



***MODIFICATION REQUEST:  
Residential and Child Care Centre  
Development  
14-18 Boondah Road Warriewood***

**MP10\_0177 MOD 8**

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

May 2012

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## 1. BACKGROUND

### 1.1 The Site

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 currently being developed in accordance with the approved Stage 1 Project Approval (MP 10\_0177).

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



**Figure 1: The Site (Base Image Source: Google Maps, 2012)**

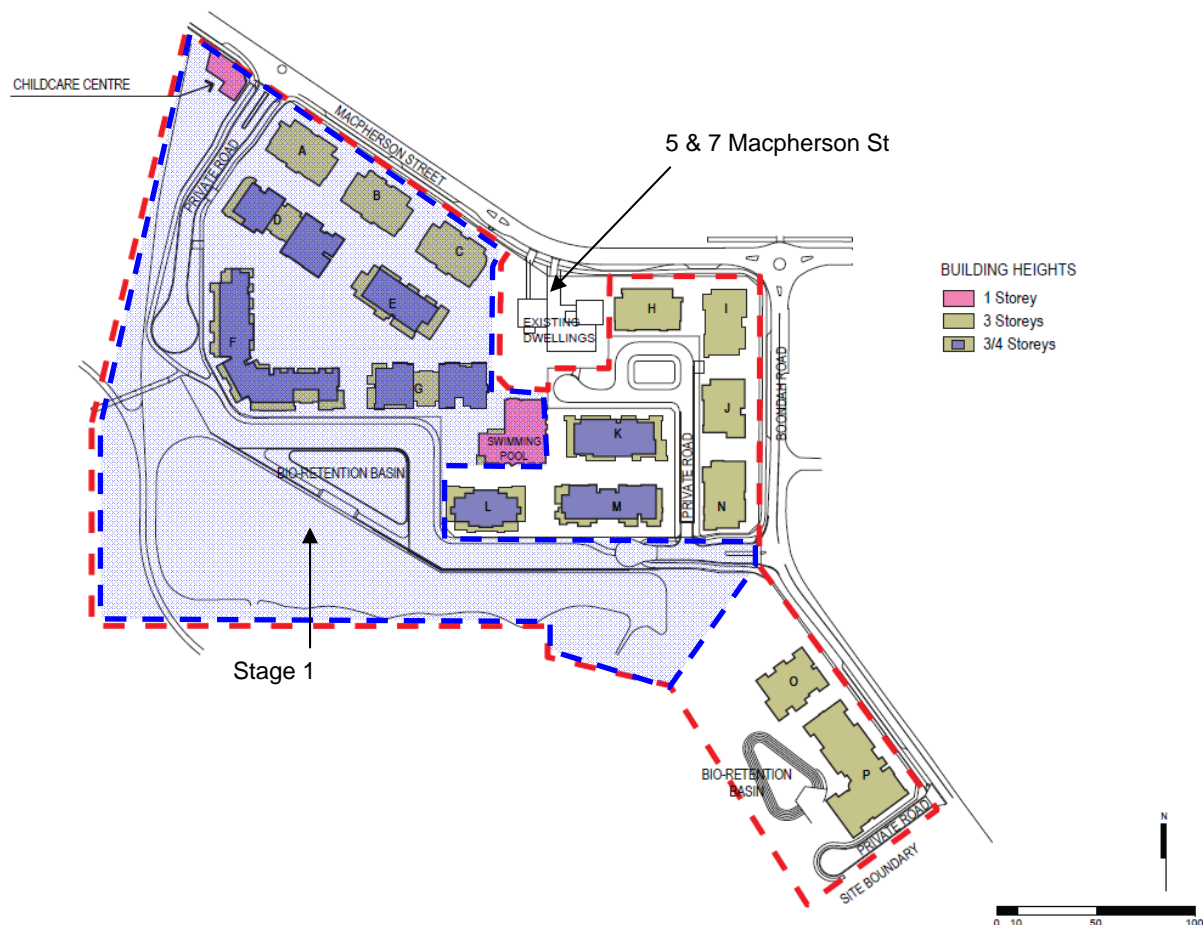
### 1.2 Previous Approvals

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 (MP 10\_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 apartments with associated pools and gymnasium;
- childcare centre;
- external road works, internal public access roads, pedestrian and cycle way; and
- ecological rehabilitation and landscaping works.

The approved project layout is provided in **Figure 2**.



