



15 July 2011

**Section 75W modification to a residential development
at 14-18 Boondah Road, Warriewood**

Background

On 18 January 2011, the Planning Assessment Commission (the Commission) approved a concept plan proposal for the site and a project application for Stage 1 development subject to conditions and certain design modifications and layout changes including reduction in building height and maximum yield of 60 dwellings per hectare.

The approved Stage 1 proposal comprised 7 residential buildings with 2 levels of basement parking for 471 cars. The change to building height and density required by the Commission has reduced the number of apartments from 295 to 226.

Following the Commission's approval, the proponent submitted amendment plans to meet the design modifications required by the Commission's determination, namely reduction in building height and density and compliance with the SEPP 65 Residential Flat Design Code (RFDC).

The Director General approved the amendment plans in March 2011 and a construction certificate was issued accordingly. In April 2011, Pittwater Council challenged the Commission's approvals in the Land and Environment Court. During the review process, the amendment plans were revoked as they had included the deletion of one level of basement car park. This was not included in the design modifications required by the Commission and as a result required a modification application to the original approval. A new set of amendment plans (excluding the deletion of the basement car parking level) was subsequently approved by the Director General and a modification application to delete one of the basement levels parking was submitted.

The Modification

The subject modification application includes:

- A reduction of 1 level of basement car parking with associated podium adjustments; and
- Amendment of the floor layout of units in Buildings A, B and C to include a study in some apartments

Delegation to the Commission

On 28 May 2011 the Minister for Planning and Infrastructure, the Hon Brad Hazzard MP, delegated his power to determine the application to the Planning Assessment Commission.

The Commission members nominated to determine the application were Ms Janet Thomson, (chair), Mr Garry Payne AM and Mr Richard Thorp.

Meeting with the Department of Planning and Infrastructure

The Commission met with Departmental staff, Mr Michael Woodland and Ms Amy Watson on 16 June 2011 for a briefing. The discussion focused on the reasons for the modification application. In brief, the Department concluded that:

- The proposed residential parking provision meets Pittwater Council's DCP requirements.
- Visitor parking is in accordance with the RTA Guide to Traffic Generating Development.
- Council's DCP permits tandem parking.
- Storage units and bicycle parking spaces are satisfactorily addressed and meet the RFDC requirements.
- The revised basement parking layout still maintains 53.4% of the site as deep soil planting.
- The provision of studies in Buildings A, B and C will increase the variety of dwelling types and have no adverse impact on density, height or floor space.

It is the Department's view that the reduction of one level of basement parking would mean less excavation and less environmental impact. The Department concluded that the proposed modification is considered reasonable and is generally consistent with the terms of project approval.

Meeting with Pittwater Council

On 16 June 2011, the Commission met with Pittwater Council representatives, Mr Steve Evans, Ms Lisa Cordoba and Ms Amy Allan. Council advised the Commission that they had not had time to review the proposed modification as they had just received the referral. Council intended to make a submission and confirmed that a written submission would be submitted to the Commission on 1 July 2011.

The Commission received Council's submission on 2 July 2011. Council maintained that the earlier concept plan and Stage 1 project approvals were invalid and therefore this application should not be determined until the Land and Environment Court handed down its judgement. Issues raised in Council's submission included:

- The proposed modifications do not comply with DCP 21's requirements in terms of number of visitor spaces, parking for removalist trucks or service vehicles, car washing space, and secure storage spaces.
- Bicycle spaces are not secure or enclosed.
- Tandem parking would result in manoeuvrability issues and inefficiency with flow on effects on parking, safety and traffic within and outside the site.
- The disperse nature of visitor parking would result in spaces not being used by visitors with flow on effects on on-street parking.
- Issues relating to Crime Prevention Through Environmental Design have not been addressed, in terms of number of dead ends and blind corners, particularly near serviceable areas and storage areas that create unsafe conditions.
- Other issues relating to car parking included:
 - carparking plan is not clearly notated;
 - a lack of information on how the basement level is to be ventilated; and
 - at certain locations, the basement carpark protrudes 1.8m to 3m above the natural ground;
- Some of the proposed studies are of a sufficient size and dimensions to be easily used as another bedroom and there is no mechanism to ensure that these rooms will not be used as a bedroom. In circumstances like this, the study areas should be considered as bedroom and the developer contributions should be recalculated to reflect the revised dwelling mix.
- The application is not supported by clear and accurate documentation and information to enable detailed assessment.

