



CB/AC
15756
20 April 2017

Carolyn McNally
Secretary
Department of Planning & Environment
GPO Box 39
SYDNEY NSW 2001

Attention: Brendon Roberts

Dear Mr Roberts

**SECTION 96(1A) MODIFICATION APPLICATION - SSD7317
AUSTRALIAN TECHNOLOGY PARK, EVELEIGH**

On behalf of Mirvac Projects Pty Ltd (Mircac), we hereby submit an application pursuant to section 96(1A) of the *Environmental Planning and Assessment Act, 1979* (EP&A Act) to modify development consent SSD 7317, which relates to the development of a commercial campus at the Australian Technology Park, Eveleigh.

The purpose of this modification application is to seek approval for alterations to the layout of the Lower Ground Floor within Building 2, the relocation and expansion of the upper signage zone on the southern elevation of Building 1 and minor word changes to Conditions A2, B4, B8, and B11.

This application identifies the consent, describes the proposed modification and provides a planning assessment of the relevant matters for consideration contained in section 96(1A) of 79C(1) of the EP&A Act. Accordingly, this application is accompanied by the following documents:

- Amended relevant Building 1 and Building 2 plans, prepared by FJMT (**Attachment A**);
- Traffic and Car Parking Statement, prepared by GTA Consultants, dated 29 March 2017 (**Attachment B**); and
- Accessibility Statement, prepared by Morris Goding Accessibility Consulting, dated 24 March 2017 (**Attachment C**).

1.0 CONSENT PROPOSED TO BE MODIFIED

Development consent (SSD 7317) was granted by the Planning Assessment Commission on 20 December 2016 for:

- Commercial campus at the Australian Technology park, including:
 - site preparation works, site clearance, excavation and remediation;
 - construction of three mixed use buildings with a total gross floor area (GFA) of 107,427m² comprising:
 - Building 1 for commercial/ office, retail and child care uses (GFA of 46,830m²/ height of nine storeys);
 - Building 2 for commercial/ office and retail uses (GFA of 56,686m²/ height of seven storeys);
 - Building 3 for retail, gym, child care, community office and commercial uses (GFA of 3,911m²/ height of four storeys).
 - car and bicycle parking;
 - landscaping, road and public domain works; and
 - building identification signage zones.

2.0 CONSULTATION

Mirvac continues to engage and work collaboratively with Council through the implementation of the development consent. Council have specifically been advised about the proposed amendment to Condition B4 and the timing for entering into a VPA. Feedback from Council indicated that it would consider such a change through the formal referral of the modification application (this modification) by the Department.

3.0 PROPOSED MODIFICATIONS

3.1 Modifications to the Development

Throughout the process of finalising the design for Buildings 1, 2 and 3 to accommodate the amendments required under the conditions of consent and those of the future tenant, the design has and continues to evolve. Accordingly, Mirvac seeks approval to relocate and expand the upper level signage zone on the southern elevation of Building 1 and alter the overall layout of the Lower Ground Floor and appearance of the eastern and southern elevations of Building 2.

The proposed modifications to SSD 7317 are illustrated in the revised Architectural Drawings prepared by FJMT (**Attachment A**) and **Table 1** provides an overview summary of the proposed changes, along with details around what has driven the specific change.

