



MODIFICATION REQUEST:

***120-128 Herring Road, Macquarie Park
MP 09_0217 MOD 3***

***Amend conditions B1 and B3 in relation to a
pedestrian/cycleway public easement***



Director-General's
Environmental Assessment Report
Section 75W of the
Environmental Planning and Assessment Act 1979

November 2013

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1. BACKGROUND

1.1 Introduction

This application seeks approval to modify two conditions imposed on Project Approval No: 09_0217 relating to:

1. the timing of the completion of the pedestrian/cycleway public easement; and
2. removing a requirement to dedicate the pedestrian/cycleway to Ryde City Council.

The proposed modifications are consistent with the intent of the original approval and there is no loss of public benefit or amenity. It is therefore recommended that the proposed modifications be approved.

1.2 The Site

The site lies within the Ryde Local Government Area, approximately 14 km north-west of the Sydney CBD and 6 km north-west of the Chatswood CBD. The site is in close proximity to Macquarie University, the Macquarie Shopping Centre, the Macquarie University Railway Station, and Epping Road (see **Figure 1** below). The site comprises part of the Morling Theological College, and has a total area of 17,253m².

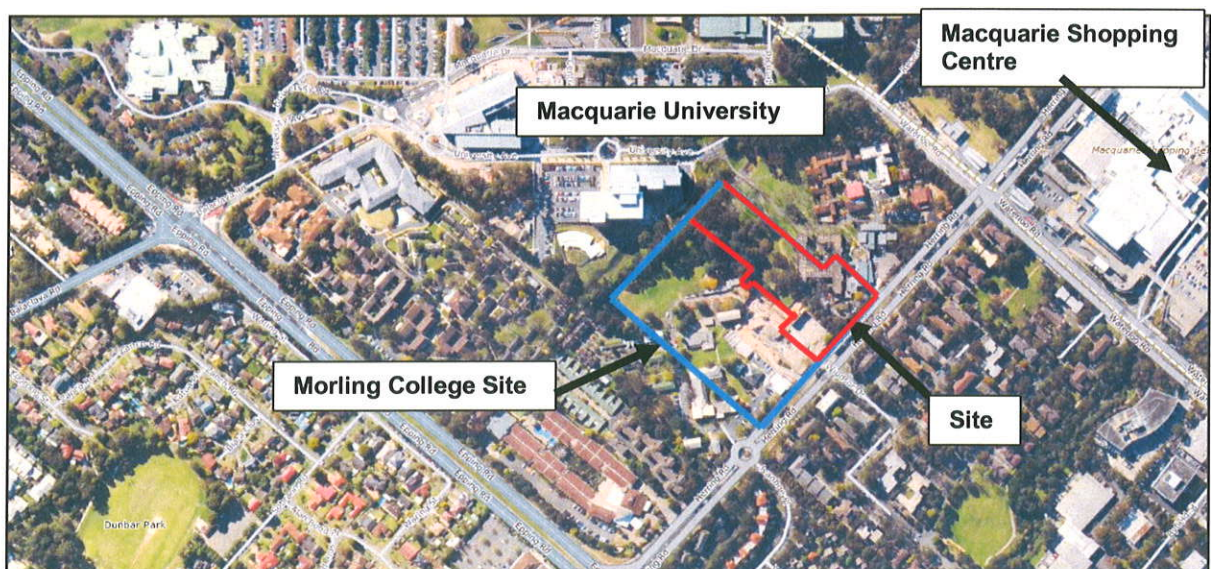


Figure 1: Site Location

1.3 Previous Approvals

On 20 January 2011, the then Deputy Director-General of Development Assessment and Systems Performance approved a suite of applications in relation to the holistic redevelopment of the subject site. These included:

- **Concept Plan (MP09_0195)** for a mixed use residential / retail development comprising 4x12 storey and 1x9 storey building envelopes with basement car parking, road works and landscaping;

- **Project Application (MP09_0217)** for staged subdivision into 7 allotments comprising 5 residential allotments and 2 road allotments for the access road; and
- **Project Application (MP09_0218)** for the construction of a residential development including demolition and excavation; construction of a 12 storey residential / retail building (Building A) providing 10,367 sqm of GFA, 123 dwellings and a 96m² retail tenancy. The approval also includes a 3 level basement car park for 152 cars and ancillary services and facilities, and the construction of the south-eastern portion of the new local public access road, footpath and cycleway off Herring Road.

