

MODIFICATION REQUEST:

**Albert Avenue & Thomas Street, Chatswood – Thomas
Street Car Park**

(MP09_0066 MOD 1)

***Amendment of conditions of consent to allow for staging
of the development***



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

June 2012

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NSW Government
Department of Planning & Infrastructure

EXECUTIVE SUMMARY

This report is an assessment of a section 75W modification application MP09_0066 MOD 1 lodged by Meriton Apartments (the proponent) requesting modifications to the project approval for MP09_0066, which permitted the construction of the Welles Thomas Plaza. The development consists of two separate southern and northern towers occupying an 'L' shaped site in the Chatswood Central Business District.

The modification application was placed on the department's website and Willoughby City Council was notified in writing. Council did not object to the principle of staging the development however issue was raised with regard to the proposed method of modifying the instrument of approval to achieve the staging.

The application seeks approval to group certain conditions under various stages of development ranging from initial site works to the issue of the final occupation certificate. The proponent has requested to achieve this through the addition of a single condition in the approval. The condition provides a description of each stage and nominates a stage to a condition referenced by its condition number. Council raised issue with this proposed method as it created ambiguity and left several conditions in the consent requiring modification unaccounted for.

Council recommended in their submission that a new condition be added to the instrument describing each stage of the development and insert reference of the stage in the condition itself.

The department agrees that the method recommended by Council will avoid ambiguities when interpreting the instrument. On this basis, the department considers that the proposed modification application should be approved, subject to the insertion of a new condition describing the stages of development and the modification of various conditions outlined in the attached Recommended Modifying Instrument under Appendix C.

1. BACKGROUND

1.1 The Site

Commonly known as the Thomas Street Car Park Site, the site comprises eleven (11) 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. The Pacific Highway is to the west of the site and the North Shore rail line is to the east of the site.

It is situated within the Chatswood CBD (within the Willoughby Local Government Area) which is a Major Regional Centre in the inner north metropolitan area.

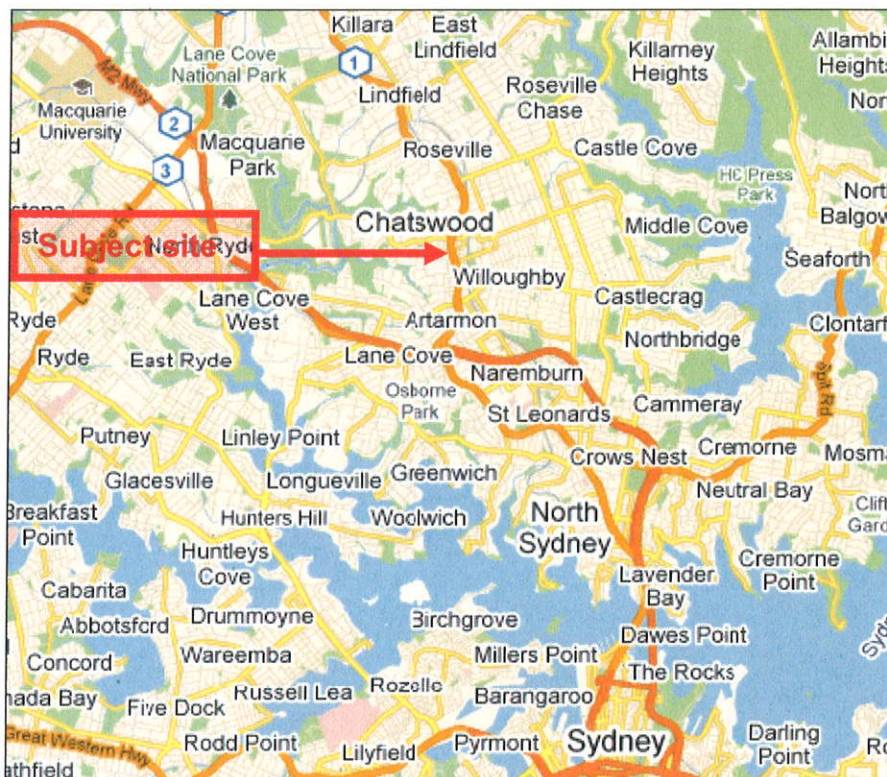


Figure 1: Regional context of the subject site

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 from 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.