Meeting with the Proponent

The Commission met with the Proponent, Meriton Apartments Pty Ltd represented by Mr Harry Triguboff AO, Mr Walter Gordon, Mr Alan Johnson and Mr Bruce Masson. The purpose of the meeting is for the Commission to understand the proponent's response to Pittwater Council's submission, which was received on 7 July 2011.

In brief, the proponent advised that:

- The current modification application does not involve any changes to the RL levels of the first level of the basement car park. The application is just for the deletion of the lower basement parking level. Hence the said protrusion is part of the Stage 1 project application approval already granted.
- The proposed parking provision complies with Council's DCP 21 as follows:
 - Council's submission to the PPR in October 2010 confirmed that visitor parking should comply with RTA requirements.
 - Removalist trucks and other service vehicles will share the loading area for garbage trucks. The area will be managed by the on-site manager.
 - The one surplus car parking space will be designated as car wash bay.
 - The storage areas comply with the requirements of the Residential Flat Design Code.
 - The bicycle parking complies with AS2890.3.
 - The DCP permits tandem parking provided spaces are allocated to the same unit.
 - Visitor parking spaces are designed to locate near the lift lobby of each building and are not randomly dispersed as illustrated by Council.
 - A CCTV and intercom system will be installed within the basement level to provide appropriate crime prevention measures.
 - Ventilation will be via mechanical and natural means and will comply with relevant Australian Standards and the Building Code of Australia.
- The study areas are internal areas with no windows and do not meet the Building Code of Australia in terms of natural light and ventilation to be classified as bedroom.

Department of Planning and Infrastructure Comment on Pittwater Council's Submission

The Department provided its comments on the Council's submission via a letter to the Commission dated 11 July 2011. The Department did not support Council's concerns in relation to the modification application. The following is a brief summary of the Department's comments:

- In the absence of an order from the Land and Environment Court that the approvals are invalid, there is no legal impediment to the Commission's considering and determining the application.
- The Department remains satisfied that Building E complies with the relevant provisions of the Residential Flat Design Code.
- Condition B3 requires the proposed car park to meet Australian Standards 2890.1-2004 and 2890.2:1989.
- Pittwater DCP21 requires parking to comply with the RTA *Guide to Traffic Generating Development* where the land use is not listed in the DCP. Further, Council has previously indicated that it would support visitor parking that is consistent with the RTA guideline for the development.
- The Department noted that all tandem spaces would be allocated to the same unit and has recommended a condition to ensure visitor spaces and units with 1 space are not stacked. It is also of the view that tandem parking is unlikely to create a

- significant increase in vehicle movements or adverse traffic impacts in the basement or on the local road network.
- Condition B4 requires any accessible parking requirements to meet relevant Australian Standards and the Building Code of Australia.
 - As to parking loading/unloading and car washing, the Department noted the proponent's comments that the garbage loading area would be shared as a loading/unloading area for other services and the extra space could be used for car washing. The Department recommends the Commission to consider allocating a designated space for car washing and require appropriate construction as a wash bay.
 - The design and provision of bicycle racks comply with Condition B13 and meet the relevant Australian Standard.
 - The provision of storage unit within individual apartment or in the basement or both is acceptable and those in the basement could be designed to be accessible.
 - The Department considered that safety can generally be managed through good lighting and signposting/delineation. However, the Commission may consider imposing a condition requiring security measures to be installed in the basement.
 - The Department raised no issue with the internal modifications to Buildings A, B and C to include studies and minor reconfigurations within the units as these works resulted in changes to achieve compliance with the RFDC. The studies are too small and lack solar access and natural ventilation to be capable of conversion into bedrooms. Thus there is no reason to adjust the Section 94 contributions.
 - The proposed modification would maintain the minimum deep soil planting area requirement of 50% of the site contained in Council planning controls
 - The car parking ventilation design is a matter for the Certifying Authority to consider at the construction certificate stage.

