



12440
4 February 2013

Mr Sam Haddad
Director-General
Department of Planning and Infrastructure
GPO Box 39
SYDNEY NSW 2001

Attention: The Assessing Officer

**MP 09_0078 (MOD 5) S75W MODIFICATION - AMENDMENTS TO CONDITIONS
BLOCK 2, CENTRAL PARK**

We write to you on behalf of the proponent Frasers Broadway Pty Ltd, seeking an amendment to Project Approval MP09_0078 pursuant to Section 75W of the *Environmental Planning and Assessment Act 1979* (EP&A Act) to modify conditions of approval to reflect amendments to the concept plan and project applications on the site.

This application identifies the instrument of approval, 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 February 2010 and the Section 75W modification applications dated March 2011, October 2011, December 2011, July 2012. The application is accompanied by:

- Section 75W application form and fee;
- Revised Subdivisions Plan prepared by Denny Link and Co, dated 7 December 2012 (**Attachment A**);

1.0 CONSENT TO BE MODIFIED

The site has a recent planning history, marked by a number of Part 3A (EPA Act 1979) approvals including a Concept Plan for the Carlton United Brewery Site (now known as Central Park).

Block 2 and Block 2A (One Central Park) have been approved under a separate Project Application (as detailed below), and are currently under construction. The relevant approvals are discussed below.

1.1 Frasers Broadway Concept Plan MP06_0171 (as modified)

MP06_0171, as modified in February 2009, is a Concept Plan approval applying to Central Park which permits the construction of a mixed use precinct comprising:

- 11 development blocks;
- A maximum Gross Floor Area (GFA) of 255,500m² of which a minimum of 30% must be commercial floor space;
- Combined basement car parks, providing car parking for Blocks 1, 4 and 8 and Blocks 2, 5, 9 and the Kensington Precinct;
- A new public park;

- Tri-generation and Re-cycle water treatment plants;
- Retention of heritage items;
- Public domain works; and
- Contributions.

1.2 Block 2 (One Central Park) Project Approval MP09-0078

On 18 June 2010 the Planning Assessment Commission approved the construction of a mixed use retail, commercial and residential building consisting of two towers located above a podium, accommodating:

- 593 residential apartments;
- A food court, specialty retail and a supermarket; and
- Commercial floor space within the podium.

The approved development also included the construction of terraces (landscaped platforms) which rise from the plaza to podium level 2 of the new building on Block 2, installation of a heliostat which projects sunlight onto the landscaped platforms, construction of the surrounding public domain and stratum subdivision of the development.

1.3 Modifications to Project Approval MP09-0078

Since approval, the PA has been modified a total of four times. The modification to the approved development included:

- Variations to the approved building envelope;
- Revised number and mix of apartments (623);
- Deletion of commercial floor space;
- Increase in residential floor space and retail floor space to 67,626m²;
- Reconfiguration of internal layout of podium;
- Reconfiguration of internal layout of some apartments;
- Revised design and operation of the heliostat;
- Amendments to landscaping on facades; and
- Amendments to the access to the landscape platforms.
- Extension to hours of construction

2.0 PROPOSED MODIFICATIONS TO CONSENT

2.1 Description of proposal

The modification seeks approval to modify conditions of consent to ensure consistency with subsequent amendments to the concept plan, project applications, and application to separate authorities. A list of the conditions proposed to be amended is provided in the table below.

Condition	
Condition A2	Development in Accordance with Plans and Documentation
Condition B4	Public Art
Condition E1	Amendments to Subdivision plans
Condition E2	Restrictions of Use of car and Storage Spaces
Condition E4	Access

Condition E8	Publicly Accessible Land
Condition E12	Building/Strata Management Statement
Condition E13	Positive Covenant for the Recycled Water Treatment Plant
Condition F1	Vertical Green Wall and landscaping
Condition F13	Publicly Accessible Areas Management Plan

2.2 Proposed amendments to condition

The following conditions are proposed to be amended. Additions are shown in ***bold italics*** and deletions are shown in **~~bold strikethrough~~**.

A2 – Development in Accordance with Plans and Documentation

Drawing No.	Revision	Name of Plan	Date
Subdivision Plans prepared for the Section 75W Application by Denny Linker & co., dated 2 December 2011 (Issue 32)			
<i>Subdivision Plans prepared for the Section 75W Application by Denny Linker & co., dated 7 December 2012</i>			

(Note: It is proposed to revise the reference to subdivision plans at the bottom of the plans and documentation list)

Reason:

The condition is proposed to be amended to be consistent the current version of subdivision plans (changing from 2 December 2011 to 7 December 2012). Issue 39 aligns to that lodged with Council for approval and also with the LPI for a pre-registration review.

