

11230
25 October 2013

Mr Sam Haddad
Director-General
Department of Planning and Infrastructure
GPO Box 39
SYDNEY NSW 2000

Attention: Heather Warton / David Gibson

Dear Mr Haddad

**MODIFICATION TO MP 10_0032
PROJECT APPLICATION APPROVAL FOR THE AUSTRALIAN HEARING HUB**

We are writing on behalf of Macquarie University to request that the Minister (or his delegate) modify Project Application approval MP 10_0032 for the Australian Hearing Hub (AHH) project pursuant the savings provisions under clause 2(1)(b) of Schedule 6(A) of the *Environmental Planning and Assessment Act 1979*. Section 75W of Part 3A continues to apply to modifications of Part 3A consents referred to in clause 8J(8) of the *Environmental Planning and Assessment Regulations 2000*.

The project approval for development of the site, as described in Section 1.0 of this letter, was granted under delegation from the former Minister by the Director-General of the Department on 20 December 2010, subject to conditions. Modification No.1 to the project was also granted under delegated authority on 1 November 2012. This approved modification extended the required timeframe to satisfy the respective conditions relating to the need to enter into agreements with both Council and the RMS.

This proposed modification seeks approval for further revised timing of satisfaction of Condition E1(a)-(c) in relation to the required RMS agreement.

1.0 BACKGROUND

The current approval (as modified) sets out various conditions that are required to be satisfied within specified timeframes following occupation of the building (Conditions E1 and E5). The AHH was completed in December 2012 with an Occupation Certificate issued on 18 December 2012.

The Conditions as modified are included below:

Access and Traffic

- E1 *Within 12 months of occupation of the building:*
- (a) *the detailed micro-simulation model, as required by Modification C10(2) in the Concept Plan MP 06_0016 Approval, is to be completed in consultation with Council, the RMS, and Transport for NSW and submitted to the Department of Planning and Infrastructure for approval;*

- (b) *an agreement is also to be made with the RMS, as required by Modification C15(1) in the Concept Plan MP 06_0016 Approval, for relevant road and intersection works within 12 months of occupation of the building.*
- (c) *the amendment to the Concept Plan, as required by Modification B5 in the Concept Plan MP 06_0016 Approval, shall make provision for any setbacks along Balaclava Road (from Epping Road to University Avenue) and Waterloo Road (from Herring Road to Research Park Drive) to facilitate additional capacity improvements and bus priority.*

Developer Contributions

- E5** *Within 8 months of the occupation of the building the Proponent shall provide written evidence to the Department that demonstrates:*
- (a) *that an agreement has been made with Council for the provision of development contributions and/or agreed works in kind as required by Condition C15(5) of Concept Plan MP 06_0016 Approval;*
 - (b) *development contributions have been paid to Council and/or agreed works in kind have been commenced in accordance with the agreement with Council in (a) in relation to this project.*

Condition E5 in relation to the VPA between City of Ryde Council (Council) and Macquarie University was required to be satisfied by 18 August 2013. We advise that the VPA was executed on 7 February 2013 and thereby satisfied Condition E5(a). We attach evidence of the execution in the event that this was not yet presented to the Department for its information.

Council and Macquarie University are presently still negotiating payment under the terms of the VPA for the Australian Hearing Hub in order to satisfy Condition E5(b). This process commenced following execution of the VPA and prior to the 18 August 2013. We are not requesting an extension to this timeframe as we believe these ongoing negotiations are close to resolution and payment being made and that these negotiations are occurring in good faith and a timely manner.

The only condition that is still presenting significant timing challenges for Macquarie University at this stage is that involving the RMS under Condition E1 and the requirement to have an agreement in place by 18 December 2013.

2.0 PURPOSE OF MODIFICATION

This application seeks modification to the above condition in recognition that significant effort has been expended by the University to seek to satisfy these requirements but that the current status of this matter is such that they are unlikely to be completed / satisfied by the nominated deadline of 18 December 2013. The intent of the modification is to provide further and sufficient time for the RMS and Macquarie University to resolve the requirements of the condition in recognition of the time spent to date. The level of negotiation and current status is articulated below in Section 3.0 as well as in the appended chronology.

