



Planning &  
Infrastructure

**MODIFICATION REQUEST:  
MULTI UNIT RESIDENTIAL DEVELOPMENT  
12 - 40 Bonar Street and 5 Loftus Street,  
Arncliffe  
MP09\_0148 (MOD 7)**



Director-General's  
Environmental Assessment Report  
Section 75W of the  
*Environmental Planning and Assessment Act 1979*  
October 2012

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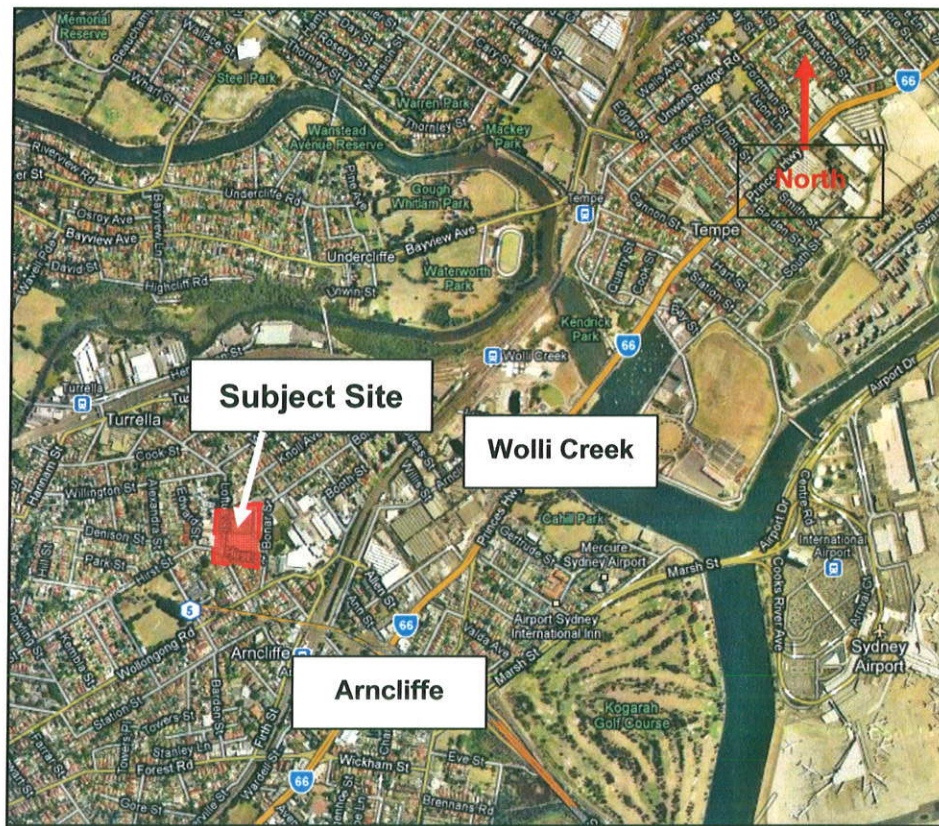
## 1. BACKGROUND

This report is an assessment of a request by Meriton Property Services Pty Ltd (the proponent) to modify the Major Project approval (09\_0148) for a multi unit residential development at 12-40 Bonar Street and 5 Loftus Street, Arncliffe, pursuant to Section 75W of the Environmental Planning and Assessment Act 1979 (EP&A Act).

The project application was granted approval by the Planning Assessment Commission (PAC) under delegation of the former Minister for Planning on 3 March 2010, in accordance with Part 3A of the EP&A Act. The project proposed the construction of a multi-dwelling residential development comprising four apartment buildings with a total of 305 residential apartments and a basement car park for 450 spaces.

A number of modifications have since been approved by the department including, a reduction in on-site parking, alterations to the building design and internal configuration, changes to the dwelling mix and staged strata subdivision.

The site is located approximately 9km south-west of the Sydney CBD within the Rockdale Local Government Area (See **Figure 1**). The site comprises an area of 16,323m<sup>2</sup> and is bound on three sides by Loftus, Hirst and Bonar Street.