Table 1 – Schedule of design changes

Proposed change	Driver for change
Building 1	
Southern Elevation	
<ul style="list-style-type: none"> Relocation, reorientation and expansion of upper level building identification zone, from eastern to more central portion of southern elevation 	Design development To improve relationship and integration of future sign with building.
Building 2	
Lower Ground Floor	
<ul style="list-style-type: none"> Integration of car park and loading dock access point into a single point 	Design development To fulfil Condition B3(b)3
<ul style="list-style-type: none"> Reconfiguration and relocation of the loading dock, storage room, waste room, mail room and back of house rooms 	Design development Consequential amendment resulting from single combined vehicle and loading access point
<ul style="list-style-type: none"> Minor increase in car parking (from 225 to 234) 	Design development Review and rationalisation of accessible parking requirements Identification of opportunities for small car spaces.
<ul style="list-style-type: none"> Minor reconfiguration of approved retail tenancies 	Design development Consequential amendment resulting from single combined vehicle and loading access point
<ul style="list-style-type: none"> Provision of an additional retail tenancy within the south east corner of the building in response to the change in the loading dock entry 	To improve level of activation Consequential amendment resulting from single combined vehicle and loading access point
<ul style="list-style-type: none"> Switching of the bicycle storage room and End of Trip facilities and other minor amendments to layout 	To provide improved access and better functioning bicycle facilities Design development
<ul style="list-style-type: none"> Reconfiguration and rationalisation of plant 	Design development Consequential amendment resulting from single combined vehicle and loading access point
<ul style="list-style-type: none"> Alterations to the internal finished floor levels¹ to increase the floor to floor clearances within the north east corner of the Building; 	Design development To provide adequate clearances for reticulating building services within the basement levels
<ul style="list-style-type: none"> Extension of the existing pedestrian and vehicular ramps and the addition of additional ramps/ stairs where necessary to accommodate the change in floor levels. 	Design development Required in order to accommodate the change in floor levels.
Eastern elevation	
<ul style="list-style-type: none"> Provision of new retail tenancy to lower ground floor level. 	To improve level of activation Design development Opportunity created through combining vehicle and loading dock access point.
South elevation	
<ul style="list-style-type: none"> Consequential amendments to lower ground floor resulting from consolidation of vehicle/loading access point and other minor plan changes 	Design development To fulfil Condition B3(b)3

¹ The amended plan references SSL (Structural Slab Level), which in this instance is also the Finished Floor Level.

3.2 Modifications to Conditions

The proposed modifications described in Section 3.1 necessitate amendments to condition A2 of development consent SSD 7317. Furthermore, in the process of the preparation of the documentation for the construction certificates and finalising the design details, it has become apparent that the wording to Conditions B4, B8, and B11 are also required to be amended.

The proposed amendments and the justification for the amendments are set out below. Words proposed to be deleted are shown in ~~bold strike~~ through and words to be inserted are shown in ***bold italics***.

A2 Terms of Consent

Drawing No.	Rev	Name of Plan	Date
Building 1			
Fjmt-AR-DWG-11050	DA1	Elevations – South & East	27.04.16
<i>Fjmt-AR-DWG-11050</i>	<i>DA4</i>	<i>Elevations – South & East</i>	<i>22/03/17</i>
Building 2			
Fjmt-AR-DWG-2100L	DA0A	Lower Ground Plan	16.12.15
<i>Fjmt-AR-DWG-BB-B2-300L</i>	<i>N</i>	<i>General Arrangement Plan – Lower Ground</i>	<i>22.3.17</i>
Fjmt-AR-DWG-21051	DA0	Elevations – South and East	17.12.15
<i>Fjmt-AR-DWG-BB-B2-3300</i>	<i>01</i>	<i>Elevations – South and East</i>	<i>4.4.17</i>
<i>Fjmt-AR-DWG-BB-B2-3401</i>	<i>B</i>	<i>Sections E & F</i>	<i>19.10.16</i>

Justification

The changes to the development as detailed and justified in Section 3.1 has necessitated the changes to the plans set out within Condition A2.

B4 Voluntary Planning Agreement

A Voluntary Planning Agreement ***generally*** in accordance with the public benefit offer dated 8 August 2016 between the Applicant (or its nominated entity) and the Council of the City of Sydney shall be prepared, publicly exhibited, executed and registered on the title of the land with the Office of Land and Property Information.

The Voluntary Planning Agreement, ~~as executed, must be registered on the title of the land prior to the issue of the first Construction Certificate for any façade works~~ ***must be executed prior to the issue of the Construction Certificate for Building 1 Stage 4 Façade Works and registered prior to the issue of the Building 1 Occupation Certificate.***

A copy of the executed Voluntary Planning Agreement shall be submitted to the Secretary.

