

16 October 2012

Mr Sam Haddad
Director-General
Department of Planning and Infrastructure
22-33 Bridge Street
SYDNEY NSW 2000

Attention: Mark Schofield

Dear Mark,

**RE: SECTION 75W MODIFICATION APPLICATION TO MAJOR PROJECT (MP09_0187)
FOR A MIXED USE DEVELOPMENT**
PROPERTY: NO. 6-16 ATCHISON STREET, ST LEONARDS

This report has been prepared for Holdmark NSW Pty Ltd by City Plan Strategy and Development Pty Ltd, seeking an amendment to Project Approval MP09_0187 pursuant to Section 75W of the *Environmental Planning and Assessment Act 1979*.

The purpose of this application is to enable the development to be undertaken in a manner which facilitates 'inter alia' the following: -

- i. Undertaking the demolition, bulk excavation works and construction of the basement levels exclusive to the construction and associated contributions of the residential and non-residential components of the development;
- ii. Providing the necessary Affordable Housing contribution to North Sydney Council via an appropriate alternative mechanism rather than the Voluntary Planning Agreement identified in the Statement of Commitments; and
- iii. Where necessary, amendments to the wording of conditions of consent to enable the staged construction and occupation of the development.

This modification application does not seek to modify or later the built form of the contribution as approved.

In detail, the proposal seeks to modify the following conditions: -

- amend the description of the approved project;

- Condition A1. Development in accordance with plans and documentation;
- Condition B3. Building Height;
- Condition B5. Affordable Housing;
- Condition B11. Section 94 Contributions;
- Condition B38. BASIX Commitments; and
- Condition E2. Dedication of Affordable Housing Units.

This application provides a summary of the consent to be modified, describes the proposed modifications and provides a planning assessment of the relevant matters for consideration pursuant to Section 75W of the EP&A Act. It should be read in conjunction with the Environmental Assessment Report dated September 2010 and the Preferred Project Report dated April 2011. This application is accompanied by: -

- Section 75W application form;
- A copy of the Notice of Determination for MP09_0187 (**Appendix A**); and
- Updated Statement of Commitments (**Appendix B**).

1. Consent Proposed to be Modified

Project Approval MP09_0187 was approved by the Planning Assessment Commission (PAC) on 1 May 2012 for a mixed use development at 6 - 16 Atchison Street, St Leonards, including: -

- 6 levels of basement, containing 168 car spaces, 4 spaces for disabled drivers, and 16 motor bike spaces;
- a cafe, residential and hotel lobbies and public plaza at the ground floor level;
- a 4 level hotel (76 serviced apartments);
- 24 levels of apartments (173 apartments); and
- 1 level of roof top plant and equipment.

A copy of the Notice of Determination is provided at **Appendix A**.

2. Proposed Modifications to Conditions of Consent

The following modifications to the consent are proposed. Words proposed to be deleted are shown as ~~strike through~~ and words to be inserted are shown in ***bold italics***.

SCHEDULE 1

- Project:** Mixed use development at 6-16 Atchison Street, St Leonards, including:
- 6 levels of basement, containing 168 car spaces, 4 spaces for disabled drivers, and 16 motor bike spaces;
 - a cafe, residential and hotel lobbies and public plaza at the ground floor level;
 - a 4 level hotel (76 serviced apartments);
 - 24 levels of apartments (173 apartments);
 - 1 level of roof top plant and equipment; and
 - ***Staging of the development with respect to demolition, excavation, construction and occupation.***

SCHEDULE 2

PART A – ADMINISTRATIVE CONDITIONS

Development in accordance with plans and documentation

A1. The Proponent shall carry out the project generally in accordance with the:

- (a) Architectural drawings numbered PA-100-01 to PA-100-18 inclusive, PA-200-01 and 200-02, PA 210-01 to PA-210-07 (inclusive), and PA-300-01 to PA-300-04 (inclusive) all dated April 2011 and all drawn by Francis-Jones Morehen Thorp Pty Ltd;
- (b) Preferred Project Report prepared by City Plan Services Pty Ltd, dated April 2011;
- (c) Stormwater drainage concept plans numbered 3532 H-100 to H-117 (inclusive) all issue 01, all dated March 2010, and all drawn by Warren Smith & Partners Pty Ltd; and
- (d) Draft Statement of Commitments ~~contained in the Preferred Project Report~~ **submitted with the Section 75W Modification Application** prepared by City Plan Services Pty Ltd, dated October 2012.

except for:

- Any modifications which are 'Exempt and Complying Development' as identified in State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 or as may be necessary for the purpose of compliance with the BCA and any Australian Standards incorporated in the BCA; and
- Otherwise provided by the conditions of this approval.

