



MB TOWN PLANNING

Thomas Street Carpark
CHATSWOOD NSW

Proposed Section 75W Modification 6 to approved Major Project
09_0066

Objection in response to notification

Prepared for Owner's Corporation SP22904 (12 Thomas Street, Chatswood)
March 2013
J12000025, Issue A

Introduction and background

The owner's corporation SP22904 at 12 Thomas Street, Chatswood have engaged MB Town Planning to review and report on the impacts of Proposed Amendment 6 to the approved major project at the Thomas Street Carpark site in Chatswood.

The approved major project MP09_0066 was for a mixed use development comprising a residential building (Building 1) and a commercial building (Building 2) having heights of 29 and 21 storeys respectively, with ground floor retail uses, a pedestrian plaza and basement car parking including 250 public car parking spaces and 506 car spaces in total. It was approved by the NSW Minister for Planning on 28 September 2010 under Section 75J of the *NSW Environmental Planning and Assessment Act, 1979* (the Act).

The approved project has been subsequently modified under Section 75W of the Act on four occasions, with another modification having been applied for but withdrawn. Those modifications have been:

- Modification 1: To allow staging of the development
- Modification 2: Reduce adaptable dwelling component; delete affordable housing (contribution in lieu); and changes to hydraulic and dilapidation reporting requirements
- Modification 3: Change use of building 2 from commercial to 302 serviced apartments; various changes to public domain; various external treatment changes; change dwelling mix; change podium uses to building 1 including a child care centre; increase number storeys to building 2 (but retain same height); and provide basement mezzanine for back of house activities for serviced apartments
- Modification 4: Basement to encroach into Fleet Lane road reserve

The presently proposed modification number 6 has been submitted prior the the approval of Modification 3 but after the approval of Modifications 1, 2 and 4. Modification 3 has been approved during the notification period.

Modification 6 was predicated upon approval of Modification 3 before such approval had been issued. Notification of Modification 6 commenced before approval of Modification 3, which has led to uncertainty as to the proper point of comparison for the proposed modification.

Scope of presently proposed modifications

Based upon comparison with the now approved Modification 3, Modification 6 involves the following key changes:

- ✦ Increase the height of building 1, as measured from the north-east corner on Thomas Street (RL99.3), from 97.9 metres to 154.1 metres, a difference of 56.2 metres. In storeys, the increase is from 29 to 47 storeys;
- ✦ Increase the height of building 2 by 24.8 metres to 122.7 metres (relative to the north-east corner on Thomas Street). In storeys, the increase is from 29 storeys to 37 storeys;
- ✦ Increase the number of apartments within Building 1 from 87x1 (37%) bedroom, 128x2 bedroom (55%) and 18x3 bedroom (8%), totaling 233, to 137x1 bedroom (39%), 186 x 2 bedroom (53%) and 30 x 3 bedroom (8%), totaling 353 apartments;
- ✦ Increase the number of serviced apartments from 233 to 356;
- ✦ Increase the total gross floor area from 45,148 square metres, to 58,621 square metres, an increase of 13,473 square metres. The floor space ratio of the proposed development is therefore to increase from 10.44:1 to 13.56:1;
- ✦ Increase the number of car-parking spaces provided within the development, in addition to the 250 public car spaces proposed under both proposals, from 258 to 490, an increase of 90% from the approved amount;
- ✦ Modify the podium by adding three storeys of parking above ground level and removing the child care centre;
- ✦ As a consequence of introducing above ground parking, the proposal removes the open air above the approved ground level open air plaza, so that that plaza becomes an indoor plaza rather than an outdoor plaza - with the exception of a 12.5 x 3 metre void along the western side of the proposed arcade;
- ✦ The proposed above ground car-parking introduces a building form having a nil setback from the eastern side boundary of 17.0 metres in height. It is unclear from the submitted drawings whether there is also a nil setback element that is as high as 24.2 metres - see Figure 1 below. In comparison, approved Modification 3 includes an element on the eastern boundary for building 1, being a raised, cantilevered child care centre play area, with a nil setback to the southernmost three metres of the side boundary. ;
- ✦ The proposal results in the "right of way" connecting Fleet Lane to Thomas Street serving also as the loading dock access point for waste vehicles and for other vehicles carrying out deliveries and removal of goods from the development. In comparison, approved

