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# Attachment 4



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19 January 2011

Ref: S75W Concept Plan Modification

Mr Richard Pearson  
Deputy Director General Development Assessment and Systems Performance  
Department of Planning  
23-33 Bridge Street,  
Sydney  
NSW 2000

Dear Richard,

## **S75W Request for Modification to Concept and Stage 1 Project Approval/s MP09\_0170**

### **NSW Housing Telopea**

WorleyParsons acts on behalf of the proponent NSW Housing. We submit the attached Request for Modification for your consideration pursuant to Section 75W of the *Environmental Planning and Assessment Act 1979 (EP&A Act)*.

On August 29, 2010 NSW Housing were issued with determinations under the Environmental Planning and Assessment Act 1979 for Concept and Stage 1 Project Approvals MP09\_0170 under your signature as the Deputy Director General acting under delegation from the Minister for Planning.

In brief, NSW Housing is seeking minor modifications to the Concept Approval pursuant to S75W:

1. To clarify potential ambiguities and/or mis-descriptions by obtaining a separate number for the Concept Approval as distinct from the Stage 1 Approval and as advertised. All references to subsequent stages, further applications et al. – where relevant, would not refer to the Stage 1 Approval which was determined subsequent to the Concept Approval albeit on the same date – August 29, 2010. Similarly this would clarify the fact the Terms of Approval for the Concept Plan apply to only that approval as distinct from the Terms of Approval for Stage 1.

To seek clarification arising from the definition of 'storey' included in the Master Plan, that notwithstanding that definition, minor exceedances to the maximum number of storeys in TEL-UD-003 caused by part of a basement protruding higher above natural ground level than specified in the aforementioned definition is requested to be expressly determined to be in accordance with the approved Concept Plan including TEL-UD-003. We request that the basement to buildings not be considered and determined as a 'storey' where a small

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part of the basement protrudes by more than 1.2 metres above the natural ground level to the ceiling of the basement. This minor exceedance generally occurs on sloping sites and in association with the clearance heights required in the vicinity of access and egress (cars, trucks and pedestrians) to basements. This requested modification provides clarity as to what the determining authority considers to be 'generally in accordance with' TEL-UD-003 and establishes the degree of flexibility in interpretation of height. Such a minor increase in the protrusion of a part of the basement area does not result in significant increase in adverse impacts and also avoids unreasonable increases in construction costs associated with complex floor plate that are likely to be required to avoid the part of the basement being counted as an additional storey and exceeding the maximum height in TEL-UD-003.

In the context of a major redevelopment project likely to extend over more than 10 years, it is reasonable to request clarification to confirm that future planning instruments such as those referred to a relevant heads of consideration in *Schedule 3 – 1 General Requirements* would not preclude a consent authority whether under Part 3A or Part 4 from approving a development on maximum height grounds due to the inclusion of the basement as a storey.

2. The alternative would be to request that the definition of storey for the purpose of this major project application be amended. An alternative definition was submitted to the NSW Department prior to the determination being made.

## **1. Concept Approval Vis-à-vis Stage 1 Approval – Numbering and Meaning of Subsequent Applications et al.**

We request clarification as to whether there is one application and/or approval (Concept Plan Approval and Approval for Stage 1 Project Application) given these were separately advertised under separate project numbers. Thereafter, the Concept Approval and the Stage 1 Approval have been separately signed and dated. They each contain separate Terms of Approval. They are nonetheless identified under one Major Project Number notwithstanding the fact they were advertised under separate project numbers (MP.09\_0170 and MP.09\_0183 respectively). The Concept Plan Approval appears to have been determined prior to the subsequent determination of the Stage 1 Major Project having regard to the Terms of Approval. References to subsequent applications, further stages et al in the Concept Approval were presumably not intended to refer to the Stage 1 application which would appear to have been approved subsequent to the Concept Approval.

