



MODIFICATION REQUEST:
Albert Avenue & Thomas Street, Chatswood – Thomas
Street Car Park
(MP09_0066 MOD 4)
Basement encroachment under Fleet Lane



Director-General's Environmental Assessment Report
Section 75W of the
Environmental Planning and Assessment Act 1979

December 2012

© Crown copyright 2012
Published December 2012
NSW Department of Planning & Infrastructure
www.planning.nsw.gov.au

Disclaimer:

While every reasonable effort has been made to ensure that this document is correct at the time of publication, the State of New South Wales, its agents and employees, disclaim any and all liability to any person in respect of anything or the consequences of anything done or omitted to be done in reliance upon the whole or any part of this document

1. BACKGROUND

This report is an assessment of a modification application (MP09_0066 MOD 4) lodged under section 75W of the Environmental Planning and Assessment Act 1979 (EP&A Act) by the Meriton Group seeking approval to modify the project approval for the construction of a new mixed use development referred to as Welles Thomas Plaza.

The modification application proposes a minor encroachment of the basement car park under Fleet Lane. The encroachment extends for approximately 1.791-1.882 metres over the 5 basement levels of the building.

1.1 The Site

Commonly known as the former Thomas Street Car Park, the site comprises eleven properties (Lots 13, 23-30 in DP 2983 and Lots A & B in DP 381223) and is located between Albert Avenue and Thomas Street, Chatswood. Part of the north-western boundary of the site comprises Fleet Lane, a Willoughby Council owned laneway. The Pacific Highway is to the west of the site and the North Shore rail line is to the east of the site- refer **Figure 1**.

The site is situated within the Chatswood CBD, which is a Major Regional Centre in the inner north metropolitan area, and is within the Willoughby Local Government Area.

The site is situated towards the south-western corner of the Chatswood CBD with Albert Avenue demarcating the southern extent of the defined CBD/ Chatswood Town Centre. It sits within the Chatswood Commercial Precinct which extends further to the north of the site.

The site is within 200 metres of Chatswood railway station which is an interchange of both the North Shore rail line and the Epping – Chatswood rail line. The Chatswood Transport Interchange is also located nearby. The proximity of both of these public transport facilities affords the site a good connectivity to a wide range of public transport services.

The Retail Precinct is located on the eastern side of the rail line to the north east of the site, and open space uses are provided to the south-west in the form of Chatswood Park and Chatswood Oval.

The site takes the form of an L-shaped block bounded by Thomas Street to the north, Albert Lane to the west, Albert Avenue to the south and low rise commercial buildings to the east. The site has an area of 4,323m² and is currently used as an at-grade, off street public car park for 156 vehicles in metered parking bays and is currently owned by Willoughby City Council (Council). It is divided into two car parking areas which are separated by Fleet Lane running east-west through the middle of the site. The southern portion of the car park is accessed from both Albert Avenue and Fleet Lane. The northern portion of the site is accessed from Thomas Street. Besides the car parking facilities and a few small trees there are no substantial improvements on the site.

As stated above, Council is the land owner of Fleet Lane. Council is also the roads authority for Fleet Lane pursuant to the provisions of the *Road Act 1993*.

