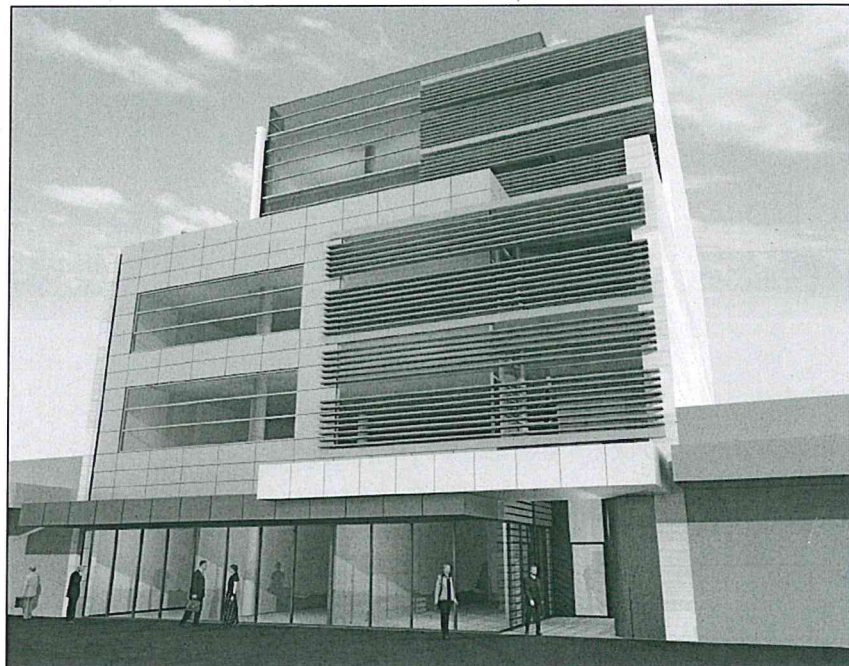


MODIFICATION REQUEST:

**92, Manning Street, Tuncurry.
7 storey Commercial/retail building Lot 1 DP
301489. MP08_0042 (Mod.2).**

Director-General's
Environmental Assessment Report
Section 75W of the
Environmental Planning and Assessment Act 1979

March 2012



© Crown copyright 2012
Published March 2012
NSW Department of Planning & Infrastructure
www.planning.nsw.gov.au

Disclaimer:

While every reasonable effort has been made to ensure that this document is correct at the time of publication, the State of New South Wales, its agents and employees, disclaim any and all liability to any person in respect of anything or the consequences of anything done or omitted to be done in reliance upon the whole or any part of this document.

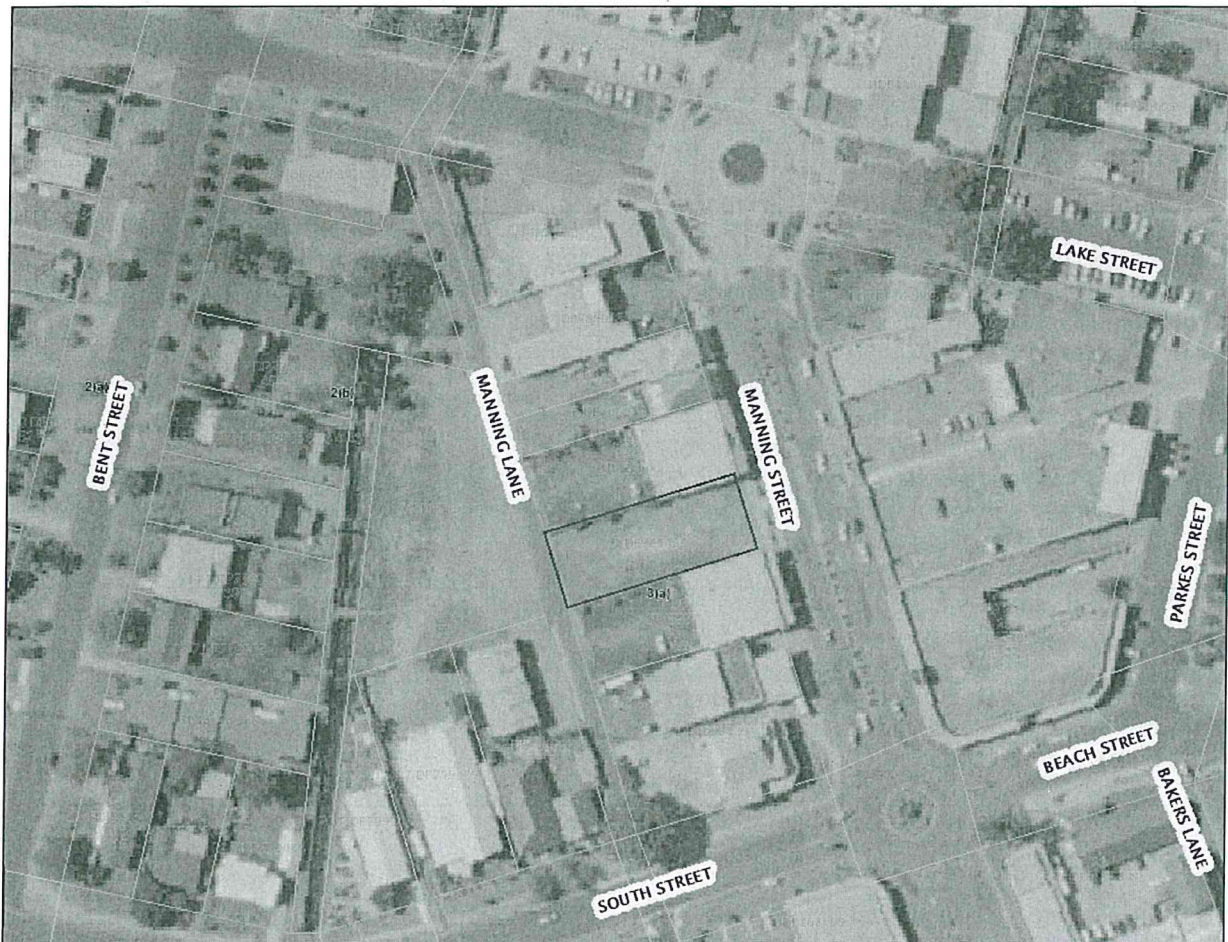
*NSW Government
Department of Planning & Infrastructure*

