



Assessment of application to modify
Development Application No. 10.2010.30491.8
**Mixed use commercial/retail development &
associated car parking and subdivision**
520-524 Smollett Street & 441 Kiewa Street, Albury

March 2016

habitatplanning
town planning | urban design

Suite 1, 622 Macauley Street
ALBURY NSW 2640
t 02 6021 0662 | f 02 6021 0663
e habitat@habitatplanning.com.au

www.habitatplanning.com.au

Prepared for
Albury City Council



town planning | urban design

Suite 1, 622 Macauley Street
ALBURY NSW 2640

Phone: 02 6021 0662

Fax: 02 6021 0663

habitat@habitatplanning.com.au

www.habitatplanning.com.au



Member – NSW Consulting
Planners



Document Control

Revision	Date	Author	Version
A	29/03/16	WH	Final

© 2016 Habitat Planning

The information contained in this document produced by Habitat Planning is solely for the use of the person or organisation for which it has been prepared and Habitat Planning undertakes no duty to or accepts any responsibility to any third party who may rely upon this document.

All rights reserved. No section or element of this document may be removed from this document, reproduced, electronically stored or transmitted in any form without the written permission of Habitat Planning.

CONTENTS

1. Introduction.....	2
2. The approved development.....	2
3. The proposed modification	2
4. Notification & referral.....	4
5. Assessment.....	4
5.1. Provisions of any Environmental Planning Instrument – Section 79c(A)(I)	5
5.2. Provisions of any Draft Environmental Planning Instrument – Section 79c(A)(li).....	6
5.3. Provisions of any Development Control Plan – Section 79c(A)(lii).....	6
5.4. Any Planning Agreement under Section 93f – Section 79c(A)(liia)	6
5.5. Any matters prescribed by the Regulations – Section 79c(A)(lv)	6
5.6. Any Coastal Zone Management Plan – Section 79c(A)(V)	7
5.7. Likely impact of the development – Section 79c(B).....	7
5.8. The suitability of the site for the development – Section 79c(C)	7
5.9. Submissions – Section 79c(D)	7
5.10. The public interest – Section 79c(E)	8
6. Conclusion.....	8
7. Recommendations	8

1. INTRODUCTION

Habitat Planning has been engaged by Albury City Council to undertake an independent assessment of an application to further modify Development Consent 10.2010.30491.8. This consent relates to a mixed use commercial/retail development and associated car parking, and subdivision at 520-524 Smollett Street and 441 Kiewa Street, Albury ("the subject land"). The consent is considered to be commenced and therefore currently valid.

The applicant is David Harper from Volt Lane Pty Ltd who are also the owners of the subject land.

The modification application is made under Section 96(2) of the *Environmental Planning and Assessment Act 1979* (EP&A Act). In receiving the modification application under this section, Council officers are satisfied that the modifications sought to the development consent will result in substantially the same development as that originally approved.

The following assessment of the modification application is made against the relevant provisions of the EP&A Act

2. THE APPROVED DEVELOPMENT

Development Consent 10.2010.30491.8 approves a mixed use commercial/retail development and associated car parking, and subdivision at 520-524 Smollett Street and 441 Kiewa Street, Albury. The development is to be undertaken in following seven stages:

1. Site works.
2. Construction of public carpark at the Volt Lane site.
3. Construction of office premises, restaurants, and food and drink premises at the Volt Lane site.
4. Construction of retail premises, restaurants, and food and drink premises (Volt Lane Markets) at the Volt Lane site.
5. Civil works to Amp Lane adjoining the Volt Lane site.
6. Construction of Market Square and civil works to Volt Lane, Selles Lane and Smollett Street at the Volt Lane site.
7. Construction of public carpark at the Gasworks site in Kiewa Street.

A staged subdivision is also approved as part of the consent.

The application has been modified on seven previous occasions, the most recent being on 19 June 2013.

3. THE PROPOSED MODIFICATION

The proposed modification relates to Stage 3 of the development being a motel in Smollett Street and Stage 7 being a car park in Kiewa Street.

The modifications to Stage 3 entail:

- *Modification to Ground Floor Internal Layout*

The back of house area has been designated as an administration area and receiving area, The reception counter has been modified to allow more space for staff and the fire stair has been slightly moved to accommodate the minor design changes.

- *Modification to Mezzanine Floor Internal Layout*

The mezzanine level has been extended to utilise the full extent of the floor plate. The redesign and increased floor area now allows the floor to provide a conference room, amenities, back of house, storage and six motel rooms.

