



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

26 June 2017

Dear Ms McNally,

**Determination of Modification Request
Australian Technology Park, Eveleigh (SSD 7317 MOD 1)**

Thank you for the Department of Planning and Environment's letter received on 15 June 2017 referring the above modification request to the Planning Assessment Commission for determination under Ministerial delegation of 14 September 2011 as the City of Sydney Council objects to the application. The modification request has been lodged pursuant to section 96(1A) of the *Environmental Planning and Assessment Act 1979*. Lynelle Briggs AO, Chair of the Commission, nominated myself as chair and Ms Abigail Goldberg to constitute the Commission and determine the modification.

Consent for the Australian Technology Park SSD 7317 was granted by the Commission on 20 December 2016, which included construction of three mixed use buildings with a total gross floor area of 107,427m² and associated facilities and amenities. The applicant seeks to modify Condition B53 of the consent to:

- Defer the requirement for approval of a Landscape and Public Domain plan to prior to the construction certificate (CC) for the Public Domain Area 1 – Stage 2; and
- Carry out the public domain works in a staged approach.

The Commission met with the applicant and Council on 23 June 2017 to discuss the modification request. Notes from these meetings are provided in **Appendix 1**. Due to the administrative nature of the modification request, the Commission determined that no public meeting was required for the project. The Commission in its deliberation of the modification considered the following issues to be the key components of the determination.

Voluntary Planning Agreement (VPA)

Council has objected to the modification on the basis that it is inappropriate to amend the application while the VPA negotiations are underway. The Department's assessment report stated however that the terms of the VPA specifically relate to the design and construction quality and future dedication of the public domain, but not the requirements for the Landscaping and Public Domain Plan itself. The Commission notes that amongst other things the VPA seeks to establish the preconditions which must be met if the public domain is to be transferred to Council at a future date (potentially in 27 years' time). The Commission agrees with the Department and finds that the VPA is not a relevant consideration to the determination of the proposed modification.

Approval Authority for Landscape and Public Domain Plan

The Department in amending Condition 53 amended the approval authority for the Plan from the Secretary to the Council. Council supported this amendment, however it was subsequently objected to by the applicant. The applicant submitted additional information to the Commission which provided clarification regarding their commitment to genuine consultation with the Council, in line with Land and Environment Court guidance, and confirmed that this would occur prior to seeking approvals from the Secretary.

The Commission is aware that Condition 53 specifically requires consultation with both the Council and Heritage Council and that there is potential for there to be different views expressed by these two organisations. It is for this reason that the Commission considers that the Secretary is best suited to the role of approval authority as the Secretary can arbitrate in the case of any conflict or difference of opinion.

Deferral of Landscape and Public Domain Plan

The applicant contends that deferring the submission and approval of the plan will not impact upon the delivery, or quality of proposed public domain areas. Council contends that it was unable to support the modification until the VPA was agreed to, and that deferral of the plan could compromise the public domain outcome if site levels and design works, in compliance with Council's design guidelines, were not fully understood at the earliest stages possible.

Council, during its meeting with the Commission, supported the approval of the Plan prior to the first Construction Certificate (CC) for building façade works. This position was also supported by the Department's assessment report. The applicant was however opposed to this amendment and provided additional information to the Commission to support the position of requiring the plan to be approved prior to the CC for the respective public domain works for Buildings 1 and 2. The applicant also sought to provide further clarity to allow landscaping and public domain works for both buildings to be approved under separate CC processes.

The Commission has reviewed the information provided by the applicant and is satisfied that the applicant has taken the necessary steps to establish the correct finished levels for the site. This includes the interaction of finished levels between the buildings and public domain areas to prevent potential non-compliances with relevant codes and legislation including the *Disability Discrimination Act*. The Commission recognises that any non-compliances would potentially compromise the ability for the finished buildings to be issued an Occupation Certificate (OC). The Commission finds the applicant's reasoning persuasive and agrees that the plan is most suitably approved prior to the issue of the first CC for the respective public domain areas for Stage 1 and 2.

Staged landscaping and public domain works

The applicant seeks to further modify Condition B53, to allow the landscaping and public domain works to be completed in two stages due to Building 1 and 2 being constructed in accordance with two distinctly different approval and construction timelines. The applicant has also sought to include in Condition 53 clarity around the requirement that each stage's landscape and public domain works be completed prior to the issue of the OC for either Building 1 or 2. Neither Council nor the Department raised any concerns with the Commission regarding the staging of works, however to ensure the timeliness of delivery the Commission amended the condition to read 'prior to the issue of the first Occupation Certification' to ensure clarity around commitment obligations. The applicant has been consulted with regard to this amended and has accepted this requirement.

The Commission finds that subject to certain amendments to Condition B53 regarding CC and OC staging that this is an appropriate way for the project to proceed.

Administrative corrections to Condition B53

During the process of reviewing Condition B53 it has become apparent to the Commission that the structure of B53 potentially compromises the intent and integrity of the sub-conditions contained within it. In consultation with the applicant and the Department the Commission has taken the opportunity to amend the condition structure. This is reflected in the modification instrument.

Commission Determination

The Commission has carefully considered the proposal, the Secretary's assessment report, the submissions received during the consultation process and the information provided by both the Council and applicant. For the reasons set out above, the Commission supports the Department's recommendation that this proposal be approved, with subsequent amendments. Consequently, the Commission has determined to grant approval to the modification application subject to the conditions set out in the modification instrument.



Stephen O'Connor
Member of the Commission (Chair)



Abigail Goldberg
Member of the Commission

cc. The Hon. Anthony Roberts, MP
 Minister for Planning
 GPO Box 5341
 SYDNEY NSW 2001