Clarification is sought in relation to *Schedule 1*:

- *Part A Table Limits on Approval* states that 'This approval does not allow any components of the concept plan to be carried out without further approval or consent being obtained. However, the determination of the Concept Plan expressly states that 'pursuant to section 75P(1)(c) that no further environmental assessment is required for Stage 1 of the project.' We seek to clarify whether one or two approvals were granted





and to ensure that all the conditions of approval attached to the Concept Plan including Schedules 2 and 3 are not required to be satisfied prior to proceeding with the development in accordance with the approved Shortland and Part Moffatts Precinct Project and the conditions of approval attached thereto. We seek clarification and confirmation that the Stage 1 Shortland and Part Moffatts Precinct Project falls outside the meaning of 'any subsequent applications made under the Part 3A or Part 4 of the EP&A Act' referred to in Schedule 3 of the Concept Plan Approval.

## 2. Minor Modifications Re Maximum Height – Request to Exclude Limited Protrusions of Part of Basements from being considered a 'Storey'

Height is defined in the Concept Approval Schedule 1 Part C Definitions. This Stage 1 Project Approval was issued as 'Determination of Shortland and Part Moffatts Precinct Redevelopment Telopea' albeit with the same Major Project number (MP.09-0170) as the Concept Approval. The Stage 1 Approval has been determined and issued with separate terms and conditions. The result was to modify the Concept Plan by increasing the maximum height overall by one additional storey. NSW Housing is seeking instead to obtain clarification in the Concept Approval that an additional storey resulting from the basement being defined as a storey resulting from obtaining clearances in the vicinity of access/egress to the basement is 'generally in accordance with' the maximum height TEL-UD-003 given the minor degree of exceedance that would arise.

### 1. Schedule 2:

- ▶ *Part A Terms of Approval - A1 Approval for the Telopea Urban Renewal Concept Plan* expressly approves 'a maximum of 1,900 dwellings including but not limited to ...(b)... a maximum Gross Floor Area of 181,778m<sup>2</sup> across 10 Precincts and building envelopes...'. The maximum total number of dwellings and maximum Gross Floor Area constitute the pre-eminent terms of the Concept Approval.
- ▶ *Part A - A2 Approved Plans and Documentation* Such development of a maximum number of dwellings (1,900) and Gross Floor Area (181,778 m<sup>2</sup>) '... shall be generally in accordance with the following plans and documentation: (a) EA; (b) PPR and (c) The following plans ....(d) statement of commitments (Schedule 4); and (e) the modifications contained in this approval. Namely, the approval referred to herein is the Concept Approval.
- ▶ The modifications contained in the Concept Approval referred to in A2 (e) are specified in *Part B Modification to the Concept Plan - B1 Maximum Heights* 'The proposed maximum heights shall be modified to be 6 storeys for the entire Shortland Precinct and 7 storeys in the Moffatts Precinct in relation to Stage 1 (Building J3 site). We seek to confirm that no further action is required to modify the proposed maximum height for Stage 1 notwithstanding the words in B1 that state – 'The proposed maximum heights in the Concept Plan **shall be modified** to be 6 storeys for the entire Shortland Precinct and 7 storeys in the Moffatts Precinct in relation to Stage 1 (Building J3).' Namely, NSW Housing is not required to submit a S75W modification to Stage 1 – particularly as Stage 1 has been approved.





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The aforementioned Stage 1 development was determined on the same date and under the same Major Project Number as the Concept Approval. The Concept Approval expressly states that in the case of plans such as the proposed maximum heights specified by Precincts, subsequent applications are to be 'generally in accordance with the proposed maximum heights by Precinct. Stage 1 was approved further to modifications being made in the consent under Part B and in relevantly B1 Maximum heights.

It is our submission that given the configuration of the overall site, it is reasonable that the maximum heights as defined in TEL-UD-003 dated 21-07.2010 and the words 'generally in accordance with...' including the aforementioned maximum height plan do not result in the basement of any future building being counted as a storey where a small part of that basement – in the vicinity of access and egress for vehicles and pedestrians results in a protrusion of more than 1.2 metres above natural ground level measured vertically to the ceiling of the basement. This clarification by way of a Section 75W modification sets aside any ambiguity that any such minor variation in height resulting from access to the basement is approved in the Concept Approval as being 'generally in accordance with' the Maximum Height Plan TEL-UD-003.

Namely, in circumstances where the maximum height is exceeded by one storey measured directly above access and egress to basements (vehicular and pedestrian), this additional height is approved for the Concept Plan TEL-UD-003 as being generally within the Terms of Approval in relation to maximum height.