**Figure 1 – Locality Plan**

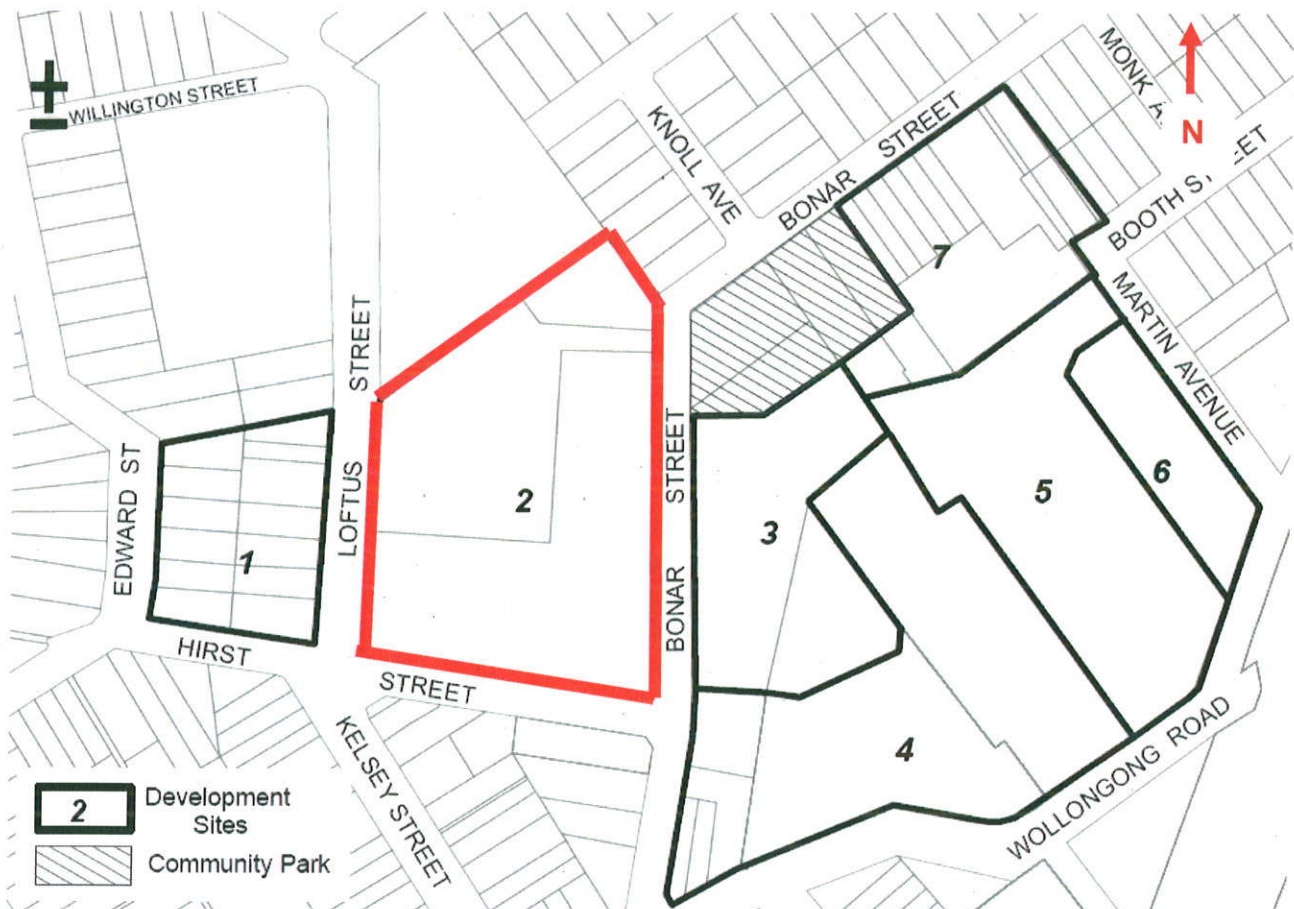
The site forms part of the broader urban redevelopment area, known as the Bonar Street Precinct, which has been rezoned to redevelop underutilised industrial land into medium to high density residential development (refer to **Figure 2**).

A range of streetscape improvements have been identified in Council's Section 94 Contributions Plan 2004, as the area is progressively redeveloped including, the undergrounding of power lines



along Bonar Street and Hirst Street for aesthetic reasons. In this regard, the Project Approval includes conditions requiring the proponent to:

- provide conduits along the Bonar Street and Hirst Street frontages of the site (Condition B4(c)); and
- pay a contribution for the future undergrounding of power lines, based on the site's proportion of the population to the entire precinct (Condition B2).