1. BACKGROUND

The proponent, Morris Bray Architects, requests a S75W modification of this centrally located 7 storey commercial building, presently under construction (nearing completion) at 92 Manning Street, Tuncurry, Great Lakes Shire, (Lot 1 DP301489). The new building is proposed to accommodate the operations of a statewide waste management company, JR Richards Waste Management, a major local employer.

The Site

The aerial photograph below illustrates the site by red edge.



1.1 Approval History

The project approval to develop a 6 storey commercial building was granted under Part 3A on 24 November 2009 (refer to Director General's Environmental Assessment Report <http://majorprojects.planning.nsw.gov.au>). Subsequently, Mod 1 comprising and amendment to car parking contributions, was approved on 28.06.2010.

2. PROPOSED MODIFICATIONS (MOD 2)

2.1 Table 1. Modification Descriptions

Modification Element	Justification
a) Southern boundary wall on levels 4, 5 and up to balustrade height level 6 extended East and West by 2m. Northern elevation levels 4-6 extended 400-1000mm towards the West	To provide fire separation between the building and boundary/future buildings.
b) Level 1, Southern and Northern boundary walls partly setback from the boundary by 200mm.	To simplify foundation construction against adjoining properties.
c) Reduction in parapet height, level 7/plant to Eastern elevation from 1.7 to 1.2m.	Original wall height is unnecessary. Parapet reduced as part of architectural design development and resolution.
d) General rationalisation of transoms and mullions to Eastern elevation curtain wall construction as part of design development.	To improve construction detailing and overall architectural quality of the facade.
e) Simplification of Western elevation glazing and curtain walling articulation. <ul style="list-style-type: none"> General rationalisation of transoms, mullions, vision and solid panels across facade. Step in facade in levels 2-5 moves up to 2m north. Level 6 modified to duplicate outline of level 5 facade & stepping. Level 7/Plant parapet modified to match outline of level below. 	Changes to the Western elevation will improve the overall architectural quality of the facade, simplify construction and improve the efficiency of the office spaces with a consistent floor plate.
f) Additional windows added to level 6, southern elevation.	To provide additional natural light to level 6 office space
g) Extent of Plant Room floor plan modified to be smaller. Note: original setbacks from the edge of the building are maintained.	To be more cost efficient
h) Extent of louvers in the plant room walls modified.	To match the revised plant room layout.
i) Part Western facade in front of the lift core and behind the balcony moved 1.7m to the west.	To create additional high quality office space (and part compensate for losses in floor space area elsewhere as a consequence of this modification). Gross Floor Area (GFA) is nevertheless reduced from 3202m ² to 3141m ²

3. STATUTORY CONTEXT

3.1 Modification of the Minister's Approval

Section 75W(2) of the Act provides that a proponent may request the Minister to modify the Minister's approval of a project. The Minister's approval of a modification is not required if the approval of the project as modified would be consistent with the original approval.