Figure 2: Aerial view of the site

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, currently owned by Willoughby City 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.

1.2 Background

Project Approval, MP09_0066 was submitted to the department on 1 April 2009 for the construction of a mixed use commercial, retail and residential development contained within two towers, a basement level car park including public car park, a through site pedestrian link and public works. The application was approved by the Minister on 28 September 2010 subject to conditions.

At the time of writing, a second modification proposing the amendment of five conditions in the approval is being assessed.

2. STATUTORY CONTEXT

2.1 Modification of the Minister's Approval

Section 75W(2) of the *Environmental Planning and Assessment Act 1979* (the EP&A Act) provides that a proponent may request the Minister to modify the Minister's approval of a project. The Minister's approval of a modification is not required if the approval of the project

as modified would be consistent with the original approval. As the proposed modification seeks to amend the wording of conditions of the Project Approval, the modification will require the Minister's approval.

2.2 Environmental Assessment Requirements

Section 75(3) of the EP&A 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. Environmental Assessment Requirements were not issued for this modification as the proponent had addressed the key issues related to the modification request.

2.3 Delegated Authority

The Minister delegated his functions to determine a modification request under section 75W of the Act where:

- the relevant local council has not made an objection; and
- a political donation disclosure statement has been made but only in respect of a previous application; and
- there are less than 10 public submissions in the nature of objections.

No submissions have been received from the public. Council has not made an objection. A political donation disclosure statement was provided with the original application confirming that no donations have been made.

Accordingly, the modification application is able to be determined by the A/Director, Metropolitan & Regional Projects South, under delegation.

3. PROPOSED MODIFICATION

3.1 Modification Description

The proponent seeks to amend 27 conditions of the approval to assist in scheduling of the certification of the development. The wording of numerous conditions is proposed to be amended in order to facilitate the staged construction of the development. The proponent wishes to insert a condition tabulating each stage of construction and nominating conditions to each of the stages as follows:

New condition A2(A)

- (a) The works may be carried out in stages with the relevant conditions being satisfied prior to the issue of a construction certificate for each stage as follows:

Stage	Description	Specific Conditions
1A	Includes installation of shoring walls and associated works around the whole development site	B5, B6, B12, B14, B15, C8, C16
1B	Includes ground preparation, piling and excavation over the whole development	B1, B18
2	Includes the construction of structures from basement to ground level	
3	Includes the construction of structures above ground level	B7, B8, B17, C18, D10, E11, E15, E31
4	Includes the construction of fit out works from basement to ground level	E9, E10
5	Includes construction of fit out works above ground level	B4, B13, D7, D8
6	Final occupation Certificate	B13, F9, F10, F11, F21

- (b) In addition to those conditions identified in the above table, other conditions may be required to be satisfied prior to the issue of a construction certificate at each stage of construction.

4. CONSULTATION AND SUBMISSIONS

4.1 Exhibition

Under section 75X(2)(f) of the EP&A Act and clause 8G of the EP&A Regulation 2000, the modification request was made publically available on the department's website. The department also consulted Willoughby City Council.

Willoughby City Council

A submission by Willoughby City Council was forwarded to the department raising no objection to the principle of staging the development. However, Council raised issue with the manner in which the staging is proposed to be applied to the instrument of approval. While the proponent proposes to insert a single condition in the approval to identify the various stages and corresponding conditions, Council's preferred practise is to identify the staging proposed by the developer and apply reference to the stage in the wording of the condition itself.

Comment

The department considers Council's approach to be reasonable in this instance. The insertion of a single condition in the approval without amending the actual conditions would create ambiguities in the interpretation of the instrument resulting in delays to the construction and certification process.

Therefore, it is the department's view that inserting reference to the stage in each of the conditions (as recommended by council) to be the preferred approach to modifying the instrument. A detailed discussion of each condition proposed to be amended is provided in Section 5 of this report.

4.2 Public Submissions

No submissions were received from the public.

5. ASSESSMENT

The key issues for the proposed modifications are outlined and addressed below.

5.1 Method of staging the development

The proposal seeks approval for the staging of the development by amending the wording of several conditions. The proponent requests to add a single condition in the approval describing the various stages of development and nominating conditions to a stage by way of tabulation.

