

19 December 2013

S.75W MODIFICATION: MIXED USE DEVELOPMENT, 330 CHURCH STREET, PARRAMATTA (MP10_0171 MOD 3)

EXECUTIVE SUMMARY

On 21 November 2013, the Executive Director, Development Assessment Systems and Approvals of the Department of Planning and Infrastructure (the Department) referred the subject section 75W modification application to the Planning Assessment Commission for determination under Ministerial delegation. The referral was triggered under the terms of the delegation as more than 25 public submissions of objection were received in relation to the application.

The modification application seeks to amend an existing approval (MP10_0171) at 330 Church Street, Parramatta for a mixed use development to:

- Increase the height of the podium by 3.1m, from RL 20.2m to RL 23.3m increasing the podium height from 3 to 4 storeys
- Increase the height of the eastern tower by 24.8m from RL 91.5 (22 storeys) to RL 116.3 (30 storeys)
- Increase the height of the western tower by 59.5m from RL 125.6 (36 storeys) to RL 195.1 (52 storeys)
- Increase the gross floor area of the development by 17,594m² from 44,117m² to 61,711m²
- Alter the configuration and land uses contained within the podium, and
- Increase the number of car parking spaces from 597 to 709 spaces.

The proponent for the modification is Meriton Property Services Pty Limited.

The Director General's Assessment Report recommends approval of the modification subject to modifications and relevant conditions of consent.

The Commission members visited the site and its surroundings and held a public meeting to hear community views about the recommendation to approve the development. The Commission also met with the proponent, Parramatta City Council and officers of the Heritage Branch (representing the Heritage Council of NSW).

The Commission has concluded that the proposed modification is appropriate and should be approved subject to conditions of consent.

1. INTRODUCTION

Project approval MP10_0171 was issued on 19 October 2012 for a mixed use commercial and residential development on land at 330 Church Street Parramatta. The approval included:

- Demolition of the existing building on site;
- Piling and associated earthworks;
- Construction of a 44,117m² mixed use building comprised of:
 - A three-storey podium comprising residential and commercial lobby areas, eight retail tenancies, a 1928m² supermarket, a 709m² childcare centre (inclusive of outdoor play area), nine maisonette apartments fronting the river and resident recreation facilities;
 - A 22 storey tower (eastern tower above the podium) containing 170 serviced apartments; and
 - A 32 storey tower (western tower above the podium) containing 211 residential apartments.
- Operation and use of a basement car park containing 597 car parking spaces, four loading docks and 24 bicycle parking spaces; and
- Installation of utility services.

Two minor section 75W modifications have been approved since approval of the original project application. In addition the proponent now seeks to amend existing approval MP10_0171, under section 75W to:

- Increase the height of the podium by 3.1m, from RL 20.2m to RL 23.3m increasing the podium height from 3 to 4 storeys;
- Increase the height of the eastern tower by 24.8m from RL 91.5 (22 storeys) to RL 116.3 (28 storeys) above the podium (i.e. total of 25 storeys);
- Increase the height of the western tower by 59.5m from RL 125.6 (32 storeys) to RL 195.1 (50 storeys) above the podium;
- Increase the gross floor area of the development by 17,594m² from 44,117m² to 61,711m²;
- Alter the configuration and land uses contained within the podium; and
- Increase the number of car parking spaces from 597 to 709 spaces.

Note: It is noted that there is a discrepancy in the Department's report in relation to the number of storeys of the original approval and proposed modification. This appears to relate to counting of storeys above the podium level.

Table 1 below illustrates the key statistics of the proposed modification as compared to the original approval:

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Table 1: Project key statistics

	Original Approval	MOD 3	Change
Gross Floor Area	44,117m ²	61,711m ²	+ 17,594m ²
Retail	8 retail tenancies (27-336m ² plus supermarket of 1930m ²)	3,201m ²	- 1,152m ²
Residential	220 apts (West Tower)	32,873m ² 378 apts (West Tower)	+ 10,778m ² + 158 apts
Serviced Apartments	170 apts (East Tower)	20,753m ² 266 apts (East Tower)	+ 6,613m ² + 96 apts
Maximum FSR	6.52:1	8.25:1	+ 1.73:1
Maximum Height			
Podium	3 storeys	4 storeys	+ 1 storey
Eastern Tower	22 storeys above the podium. Total of 25 storeys. (RL 91.5)	28 storeys above the podium. Total of 32 storeys plus plant. (RL 116.3)	+ 6 residential storeys + 24.8m
Western Tower	32 storeys above the podium. Total of 35 storeys. (RL 125.6)	50 storeys above the podium. Total of 54 storeys plus plant. (RL 185.1)	+ 18 residential storeys + 59.5m
Car Parking Spaces	597	709	+ 112 spaces

