



Planning &
Infrastructure

MODIFICATION REQUEST:
Residential and Childcare Centre
Development
14-18 Boondah Road, Warriewood

Modification MP10_0177 MOD 2

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

September 2011

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EXECUTIVE SUMMARY

Meriton Apartments Pty Ltd ('the Proponent') lodged an application to modify the Stage 1 Project Approval MP 10_0177 ('Project Approval') pursuant to Section 75W of the *Environmental Planning and Assessment Act 1979* ('the Act').

On 18 January 2011, the Planning Assessment Commission (PAC) approved the project subject to conditions requiring a reduction to the dwelling yield from 75 dwellings per hectare to 60 dwellings per hectare and reduced building heights.

The application seeks approval to modify Condition C19 – Ground water to allow for the installation of a permanent pumping system to ensure the basement is free of stormwater.

As part of its assessment, the Department has referred the proposal to Pittwater Council and State environmental agencies including the NSW Office of Environment and Heritage and the NSW Office of Water. Each of the agencies and Council consider the proposed system to be acceptable subject to conditions. The Department is satisfied that this modification application falls within the scope of section 75W of the Act.

The proposed modifications are generally consistent with the terms of the Project Approval and are considered to be acceptable. It is therefore recommended that the application be approved subject to the modified conditions.

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1. BACKGROUND

The subject site, 14-18 Boondah Road, Warriewood, is located in the Warriewood Valley Release Area within the Pittwater Local Government Area (LGA). The site is irregular in shape, has an area of 8.118 hectares and frontages of 293 metres to Boondah Road and 273 metres to Macpherson Street. Vehicular access is available from both road frontages. The land slopes approximately 2.5 metres to the rear (south) towards the wetlands.

The site is adjacent to the Sydney Water Sewerage Treatment Plant.

The current land use is rural-residential, with horse paddocks located at the rear of residential properties fronting Macpherson Street, as well as disused agricultural land, plantation and a light industrial premises on Boondah Road. The Macpherson Street frontage of the site is bisected by 2 residential properties (Nos. 5 and 7) which do not form part of the development site.

The site is currently being developed subject to the approved Project Application described below.

The site locality and site boundary is illustrated in **Figure 1**.



Figure 1: The site

2. MAJOR PROJECT APPROVAL

Original Major Project Approvals MP 09_0162 and MP 10_0177

On 18 January 2011, the Planning Assessment Commission (PAC) approved a Concept Plan (MP 09_0162) for a multi-unit housing development and childcare centre, private and public open space, parking, road works, pedestrian and cycle pathway, landscaping and ecological rehabilitation works.

The PAC also issued Stage 1 Project Approval (MP10_0177) for a development comprising:

- demolition of the existing buildings and structures on site and tree removal;

- excavation, earthworks and flood mitigation works;
- construction of 7 residential buildings of 3, 4 & 5 storeys in height providing 295 apartments with associated pools and gymnasium;
- basement parking for 471 cars comprising 429 resident car spaces and 42 visitor spaces;
- single storey childcare centre (270m²);
- external road works, internal public access roads and public pedestrian and cycle way; and
- Asset Protection Zone, Environmental Buffer areas and ecological rehabilitation and landscaping works.

Conditions Requiring Modifications

Modification Requirements 1 and 2 of the Concept Approval and Condition B1 of the Stage 1 Project Approval required several design and layout changes, including:

- a. The dwelling yield is limited to a maximum of 60 dwellings per hectare.
Note: For the purposes of calculating the dwelling yield, the site area is the developable area of 7.45ha and excludes Fern Creek and the creekline corridor.
- b. The height of the development shall be limited to 3 storeys, with the exception of Buildings D, E, F and G which may be permitted to be a maximum of 4 storeys to achieve the maximum density specified in Condition B1(a) above, subject to:
 - i. any 4th storey having a smaller footprint than the 3rd level below to provide articulation to the building form;
 - ii. any change to the siting or form of the envelopes resulting from Conditions B1(a) and/or B1(b) shall maintain compliance with the relevant provisions of the Residential Flat Design Code; and,
 - iii. the amendments shall maintain a minimum of 50% of the developable area of 7.45ha as deep soil area.

On 6 June 2011, the Director-General approved amended plans to satisfy the above conditions. In summary, the amendments to Stage 1 involve a reduction from 295 apartments to 226 apartments and reduced heights of Buildings D, E, F and G to part 3 and part 4 storeys. The Project layout, as approved by the Director-General is provided in **Figure 2**.

