

17 December 2020

2200799

Ross McLeod
General Manager
Waverley Council
55 Spring Street
Bondi Junction NSW 2022

Dear Mr. McLeod,

**SECTION 4.56 MODIFICATION APPLICATION
DA-483/2018/C – 163 BIRRELL STREET, WAVERLEY**

This Modification Application has been prepared by Ethos Urban on behalf of Mirvac pursuant to section 4.56 of the *Environmental Planning and Assessment Act 1979* (EP&A Act) to modify Development Consent DA-483/2018 relating to 163 Birrell Street, Waverley (the site or otherwise known as the Waverley Bowling Club).

The scope of the modification relates to minor housekeeping and administrative amendments to a small number of Conditions of Consent in order to support the timely and efficient delivery of the project.

This application identifies the consent, describes the proposed minor modifications, and provides a planning assessment of the relevant matters for consideration contained in section 4.56 of the EP&A Act.

1.0 Background

Development consent DA-483/2018 was issued to the Eastern Suburbs Leagues Club Ltd by the Land and Environment Court of NSW on 20 September 2019 for the following development:

Partial retention & reuse of clubhouse; construction of 4 x 3-6 storey buildings, consisting of 55 seniors units & facilities; new registered clubhouse; two basement levels for 149 cars, services, gym & swimming pool; two bowling greens & landscaping.

An artist's impression of the development, as approved under DA-483/2018, is provided in **Figure 1** below.



Figure 1 Artist's impression of DA-483/2018 as approved

Source: Altis Architecture

DA-483/2018 has subsequently been modified once. Modification Application DA-483/2018/A was approved by the Sydney Eastern City Planning Panel on 10 December 2020 for *modification to conditions 1 and 8 to increase approved height of each of the buildings, plant and equipment located on the roof top of each building and screening, conditions 10 and 132 relating to description of user and housekeeping amendments.*

Mirvac has recently been successful in securing the development rights. Mirvac, building on its strong track record of delivering high quality communities in Waverley Council, plan to commence works on-site as soon as possible. As one of Australia's leading and most innovative property groups, Mirvac in conjunction with its proposed project team have reviewed the approved development and identified minor administrative changes that can be made in order to deliver the project more efficiently and effectively.

It should be noted that another minor Modification Application (DA-483/2018/B) for minor amendments to the design of the approved basement is being lodged concurrently alongside this application. That application emanates from design efficiency and rationalisation reasons. As the two applications relate to differing components of the approved development, it is considered that they can be assessed independently.

2.0 Proposed modifications to the consent

It is noted that the development consent does not appear to be structured to accommodate staging of the development as would practically apply to its delivery.

At present there are a small number of conditions that require both the submission of details to Council and for Council to endorse that detail prior to the issue of a Construction Certificate. Whilst there is no objection to that principle, there is a minor amendment requested to enable fluid review and approval process and efficient construction sequencing.

In order to address this, rather than attempt to introduce development stages in the development Consent, and allocate consent conditions to those development stages, which would result in complicated and holistic changes, Mirvac is proposing a more considered simplistic approach to align a small number of conditions only, with more natural stages of the development process.

In balancing Council's desire to have information and detail upfront, where the small number of conditions currently require submission and approval before a Construction Certificate Mirvac is suggesting minor amendments to the conditions provided in Section 2.1, as follows:

- Still require the submission of information to Council prior to a Construction Certificate; and
- That information to be able to be approved by Council prior to the issue of a Construction Certificate for above ground building works.

The proposed changes to the relevant small number of applicable conditions relate only to the timing for when the detail needs to be endorsed by Council. We believe this is a pragmatic and reasonable approach and one which Council still has sufficient control and comfort as works cannot proceed above the ground floor should the relevant condition not be approved by Council.

2.1 Modification to conditions

The proposed modifications described above necessitate amendments to the consent conditions which are identified below. Words proposed to be deleted are shown in ~~**bold strike through**~~ and words to be inserted are shown in ***bold italics***.