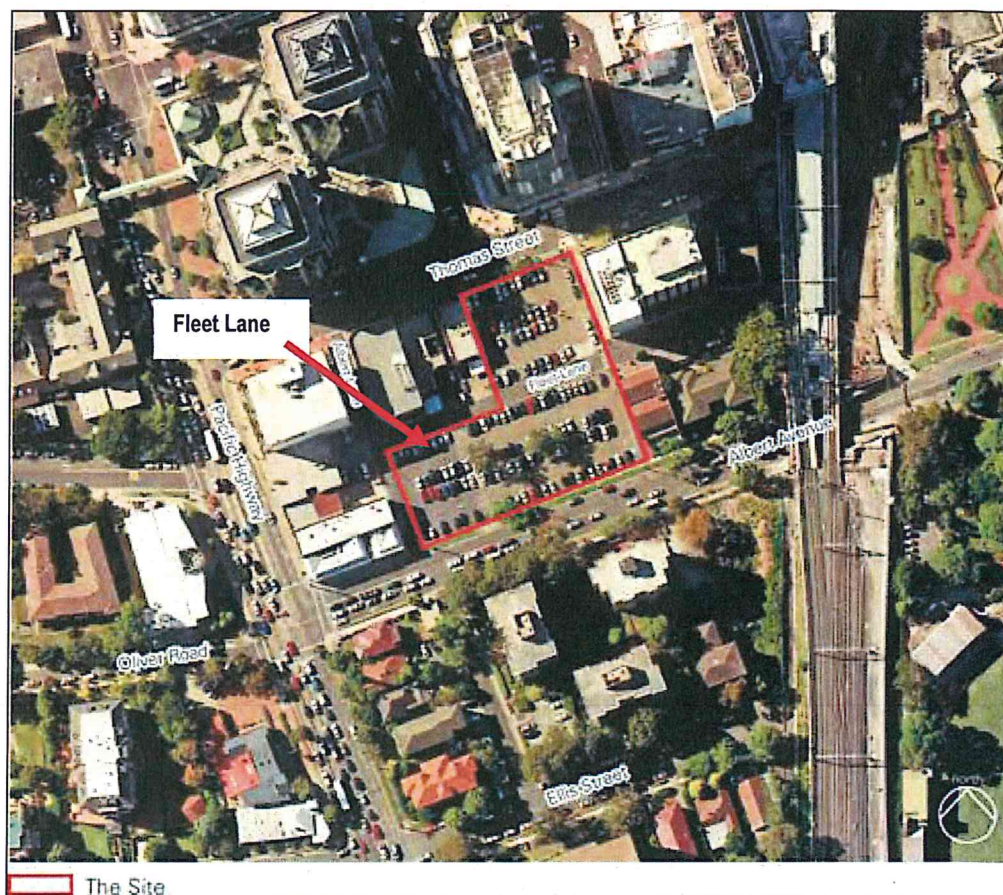


Figure 1: Aerial view of the site

1.2 Background

On 28 September 2010, the then Minister for Planning approved a Project Application (MP09_0066) for the construction of a mixed use commercial, retail and residential development contained within two towers, a basement level car park including a public car park, a through-site pedestrian link and works to the public domain.

On 7 June 2012, the then A/Director, Metropolitan and Regional Projects South approved a section 75W modification application (MP09_0066 MOD 1) for the staging of construction related conditions.

On 1 November 2012, the Planning Assessment Commission, as delegate of the Minister for Planning and Infrastructure, approved a section 75W modification application (MP09_0066 MOD 2) for the following:

- Modifications to the adaptable unit requirements within the development.
- Amend to the rainwater harvesting system.
- Amendment of stormwater design relative to Fleet Lane.
- Amendment to Condition C15 to reword the requirement in relation to the dilapidation report for adjoining properties.

The department notes that a further modification application, MP09_0066 MOD3, was lodged by Meriton Group on 31 August 2012. This modification application seeks approval for various design amendments to the project including:

- a new residential floor level, changes to unit mix and podium uses including a new child care centre of Building 1;
- to change the approved use, layout and design of Building 2 from commercial offices to serviced apartments (302 serviced apartments) and

- including a new mezzanine basement level to accommodate back-of-house facilities for the serviced apartments; and
- Minor design amendments to the central public open space.

MP09_0066 MOD 3 also proposes changes to the basement design of the building including to the internal layout of the car park within the encroachment under Fleet Lane. Technically, MP09_0066 MOD 3 relies on the determination of MP09_0066 MOD 4 (refer description of MOD 4 in Section 3.0 of this report below) in the first instance, as this application deals specifically with the extent of the basement encroachment and the legal, administrative and operational requirements of Council associated with facilitating the basement encroachment under Fleet Lane.

The department notes that the proponent is currently preparing a response to submissions received with respect to MP09_0066 MOD 3.

The department also notes that construction has not commenced on the site but is imminent and is subject to the determination of the MP09_0066 MOD 4 (basement encroachment).

2. STATUTORY CONTEXT

2.1 Modification of the Minister's Approval

Clause 3 of Schedule 6A of the EP&A Act provides that the provisions of Part 3A including section 75W continues to apply to "transitional Part 3A projects" and relevantly applies to this modification application.

The department considers that the Minister could reasonably form the view that the modification request is within the scope of section 75W of the EP&A Act, is permissible and therefore, is capable of being approved as a modification under section 75W of the EP&A Act.

2.2 Environmental Assessment Requirements

Section 75(3) of the Act provides the Director-General with scope to issue Environmental Assessment Requirements (DGRs) that must be complied with before the matter will be considered by the Minister. Given the minor nature of the amendment, DGRs were not issued for this modification as the application was not considered to give rise to new assessment issues.

3. PROPOSED MODIFICATION

On 12 November 2012, the proponent lodged a modification application seeking to amend Major Project Approval MP09_0066 to permit an encroachment of the basement car park under Fleet Lane. The encroachment under Fleet Lane extends for approximately 1.791-1.882 metres over the 5 basement levels of the building. The proposal is also to create a stratum lot for this land.