The subject application is a transitional Part 3A matter within the meaning of the *Environmental Planning and Assessment Act 1979*. Clause 3 of Schedule 6A Part 3A and the associated regulations continue to apply to transitional Part 3A projects and accordingly the Minister (or his delegate) may approve modifications under Section 75W of the EP&A Act.

Section 75W provides that a proponent may request that the Minister modify a project approval. The Planning Assessment Commission, as advised by the Department of Planning and Infrastructure, notes that the Minister has broad powers to modify an approval under section 75W and that it is for the Minister to decide the permissible scope of a request for modification. In determining a modification request the Department has advised that *"the Minister (and by extension the PAC in this case) is required to consider the principles of ESD as part of the public interest and may consider any other factors the Minister considers relevant. The Minister may assign weight to the particular aspects of a modification request and any environmental impacts as the Minister considers appropriate in the circumstances"*.

The PAC notes that the Department has advised that it is satisfied that the subject application is within the scope of section 75W on the basis that the application will not result in any adverse environmental or amenity impacts in comparison to the existing approval, and will result in an acceptable increase in floor space (26%) in comparison to the existing project approval.

2. DELEGATION TO THE COMMISSION

The modification application falls within the general terms of delegation issued to the Commission by the Minister on 14 September 2011 being applications:

- Objected to by the relevant council;
- Where a political disclosure statement has been made; or
- Where more than 25 objections were received.

The application was referred to the Commission on 21 November 2013 for determination.

The Commission for the purposes of this application consisted of Mr Paul Forward (Chair) and Mr Brian Gilligan.

3. INFORMATION AVAILABLE TO THE COMMISSION

3.1 Documents

The referral to the Commission included the following documents:

- The Director General's environmental assessment report (DG's report);
- The proponent's environmental assessment report (EA);
- Submissions received by the Department including 4 submissions received from public authorities (Parramatta City Council, Heritage Council of NSW, Transport for NSW Roads and Maritime Services Division and Sydney Water) and 40 public submissions on the EA (39 objections and one submission in support);
- The proponent's response to submissions report (RTS); and
- Recommended conditions of approval.

3.2 Site visit

The Commission members visited the site and the surrounding area in December 2013 (various dates).

4 DIRECTOR- GENERAL'S ASSESSMENT REPORT

4.1 Key issues

The DG's report identified the key issues with the proposed modification as:

- Height, bulk, scale and visual impacts,
- Amenity impacts
- Compliance with SEPP 65
- Traffic and car parking
- Flood management
- Development contributions
- Air safety and navigation issues.

4.2 Council's view

The DG's report notes that Parramatta City Council has indicated support for the proposed modification particularly having regard to changes made in the Response to Submissions (RTS) report.

4.3 Public submissions

40 public submissions were received in response to the exhibition, 39 in the form of objections and 1 submission in support of the application.

The DG's report identifies that 33 of the 39 submissions of objection were 'form' letters primarily raising concerns about:

- the extent of the proposed modifications;
- the use of section 75W to undertake large scale modifications; and
- the impact of these modifications on the National and World Heritage values of Old Government House and The Domain.

The residual issues raised include the following:

- Height and scale including scale of podium and relationship to the Church street frontage;
- Traffic impacts and vehicular and pedestrian access (including impact of loading dock and access arrangements on the adjacent El-Phoenician restaurant and pedestrians accessing public car parking); and
- Activation of future laneway on the southern elevation.

