



1 February 2018

The Minister
NSW Department of Planning and Environment
GPO Box 39,
Sydney NSW 2001

Dear Minister,

SECTION 75W MODIFICATION (MOD 3) OF PROJECT APPROVAL MP09_0146 - EASTLAKES SHOPPING CENTRE, EASTLAKES

1. INTRODUCTION

This Section 75W Modification has been prepared by Urbis on behalf of Stateland East Unit Trust (Crown Group) to modify Project Approval MP09_0146 relating to the Eastlakes Shopping Centre, Eastlakes.

This application seeks to modify the Project Approval to facilitate the removal and replacement of four (4) existing trees along the northern side of Evans Avenue to enable the construction of the approved development.

This letter is supported by the following information:

- Arboricultural Impact Assessment prepared by Eco Logical Australia and submitted at **Appendix A**.
- Amended Landscape Plans prepared by Taylor Brammer Landscape Architects and amended by Turf Design Studio and submitted at **Appendix B**.

Prior to lodgement of this Section 75W Modification, the Proponent consulted with Bayside Council in September 2017. Council acknowledged that following a site inspection the trees will be impacted by the approved development and a modification should be prepared to facilitate their removal.

This letter provides a brief history of approvals on the site, describes the site and its context, provides a description of the proposed modification and assesses the modifications against the relevant provisions under the *Environmental Planning and Assessment Act 1979* (EP&A Act) and applicable environmental planning instruments and policies.

2. PROJECT BACKGROUND

Project Approval (MP09_0146) was granted on the 19 September 2013 by the Planning Assessment Commission, on behalf of the Minister for Planning, for the redevelopment of the Eastlakes Shopping Centre comprising:

Mixed use development incorporating basement car parking, ground floor retail area, and residential development above, communal open space, public domain landscaping and associated infrastructure works.

Modification 1 to the Project Approval was lodged on the 11 July 2017. The modification was exhibited until the 23 August 2017 and seeks approval for the following:

The proposed modification relates exclusively to the North Site. The works comprise general site improvements relating to basement car park layout, reconfiguration of the ground level retail mall and a modification to the building envelope of Building 1B. The proposal also involves design development of the landscape strategy for the North Site and tree removal and replacement along Evans Avenue.

Modification 2 to the Project Approval was lodged on the 18 September 2017. The modification sought approval for a minor modification to Condition B29(e) to facilitate larger construction vehicles up to 19 metres long to be used during construction. Approval was subsequently granted on the 19 December 2017.

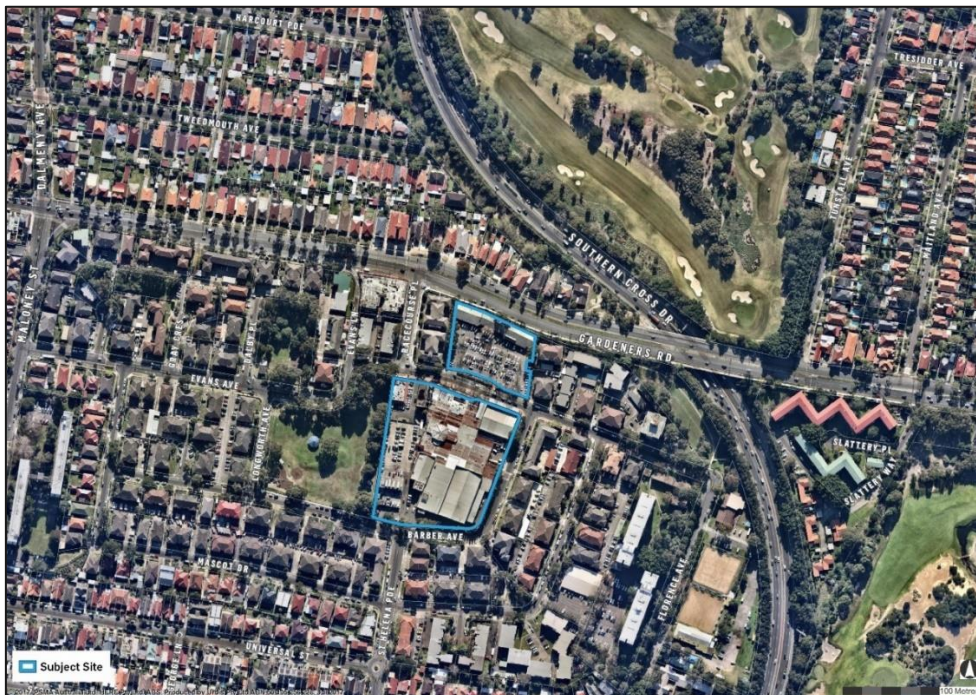
Due to construction timeframes, approval is now sought under this modification for tree removal and replacement along Evans Avenue (known as Mod 3). Approval for these works will be subsequently removed from Mod 1.