This encroachment would allow for the construction of the north-western extent of a number of car parking spaces, car park utility rooms and plant room and part of the structural western wall (including shoring wall and support pillars) of the basement, the design of which is illustrated in the plans which accompany MP09_0066 MOD 3. Plans of the basement car park associated with the encroachment (MP09_0066 MOD 4) and the design refinement of the basement levels of the building (MP09_0066 MOD 3) are provided at **Appendix D** and **Appendix B**, respectively.

The application (MOD 4) is supported by a draft plan of subdivision for the creation of the stratum allotment defined by the encroachment (refer **Appendix B**). Administratively, this stratum allotment would allow for the subject land under Fleet Lane to be the subject of a future road closure under the *Road Act 1993*, and for the proponent to then purchase the stratum lot from Council for consolidation into the development site.

The department notes that an encroachment of the basement structure under Fleet Lane (albeit to a lesser extent than that shown on plans accompanying MP09_066 MOD 3) is shown on the approved development plans. However, this matter has been the subject of some conjecture, with Council claiming that approval as landowner was not previously issued for this encroachment. With respect to this matter, the department submits that appropriate terms relevant to encroachment are not currently included in the Project Approval. **Figures 2 and 3** below, show the extent of the basement encroachment in the approved development plans and as currently proposed in this modification application.

Accordingly, this application is proposed to remove any uncertainty around this matter, to clearly define the extent of the encroachment and the terms upon which Council, as landowner, grants approval for the works and to modify the Project Approval to include Council's terms.

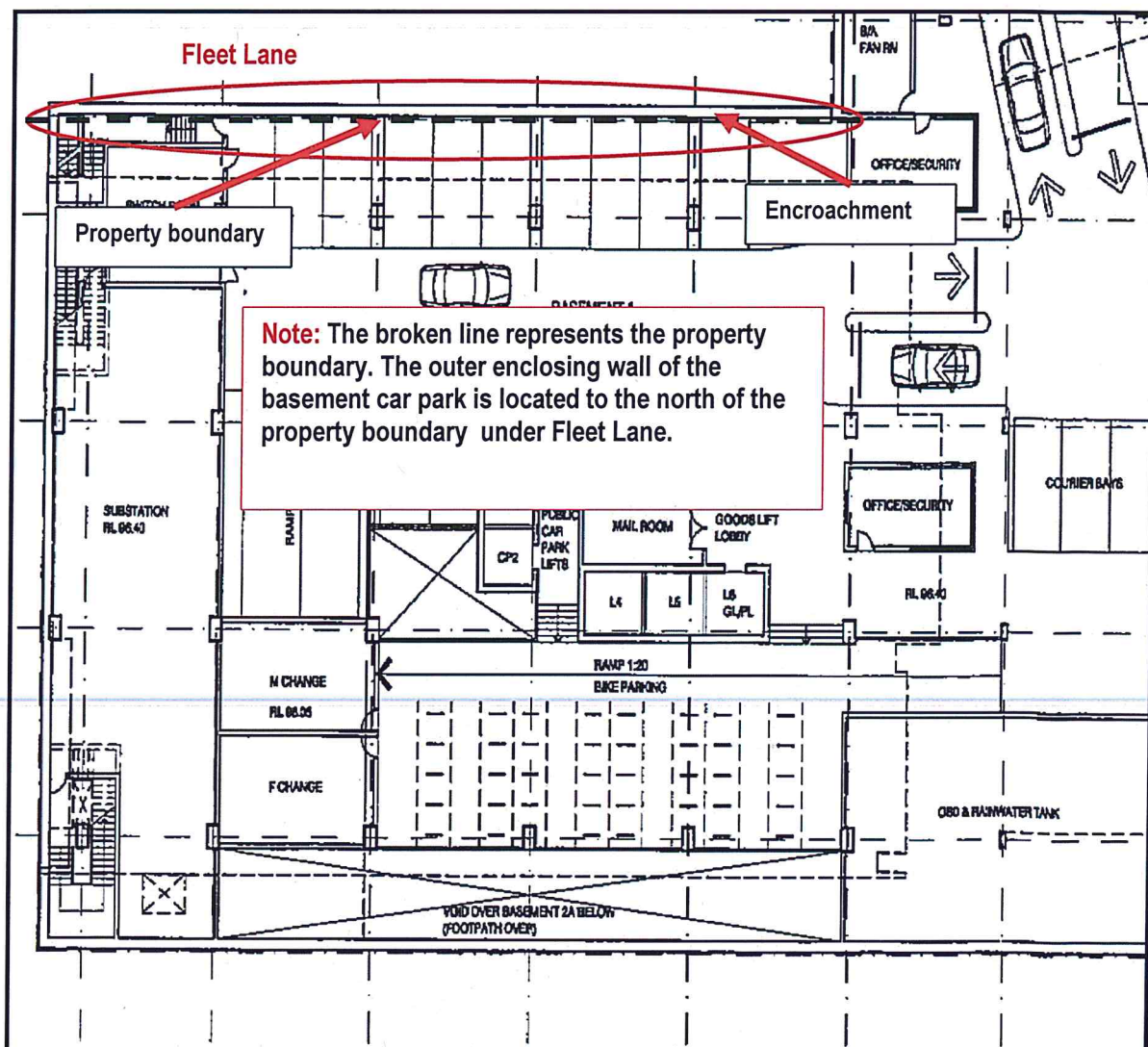


Figure 2: Extract from approved development plan showing encroachment under Fleet Lane- Basement Level 1

