



8 May 2018

Council Ref: DA 13/135/07
Our Ref: 13-0130

The General Manager
Bayside Council
PO Box 21
ROCKDALE NSW 2216

Attention: Town Planning Department

Dear Sir/Madam,

re: Section 4.56(1) Application to modify the Consent to Development Application No. 13/135 for a mixed use residential and commercial development at 659, 661-663 and 665-669 Gardeners Road, Mascot

1. INTRODUCTION

We write on behalf of Mascot Circle Pty Ltd ("the Applicant") to request a modification of the consent to DA No. 13/135 ("the original consent") which was approved by the Land and Environment Court on 21 August 2014 for a mixed use residential and commercial development at 659, 661-663 and 665-669 Gardeners Road, Mascot ("the site").

The original consent has been modified six times, as detailed below:-

- Section 96 Application (DA-13(135).02) approved by the Sydney East Joint Regional Planning Panel on 17 November 2015, corrected an error with the calculation of the Section 94 Contribution; and
- Section 96 Application (DA-13(135).03) approved by the Sydney East Joint Regional Planning Panel on 24 November 2015, amended the wording of various conditions to allow the approved development to be constructed in stages, with separate Construction Certificates to be issued for each of the following stages:-
 - Site Establishment / Shoring / Excavation;
 - Footings / In-ground Services / Structure;
 - Façade / Services / Finishes; and
 - External Works.
- Section 96 Application (DA-13(135).04) approved by the Sydney East Joint Regional Planning Panel on 5 October 2016, amended the consent to include the following:-
 - increase the size of the southern commercial units thereby increasing the total GFA by 238m² and shift the construction of the commercial tenancies from Stage 2 to Stage 1 of the construction works;

- amend the construction staging so that the car parking spaces in Stage 1 were reduced by 24 spaces. However the total number of car spaces at the end of Stage 2 remain unchanged;
- various design amendments including revisions to the northern lobby and adjacent commercial tenancies, changes to the amenities area of the northern and southern commercial tenancies, reduction and modification of 3 balconies to accommodate requirements for a substation and changes to the fire egress of the southern building;
- amend the Level 2 podium landscaping as a result of the design changes and changes to the fire egress; and
- amend condition No. 34 relating to stormwater management, to reflect the details in the amended stormwater plans.
- Section 96 Application (DA-13(135).05) approved by the Sydney East Joint Regional Planning Panel on 7 June 2017, amended the consent to include the following:-
 - the addition of horizontal spandrels on the eastern, western and southern sides of the corridors in both the northern and southern buildings, with fixed glass louvres above the spandrels;
 - the deletion of planters within corridors on the eastern, western and southern facades and replace with spandrels as a result of the provision of louvres for wind amelioration as required by conditions of consent. This will result in a reduction of 180m² in landscaped area;
 - changes to the articulation of the southern facade of the northern building and the northern façade of southern building, on either side of the lift core through changes to the balconies of various apartments in both buildings, increasing the size of the balconies and improving the articulation of the internal facing facade;
 - amending the unit type 2.7, located on Level 5. The changes relate to units S5.01 to S5.08 and S5.17 to S5.24 (16 units) – the amendment involves the removal of the entry indent to the unit to improve the unit layout. This results in an increase of 32m² of Gross Floor Area (GFA). The GFA of the stage 2 retail area on the ground floor has been reduced by 32m² GFA. As such there is no change to the overall GFA of the approved development;
 - minor amendments to the elevations to ensure they correspond with the approved unit layouts;
 - amendments to the location of various columns in the building to create more efficient apartment layouts, due to the variety of units being developed and the structural engineering requirements;
 - Deletion of solar panels on the roof; and
 - Deletion of the requirement to paint the car park ceiling white.
- Section 96 Application (DA 13/135/06) approved by the Sydney Central Planning Panel on 24 August 2017, amended the consent to include the following:-
 - changes to the lift on the southern building to provide access to the rooftop terrace resulting in an increase in the height of the southern building to RL 52.2 metres AHD, but only in relation to the lift overrun.

- deletion of the perimeter landscaping outside the balustrade on the rooftop terrace due to the maintenance difficulties;
 - changes to the glass roof shape (lowered) to both the North and South Tower to comply with the requirements of the fire engineering report; and
 - changes to the approved Reference Document Qualitative Wind Impact Assessment prepared by SLR dated 29 July 2013.
- Section 96 Application (DA 13/135/07) approved by the Sydney Central Planning Panel on 21 March 2018, amended the consent to include the following:-
 - Changed details and references in Condition 1 to reflect updated architectural drawings;
 - Changed references in Condition 47 to reflect the updated Qualitative Wind Impact Assessment Report; and
 - Reference to the amendment in Condition 130.