Modification 3 provides for that "right of way" to serve only as a public accessway - being intended to allow vehicles to access Fleet Lane from Thomas Street. Without that "right-of-way" there is no access to that part of Fleet Lane because Fleet Lane is blocked further west by the proposed development. Therefore, properties east of the development site that have vehicular access to basements via Fleet Lane rely upon the proposed "right-of-way" to maintain that vehicular access;

- ◆ Approved Modification 3 includes a single lane vehicular egress onto Thomas Street from the public car-park and an adjacent single lane right-of-way (one-way southwards). The proposed Modification 6 involves the right-of-way with inclusion of loading dock access, entry and exit from the residential car-park, and an entry and egress for the basement car-parking, all off Thomas Street;
- ◆ The cafe presentation to Thomas Street is reduced from 8 metres to 4 metres.

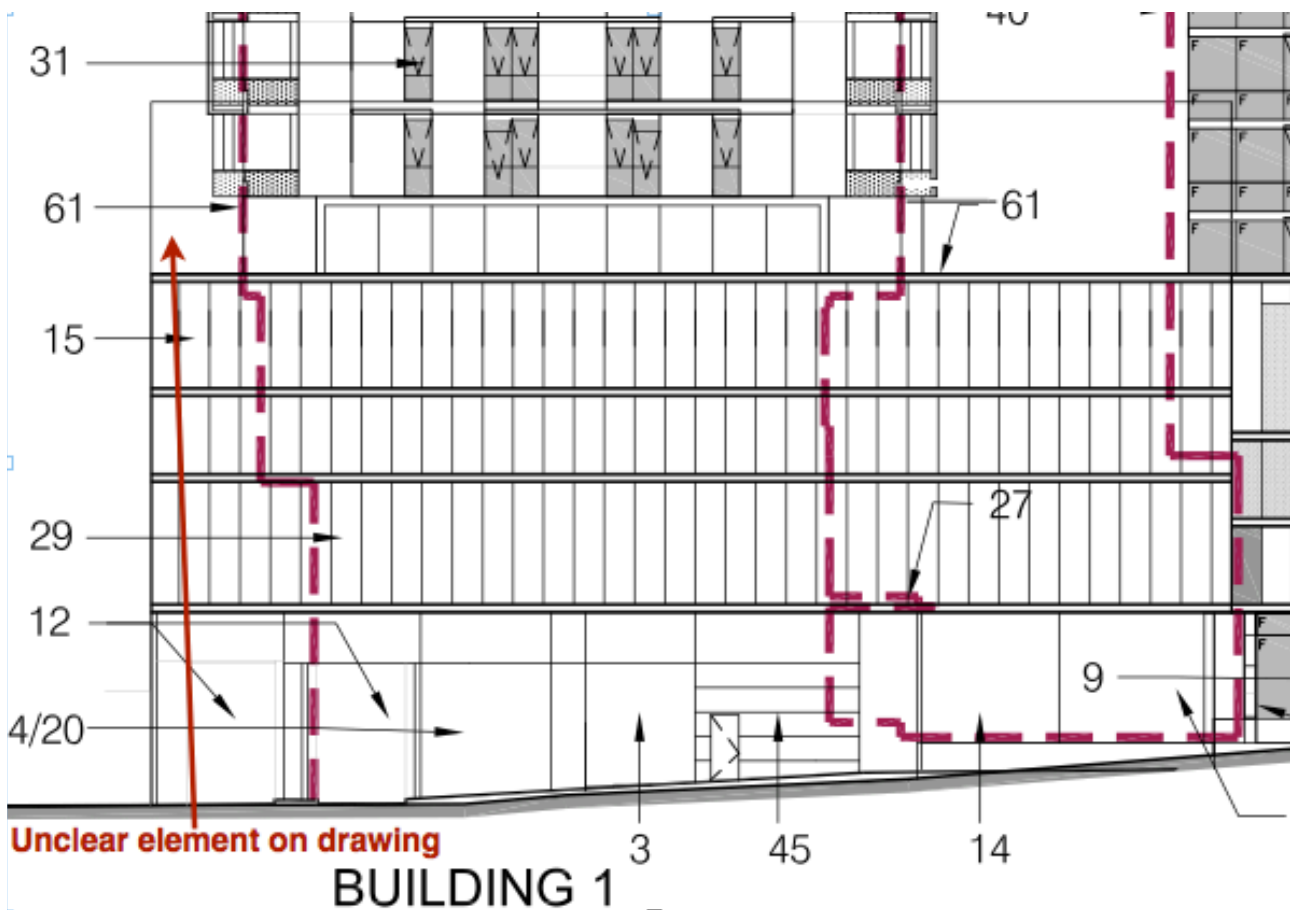


Figure 1: Extract from proposed plans - northern elevation building 1

In relation to the proposed car-parking provision, the breakdown changes as follows:

	Approved Mod 3	Proposed Mod 6
Residential (Building 1)	168	361
Serviced apartments (Building 2)	77	89
Visitors	Not identified	36
Other uses	3 retail 10 child care	4 retail
Public car park	250	250
TOTAL	508	740

The proposal involves a change from a parking rate of 0.72 spaces per apartment within building 1 to 1.02 spaces per such apartment. As such, the present approval assumes some non-car ownership whereas the proposal is designed to provide all residents with a parking space.

The proposal involves a change from a parking rate of 0.33 per serviced apartment to 0.25 spaces per serviced apartment.

When the number of car-spaces per apartment (whether serviced or not) is calculated, the rate changes from the approved 0.52 spaces per apartment to 0.63 spaces per apartment. Therefore, the proposal involves an increased provision of car-parking spaces per unit, even though the apartment mix is proposed to increase the proportion of single bedroom apartments.

Description of 12 Thomas Street in relation to subject site