4.4 Recommendations

The DG's report recommends approval of the section 75W application subject to conditions to:

- Ensure development contributions reflect the additional CIV of the project as modified;
- Ensure the additional VPA associated with increases in height is executed;
- Ensure the layout of car parking spaces and access aisles comply with relevant Australian standards;
- Ensure the proposed modifications continue to comply with wind criterion specified for Church Street and the riverbank foreshore area;
- Require the proponent to prepare a supplementary acoustic report to the satisfaction of the Director-General outlining all measures required to ensure the amenity of the podium level residential apartments is not affected by the operation of the adjoining car park; and
- Ensure the proponent obtains all relevant approvals under the Airports Act.

The report concludes that the Department acknowledges that the application will increase the approved podium and tower heights, but that it considers that the revised design continues to exhibit design excellence, and subject to the conditions recommended above, will not generate any adverse amenity impacts on the surrounding area. It notes that the application is consistent with Council's strategic vision for the Parramatta CBD and will strengthen Parramatta's role as Sydney's premier regional city and second CBD as outlined in the Metropolitan Strategy. Further the Department considers that the application takes advantage of public transport and community facilities within the area, is consistent with principles of ESD and is in the public interest. Accordingly the Department has supported the application and recommended it for approval subject to conditions.

5 MEETINGS WITH STAKEHOLDERS

On 19 December 2013 the Commission met separately with senior officers of Parramatta City Council and representatives of Meriton Property Services.

5.1 Meeting with Parramatta City Council

Senior officers of Parramatta City Council reiterated Council's support for the proposed modification noting that it was satisfied with the changes made following exhibition of the application including lowering the retail floor level to provide level public access on Church Street, providing at grade access to the two bridges adjacent to the site and setting back of the pool on the Church Street frontage to reduce its visibility from the street.

Council indicated that in relation to the proposed protrusion of the buildings into prescribed airspace, it was confident approval would be granted to breach the Obstacle Limitation Surface (OLS) as advice provided on another project in the vicinity indicated that this level is

out of date. However, Council agreed that this is a decision for Air Services Australia. It also noted that it considered a condition of consent was appropriate to ensure construction did not occur above this level until the relevant approval is granted.

Council outlined its plans for the adjacent car park site to the west including a new public plaza and public domain area to accommodate up to 10-15,000 people in event mode. Council also noted that in relation to the Council owned car park site to the west across Church Street, it is currently progressing a planning proposal that will provide for a 150m height maximum on this site. This is consistent with Council's revised strategic vision for the Parramatta CBD.

In relation to the potential for the proposal to have an adverse visual impact on the setting of Old Government House and the Domain, Council advised that it noted that the *"Development in Parramatta City and the Impact on Old Government House and Domain's World and National Heritage Listed Values: Technical Report"* prepared by Planisphere on behalf of Parramatta City Council, the Department of Planning and Infrastructure and the Commonwealth Department of Sustainability, Environment, Water, Population and Communities (DSEWPAC) (2012) (the Planisphere study) identified that the site is outside of the highly sensitive area. It therefore considers that the proposed modification would not have a significant impact on the setting of the heritage items.

In summary Council advised that it did not have any outstanding issues in relation to the application, other than consistency of conditions with the VPA (refer discussion below) and that it supported approval in accordance with the Department's recommendation.

5.2 Meeting with Proponent

The Commission met with representatives of the proponent who advised that it supported the Department's recommendation. Two issues were raised including:

- (1) the VPA condition which Meriton agreed with Council should be updated to reflect the agreed voluntary planning agreement; and
- (2) recommended condition A10 which provides that the modification does not come into effect until evidence is provided to the Director General that all relevant approvals from the Secretary, Department of Transport and Regional Development, or delegate under the Airport Act 1996 .

Meriton has requested that Condition A10 be amended to allow for a staged construction certificate process allowing construction up to RL151m prior to gaining the above approvals and only allowing construction above this level following the gaining of relevant approvals.

5.3 Public Meeting

A public meeting was held on 12 December 2013 at the Novotel Parramatta (commencing at 4pm). Representatives of the National Trust, Australia ICOMOS and a planning consultant representing the adjoining owners of 328 Church Street (the El Phoenician Restaurant), made representations to the Commission regarding the modification application. A total of 3 people addressed the Commission with issues raised being consistent with those raised in the submissions as outlined above.