2. THIS APPLICATION

BBC Consulting Planners has been requested by the Applicant, to prepare the supporting information for this Section 4.56(1) Application.

A copy of the consent, as already modified (DA 13/135/07), is provided in **Attachment 1**.

Also, accompanying this correspondence are:-

- a completed Section 4.56 application form which includes the consent of the owner; and
- a cheque to cover the application fee associated with the Section 4.56(1) application;

3. PROPOSED MODIFICATIONS

Approval is sought to modify Condition Nos. 6(a), 6(b), 6(h) and 86 of the consent to enable the issue of an occupation certificate for Stage 1 works prior to the dedication of land for the new public road and the completion of other associated works. Due to ongoing construction activities and site access requirements, the land cannot be dedicated as public road until building construction works are complete.

The applicant has prepared a stratum plan for the site which includes the dedication of the public road. Following the issue of the Occupation Certificate for Stage 1 works, this plan will be registered and the road dedication made.

To enable the above, it is requested that the above conditions of consent be modified to include the words “for the approved Stage 2 works” after any reference to “occupation certificate” in each instance. It is also requested that Condition 130 include reference to this modification once approved.

The requested modifications are specified below with additional content in **bold type**.

6. It is a condition of consent that the applicant shall, at no cost or expense to Council, comply with the following:
 - a) Dedicate the portion of land to Council for the purpose of a new public road. The area of the land to be dedicated shall be the full length of the southern property

- boundary for a width of 9 metres as shown on the stamped approved plans. The Plan of Dedication shall be lodged with Council prior to the issue of the *relevant Construction Certificate* and registered with the Department of Lands prior to the issue of the *Occupation Certificate* **for the approved Stage 2 works**. A copy of the registered document shall be submitted to Council for record purposes.
- b) The construction of New Street and public domain such as footpaths, street lighting, landscaping, etc. shall be constructed by the Applicant at no cost to Council or the body corporate. The developer may enter into a Voluntary Planning Agreement (VPA) with Council to provide a monetary contribution in lieu of the construction works for the new road. A signed undertaking shall be submitted by the applicant prior to the issue of the *Occupation Certificate* **for Stage 2 works**.
- h) The completion of works at (a) to (g) above are pre-conditions to the issue of the occupation certificate **for Stage 2 works**.
86. Prior to the issue of any Occupation Certificate **for Stage 2 works** the person who is entitled to act on this consent must give to Council in writing an irrevocable offer to enter into a Deed of Agreement, the terms of which must provide a process to:-
- a) Extinguish the Right of Way and infill the temporary vehicular access from Gardeners Road with a commercial land use together with all the necessary building work to allow the space to be adapted for that purpose or other such arrangement as agreed to by Council or determined by legal jurisdiction; and
- b) Dedicate land to be occupied for the New Street to Council, without cost to Council, together with proportional costs for its design and construction.

4. PRESCRIBED FORM

The prescribed requirements for a Section 4.56 application are set out in Clause 115 of the *Environmental Planning and Assessment Regulation 2000*. Bayside Council has integrated these requirements into a form for its own administrative purposes. A completed copy of this form accompanies this letter.

5. RELEVANT PROVISIONS OF SECTION 4.56

Section 4.56(1) of the *Environmental Planning and Assessment Act, 1979* ("EP&A Act") states as follows:-

"(1) A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the Court and subject to and in accordance with the regulations, modify the development consent if:

(a) 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), and

(b) it has notified the application in accordance with:

(i) the regulations, if the regulations so require, and

(ii) a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or

advertising of applications for modification of a development consent, and

(c) it has notified, or made reasonable attempts to notify, each person who made a submission in respect of the relevant development application of the proposed modification by sending written notice to the last address known to the consent authority of the objector or other person, and

(d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.”

In relation to **Section 4.56(1)(a)**, the Council can be satisfied that the development as originally approved will still be substantially the same development when modified in accordance with this application. The proposed amendments are of a minor, technical nature that are in the public interest and that will enable the development to achieve its intended outcomes and satisfy the intent of consent conditions. These modifications proposed as part of this amendment will not change the nature of the approved development.