Commission's Comments and Determination

Following careful consideration of the Director General's assessment report, Council's submission and the proponent's response to Council's submission and DOP response to the Pittwater submission, the Commission is satisfied that the issues raised by Pittwater Council have been satisfactorily addressed by the Proponent and the Department. Particularly the Commission noted that:

- The earlier approvals still stand and the court challenge is not a matter for this Commission to consider.
- DCP21 permits stack parking if the spaces are for the same unit. The applicant has indicated that experience in other developments where stack parking occurs indicates that residents understand the parking conditions and would manage accordingly. However, the Commission considers that there should be an amendment to the proposed condition B13d to ensure that stacked spaces are allocated to one unit on title.
- The proposed studies in Buildings A, B and C are too small in size and located in the middle of the units with no direct solar access or natural ventilation to be used as a bedroom.
- Pittwater Council previously agreed that visitor parking should be consistent with the RTA guidelines and the proposed number of spaces meets the RTA requirements.
- It is proposed to use the extra parking space as a car washing space. The Commission agreed and a condition is included accordingly to ensure a designated space with appropriate environmental controls is provided for car washing.
- The proponent proposed to install CCTV and intercom for the basement level to ensure the security and safety of the basement car park. The Commission considers it is appropriate to include a condition to ensure the proposed measures are implemented and properly maintained.

- There are conditions in the earlier approval to ensure that car parking design and layout, provision of bicycle racks and accessible parking will meet the relevant Australian Standards and Building Code of Australia.
- The Department confirmed that Building E complies with RFDC.

The Commission agrees with the Department's conclusion that the deletion of the lower basement level of car park will reduce excavation with flow on environmental benefits of minimising potential impact on groundwater. Hence the application should be approved subject to conditions recommended by the Department of Planning with minor amendment to Condition B13d and additional conditions in relation to car washing space and security.

Condition B13d should be amended to read "... 2 stacked spaces must be allocated **on title** to a single apartment...". Additional conditions include Conditions C21 and F20 concerning Crime Prevention Through Environmental Design measures and Conditions C22 and F21 in relation to car washing space.

Attachment 1 is the Instrument of Approval.



Janet Thomson
Commission Member



Garry Payne AM
Commission Member



Richard Thorp
Commission Member

Attachment 1
Instrument of Approval

Modification of Minister's Approval

Section 75W of the *Environmental Planning & Assessment Act 1979*

As delegate of the Minister for Planning and Infrastructure under delegation executed on 28 May 2011, we the Planning Assessment Commission of New South Wales (the Commission) approve the modification of the application referred to in Schedule 1, subject to the conditions in Schedule 2.



Janet Thomson
Member of the Commission



Garry Payne
Member of the Commission



Richard Thorp
Member of the Commission

Sydney

2011

SCHEDULE 1

Project Approval:

MP 10_0177 granted by the Planning Assessment Commission on 18 January 2011.

For the following:

Stage 1 Project Approval for demolition of the existing buildings and structures on site, tree removal, excavation, earthworks, flood mitigation works, construction of 7 residential buildings, basement parking, childcare centre, external road works, internal public access roads, public pedestrian and cycle way, Asset Protection Zone, environmental buffer areas, ecological rehabilitation and landscaping works.

At:

14-18 Boondah Road, Warriewood (Lot 20 in DP 1080979).

Proposed Modification:

MP 10_0177 MOD 1: Modification includes:

- Deletion of a basement level and provision of a single storey basement car park containing a total of 474 car parking spaces (428 resident parking spaces, 362 of which are in a stacked formation, and 46 visitor parking spaces), 98 bicycle racks, 187 storage units and associated modifications to deep soil planting area, stair/lift locations and associated minor modifications at podium level.
- General internal layouts to Buildings A, B and C which include provision of studies.