It is considered that the proposed modifications described in Table 1 above, are consistent with the original approvals but are sufficient to require their lodgement and consideration as a formal modification to the approval.

3.2 Environmental Assessment Requirements

Section 75(3) of the Act provides the Director-General with scope to issue Environmental Assessment Requirements (DGRs) that must be complied with before the matter will be considered by the Minister. Environmental Assessment Requirements were not required due to the minor nature of the proposal involving changes to the façade design and for the introduction of new windows.

3.3 Delegated Authority

The Minister delegated his functions to the Director, Metropolitan and Regional Projects, North, to determine a modification request under section 75W of the Act where:

- The relevant local council has not made an objection; and
- A political disclosure statement has been made, but only in respect of a previous related application, and
- There are less than 10 public submissions in the nature of objections.

There have been no submissions received from the public and although council has made a submission this is only in relation to the introduction of new windows to the southern elevation at level 6 and an item of missing information concerning the plant room layout. These issues have since been resolved to the satisfaction of the council.

A political disclosure statement has not been submitted in respect of this nor the previous related application.

Accordingly, the applications are able to be determined by the Director, Metropolitan and Regional Planning North.

4. CONSULTATION AND SUBMISSIONS

4.1 Exhibition

Under section 75X(2)(f) of the Act and clause 8G of the Environmental Planning and Assessment Regulation 2000, the modification requests were made publically available on the department's website.

The department also consulted with council, who made submissions in relation to the modification applications.

4.2 Public Authority Submissions

Great Lakes Council by response dated 6 January 2012 advised that the plant room was undefined in the modification plans and that new windows near the side boundary on level 6 require possible contingency treatment to maintain future privacy and neighbouring site redevelopment equity. These issues have subsequently been resolved by the submission of the plant room plans and the imposition of new condition F23 (see Table 2 below) which satisfy council's concerns.

4.3 Public Submissions

No submissions were received from the public.

5. ASSESSMENT

The key issues are outlined in table 2 below:

Table 2 Key Assessment Issues

Issue	Consideration
<p>1. New windows are proposed near the side boundary on level 6 (item f, Table 1).</p> <p>This requires a contingency to allow for their treatment to maintain future privacy and neighbouring site redevelopment equity.</p> <p>Planning Control: DCP51 setback requirements (Clause 15.7, Table 15.1):</p> <p><i>9 metres where a habitable room/balcony faces a habitable room/balcony on an adjacent property</i></p> <p><i>6.5 metres between habitable rooms/balconies and non habitable rooms/balconies on an adjacent property</i></p> <p><i>4.5 metres where a non-habitable room/blank wall faces a non habitable room/blank wall on an adjacent property</i></p>	<p>Generally, the setback controls specified in Table 15.1 of DCP 51 would require a side wall incorporating windows to be setback up to 9 metres. The approved southern blank wall on level 6 was setback 0.725 metres by virtue of condition B1, essentially to improve the urban design of the upper levels of the building.</p> <p>The DCP height controls allow construction of a building of similar or even greater height, on neighbouring sites in the future. Therefore it is necessary to consider the implications of future development potential of neighbouring sites. Note that in DCP 51, sites having width less than 30 metres are restricted to 4 storeys.</p> <p>Setbacks are also normally required in order to preserve future privacy because a presumption exists that a future redevelopment may incorporate a residential use with windows facing the proposed windows. The setback controls are also aimed at maintaining a level of equity between adjoining sites so that neither is disadvantaged in terms of development potential by allowing the excessive "borrowing" of window amenity from its neighbour. Therefore when windows are placed within the specified side boundary setbacks, the windows must be unrequired (by the BCA, in terms of light and ventilation) and be capable of being treated so that they also allow suitable privacy and amenity objectives to be achieved for any future residential development on the adjoining site</p> <p>The proposed windows are unrequired. Therefore, the proposed side elevation windows will be regarded as a temporary opportunity for occupants to enjoy views from the side of this commercial building. The most appropriate means to control these windows is to provide for a condition to require a covenant to specify that the side boundary windows to be made suitable for, and, if necessary, deferring to, a future development at the time when this occurs on the neighbouring site. The covenant will require the windows to be treated or replaced (if necessary) with chemically or mechanically etched glass so as to eliminate any privacy concern, if needed to mitigate privacy or achieve development density capability, in the redevelopment of the neighbouring site. The accepted method is to provide for a S88(B) covenant in favour of the Council.</p> <p>The Council should regard the covenant as a discretionary tool whereby the Council can enforce its design intent to achieve a reasonable planning outcome for the neighbouring site, if such enforcement is indeed required (given contemporary development controls). The covenant should be maintained for so long as the building which has the covenanted windows continues to exist.</p>