- *Modification to First Floor Internal Layout*

The first floor has been redesign to accommodate motel rooms rather than the previously approved conference rooms. The facilities originally located on this floor have been incorporated into the increased mezzanine floor. The first floor now contains 21 motel rooms and an office/administration area.

- *Modification to Second Floor Internal Layout*

The number of motel rooms has reduced from 22 to 21 and an accessible motel room is now provided. The motel rooms have increased in length and as a result the linen/cleaning area has been reduced in size. The longer length motel rooms provide more amenity for the guests and the floor plate in general is simplified and more user friendly.

- *Modification to Third Floor Internal Layout*

The number of motel rooms has reduced from 22 to 21 and an accessible motel room is now provided. The motel rooms have increased in length and as a result the original approved gymnasium has been removed and a linen/cleaning area provided. The longer length motel rooms provide more amenity for the guests and the floor plate in general is simplified and more user friendly.

- *Modification to Fourth Floor Internal Layout*

The number of motel rooms has reduced from 24 to 21 and an accessible motel room is now provided. The central floor plate area originally containing a courtyard and two motel rooms has been replaced with a gymnasium relocating the gymnasium from the third floor to the fourth. The motel rooms have increased in length, longer length motel rooms provide more amenity for the guests and the floor plate in general is simplified and more user friendly.

- *Modification to Fifth Floor Internal Layout*

The number of motel rooms has reduced from 24 to 21 and an accessible motel room is now provided. The central floor plate area originally containing a courtyard and two motel rooms has been replaced with a staff change room and staff dining area. The motel rooms have increased in length, longer length motel rooms provide more amenity for the guests and the floor plate in general is simplified and more user friendly.

- *Modification to Sixth Floor Internal Layout*

The number of motel rooms has reduced from 24 to 21 and an accessible motel room is now provided. The central floor plate area originally containing a courtyard and two motel rooms has been replaced with a back of house area for staff. The motel rooms have increased in length, longer length motel rooms provide more amenity for the guests and the floor plate in general is simplified and more user friendly.

- *Modification to Seventh Floor Internal Layout*

The number of motel rooms has reduced from 22 to 21 and an accessible motel room is now provided. The original void has been removed and the executive services lounge has been reorientated. The motel rooms have increased in length, longer length motel rooms provide more amenity for the guests and the floor plate in general is simplified and more user friendly.

- *Modification to Roof*

The original void has been removed and the roof skylight has been relocated as a result of the internal design amendments.

- *Modification to External Elevation Façade*

There are minor modifications to the north, south and west elevations at the mezzanine level and first floor level. Visually they are in keeping with the original approved façade and are a result of the internal design amendments.

The modifications to Stage 7 entail:

- *Relocation of Car Park Orientation*

The second and third storey were originally located to the northern end of the site and under this proposal they are relocated to the eastern boundary therefore reducing the impact on adjoining neighbours and also presenting a more uniform streetscape. The relocation allows the first and second floors of car parking to be constructed outside the zone of contaminated land.

- *Increase in Number of Spaces Provided*

The car park orientation has been modified achieving additional car parking spaces as a result.

- *Relocation of Entry/Exits*

The entry/exits have been slightly relocated to facilitate the new orientation of the car park layout, the number of entry/exits remain as two as per the approved plans.

- *Provision of Additional Fire Stairs*

The proposal now provides five fire stairs as appose to the originally approved three.

- *Provision of Lift*

The modifications also contain the inclusion of a lift to service all three floors of the car park.

- *Provision of Amenities*

The proposed modifications also include the provision of amenities to the ground floor consisting of an assessable WC, ambulant female WC and ambulant male WC. The Lions Club wish to utilise the Ground Floor car park for community markets on weekends therefore the proposed amenities have been provided to cater to the communities needs during this activity.

4. NOTIFICATION & REFERRAL

The modification application was notified in the Border Mail newspaper and in writing to adjoining landowners. One submission was received from a group of residents within a multi-storey building in Smollett Street known as 'Florin House', which backs on to Gasworks car park site. The submission raises "*serious concerns*" relating to the proposed changes to the Gasworks car park. The issues raised are addressed in Section 5.9 of this report below.

The Application was also referred within Council for plumbing, building and engineering comment. As a result of this, amended plans were sought from the applicant to address a number of compliance issues relating to the design of the car park. The issues have been satisfactorily addressed by the applicant.

