

Wednesday, 23 November 2011

Anthony Witherdin
Acting Director, Metropolitan Projects
NSW Department of Planning and Infrastructure
22-33 Bridge Street
Sydney NSW 2000

Architecture
Urban Design
Planning
Interior Architecture

Attention: Anthony Witherdin
Acting Director, Metropolitan Projects

RE: 128 Herring Road, Macquarie Park
Section 75W Modification to MP 09_0217 Project Application for Subdivision

Dear Anthony,

We write on behalf of Toga Macquarie Developments Pty Ltd, developers of a portion of 128 Herring Road, Macquarie Park, to submit a Section 75W application to modify the Major Project Application for Subdivision MP 09_0217 consent, granted by the NSW Department of Planning and Infrastructure (formerly, NSW Department of Planning) on 20 January 2011 and amended by MOD1, granted consent on 11 July 2011.

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This report describes an application made under Section 75W of the *Environmental Planning and Assessment Act 1979* (historical version up to 8 July 2011, as per Planning Circular PS 11-021) (EP&A Act). The application is made under a historical version of the act, as Major Project Application MP 09_0217 was approved under the now repealed Part 3A of the EP&A Act. Under this modification application, it is proposed to modify Conditions A1 and A2 of the Project Application Consent MP 09_0217 Conditions of Approval, as modified by MOD1 to allow:

1. Modification of the type of subdivision, from Torrens Title to Community Title with associated modifications to lots and easements ;
2. Amend the approved plans of subdivision to reflect the above.

The proposal is sought to allow for the sharing of facilities and services across all sites within the proposed subdivision. Some of the maintenance requirements need to be evenly distributed to all occupants of the site. This will be more appropriately administered under a Community Title, rather than Torrens Title subdivision.

The modification is proposed in accordance with the requirements of Section 75W of the EP&A Act (historical version), as the subject approval of this application was made under the now repealed Part 3A of the EP&A Act. This modification provides additional environmental assessment and amended plans of Subdivision to support the proposed modifications.

The report should be read in conjunction with the attached documentation, including:

- **Attachment A:** Conditions of Approval MP 09_0217 and MP 09_0217 MOD1, issued by the NSW Department of Planning and Infrastructure.
- **Attachment B:** Proposed Draft Plans of Subdivision, prepared by Mark John Andrew of Denny Linker & Co.

An application form and fee are submitted separately.

Architectus Group Pty Ltd
ABN 90 131 245 684

Managing Director:
David Sainsbery
Nominated Architect
NSWARB 5551
ARBV 13176

1. Site and locality

The subject site is located on part of 128 Herring Road, Macquarie Park, within the City of Ryde Local Government Area (LGA). The subject site is part of the Morling College site at 120-128 Herring Road, Macquarie Park.

The site is bounded by Waterloo Road to the southeast, Morling College to the southwest, Macquarie University and University Creek to the northwest and Dunmore Lang College to the northeast.

The area of the site subject to this application has an area of 1.312 hectares, and a frontage length of 120 metres to Waterloo Road.

The site is legally described as Lot B in Deposited Plan 368446 and Lot 1 in Deposited Plan 876482.

2. Development consent history

This application seeks to modify Major Project Application MP 09_0217 for subdivision. MP 09_0217 was lodged to the Department of Planning in May 2010, and exhibited between 26 May and 25 June 2010. MP 09_0217 was approved on 20 January 2011. On 11 July 2011, a Modification Application (MP 09_0217 MOD 1) was approved by the Director-General of the NSW Department of Planning and Infrastructure which sought to make minor modifications to boundaries and modify the Conditions of Consent to incorporate the amended Plans of Subdivision.

The above subdivision application was submitted together with the following Major Project Applications for the subject site:

- MP 09_0195 – Concept Plan Application for a mixed use residential and retail development with associated public domain works. The Concept Plan Application established the building envelopes and heights for development on the site, as well as a new road. The Concept Plan Application was approved on 20 January 2011; and
- MP 09_0218 – Stage 1 Project Application for a mixed use residential/retail building comprising 123 apartments, retail, associated parking and public domain works. This Project Application was also approved on 20 January 2011.