Section 75W Modification

On 15 July 2011, the PAC approved a modification request (MP10_0177 MOD 1) in relation to the Stage 1 Project Approval which involved:

- the deletion of the second basement level and provide a total of 474 spaces within a single level basement and associated modifications to deep soil planting, stair/lift locations and associated minor modifications at podium level; and
- general internal layout changes to Buildings A, B and C, including the provision of studies.

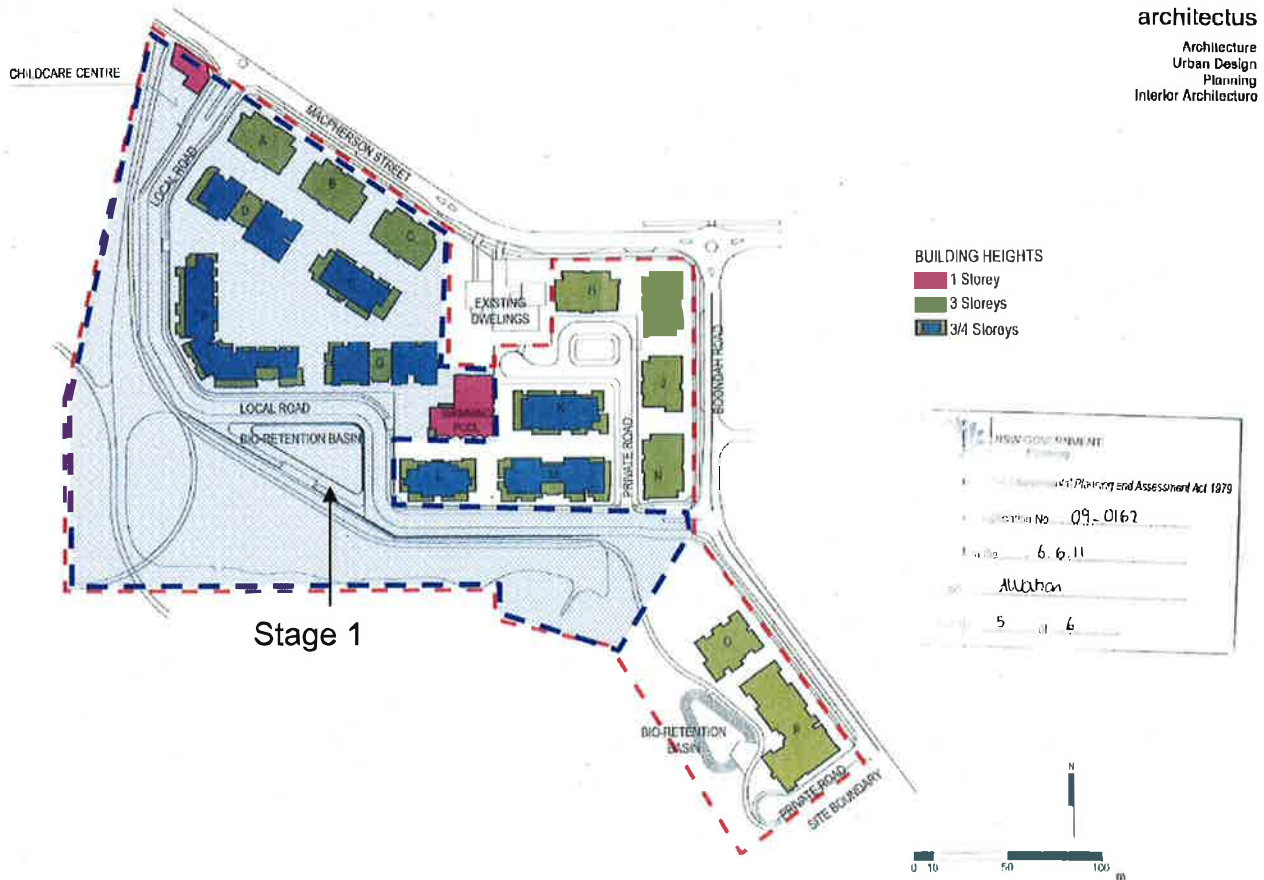


Figure 2 The revised Project Layout approved by the Director-General in accordance with modification requirement 2 of the PAC Concept Plan Approval and Condition B1 of the Project Approval.

