

08510  
31 May 2011

Mr Sam Haddad  
Director-General  
Department of Planning and Infrastructure  
22 – 33 Bridge Street  
Sydney NSW 2000

Attention: Andrew Smith

Dear Andrew

**SECTION 75W MODIFICATION (2) – MP08\_0238  
1 DENISON STREET, NORTH SYDNEY**

We write to you on behalf of the proponent Eastmark Holdings Pty Limited, seeking an amendment to Project Approval MP08\_0238 pursuant to Section 75W of the *Environmental Planning and Assessment Act 1979* (EP&A Act) which will allow the staged construction and occupation of the approved commercial and hotel buildings.

Specifically the following amendments are sought:

- Deletion of works which relate to Mount Street that are unrelated to the approved development;
- Rewording of conditions so as to allow the phased construction of the project allowing the issue of the Construction Certificates as required for the various stages of works including the enabling works, early site works and the commercial building and hotel building each in their own right;
- Rewording of conditions so as to allow the staged payment of section 94 contributions; and
- Rewording of conditions so as to allow the deferred payment of section 94 contributions such that they are payable prior to the issue of an Occupation Certificate as opposed to a Construction Certificate.

A tracked changes version of the conditions of consent showing proposed deletions (~~striketrough~~) and insertions (***bold italics***) is included at **Attachment A**. The proposed changes are procedural only and no changes are proposed to the physical form of the development.

This application identifies the consent, describes the proposed modifications and provides a planning assessment of the relevant matters for consideration contained in Section 75W of the EP&A Act. It should be read in conjunction with the Environmental Assessment Report (EAR) dated May 2009, the Preferred Project Report (PPR) dated October 2009 and the Section 75W modification dated August 2010. The application is accompanied by:

- Section 75W application form and fee;
- Tracked changes of amendments to conditions of consent (**Attachment A**);
- A copy of the Notice of Determination for MP08\_0238, as amended (**Attachment B**);

- Plans showing extent of enabling works prepared by Rice Daubney (**Attachment C**); and
- A copy of the Notice of Determination for The Ark development (DA660/06) (**Attachment D**).

## 1.0 CONSENT PROPOSED TO BE MODIFIED

Project Approval MP08\_0238 was granted by the Department of Planning (DoP) on 25 February 2010 for demolition of existing buildings and erection of a mixed use development comprising a retail/commercial building and a hotel building at 77 – 81 Berry Street and 88 Walker Street.

The consent was modified in March 2011 in the following manner:

- A service tunnel was included under Little Spring Street connecting the basement of the hotel building with the basement of the commercial building;
- The height of Level B5 basement area was increased to accommodate additional plant requirements;
- The basement and lobby areas of the hotel building were amended to reflect the original proposal, to reflect the introduction of the service tunnel;
- The public domain / undercroft space to the south of the commercial building was enlarged;
- The public domain area in Dennison Street was reconfigured;
- The ground floor lobby / mezzanine areas of the commercial building were reconfigured;
- The car park and commercial tower lift cores were relocated;
- The upper level setbacks to Little Spring, Spring and Dennison Streets were reduced;
- The design of the façade articulation was revised following a reduction in the height of the building;
- The accessible car parking spaces were relocated and reconfigured in anticipation of the requirements of Building Code of Australia 2011 (BCA 2011) – note no change to overall number of parking spaces occurred;
- Condition B1 was deleted;
- Conditions B4 & B6 were amended as a result of the revised GFA of the development; and
- Condition B38 was amended to reflect the revised wind assessment.

A copy of the Notice of Determination, as amended, is included at **Attachment B**.

## 2.0 PROPOSED MODIFICATIONS TO CONSENT

The following modifications to the consent are provided in table of conditions at **Attachment A**. The proposed changes will allow for the stage construction of the project and also the staged payment of Section 94 contributions.

In addition the changes proposed in the table at Attachment A

### 3.0 ENVIRONMENTAL ASSESSMENT

The following provides an environmental assessment of the proposed modifications.