This assessment has been prepared for the owner's corporation SP22904 at 12 Thomas Street.



Figure 2: Location of 12 Thomas Street, in yellow and marked with flag, in relationship to subject site, shown bordered in red

12 Thomas Street contains a seven storey office building with 18 strata units plus two basement parking levels (Figure 3). The basement levels obtain access via the basement levels of the adjoining, attached office building to its east at 6-8 Thomas Street. (The basement door facing Fleet Lane is to a waste bin storage area only).

The upper basement of the office building at 12 Thomas Street is partially raised above ground level (existing). There is a 3 metre wide pedestrian walkway to the western side of the building adjacent to the property boundary to the subject development site. There are steps up from Thomas Street to accommodate the partially raised basement, and the walkway then continues

to ramp down to the rear property boundary on Fleet Lane (Figure 5). Access for people with a disability is from Fleet Lane only.



Figure 3: Left: Office building at 12 Thomas Street as viewed from Thomas Street, with subject development site to its right (west) Right: Office building at 12 Thomas Street as viewed towards its south-west corner within Fleet Lane



Figure 4: Detail of 12 Thomas Street as viewed from Thomas Street, showing the western property boundary



Figure 5: Pedestrian access along western side of office building at 12 Thomas Street. The pedestrian access is entirely within the 12 Thomas Street property boundaries

Impacts of the proposed modification

Pedestrian access

The approved development under Modification 3 includes a single lane driveway exit ramp along the eastern boundary, up from the approved basement parking levels. Adjacent to its west is a level driveway linking Fleet Lane with Thomas Street.

Modification 3 has relocated the "right of way" from directly along the eastern boundary of the subject development site. It is now separated by the approved driveway ramp up from the basement levels. However, it does maintain a public access link between Thomas Street and Fleet Street.

