

30 May 2012

**DETERMINATION OF A MAJOR PROJECT MODIFICATION APPLICATION FOR
A MIXED USE DEVELOPMENT AT 7 RAILWAY STREET, CHATSWOOD
(MP09_0154 MOD 1)**

MAJOR PROJECT MODIFICATION APPLICATION

On 23 February 2011, the then Minister for Planning granted project approval (MP09_0154) for construction of a new mixed use residential, commercial and retail development at 7 Railway Street, Chatswood, summarised as:

- a 43 storey building, incorporating retail/café's and 4,876m² of commercial within a 5 storey podium, with the tower above accommodating 295 residential units and plant;
- a 7 level basement accommodating 332 ancillary car parking spaces;
- private open space on top of the Railway enclosure structure; and
- publicly accessible open space fronting Railway Street, with a through-site pedestrian link between Railway Street and Cambridge Street.

The proponent is seeking (as amended by the proponent and assessed by the Department) the following modifications (under MOD 1 only) to the project approval:

- deletion of street trees along Railway Street and Help Street, with some corresponding increase in provision of on-site tree planting;
- minor changes to the terraced landscaped area due to revised vent locations and the basement design;
- amendment to materials and finishes within the landscaped area;
- deletion of a requirement for on-site slip testing of surfaces;
- reconfiguration of commercial levels to provide amenities on each floor, changing layouts and amend the requirement for separate development consents to allow the construction of inter-tenancy walls and tenancy facilities;
- removal of the requirement for commercial parking spaces to be made available for residential use outside of commercial business hours;
- reduction in the number of apartments from 295 down to 294 due to consolidation of two units on Level 38;
- provision of screens to certain balconies on the eastern façade, effectively enclosing those balconies;
- implementation of a traffic management system, thereby deleting the requirement for truck manoeuvring to be separate to and not conflict with access to the basement carpark;
- amend the requirement for a 3 metre wide easement to allow for a variable width easement; and
- amend timing of rights granted under the easement for public access to the open space and the through-site link, to allow completion of the landscaping and walkways as the last stage of the development.

A detailed list of the modifications sought and corresponding condition amendments as considered by the Commission are set out in Table 1 of the Director General's Environmental Assessment Report.

A separate modification application (MOD 2) is currently being assessed by the Department relating to the childcare centre.

DELEGATION TO THE COMMISSION

The project modification (MP09_00154 MOD 1) was referred to the Planning Assessment Commission ('the Commission') for determination under Ministerial delegation dated 14 September 2011, as Willoughby City Council objected.

For this determination, the Commission consists of Mr Richard Thorp (chair) and Ms Donna Campbell.

DEPARTMENT'S ASSESSMENT REPORT

On 23 April 2012, the Commission received the Director General's Environmental Assessment Report and documents associated with the application.

The report considered submissions, relevant legislation and policies, and it also provided an assessment of the following key issues:

- loading area manoeuvring;
- shared use of commercial car parking spaces;
- street trees;
- wind impacts;
- easement for public access;
- internal works within the commercial levels;
- landscaping and materials; and
- building appearance.

The report concludes the proposed modifications (as amended) have been adequately justified by the proponent in response to site constraints and practicalities of the construction of the development.

The Department recommends approval of the application as outlined in the report, subject to the recommended modified conditions.

CONSULTATION

Under Section 75X(2)(f) of the *Environmental Planning and Assessment Act 1979* ('the Act') and in accordance with Clause 8G of the *Environmental Planning and Regulation 2000*, the application to modify the approval was made publicly available on the Department's website. The Department also referred the modification request to Willoughby City Council, Roads and Maritime Services ('the RMS'), RailCorp and Transport for NSW for comment.

No public submissions were received. Submissions were received from the RMS, RailCorp and Willoughby City Council. RMS initially objected with regard to the shared servicing and vehicular access arrangements, however after meeting with the Department and proponent and receipt of further information, it withdrew its objection. Willoughby City Council ('WCC') objected, a position maintained after its review of the Department's report and recommendation.

Both Commission members visited the site independently. The Commission reviewed the submissions received by the Department, and also met with the parties outlined below.

1. Willoughby City Council

A representative of WCC met with the Commission on 9 May 2012 to discuss the Department's recommendation.