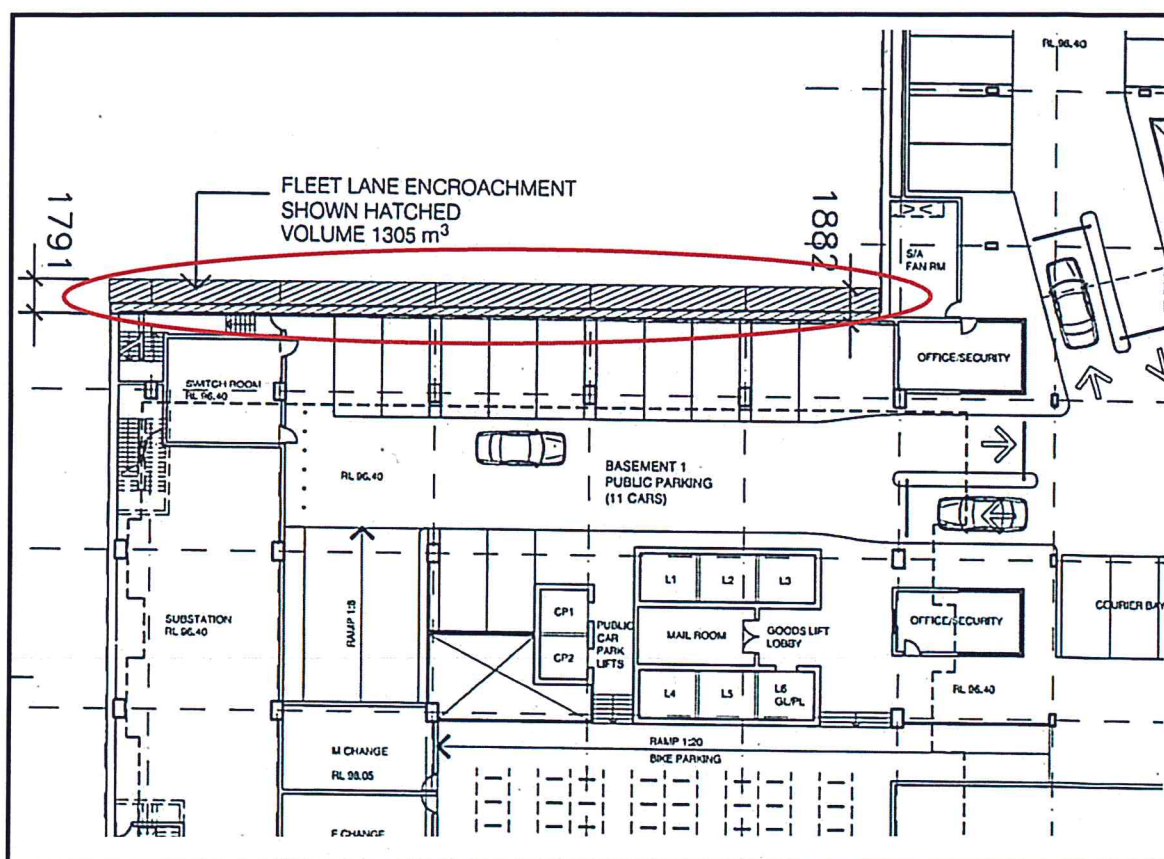


Figure 3: Extent of proposed encroachment under Fleet Lane (MOD 4)

4. CONSULTATION AND SUBMISSIONS

In accordance with section 75X(2)(f) of the EP&A Act, the modification request was made publicly available on the department's website. The department also consulted Willoughby City Council, as landowner of the laneway.

4.1 Council

Council considered the modification application at the Ordinary Council meeting held on 3 December 2012. At this meeting Council resolved to support the proposal subject to appropriate terms addressing the legal creation of the stratum lot and the transfer of ownership to the Meriton Group for consolidation in the development lot. Council's terms also included those matters relevant to the facilitating the construction and management of the Laneway prior to commencement of construction, during construction and on completion of construction works.