Justification

The VPA that is referred to in Condition B4 has been prepared by Mirvac and submitted to the City of Sydney for review. The registration of the VPA on the title of the land with the Office of Land and Property Information is likely to take at least two months to complete once the VPA is executed. Whilst it is understood that the original Public Benefit Offer by Eveleigh Precinct Pty Ltd (dated 8 August 2016) proposed that the VPA would be registered prior to the issue of the first Construction Certificate for any Façade Works, that proposed timing was based upon the expectation that an approval for the proposed development would be issued in October 2016, when the application was first referred to the Planning Assessment Commission for determination.

Given approval was granted, just prior to the Christmas Holiday period on 20th December 2016, this has caused a delay in the process of some 4 months. Should the current requirement for registration of the VPA be enforced, this has severe implications upon Mirvac's stringent build programme as the timing for the façade installation has needed to be brought forward. Accordingly, there is not enough time within

the build programme for the VPA to be executed and registered prior to the first construction certificate for any façade works. The proposed amendment to Condition B4, sets out a more realistic timeframe.

Mirvac has consulted with the City of Sydney in regard to the proposed change to the wording of this Condition. Whilst no specific correspondence has been issued by the City of Sydney to the effect that they agree to the proposed wording, it is understood that Council is happy for the application to be referred to them in the usual manner by the Department of Planning & Environment and they will provide their comments in return, once they have reviewed the entire application. In addition, it is Mirvac's intension to issue a copy of this application to Council directly.

B8 Car Parking

A maximum total of 738 new car parking spaces shall be provided, ~~comprising generally in accordance with the following allocation:~~

- a) ~~207 696~~ car parking spaces ~~in across~~ Building 1 **and Building 2; and**
- b) ~~489 car parking spaces in Building 2;~~
- c) 42 on-street car parking spaces within the ATP.

Justification

It is Mirvac's intention to provide the required number of car parking spaces within Buildings 1 and 2 and on-street within the Australian Technology Park. The proposed minor amendments to the wording of Condition B8 are sought in order to provide a degree of flexibility in the determining the mix and location of car spaces.

It is understood that Building 2 has a total car space allocation of 500 and whilst the Lower Ground Floor plan at **Attachment A** illustrates the provision of 234 car spaces and that the approved Mezzanine Floor Plan shows a total of 264 spaces, which would provide a total of 498 spaces, the designs of both Buildings 1 and 2 are still being tested in order to maximise the car parking provision.

The proposed modification to Condition B8 will therefore provide Mirvac the opportunity to test the car park configurations within Buildings 1 and 2, whilst still providing the required number of car spaces in total. Furthermore, the proposed wording will also provide certainty to the Department and Council that no more than the 42 on-street car spaces will be provided.

B11 Bicycle Parking and Facilities

Minimum of 643 on-site bicycle parking **spaces** shall be provided **generally** as follows:

- a) **minimum of 606 586** employee/staff bicycle spaces within Building 1 and Building 2;
- b) **minimum of 37** visitor spaces within the public domain.

Justification

It is Mirvac's intension to provide a total of 643 number of bicycle spaces within the Australian Technology Park as required by Condition B11. However, the testing of the building designs that is currently being undertaken has determined that a maximum of 20 spaces may not be able to fit within the Buildings. The detailed designs of the building continue to be tested and therefore approval for the proposed amendments to the wording of Condition B11 is sought, in order to achieve the following objectives:

- provision of certainty to the Department that the significant majority of spaces provided will be set aside within the secure bicycle parking areas for use by the employees of Buildings 1 and 2; and
- provision of a degree of flexibility in determining the final location of the 20 spaces that currently cannot be included within the Buildings.

4.0 SUBSTANTIALLY THE SAME DEVELOPMENT

Section 96(1A) of the EP&A Act states that a consent authority may modify a development consent if *“it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all)”*.