3. PROPOSED MODIFICATION

The existing Condition C19 of the approval reads as follows:

C19 Ground water

- a. The design and construction of the structure must preclude the need for permanent dewatering
- b. The design and construction of the structure that may be impacted by any watertable must include a water proof retention system (i.e. a fully tanked structure) with adequate provision for future fluctuations of water table levels. (It is recommended that a minimum allowance for a water table variation of at least +/- 1.0 metre beyond any expected fluctuation be provided). The actual water table fluctuation and fluctuation safety margin must be determined by a suitably qualified professional.
- c. Construction methods and material used in and for construction are not to cause pollution of the groundwater.
- d. Monitoring of groundwater levels is to be continued at least weekly during the construction stage and at least weekly over a period of at least 2 months following cessation of dewatering, with all records being provided to the NSW Office of Water on expiration of the licence. This requirement is only for sites where the proposed structure shall extend greater than one floor level into the existing ground level.

- e. *Groundwater quality testing must be conducted (and report supplied to the NSW Office of Water). Samples must be taken prior to commencement of dewatering,) and ongoing to the satisfaction of the NSW Office of Water for any extraction and reinjection activities). Collection and testing and interpretation of results must be done by suitably qualified persons and NATA certified laboratory identifying the presence of any contaminants and comparison of the data against accepted water quality objectives or criteria.*
- f. *Discharge of any contaminated pumped water (tailwater) that is not to be reinjected, must comply with the provisions of the Protection of the Environment Operations Act 1997 and any requirements of the relevant controlling authority. The method of disposal of pumped water (i.e. street drainage to the stormwater system or discharge to sewer) and written permission from the relevant controlling authority must be presented to the NSW Office of Water in support of the licence application.*
- g. *Discharge of any contaminated pumped water (tailwater) that is reinjected, must comply with the provisions of the Protection of the Environment Operations Act 1997. The quality of any pumped water (tailwater) that is to be reinjected must be compatible with, or improve the intrinsic or ambient groundwater in the vicinity of the reinjection site. Contaminated groundwater is not to be reinjected into any aquifer. The following must be demonstrated in writing:*
 - i. *The treatment to be applied to the pumped water (tailwater) to remove any contamination.*
 - ii. *The measures to be adopted to prevent redistribution of any contamination in the groundwater system. Any reinjection proposal that is likely to further spread contamination within the groundwater system will not be allowed and the project will need to be modified.*
 - iii. *The means to avoid degrading impacts on the identified beneficial use of the groundwater. Any reinjection proposal that is likely to lower the identified beneficial use of a groundwater system will not be allowed and the project will need to be modified.*
 - iv. *The means to avoid degrading impacts on the identified beneficial use of the groundwater. Any reinjection proposal that is likely to lower the identified beneficial use of a groundwater system will not be allowed and the project will need to be modified.*
- h. *Written advice be provided from the Certifying Authority to the NSW Office of Water to certify that the following ground settlement issues have been addressed in reports submitted by the proponent:*
 - i. *Assessment by a suitably qualified geotechnical professional that the proposed dewatering activity does not pose an unacceptable risk of off-site impacts such as damage to surrounding buildings or infrastructure as a result of differential sediment compaction and surface settlement during and following pumping of groundwater.*
 - j. *Settlement monitoring activities to be undertaken prior to, during and for the required period of time following the dewatering pumping to confirm the impact predictions.*
 - k. *Locations of settlement monitoring points, and schedules of measurement.*

The proposed modification seeks to amend Condition C19 to allow for the installation of a permanent pumping system, to operate intermittently, to ensure the basement is free of stormwater.

The Proponent engaged Jeffery and Katauskas Pty Ltd to prepare a Hydrogeological Assessment and a report estimating groundwater inflow into the basement. These reports recommend that a bypass system be adopted to maintain the groundwater regime around the site to minimize the build-up of groundwater levels. During significant rainfall events the water would be diverted around the basement and be allowed to drain evenly by filtration into the nearby wetlands. In addition to the recommended bypass system, the Proponent proposes to install a pump-out system to address any water within the basement as a result of:

- groundwater that is not cut off by the bypass system; and
- excess storm water during significant rainfall events.

The proposed pump out system would manage groundwater entering the basement from bedrock which has been exposed at the base of the excavation. This proposed system will also involve intermittent dewatering of the basement during times of significant rainfall events as water enters the basement from cars and also flowing down the ramp. The proposed intermittent dewatering will also remove water from the basement that may backflow in pipes in the event of sustained rainfall.