Subject to appropriate management, signage and treatment, the "right-of way" could facilitate a pedestrian connection. However, the Director-General's Assessment Report of Modification 3, in section 5.6.3, states the view that "reliance upon the subject site the adjoining property for access to 12 Thomas Street is unsustainable and cannot justifiably be maintained at the expense of the reasonable development of the site".

The Director-General's position is perplexing given that the design of the development acknowledges the need to maintain access between the Thomas Street and Fleet Lane. It is potentially open to interpret the Director-General's assessment as suggesting that vehicular access must be maintained but not pedestrian access and, in particular, not pedestrian access for people with a disability. In that regard, there is a prima-facie case that the approval of Modification 3, if it fails to accommodate pedestrian access including access for people with a disability, is in breach of the *Commonwealth Disability Discrimination Act, 1992*.

The subject site was previously public land and included a publicly owned connection between Fleet Lane and Thomas Street. 12 Thomas Street relies upon that pedestrian connection in order for access for people with a disability to be conveniently provided to the office building. Without a pedestrian connection being provided across the subject development site, people with a disability must access Fleet Lane via Thomas Lane adjacent to the nearby railway line (Figure 6). The distance from the principal entry to 12 Thomas Street, which is on Thomas Street, to the rear access to the access ramp off Fleet Lane is approximately 160 metres.

The maintenance of a public pedestrian pathway to connect Thomas Street to Fleet Lane is a reasonable expectation given that the original approval incorporated such a connection and given the expectations associated with the site as former public land. It is also a reasonable expectation from an urban design perspective - the permeability of pedestrian access within street blocks is a desirable quality within concentrated areas of urban development.

Furthermore, as set out above, if it is considered essential to maintain a vehicular "right-of-way" to connect Thomas Street with Fleet Lane, the

question arises of why it is not equally necessary to maintain pedestrian access of a standard that accommodates people with a disability.

Whilst Modification 3 provides the potential for a pedestrian connection subject to careful implementation so as to ensure that there are no unacceptable pedestrian-vehicular conflicts, the presently proposed Modification 6 converts that "right of way" into the principal loading dock entry for heavy vehicles such as garbage trucks, food and linen delivery trucks and such like. It renders the provision of a pedestrian connection as completely untenable.

With the "right of way" to become a loading dock accessway for heavy vehicles, the quality and safety of the right of way will be severely diminished. Modification 3 provides for the "right of way" receiving only limited light vehicular traffic. Therefore, use of that right-of-way by pedestrians is entirely plausible subject to suitable management measures. Modification 6 converts the right of way to the heavy vehicle access point to what is a major development and renders such use untenable.



Figure 6: Alternative path of travel to provide disabled access to 12 Thomas Street, indicated by red dashed line

As a consequence of the use of the "right of way" by heavy vehicles, the owners and occupiers of 12 Thomas Street will be severely disadvantaged. In

that regard, 12 Thomas Street includes medical clinics and other businesses that receive frequent visitation from people with a disability. Those visitors will have to go around the block to access the premises via Fleet Lane.

Aside from the compromised "right of way", the proposed modification will lead to significantly increased traffic accessing and exiting the site from Thomas Street and an increased extent of driveway crossings immediately adjacent to the western side of 12 Thomas Street. The proposal increases the width of uninterrupted driveway crossovers from 10 metres to 18 metres. It also increases the frequency of usage of those crossovers by vehicles, including due to the use of the "right of way" as the loading dock access point. As a consequence, it will become hazardous and, in effect, untenable for pedestrians to walk along the northern side of Thomas Street at that point.

By rendering the northern side of Thomas Street west of 12 Thomas Street as an unsafe, unattractive area for pedestrians, the proposed modification diminishes the availability of pedestrian access to 12 Thomas Street and increases the potential for pedestrian accidents for clients of businesses at 12 Thomas Street.

Visual amenity and solar access

There are windows to 12 Thomas Street facing Thomas Street, towards the subject site, and to Fleet Lane at all levels. The building is nil set back from its neighbour to its east. It is set well back from Thomas Street and is set back three metres from the boundary to the subject development site.