6 KEY ISSUES

The Commission has identified the following key issues in relation to the subject modification application:

- Scope of section 75W modification;
- Height and scale of the proposal;
- Impact of increase in podium height;
- Impact of proposal on the visual setting of Old Government House and the Domain;
- Need for activation of future laneway on the southern elevation; and
- Impact of loading dock on pedestrian access and safety at the rear of the El Phoenician restaurant.

These issues are discussed below.

6.1 Scope of section 75W Modification

A number of public and interest group submissions raised concern that the proposed modification is not within the scope of section 75W of the *Environmental Planning and Assessment Act 1979* because of the scale of the changes to the previously approved project. As noted above the Commission is advised in the Director General's assessment report that the application is within the scope of section 75W on the basis that the application will not result in any adverse environmental or amenity impacts in comparison to the existing approval, and will result in an acceptable increase in floor space (26%) in comparison to the existing project approval. Accordingly it is considered that it is open to the Commission to determine the subject modification under section 75W.

6.2 Height and scale

The Commission has considered issues raised in submissions regarding the height and scale of the proposed modified towers and more generally the height of the tower in the surrounding context. The Commission notes that the height of the towers under both the existing approval and the proposed modification is greater than that provided for under the local environmental plan. However the subject project has been approved under Part 3A of the EP&A Act and therefore the LEP provisions do not strictly apply.

The Commission considers that the height of the towers is acceptable given that the development footprint is unchanged and the increased height will not result in adverse environmental impacts, having regard to Council's revised strategic vision for the Parramatta CBD. The proposed increase in height will accommodate additional residential and serviced apartment accommodation in a highly accessible location within easy walking distance of employment and public transport. The proposal will support urban consolidation objectives, is consistent with the Sydney Metropolitan Strategy and will provide increased activity with the riverfront precinct in line with Council's future plans. Accordingly the Commission has formed the view that the increased height of the towers is acceptable.

6.3 Impact on increase in podium height

It is noted that the proposed modification provides for an increase in the height of the podium from 3 storeys (as currently approved) to 4 storeys in addition to modifications to the land use mix and configuration. Concerns have been raised in submissions that the increased height will result in the development being inconsistent with the scale of development on the Church Street frontage and accordingly will have an adverse impact on the public domain. The Commission notes that due to flood levels, at grade access cannot be provided along the Church street frontage but that level access is provided to the north western corner adjacent to Lennox Bridge and then into the colonnade along the Church street frontage. This is considered appropriate and a significant improvement to the previous proposal.

In terms of the height and treatment of the podium, it is considered that the proposal provides a high quality streetscape and active frontage to both Church Street and the Riverfront. The height of the podium is considered to be acceptable and will provide a strong base to the building in line with best practice urban design principles. It is agreed that increased activation should be provided to the future laneway to the south however it is noted that the Department has recommended a condition in this regard and in relation to the amenity of residential units within the podium. Accordingly the Commission considers that the proposed modification to the podium is acceptable and will not result in any adverse impacts.

6.4 Impact of the proposal on the visual setting of Old Government House and the Domain

The Commission notes that the National Trust, Australia ICOMOS and the Heritage Council of NSW have all raised concerns that the proposed modification will have an adverse impact on the visual setting of Old Government House and Domain which is listed on the National and World heritage register. The Commission notes concerns raised regarding the appropriateness of relying on the assessment contained in the document entitled *“Development in Parramatta City and the Impact on Old Government House and Domain’s World and National Heritage Listed Values: Technical Report”* prepared by Planisphere on behalf of Parramatta City Council, the Department of Planning and Infrastructure and the Commonwealth Department of Sustainability, Environment, Water, Population and Communities (DSEWPAC) (2012). In particular submitters have raised concerns that the report cannot be relied upon as it only addressed the impact of developments up to 80m in height (the maximum height permissible under the LEP) and that no photomontages of the proposal have been prepared for significant views from Old Government House and the Domain.

The Commission notes that the proponent has referred the subject modification to DSEWPAC to determine whether the project requires assessment as a controlled action under the Environmental Protection and Biodiversity Conservation Act 1999 (EPBC Act). DSEWPAC advised the proponent on the 24 April 2013 that while the Planisphere Study identified the subject site as being within a ‘sensitive area’, development within this area would not have a significant impact on the National and World Heritage values of the OGH and The Domain and that therefore the application did not require a referral under the EPBC Act.