**Figure 2 The Approved Concept Plan Layout (as modified) (Base Image Source: Meriton Apartments, 2011)**

### 1.3 Previous Modifications

A number of modification applications have been pursued by the proponent which have been assessed by the department and determined by the PAC or the department. The modification applications are summarised in **Table 1** below.

**Table 1: Previous Modifications**

<b>Concept Plan Modifications</b>		
<b>Modification No.</b>	<b>Application details</b>	<b>Determination</b>
MP09_0162 MOD 1	The deletion of the internal road, re-alignment of the pedestrian/bicycle path routes, amendment to the requirements of accessible units and car parking provision.	Approved by PAC on 15 December 2011
<b>Project Modifications</b>		
<b>Modification No.</b>	<b>Application details</b>	<b>Determination</b>
MP10_0177 MOD 1	The deletion of the second basement level and provision of a total of 474 spaces within a single level basement. Amendment to Condition B13 to provide for a car parking rate of 2 resident car parking spaces per 2 bedroom unit and 1 visitor car parking space per 5 units.	Approved by PAC on 15 July 2011

MP10_0177 MOD 2	Modification of Condition C19 – Ground water to allow for the installation of a permanent pumping system to ensure the basement is free of stormwater.	Approved by the Director General on 12 October 2011
MP10_0177 MOD 3	Amendment to the basement car park plan including the deletion of a vehicular entry/exit point.	Approved by PAC on 15 November 2011
MP10_0177 MOD 5	Amendment to Condition C21 relating to CPTED measures within the basement car park for the painting of the soffit.	Approved by PAC on 12 January 2012
MP10_0177 MOD 7	Staged strata subdivision of Buildings A, B, C, D, E, F, G and Pool Building.	Approved by the Deputy Director General on 18 April 2012
MP10_0177 MOD 4	Staging of road works within Boondah Road and Macpherson Street, staging of landscaping and deletion of requirement for cost sharing of the roundabout at the entry to the Anglican Retirement Village.	Approved by PAC on 10 May 2012

### Other Modifications Currently Proposed

The following modification applications are currently being assessed by the Department:

**Table 2 Current Modifications**

<b>Modification No.</b>	<b>Application details</b>
MP10_0177 MOD 6	Replace the internal road with private roads, realign the pedestrian/cycle path and allow shared emergency vehicle access, and associated revisions to landscaping.
MP10_0177 MOD 9	Modifications to Buildings E and G including provision of studies, revisions to storage cupboards and laundries, extension of the roof slap, reconfiguration of windows and provision of pop up roofs.

## 2. PROPOSED MODIFICATION

The proposed modification seeks to amend conditions of approval in relation to landscaping, developer contributions, works within the road reserve, civil works and smoke detectors to allow for the staged occupation on Buildings.

The existing conditions of approval require compliance prior to issue of the first or any occupation certificate.

The proponent has indicated that the construction is progressing in stages and that Buildings B, C and E will be completed ahead of the remainder of Buildings in Stage 1. The proponent therefore seeks to amend the conditions to allow occupation of these three buildings. Specifically, the proposed amendments involve deferring the following matters until prior to issue of a Final Occupation Certificate

- completion of landscaping only for the parts of the site adjacent to the relevant building;
- implementation of a Landscape Management Plan and commencement of the 24 month maintenance period by the proponent;
- certification of landscape works by a qualified landscape architect;
- dedication of the creekline corridor and open space;
- any agreement with Council regarding Material Public Benefit in lieu of cash contributions;

- repair of any damage to public roads or other public infrastructure;
- certification of road works, drainage and civil works and commencement of the 6 month maintenance period by the proponent (for any works to be dedicated to Council); and
- certification of water and ground management, bushfire requirements, landscaping and nest boxes.

The application also seeks to amend the requirement for hard wired smoke detectors to clarify that it is to be met prior to issue of the relevant Occupation Certificate, rather than any Occupation Certificate.

### **3. STATUTORY CONTEXT**

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#### **3.1 Continuation of Part 3A**

Under clause 3C of Schedule 6A to the *Environmental Planning & Assessment Act 1979* (the Act), Section 75W of the Act (as in force immediately before its repeal on 1 October 2011) continues to apply for the purpose of the modification of a project application approved before or after the repeal of Part 3A.

Consequently, this report has been prepared in accordance with the requirements of Part 3A and associated regulations, and the Department may approve or disapprove of the modification to the project under Section 75W of the Act.

#### **3.2 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.

#### **3.3 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.

#### **3.4 Delegated Authority**

The Minister has delegated his functions to determine Part 3A applications to the Deputy Director General, Development Assessment & Systems Performance where:

- the relevant Council has not made an objection, and
- a political disclosure statement has been made, but only in respect of a previous related application; and
- there are less than 10 public submissions objecting to the proposal.