In relation to **Section 4.56(1)(b)**, Council may choose to notify the application and invite submissions.

In relation to **Section 4.56(1)(c)**, if Council choose to notify the application they will need to address this provision.

In relation to **Section 4.56(1)(d)**, should Council choose to notify the application and invite submissions, any relevant submissions made will need to be considered by Council / the Sydney central planning panel.

Section 4.56(1A) states as follows:-

“(1A) In determining an application for modification of a consent under this section, the consent authority must take into consideration such of the matters referred to in section 4.15 (1) as are of relevance to the development the subject of the application.”

The modifications to the consent for which approval is now sought do not alter the findings made in relation to DA 13/135, resulting in its approval, regarding the reasonableness and appropriateness of the original (approved) proposal when considered in the light of the matters listed in Section 4.15(1) of the *Environmental Planning and Assessment Act, 1979*. The relevant provisions are addressed below.

6. STATUTORY PLANNING CONSIDERATIONS

Section 4.15(1)(a) of the *Environmental Planning and Assessment Act, 1979* requires Council to take into consideration the provisions of:-

- “(i) any environmental planning instrument, and*
- (ii) any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Director-General has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and*
- (iii) any development control plan, and*

- (iia) *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) *the regulations (to the extent that they prescribe matters for the purposes of this paragraph), and*
- (v) *any coastal zone management plan (within the meaning of the Coastal Protection Act 1979),”*

In relation to **Section 4.15(1)(a)(i)**, the proposal is of a minor nature that will not change the substance of the development as approved. The proposed amendments will not result in any inconsistencies with any relevant planning instruments applicable to the site or the development.

In relation to **Section 4.15(1)(a)(ii)**, there are no proposed instruments of relevance to the site or the development that have been the subject of public consultation.

In relation to **Section 4.15(1)(a)(iii)**, the proposal is of a minor nature that will not change the substance of the development as approved. The proposed amendments will not result in any inconsistencies with any development control plan provisions applicable to the site or the development.

In relation to **Section 4.15(1)(a)(iia)**, there are no planning agreements applicable to the proposed development.

In relation to **Section 4.15(1)(a)(iv)**, there are no matters arising out of the proposal which raise compliance issues with relevant regulations.

Section 4.15(1)(a)(v) does not apply to the site.

6.1 Impacts of the Development

Section 4.15(1)(b) requires the consent authority to consider:-

- “(b) the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality.”*

The proposed amendments to consent conditions are minor and are of a technical nature that will not result in any adverse impacts on the natural or built environments or result in negative social or economic impacts in the locality. The proposed amendments are sought to enable the intended construction staging and the orderly delivery of public infrastructure and thus will result in positive social impacts.

No additional construction or amenity impacts, over and above those identified in the original DA, are caused by the amendments which are proposed.

6.2 Suitability of the Site

Section 4.15(1)(c) requires the consent authority to consider:

- “(c) the suitability of the site for the development.”*

The proposal does not alter the site's suitability for the approved development.

6.3 Submissions

Section 4.15(1)(d) requires the consent authority to consider:-

“(d) any submissions made in accordance with this Act or the regulations”.

Any relevant representations will need to be considered by the consent authority in the determination of the Section 4.56(1) application.

6.4 Public Interest

Section 4.15(1)(e) requires the consent authority to consider:-

“(e) the public interest”.

The public interest is best served by the orderly and economic use of land for purposes which serve a useful role in the social and economic life of the local community whilst not giving rise to any significant adverse impacts. The proposal is therefore in the public interest.

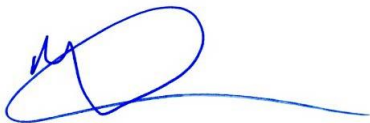
7. CONCLUSION

The Applicant, since the original consent was granted, has substantially commenced construction works on the site. The proposed amendments will enable the applicant to finalise the first stage of the development.

No environmental harm or unreasonable adverse impacts on the amenity of neighbours arise out of the proposed modifications with environmental impacts of the requested modifications being immaterial.

If any further details are required, or if further justification is required in support of the requested modification, please do not hesitate to contact this office. However, we trust that you will find the application acceptable and look forward to a prompt and favourable determination.

Yours sincerely,
BBC Consulting Planners



Robert Chambers
Director



ATTACHMENT 1

Consent to DA 13/135/07