**Figure 2** – Bonar Street Precinct comprising development sites 1 to 7 (the subject site is bounded in red)

## 2. PROPOSED MODIFICATION

The originally submitted modification application requested changes to the wording of condition B4(c) on the Project Approval which would allow the proponent to provide a bank guarantee in lieu of works associated with the installation of conduits along the Bonar street frontage of the site.

The modification application was later amended to also include a change to Condition B2 (bullet point 8) which would apply an indexation rate in accordance with the Consumer Price Index (CPI) to the infrastructure contribution (should it be returned to the proponent) for the undergrounding of RailCorp power lines.

The proponent's proposed wording changes are depicted by the deletion of the ~~struck-out~~ words and insertion of the **bold and underlined** words and numbers as follows:

### *Condition B2 Infrastructure Contribution (bullet point 8)*

- **Undergrounding the existing State Rail 33kV power lines in Bonar Street and Hirst Street (\$477,617). If the money is not used for this purpose within 5 years it is to be returned to**

the proponent. **The amount to be returned is to be adjusted at the indexed rate of the CPI the time of payment in accordance with the Australian Bureau of Statistics indexation.**

Condition B4(c) Additional provision of public infrastructure

- (c) The proponent shall design and construct the streetscaping of the Hirst Street (northern side only) and Loftus Street (eastern side only) frontages of the site, including all paving, footpaths, tree planting, landscaping, lighting, and street furniture and the undergrounding of electricity and other service (excluding railcorp power lines), in accordance with the requirements of DCP 80 and the Wolli Creek Streetscape Design Manual (or any design manual that supersedes this manual), to the satisfaction of Council's Manager – Technical Services. Prior to streetscaping the proponent shall provide conduits within the footpath/nature strip along the entire Bonar Street and Hirst Street frontages **frontage** of the site suitable to accommodate the future undergrounding of the power lines.

**The proponent shall provide a Bank Guarantee in favour of Rockdale City Council to the value of \$40,604.00 to cover costs for Council to install conduits along Bonar Street should the installation of electrical ducts for undergrounding of Rail Corp cables be undertaken. Should the undergrounding of the conduits not take place by Council, then the bank guarantee is to be returned in full to the proponent 5 years from the date of consent, being consistent with Condition B2.**

### 3. STATUTORY CONTEXT

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#### 3.1 Modification of the Minister's Approval

The Modification Application has been lodged with the Director General pursuant to Section 75W of the Act. The Minister's approval of a modification is not required if the project as modified will be consistent with the existing approval. However, in this instance, the proposal seeks to modify terms of approval imposed on the Project Approval, and therefore, approval to modify the application is required.

#### 3.2 Environmental Assessment Requirements

No additional environmental assessment requirements were issued with respect to the proposed modifications, as sufficient information has been provided to the department in order to consider the application.

#### 3.3 Delegated Authority

The Minister has delegated his functions to determine Part 3A applications to the Planning Assessment Commission (PAC) where an application has been made by persons other than by or on behalf of a public authority.

The application is being referred to the PAC for determination as Rockdale City Council has lodged a submission objecting to the modification.

### 4. CONSULTATION AND SUBMISSIONS

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Under Section 75W of the Act, a request for a modification of an approval does not require public exhibition. However, under Section 75X(2)(f) of the Act, the Director General is required to make publicly available requests for modifications of approval given by the Minister. In accordance with Clause 8G of the *Environmental Planning and Assessment Regulation 2000*, the application to

modify the approval was made publicly available on the Department's website. Additionally, Council and NSW Transport (RailCorp) were notified of the proposal in writing.

Council objects to the proposed modifications to the Project Approval because it does not accept a bank guarantee in lieu of works to satisfy Condition B4(c) and an indexation rate being applied to the infrastructure contribution in Condition B2 (bullet point 8).

In addition, RailCorp also objects to the proposed modification to Condition B4(c) because it facilitates the installation of conduits only and does not cover the entire cost of undergrounding their power lines.

The objections raised by both authorities are addressed in **Section 5** of this report.