The meeting focussed on Council's key concerns, namely,

- the site's history, and its context within the broader Railway Street precinct and the *Epica* and *Altura* sites to the north;
- services under the footpath are a common occurrence, and the proponent's justification for deletion of the street trees is not supported;
- Chatswood experiences high demand for on-street parking and other parking is typically ancillary to a primary purpose. A low residential visitor parking rate was justified in the project application on the basis of the shared commercial/residential parking arrangements, and removal of residential rights to use this parking would result in insufficient residential visitor parking;
- the vehicular access is shared with Epica and the traffic management system may conflict with access to that building;
- the Council maintains its preference for provision of an additional half level basement to separate trucks from other vehicular access;
- the Council commonly requires in situ slip testing of surfaces for public safety and for liability reasons;
- a mechanism is required to secure timely finalisation of the public landscaping and through-site links, and to secure public access to these areas; and
- WCC confirmed it raises no objection to variation of the condition in relation to the drainage easement width.

2. The Proponent

The proponent and its representatives met with the Commission on 9 May 2012. In the meeting the following was discussed:

- the proponent explained the traffic management system;
- the proponent advised that a shift in the market has modified the commercial floor plates, and shared residential/commercial parking spaces are unworkable, unenforceable and would affect the viability of the commercial space;
- the proponent advised it would subsequently confirm whether s94 contributions levied under the project approval would contribute to car parking provision in Chatswood;
- the proponent advised major services run under the footpaths and this would be the only site between Pacific Highway and Chatswood Station with street trees should they be provided, and the Council's tree planter specifications are unable to be accommodated as shown on the approved project plans;
- the Commission advised that the proponent needs to consider a detailed services survey and consider where and how there may be the opportunity to accommodate street tree planting;
- the proponent explained the easement for public access will be registered prior to the first Occupation Certificate, however landscaping works will be completed last. The proponent does not object to an amended condition to ensure that landscaping is completed and public access is secured in a timely manner; and
- the extent of on-site surface slip testing is for the owners to decide, noting any liability is theirs.

The proponent submitted additional documentation on 17 May 2012 in relation to the following, as discussed in further detail under the *Commission's Comments*:

- two options for accommodating landscaping on the public way along both Railway Street and Help Street, with recommended condition amendments;
- a recommended condition amendment to secure finalisation of the landscaping (and correspondingly allow public access) within six months of the issue of the first subdivision certificate for the lot burdened;
- deletion of Mirvac's request that the commercial carspaces are not shared by residents; and
- confirmation that s94 contributions were not payable in lieu of the provision of on-site car parking spaces under the project approval.

The Council provided comments on this additional documentation on 22 May 2012, and on 24 May 2012 the proponent provided final comments.

COMMISSION'S COMMENTS

The proposed modifications would amend a project approval, which has established a number of factors including land use, quantum of development, the layout and the built form. The majority of the proposed modifications are minor, hence the comments below relate to the primary matters discussed with the Council and the proponent.

1. Street Trees

The project approval provided for nine street trees along Railway Street and three street trees along Help Street, all on the public way.

The project modification, as considered by the Department, sought removal of all twelve street trees. The proponent proposed to partially offset this loss, by increasing the number of trees within the publicly accessible open space immediately adjacent to Railway Street from four trees up to six trees.

The proponent advised there are major Telstra fibre optic cables (running between Sydney and Brisbane) located on the eastern side of Railway Street under the footpath. Accommodating the street trees as shown in the project approval, would require relocation of the existing cables, with the disruption cost estimate being \$1 million per day. The proponent considered the service disruption and expense meant the previously approved option would be unfeasible. Deletion of the street trees was also been justified on the basis that the Epica and Altura buildings immediately to the north of the development have trees within their front setback, not on the public way. The Council responded that this arrangement for Epica and Altura arose from a site specific development control plan that varied front setbacks and hence each site's capacity to accommodate on-site planting along Railway Street, and can not justify deletion of the street trees in relation to this site.

The Commission considers street trees provide valuable public amenity by enhancing the public footpath, and softening the scale of buildings. Street trees are also important for pedestrian amenity by providing shelter from weather conditions, although the Commission notes that the wind conditions in this location would be largely unaltered irrespective of street tree provision. Under-pavement services are a common occurrence and their existence is not sufficient to justify deletion of all of the approved street trees, although it is accepted that the number, location and species and their planter specifications could reasonably be revised to accommodate this constraint.