Specifically, the terms issued by Council require the following, as summarised below:

Prior to the issue of a construction certificate for the basement levels:

- Traffic Management Plan (TMP): that the TMP demonstrate that adequate access and manoeuvring is available to 20-24 Thomas Street (the neighbouring land to the development site) during construction.
- Public and adjoining occupation information: the preparation of a public and adjoining occupant information campaign to inform of any road changes well in advance of each stage.

- Stratum Subdivision: the preparation and approval of a draft stratum subdivision plan of Fleet Lane West for partial road closure demonstrating that the basement encroachment is wholly contained within the stratum. The draft plan is to be accompanied by a section 88b instrument to the satisfaction of Council addressing easement/s for support of the road structure and a positive covenant in favour of Council addressing the maintenance and repair of the basement structure, right to inspect, insurance and indemnity requirements and the extinguishment of the stratum under the road, should the site be redeveloped or the buildings demolished in the future.

Prior to the commencement of construction of the basement levels

- Road Pavement Reconstruction: the preparation of full engineering plans and specification for the reconstruction of the full width of Fleet Lane west. Approval is required to be obtained from Council as the roads authority under the *Roads Act 1993* for any construction works in the public road.
- Deed of Indemnity: that the proponent fully indemnifies Council and its representatives from all claims, demands and liability which may arise from the associated works.

Prior to the issue of an occupation certificate/prior to operation of the basement levels:

- Reconstruction of the pavement in Fleet Lane West: that the proponent construct the full width road pavement including any necessary associated works adjoining the full frontage of the development site to Fleet Lane West in accordance with Council's requirements.
- Purchase of stratum in Fleet Lane West: that the stratum subdivision be registered and the partial road closure gazetted for the sale of the stratum freehold interest to occur and consolidation of the stratum into the development site. The sale of the stratum lot is to be completed prior to an occupation certificate being issued for the encroaching structure.
- Maintenance of encroaching structure: that the owner (and any successor in title of the stratum) take responsibility for the maintenance of the structure and all fixtures and fittings and meet all associated costs.
- Costs of the stratum, encroaching structure and ongoing maintenance of the encroaching structure: that all costs associated with the maintenance of the encroaching structure be met by the developer or the owner at the time.
- Reinstatement of lighting in Fleet Lane West: the lighting poles at the corner of Fleet Lane West and Albert Lane be reinstated in a location to the satisfaction of Council.

Council's full submission including its consent as landowners is provided at **Appendix B**.

The department notes that the Meriton Group has reviewed Council's terms of approval and has agreed to the terms. Refer email correspondence provided at **Appendix E**.

4.2 Public Submissions

No public submissions were received in relation to this modification application.

5. ASSESSMENT

5.1 Basement design

As detailed above, the resolution of the extent of the basement encroachment is necessary to correspond with the refined layout of the basement illustrated in the plans accompanying MP09_0066 MOD 3 (refer **Attachment D**).

The proponent maintains that the encroachment of the basement under Fleet Lane is necessary to ensure compliance with various Australian Standards relevant to the construction and operation of basement car park. Additionally, the proponent contends that the minor encroachment will remove the need for the redesign of the basement levels and possibly additional basement levels.

As detailed above, the Council has raised no objection to the proposal subject to relevant new conditions being included in the Instrument of Approval. The department considers that the proposed amendment is minor in nature. Conditions relevant to the basement construction are already included in the Instrument of Approval, including the requirement for a construction management plan (B14), damage deposit against possible damage to council assets (B5) and a dilapidation report (C15). These conditions are imposed to prevent and minimise environmental impacts and to provide for the ongoing management of environmental issues and are relevant to the current modification application.

Subject to compliance with the Instrument of Approval, including those new terms relevant to the legal and administrative requirements of Council to give effect to the basement encroachment as detailed in Section 4.1 above, the department raises no objection to the proposal.

5.2 Changes to the Instrument of Approval

Changes to a number of conditions in the Instrument of Approval are required to reflect the modification proposal. The changes relate to Condition A2 and the insertion of new Conditions B6(g) and (h), B19, B20, B21, C19, C20, E41, E42, E43, E44 and E45 and are detailed in the Instrument of Modification at **Appendix C**.

6. CONCLUSION

The department has assessed the proponent's application and has considered the submission from Council, which includes terms relevant to the encroachment of the basement under Fleet Lane.

The department supports the amendment subject to the terms issued by Council which directly relate to the legal and administrative requirement relevant to facilitating the construction of the basement within the stratum under Fleet Lane.

The department's recommended Modifying Instrument of Approval is contained at **Appendix C**.