## 5. ASSESSMENT

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The department has considered the merits of the modification request, as follows:

### 5.1 Infrastructure Contribution (Condition B2 bullet point 8)

Condition B2 of the Project Approval requires a monetary contribution equating to \$477,617 to cover the cost of undergrounding of RailCorp power lines along the Bonar Street and Hirst Street frontages of the site. The contribution has already been paid to Council but the physical works have not yet commenced. The subject condition also requires the funds to be returned to the proponent within 5 years, if not used for the stated purpose. The department notes that the PAC, prior to approving the project application, imposed a requirement for the contribution to be returned if not used within 5 years so as to ensure the funds would be used for the stated purpose.

The proponent is seeking to modify the wording of the condition so that the amount to be returned is adjusted in accordance with the CPI, in the event the contribution is not used for the stated purpose within 5 years. The proponent is of the view that any returned contribution should be adjusted to include the accrued interest and that this is consistent with Council's practice of applying an indexation amount for Section 94 Contributions which are reviewed annually on the basis of the CPI.

Council accepts that the contribution will need to be returned to the proponent within 5 years from the date of the consent, if not used for the stated purpose. However, Council objects to the proponent's request for any returned contribution to be adjusted in accordance with the CPI because of the staff resources and funds already expended to ensure the power lines are installed underground. Council also makes the point that further negotiations with RailCorp will be required before the physical works are undertaken. The department notes that even though it has always been Council's objective to underground power lines, that it may not occur within the 5 year timeframe given they are relying on the approval from other authorities, such as RailCorp. Also, Council intends to underground the power lines for the entire precinct and not for individual sites which may extend the undergrounding project beyond the 5 year timeframe.

On balance, the department considers that Council's position is adequately justified and as such there should be no adjustment to any returned contribution if the undergrounding works are not undertaken within the 5 year timeframe. The department therefore does not support the proponent's request to include a reference to indexation in Condition B2 bullet point 8.

In addition to the proponent's request to modify the wording of Condition B2, the department notes the proponent's view that the infrastructure contribution should be deleted because there is no nexus between the development and the undergrounding of power lines. Whilst this aspect is not part of the modification application, the department notes that the undergrounding of power lines is identified as streetscaping works to be funded under Council's Section 94 Contributions Plan,

2004. Furthermore, the Bonar Street precinct is undergoing transition to a high quality residential area, and the new resident population will require a high quality public domain to match the new development replacing the industrial character of the area. For this reason, the department does not agree with the proponent that there is no nexus between the development and the undergrounding of power lines.

## 5.2 Bank Guarantee (Condition B4(c))

Condition B4(c) requires the provision of conduits within the footpath/nature strip along the Hirst and Bonar street frontages of the site to accommodate the future undergrounding of the RailCorp power lines. The proponent has since installed conduits along the Hirst Street frontage of the site during the streetscaping works. However, the proponent was advised by Council to suspend the installation of conduits along the Bonar Street frontage because of a flood study being undertaken at the time to address flooding in the area, resulting in a potential change to the street level. To avoid any conduits being buried to depths that are unacceptable to RailCorp, the proponent did not install the conduits along the Bonar Street frontage in accordance with Council's advice. In that regard, the proponent has provided the department with email correspondence from Council which states it is *"...prepared to negotiate an alternate arrangement to defer the installation of conduits to coincide with the reconstruction of Bonar Street at a later date"*.

The flood study is now complete and Council has advised that the existing road and footpath levels along Bonar Street will not change as originally anticipated. The proponent has now requested the wording of Condition B4(c) be modified by allowing the provision of a bank guarantee to cover Council's costs for the future installation of conduits along the Bonar Street frontage of the site.

Whilst Council has not objected to the cost of works (being \$40,604), the key point of contention between Council and the proponent relates to whether a bank guarantee in lieu of the works is acceptable to satisfy Condition B4(c) of the approval. The proponent is of the view that the provision of a bank guarantee is consistent with the discussions they have held with Council. The department notes that a bank guarantee sets aside the money as security, which Council can draw upon as they need for the subject works. However, Council has advised they do not support a bank guarantee in this case because it is a fixed sum which is not indexed to cover inflation and the potential rising cost of future works.