3.0 CURRENT STATUS

In seeking satisfaction of Condition E1, Macquarie University has prepared a detailed micro-simulation model (by ARUP) in consultation with Council, the RMS, and Transport for NSW. Council has been part of ongoing discussions regarding the form and content of the model, particularly around the purchase of the current Paramics model from Council to ensure up to date information as the basis for the model. Both RMS and Transport for NSW have been part of meetings to confirm the appropriate approach to traffic modelling for the Macquarie Park Corridor.

The model was submitted to the RMS for its consideration and endorsement as an attachment to the letter dated 17 June 2011 addressing all relevant traffic related requirements arising from the Concept Plan approval. A meeting between Macquarie University and the RMS was held on 17 July 2011 to explain and discuss the letter. Since that time Macquarie University (recognising the importance of a timely resolution to this matter) has sought RMS's response, without success, until some 11 months later the RMS and Macquarie University met (10 May 2012) to further discuss the letter and model. The resolution of the meeting however was to:

- Establish all-party Steering Committee
- Agree required scope of works for the relevant road junctions
- Agree signatories to the proposed Agreement
- Prepare cost estimates for the proposed works
- Assess and agree cost apportionment for each section of the works and commence drafting of the Agreement
- Assess approximate likely timing and "triggers" for each section of the works
- Finalise and execute Agreement
- Execute WAD for each section of works as required

The first Steering Committee meeting was held on 21 June 2012, with a second following on 9 November 2012. The current status of this part of the process to form an agreement with the RMS is that there is still no clear resolution on how and when Macquarie University will be able to reasonably contribute to any required traffic and transport-related upgrades within the Macquarie Park Corridor. As is clear in the meeting minutes, 4 of the 6 required intersection upgrades are now completed, leaving 2 intersections remaining. There is however, no consensus as to whether this at present still represents a suitable contribution and whether this can be resolved promptly and therefore not hold up new development at the University unreasonably.

Workshop No.1 (as a sub-committee of the Steering Committee) was held on 19 March 2013 and attended by the RMS and both JBA and ARUP on behalf of Macquarie University. Broadly, the purpose of the meeting was to discuss in greater detail the likely future design of the Epping Road / Balaclava Road and Epping Road / Herring Road intersections (these being the 2 remaining intersection works). The RMS reiterated at this meeting that the university is still expected to pay for other works already carried out and that the apportioned valued would be supplied to Macquarie University.

It should be noted that Macquarie University (with ARUP) has confirmed to the RMS (in the MQU letter to RTA/RMS dated 17 June 2011) that the setbacks required by Condition E1(c) above are not required (and therefore a Concept Plan modification is also not required). This is still pending final agreement from the RMS as part of the micro-simulation modelling exercise.

Accordingly, outstanding at this point regarding Condition E1 is:

- RMS endorsement of the micro-simulation modelling (submitted 17 June 2011);
- Department of Planning approval of the micro-simulation modelling (unable to be submitted until RMS endorsement is received);
- Formal Agreement with the RMS on the required intersection works (proposal submitted 17 June 2011); and
- Confirmation from the RMS (via the micro-simulation modelling) that no setbacks are required for the nominated roadways (and hence no Concept Plan modification is required) (proposal submitted 17 June 2011).

The above four dots are identical to those presented in our s75W modification request of August 2012 – that is, nothing has changed and no significant progress has been made with the RMS in

the meantime, despite consistent effort by MQU to advance the matter. Accordingly, given the difficulties experienced to date, we anticipate these actions would be resolved in no shorter than the next 9-12 months given our understanding of the process and timeframes for individual components of the process.

To assist in attempting to resolve the above matters, Macquarie University sent a letter to the RMS (dated 16 August 2012) seeking clarity on what it believes are resolved and unresolved matters. RMS sent a response dated 8 March 2013 (some 7 months later) advising that it disagrees with Macquarie University on a range of matters, most significantly the university's position on remaining intersection works. The RMS is of the view that Macquarie University should contribute to any completed works and allow the RMS to recoup costs where the university benefits, via the "beneficiary principle".

Again, to seek to resolve and progress the matter, Macquarie University sent another response to the RMS on 16 July 2013 with a further follow-up email on 4 October 2013. A formal response is still pending some 3-4 months later.

4.0 PROPOSED MODIFICATION

The purpose of the condition was to ensure Macquarie University resolves various traffic and transport-related matters in a timely manner and with a suitable level of certainty for the Department, the Council and the RMS (as relevant).