PART B – PRIOR TO ISSUE OF A CONSTRUCTION CERTIFICATE

Building Height

- B3. The building is to be lowered so that it has a maximum height of RL 167.3 AHD. Amended plans shall be submitted to the Director-General for approval prior to the issue of ~~any Construction Certificate~~ **the Construction Certificate for the above-ground non-residential and residential components of the development.**

Affordable Housing

- B5. In accordance with the requirements of cl.6 (b)(iv) of the North Sydney Development Control Plan 2002, 4% of dwelling space (net dwelling area, excluding serviced apartments) must be dedicated to North Sydney Council for Affordable Housing **prior to issue of the Occupation Certificate for the residential component of the development.**

Agreement is to be reached with North Sydney Council over the **general** location and mix of these units prior to issue of ~~any~~ the Construction Certificate **for the residential component of the development.**

The Affordable Housing units are to generally comprise a unit mix such as 3 x studio apartments and 1 x 1 bedroom apartment, or the equivalent to 4% of dwelling space (net dwelling area, excluding serviced apartments), to be located on the first and/or second residential levels.

Section 94 Contributions

- B11. Following receipt of the approval of the Director-General for the amended plans required by Condition B3, the approved plans must be submitted to Council so that it may calculate the required Section 94 Contributions (in accordance with the North Sydney Section 94 Contribution Plan). The contributions are to be paid to Council prior to the determination of ~~any Construction Certificate~~ **any Occupation Certificate for the building.**

BASIX Commitments

- B38. Under Clause 97A(3) of the Environmental Planning & Assessment Regulation 2000, it is a condition of this Project Approval that all the commitments listed in each BASIX Certificate for the development are fulfilled. The Certifying Authority must ensure that the building plans and specifications submitted by the Proponent, referenced on and accompanying the issued Construction Certificate **for the residential component of the development**, fully satisfy the requirements of this condition.

PART E – PRIOR TO ISSUE OF OCCUPATION CERTIFICATE

Dedication of Affordable Housing Units

- E2. Prior to the issue of any ~~interim~~ Occupation Certificate **for the residential component of the development**, the Proponent shall provide evidence that the Affordable Housing Units required to be dedicated (condition B5) to North Sydney Council have been so dedicated.

3. Environmental Assessment

An environmental assessment of the proposed modifications is as follows: -

3.1 Restructure the Staging of the Construction Process

The original Environmental Assessment Report submitted with the Major Project (MP09_0187) sought progressive construction certificates and progressive occupation certificates, in accordance with the staged construction as detailed in the Construction Management Plan (CMP) prepared by CPM Consulting dated 19 May 2010, which accompanied the application. It is noted that the PPR included an updated CMP dated April 2011 which maintained the staging process. The CMP indicates three (3) construction stages will generally be undertaken, being for the basement levels, followed by the non-residential component, and finally the residential component of the development.

Several conditions of consent in the Major Project Approval have the potential to inhibit the staged demolition, excavation, and construction phases of the development. As such, this application seeks to amend the wording of these conditions to facilitate the staged construction and progressive occupation of the development as sought. As detailed in Section 2 above, this application proposes to amend the conditions as follows: -

- amend the description of the approved project to include staging of the development with respect to demolition, excavation, construction and occupation;
- amend Condition A1 *Development in accordance with plans and documentation* to reference the revised Draft Statement of Commitments prepared by City Plan Strategy and Development Pty Ltd, dated October 2012 submitted with this Environmental Assessment; and
- amend the timing of the following conditions to enable them to be satisfied prior to the relevant construction certificate or occupation certificate: -
 - B3. Building Height
 - B5. Affordable Housing

- B11. Section 94 Contributions
- B38. BASIX Commitments
- E2. Dedication of Affordable Housing Units

The proposed amendments to the conditions of consent described above are not considered to adversely impact upon the development and the proponent acknowledges that all commitments specified in the Major Project Approval will be duly complied with. As approved, however, the timing of these conditions of consent are considered to be onerous and misaligned to the stage of the development to which they relate. For example, Condition B5 *Affordable Housing* and Condition E2 *Dedication of Affordable Housing Units* requires the units to be designated as Affordable Housing to be identified in agreement with Council prior to the issue of any Construction Certificate. As such, the mix and location of the Affordable Housing units are required to be identified prior to the issue of the Construction Certificate for an unrelated component of the development, most likely being the basement parking levels, and in addition, should the proponent seek to amend the floorplan layout of the residential units, the process of identifying the Affordable Housing units in agreement with Council would be required to be repeated.