#### 3.1 Staged Construction

The application seeks amendments to the conditions of consent which will allow for the phased construction of the project and the release of various Construction Certificates to reflect the construction program and construction methodology. Four separate project phases are proposed:

- Enabling Works phase;
- Early works, including demolition and excavation;
- Construction of the commercial building; and
- Construction of the hotel building.

Given the size of the project, it is reasonable that construction be carried out in phases. However the current wording of the consent does not permit this to occur.

The phased construction of the development would not generate any new environmental impacts but will facilitate the early and orderly construction of the commercial building followed by the hotel building.

Rice Daubney has prepared plans which outline the scope of the enabling works (**Attachment C**). These works involve the realignment and/or relocation of some of the services for the total site that currently pass through the future works zone. The works involve the establishment of new routes for the individual services and new locations for plant rooms within the existing Beau Monde building. All works are to be in the stratum owned by Eastmark however the services form part of the Strata Management Statement as shared facilities between various lots of the building.

The enabling works remain the same as those approved as part of the Project Approval with the exception of the fire pump room which has been relocated from the eastern side of the basement to the western side of the basement.

The following new condition is proposed which will allow for a CC to be issued for enabling works whilst more detailed issues of the development are being resolved:

#### **B56 Enabling Works**

*The construction of the development is to be carried out in phases. The Construction Certificate can be issued for the enabling works as generally shown on the Rice Daubney plans at Attachment C of the Section 75w application.*

*Notwithstanding the requirements of any other condition of this consent, a Construction Certificate can be issued for the enabling works following satisfaction of the following conditions:*

- B9 Long Service Levy
- B10 Security Bond Schedule
- B22 Required Trunk Drainage Diversion Works – submission and approval of plans by Council under Roads Act 1993
- B28 Services to be underground
- B29 Sydney Water
- B40 Works Zone
- B51 Construction Management Plan
- C3 Statement of Compliance with Australian Standards
- C5 24 Hour Contact Telephone Number

### 3.2 Staged Payment of Section 94 Contributions

The amendments proposal seek to stage the section 94 contributions commensurate with the development of each stage of the development and also seek to defer the payment of some contributions such that they are payable prior to the issue of an Occupation Certificate as opposed to a Construction Certificate.

In this instance contributions are payable for childcare facilities, community centres, library premises and equipment and the like. None of which will be demanded by the development until such time as occupation occurs. It therefore makes sense that the payment is made at the time the demand is generated.

A precedent of staged contributions has already been established by North Sydney Council in the approval of The Ark development at 16 – 40 Mount Street, North Sydney. In the approval of DA660/06 Council required the part payment of contributions prior to the issue of a Construction Certificate and part payment prior to the issue of an Occupation Certificate as outlined below.

#### Payment prior to Construction Certificate

- Public Domain Improvements
- Traffic Improvements

#### Payment Prior to Occupation Certificate

- Administration
- Multi Purpose Indoor Sports Facility
- Child Care Facilities
- Open Space Acquisition
- Community Centres
- Open Space Increased Capacity
- Library Acquisition
- Olympic Pool
- Library Premises and Equipment

We note that in 2008 the State Government recognised that the upfront payment of contributions created significant cash flow concerns for developers, particularly in light of the tightening of credit. In response to this payment of state levies were required to be paid before the transfer of title from the developer to the purchaser.

The deferred payment of some contributions under this consent would be consistent with the above precedents. We therefore request that the Department considers this request and allows for the staged payment of contributions.

### 4.0 CONCLUSION

This application seeks modifications to procedural issues only and will not generate any new or different environmental impacts compared to the approved development. The changes proposed will allow for the staged construction of the development and as such will facilitate the economic and orderly delivery of the development and are thus recommended for approval.

Should you have any queries about this matter, please do not hesitate to contact me on [jbuchanan@jbaplanning.com.au](mailto:jbuchanan@jbaplanning.com.au) or on 9956 6962.

Yours faithfully



Jennie Buchanan  
Principal Planner