To formally allow further time, this application seeks to modify Condition E1 of the original and modified consent for MP 10_0032 for a further 12 months. This means the RMS agreement and satisfaction of Condition E1 would be required by 18 December 2014.

The proposed amended wording of the relevant condition is identified below. Words proposed to be deleted are shown in ~~bold strike through~~ and words to be inserted are shown in ***bold italics***.

Access and Traffic

- E1 ~~Prior to~~ ***Within 24 months of*** occupation of the building:
- (a) the detailed micro-simulation model, as required by Modification C10(2) in the Concept Plan MP 06_0016 Approval, is to be completed in consultation with Council, the RTA, and Transport NSW and submitted to the Department of Planning for approval;
 - (b) an agreement is also to be made with the RTA, as required by Modification C15(1) in the Concept Plan MP 06_0016 Approval, for relevant road and intersection works prior to occupation of the building.
 - (c) the amendment to the Concept Plan, as required by Modification B5 in the Concept Plan MP 06_0016 Approval, shall make provision for any setbacks along Balaclava Road (from Epping Road to University Avenue) and Waterloo Road (from Herring Road to Research Park Drive) to facilitate additional capacity improvements and bus priority.
The requirement or relevance of this clause of this condition is to be confirmed via the micro-simulation modelling.

We note that under the Concept Plan approval condition A6, *if any of the terms of the approval specify that an agreement is to be made between the proponent and a government agency or council, all parties to the agreement are to act reasonably. If no agreement is reached within 3 months of commencement of negotiations, the issue can be referred to the Director-General for a decision. Full details of the discussions and the dispute are to be provided in order for the Director-General to make a decision.*

Whilst we are not at this point seeking to invoke this condition, clearly no agreement has been reached within 3 months of commencement of each proposed agreement. The University is keen to continue to work with the RMS, but should the requested revised timeframes under this application further not be able to be met, the condition may need to be invoked by the University. Prior to doing so, Macquarie University will seek the Department's advice and position on the matter.

5.0 PLANNING AND ENVIRONMENTAL ASSESSMENT

5.1 Merits of the modification

We are of the view that the above process to seek to meet Condition E1 is still likely to take a further lengthy timeframe. A further period of 12 months to resolve this complex matter is reasonable given the significant level of work already completed by Macquarie University to gain an agreement with the RMS. The reworded condition will allow for this condition to be satisfied in a reasonable timeframe. The Condition (as reworded) does not lessen the need for Macquarie University to complete actions required, nor reduce the tempo required to complete these actions. As evidenced in the appended chronology, Macquarie University has acted promptly and in good faith to seek to resolve the condition's requirements over the past few years, and various delays to gain response to letters, the RMS' positions on various matters, and meeting times have prolonged the process.

5.2 Consultation

We are of the view that no formal notification process is required in support of the proposed modification as the RMS is aware of the timing constraint presently faced by Macquarie University and has been part of the process to date.

6.0 CONCLUSION

In our view, the scope of modification sought in the context of the original approval is minor and largely administrative and will not seek to remove Macquarie University's obligation to resolve the matter in a timely manner with the RMS. By its actions to date, Macquarie University has already demonstrated its commitment to satisfying the condition.

We trust this request for a modification contains all the necessary information. Consistent with the provisions of relevant legislation, please find enclosed the s75W modification application form and the requisite landowner's consent.

We would welcome any meetings you may wish to have to assist in resolving this matter, along with any other options or suggestions that you see appropriate in ensuring delivery of Macquarie University's obligations under the various Part 3A approvals applicable to the AHH. We note that Macquarie University has to date not opted to employ Condition/Modification A6 of the Concept Plan approval as it is of the opinion that a suitably negotiated position can still be achieved, however belatedly. Should the current position with respect to this agreement not be able to be progressed suitably, we would seek the Department's advice and position on the use of this Condition/Modification prior to formally acting upon it.

If you have any queries or would like to discuss this matter further, please do not hesitate to contact me on 9409 4940 or oklein@jbaplanning.com.au.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Oklein', with a stylized, cursive script.

Oliver Klein
Associate

Attachments:

- Occupation Certificate for Australian Hearing Hub
- Chronology – Macquarie University Concept Plan Approval C15(1) - RTA / RMS Agreement
- S75W modification form including landowner's consent
- Political Donations declaration