These approvals have been modified on various occasions. A summary of the modifications is provided at **Appendix A**.

2. PROPOSED MODIFICATION

2.1 Modification Description

It is proposed to modify condition B1 (Pedestrian/Cycleway Public Easement) of Project Approval MP 09_0217 to allow the completion of the pedestrian/cycleway prior to issue of the occupation certificate for building C, rather than building B. The proposed modification is as follows (text shown with strikethrough to be deleted and text in bold to be added):

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 24hour/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~~.

It is also proposed to modify condition B7 (Dedication to Council) to delete the requirement to dedicate the cycleway to the Council. The proposed modification is as follows (text shown with strikethrough to be deleted and text in bold to be added):

B7 Dedication to Council

The Proponent 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 subject to 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.

3. STATUTORY CONTEXT

3.1 Continuing Operation of Part 3A to Modify Approvals

In accordance with clause 3 of Schedule 6A of the *Environmental Planning and Assessment Act 1979* (EP&A Act), section 75W of the EP&A Act as in force immediately before its repeal on 1 October 2011, and as modified by Schedule 6A, continues to apply to transitional Part 3A projects.

Consequently, this report has been prepared in accordance with the requirements of Part 3A and the associated regulations, and the Minister (or his delegate) may approve or disapprove the proposed modifications under section 75W of the EP&A Act.

3.2 Modification of the Minister's Approval

Section 75W(2) of the EP&A Act provides that a proponent may request the Minister to modify his approval of a project. The Minister's approval of a modification is not required if the approval of the project, as modified, would be consistent with the original approval. The proposed modification seeks to amend conditions of approval and therefore requires the Minister's approval.

3.3 Environmental Assessment Requirements

Section 75W(3) of the EP&A Act provides the Director-General scope to issue Environmental Assessment Requirements (DGRs) that must be complied with before the matter will be considered by the Minister. DGRs were not issued for this modification as the proponent has addressed the key issues related to the modification request.

3.4 Delegated Authority

Under the Minister's delegation of 14 September 2011, the Planning Assessment Commission (PAC) may determine the application as Toga Pty Ltd (the proponent) has lodged a political donations disclosure (refer **Appendix C**).

4. CONSULTATION AND SUBMISSIONS

4.1 Exhibition

Under section 75X(2)(f) of the EP&A Act and clause 8G of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation), the modification request was made publically available on the department's website. The department also notified Ryde City Council. Given the minor nature of the modifications the department did not undertake any further notifications.

Council has not responded to the department's notification and no public submissions have been received.

5. ASSESSMENT

The large allotments in Macquarie Park are a barrier to the movement of pedestrians and cyclists and the provision of a pedestrian/cycleway link is desirable. Figure 2 below show the location of the link.