The proponent has provided email correspondence to the department which indicates Council would *"...consider the submission of a bond to Council for the installation of conduits in Bonar Street"*. As a general rule, Council accepts a bank guarantee for works undertaken on its behalf and a bond when Council undertakes the works. Council has indicated a bond is appropriate because the money is held in Council's bank account which earns interest to cover the rising cost of future works. It is for this reason Council supports a bond and not a bank guarantee. The department considers it reasonable for the proponent to provide security in the form of a bond and not a bank guarantee, so as to offset any rising costs associated with future work.

The proponent originally requested that the bank guarantee expire on 1 March 2015. Council does not accept the expiry date because the completion of the works is subject to negotiations with other utility providers and is therefore beyond their control. In response, the proponent suggested the condition be re-worded so that the bank guarantee is returned if the undergrounding of power lines does not take place within 5 years of the date of the consent, being consistent with Condition B2. In the event that the undergrounding works are not completed in accordance with Condition B2, the department considers that Council should return the bond for the installation of conduits to the proponent.

The department therefore considers that condition B(4)(c) should be modified to read (with additional text in bold), as follows:



*The proponent shall design and construct the streetscaping of the Hirst Street (northern side only) and Loftus Street ( eastern side only) frontages of the site, including all paving, footpaths, tree planting, landscaping, lighting, and street furniture and the undergrounding of electricity and other service (excluding railcorp power lines), in accordance with the requirements of DCP 80 and the Wolli Creek Streetscape Design Manual (or any design manual that supersedes this manual), to the satisfaction of Council's Manager – Technical Services. **The proponent shall provide a Bond in favour of Rockdale City Council to the value of \$40,604.00 to cover costs for Council to install conduits along Bonar Street should the installation of electrical ducts for undergrounding of RailCorp cables be undertaken.***

***Should the undergrounding of the conduits not take place by Council, then the Bond is to be returned in full to the proponent 5 years from the date of consent, being consistent with Condition B2.***

RailCorp has also objected to the proposed modification because it facilitates the installation of conduits only and does not cover the entire cost of undergrounding power lines. RailCorp has advised that they would consider any request to underground their power lines provided all costs are met by the developer. The department notes that the costs have already been met through the payment of a monetary contribution to Council in accordance with bullet point 8 of Condition B2 and that Railcorp's concerns are therefore addressed.

## **6. CONCLUSION**

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The proposed modifications do not alter the overall nature of the approved project or introduce any detrimental environmental social or economic impacts upon the site or the locality. The department has considered the merits of the modification request and taken into account the views of the Council and RailCorp in the assessment of the application.

The department does not accept the proponent's request to adjust any returned contribution for the undergrounding of power lines given the time and resources expended by Council in the pre-works stage of the project.

The department also considers a bond, as opposed to a bank guarantee, is an acceptable form of security which would cover the potential rising cost of future works for the installation of conduits.

The department is of the view that the security bond should be returned to the proponent in the event the installation of conduits are not undertaken for the undergrounding of power lines.

It is therefore recommended that the application be approved subject to the relevant conditions being modified accordingly.

## 7. RECOMMENDATION

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It is recommended that the Planning Assessment Commission:

- (a) **consider** the findings and recommendations of this report;
- (b) **approve** the modification request under delegated authority, under Section 75W of the Environmental Planning and Assessment Act 1979; and
- (c) **sign** the attached Instrument of Modification for MP 09\_0148 MOD 7.

Endorsed by

Endorsed by:



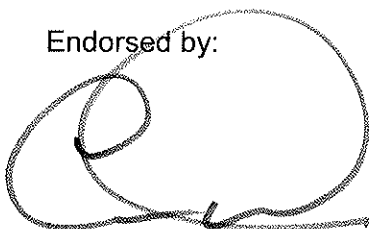
Karen Jones 25/10/2012  
**Director**  
**Metropolitan & Regional Projects South**



25/10/12

**A/Executive Director**  
**Major Projects Assessment**

Endorsed by:



26.10.12

**A/Deputy Director-General**  
**Development Assessment & Systems**  
**Performance**

## **APPENDIX A    MODIFICATION REQUEST**

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See the department's website at

[http://majorprojects.planning.nsw.gov.au/index.pl?action=view\\_job&job\\_id=5242](http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=5242)



## **APPENDIX B SUBMISSIONS**

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[http://majorprojects.planning.nsw.gov.au/index.pl?action=view\\_job&job\\_id=5242](http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=5242)

## **APPENDIX C    RECOMMENDED MODIFYING INSTRUMENT**

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