Exceeding the maximum height by no more than one storey where this results in the ceiling space protruding more than 1.2 metres as measured vertically above the natural ground level immediately below in the vicinity of access and egress areas to basements for vehicles and/or pedestrians is approved. With a sloping site and variable natural ground level obtaining headway clearance to basements in the vicinity of access to the basement by vehicles and pedestrians results in this part of basement protruding above the natural ground level; being counted as a storey and notwithstanding the fact this is over a small part of the total area of the basement results in this portion of the basement being counted as a storey and resulting in reconfiguration of floor plates above this area to avoid non compliance with the maximum height limit say in the local environmental plan.

We request that the Terms of Approval in Schedule 2 A2 add a statement that in special circumstances in the vicinity of access/egress to basements, the exceedance of the 1.2 metre protrusion above the natural ground level is considered to be generally in accordance with the Maximum Height Limit Plan TEL-UD-003 and is approved. The inclusion of this clarification in Schedule 2 A2 would avoid minor modifications to the Concept Plan Approval for all subsequent applications.

## 2. Schedule 3 Future Environmental Assessment Requirements –

- ▶ 1 General Requirements second item requires that *'any future development shall address the planning provisions applying to the site including , but not limited to SEPP ...; and the relevant Local Environmental Plan.'*



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In the interest of clarity and certainty regarding the terms of the Concept Plan Approval in relation to subsequent applications being generally in accordance with the maximum height (as defined in Parramatta Local Environmental Plan 2001), rather than future definitions of height in any new or amended instruments, NSW Housing seeks the inclusion of a condition that expressly approves in particular circumstances and in the vicinity of access/egress to basements.

We request a minor variation to the provisions in Schedule 2 so as to include a notwithstanding clause that permits exceedance of the maximum height limits by one storey where the height definition in the Parramatta Local Environmental Plan would cause the basement to be counted as a 'storey' and be included in the maximum height in the Concept Plan where in the vicinity of the access and egress to such a basement would result in the ceiling space of the basement protruding more than 1.2 metres measured vertically above the natural ground level immediately below.

It is relevant to note that including a clause to permit a minor variation to the maximum height (storey or RL) and footprints avoids duplication and unnecessary administrative costs for subsequent applications by a consent authority (namely, Council). It avoids imposing unnecessary constraints on the design process beyond the conceptual level of definition of a project at the Concept Approval stage of the project development process.

In summary, we respectfully submit and request that

- ▶ Numbering and references to the Concept Approval as distinct from the Stage 1 Approval be clarified and references in the Concept Approval to subsequent applications by way of definition expressly exclude the Stage 1 Approval;
- ▶ the maximum height limits defined in Schedule 2 Part A Terms of Approval A2 (c) TEL-UD-003 expressly include approval for minor modifications to the maximum height without further Concept Plan Approvals and/or modifications being required thus clarifying that where a small part of the total area of the basement (say in the vicinity of access/egress areas for vehicles and pedestrians), protrudes more than the 1.2 metres above natural ground level measured as in the definition of 'storey' in Parramatta Local Environmental Plan 2001, this is approved and considered to be in accordance with TEL-UD-003 maximum heights.

NSW Housing as part on the ongoing design development process for subsequent stages of the development requests that these minor S75W modifications particularly in relation to the maximum height (number of storeys) be expressly approved to clarify and confirm that notwithstanding the existing and any future definitions of maximum height (albeit 'storeys') in any future local environmental plans referred to in Schedule 3 item 1 in MP.09-0170, the maximum height approved in TEL-UD-00 expressly contemplates that where basement measured to the ceiling protrudes more than 1.2 metres above the natural ground level et al, such an exceedance is considered to be generally in accordance with the approved maximum height, is approved. Moreover, further S75W or other modification are not required to the Concept Approval when subsequent Project Applications and/or Part 4 Development Applications are submitted to the



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determining authority – albeit Council and a small part of the basement protrudes beyond the Definition in the Concept Approval.

Yours Sincerely

**SONJA LYNEHAM**

**ANZ Director of Strategy and Approvals**

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