5. ASSESSMENT

Under section 96(3) of the EP&A Act Council must take into consideration those matters referred to in Section 79C(1) that are relevant to the development the subject of the modification application. The matters contained within Section 79C(1) are:

- (a) the provisions of:
 - (i) any environmental planning instrument, and

- (ii) any draft environmental planning instrument that is or has been placed on public exhibition, and
- (iii) any development control plan, and
- (iiia) any planning agreement that has been entered into under section 93F, or any draft planning agreement that a developer has offered to enter into under section 93F, and
- (iv) (iv) the regulation (to the extent that they prescribe matters for the purpose of this paragraph),
- (v) (v) any coastal zone management plan (within the meaning of the Coastal Protection Act 1979), that apply to the land to which the development application relates,
- (b) the likely impacts of that development, including environmental impacts on both the natural and built environment's, and social and economic impacts in the locality,
- (c) the suitability of the site for the development,
- (d) any submissions made in accordance with this Act or the regulations,
- (e) the public interest

Each of these matters is addressed in the following sections.

5.1. Provisions of any Environmental Planning Instrument – Section 79C(a)(i)

An environmental planning instrument includes state environmental planning policies and local environmental plans.

State Environmental Planning Policy No. 55 – Remediation of Land (SEPP55)

SEPP 55 requires that a responsible authority must not grant consent to a development without having considered whether or not the land is contaminated. If it is found to be contaminated, the Council must be satisfied that it can be remediated to a level in line with the sensitivity of the proposed use.

The modification relocates the multi-deck component of the car park in Kiewa Street from the northern side to the eastern side along the street frontage. This has the effect of removing the multi-deck section away from the identified contaminated section of the site. By removing the need to disturb the contaminated land for construction of the multi-deck component, the risk of exposure to contaminants is substantially reduced. Consequently the element of the modified proposal achieves greater compliance with SEPP55.

Murray Regional Environmental Plan No. 2 – Riverine Land (MREP2)

The changes proposed in the modification for the two sites do not give rise to a different conclusion drawn from the assessment of the original application (and subsequent modifications) against the provisions of MREP2. Consequently the favourable assessment of MREP2 remains valid.

Albury Local Environmental Plan 2010 (ALEP)

The changes proposed in the modification for the two sites do not give rise to a different conclusion drawn from the assessment of the original application (and subsequent modifications) against the following provisions of the ALEP:

- Objectives and land use tables in Part 2 for the B3 Commercial Core zone (motel) and B4 Mixed Use zone (car park).
- Maximum building height (clause 4.3).
- Floor space ratio (clause 4.4).
- Heritage conservation (clause 5.10(5)) insofar as the impact of the development on nearby heritage items.
- Flood planning (clause 7.4) for the car park site.
- Essential services (clause 7.6).

5.2. Provisions of any draft environmental planning instrument – Section 79C(a)(ii)

There are no draft environmental planning instruments on public exhibition or have been placed on public exhibition but not commenced, that are relevant to the proposed modification.

5.3. Provisions of any development control plan – Section 79C(a)(iii)

The *Albury Development Control Plan 2010* (ADCP) is relevant to the proposal. With the exception of the car park, the changes proposed in the modification do not give rise to a different conclusion drawn from the assessment of the original application (and subsequent modifications) against the following provisions of the ADCP:

- *Land use precincts* (clause 11.7.2 & Figure 11.7)
- *Building heights* (clause 11.7.3 & Figure 11.8)
- *Street wall heights and upper level setbacks* (clause 11.7.4 & Figure 11.9) – Figure 9 imposes a “5 storeys” limit above which an “upper level setback” of 3 metres would be required. Whilst more of the multi-storey car park now has frontage to Kiewa Street, it is below the limit specified and is therefore compliant.
- *Floor Space Ratio* (clause 11.7.5 & Figure 11.10)
- *Building design* (clause 11.7.6)
- *Building setbacks* (clause 11.7.7 & Figure 11.11) – The Street setbacks plan (Figure 11.11) specifies a zero lot line for buildings on the western side of Kiewa Street between Hume and Smollett Streets. The reconfiguration of the car park in the modification application is now more compliant with this requirement than the current consent.
- *Building depth* (clause 11.7.8)
- *Building separation* (clause 11.7.9)
- *Open space and landscaping* (clause 11.7.10)
- *Car parking traffic and access* (clause 11.7.11)
- *Streetscape* (clause 11.7.12)
- *Urban design and pedestrian circulation* (clause 11.7.13)
- *Outdoor advertising* (clause 11.7.14)
- *Opportunity sites* (clause 11.7.16 & Figure 11.12) and in particular the Gasworks site for the proposed car park and the Volt Lane Precinct for the motel.
- *Masterplan requirement* (clause 11.7.17)
- *Future character areas* (clause 11.7.18 & Figure 11.13)
- *Heritage* (clause 11.7.19)
- *Awnings, verandahs and balconies* (clause 11.7.20)

5.4. Any planning agreement under Section 93F – Section 79C(a)(iia)

There are no planning agreements in place that would influence the consideration of the application.