The Commission has given careful consideration to this issue and has concluded that given:

- the existing approval (which was considered in the Planisphere Study);
- the designation of the subject site within a ‘sensitive’ but not ‘highly sensitive’ area as defined by the Planisphere study; and
- the views of DSEWPAC,

the proposed modification will not have a significant impact on the heritage values of the setting of Old Government House and the Domain. It acknowledges that the assessment could have been improved through the provision of photomontages of significant views however considers that the proposed buildings are at sufficient distance from the heritage items that they will not result in a significant adverse visual impact. The construction of the buildings will result in altered views from the heritage precinct however the current approved buildings would similarly result in altered views albeit that the modification increases the height. The Commission considers that on balance the subject buildings will form an element of the backdrop to the setting of Old Government House and the Domain but will not adversely impact on the setting. This is similarly the case for future development within the Parramatta CBD as planned for under Council’s changes to its strategic planning framework. The Commission recognises that with the development of the CBD for high density

development consistent with urban consolidation and transit oriented development objectives, additional buildings will become visible from the Old Government House precinct. However it is considered that this development will not unreasonably impact on the heritage significance of either the items themselves or their setting subject to consistency with the Planisphere study.

Accordingly the Commission concurs with DSEWPAC and the Department of Planning and Infrastructure, that the proposed modification will not have a significant impact the National and World Heritage values of the OGH and The Domain.

6.5 Need for activation of future laneway on the southern elevation

A concern has been raised that the proposed development should provide for activation of the ground level on the southern elevation adjacent to the proposed future laneway. The Commission notes that this issue was addressed in the Department's report and that the Department has recommended a condition of consent (B36) to require plans to be submitted prior to the issue of a Construction Certificate for above ground works. These plans are to demonstrate how the development will be adapted to provide for active uses along the southern elevation of the building following the construction of the laneway. The Commission considers that this condition is appropriate and that the proponent can adequately address this requirement post development approval.

6.6 Impact of loading dock on pedestrian access and safety at the rear of the El Phoenician restaurant.

The El Phoenician restaurant, in both written submissions and during the public meeting, raised concerns that the proposed car parking within the podium and associated access and loading arrangements will result in adverse impacts on access arrangements to the rear of adjacent restaurant particularly for patrons entering from the adjacent public car park. Concerns were raised regarding pedestrian safety and potential conflict between trucks, cars and pedestrians in the proposed shared zone at the rear of the site.

In response to concerns raised by the objector, the Commission inspected the rear of the El Phoenician restaurant following the public meeting. The Commission noted the existing access arrangements and the potential for conflict between pedestrians and vehicles accessing the development site. In response to this issue the proponent has indicated a willingness to extend the southern wall of the building adjacent to the loading dock further to the east to provide a buffer for pedestrians exiting the rear of the restaurant (by email dated 16 December 2013) as shown in Figure 1 below.