3. Consultation with Ryde Council

Toga Macquarie Developments has undertaken consultation with the City of Ryde Council regarding the proposed community title subdivision. Council raised initial concerns with an easement to accommodate basement parking for future Buildings C and D under the proposed Road Lot, which is to be dedicated to Council. Toga Macquarie Developments, in consultation with Council, has amended the Road Lot to be dedicated to Council to ensure no part of the area to be dedicated is affected by an easement to accommodate basement parking, associated with the mixed residential and retail use of the site. Council's service vehicles, including garbage trucks, have been considered in the design of the cul-de-sac turning head and the subdivision plan for the Public Road Lot to enable a three-point-turn.

4. The proposed modifications

It is proposed that Conditions A1 and A2 of the Conditions of Approval to MP 09_0217 (as modified) be amended to facilitate the following:

- Modification of the type of subdivision, from Torrens Title to Community Title with associated modifications to lots and easements;
- Amend the approved plans of subdivision to reflect the above.

The proposed modifications are described in detail below.

4.1 Modification to type of subdivision

Condition A1 currently reads as:

'A1 Development Description

(1) *Project Approval is granted to the development as described below:*

- (a) *Torrens Title Subdivision of the development site from Morling College and creation of 3 lots known as Stage 1;*
- (b) *Torrens Title Subdivision of the Stage 1 allotment into 3 allotments known as Stage 1A; and*
- (c) *Torrens Title Subdivision of the residual development site into 4 allotments known as Stage 2.'*

It is proposed that Stage 1A be modified from a Torrens Title Subdivision of the Stage 1 allotment into three lots, to a Community Title Subdivision into 6 lots, as follows (refer to proposed Draft Plans of Subdivision at **Attachment B**):

- **Community Lot 1**, being the future open space area at the western end of the site, with an area of 2,075m².
- **Development Lot 2** (Building A), being a development lot at the north eastern corner of the site with an area of 1,973m². Part of Building A will be located over Development Lot 4. Part Lot 2 and 3, which will also accommodate parts of Building A, has an area of 624m². Lot 2, together with Lots 3 and 4 will be in stratum with Part Lots and be subject to a strata management statement. Lot 2 is also affected by Global Easements, also affecting Lots 3 and 4, for support and shelter; services; and fire stairs and passages.
- **Development Lot 3** (Building B), being a development lot between Lots 2 (east) and Lot 6 (west) with an area of 2,209m². Building B will also be situated over Part Lot 2 and 3. Easement (A) will be maintained along the western boundary of this Lot for access. Easement (A) provides a public thoroughfare between the new road and the northern boundary of the site. Lot 3, together with Lots 2 and 4 will be in stratum with Part Lots and be subject to a strata management statement. Lot 3 is also affected by Global Easements, also affecting Lots 2 and 4, for support and shelter; services; and fire stairs and passages.
- **Development Lot 4**, being a retail stratum Lot of Building A, is located at the corner of Herring Road and the proposed new road. This lot has an area of 328m². Lot 4, together with Lots 2 and 3, will be in stratum with Part Lots and be subject to a strata management statement. Lot 4 is also affected by global easements, also affecting Lots 2 and 4, for support and shelter; services; and fire stairs and passages.
- **Development Lot 5**, being a future road lot. This lot forms Stage 1 of the proposed new road with an area of 1,030m². An easement for access will be maintained over this lot. This lot will be dedicated to the City of Ryde Council together with Lot 10, as a public road, in accordance with Commitment 2 of the Statement of Commitments provided in the Preferred Project Report dated October 2010, prepared by Urbis Pty Ltd and approved under Concept Plan MP 09_0195.
- **Development Lot 6**, being a residual lot, to be further subdivided in Stage 2.

It is also proposed that Stage 2 be modified from a Torrens Title Subdivision of the residual lot into 4 allotments, to a Community Title Subdivision of Development Lot 6 (described above) into 4 lots as follows (refer to proposed Draft Plans of Subdivision at **Attachment B**):

- **Development Lot 7** (Building C), being a development lot between Lot 3 (east) and Lot 8 (west). This Lot has an area of 2,654m² and will be affected by three Global Easements, which also affect Lot 8, for support and shelter; services; and fire stairs and passages. Lots 7 and 8 will be subject to a Strata Management Statement with part lots in accordance with approved plans.