5.5. Any matters prescribed by the Regulations – Section 79C(a)(iv)

None.

5.6. Any Coastal Zone Management Plan – Section 79C(a)(v)

Not applicable.

5.7. Likely impact of the development – Section 79C(b)

The changes proposed in the modification for the two sites will still result in development substantially the same as that currently approved. Consequently the impacts of the development will remain much the same as before.

5.8. The suitability of the site for the development – Section 79C(c)

By virtue of the current consent, the development has previously been considered as suitable for the two sites. As the changes proposed in the modification for the two sites will result in development substantially the same as that currently approved, the previous assessment of site suitability remains valid.

5.9. Submissions – Section 79C(d)

A single submission objecting to the modification application was received. The submission is co-signed (presumably) by the six residential tenancies of an apartment building in Smollett Street (Florin House) that backs onto the site proposed for a multi-deck car park in Kiewa Street.

The grounds for the objecting submission can be summarised as follows:

- A degradation of the current 'long view' to the hills to the south east.
- Fumes and noise from cars being detrimental to the usage of outdoor balconies.
- A devaluation of property value.
- Loss of privacy courtesy of car occupants being able to view outdoor balcony areas.
- The northernmost access to the car park in Kiewa Street is too close to the existing laneway used by residents and will cause conflicts.
- An increase in the number of parking spaces will add to congestion and reduce safety in Kiewa Street.
- A vacant car park at night will create security issues.
- The car park should be sited on the southern part of the Gasworks site.
- Landscaping should be included to improve the aesthetics of the car park.
- Can't assume that this car park will be utilised principally for all-day parking. Short term parking will create traffic problems.

In consideration of these grounds:

- The current approved development has the multi-deck car park located in the northern half of the Gasworks site and extending from the Kiewa Street frontage, across the rear of Florin House to the rear of the former Tax Office building. The proposed modification reorientates the multi-deck car park so that it is no longer directly opposite the rear of Florin House. In terms of visual amenity this is considered a small improvement for residents of Florin House although it is acknowledged that the 'long view' will remain compromised by the structure. It is also noted that it is an established principle in planning law that no-one 'owns' a view.

As the original siting of the multi-deck car park was approved and the modification doesn't exacerbate the loss of the 'long' view for residents of Florin House, this issue is not grounds for refusing the application.

- With the re-siting of the car park, vehicles using it will be further away from Florin House.
- Impact on property value is not a planning consideration.
- Access and egress arrangements for the car park as well as its usage have been assessed and endorsed by traffic engineers.
- Consideration of alternative sites is not a planning consideration.

5.10. The public interest – Section 79C(e)

It is in the public interest for the development as modified to be compliant with both the strategic and statutory planning influences for the two sites in central Albury. As the changes proposed in the modification for the two sites will result in development substantially the same as that currently approved, the previous consideration of the public interest remains valid.

6. CONCLUSION

Having regard for the above assessment of the modified proposal against of the matters of consideration under Section 79C of the EP&A Act, it is concluded that on balance the modification application should be approved.

7. RECOMMENDATIONS

Accordingly, the application to modify Development Consent 10.2007.28409.8 is recommended for approval subject to the following changes to conditions:

- (a) Addition to the list of approval dates on the face page.
- (b) Update the description of the subject land with reference to both sites.
- (c) In the description of the development, change the number of car parking spaces referenced in Stage 7 from “328” to “384”.
- (d) In condition (A1), replace “*and 30 May 2013*” with “*, 30 May 2013 and 15 January 2016*”.
- (e) In condition (A1), for references to Drawing Nos A411.1, A411.3, A411.4 change the Revision Nos to “115” and Dated to “23/11/2015”.
- (f) In condition (A1), for references to Drawing Nos A500, A501.1, A502, A503, A504, A505, A507 and A508, change the Revision Nos to “C” and Dated to “11/3/2016”.
- (g) In condition (B17), change the number of car parking spaces referenced from “368” to “384”.