SCHEDULE 2

CONDITIONS

The above approval is modified as follows:

- a) Condition A1 is amended by the insertion of the **bold and underlined** words/numbers and deletion of the ~~struck-out words/numbers~~ as follows;

A1. Development in Accordance with Plans and Documentation

The development will be undertaken in accordance with MP No. 10_0177 and the Environmental Assessment dated March 2010, prepared by Architectus, except where amended by the Preferred Project Report dated September 2010, prepared by Architectus, **the Section 75W Modification dated May 2011, prepared by Meriton Apartments Pty Limited** and the following drawings:

Architectural Drawings				
Drawing No.	Revision	Name of Plan	Drawn By	Date
DA00	B	Cover Sheet	Meriton Apartments Pty Ltd	6/08/2010
<u>DA00</u>	<u>D</u>	<u>Cover Sheet (S75W Application)</u>	<u>Meriton Apartments Pty Ltd</u>	<u>30/05/2011</u>
DA01	B	Overall Site Staging Plan	Meriton Apartments Pty Ltd	13/08/2010
<u>DA01</u>	<u>D</u>	<u>Overall Site Staging Plan</u>	<u>Meriton Apartments Pty Ltd</u>	<u>30/05/2011</u>
DA02	B	Site Plan	Meriton Apartments Pty Ltd	12/08/2010
DA03	B	Carparking Plan 1	Meriton Apartments Pty Ltd	12/08/2010
DA04	B	Carparking Plan 2	Meriton Apartments Pty Ltd	12/08/2010
<u>DA04</u>	<u>C</u>	<u>Car parking Plan</u>	<u>Meriton Apartments Pty Ltd</u>	<u>30/05/2011</u>
DA05	B	Podium Plan	Meriton Apartments Pty Ltd	12/08/2010
<u>DA05</u>	<u>D</u>	<u>Podium Plan</u>	<u>Meriton Apartments Pty Ltd</u>	<u>30/05/2011</u>
DA06	B	Typical Floor Plan (Level 2)	Meriton Apartments Pty Ltd	13/08/2010
<u>DA06</u>	<u>E</u>	<u>Typical Floor Plan (Level 1 & 2)</u>	<u>Meriton Apartments Pty Ltd</u>	<u>31/05/2011</u>
DA07	B	Deep Planting	Meriton Apartments Pty Ltd	13/08/2010
<u>DA07</u>	<u>D</u>	<u>Deep Planting</u>	<u>Meriton Apartments Pty Ltd</u>	<u>30/05/2011</u>
DA10	B	Street Elevations	Meriton Apartments Pty Ltd	04/08/2010
DA11	B	Site Sections	Meriton Apartments Pty Ltd	03/08/2010
<u>DA11</u>	<u>D</u>	<u>Site Sections</u>	<u>Meriton Apartments Pty Ltd</u>	<u>30/05/2011</u>
DA20	B	Building A Plans & Elevations	Meriton Apartments Pty Ltd	08/08/2010
<u>DA20</u>	<u>D</u>	<u>Building A Plans & Elevations</u>	<u>Meriton Apartments Pty Ltd</u>	<u>31/05/2011</u>
DA21	B	Building B Plans & Elevations	Meriton Apartments Pty Ltd	03/08/2010
<u>DA21</u>	<u>D</u>	<u>Building B Plans & Elevations</u>	<u>Meriton Apartments Pty Ltd</u>	<u>31/05/2011</u>