- **Development Lot 8** (Building D), being a development Lot between Lot 7 (east) and Community Lot 1 (west). This lot has an area of 1,731m². The Lot is affected by three Global Easements, which also affect Lot 7, for support and shelter; services; and fire stairs and passages. The Lot is also affected by an easement along its southern boundary for drainage services. Future development on this lot will include a shared basement area with adjoining Lot 7. Lots 7 and 8 will be subject to a Strata Management Statement with part lots in accordance with approved plans.
- **Development Lot 9** (Building E), being a development lot located at the corner of Herring Road and the proposed new road in the southeast corner of the site. This lot has an area of 2,990m².
- **Development Lot 10** comprises the remainder of the proposed future road lot. Lot 10 has an area of 1,637m², and is affected by an easement for access. This lot, together with Lot 5, is to be dedicated to Council as a public road. In consultation with Council, the turning circle of the future road has been modified so there is no encroachment of basement parking on land to be dedicated to Council.

All of the above lots will be subject to a Community Management Statement. A Community Management Statement provides information regarding the body corporate and community titles scheme including by-laws, entitlements and rights of owners and regulation of the use of common property. Small amendments to the boundaries and part lots may be required on the final plans to fit as built structures constructed in accordance with approved plans.

To reflect the above modifications, it is proposed that Condition A1 be modified to read as follows (modifications shown in *red text*):

‘A1 Development Description

(1) *Project Approval is granted to the development as described below:*

- Torrens Title Subdivision of the development site from Morling College and creation of 3 lots known as Stage 1;*
- Community Title ~~Torrens Title~~ Subdivision of the Stage 1 allotment into 6 ~~3~~ allotments known as Stage 1A; and*
- Community Title ~~Torrens Title~~ Subdivision of the residual development site into 4 allotments known as Stage 2.’*

4.2 Modification to Draft Plans of Subdivision

To reflect the above modifications, it is required that Condition A2 of the Conditions of Approval be modified. Condition A2 was amended by a previous Section 75W Application approved in July 2011. It is proposed that Condition A2 (as modified) be amended to read as follows (modifications shown in *red text*):

‘Condition A2 Development in Accordance with Plans and Documentation

The development will be undertaken in accordance with MP No 09_0217 and the Environmental Assessment dated May 2010 prepared by Urbis Pty Ltd, except where amended by the Preferred Project Report (September 2010), and additional information to the Preferred project Report dated 7 October 2010, and drawings prepared by Cameron Phillip Miles Surveyor as amended by the Section 75W modification dated 23 March 2011 prepared by Urbis, together with associated documentation including amended plans prepared by Cameron Phillip Miles, Surveyor of Denny Linker & Co, and by the Section 75W modification dated [INSERT DATE OF APPROVAL], prepared by Architectus Group Pty Ltd and the associated documentation including amended plans by Cameron Phillip Miles, Surveyor of Denny Linker & Co:

Architectural Drawings prepared for the Environmental Assessment/Preferred Project Report			
Drawing No	Revision	Name of Plan	Date
091120.DP.STG1	4	Sheet 1 of 1	1/10/2010
091120.DP.STG1A	8	Sheet 1 of 3	02/03/11
091120.DP.STG1A	8	Sheet 2 of 3	02/03/11
091120.DP.STG1A	8	Sheet 3 of 3	02/03/11
091120.DP.STG2	8	Sheet 1 of 3	02/03/11
091120.DP.STG2	8	Sheet 2 of 3	02/03/11
091120.DP.STG2	8	Sheet 3 of 3	02/03/11

Except as for:

- (1) Any modifications which are 'Exempt or Complying Development' as identified in State Environmental Planning Policy (Exempt and Complying Codes) 2008) or as may be necessary for the purpose of compliance with the BCA and any Australian Standards incorporated in the BCA;
- (2) Otherwise provided by the conditions of this approval; *and*
- (3) *Draft Plans of Subdivision Drawing submitted with the Section 75W Application dated [Insert Date of Approval of this Modification], being Drawing Nos 11023_A203_Level 00 Plan_F (Stage 3) and 11023_A203_Level 00 Plan_F (Stage 4) prepared by Mark John Andrew of Denny Linker & Co.'*

5. Relevant statutory controls

The following statutory planning controls are applicable to the subject site:

- State Environmental Planning Policy No 55 – Remediation of Land (SEPP 55)

SEPP 55 requires that an assessment is made of the level of contamination of a site prior to the carrying out of development on land. It is also required that a site be remediated to an appropriate level for proposed future use.