The proposed pump-out system will require the modification of Condition C19 (a). The Proponent proposes the following modified condition:

"The design and construction of the structure permits a permanent pumping system, which would operate intermittently, to be installed and maintained in order to ensure that the basement is free of excess stormwater".

The Department further notes that this proposal would also require a modification to condition C19 (b). The modified wording is provided in **Appendix D**.

4. STATUTORY CONTEXT

4.1 Modification of the Minister's Approval

The modification application has been lodged with the Director General pursuant to Section 75W of the Act. Section 75W provides for the modification of a Minister's approval including "revoking or varying a condition of the approval or imposing an additional condition of the approval".

The Minister's approval for a modification is not required if the project as modified will be consistent with the existing approval. However, in this instance, the proposal seeks to modify conditions imposed on the Project Application approval and therefore, approval to modify the application is required.

4.2 Environmental Assessment Requirements

No additional environmental assessment requirements were issued with respect to the proposed modification, as sufficient information has been provided to the Department in order to consider the application and the issues raised remain consistent with the key assessment requirements addressed in the original DGRs.

4.3 Delegated Authority

On 17 August 2011, the Minister for Planning and Infrastructure endorsed a Departmental policy that the Director-General may determine requests under Section 75W of the *Environmental Planning and Assessment Act 1979* to modify Part 3A approvals where there has been a reportable political donation disclosure lodged only in respect to a previous application, and where:

- there are less than 10 submissions by way of objection by members of the public; and

- where the relevant council has not objected to the modification.

The above criteria apply to this Section 75W request as a reportable political donation was declared in relation to the original application; no reportable political donations were declared in relation to this Section 75W request; Council does not object to the modified proposal and no public submissions were received.

The application can therefore be determined by the Director-General under delegated authority.

5. CONSULTATION AND SUBMISSIONS

Under Section 75W of the Act, a request to modify an approval does not require public exhibition. However, under Section 75X (2) (f) of the Act, the Director-General is to make publicly available requests for modifications of approvals given by the Minister.

In accordance with Clause 8G of the *Environmental Planning and Assessment Regulation 2000*, the application to modify the approval was made publicly available on the Department's website on 23 June 2011 and referred to the NSW Office of Water (NOW), the Office of Environment & Heritage (OEH) and Pittwater Council for comment.

The Department received submissions from each of these public authorities in response to the modification request.

No submissions were received from the general public and special interest groups.

A summary of the issues raised in submissions is provided below.

5.1 NSW Office of Water

The NSW Office of Water (NOW) initially advised that insufficient information was provided to assess the potential impacts of discharging potentially contaminated groundwater from the basement to the Warriewood wetlands, including the potential impacts on water quality and quantity, vegetation and habitat. On this basis, NOW did not support the proposed modification.

In response to the issues raised by NOW, the Proponent submitted a *Pump Out Water Management Plan* prepared by Hayes Environmental Consulting Pty Ltd. This plan addressed water quality and quantity.

This plan was referred to NOW for comment. Following an assessment of this additional information, NOW did not object to the proposed modification and provided recommended conditions of approval. The recommended conditions of approval have been incorporated into the recommended modifying instrument at **Appendix D**.

5.2 Office of Environment & Heritage

The Office of Environment & Heritage (OEH) also raised concern in relation to pumped-out water quality and quantity. Following this, the *Pump Out Water Management Plan* was also referred to OEH for comment. OEH considers that the plan provides a suitable framework for assessing water quality to be discharged from the proposed pump out system. OEH recommended that monthly monitoring and sampling be carried out for at least the first year of occupation of the development. Further, the monitoring and sampling program and discharge acceptance levels should be reviewed between 1-2 years following occupation of the development.

OEH have recommended that in the event that the on-going monitoring indicates that water quality levels recommended in the *Pump Out Water Management Plan* are not met, any

discharge of basement water should immediately cease and not recommence until the water quality levels are met (and the relevant environmental agency is notified in writing).

The recommended conditions of approval proposed by OEH have been incorporated into the recommended modifying instrument at **Appendix D**.

5.3 Pittwater Council

Pittwater Council advised that they raise no objections to proposed modification subject to all relevant licences being obtained from the NSW Office of Water.