B4 – Public Art

High quality art work must be provided within the development in publically accessible locations ***established within the approved Public Art Strategy document (as amended).*** ~~including near main entrances, lobbies, and on street frontages, in accordance with the Central Sydney DCP 1996 and Public Art policy.~~ Consultation must be undertaken with Council and details of the art work must be submitted to and approved by Council prior to the relevant Construction Certificate being issued.

All public art is to be provided, installed and completed prior to the issue of ***the last occupation certificate for any part of the building on Block 2.***

Reason:

The condition is proposed to be modified to reflect the public art elements within Block 2 in accordance with the strategy as approved. For Block 2 these incorporate the Vegetal Green Walls by Patrick Blanc and the heliostat lighting by Yann Kersale. For Lots 301, 303, and 305 only the relevant green walls by Patrick Blanc apply.

For Lot 302 it will include the Yann Kersale lighting as well as the Patrick Blanc green walls. Staged provision of the public art to individual Occupation Certificates is problematic given the timing for completion of different elements of the building. It is preferable and controllable to require all public art to be completed by the time the last occupation certificate is issued.

E1 Amendments to Subdivisions Plan

~~Lot 310 is to be consolidated with Lot 305~~

Reason:

It is proposed to delete this condition as the lot references in the condition relate to draft stratum plan dated 23 February 2010 which has now been superseded and the lot references are now well out of date, however it appears at the time lot 310 was the RWTP and lot 305 was the "residue" lot. Frasers propose that this condition be deleted as the Recycle Water Plant is to remain on separate title to ensure efficiencies with regulatory compliance with WICA regime.

E2 - Restriction on Use of car and Storage Spaces

The following conditions apply to car parking and storage where those spaces affect Strata Lots:

- (a) The on-site car parking and storage spaces within lots 301, 302, 303, 308, 310, 311 and 312 are not to be used other than by ~~a resident or~~ an owner or occupant of the subject lots
- (b) The on-site car parking spaces within lot 305, ~~306~~ & 309 are not to be used other than by an ~~occupant, tenant or~~ owner or occupant of the subject lot.
- (c) The on-site car parking and storage spaces within ~~313 306 are not to be used other than by a resident or owner of~~ **are to be used by tenants, residents, owners and occupiers of Blocks 3, 6, 7 and 10. On-site car parking spaces can also be used by owners or occupiers of lots 310, 311 and 312.**
- (d) The proponent is to include restrictions on use, created pursuant to section 88B of the Conveyancing Act 1919, to Council's satisfaction addressing Conditions E2 (a) to (e) in either,
 - 1) the initial deposited plan subdividing the site; or
 - 2) the appropriate strata plan/s subdividing a lot created by the plan referred to in 1).

Reason:

It is proposed to delete reference to Lot 306 as recreation facilities are now part of Lot 302. Lot 306 is the "Car Parking Stratum" (formerly lot 313) referred to in (c) above. Point (c) is proposed to be amended to reflect expected changes to MP09_0042 (MOD 3) east basement.

E4 - Access

Documentary easements for access must be created over the appropriate lots in the subdivision to provide for ~~public access and~~ access to lifts, lobbies, fire stairs, **and** service areas, loading areas and car parking areas, and created pursuant to Section 88B of the Conveyancing Act 1919.

Reason:

Easements under this condition will provide access for owners, occupiers and their invitees and easements for "public access" are dealt with under condition E8 (see below).

E8 - Publicly Accessible Land

Rights of way, easements and **positive covenants** must be created over the publicly accessible land shown on the Public Domain Plan for the site to provide and maintain public access, pursuant to Section 88B of the Conveyancing Act 1919 at ~~the appropriate times as agreed with Council.~~

Reason:

Items 1- 5 of the Privately Owned Publically Accessible areas are subject to the opening of the retail component (Lot 305) whilst the remainder, items 6-10 will be contingent upon the completion of Block 5C (lots 311/312). The contractor, Watpac Constructions (NSW) Pty. Ltd., scope of work for the retail consists of a cold shell which they envisage completing in March 2013 and seeking the receipt of OC for that component. From that point, Frasers will be undertaking fitout with the intent of operating the retail as from August/ September 2013.

Because of the staging of the works, it was discussed that items 1-5 should be linked to the Occupation Certificate of Lot 301/302 whilst items 6-10 should be linked to the occupation Certificate of Lot 311 (Block 5C). It is the intent of the applicant to seek amendment to MP09_0078 to reflect these staging requirements and trust that such will be supported by Council. Item 9 is subject to a Concept Plan modification to be lodged to reflect the final usage of the space being a landscaped area rather than a publicly accessible space as previously discussed.

Further, in Block 5A or MP09_0041 at Condition F15 the OC of Block 5A is linked to the OC of the Main Park and Block 2A which is in essence the Block 2 retail (Lot 305), which both should be acceptable provided the above are endorsed .