No submissions have been received from the public and Pittwater Council does not object to the proposal. While a donation has not been disclosed in relation to this application, the proponent provided a statement disclosing a reportable political donation with the previous Concept Plan (MP09\_0162).

Accordingly this modification application is referred to the Deputy Director-General, Development Assessment & Systems Performance for determination.



## 4. CONSULTATION AND SUBMISSIONS

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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 required 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 and was referred to Pittwater Council.

Pittwater Council does not object to the proposed modification. No public submissions were received.

## 5. ASSESSMENT

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The Department considers that the key issues for the proposed modification are:

- landscaping;
- repair of damage to public roads and other public infrastructure;
- certification of all road, drainage and civil works and smoke detectors; and
- Developer Contributions.

### Landscaping

The proposed modification seeks to allow for the landscaping to be undertaken in stages prior to issue of a Final Occupation Certificate for the relevant part of the site.

The Department considers that the staged landscaping is appropriate given that:

- landscaping will be provided adjacent to the buildings to be occupied to provide amenity to residents during the construction phase of surrounding buildings;
- allowing the remainder of landscaping on the site to be undertaken at a later stage will avoid damage during construction;
- all landscaping, including certification by a registered landscape architect, and implementation of a Landscape Management Plan must be completed prior to issue of a Final Occupation Certificate; and
- Council has raised no objection to the proposed staging.

The modification to Conditions C2 and D13 is therefore supported.

### Repair of damage to public roads and other public infrastructure

The Department considers that it is appropriate to defer the final repair of any damage to public roads and other public infrastructure until all construction is complete to avoid unnecessary costs associated with any damage that may occur throughout the staged construction. It is considered acceptable that all works be repair and restored to the satisfaction of Council prior to issue of the Final Occupation Certificate.

Council has raised no objection to this amendment. The modification of Conditions F12 and F14 is therefore supported.



### **Certification for various works**

The proposed modification seeks to amend the conditions in relation to certification of, water and ground management, all road, drainage and civil works, bushfire requirements, landscaping and nest boxes to allow the staged occupation of buildings. The proponent has requested that the conditions be amended to require completion of all works prior to issue of a Final Occupation Certificate, rather than the first or any Occupation Certificate.

The Department does not raise any objection to these works to be completed prior to issue of a Final Occupation Certificate, thereby allowing occupation of Buildings B, C and E prior to the completion of these works. It is also appropriate that the maintenance period for any works being dedicated to Council occur after issue of the Final Occupation Certificate. Further, Council has raised no objection to this amendment.

It is also proposed to amend the requirement for hard wired smoke detectors to be provided prior to the relevant Occupation Certificate, rather than any Occupation Certificate. The Department notes that smoke detectors are required by the Building Code of Australia (BCA). It is the certifier's responsibility to ensure that the BCA requirements are complied with and inserting the word 'relevant' into the condition does not alter this requirement. The Department therefore considers that this modification is acceptable.

The requirement for a Sydney Water Section 73 Certificate remains relevant for any Occupation Certificate and the proposed modification to Condition F16 clarifies this requirement, while allowing other certification matters to be satisfied prior to issue of the Final Occupation Certificate.

### **Developer Contributions**

The existing conditions of approval require the proponent to dedicate the creekline corridor and open space to Council prior to issue of the first Occupation Certificate. In addition, should the proponent agree to a Material Public Benefit in lieu of cash contributions, the agreement (with Council) is to be agreed to and signed prior to issue of the first Occupation Certificate.

Council has raised no objection to deferring these requirements until the final Occupation Certificate. On this basis, the Department does not object to the amendment of Condition C12.

## 6. CONCLUSION AND RECOMMENDATIONS

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 modification is generally consistent with the terms of the Project Approval as it involves only amendments to the timing of works to allow the staged occupation of buildings. Council has not raised any objections to the proposed staged occupation of the development. On this basis, the proposed modification is considered to be acceptable.

It is recommended that the Deputy Director General, Development Assessment & Systems Performance:

- (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**).



A/Director  
Metropolitan & Regional Projects South



11.5.12  
Executive Director  
Major Projects Assessment



23/5/12  
Deputy Director-General  
Development Assessment &  
Systems Performance

## **APPENDIX A      MODIFICATION REQUEST**

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## **APPENDIX B SUBMISSIONS**

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## **APPENDIX C    RECOMMENDED MODIFYING INSTRUMENT**

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