21. PUBLIC DOMAIN IMPROVEMENTS

*The public domain is to be upgraded on all three street frontages, Henrietta Street, Birrell Street and Langlee Avenue as detailed in Condition 37 for the development site in accordance with the current Waverley Council Development Control Plan (DCP) and Public Domain Technical Manual (PDTM) at the time of engineering plan approval. A public domain plan for the following works shall be submitted to ~~the Executive Manager,~~ ***Creating Waverly prior to any Construction Certificate,*** and approved by the Executive Manager, *Creating Waverley prior to the issue of the Construction Certificate* ***for above ground building works.****

47. EXTERNAL WALLS AND CLADDING FLAMMABILITY

*The external walls of the building including attachments must comply with the relevant requirements of the National Construction Code (NCC). Prior to the issue of a Construction Certificate ***for above ground building works*** and Occupation Certificate the Principal Certifier must.....*

72. ENERGY ASSESSMENT REPORT

*(a) The design and efficiency initiative from the 'Draft proposal on how non-residential building component will target GHG emissions 30% less than a reference building' from Wood & Grieve Engineers date 17 June 2019 are to be reported on and the recommendations included in the construction certificate plans and provided to the satisfaction of Council's Co-ordinator, Sustainable Energy prior to the issue of any construction certificate **for above ground building works.....***

89. LANDSCAPED (GREEN) ROOFS

*(a) Details of the landscaping on Building A roof, drawn to scale, by a qualified landscape architect or landscape designer, must be submitted to **Council's Executive Manager, Building Waverley (or delegate) prior to any Construction Certificate** and approved by Council's Executive Manager, Building Waverley (or delegate) prior to the issue of a Construction Certificate **for above ground building works**. The details must include:.....*

3.0 Substantially the same development

Section 4.56(1)(a) 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 consent was originally granted and before that consent as originally granted was modified (if at all)".

The development, as proposed to be modified, is substantially the same development as that originally approved in that:

- The proposed amendments relate to housekeeping and administrative changes to the wording of a small number of conditions only;
- The proposed amendments do not change the built form, bulk or scale of the development in any way;
- The proposed amendments do not alter the nature of the approved development in any way before the issuance of an Occupation Certificate;
- The proposed amendments do not seek to alter any of the fundamental aspects or key land uses of the approved development; and
- The proposed amendments still provide Council sufficient control of the relevant conditions whilst allowing the project to proceed in an efficient manner.

4.0 Planning assessment

Section 4.56(1A) of the EP&A Act requires a consent authority to 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 and the reasons given by the consent authority for the grant of the original consent.

The planning assessment of the proposed modified development remains unchanged with respect to the above matters.

4.1 Statutory and Strategic Context

The subject site has a long planning history, culminating in granting of development consent by the Land and Environment Court in September 2019. Through this journey the original development was rigorously assessed against the relevant strategic plans, policies guidelines and statutory planning instruments, including:

- SEPP (Building Sustainability Index – BASIX) 2004
- SEPP 55 Remediation of Land
- SEPP 65 Design Quality of Residential Flat Development
- SEPP (Housing for Seniors or People with a Disability 2004)
- Waverley Local Environmental Plan 2012; and
- Waverley Development Control Plan 2012

The proposed minor amendments, which are limited to housekeeping and administrative changes to conditions, do not affect the development's consistency with any of the relevant planning instruments and strategic documents.

4.2 Construction impact

The amended proposal will represent project efficiency benefits in terms of the timing of the submission of required documents for approval prior to the issue of Construction Certificates. This is considered essential so that the delivery of development can occur in a timely and efficient manner.

The efficient and timely delivery of the project also has benefits to the broader community, reducing the period of any construction related impacts and delivering much needed seniors housing sooner.

4.3 Reasons given for granting consent

It is considered that the proposed housekeeping and administrative amendments to conditions is not inconsistent with the overarching aims and objectives of the approved development in establishing an opportunity where the bowling community can continue to retain their facilities, whilst improving the economic viability of the land.

4.4 Site suitability and public interest

The proposed minor amendments to conditions will enable construction to occur in a more timely and efficient manner, without altering the built form of the final completed development. Therefore, the proposed amendments are considered to be suitable for the site and in the public interest.

5.0 Conclusion

The proposed modifications relate to minor administrative amendments to the Conditions of Consent to enable the timely and efficient delivery of the project.

In accordance with section 4.56 of the EP&A Act, Council may modify the consent as:

- the consent, as proposed to be modified, is substantially the same development as that originally approved;
- the proposed amendments will not result in any adverse environmental impacts; and
- the proposed amendments are suitable for the site and in the public interest.

We trust that this information is sufficient to enable a assessment of the proposed modification request at your earliest convenience.

Yours sincerely,



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