As such, it is proposed that the wording of the conditions is amended to relate to the stage to which it relates. In the case of Conditions B5 and E2, it is proposed that the general location and mix of the proposed Affordable Housing units are identified prior to the issue of the Construction Certificate for the residential component of the development, and their dedication to Council is undertaken prior to the issue of the Occupation Certificate for the residential component of the development, which will relate to the final floorplan layout.

Similarly, the wording of the conditions nominated above in relation to timing are also proposed to be amended to reflect the stage of construction or stage of occupation to which they directly relate. This approach facilitates the execution of the development and contributions in a timely and effective manner.

In addition, the Draft Statement of Commitments dated April 2011 includes a commitment to provide these units via the Draft Planning Agreement prepared by Baker & MacKenzie dated 8 April 2011. This commitment is attached to Condition A1(d) but overridden by Condition B5. It is noted that this Draft Planning Agreement was not publically exhibited. In the circumstances, the commitment of the Affordable Housing via a Planning Agreement is not necessary.

3.2 Section 94 Contributions

Condition B11 *Section 94 Contributions* requires the necessary Section 94 Contributions to be paid to Council prior to the determination of any Construction Certificate. The timing of this condition contradicts the details in the Draft Revised Statement of Commitments approved with the Preferred Project Report which designates payment of the Section 94 Contributions prior to the issue of the Occupation Certificate for the building. This application seeks to modify the wording in Condition B11 to maintain the timing for the payment of the contributions in accordance with the approved Draft Revised Statement of

Commitments (which is also reflected in the Draft Revised Statement of Commitments provided in **Appendix B**).

It is noted that amended plans satisfying the requirement in Condition B3 to reduce the building height to a maximum height of RL 167.3 AHD are also required to be submitted to the Director-General for approval prior to the calculation and payment of the Section 94 Contributions. Conditions B3 and B11 are considered onerous as they commit the development to detailed floor layout plans at the early stages of the development which are unrelated to the residential component of the development, and it is likely to make the process difficult should any further Section 75W Modification Applications be sought to amend these plans.

It is recommended that amended floor plans are submitted with the Section 75W Modification Application which satisfies the requirement to reduce the maximum building height as required by Condition B3 *Building Height* and request the deletion of this condition.

With regard to Condition B11 *Section 94 Contributions*, it is recommended that this Condition is amended to require the payment of the Contribution to relate to the issue of the Occupation Certificate of the development.

3.3 Affordable Housing Contribution

The Major Project Approval commits 4% of dwelling space (net dwelling area, excluding services apartments) to be dedicated to North Sydney Council, in accordance with Condition B5 *Affordable Housing* and Clause 6(b)(iv) of the North Sydney Development Control Plan 2002. This condition requires the location and mix of these units to be identified prior to the issue of any Construction Certificate with the agreement of North Sydney Council.

In addition, the Draft Statement of Commitments dated April 2011 includes a commitment to provide these units via the Draft Planning Agreement prepared by Baker & MacKenzie dated 8 April 2011. This commitment is attached to Condition A1(d) but overridden by Condition B5. It is noted that this Draft Planning Agreement was not publically exhibited. In the circumstances, the commitment of the Affordable Housing via a Planning Agreement is not necessary.

To this end and for abundant clarity, this application proposes the Planning Agreement is deleted and the alternative mechanism of Condition B5 is used as drafted to provide the Affordable Housing contribution. Accordingly, the Draft Statement of Commitments has also been updated to reflect the deletion of the Planning Agreement (refer to **Appendix B**). The introduction of a Condition of Consent for this purpose offers Council the opportunity to agree to the general location and mix of the Affordable Housing units prior to the issue of the Construction Certificate for the residential units. It is considered appropriate to include a commitment to a quantum of floorspace, general location and unit mix for the Affordable

Housing contribution, which has been clearly detailed in the amended condition, which is provided in **Section 2** above.

4. Conclusion

This application proposes modifications to the conditions of consent in Major Project Approval (MP09_0187) to facilitate the staged construction and progressive occupation of the mixed use development and to amend the requirements for the timing of items such as the Section 94 Contributions and Affordable Housing contribution to be provided in accordance with the residential component of the development to which they relate.

This environmental assessment has demonstrated that the proposed modifications do not generate any adverse impacts when compared to the original approved proposal and that the proposal does not impact on the built form and use of the development. The application is considered appropriate for approval.

Should you have any queries with regard to the above, please feel free to contact me on 8270 3500.

YOURS FAITHFULLY



**SUE FRANCIS
EXECUTIVE DIRECTOR
CITY PLAN STRATEGY AND DEVELOPMENT**