3. SITE AND SURROUNDS

3.1. THE SITE

The site is known as the Eastlakes Shopping Centre and is legally described by Lot 100 in DP70082, Lots 41 and 42 in DP601517 and Lots 3 and 5 in DP248832, Nos. 19A Evans Avenue and 193A Gardeners Road, Eastlakes (the site). Cumulatively the site occupies a total area of 24,053m² (see **Figure 1**).

Figure 1 – The Site



The site is separated into two landholdings located on either side of Evans Avenue and known as the 'North Site' and 'South Site'. More specifically the site is bound by Gardeners Road to the north, Evans Avenue to the south of the North Site and north of the South Site and Barber Avenue to the east and south of the South Site. Eastlakes Reserve adjoins the western boundary of the South Site.

3.2. SURROUNDING DEVELOPMENT

The site is situated in the south-eastern Sydney suburb of Eastlakes, 8km south of the Central Business District (CBD) and within Bayside Council Local Government Area (LGA).

More specifically, the subject site is located within the Eastlakes Town Centre, with the Shopping Centre forming the basis of the centre. Current land uses in the immediate vicinity of the site consist of residential developments built in the 1960s-1970s and community parklands.

North of the site is Gardeners Road, a major east-west road connecting Mascot and Randwick. On the opposite side of Gardeners Road are single storey detached dwellings.

South of the site is characterised by 3-4 storey residential flat buildings.

East of the site are residential flat buildings located along Barber Avenue and the site boundary of the north site.

West of the site is Eastlakes Reserve which adjoins the boundary of the South Site. The reserve includes numerous mature trees, a children's playground and seating. A residential flat building immediately adjoins the boundary of the north-western portion of the site.

4. PROPOSED MODIFICATION

This modification seeks to remove four (4) trees located along the northern side of Evans Avenue.

To facilitate this modification, Condition A2, B22 (a) and Commitment 9 is to be amended as follows (note: amendments shown by deleted text **struck through** and new text in **'red'**):

A2 *The development shall be undertaken generally in accordance with:*

- *the Environmental Assessment dated 12 July 2012 prepared by Don Fox Planning except where the amended by the Preferred Project Report dated 14 March 2013 and as amended by information submitted on 8 May 2013, including all associated documents and reports;*
- *the Draft Statement of Commitments prepared by Don Fox Planning;*
- *the following drawings:*

Landscape Plans by Taylor Brammer

Drawing No	Revision	Name of Plan	Date
LA01	C D	Concept Landscape MasterPlan	28.02.2013 03.01.2018
LA02	C D	Tree Retention and Removal Plan	28.02.2013 03.01.2018

LA03	⊖ D	Public Domain Landscape Plan	28.02.2013 03.01.2018
LA04	⊖ D	Landscape Planning Plan	28.02.2013 03.01.2018
LA05	C	Landscape Soil Depths Plan	28.02.2013
LA06	C	Landscape Details Plan	28.02.2013
LA07	C	Landscape Elevations – Barber Avenue	28.02.2013
LA08	⊖ D	Landscape Elevations – Evans Avenue	28.02.2013 03.01.2018
LA09	C	Landscape Elevation and Section – Gardeners Road	28.02.2013
LA10	C	Landscape Elevations – North Site East and West Elevations	28.02.2013

B22 The following existing trees within the public domain are to be retained:

~~(a) All trees on the northern side of Evans Avenue fronting/adjoining the site shown as being retained on Landscape Plan LA02 Rev G,~~

(b) The *Tristanopsis laurina* Sweeper street trees in Barber Avenue south, and

(c) All trees within Eastlakes Reserve adjacent to the site.