DA22	B	Building C Plans & Elevations	Meriton Apartments Pty Ltd	03/08/2010
<u>DA22</u>	<u>D</u>	<u>Building C Plans & Elevations</u>	<u>Meriton Apartments Pty Ltd</u>	<u>31/05/2011</u>
DA23	B	Building D Plans & Elevations	Meriton Apartments Pty Ltd	04/08/2010
DA24	B	Building E Plans & Elevations	Meriton Apartments Pty Ltd	03/08/2010
DA25	B	Building F Plans & Elevations Sheet 1	Meriton Apartments Pty Ltd	06/08/2010
DA26	B	Building F Plans & Elevations Sheet 2	Meriton Apartments Pty Ltd	13/08/2010
DA28	B	Building G Plans & Elevations	Meriton Apartments Pty Ltd	03/08/2010
DA30	B	Childcare Pool Plans & Elevations	Meriton Apartments Pty Ltd	13/08/2010
DA70	B	Typical Unit Plans	Meriton Apartments Pty Ltd	06/08/2010
Landscape Plan				
Drawing No.	Revision	Name of Plan	Drawn By	Date
LA000	B	Title Sheet	Site Image Landscape Architects	13/08/10
LA101	B	Landscape Masterplan Vegetation Plan	Site Image Landscape Architects	13/08/10
LA102	B	Landscape Masterplan Landscape Management Zones	Site Image Landscape Architects	13/08/10
Other				
Drawing No.	Revision	Name of Plan	Drawn By	Date
C025	P1	Site Earthworks Plan and Section	AT&L Civil Engineers and Project Managers	07/09/10
C001	P1	Cover Sheet	AT&L Civil Engineers and Project Managers	26/07/10
C002	P1	Notes and Legends	AT&L Civil Engineers and Project Managers	26/07/10
C003	P4	General Arrangement Plan	AT&L Civil Engineers and Project Managers	12/08/10
C004	P2	Typical Road Cross Sections Sheet 1	AT&L Civil Engineers and Project Managers	26/7/10
C005	P1	Typical Road Cross Sections Sheet 2	AT&L Civil Engineers and Project Managers	26/7/10
C006	P1	Typical Road Cross Sections Sheet 3	AT&L Civil Engineers and Project Managers	26/7/10
C007	P2	Typical Road Cross Sections Sheet 4	AT&L Civil Engineers and Project Managers	12/08/10
C008	P1	Roadworks Details Sheet 1	AT&L Civil Engineers and Project Managers	26/7/10
C009	P1	Roadworks Details Sheet	AT&L Civil Engineers and	26/7/10

		2	Project Managers	
C010	P2	Roadworks and Stormwater Drainage Plan Sheet 1	AT&L Civil Engineers and Project Managers	26/7/10
C011	P2	Roadworks and Stormwater Drainage Plan Sheet 2	AT&L Civil Engineers and Project Managers	26/7/10
C012	P3	Roadworks and Stormwater Drainage Plan Sheet 3	AT&L Civil Engineers and Project Managers	12/08/10
C013	P2	Roadworks and Stormwater Drainage Plan Sheet 4	AT&L Civil Engineers and Project Managers	12/08/10
C014	P6	Roadworks and Stormwater Drainage Plan Sheet 5	AT&L Civil Engineers and Project Managers	12/08/10
C015	P4	Roadworks and Stormwater Drainage Plan Sheet 6	AT&L Civil Engineers and Project Managers	2/08/10
C020	P1	Road Longitudinal Sections Sheet 1	AT&L Civil Engineers and Project Managers	04/06/10
C021	P1	Road Longitudinal Sections Sheet 2	AT&L Civil Engineers and Project Managers	04/06/10
C040	A	Bio Retention Basin A Detail Plan	AT&L Civil Engineers and Project Managers	29/10/10
C041	A	Bio Retention Basin B Detail Plan	AT&L Civil Engineers and Project Managers	29/10/10
C035	P1	Pavement Plan Sheet 1	AT&L Civil Engineers and Project Managers	26/07/10
C036	P1	Pavement Plan Sheet 2	AT&L Civil Engineers and Project Managers	26/07/10
C037	P1	Pavement Plan Sheet 3	AT&L Civil Engineers and Project Managers	26/07/10
C038	P1	Pavement Plan Sheet 4	AT&L Civil Engineers and Project Managers	26/07/10
N/A	N/A	Letter regarding public open space dedication	Meriton Apartments Pty Ltd	11/11/10

except for:

- any modifications which are 'Exempt and Complying Development' as identified in State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 or as may be necessary for the purpose of compliance with the BCA and any Australian Standards incorporated in the BCA; and
- otherwise provided by the conditions of this approval.