Whilst there is no hard and fast rule when it comes to determining what constitutes ‘substantially the same development’ the ‘substantially the same test’ has been considered and approved through various cases within the Land & Environment Court.

The applied phrasing as described in *Moto Projects (No2) Pty Ltd v North Sydney Council [1999] NSWLEC 280*, requires the consent authority to undertake both quantitative and qualitative analysis:

“The comparative task does not merely involve a comparison of the physical features or components of the development as currently approved....Rather, the comparison involves an appreciation, qualitative, as well as quantitative, of the developments being compared in their proper contexts (including circumstances in which the development consent was granted)”.

Further *Moto Projects Pty Ltd v North Sydney [1999] NSWLEC 280* established the following key principles when considering what constitutes a modification:

- The verb “modify” means to alter without radical transformation.
- “Substantially” in this context means essentially or materially or having the same essence.
- A development as modified would not necessarily be “substantially the same development” simply because it is precisely the same use as that for which consent was originally granted.
- A modification application involves undertaking both a qualitative and quantitative comparison of the development as originally approved and modified.
- Although the comparative task required under Section 96 involve a comparison of the whole development being compared, that fact does not eclipse if a particular feature of the development, particularly if that feature is found to be important material or essential to the development.

With the above in mind, the development, as proposed to be modified, is substantially the same development as the development for which consent was originally granted as:

- the proposed amendments do not seek to modify the approved use or building envelopes;
- the modified development generally retains the same design and development parameters as approved;
- the majority of the amendments are administrative in nature and do not seek to materially affect the intent of the original conditions;
- the environmental impacts of the modified development remain substantially the same as the approved development as outlined below; and
- the proposed modifications do not give rise to any new matters/ areas of non-compliance and minimal environmental impact.

5.0 ENVIRONMENTAL ASSESSMENT

Section 96(3) of the EP&A Act requires the consent authority to take into consideration such of the matters referred to in Section 79C(1) as are of relevance to the development, the subject of the application. The EIS submitted with the original DA addressed the following environmental impacts:

- Consistency with relevant legislation, Strategic and Statutory Plans;
- Built form and design quality;
- Public Domain and urban design;
- Transport, traffic and access;
- Aboriginal and European heritage;
- Accessibility;
- Noise and vibration;
- Civil infrastructure and utilities;
- Railway infrastructure;
- Operational waste management;
- Geotechnical implications;
- Contamination;
- Wind impacts;
- Reflectivity;
- BCA and Fire Safety;
- Social and economic impact;
- Crime prevention and public safety;
- Environmental and construction management;
- Ecologically sustainable development;
- Development contributions;
- Site suitability; and
- Public interest.

The planning assessment of the proposed modified development generally remains unchanged with respect to the above matters. The following matters however warrant further assessment.

5.1 Consistency with relevant legislation, Strategic and Statutory Plans

The proposed modifications do not alter the conclusions of the original assessment of the development against the relevant legislation, Strategic and Statutory Plans.

Specifically, the amendments to the Lower Ground Floor layout and Condition B8 does not alter the level of compliance with Subclause 23 of Schedule 3, Part 5 of *State Environmental Planning Policy (State Significant Precincts) 2005* (SEPP SSP 2005), that restricts the total number of car spaces within land zoned Business Zone – Business Park to 1,600.

Furthermore, the amendments to the retail tenancies within the Lower Ground Floor area of Building 2 results in the provision of 1,090m² (a reduction of 28m² GFA) at the Lower Ground Floor level in comparison to the 1118m² that was approved. Mirvac and CBA continue to be in negotiation in relation to the specific mix of retail tenancies and facilities desired to support CBA's occupation. The final mix and layout of the tenancies within the entire building and their specific fit-out and uses will be undertaken via a separate approval. Overall therefore, the changes to the layout of the Lower Ground Floor level do not result in an exceedance of the maximum 56,686m²GFA for Building 2.

