



MERITON

Making Luxury Apartments Affordable

13 May 2009

Mr Andrew Smith
Department of Planning
23-33 Bridge Street
SYDNEY NSW 2001

Dear Mr Smith,

**RE: Section 96(1A) Application to Modify Consent Condition B2 of DA No.126-05-2004
3-11 McIntyre Street and 4-14 Merriwa Street, Gordon.**

Pursuant to Section 96(1A) of the Environmental Planning and Assessment Act 1979, consent is sought from the Department of Planning to amend consent condition *B2 – Confirmation of Areas of Determination* Notice DA No.126-05-2004.

INTRODUCTION

The subject site is located west of the Pacific Highway at Gordon and consists of 10 allotments, 6 of which front Merriwa Street and 4 front McIntyre Street. Collectively the allotments have a site area of 8,434sqm. The street address of the development site is 3-11 McIntyre Street and 4-14 Merriwa Street, as shown below:



On 1 August 2005, the Department of Planning granted a modified development consent (MOD 48-03-2005 of DA 126-05-2004) subject to conditions, to the following development on the subject site:

- (1) Demolition of 9 existing dwellings and associated structures on the site;*
- (2) Relocation and adaptive re-use of a cottage on the site for communal use by the development's residents;*
- (3) Construction of 2 buildings containing a total of 140 apartments comprising;*
 - (a) McIntyre St building – 6 storey building containing 5 x 1 bedroom, 20 x 2 bedroom and 27 x 3 bedroom dwellings;*
 - (b) Merriwa St building – 7 storey building containing 21 x 1 bedroom, 52 x 2 bedroom and 15 x 3 bedroom dwellings;*
- (4) Construction of a basement structure under the McIntyre St building containing 101 car parking spaces on three levels;*
- (5) Construction of a basement structure under the Merriwa St building containing 129 car parking spaces on three levels;*
- (6) Associated landscaping works; and*
- (7) Strata title subdivision of the completed development.*

Subsequent to this, on 29 April 2009 the Department issued a Section 96 approval that permitted amendments to consent condition *B8 – Remediation of Land*.

PROPOSED AMENDMENTS

Part B, Condition *B2 – Confirmation of Areas* of the development consent requires verification of total floor area and deep soil area prior to the release of a Construction Certificate for *above ground works*. This is problematic for this site in particular because of the considerable slope of the land and the wording of the condition would prevent a PCA from issuing a CC because parts of the basement rise *above ground* (refer to attached plans). To achieve the intended outcome of the condition (that floor areas and deep soil areas be confirmed while the basement is under construction) it is proposed to reword the condition in the following manner:

B2 Confirmation of Areas

The total floor space of the development shall be calculated in accordance with the definition of floor space in the Ku-ring-gai Sites Report and shall not exceed 14,867m². The floor areas to be excluded from the total floor space calculation shall be in accordance with the floor space exclusions referred to in the Ku-ring-gai Sites Report's General Controls and Guidelines. Storage, garbage areas, plant rooms and car parks, with a floor level above natural ground level, must not be counted as floor space exclusions.

The total deep soils area to be included in the development shall be no less than 2,711m². The total deep soils area calculations may include the footprint areas of the relocated heritage item, the swimming pool, and suitably pervious paving areas of minimum dimensions required for access to and between the buildings and around the swimming pool. Areas having a dimension of less than 3 metres shall be excluded from the deep soil area calculations.

*Prior to the issue of the first Construction Certificate for above ground works **(with the exception of basement car parking levels that protrude above ground level, which may also be directly/physically connected to a residential unit/s due to the slope of the land)**, the applicant shall submit for the PCA's approval, a qualified surveyor's certificate certifying compliance with the above areas, accompanied by dimensioned site and floor plans at a scale of 1:200, identifying the deep soil and floor space areas that have been included and excluded from the total deep soil area and total floor space calculations. A copy of the documents approved by the PCA is to be referred to the Department.*

REASONS FOR MODIFICATION

The requested modification is required to allow for the basement construction to take place while the floor area and deep soil area is being finalised. The current condition wording prohibits a CC from being issued for the basement levels because the site has a steep slope and parts of the basement rise above ground level.

Portions of the basement are also directly connected or attached to residential unit/s. In this instance, it is requested that a CC can also be issued that allows for the construction of the unit. This is necessary as the basement floors and roof are constructed as one entire horizontal structure, which cannot abruptly stop where residential unit/s adjoin.

APPLICABILITY OF SECTION 96(1A)

The application of Section 96(1A) is considered to be warranted in this case for the following reasons:

- The nature of the approved development, being erection of a residential development, is unchanged, and
- The appearance of the building, functionality and relationship to adjoining properties will remain unchanged.

For the above reasons, the development as modified is considered to be substantially the same development as originally granted development consent.

CONSIDERATION

The proposed amendment has been assessed having regard to the relevant matters for consideration under Section 79(C) of the Environmental Planning and Assessment Act 1979. The matters are assessed under the following sections.

Environmental Planning Instruments

The proposed amendment to the condition of consent does not affect the compliance of the development with the relevant planning instruments. The amendment seeks to better facilitate the orderly and economic development of the site by allowing basement construction works to commence while the technical requirements of condition B2 are being resolved.

Impact of the Development

Suitability of the site

It is considered that the proposed modification does not change the original assessment as to the site's suitability for this development.

Public Interest

The site is to be developed in an orderly and economic manner; this modification application seeks to achieve this.

CONCLUSION

The proposal is considered to satisfy the relevant heads of consideration under Section 79C of the Environmental Planning and Assessment Act 1979.

In the circumstances, rewording of consent condition B2 to allow for commencement of basement construction works is considered to be a reasonable proposal.

Yours sincerely

MERITON APARTMENTS PTY LIMITED



BENJAMIN BLACK
SENIOR TOWN PLANNER