E12 – Building/Strata Management Statement

Prior to the issue of a Subdivision Certificate, a Building/Strata Management Statement must be prepared which adequately details the following matters to the satisfaction of the Department ~~and Council~~:

- ~~a) The use, operation, management and arrangements for the supply of services, 'step-in' agreement, maintenance and upgrading for the Recycled Water Plant within proposed Lot 307 and associated plant, equipment and pipes;~~
- a) The use, operation, management, maintenance and upgrading for the Stormwater Detention Tank within proposed Lot 311 and associated pipes and equipment;*
- ~~b) The use and arrangements for the supply of services for the Central Thermal Plant within 'Superlot 2' and associated plant, equipment and pipes~~
- b) The use, management, maintenance and upgrading for the privately owned and publically accessible areas within the subdivision; and*
- c) The ongoing maintenance, upgrading, redevelopment and structural adequacy of each stratum lot within the subdivision.*

Reason:

The previous part (a) of this condition should be deleted as the entirety as the management of this facility will be subject to the WICA licensing regime and IPART oversight and any 'step in rights' will be addressed through the regulatory regime and otherwise supplemented by private agreements. Furthermore, as with any such business venture it will be financed and the financier will need authority over this facility. These private agreements are not required to be addressed as part of the planning system and conditions of approval.

The previous part (c) is proposed to be deleted as the Central Thermal Plant is not located on the land the subject of this approval and although it may provide services to Block 2, it may be that the BMS/SMS will not address the CTP but rather the services will be covered by private contractual arrangements.

The remainder of the conditions are to be maintained as existing and involve a change to the letter numbering for consistency.

E13 - Positive Covenant for the Recycled Water Plant

~~A public positive covenant must be created on the subdivision, burdening proposed Lot 307 (the Recycled Water Plant) in favour of Council, requiring that the owner of the lot maintains in good functioning order, and upgrades and replaces when necessary, the Recycled Water Plant and associated plant, equipment and pipes to ensure that the Plant functions appropriately for its intended purpose. The covenant is to also include the provision for Council to inspect the Lot. The covenant must be created pursuant to Section 88B of the Conveyancing Act 1919, to Council's satisfaction.~~

Reason:

This condition is no longer necessary and should be deleted in its entirety as it is already overseen by IPART as part of the License Agreement that is in place. Under changes to WICA, the Council no longer has any role for these types of facilities under section 68 of the Local Government Act. The regulator is IPART and the Minister administering the WIC Act, as such, this condition is considered to be redundant and would result in a third regulator of this activity.

F1 – Vertical Green Wall and Landscaping

Prior to the issue of an Occupation Certificate, the owner must procure the registration of a ~~positive covenant on the title of the land benefiting a public authority requiring the vertical green walls and landscaping be maintained, repaired and replanted where necessary in accordance with the maintenance schedule approved in Condition B17 of this approval. Prior to the issue of an Occupation Certificate, a Building Management Statement or Strata Management Statement must be provided in registrable form to the Director General for approval which requires the ongoing maintenance of all plantings, both horizontal and vertical and which maintenance is to be the responsibility of the relevant owners of the land. on the relevant titles prior to the issue of the Occupation Certificate of Lot 302 or as otherwise agreed with Council benefiting a public authority requiring the vertical green walls and landscaping be maintained, repaired and replanted where necessary in accordance with any management plan or like document approved by the Director-General.~~

Reason:

The condition is proposed to be amended so that the positive covenant to Lots 301-303 and 305 as these are the lots over which the green walls and associated landscaping will be constructed.

F13 – Publicly Accessible Areas Management Plan

~~A Management Plan for public accessible areas must be prepared in consultation with Council officers, in accordance with the Second Deed of Variation of Owner's Approval Deed dated 26 June 2009. The Management Plan must be prepared, publicly exhibited and approved by the Council prior to the issue of an Occupation Certificate, or the use commencing, whichever is the earlier.~~

Any Management Plan for public accessible areas may be prepared in stages to accord with the creation of any rights of way, easements and positive covenants as referred to in condition E8 for the relevant publicly accessible areas and must be prepared in consultation with Council officers, in accordance with the Second Deed of Variation of Owner's Consent Deed dated 26 June 2009

Reason:

It is proposed to amend this condition to ensure consistency with condition E8 (as amended) and to better reflect the actual terms of the Owner's Consent Deed which does not of itself require such a plan.

3.0 ENVIRONMENTAL ASSESSMENT

The proposed modification will not result in any additional or adverse environmental impacts.

4.0 CONCLUSION

The proposed amendments to conditions allow for the orderly finalisation, management and delivery of the project, reflecting concurrent amendments to the concept plan, and other project applications.

We trust the above provides sufficient information to undertake an assessment of the application. Should you have any queries about this matter, please do not hesitate to contact me on 9956 6962 or sgouge@jbaplanning.com.au.

Yours faithfully

A handwritten signature in blue ink, reading "Stephen Gouge". The signature is written in a cursive, flowing style.

Stephen Gouge
Urban Planner