- b) Condition B13 is amended by the insertion of the **bold and underlined** words/numbers and deletion of the ~~struck out words/numbers~~ as follows;

B13 Car and Bicycle Parking Provision and Storage

- a. ~~Car parking provision shall meet the requirements of Pittwater DCP 21. A total of 474 car parking spaces are to be provided within the basement, including a minimum of 46 visitor parking spaces.~~ **A total of 474 car parking spaces are to be provided within the basement, including a minimum of 46 visitor parking spaces.** Visitor parking shall include a minimum of 2 spaces

- designated for persons with a disability. The design and construction of the parking area and parking spaces must be in accordance with AS2890.1 and AS2890.6.
- b. Secure bicycle parking is to be provided for 98 bicycles on site, designed and constructed in accordance with AS2890.3.
 - c. Storage areas for each dwelling are to be provided within the unit and/or basement or part lot.
 - d. **The 362 parking spaces in a stacked formation shall be allocated to the 2 or 3 bedroom units, ie. 2 stacked spaces must be allocated on title to a single apartment. All studio and 1 bedroom units, which are only allocated 1 parking space, must be provided with a single unstacked space. The 46 visitor parking spaces must not comprise stacked spaces.**
- c) Condition C21 to be added by the insertion of the **bold and underlined** words as follows;

“C21 CPTED measures within the basement car park

To minimise the opportunity for crime and in accordance with CPTED principles, the development shall incorporate the following to the satisfaction of the Certifying Authority prior to issue of the relevant Construction Certificate:

- i. **In order to maintain a safe level of visibility for pedestrians within the development, adequate lighting to AS1158 is to be provided to the basement car park, including entry/exits, lift and stair access, storage and bike racks and waste storage areas.**
This lighting shall ensure consistency to avoid contrasts between areas of shadow/illumination and preferably be solar powered and with an automatic/timed switching mechanism, motion sensor or equivalent for energy efficiency. Such lighting shall be installed and directed in such a manner so as to ensure that no nuisance is created for surrounding properties or to drivers on surrounding streets. Car parking lighting system is to be controlled by sensors to save energy during periods of no occupant usage.
 - ii. **The soffit of the basement parking area shall be painted a gloss white (or equivalent) in order to ensure good visibility, surveillance and less reliance on artificial lighting lux levels.**
 - iii. **Adequate signage within the basement to identify facilities, including visitor and accessible parking spaces, entry/exit points, and direct movement within the development.**
 - iv. **Provision of 24 hour security surveillance over the basement car park by means of monitored CCTV cameras and on-site management/security”.**
- d) Condition F20 to be added by the insertion of the **bold and underlined** words as follows;

“F20. CPTED measures within the basement car park

To minimise the opportunity for crime and in accordance with CPTED principles, the development shall be constructed in accordance with the approved plans/details in accordance with Condition C21 of this Project Approval”.

- e) Condition C22 to be added by the insertion of the **bold and underlined** words as follows;

“C22 Car washing facilities within the basement

The development shall incorporate a minimum of 1 car washing bay with appropriate construction including water supply, bunding, drainage and collection/treatment of water. Appropriate plans/details are to be submitted to the satisfaction of the Certifying Authority prior to issue of the relevant construction certificate”.

- f) Condition F21 to be added by the insertion of the **bold and underlined** words as follows;

"F21 Car washing facilities within the basement

A car washing bay is to be provided within the basement in accordance with the approved plans/detailed in accordance with Condition C22 of this Project Approval".

END OF MODIFICATIONS TO MP 10_0177