

ITEM NO: 1**SUBJECT: CULTURAL CENTRE / LIBRARY / COMMERCIAL DEVELOPMENT ON LOT 1 DP 123748, LOT 1 DP 566097, LOT 2 DP 547229, 30-32 PARKE STREET AND 33-35 COLLEGE LANE, KATOOMBA - DELEGATION TO GENERAL MANAGER UNDER SECTION 96 OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT TO MODIFY CONSENT.****FILE NO: X/786/2007**

Recommendation:

That the General Manager be granted delegated authority within the terms of Section 377 of the Local Government Act 1993 to determine section 96 and 96AA applications in accordance with the Environmental Planning and Assessment Act 1979 to modify the development consent relating to development application X/786/2007.

Report by General Manager**Reason for report**

A meeting between the General Manager, senior management from Coles and the Department of State and Regional Development was arranged to put forward Council's concerns for the apparent lack of progress with the development and to ascertain the reasons for the delay. The outcome of that meeting was very positive and Coles advised that they are now in a position to place a priority on moving the development forward with their intentions.

Coles have a very ambitious timetable and will need the full cooperation of the partners working together. As such in the spirit of cooperation, it is recommended that Council provides the General Manager with delegated authority to determine section 96 and 96AA applications in accordance with the Environmental Planning and assessment act 1979 for this development.

Background

Councillors are aware this is a large, complex development that will contain stratum ownership for the Council and Coles. There is also significant work to be completed on the public road reserve as part of the development. In a project such as this there will inevitably be modifications as the detailed design drawing are prepared, work commences, progress is made and owner's requirements change for practical and cost reasons.

Modifications that are likely to need to be made could relate to corrections or minor errors, misdescriptions and miscalculation, space reallocation or changes involving minimal environmental impact. If it was necessary for such minor modifications to be brought back to council for determination each time it would in all likelihood add significant delays to the project and impact on the completion date.

For a proposed change to a development to be considered a modification under Section 96 or 96AA of the Act, the development, as modified, must remain substantially the same

development as that for which consent was originally granted. Significant changes that result in the development not remaining substantially the same would necessitate submission of a new development application that would come back before the Council.

Councillors have previously, through resolution Minute No 424 dated the 11 March 2008 set out below, in effect given the delegation sought.

“That the General Manager, or his nominee, within the terms of Section 377 of the Local Government Act 1993, be delegated the authority to determine:

- a) Section 96 or 96AA applications to modify a development consent, or*
- b) Section 95A applications to extend the lapse date of a development consent, where the application had previously been determined by the Council or the Court, unless two or more Councillors make a request in writing to the General Manager for an individual application to be referred to the Council for determination.”*

(Minute No. 424, 11/3/2008)

However given the prominence of this project and the fact that the Council is a joint partner with the State Government and Coles and will be an eventual owner of a stratum, it is considered wise to be transparent and for the Council to consider this delegation separately on its merits.

The recommendation in this report is consistent with the intent of the previous resolution relating to S96 delegations and is not treating this consent or applicant any differently to others.

Sustainability Assessment (Triple Bottom Line Reporting):

Effects	Positive	Negative
<u>Environmental</u>	Section 96 and 96AA of the EP&A Act stipulates that it can only be used where the modification of the original consent granted has minimal environmental impact.	
<u>Social</u>	The timely completion of a contemporary library, cultural centre and major supermarket centrally locate in the commercial precinct is seen as a positive resource for locals and visitors.	
<u>Economic</u>	The completion of this mixed use retail, community and cultural facility was identified in the Katoomba Revitalisation Outcome Report to be a significant project for the future sustainability of Katoomba as a district commercial, and regional tourist centre.	

Financial implications for the Council

This report relates to the Council as the consent authority and it has no financial implications in that context.

Legal and risk management issues for the Council

The delegation used strictly in accordance with the provisions of Section 96 and 96AA will not create any undue legal or risk management situation for the Council that it does not normally encounter in its development assessment role.

Conclusion

This report has been presented to the Council given the Council’s dual roles in this matter and to ensure transparency in the decision made. The delegation sought is consistent with the Council delegations for other developments.

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