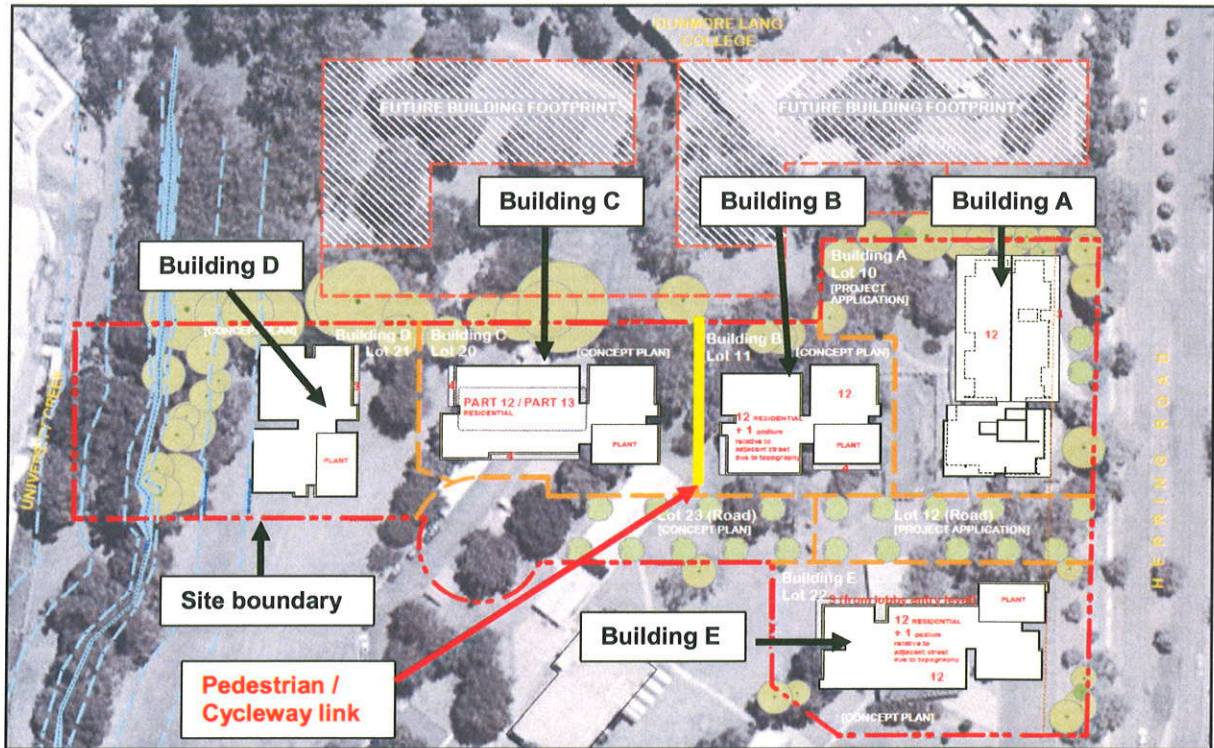


Figure 2: Site context plan illustrating the development layout with the pedestrian / cycleway link shown highlighted in yellow.

Condition B1 requires the pedestrian/cycleway to be completed prior to issue of the occupation certificate for building B, not building C. In its submission the proponent argues that the completion and handover at the building B stage would impede the construction of building C. The proponent states that:

"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".

Figures 3 and 4 illustrate that the ground floor slab for building C abuts the western edge of the pedestrian/cycleway. The scaffolding required to facilitate the construction of that slab is therefore located on the pedestrian/cycleway.