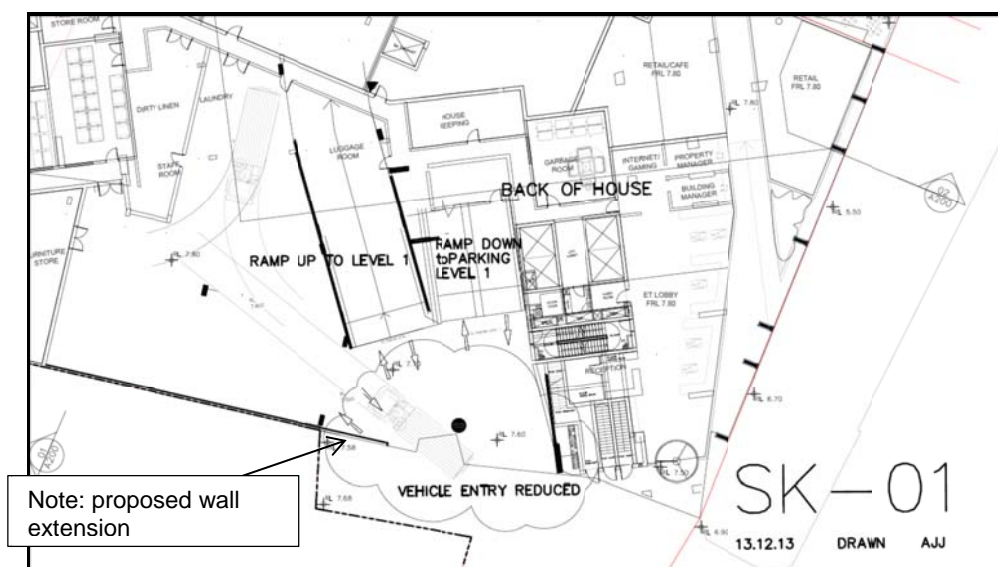


Figure 1: Proposed modification to loading dock

The Commission considers that it is appropriate to include an additional condition of consent requiring that an amended plan of the loading dock, vehicle car park entry and shared zone be prepared and submitted for the approval of Parramatta City Council prior to issue of a construction certificate for above ground works. The plan is to ensure appropriate and safe loading and pedestrian access is provided to the rear of the El Phoenician Restaurant.

6.7 Conditions

The Commission has reviewed the proposed conditions of consent and considers that generally they are appropriate. It does however agree with both Council and the proponent that condition A10 should be amended to allow the issue of a construction certificate for above ground works up to the level RL151m only, prior to the proponent obtaining all relevant approvals under the Airports Act. The condition should further ensure that a construction certificate for works above RL 151 shall not be issued until such time as evidence has been provided that all relevant approvals have been obtained as set out below:

A10 PRESCRIBED AIRSPACE

This instrument of modification does not permit the buildings to be constructed beyond RL 151 until the proponent has provide evidence to the satisfaction of the Director General confirming that the proponent has obtained all relevant approval(s) from the Secretary, Department of Transport and Regional Development, or his or her delegate, under the Airports Act 1996 (Airports Act).

And new condition:

B40 CONSTRUCTION CERTIFICATE ABOVE RL 151 – PRESCRIBED AIRSPACE

A construction certificate shall not be issued for development above RL 151 until such time as the proponent has provided evidence to the satisfaction of the Director General confirming that the proponent has obtained all relevant approval(s) from the Secretary, Department of Transport and Regional Development, or his or her delegate, under the Airports Act 1996 (Airports Act).

Further the Commission requires that an additional condition be included as follows;

B41 LOADING DOCK, VEHICLE CAR PARK ENTRY AND SHARED ZONE

Prior to the issue of a construction certificate for above ground works, an amended plan of the loading dock, vehicle car park entry and shared zone is to be submitted for the approval of Parramatta City Council. The plan is to ensure appropriate and safe loading and vehicular and pedestrian access is provided to the building and the rear of the El Phoenician Restaurant.

The Commission also notes that there is a discrepancy in the section 94A contributions proposed to be levied under Condition A7 and the VPA condition A8A as a result of a change in capital investment value following negotiations on the VPA. Following discussions with the proponent and the Department, an amended CIV value has been provided by the proponent. This ensures that the VPA is correct. Accordingly it is necessary to amend condition A7 to refer to amended CIV value as follows:

A7 DEVELOPMENT CONTRIBUTIONS

Note¹: The value of the proposed works as specific in the Quantity Surveyor's report prepared by Harper Somers O'Sullivan dated 18 December 2013 is \$209,917,825.00.

7 CONCLUSION

The Commission has considered all relevant information in relation to the proposed modification and has concluded that it agrees generally with the Department of Planning and Infrastructure's recommendation for approval subject to conditions as amended.

The modification is therefore approved.



Mr Paul Forward
Commission Chair



Mr Brian Gilligan
Commission Member

Appendix 1
List of Speakers at the Public Meeting

Planning Assessment Commission Meeting
Mixed Use Development Modification 3
330 Church Street, Parramatta

Date & Time: Thursday 12 December 2013, 4 pm

Place: Novotel Parramatta's Lennox Room III, 350 Church Street, Parramatta

1. National Trust
Graham Quint, Conservation Manager
2. Australia ICOMOS
Helen Wilson
3. Adam Byrnes