As discussed briefly in Section 4 of this report, Council did not object to the proposed staging but raised issue with the proposed method of application to the instrument of approval. Council's preferred method is to insert a new condition describing each stage of the development and also insert reference to the stage in the wording of each corresponding condition. The department is in agreement with Council that this will simplify the interpretation of the instrument for construction and certification purposes.

The new condition describing each stage of the development shall be inserted under 'SCHEDULE 2, Part A – ADMINISTRATIVE CONDITIONS' as follows:

A6 Staging of development

- (a) The works may be carried out in stages with the relevant conditions being satisfied prior to the issue of a construction certificate or final occupation certificate for each stage as follows:

Stage	Description
1A	Includes installation of shoring walls and associated works around the whole development site
1B	Includes ground preparation, piling and excavation over the whole development
2	Includes the construction of structures from basement to ground level
3	Includes the construction of structures above ground level
4	Includes the construction of fit out works from basement to ground level
5	Includes construction of fit out works above ground level
6	Final Occupation Certificate

In addition to the addition of the condition above, reference to the relevant stage shall be inserted into the wording of each condition required to be modified.

5.2 Proposed staging of conditions

The following table outlines the conditions proposed to be amended by the proponent, council's recommendation and the department's determination. A comment is provided for any conflicts between the proponent, council and the departments recommended staging.

Proposed Stage	Condition	Council's recommended staging	Department's recommended staging	Comment
1A	B5, Damage Deposit	1A	1A	Agreed
	B6, Traffic Management During Construction	1A	1A	Agreed
	B12, Temporary ground anchors	1A	1A	Agreed
	B14, Construction Management Plan (CMP)	All stages	1A	Agreed
	B15, Public Car Park	1B	1A	The proponent requests this Condition be met at an earlier stage than council. No issue is raised by the department in this regard.
1B	C8, Suitable Screens	All stages	1A	Barricades must be erected to prevent entry into the site at the commencement of works. This condition should be met at Stage 1A of the development and maintained during construction.
	C16, Spoil Route Plan	1B, 2, 3, 4, 5	1A	Transportation of spoil may occur at any stage of the development. Details of the transportation of spoil shall therefore be approved prior to the commencement of any works occurring on the site. This condition shall be met at Stage 1A of the development however will apply throughout the construction process.
	B1, Road Closure of Fleet Lane	1A	1A	This condition requires the closure of Fleet Lane, which is necessary to allow any construction to commence on the site. Therefore, the condition is recommended to be met at Stage 1A.
2	B18, Sydney Water Requirements	All stages	1A	Works at all stages of the development have the potential to result in the discharge of effluent into the Chatswood, Willoughby Stormwater Channel 26 system where Sydney Water has an interest in maintaining and improving water quality. Therefore the condition shall apply from Stage 1A of the development.
	B7, Noise from Location and Transport Corridor	All stages	3	Condition B7 requires compliance with the recommendations of the acoustic report prepared for the development for the purpose of internal amenity. This condition is recommended to apply to Stage 3 as the report requires the use of specific materials for the built form existing above ground level.
	B8, Building Ventilation	All stages	2	The department considers that this condition should be met at Stage 2 as basements must also be ventilated in accordance with the requirements of the Building Code of Australia