The proposed modifications to the subdivision will not impact on the contamination or remediation of the site. A Commitment has been made under the MP 09_0195 Concept Plan Approval to implement the recommendations of a Phase I Preliminary Assessment prepared by Douglas Partners (December 2009). The proposal will not impact on the undertaking of these recommendations.

- State Environmental Planning Policy (Major Development) 2005 (Major Development SEPP)

The subject site was approved under the former Part 3A of the *Environmental Planning and Assessment Act 1979* (EP&A Act) in accordance with the Major Development SEPP. The proposed subdivision and easements will facilitate a variation to the approved Concept Plan, 09_0195 with regards to the turning circle of the proposed road. The turning circle has been modified, in consultation with the City of Ryde Council, to avoid any easement for basement parking of Proposed Lots 7 and 8 do not encroach into the area of the future Road Lot to be dedicated to Council, whilst allowing Council's garbage collection trucks to make a three-point-turn in the cul-de-sac.

- Ryde Local Environmental Plan 2010 (Ryde LEP 2010)

The Ryde LEP 2010 is the primary environmental planning instrument applicable to development within the City of Ryde local government area. Subdivision is permissible in all zones with consent under the Ryde LEP 2010.

The proposed modification will not result in any inconsistencies with the Ryde LEP 2010 B4 Mixed Use zoning provisions and objectives. The proposed modifications are for subdivision only.

6. Environmental assessment

This section assesses the proposed modifications against the relevant legislation and planning considerations.

6.1 Section 75W modification of Minister's approval

Section 75W of the EP&A Act states the following:

'75W Modification of Minister's approval

- (1) *In this section:*
"Minister's approval" means an approval to carry out a project under this Part, and includes an approval of a concept plan.
"modification of approval" means changing the terms of a Minister's approval including:
 - a) *revoking or varying a condition of the approval or imposing an additional condition of the approval, and*
 - b) *changing the terms of any determination made by the Minister under Division 3 in connection with the approval.*
- (2) *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.*
- (3) *The request for the Minister's approval is to be lodged with the Director-General. The Director-General may notify the proponent of environmental assessment requirements with respect to the proposed modifications that the proponent must comply with before the matter will be considered by the Minister.*
- (4) *The Minister may modify the approval (with or without conditions) or disapprove of the modification.*
- (5) *The proponent of a project to which section 75K applies who is dissatisfied with the determination of a request under this section with respect to the project (or with the failure of the Minister to determine the request within 40 days after it is made) may, within the time prescribed by the regulations, appeal to the Court. The Court may determine any such appeal.*
- (6) *Subsection (5) does not apply to a request to modify:*
 - a) *An approval granted by or as directed by the Court on appeal, or*
 - b) *A determination made by the Minister under Division 3 in connection with the approval or a concept plan.'*

The proponent, Toga Macquarie Developments Pty Ltd, request that the NSW Department of Planning and Infrastructure, as the consent authority, approve the proposed modifications to the approved Project Application for Subdivision MP 09_0217 (as modified).

No provisions of Section 75W of the EP&A impose any prohibition or limitations on the proposed modifications. Therefore it is considered that the proposed modifications satisfy the provisions of this Section.

The modifications are described in detail under **Section 3** above.

7. Conclusion

The proposed modification under Section 75W of the EP&A Act will allow for modifications to the type of subdivision and the Draft Plans of Subdivision approved under MP 09_0217 (as modified).

The proposed subdivision is to be prepared in accordance with this Environmental Assessment and the Statement of Commitments made under **Section 6**. The Proponent has discussed the proposed modification with the City of Ryde Council. Issues raised by Council have been addressed.

Accordingly, it is recommended that this Section 75W modification application be approved by the NSW Department of Planning and Infrastructure.

Should you have any further queries in regards to the proposed Section 75W application, please do not hesitate to contact the undersigned on 8252 8400.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'M. Donaldson', with a stylized flourish at the end.

Murray Donaldson
Associate Director
Architectus Group Pty Ltd

cc. Rob Thomas, Toga Macquarie Developments Pty Ltd, rthomas@toga.com.au

Attachment A: Conditions of Approval MP 09_0217 and MP 09_0217 MOD1, issued by the NSW Department of Planning and Infrastructure.

Attachment B: Proposed Draft Plans of Subdivision, prepared by Mark John Andrew of Denny Linker & Co.