



MERITON

Making Luxury Apartments Affordable

15 May 2009

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

Dear Mr Smith,

**S.96(1A) Application to Modify Consent Condition B20 and B34 of DA No.126-05-2004
3-11 McIntyre Street and 4-14 Merriwa Street, Gordon.**

Pursuant to Section 96(1A) of the EP&A Act 1979, consent is sought from the Department of Planning to amend consent conditions *B20 – Bond for Protection of Tree Species* and *B34 – Bond for Repair of Public Infrastructure* 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

Existing consent condition B20 requires the payment of a \$5000 bond for the protection of trees that are located on private property. This is an illegal condition as it is not in accordance with Section 80A(6) of the Environmental Planning & Assessment Act, 1979, which specifies that bonds can only be imposed with relation to protection/restoration of public infrastructure. It is proposed to delete condition B20 (Condition C13 will protect trees on site as required).

~~**B20 — Bond for Protection of Tree Species**~~

~~A cash/bon guarantee of \$5000 shall be lodged with the Council prior to the release of the Construction Certificate for below ground works for Stage A to ensure that Angophora floribunda (Rough Barked Apple) trees Nos 47, 49 and 50 on the Merriwa St site are maintained in the same condition as found prior to commencement of site development work.~~

~~The bond will be returned following issue of the final Certificate of Compliance, provided the trees are undamaged.~~

~~In the event that any specified trees are found damaged, dying or dead as a result of any negligence by the applicant or its agent, or as a result of the construction works at any time during the construction period, the Council will have the option to demand the whole or part therefore of the bond.~~

Condition B34 requires lodgement of a \$640,000 bond to cover the cost of any necessary restoration works to public infrastructure that may be required as a result of construction works that occur with relation to the proposed development. This amount is considered to be excessive and it far exceeds similar bond payments made for other Development Applications within the Ku-ring-gai Council area. We propose to amend condition B34 as follows:

B34 Bond for repair of public infrastructure

Prior to the issue of the first Construction Certificate for below ground works the applicant shall lodge a ~~\$640,000~~ \$136,000 cash bond with Council. This bond is to cover the restoration by Council of any damage to public infrastructure, caused as a result of construction works, in close proximity to the subject development. The bond will also cover the finishing of any incomplete works required in the road reserve under this consent and/or as part of the approved development. The bond shall be refundable following completion of all works relating to the proposed development or at the end of any maintenance period stipulated by consent conditions upon approval by Council's Engineers. Further, Council shall have full authority to make use of the bond for such restoration works as deemed necessary by Council in the following circumstances:

Where the damage constitutes a hazard in which case Council may make use of the bond immediately, and

The applicant has not repaired or commenced repairing the damage within 48 hours of the issue by Council in writing of instruction to undertake such repair works.

REASONS FOR MODIFICATION

Condition B20 – Bond for Protection of Tree Species

Condition B20 is proposed to be deleted as it is an illegal condition that is not in accordance with Section 80A(6) of the EP&A Act, 1979. Nevertheless, existing consent condition C13 will ensure that the subject trees are adequately protected.

Condition B34 – Bond for Repair of Public Infrastructure

Condition B34 requires the lodgement of a \$640,000 cash bond, which is an excessive amount given the limited potential for restoration of public infrastructure that may be required as a result of the proposed development. Furthermore, the required bond is substantially more than bonds that have been charged for similar developments in the Ku-ring-gai Council area.

By way of example, our approved DA at 2-12 Avon Rd, Pymble is for the construction of 143 apartments over basement car parking and it has street frontage to Avon Road of approximately 125m, and it requires payment of a \$100,000 bond. In comparison, the approved development on the subject site is for 140 apartments over basement car parking with a combined street frontage of approximately 170m, yet a \$640,000 bond is required. This example demonstrates that the bond required for the subject site is disproportionate to the amount of restoration work that may be required to public infrastructure.

Per lineal metre, the bond required for Avon Rd, Pymble equates to \$800. Given that the subject site has a combined street frontage of 170m, the bond payable should be in the order of \$136,000 instead of the \$640,000 stated in the existing consent condition.

Notwithstanding the above reasons for reducing the bond payable, consent condition *F1 Issue of Occupation Certificate* will prevent any occupation of the development until such time that the required road and public infrastructure works are completed. On this basis, to require payment of any bond would seem superfluous.

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 amendments proposed to the existing consent conditions do not affect the level of compliance that the development has with the relevant planning instruments. This modification application seeks to better facilitate the orderly and economic development of the site by requiring the payment of bonds that are in accordance with the requirements of Section 80A(6) of the EP&A Act, 1979, and consistent with other development consents issued within the Kuring-gai LGA.

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, deletion of consent condition B20 and rewording of consent condition B34 with relation to the payment of bonds is considered to be reasonable and approval is recommended.

Yours sincerely

MERITON APARTMENTS PTY LIMITED



BENJAMIN BLACK
SENIOR TOWN PLANNER