7. DELEGATION

On 14 September 2012, the Minister delegated his powers and functions under section 75W of the EP&A Act to the Director Metropolitan & Regional Projects North in cases where the relevant local council has not made an objection, a political disclosure statement has not been made and there are less than ten (10) public submissions in the nature of objections.

In this instance, a political disclosure statement has not been made, no public submissions were received by the department, and the Council's submission does not constitute an objection.

For the reasons outlined above, the terms of the Minister's delegation can be met and as such, the application can be determined under delegation by the Director, Metropolitan & Regional Projects North.

8. RECOMMENDATION

It is recommended that the Director, Metropolitan & Regional Projects North:

- (A) **Consider** the recommendations of this report;
- (B) **Approve** the modification, subject to conditions; under Section 75W of the *Environmental Planning and Assessment Act. 1979*, and
- (C) **Sign** the attached Instrument of Modification (**Appendix C**).

Team Leader
Metropolitan & Regional Projects North


14/12/12
Director
Metropolitan & Regional Projects North

APPENDIX A MODIFICATION REQUEST

http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=5245

APPENDIX B COUNCIL SUBMISSION

http://majorprojects.planning.nsw.gov.au/index.pl?action=list_submissions&job_id=5245

APPENDIX C RECOMMENDED MODIFYING INSTRUMENT

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 dated 14 September 2011, I approve the modification to the project application referred to in schedule 1, subject to the conditions in schedule 2.



Director,
Metropolitan and Regional Projects North

Sydney 14 December 2012

SCHEDULE 1

Project Approval:	MP09_0066 granted by the Minister for Planning and Infrastructure on 28 September 2010.
For the following:	Welles Thomas Plaza including: Mixed use development consisting of: • Southern commercial building consisting of a: - three storey podium; and - 18 storey commercial tower above. • Northern residential building consisting of a: - three storey podium; and - 26 storey residential tower above. • Five level basement; and • Public domain works.
At:	Lots 22 – 30 in DP 2983 Lot 13 in DP 2983 Lots A & B in DP 381223 Part of Fleet Lane
Modification:	MP09_0066 MOD 4: modification includes: • Encroachment of the basement car park structure into the road reserve of Fleet Lane. • Stratum subdivision to create a new lot defined by the encroachment of the basement car park structure into the road reserve of Fleet Lane. • Various modifications to the Instrument of Approval including to Condition A2 and the insertion of new Conditions B6(g) and (h), B19, B20, B21, C19, C20, E41, E42, E43, E44 and E45.

SCHEDULE 2

1. In Part A, amend Condition A2, as shown in *bold italics*:

Approved Plan/Details

- A2 The development will be undertaken in accordance with MP No. 09_0066 and the Environmental Assessment dated December 2009, prepared by JBA Urban Planning Consultants Pty Ltd, except where amended by the Preferred Project Report dated July 2010, prepared by JBA Urban Planning Consultants Pty Ltd, the further amendments contained within the additional submission by JBA dated 12 August 2010 and the following drawings:

Architectural Drawings prepared for the Environmental Assessment / Preferred Project Report by PTW Architects			
Drawing No.	Revision	Name of Plan	Date
A - 0001	B	Locality / context plan	18/12/09
A - 0002	B	Site analysis	18/12/09
A - 0090	B	Site / roof plan	18/12/09
A - 0100	B	Ground floor plan	18/12/09
A - 0101	B	Level 1 plan	18/12/09
A - 0102	B	Level 2 plan	18/12/09
A - 0103	B	Level 3-6 plan	18/12/09
A - 0104	B	Level 7-10 plan	18/12/09
A - 0105	B	Level 11-18 plan	18/12/09
A - 0106	B	Level 19-20 plan	18/12/09
A - 0107	B	Level 21-28 plan	18/12/09
A - 0108	B	Roof plant level plan	18/12/09
A - 0111	B	Basement 1 plan	18/12/09
A - 0112	B	Basement 2 plan	18/12/09
A - 0113	B	Basement 3 plan	18/12/09
A - 0114	B	Basement 4 plan	18/12/09
A - 0115	B	Basement 5 plan	18/12/09
A - 0121	B	North elevation	18/12/09
A - 0122	B	South elevation	18/12/09
A - 0123	B	East elevation – building 1 (residential)	18/12/09
A - 0124	B	East elevation – building 2 (commercial)	18/12/09
A - 0125	B	West elevation – building 1 (residential)	18/12/09
A - 0126	B	West elevation – building 2 (commercial)	18/12/09
A - 0131	B	Section – building 1 (residential)	18/12/09
A - 0132	B	Section - building 2 (commercial)	18/12/09
A - 0181	B	Building 1 façade finishes	18/12/09
A - 0182	B	Building 2 façade finishes	18/12/09

Except as amended by:

SK 001	-	Residential Amenity	May 2010
SK 002	-	Ground floor plan	May 2010
SK 003	-	Basement 1 Plan	May 2010

Except as amended by:

SK 010	-	Residential Amenity	August 2010
--------	---	---------------------	-------------

Except as amended by:

<i>The extent of the basement encroachment under Fleet Lane shown hatched on the following plans prepared by PTW Architects (MOD 4):</i>			
<i>A-0111</i>	<i>F</i>	<i>Basement 1 Plan</i>	<i>09.10.12</i>
<i>A-0112</i>	<i>F</i>	<i>Basement 2 Plan</i>	<i>09.10.12</i>
<i>A-0113</i>	<i>F</i>	<i>Basement 3 Plan</i>	<i>09.10.12</i>
<i>A-0114</i>	<i>F</i>	<i>Basement 4 Plan</i>	<i>09.10.12</i>
<i>A-0115</i>	<i>F</i>	<i>Basement 5 Plan</i>	<i>09.10.12</i>
<i>The following plan prepared by JBW Surveyors Pty Ltd showing the concept for the proposed stratum road closure of Part of Fleet Lane:</i>			
<i>124741 PROPRDCLOSURE</i>		<i>Plan showing the concept of the proposed stratum road closure of part of Fleet Lane.</i>	<i>12/11/2012</i>

Except for:

- (1) 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
- (2) otherwise provided by the conditions of this approval.

2. In Part B, amend Condition B6 by inserting new sub-sections (g) and (h) as follows:

- (g) *The Traffic Management Plan shall demonstrate that adequate access and manoeuvring is available to 20 to 24 Thomas Street during construction for delivery vehicles and vehicles using the car parking on those sites.*
- (h) *Implement a public and adjoining occupant information campaign to inform any road changes well in advance of each change. In this regard it is noted that access to the properties 20 to 24 Thomas Street from Fleet Lane West shall be maintained throughout the construction process unless written agreement from the owners of those properties is obtained prior to work commencing for any temporary (day or part day) closure.*

Note: Conditions B6(g) and B6(h) are to be satisfied prior to the issue of a construction certificate for the basement levels.

3. In Part B, insert new Condition B19 as follows:-

B19 *Stratum Subdivision of Fleet Lane West for Encroaching Structure*
(Condition to be satisfied prior to the issue of construction certificate for the basement levels)

A draft stratum subdivision plan of Fleet Lane West for partial road closure demonstrating that the encroaching structure is wholly contained within the stratum is to be lodged with

Council and approved. The stratum subdivision plan is to be accompanied by a section 88b Instrument that provides for the following:

1. An easement of support for the road constructed on the stratum above the encroaching land to the satisfaction of Willoughby Council.
2. A positive covenant in favour of Council and to Council's satisfaction which:
 - a. Requires the owners (and any future owners) to maintain and repair the basement structure to be constructed within the stratum below Fleet Lane West.
 - b. Allows for Council inspection of the basement structure.
 - c. Requires the owners (and any future owners) to insure and keep insured the structure.
 - d. Indemnifies Council against any actions, costs, demands, claims, losses, damages, expenses arising from failure of the owners (and any future owners) to meet the obligations.
 - e. Provides for extinguishment of the stratum lot in the road and reinstatement of the public road should the site be redeveloped and/or the buildings demolished.

All costs associate with the plan preparation are to be borne by the proponent of the development. All costs associated with the process of partial road closure are to be borne by the proponent.

4. In Part B, insert new Condition B20 as follows:-

B20 Stratum Subdivision Plan of Fleet Lane West
(Condition to be satisfied prior to the issue of construction certificate for the basement levels)

The stratum subdivision plan of Fleet Lane West lodged with Modification 4 shall be amended to provide for a stratum lot defined in height, width and depth and it shall be demonstrated that the basement structure include any piling will be wholly contained within the stratum lot.

5. In Part B, insert new Condition B21 as follows:-

B21 Deed of Agreement to Purchase Stratum
(Condition to be satisfied prior to the issue of construction certificate for the basement levels.)

A Deed of Agreement for purchase of the stratum space under the public road containing the encroachment of the building into Fleet Lane West is to be finalised to the satisfaction of the General Manager, Willoughby City Council. The Deed of Agreement shall provide the terms satisfactory to Council by which the stratum is to be purchased from Council following partial road closure of Fleet Lane West. The terms of the Deed shall also have regard to the provisions of condition E42.

NOTE: Should the road closure process be excessively delayed, Willoughby Council will enter into an interim lease of the stratum pursuant to s149 of the Roads Act 1993 until such time as the road closure is completed. The Deed of Agreement is to provide for this contingency in terms satisfactory to Council.