Following its meeting with the Commission, in correspondence dated 17 May 2012 the proponent outlined two options for reinstatement of street tree planting along both Railway and Help Streets. In brief, Option One provided for six street trees along Railway Street and three street trees along Help Street, that would result in medium sized trees providing a canopy over the footpath. Option Two provided smaller scale planting adjacent to the kerb, which would result in more of a landscaped screen effect.

The options were discussed with the Council, which indicated a preference for Option One. Option One is also preferred by the Commission, as it allows for larger street trees which would be more in keeping with both the scale of the surrounding built environment, and landscaping to the north.

The Commission has inserted Street Tree Plan – Option One (10228 L75W 03 Revision 02 dated 16.05.2012) into the plan list in Condition A2, and reinstated Condition E17 also referring to this plan. Condition E17 has been amended as necessary to reflect the revised pit dimensions and arrangements. A new condition, Condition E48 is imposed, to confirm that the species of the trees in the publicly accessible landscaped area (on-site) will be *Magnolia Grandiflora*.

2. Loading Area Manoeuvring

Condition B2(g) of the project approval requires *‘Provision of access to a loading/waste handling area capable of handling two trucks at the same time and manoeuvring space that is separate to and does not conflict with the access to the car park...’*.

The proponent advises that the site size and required headroom means it is not possible to provide a separate manoeuvring area for trucks. In lieu of a physically separated truck manoeuvring area, the proponent has provided details of a traffic management system. This system relies on sensors and traffic signals, to prevent other vehicles accessing the ramp while trucks manoeuvre into the loading docks. The intention is to allow trucks to enter and exit the site in a forward direction, whilst reducing potential for conflict with other vehicles while manoeuvring on site. The proponent also advises the development will have a building manager (noting this is not a 24 hour position), who will manage aspects such as loading and servicing times to minimise potential for queuing and conflict between different users of the building.

Roads and Maritime Services (RMS) originally raised objection. The Department’s report sets out that following a meeting with the proponent and the Department, and consideration of additional information supplied by the proponent, the RMS confirmed it raised no objection to the proposed traffic management system. The RMS recommended amended wording of Condition B2(g), which the Department has adopted in its recommendation.

The Council is not satisfied with the arrangement, particularly noting that the shared access arrangement with Epica reduces the queuing area, and that queuing may impede access to the neighbouring site. On this basis, the Council’s view is that the development would need an additional half basement level to avoid any conflict between the service vehicles and other vehicles accessing the basement.

The Commission has reviewed the traffic management system documentation. It notes the shared access with the Epica building is for the neighbour’s service area only, and also that the application site would not generate significant or unusual loading or servicing requirements. The Commission is satisfied that the traffic management system is a reasonable outcome that would minimise potential for conflict between users of the access, and maintain reasonable efficiency of movement. The Commission therefore considers that

the objective of the original condition will be achieved, and it has approved the amended Condition B2(g) as recommended by the RMS and the Department.

3. Shared Commercial and Residential Visitor Parking Spaces

The proponent sought approval to remove any requirement for commercial parking spaces to be made available for residential use outside of commercial business hours.

The Council objected to the removal of this requirement, as in its view it would exacerbate an under-provision of on-site residential visitor parking, and place pressure on on-street parking. The RMS raised no objection to this amendment.

The Department agreed with the proponent's position, which was supported by evidence including legal advice. Accordingly, the Department recommended modification and deletion of Conditions E3 and E33(b) respectively, which would then allow exclusive commercial use of the commercial parking spaces.

Following its meeting with the Commission, the proponent formally withdrew this proposed amendment in correspondence dated 17 May 2012. In this correspondence, the proponent confirmed it will investigate other potential solutions with regard the practical operation of this aspect of the proposed development. If a workable solution can not be found, the proponent may lodge a subsequent separate modification application.

The Commission has deleted the Department's recommended modifications to Conditions E3 and E33(b), to reflect the proponent's withdrawal of this aspect of the modification.