These trees including their above and below ground structures, must be retained and protected during development. Permission is not granted for the removal or pruning (either canopy or roots) of any of these trees without further consultation between the engaged Consultant Arborist and the City of Botany Bay Council.

In order to ensure that the abovementioned trees are protected during demolition, excavation and construction, and their health and structural stability ensured, a Consultant Arborist AQF Level 5 is to be engaged to

(a) liaise with Council tree officers regarding their usual requirements for tree protection;

(b) provide a survey of all existing trees;

(c) recommend all necessary tree protection measures including

i. tree protection zones,

ii. pruning or remedial work to trees,

iii. any necessary construction or excavation methods; and

iv. any necessary amendments to basement design to ensure the longevity of adjoining trees to be retained.

A copy of the report is to be forwarded to Council and all recommended measures are to be incorporated into the Construction Certificate drawings and Construction Environmental Management Plan.

9. Landscape Design

The proponent will provide landscaping generally in accordance with the landscape plans provided by Taylor Brammer Landscape Architects and attached at Appendix 5 of the PPR dated March 2013 **except as modified by MOD 3 and dated 03.01.2018.**

4.1. JUSTIFICATION FOR THE MODIFICATION

The proposal seeks to remove four (4) existing trees along the northern side of Evans Avenue (refer **Figure 2**).

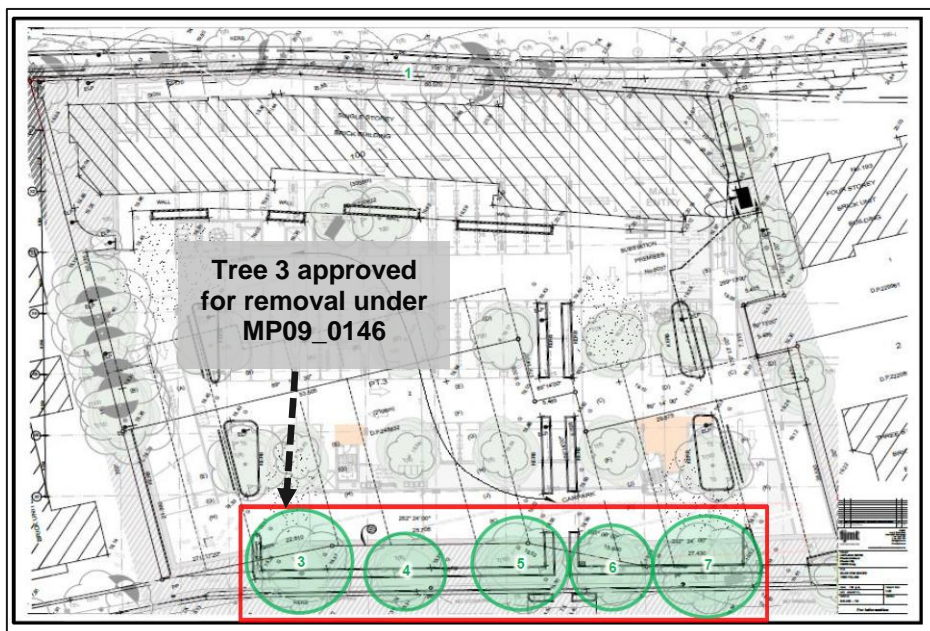
An Arboricultural Impact Assessment has been prepared by Eco Logical Australia to provide an assessment of the health and condition of existing vegetation on site, and the impact the approved development will have on existing trees. The report is submitted at **Appendix A** and it identifies that Trees 4-7 located along the northern side of Evans Avenue are identified as *Platanus Acerifolia*, or 'London Plane' trees and have a medium retention value. It is noted that Tree 3 was approved for removal under MP09_0146 and has since been removed from the site.