Notwithstanding, Council raised concern that the construction of the basement car park is currently being undertaken in a manner to allow a permanent dewatering system, which is not in accordance with requirements of the current conditions of approval.

Further Council considers that the Concept Plan and Stage 1 Project Approvals; the approval issued by the Director-General involving amended plans to satisfy Modification 1 and 2 of the Concept Plan and Condition B1 of the Project Approval; and Modification Approval (MOD 1) are all invalid.

In this regard, Pittwater Council requests that determination of the modification application be deferred until the Land and Environment Court determines Council's challenge to the Concept and Project Approvals granted by the PAC on 31 January 2011.

Department's response

The Department notes Council's view regarding the possibility of non-compliance with approval condition C19 (a). It is noted however that the current building works are largely incomplete and as such it is not yet possible to determine whether or not the works (once finalised) will comply with this condition.

This assessment gives consideration to the merits of the proposed modification independently of any work already undertaken. Should the proposed modification be approved, it will have the effect of retrospectively remedying any building work that may not strictly comply with the existing condition. The Department does not consider that any compliance investigation is warranted whilst it is assessing an application to modify condition C19 (a).

On 29 March 2011, Pittwater Council commenced Class 4 judicial review proceedings in the Land and Environment Court challenging the PAC's approval of the Concept Plan and Stage 1 Project Application. The central concern was that the conditions imposed by the PAC were legally uncertain. The matter was heard from 24 May 2011 until 26 May 2011. The appeal was dismissed on 12 September 2011.

6. ASSESSMENT

The Department considers that the key issue for the proposed modification is the impact of water which is collected from the basin and discharged to the Warriewood wetlands.

NOW and OEH originally raised concern in relation to the quantity of water being discharged to the wetlands and the quality of the water to ensure the protection of vegetation, habitat and other environmental attributes of the wetlands.

In response to these issues, the Proponent submitted a *Pump Out Water Management Plan* prepared by Hayes Environmental Consulting Pty Ltd. This plan outlines the four levels of treatment prior to discharge into the Warriewood wetlands, including:

- an oil-water separator;
- a gross pollutant trap;

- a sedimentation (bioretention) basin; and
- percolation through the floodplain.

The estimated total volume of water to be discharged from the basement is approximately 200 litres per day.

It is also proposed to undertake on-going monitoring of water quality to ensure that the water discharged from the pump out system is an acceptable quality for discharge to the Warriewood wetlands. The Proponent advised that monitoring will be carried out on a monthly basis during construction and on a 2 yearly basis following occupation of the development by an appropriately qualified environmental consultant.

Both NOW and OEH have raised no objections to the installation of a permanent pump out system, subject to requirements for on-going monitoring and inspection of the pump out pits and sampling testing of water quality.

The *Pump Out Water Management Plan* indicates monitoring on a monthly basis. This is endorsed by OEH which has also recommended a monitoring period including sampling and analysis of water quality for a period of 1 year following occupation of the development. After this time the frequency of inspections may be reviewed. It is recommended that this requirement be imposed as a condition of approval (**Condition G5**).

The Department has reviewed the plan and considers that the recommended conditions of approval proposed by NOW and OEH will ensure that the water from the pump out system will be treated to an acceptable quality prior to discharge into the Warriewood wetlands (**Condition C21 i-iv**). Further, the water quality contingency response measures outlined by OEH are considered to be reasonable and are also recommended to be adopted as part of the approval conditions (**Condition C21 v**).

Appropriate conditions of approval have been incorporated into the recommended modifying instrument at **Appendix D**.

7. CONCLUSION AND RECOMMENDATIONS

The Department has assessed the application on its merits and the proposed modification is considered to be reasonable given that:

- the pumped out water from the basement will be subject to four levels of treatment to ensure that the quality of the water will have minimal impacts on vegetation, habitat and other environmental attributes of the Warriewood wetlands;
- a framework has been established for the on-going monitoring and sampling for assessing water quality to be discharged from the proposed pump out system; and
- measures are to be implemented to rectify any incident where water quality of the pump out water would have an impact on the wetlands.

The Department is satisfied that this modification application falls within the scope of section 75W of the Act.

The proposed modification does not change the original assessment as to the site's suitability for this development.

The proposed modifications are generally consistent with the terms of the Project Approval and are considered to be acceptable. It is recommended that the Director General:

- (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 D**).


Endorsed by



27/9/2011

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