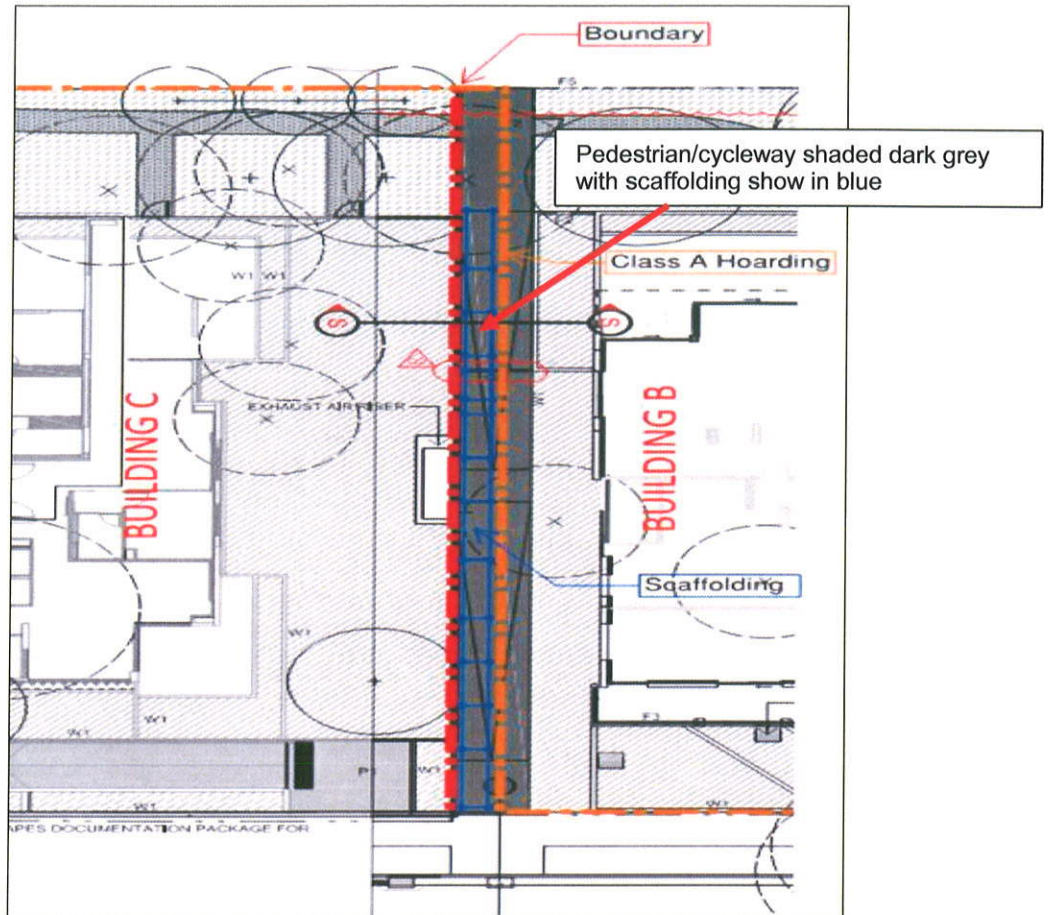


Figure 3: Plan view showing location of pedestrian/cycleway and scaffolding required to construct building C

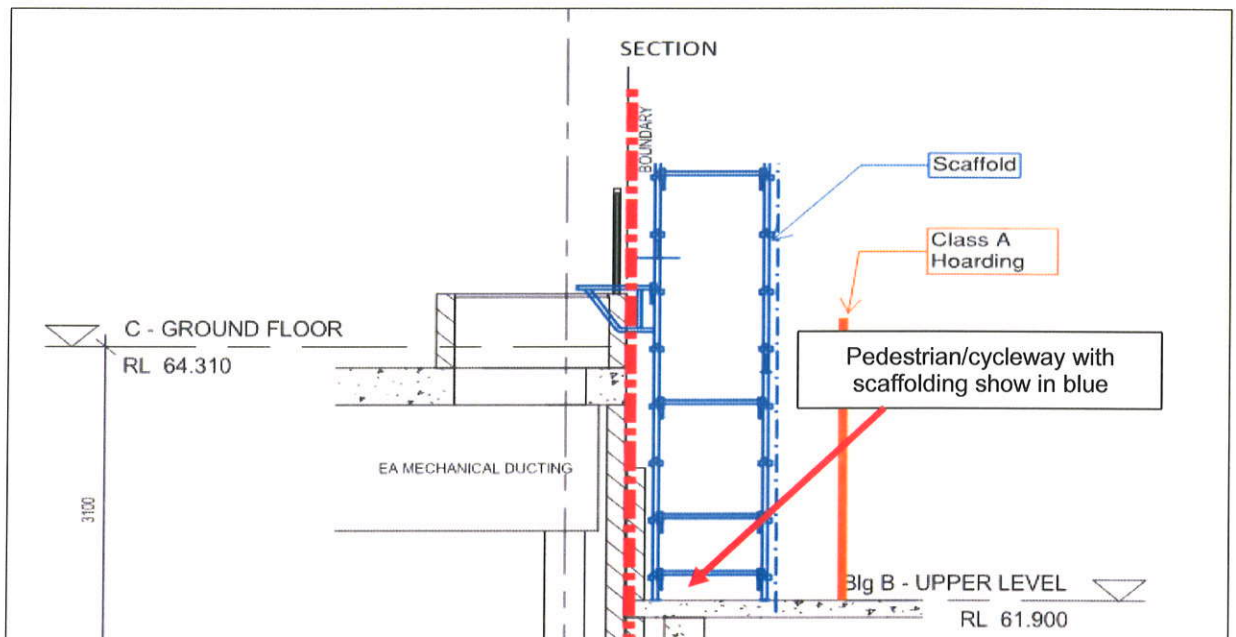


Figure 4: Section showing location of pedestrian/cycleway and scaffolding required to construct building C

The Department supports the proposed modifications to condition B1 for the following reasons:

- the proponent's advice in relation to the benefits to the construction process including maximising construction efficiencies and eliminating potential conflicts is accepted. Figures 3 & 4 illustrate the close proximity between the pedestrian/cycleway link and building C;
- the project approval, as originally granted, permitted the link to be provided at the time of the issue of the occupation certification for building C (as is now proposed), but was later modified (Mod 1) at the proponent's request;
- the road which will provide access to the pedestrian/cycleway, will not be provided until the issue of the occupation certificate for building C; and
- the proposed modifications will result in the pedestrian/cycleway link being provided in October 2014 rather than January 2014. This time delay (9 months) is relatively minor and considered acceptable.