Issue	Consideration
2. Urban design consideration of new windows on the southern elevation (item f Table 1).	<p>The proposed new side windows to the southern elevation of level 6 are a positive urban design element that helps to reduce the massing of what will be a quite prominent building in Tuncurry, pending new developments of a similar scale in this precinct in the future.</p> <p>There is merit in allowing additional articulation of a façade through introduction of windows, wherever possible, especially when there may be an extended period of time that a building such as this one may feature prominently within the townscape. This is also consistent with the objectives of Clause 9 of DCP 51.</p>
3. Urban design consideration of East (rear) and West (front) façade modifications (items a, d, e, Table 1).	<p>Department's Team Leader, Urban Design, advises that the revised façade is improved through expressed transom framing and solid spandrel panels. Creation of a shadow line between the side walls and the façade helps to give depth to the composition and delineate the non-load bearing façade. This outcome is consistent with the objectives of DCP 51.</p>
4. Other minor design modifications (item b, c, g, h in Table 1)	<p>These proposed modifications are minor, making little difference in the overall appearance of the building. However, in terms of the overall composition of the building, the Department's Team Leader, Urban Design, advises that the revisions represents an improvement to the original scheme.</p>

6. CONCLUSION

The proposed modifications are acceptable, subject to a new condition F23 for a covenant to require future treatment (privacy etching or frosting) of the windows at level 6. The covenant would only be enforced to maintain future equity and privacy of neighbouring property on its redevelopment.

The urban design appearance of the building is also further enhanced by the modifications to the other facades, as proposed in the other modifications. Referenced in Table 1.

Conditions A1 and A2, are also amended relating to the modification description of the uses, gross floor area and approved plans made necessary as a consequence of this modification.

It is therefore concluded that the modification applications may be approved, as outlined in the recommended Instruments of Modification Approval.

7. RECOMMENDATIONS

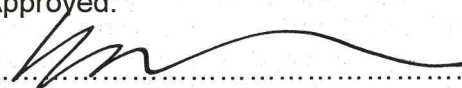
It is recommended that the Director, Metropolitan and Regional Planning North Deputy **Consider** the findings and recommendations of this report;

- a) **Approve** the modification (MOD 2), under section 75W of the *Environmental Planning and Assessment Act, 1979*, and;
- b) **Sign** the attached Instrument of Modification Approval (**Tag A**)


Assessment prepared:


.....
Steve Czeref, **Planner**

Approved:


.....
Heather Warton
**Director, Metropolitan and Regional
Projects North**

Endorsed:


.....
Stuart Withington, **Team Leader**

21/3/12

Instrument of Determination (Tag A).

Appendix A;

Table 3 Compliance with LEP and DCP

Ref# Mod	DCP 51 clauses	Comment/compliance/consistency with objectives and /or detailed requirements.
a	Clause 9 External Building Elements	Consistent
b	Clause 9 External Building Elements	Consistent
c	Clause 9 External Building Elements	Consistent
d	Clause 9 External Building Elements	Consistent
e	Clause 9.1 Façade articulation	Consistent. Department's Team Leader, Urban Design, Centres and Urban Renewal, advises that the proposed façade detail represents an overall improvement to the previously approved façade detail in the scheme.
f	<p>Clause 9(e) <i>Visible parts of side and rear boundary walls are to be treated with similar consideration of proportion, detailing and materials as other elements of the façade.</i></p> <p>Clause 15.7 <i>Side boundary setbacks</i></p>	<p>Generally consistent. The previously approved façade required to be amended to provide for minor setback at level 6. Condition B1 required that the level 6 be set back from both the north and south (side) boundaries. This setback, although small in dimension, facilitates the incorporation of windows that assist in the relief of massing of the side boundary wall.</p> <p>This consideration also involves the new side boundary windows on level 6 See Table 1 for consideration of key setback, equity and privacy issues as relevant to Clause 15.7.</p>
g	Clause 9.2 Roof Design	Consistent. Note the plant room area has been reduced in (plan view) area from that as approved.
h	Clause 9.2 Roof Design	Consistent.
i	Clause 9	Consistent