In relation to the relocation, reorientation and expansion of the signage zone at the upper level of the southern elevation of Building 1, the amendments to the signage zone does not alter the assessment of the signage zones against the criteria set out within *State Environmental Planning Policy No 64 – Advertising and Signage* that was included at Section 5.4.4 within the original EIS in that:

- the future signage will continue to be compatible with the existing and desired character for the buildings within the ATP precinct and will not detract from the amenity or visual quality of any environmentally sensitive areas, heritage areas, open space or waterways;
- the future signage will be integrated with the proposed building and will not obstruct or compromise any views;
- the scale, proportion and form of the future signage will be consistent with the setting of the ATP precinct;
- the future signage will have an improved relationship with the appearance and function of Building 1; and
- the future signage will not result in any safety impacts.

5.2 Traffic and Car Parking

The original application assessed the traffic implications that would result from the provision of a maximum of 738 new parking spaces across the ATP site and found that any impacts could be readily mitigated. The proposed modifications to the Lower Ground Level within Building 2 and to Condition B8 do not seek to increase the number of car spaces provided as part of the development overall and therefore it is considered that the proposed amendments will not result in any additional trips generated or flow-on impacts upon the surrounding road network.

The amendments to the car parking layout and in particular the reduction in the number of accessible car spaces has been reviewed by GTA and Morris Goding Accessibility Consulting (please refer to **Attachments B and C**). Both GTA and Morris Goding confirm that the provision of 6 accessible car spaces within Building 2 (as proposed to be amended) is consistent with the provisions set out within the BCA 2016 and Disability (Access to Premises – Buildings) Standards 2010 (Table D3.5).

Furthermore, GTA also confirm that the revised car parking layout is designed in accordance with the Australian Standards AS2890 series for 'Category 1A' employee parking, and that vehicles accessing the loading dock can be accommodated within the service area and the revised loading dock area is capable of accommodating the following:

- 2 x 8.8m medium rigid vehicles;
- 2 x 6.4m small rigid vehicles; and
- 3 x 99th percentile vehicles (large car/ van).

Bicycle Parking

The amendments to Condition B11 do not alter the number of bicycle parking spaces required to be provided within the development. However the amendments will potentially reduce the number of spaces provided within the buildings by 20, which represents a 3% decrease. Should space not be found within the buildings to accommodate the 20 bicycle spaces, it is likely they will be provided within the public domain. In this way, the development will still provide a significant quantity of spaces for the future employees within the buildings, but additional spaces will be provided within the public domain for use by employees of the buildings (if necessary) and the general public.

5.3 Streetscape Appearance

The modifications to the Lower Ground Level of Building 2 will alter the appearance of the southern and eastern elevations to a minor extent. However the modifications are considered to improve upon the approved development for the following reasons:

- The activation of the southern and eastern building facades will be enhanced by the placement of additional retail tenancies adjacent to the vehicle entry/exit and in the south-eastern corner of the building. They in turn will increase the number of surveillance opportunities from the building over the street and increase the perception of safety and security along Central Avenue and Mitchell Way.
- Blank, non-activated ground floor spaces will be reduced at the Lower Ground Floor level.
- The amendments do not alter the appearance of Building 2 and its interface with the Locomotive Workshop.

6.0 CONCLUSION

The proposed modification to the layout of the Lower Ground Floor level of Building 2, the relocation and expansion of the signage zone on Building 1 and the amendments to Conditions A2, B4, B8 and B11 will provide Mirvac the opportunity to respond to the requirements of CBA the future tenant and achieve a degree of flexibility in relation to the application of the conditions to ensure that the the construction programme for the development proceeds in a timely and efficient manner.

Therefore in accordance with section 96(1A) of the EP&A Act, the Minister or his delegate may modify the consent as:

- the proposed modification is of minimal environmental impact; and
- substantially the same development as development for which the consent was granted.

We trust that this information is sufficient to enable a prompt assessment of the proposed modification request. Should you have any queries about this matter, please do not hesitate to contact me on 9956 6962 or cburdett@jbaurban.com.au.

Yours faithfully



Claire Burdett
Principal Planner