The trees are affected by excavation for basement levels and installation of underground services as well as being located in the approved awning line. It is noted that excavation has already commenced on site and undergrounding of services will follow as required by Condition B41 of the Project Approval. The awning is proposed to be amended as part of a separate modification (MOD 1) which is currently under assessment by DPE, which too will continue to impact the trees. The awning is important for public amenity and shelter in creating an activated café strip along Evans Avenue, as well as highlighting the entry to the retail mall architecturally.

The Arboricultural Impact Assessment identifies that having regard to the above factors, the extent of encroachment to the impacted trees is characterised as a 'major encroachment' and therefore the trees cannot remain viable and are required to be removed.

To offset the proposed removal of the subject trees, this modification seeks to plant six (6) new *Platanus orientalis cuneata*, or 'Oriental Plane' trees along the northern side of Evans Avenue to reintroduce vegetation into the streetscape in alignment with the neighbouring properties street trees setback from the kerb. These trees will be supplemented with understorey planting chosen in accordance with the Street Tree Masterplan, published by Botany Bay Council in 2014. The proposed replanting strategy is illustrated in the amended Landscape Plans prepared by Taylor Brammer Landscape Architects and amended by Turf Design Studio and submitted at **Appendix B** and in **Figure 3** (overleaf).

Figure 2 – Tree Removal Plan



Source: Eco Logical Australia

Figure 3 – Proposed Landscape Plan



Source: Taylor Brammer Landscape Architects amended by Turf Design Studio

The proposed replanting strategy will result in a total of seven (7) 'Oriental Plane' trees along the northern alignment of the Evans Avenue streetscape. This comprises the six (6) trees proposed under this modification as well as one (1) tree in the north-eastern corner approved under the original application.

As demonstrated in the following **Figure 4** and **5** elevation comparisons, the proposed replanting strategy results in an addition two (2) trees than approved/ existing along Evans Avenue and an improved streetscape presentation.

Figure 4 – Approved North Site South Elevation (Evans Avenue)



Source: Taylor Brammer Landscape Architects

Figure 5 – Proposed North Site South Elevation (Evans Avenue)



Source: Taylor Brammer Landscape Architects amended by Turf Design Studio

5. STATUTORY FRAMEWORK

5.1. ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979

As part of the repeal of Part 3A of the *Environmental Planning and Assessment Act 1979* (EP&A Act), Schedule 6A of the EP&A Act was enacted to allow the application of the repealed Part 3A provisions to certain projects that had been approved or were in the process of environmental assessment under Part 3A. These projects are known as “Transitional Part 3A Projects” and enable approved projects to be modified under the modification framework set out in the repealed section 75W of the EP&A Act, as if it were still in effect.

Major Project No. 09_0146 was approved on the 19 September 2013 by the then Minister for Planning and is a transitional Part 3A project. Modification of MP09_0146 is sought under Section 75W of the EP&A Act in accordance with the proposed modification set out in this letter.

The following sections assess the proposed modification against the relevant legislation, instruments, strategies, plans and guidelines relevant to this proposal.

5.1.1. Section 75W Modification of Project Approval

Section 75W of the EP&A Act provides a mechanism by which the proponent of a Part 3A project may request the modification of, and the Minister may modify, that project.

Section 75W(2) of the EP&A Act sets out the right of a proponent to request a modification:

“The Proponent may request the Minister to modify the Minister’s approval for a project. The Minister’s approval for a modification is not required if the project as modified will be consistent with the existing approval under this Part.”

Section 75W(4) of the EP&A Act then provides the Minister with the power to “*modify the approval (with or without conditions) or disapprove of the modification.*”

It is submitted that the Minister has the power under section 75W(4) of the EP&A Act to make the proposed modification, particularly as the modification is of limited environmental impact. This is demonstrated by the following considerations:

- The approved uses on site remain unchanged.
- The subject trees are impacted by the approved extent of basement excavation, undergrounding of services and awning line and as such there are no feasible options that would permit the retention of these trees.
- Replacement planting is proposed to compensate for loss of amenity in the Evans Avenue streetscape. The proposed planting will consist of six (6) *Platanus orientalis cuneata*, or ‘Oriental Plane’ trees along the northern side of Evans Avenue to reintroduce vegetation in a more suitable alignment.
- Results in an improved streetscape presentation with additional vegetation introduced to the street interface than is currently existing and approved.
- Will not alter the approved development in terms of its use, bulk, scale or appearance or the nature of the development.
- Will not result in any impacts on local land owners or residents and the development remains suitable for the site as approved.