Proposed Modification 6 involves a car-parking structure having a nil setback for the entire western boundary of 12 Thomas Street and having a height of 17 metres. (The height may be even greater depending upon interpretation of the badly drawn northern elevation).

Modification 3 has introduced negative impacts to 12 Thomas Street, due to the proposed nil setback child care centre, with the potential for obtrusive noise impacts and also the visual impacts associated with a structure built up against the property boundary. The proposed development, under approved Modification 3, does not provide an appropriate landscaped separation to respect the amenity of 12 Thomas Street, even though 12 Thomas Street properly provides a three metre building setback despite its narrow lot width. However, those impacts are reduced by the limited extent to which the nil setback childcare centre adjoins the property boundary to 12 Thomas Street, with the protrusion of that part of the building along the boundary being only for the southernmost three metres.

The height of the proposed car-park under Modification 6 is (subject to clarification) equivalent to the height of all but the uppermost two storeys of 12 Thomas Street. The building will cause significantly worse overshadowing onto the western wall of the building than the approved Modification 3. That is because the approved modification has a nil setback only on the southern most three metres of the western property boundary. Although the proposed Building 1 tower will cause substantial overshadowing, the three metre setback

of that tower from the eastern boundary of the subject development site (aside from bay-window obtrusions) affords some solar access to 12 Thomas Street during the early afternoon - that solar access is substantially eliminated by the proposed modifications.

The proposed car-park structure represents a visually bulky and bland intrusion compared to approved modification 3 which, whilst not an excellent outlook, at least provides mostly a three metre setback resulting in a total 6 metre separation. That approved separation provides increased daylight access compared to the proposed modification, which will provide a darker lightwell area that will be visually unattractive and which will be detrimental to owners and occupants of 12 Thomas Street.

During the construction phase, the development under the proposed modification will be more obtrusive to 12 Thomas Street than the approved development.

Acoustic impacts to 12 Thomas Street

The submitted eastern elevation for Building 1 indicates openings to the wall on the eastern side of the proposed driveway ramp along the eastern property boundary. The submitted eastern elevation for Building 1 is of insufficient quality to provide certainty in relation to what is the proposed treatment of the eastern wall. For the purposes of this assessment, it is assumed that the wall is enclosed but if it is not, that would further expand the scope of concerns regarding acoustic impacts.

The submitted acoustic report by Acoustic Logic does not address potential acoustic impacts from the proposed development to surrounding properties. This is an alarming deficiency for a project that massively increases densities, car-parking volumes and the overall magnitude of the project.

The proposed driveway in particular has the potential to cause unacceptable acoustic impacts to users of the offices at 12 Thomas Street. The proposed development must not be approved without an acoustic assessment being provided and included in a re-notification of the proposed modification.

Increased magnitude of site activity and associated procedural concerns

The proposal massively increases the magnitude of the development. The maximum permissible floor space ratio applicable to the development under *Willoughby Local Environmental Plan 2012* (WLEP2012) is 6:1. The proposal takes the floor space ratio of the development from 10.41:1 (1.73 times the permitted FSR) to 13.56:1 (2.26 times the permitted FSR).

The proposed height of Building 1 is increased to 154.1 metres, compared to the WLEP2012 control of 60 metres. The proposed height of Building 2 is increased to 122.7 metres, compared to the WLEP2012 control of 34 metres.

The proposed increase in the magnitude of development on the site, coupled with the aforementioned increases in the number of driveways entering and exiting onto Thomas Street adjacent to 12 Thomas Street, will greatly increase

the number of vehicular movements, compromising the amenity of the precinct. The report does not examine impacts to pedestrians. It is also noted that the submitted traffic report is unsigned and unattributable to a particular professional.

Broader questions, such as in relation to the visual impacts upon the Chatswood skyline; the amenity impacts upon properties to the south; and strategic land-use planning implications; are beyond the scope of the present assessment and are properly within the jurisdiction of Willoughby City Council for their response.

However, such increases in the magnitude of development would normally be changed only with a carefully planned approach to ensure that infrastructure can accommodate the increase and to ensure that the development contributes to the quality of the urban environment.