Condition B7 specifies those infrastructure elements which must be dedicated to Council, including the cycleway. The proponent proposes that the pedestrian/cycleway now not be dedicated to the Council. The proponent argues that the modification is necessary to make the condition consistent with the other parts of the approval which require the pedestrian/cycleway to be on private land but publicly accessible.

The Department has reviewed the Director-Generals Environmental Assessment report, concept and projects approvals and concurs with the proponent. It was intended that the pedestrian/cycleway be provided on private land and made publicly accessible through easements. The reference to the cycleway being delivered as an easement is stated in condition B1. The proposed modification to condition B7 will therefore make the condition consistent with the intent of the approval.

6. CONCLUSION AND RECOMMENDATIONS

The proposed modifications to condition B1 will facilitate the timely construction of the subsequent stages of the development. The proposed modification to condition B7 will make that condition consistent with the intent of the concept and project approvals of providing the pedestrian walkway / cycleway on private land.

It is recommended that the Planning Assessment Commission:

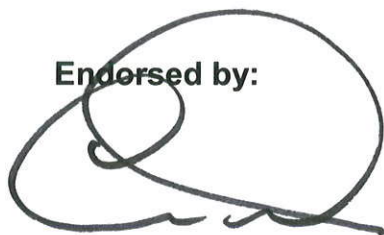
- (a) **Consider** the findings and recommendations of this report.
- (b) **Approve** the modifications under delegated authority, under Section 75W of the *Environmental Planning and Assessment Act 1979*.
- (c) **Sign** the attached instrument of Modification for MP09_0217 (MOD 3).

Prepared by:



Mark Schofield
Team Leader

Endorsed by:



7.11.17

Chris Wilson
Executive Director
Development Assessment, Systems and Approvals

APPENDIX A SUMMARY OF MODIFICATIONS TO CONCEPT AND PROJECT APPROVALS

On 11 July 2011, the Director-General approved the following modification applications:

- **Concept Plan (MP09_0195) MOD 1** for alterations to the building envelopes and gross floor areas for buildings B, C, D and E in response to modification requirements of terms of approval B1 and B2;
- **Project Application (MP09_0217) MOD 1** for the addition of a notation for an access easement across proposed Lot 11 as required by conditions of approval and rectification of minor drafting errors; and
- **Project Application (MP09_0218 MOD 1)** for modifications to Building A to increase the number of units and gross floor area, modify the dwelling mix, and basement car park level and loading spaces, and minor façade changes.

On 13 March 2012, the Acting Director, Metropolitan and Regional Projects South approved the following modification applications:

- **Project Application (MP09_0217 MOD 2)** for modifications to the Project Approval to change the subdivision type from Torrens Title to Community Title Subdivision; and
- **Project Application (MP09_0218 MOD 2)** for modifications to the configuration of the basement levels of Building A.

On 23 March 2012, the Acting Director, Metropolitan and Regional Projects South approved the following modification application:

- **Concept Plan (MP09_0195 MOD 2)** for modifications to the Concept Plan approval relating to Building C to provide seven additional residential units, increase the building height to part 12 / part 13 stories and provide an additional part level of parking.

On 10 April 2012, the Acting Director, Metropolitan and Regional Projects South approved the following modification application:

- **Project Application (MP09_0218 MOD 3)** for modifications the approved dwelling mix, basement parking and storage and energy efficiency of clothes dryers of Building A.

On 1 November 2012, the Acting Director, Metropolitan and Regional Projects South approved the following modification application:

- **Concept Plan (MP09_0195 MOD 3)** for modifications to the Concept Plan approval to adjust ground floor levels, heights and extent of basements for

buildings C and D, remove an additional eight trees across the site, and revise the Tree Management Plan.

On 21 December 2012, the Planning Assessment Commission approved the following modification application:

- **Project Application (MP09_0218 MOD 3)** for modification of the project approval to allow for removal of two trees from the area around Building A and to update the Tree Management Plan.

Development Applications LDA/2011/0578 (for Building B) and LDA/2012/0114 (for Building D) also relate to the site.

APPENDIX B MODIFICATION REQUEST

See the Department's website at:

http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=6087

APPENDIX C POLITICAL DONATION DECLARATION

APPENDIX D RECOMMENDED MODIFYING INSTRUMENT