- Remains consistent with the relevant environmental planning instruments and provisions as detailed in the original application.

5.2. RELEVANT STATE ENVIRONMENTAL PLANNING POLICIES

The proposal has no bearing on the proposals compliance with the relevant State Environmental Planning Policies.

5.3. BOTANY BAY LOCAL ENVIRONMENTAL PLAN 2013

Clause 5.9 of the Botany Bay LEP 2013 aims to preserve the amenity of the area, including biodiversity values, through the preservation of trees and other vegetation.

The proposal includes the removal of four (4) urban trees of medium retention value. An Arboricultural Impact Assessment report has been prepared by Eco Logical Australia and is provided at **Appendix A**.

The trees have no special heritage or ecological significance and there are no feasible options that would permit the retention of these trees. However, replacement planning is proposed to compensate for loss of amenity in the streetscape.

5.4. BOTANY BAY DEVELOPMENT CONTROL PLAN 2013

Part 3L of the Botany Bay DCP 2013 states that consent is required to undertake any tree pruning or removal work.

Part 3L.4.5 (C2) of the Botany DCP 2013 discusses that Council will only approve the removal of a tree if it can be demonstrated that it is not possible to provide an alternative layout or design of buildings or structures to permit retention of the tree. The approved basement excavation, awning line and installation of underground services (as required by Condition B41 of the Project Approval) means the encroachment into the Tree Protection Zones (TPZ) of the impacted trees is categorised as a 'major encroachment' of 100%.

To support the proposed tree removal, an Arboricultural Impact Assessment has been prepared by Eco Logical Australia and is provided **Appendix A**. In summary, the report concludes that:

- All trees are of medium retention value and can be replaced with new tree planting in the short term – as such there will be relatively minor and temporary loss of amenity.
- Because there are no feasible options that can be implemented that would permit the retention of these trees, replacement planting is proposed to compensate for loss of amenity in the Evans Avenue streetscape in accordance with the Botany Bay DCP 2013 and Council's Street Tree Master Plan.
- The relocation of overhead wires to underground will allow for replacement species to be formatively pruned/managed so as to re-establish an avenue canopy, whilst maintaining the Councils standard pruning clearances. This will also allow re-alignment of trees to suit neighboring sites' existing tree alignment.
- Remaining trees surrounding the site are proposed to be retained and protected during construction in accordance with the recommended Tree Protection Measures and Tree Protection Plan outlined in the Arboricultural Impact Assessment.

The amended Landscape Plans submitted at **Appendix B**, illustrates the replanting of six (6) new *Platanus orientalis cuneate* street trees with understorey planting along the northern side of Evans

Avenue. These trees are proposed to be either transplanted from the existing at-grade car parking area which were approved for removal as part of MP09_0146 or will be in the form of new mature tree plantings. The new trees are proposed to be planted in alignment with the neighbouring properties street trees setback from the boundary.

6. CONCLUSION

This Section 75W application seeks to modify Project Approval MP09_0146 to facilitate the removal of four (4) existing trees along the northern side of Evans Avenue to allow for the construction of the approved development. It is not feasible to retain the trees as the canopy infringes on the awning line and the basement excavation and undergrounding of cables and infrastructure (as required by Condition B41) impacts the TPZ of these trees requiring their removal. A replanting strategy is proposed to offset the removal of these trees.

Having regard to each of the matters considered above, the proposed modification is considered to be reasonable and appropriate.

Based on the above, we conclude that the proposed modification should be approved pursuant to the provisions of Section 75W of the Act.

If you have any questions with regard to the application, please call the undersigned on (02) 8233 9900.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Jessica Ford".

Jessica Ford
Senior Consultant