A modification under Section 75W of the Act, which continues to apply under transitional arrangements for Part 3A projects, does not have to pass the test of being substantially the same development. However, there is no obligation upon the consent authority in this instance to disregard the disbenefits to the public interest that are inherent in allowing multiple modifications to such a major project to the extent that it loses all connection with the scope of the originally approved Part 3A project. The consent authority must surely, in this instance, recognise that the modification process is in conflict with the public interest and must therefore refuse the presently proposed modification. The use of a modification of consent to fundamentally alter the strategic planning and urban design outcomes for the Chatswood CBD must surely be rejected outright as an unacceptable perversion of the planning process, and one which the consent authority is under no obligation to accept.

Urban design quality

The proposed development involves the conversion of the approved podium levels to a 17 metre high car-park, with the associated poor quality presentation to Thomas Street. The only active use that is now proposed within that facade is a four metre wide cafe.

The proposal under approved Modification 3 includes a plaza that is open to the air, providing some degree of direct sunlight and for natural air movement. As such, the approved plaza makes some contribution to the public domain as a space that other people within the Chatswood CBD can visit and enjoy.

The approved plaza under Modification 3 also provides a pedestrian connection between Albert Avenue and Thomas Street. That is a much needed connection, because there is no alternative eastwards of Albert Lane and because the connection is aligned with Katherine Street which connects to other parts of the Chatswood CBD.

The provision of a high quality public connection along the alignment of the plaza as, in effect, an extension of Katherine Street, is vital for the proper functioning of the precinct.

The proposed development replaces the open plaza space with a car-park wall with a plaza opening. The plaza becomes covered by the car-parking structure, with only a three metre lightwell to its western side. This reduces the quality of the space - people are attracted to open air spaces and there is a need for such spaces within densely built-up areas. The space becomes internalised to a greater extent and the perception arises that the space is private rather than public or semi-public.

The proposal represents a travesty of the original design intent and takes away a crucial element in the justification for the project as a whole.

Conclusion

Proposed Modification 6 will severely compromise amenity and convenient use for owners and occupants of 12 Thomas Street because:

- ◆ It will allow loading dock access to the "right of way" linking Thomas Street to Fleet Lane and will render use of that "right of way" by pedestrians untenable. This will result in people with a disability who need to access the ramp to 12 Thomas Street having to walk 160 metres from the principal entrance to that building. This is unacceptable given that the pre-existing use of the site was for a public purpose and is also unacceptable in urban design terms having regard to permeability of the urban environment for pedestrians;
- ◆ It will increase the width of driveway crossovers immediately adjacent to 12 Thomas Street from 10 to 18 metres and will greatly increase traffic using those crossovers, with no relief for pedestrians. This will render pedestrian access on the northern side of Thomas Street west of 12 Thomas Street untenable;
- ◆ It introduces a massive, unrelieved 17 metre high car-park having a nil side setback to 12 Thomas Street, with associated restrictions to solar access, daylight access and an unattractive visual outlook;
- ◆ It massively increases the magnitude of the development, without proper planning to determine whether the locality has the capacity to accommodate that increased magnitude. The submitted traffic report does not consider pedestrian impacts;
- ◆ The proposal generates potential significant acoustic impacts not addressed in the acoustic report (which focuses only upon impacts to the development from the Pacific Highway and railway line);
- ◆ The proposal causes a major impact to the quality of the public domain through the introduction of the proposed above ground carpark. The proposal causes a major denigration in the quality of the public plaza, which is a vital through site link that was a key part of the justification for the original proposal.

The proposal utilises modification provisions under transitional Part 3A arrangements which would completely pervert the normal strategic land use planning process. The consent authority may reject the proposal on those public interest grounds and must do so, along with the grounds set out above, in addition to any other considerations that may arise such as skyline impacts and impacts on properties to the south of the site, for example.

The proposal represents atrocious urban planning and must be refused.

Yours faithfully,



Matthew Benson
Principal - MB Town Planning