6. In Part C, insert new Condition C19 as follows:

C19 Road Pavement Fleet Lane West Reconstruction
(Condition to be satisfied prior to commencement of construction for the basement levels.)

The proponent shall submit, for approval by Council under Section 138 of the Roads Act, full engineering design plans and specifications prepared by a suitably qualified and

experienced engineer for the reconstruction of the full width of Fleet Lane West including, drainage, kerb and guttering and any associated works fronting the subject site. The design shall have regard to the requirements of Condition B11 – Design of Stormwater System in Fleet Lane.

The required plans must be designed in accordance with Council's Specifications (AUS-SPEC). Approval must be obtained from Willoughby City Council as the road authority under the Roads Act 1993 for any construction works in the public road.

7. In Part C, insert new Condition C20 as follows:

C20 Deed of Indemnity – Construction within Fleet Lane West (Condition to be satisfied prior to commencement of construction for the basement levels)

A Deed of Indemnity is to be entered into PRIOR TO COMMENCEMENT OF BUILDING OR PREPARATORY WORKS for the excavation or associated structures whereby the developer will fully indemnify Council and its representatives from all claims, demands and liability which may arise in respect of any accident or damage to property or death or injury to any person of whatsoever nature. In this regard the developer will from the date that work commences on the excavation and/or associated structures until the expiration of the Deed when purchase of the stratum encroachment lot is completed, effect appropriate insurance policies including a Contract Works Policy, Public Risk Insurance, Worker's Compensation Insurance and will keep insured each part of the works as they are completed against damage or destruction. A copy of the executed Deed is to be submitted to Council.

8. In Part E, insert new Condition E41 as follows:

E41 Reconstruct Pavement in Fleet Lane West
(Condition to be satisfied prior to issue of occupation certificate/prior to operation of the basement levels)

The proponent shall construct the full width road pavement including any necessary associated works adjoining to the full frontage of the development site to Fleet Lane West. It shall be constructed in accordance with Willoughby City Council's approved drawings, conditions and specification (AUS-SPEC). Council's standard design for traffic for these pavements is 2 X 104 ESA.

9. In Part E, insert new Condition E42 as follows:

E42 Purchase of Stratum in Fleet Lane West containing the Encroaching Structure
(Condition to be satisfied prior to issue of occupation certificate/prior to operation of the basement levels)

The proponent is to obtain a Subdivision Certificate and the stratum subdivision is to be registered and the partial road closure shall be gazetted for sale of the stratum freehold interest to occur and consolidation of the stratum into the development site.

The stratum freehold interest (and/or interim lease) is to be valued by an independent Valuer agreed to by Willoughby Council and the Proponent and payment for the stratum interest made.

The sale in respect of the stratum lot containing the proposed encroachment of the basement building into Fleet Lane West shall be completed to the satisfaction of Willoughby City Council prior to an Occupation Certificate for the encroaching structure.

All costs associated with the registration of the stratum plan of subdivision, road closure, consolidation, valuation and sale of the stratum interest are to be borne by the Proponent of the development.

***NOTE:** This condition may be varied to the extent that an interim lease pursuant to the Roads Act 1993 is agreed to by Willoughby Council and is signed and registered until such time as the road closure, sale and transfer occurs.*

10. In Part E, insert new Condition E43 as follows:

***E43 Maintenance of Encroaching Structures**
(Condition to be satisfied prior to issue of occupation certificate/prior to operation of the basement levels)*

The owner and its successors in title of the stratum within which the encroaching structure is located are to take responsibility for the maintenance of the structure and all fixtures and fittings. That is, it will meet the costs of structural repairs, the regular repainting, cleaning or repairs of all surfaces and also the costs of cleaning, electricity consumption, replacement of or repair to fixtures or fittings arising from the day to day use of the structure.

11. In Part E, insert new Condition E44 as follows:

***E44 Costs for stratum, encroaching structure and ongoing maintenance of encroaching structure**
(Condition to be satisfied prior to issue of occupation certificate/prior to operation of the basement level)*

All costs relating to the provision and ongoing maintenance of the encroaching structure including all of Willoughby Council's legal costs, valuation costs, stamp duties, land title fees and professional fees of any consultant as required from time to time are to be met by the developer or owner at the time.

12. In Part E, insert new Condition E45, as follows:

***E45 Reinstatement of Lighting in Fleet Lane West**
(Condition to be satisfied prior to issue of occupation certificate/prior to operation of the basement levels)*

The light pole at the corner of Fleet Lane West and Albert Lane is to be reinstated in a location to the satisfaction of Willoughby Council.

APPENDIX D MP09_066 MOD 3- PLANS

APPENDIX E CORRESPONDENCE- MERITON GROUP