4. Easements for Public Access

Condition E45 of the project approval requires an easement for public access to the publicly accessible open space and the through site link and tunnel to be registered in favour of WCC, prior to issue of any Occupation Certificate. Willoughby City Council's approval of the terms of the easement is then required prior to issue of any Certificate of Subdivision or registration of the approved Plan of Subdivision.

In the MOD 1 application as lodged, the proponent requested an amendment for this easement registration to occur prior to issue of the final Occupation Certificate.

The Council raised concern, as in many instances a final Occupation Certificate is never issued and hence the easement and access would not be secured. Willoughby City Council considers the easement should be enabled as soon as any occupation of the development commences.

Following this concern and in response to an amended request by the proponent, the Department has recommended amendment of Condition E45 by inserting a requirement that the rights granted under the easement would be enabled at completion of the construction of the landscaping and walkways. The easement itself would still need to be registered prior to issue of any Occupation Certificate.

Upon its review of the Department's recommendation, the Council maintains its concern due to lack of certainty as to when the landscaping works would be completed, and when public access would be secured.

Following its meeting with the Commission, the proponent has suggested an amendment, so that Condition E45 would read:

Prior to any occupation certificate, an easement for public access in gross for the public to enter, pass, re-pass, use and enjoy the publicly accessible landscaped area and through site link and tunnel is to be registered over the land in favour of Willoughby City Council.

The terms of the easement are to be approved by Council prior to the issue of any Certificate of Subdivision or registration of the approved Plan of Subdivision, and shall reflect the following:

The rights granted under this easement for public access are subject to the completion of construction of the landscaping and walkways (Works) forming part of the Easement Site by the Grantor. The Grantor must complete construction of the Works by the date being 6 months from the issue of the first subdivision certificate for the Lot Burdened (Sunset Date). Mirvac Projects Pty Limited as the Grantor at the time of registration of the Plan covenants with Council to complete construction of the Works by the Sunset Date.

The proponent has advised that the easement would be created on the Stratum Plan which creates lot 1 and lot 2, and the burden would be on lot 1 being the residential stratum lot. The proponent's suggested additional covenant on the part of Mirvac is to ensure that the Owners' Corporation is not responsible for completion of the Works.

The Commission is of the view the above amended condition provides certainty that the easement would be registered, and the landscaping/through-site link/tunnel and public access secured and enabled within a reasonable timeframe. As such, the Commission has approved modification of Condition E45 as set out above.

5. On-Site Surfaces Testing

Condition E9 of the project approval required in situ testing of floor finishes and surfaces, to confirm an appropriate level of slip resistance.

The Council supports inclusion of this requirement, as although surface materials may be appropriately certified, their slip level can be affected by applied finishes and dependent upon their installation and site-specific conditions.

The Department has recommended modification of Condition E9 requiring either on-site testing, or certification from the manufacturer that the surface achieves the relevant slip resistant classification. The condition has also been amended requiring on-site testing where the finish of the original product is altered in any way during or after installation.

The Commission accepts that the liability is with the owner, and it supports amendment of Condition E9 in accordance with the Department's recommendation.

COMMISSION'S DETERMINATION

The Commission has carefully reviewed the application, the Director-General's Environmental Assessment Report, and submissions. The Commission also discussed the Department's recommendation with Willoughby City Council and the proponent.

The Commission agrees with the Department's recommended modifications to the project application, subject to further amendments that secure the following:

- modification of Condition A2 to refer to the Street Tree Plan - Option One 10028 L75W 03 Revision 02 dated 16.05.2012;

- modification of Condition A2 to refer to the Planting Palette plan 10028 L75W 02 Revision 01 dated 09.11.2011;
- reinstatement and modification of Condition E17 establishing street tree planting requirements;
- insertion of Condition E48 requiring *Magnolia Grandiflora* to be planted in the on-site planter beds to the north of the street trees;
- removal of Conditions E3 and E33(b) from the modification instrument, to reflect the proponent's subsequent decision to maintain shared commercial and residential visitor car spaces and therefore retain these conditions in their original form;
- modification of Condition E45 to insert a requirement for completion of the landscaping/through site link/tunnel works within six months of the issue of the first subdivision certificate for the lot burdened.



Mr Richard Thorp
PAC Member (Chair)



Ms Donna Campbell
PAC Member