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Our Ref: PR115598
Date: 9 August 2013

Heather Warton - Director of Metropolitan Region South
Department of Planning and Infrastructure
22-33 Bridge Street
Sydney NSW 2000

Via: electronic submission

Dear Heather

**RE: 120 – 128 HERRING ROAD, MACQUARIE PARK
MP09_0217 S75W MODIFICATION 3**

In accordance with the provisions of Section 75W (s75W) of the *Environmental Planning and Assessment Act 1979* (EP&A Act) and on behalf of our client Toga Macquarie Developments Pty Ltd (Toga), we hereby submit this s75W Application to modify the Minister's approval MP09_0217 relating to 120-1258 Herring Road, Macquarie Park. The proposed modifications seek changes to the wording of Condition B1 to change the timing for the operation of a pedestrian/cycleway and Condition B7 to ensure consistency between Conditions B1 and B7.

BACKGROUND

On 20 January 2011, Project Approval (MP09_0217) was granted for "*Torrens Title Subdivision of the development site from Morling College and creation of 3 lots known as Stage 1; Torrens Title Subdivision of the Stage 1 allotment into 3 allotments known as Stage 1A; and Torrens Title Subdivision of the residual development site into 4 allotments known as Stage 2.*" This approval is the subject of this application.

The following modifications to the MP09_0217 have since been granted:

- MOD 1 – The addition of a notation for an access easement across proposed Lot 11 as required by conditions of consent and rectification of minor drafting errors. This modification included an amendment to Condition B1 to ensure the public easement was maintained on title and that related requirements were completed with the staged subdivision for Building B. Approved on 11 July 2011.
- MOD 2 – Modification to change the type of subdivision from a Torrens Title Subdivision to a Community Title Subdivision with associated modifications to lots and easements. Approved on 13 March 2012.

Currently, Condition B1 states that a pedestrian/cycleway, a minimum of 2.5 metres in width, shall be provided by right-of-way easement. Condition B7 states that the proponent shall dedicate the internal road, footpath and cycleway (upon completion) to the council. These conditions are contradicting and have the potential to cause issues at the occupation certificate stages of the relevant buildings.

Condition B1 also states that the pedestrian/cycleway is to be constructed and operational prior to the occupation of Building B.

PROPOSED MODIFICATION

This application seeks to modify the wording of Condition B1 and B7 of MP09_0217 as follows:

B1 Pedestrian/Cycleway Public Easement

A pedestrian/cycleway, a minimum of 2.5 metres in width, shall be maintained across the proposed Lot 11 (Building B) to provide a 24 hour/7 day a week connection by right-of-way easement and be located between the new internal road and the north-eastern (side) boundary with the Macquarie University. The design and specifications (including lighting) shall be agreed with the Council prior to the commencement of construction and the access shall be completed and operational prior to the issue of an Occupation Certificate for Building ~~B~~ C. A documentary easement for access over the pedestrian/cycleway required in accordance with this condition is to be created pursuant to Section 88B of the *Conveyancing Act 1919* and shall be registered on title prior to the issue of an Occupation Certificate for Building ~~B~~ C.

B7 Dedication to Council

The Proposal shall dedicate to Ryde Council the internal road, footpath **(not including pedestrian/cycleway which is the subject of Condition B1) and cycleway** following completion. The area to be dedicated is to be the subject of a final plan of survey prepared by a registered surveyor and shall be detailed on the required Plan of Subdivision. The required dedication is to take place by way of subdivision. Evidence that the required Subdivision Certificate has been registered shall be provided to the certifying Authority prior to the issue of the first Occupation Certificate for Building E.

JUSTIFICATION

The changes for the timing of the operation of the pedestrian/cycleway is required to facilitate the construction of Building C. The pedestrian/cycleway is directly adjoining Building C. The use of this area as part of the Building C construction site would shorten the construction period through maximising efficiencies in the construction process. It would also ensure public safety by eliminating any potential public/construction conflict.

The proposed change to Condition B7 is justified as it ensures that the intent of Condition B1 is met and provides consistency throughout the condition of the Development Permit. Importantly, it is essential that the right-of way be via an easement as the pedestrian/cycleway is the common property of the Building B strata scheme and cannot be dedicated to Council. By ensuring that the easement falls under the responsibility of the owner of the site, the development will be able to provide consistency with landscaping across the site and also alleviate Council from the responsibility and costs associated with the maintenance of a dedicated pedestrian/cycleway.

LIKELY ENVIRONMENTAL IMPACTS FROM PROPOSED MODIFICATION

The proposed amendments will not change the overall outcome of the development and as such there would be no detrimental environmental impacts.

The changes to the timing of the operation of the pedestrian/cycleway would ensure public safety through removing any potential construction/ public conflict. It would also reduce impacts on the amenity of Building A residents that might be caused during the construction of Building C, offsetting any inconvenience caused by delaying the operation of the pedestrian/cycleway.

CONCLUSION

The proposed modifications are considered to be minor and will not change the overall outcome of the development of the site. The proposal satisfies the requirements of s75W of the EP&A Act.

We trust this information is sufficient for your purposes; however should you require any further details or clarification, please do not hesitate to contact the writer by telephone on (02) 8270 8300.

Yours sincerely
RPS

A handwritten signature in black ink, appearing to read 'pmangels', written in a cursive style.

Peter Mangels
Senior Planner

cc: Mino Howard (Toga Macquarie Developments Pty Ltd)