	B17, Certificate requirements	BASIX	1B, 2, 3, 4, 5		2	(BCA)
	C18, Pavement Engineering Details	Road -	All stages		3	Structures such as ventilation systems related to environmental performance of the building are likely to be partly installed within basement levels. Ventilation relates to building sustainability which is governed by BASIX. In this regard, demonstration of compliance with BASIX requirements is recommended to be demonstrated prior to issue of a construction certificate for Stage 2.
	D10, Control of Wind Movements		2		3	This condition relates to the provision of details regarding above ground works external to the subject site. The department agrees that this condition should be provided prior to issue of the Construction Certificate for Stage 3 as requested by the proponent.
	E11, Waste & recycling rooms	6A			2	The condition relates to landscaping at the ground level and therefore relates to the construction of structures above ground level being Stage 3.
	E15, Tree Planting	6B			3	Commercial waste rooms are provided at basement levels. This condition is recommended to apply to Stage 2 of the development.
	E31, Sweep & Clean Pavement	All stages			1A onwards	Tree planting relates to above ground works and directly affect wind management requirements which are to be addressed at Stage 3.
4	E9, Access for the Disabled	6A, 6B			2	The condition states that the pavement is to be made clear at the end of each working day. The pavement should be cleaned during all stages of the development. Therefore, the condition is recommended to be amended to apply from Stage 1A of the development then throughout the construction process.
5	E10, Food Premises	6A, 6B			4	Disabled access facilities relate to the provision of parking spaces and pedestrian access ways located throughout the building including basement levels. Therefore this condition is recommended to be addressed prior to issue of a construction certificate for Stage 2.
	B4, Developer Contributions	1B			1B	Agreed.
	B13, Dedication of Land - Road Widening	1A, 6			5	Council is the recipient of the S94 contribution fees. The department considers that Council's request that these be payable prior to Stage 1B is reasonable and consistent with normal planning practise.
	D7, Adjustment to overhead electricity supply	All stages			5	The department raises no issue with the dedication of land for the purpose of road widening at Stage 5. Road dedication is usually carried out towards the latter stages of development and staging it this way will allow the proponent to carry out the necessary road works prior to the dedication being carried out.
	D8, Ventilation Plans and Details	All stages			2	This condition requires the existing overhead electricity cables are to be relocated underground and relates to reconstruction of the road. To ensure the timing of this condition is consistent with other road work related conditions in the approval, the condition is recommended to apply prior to issue of the Construction Certificate for Stage 5.
6	F9, Services - Mailboxes	6A, 6B			-	Ventilation systems are to be partly accommodated within the basement levels therefore it is necessary that this condition be met prior to issue of the Construction Certificate for Stage 2 of the development.
						This condition does not currently apply to any stage of development; rather it is an operational condition. The department considers it appropriate to amend the wording of the condition to indicate compliance prior to issue of 'any occupation certificate'.

	F10, Ventilation Operation	-	-	-	Operational condition.
	F11, Mechanical ventilation systems comprising water cooling	6A, 6B	6	Agreed.	
	F12, Annual Fire Safety Statement	-	-	The condition relates to the annual submission of a Fire Safety Statement which is an ongoing operational requirement.	

No issue to the proposed staging of the development is raised by the department subject to the recommended staging detailed in the above table. Additionally, the department recommends that four other conditions of the approval be amended to clarify their relevance to the proposed stages. These conditions are B3 (Additional Details and Information), B9 (Adaptable units), B10 (Design of OSD & Rainwater Harvesting System) and B11 (Design of stormwater system in Fleet Lane). These conditions are shown in their amended form in the recommended instrument of approval (Appendix C).

6. CONCLUSION

The department has assessed the proponent's application and considered Council's submission in response to the proposal. While council did not object to the staging of the development, concern was raised with regard to the method suggested by the proponent to modify the instrument of approval. Council's recommended approach was to add a new condition to the approval describing the stages of the development and insert wording of the stage in the corresponding condition in order to avoid ambiguities arising when interpreting the instrument.

The department raises no issue with the principle of staging the development and considers Council's recommended method of applying the staging in the instrument of approval to be more appropriate.


The proposal is therefore recommended for approval subject to the amendment of four additional conditions (B3, B9, B10 and B11) as outlined (Appendix C) in the recommended instrument of approval.

8. RECOMMENDATION

It is recommended that the A/Director, Metropolitan & Regional Projects South:

- (a) **Consider** the findings and recommendations of this Report;
- (b) **Approve the** Director-General's Environmental Assessment Report under Section 75W Application *Environmental Planning and Assessment Act, 1979* and sign the Determination (**Tag A**)

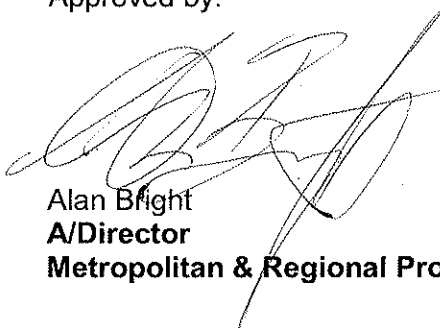
Endorsed by:



4/6/12

Ben Lusher
A/Team Leader
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Approved by:



07/06/12

Alan Bright
A/Director
Metropolitan & Regional Projects South

APPENDIX A MODIFICATION REQUEST

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

APPENDIX B SUBMISSIONS

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

APPENDIX C RECOMMENDED MODIFYING INSTRUMENT
