

2 July 2012

Mr Ben Lusher  
NSW Department of Planning and Infrastructure  
23-33 Bridge Street  
SYDNEY NSW 2000



**MERITON**  
MERITON PROPERTY SERVICES  
PTY LIMITED

**HEAD OFFICE**  
Level 11, 528 Kent Street  
Sydney NSW 2000  
Tel: (02) 9287 2888  
Fax: (02) 9287 2653

Dear Mr Lusher

**RESPONSE TO WILLOUGHBY CITY COUNCIL'S SUBMISSION  
SECTION 75W APPLICATION TO MAJOR PROJECT MP NO.09\_0066, THOMAS STREET CAR  
PARK – AMENDMENT TO CONDITIONS**

Reference is made to Council's letter dated the 18 May 2012 relating to the above mentioned modification. Please find below our response to the Council's comments and the submission received from the adjoining owner as follows.

Please note that we have revised our position on disabled car parking spaces and are satisfied to comply with council's DCP. We have also sought to further amend the dilapidation reports required by conditions C14 and C15. With regard to the provision of Affordable Housing we have changed our position to no dedication or monetary contribution which you will find is a reasonable and justifiable request.

**Condition B9 – Adaptable Units**

The Metropolitan Strategy seeks new dwellings to have a minimum 10% for adaptable housing. This 10% requirement of the Metropolitan Strategy has already been adopted by many Councils, which is evident in Appendix 2 of the report prepared by Chris Elnor for Shelter NSW (See **Annexure 1**).

The provision of adaptable housing is not a special issue pertaining to an individual local council area, but applies across the entire metropolitan area and state. Therefore, the State Government's policy on the amount of adaptable housing to be provided in a new development should apply. The proposed modification merely seeks to adopt the Metropolitan Strategy and as such State Government policy.

The current condition requiring 20% of adaptable units is considered excessively high, as over the last 40 years there has been only 1 request for Adaptable accommodation in Meriton developments. Clearly there is a policy gap between a perceived supply and demand of adaptable units in new apartment developments.

Previous recommendations by the Department of Planning for MP10\_0177 at Warriewood to reduce the amount of adaptable housing from 50% to 10% was adopted by the Planning and Assessment Commission back in 2011. The request to reduce the proportion of adaptable housing in this modification is no different.

The principal policy of the State Government for the provision of adaptable housing can be found within State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004. This policy provides the specialised accommodation for seniors or people with a disability over a life cycle. The built

form under this policy provides housing stock which meets the various life cycle requirements of a community.

People who have disabilities or who are significantly older want accommodation in specialised housing facilities and not standard unit developments. Such people prefer to be with others of similar circumstances. The Seniors Living accommodation provides the appropriate and specialist care which meets the needs of an ageing population and or people with disabilities, not the general apartment stock, and is why we receive no demand for adaptable units.

Seniors living housing is the appropriate built form to meet the needs of this sector of the community. The planning system has already provided for this sector of the population. There is therefore no need to duplicate facilities.

The cost associated to build units for people with disabilities requires the provision of ramps, wider corridors, bedrooms, kitchens, living rooms, bathrooms, toilets, and most importantly, wider car parking spaces and excessive floor to ceiling heights in the basement. Such excessive space adds considerable pressure to construction costs and leads to less affordable housing. From our experience, adaptable units and associated facilities are not used.

Providing all these facilities does not guarantee a person with a disability will have the opportunity to purchase an adaptable unit. The general public (without a disability) also purchase these units for standard accommodation which then locks out a person with a disability from buying an adaptable unit.

Importantly, dwelling houses do not come under the same scrutiny with providing adaptable provisions.

#### **Condition B9 – Car Parking**

The Council has a sliding scale for the provision of disabled car spaces for adaptable units and this should be used as a template for other Council areas in recognition that not all people with a disability or older person is going to have a car. We therefore are content to provide disabled car spaces in accordance with the sliding scale listed in Part C6 of the Willoughby DCP. The wording of the condition can be as follows:

*“Adaptable residential units for disabled persons are to be provided to no less than **10%** of the total number of units. Each adaptable unit is to be nominated on the Construction Certificate drawings and is to be provided with disabled car spaces required by Willoughby Development Control Plan Part C.6 – Access, Mobility and Adaptability.”*

#### **Condition B10 – BASIX and Rainwater Re-use**

Condition B10 of the approval seeks to reduce the consumption of mains-supplied potable water by having non-potable water being connected to the laundry, toilets and irrigation of landscaped areas in accordance with the Willoughby DCP. This requirement does not comply with Clauses 3 and 9 of State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004. Both clauses state that a DCP cannot subtract or modify obligations under BASIX. In particular Clause 9 states that a DCP cannot reduce the consumption of mains-supplied potable water. By increasing non potable water to the laundry and toilets, it is subsequently reducing the amount of mains-water to the building which is not in accordance with BASIX.

New apartment buildings we construct are always in accordance with the relevant BASIX certificate at the time of approval. When BASIX was first introduced in 2004 there was a requirement to reduce water use by 20%. This has now increased to 40%. With Council introducing the requirement of a non-potable supply of water to the laundry and toilets, the BASIX requirements are exceeded.

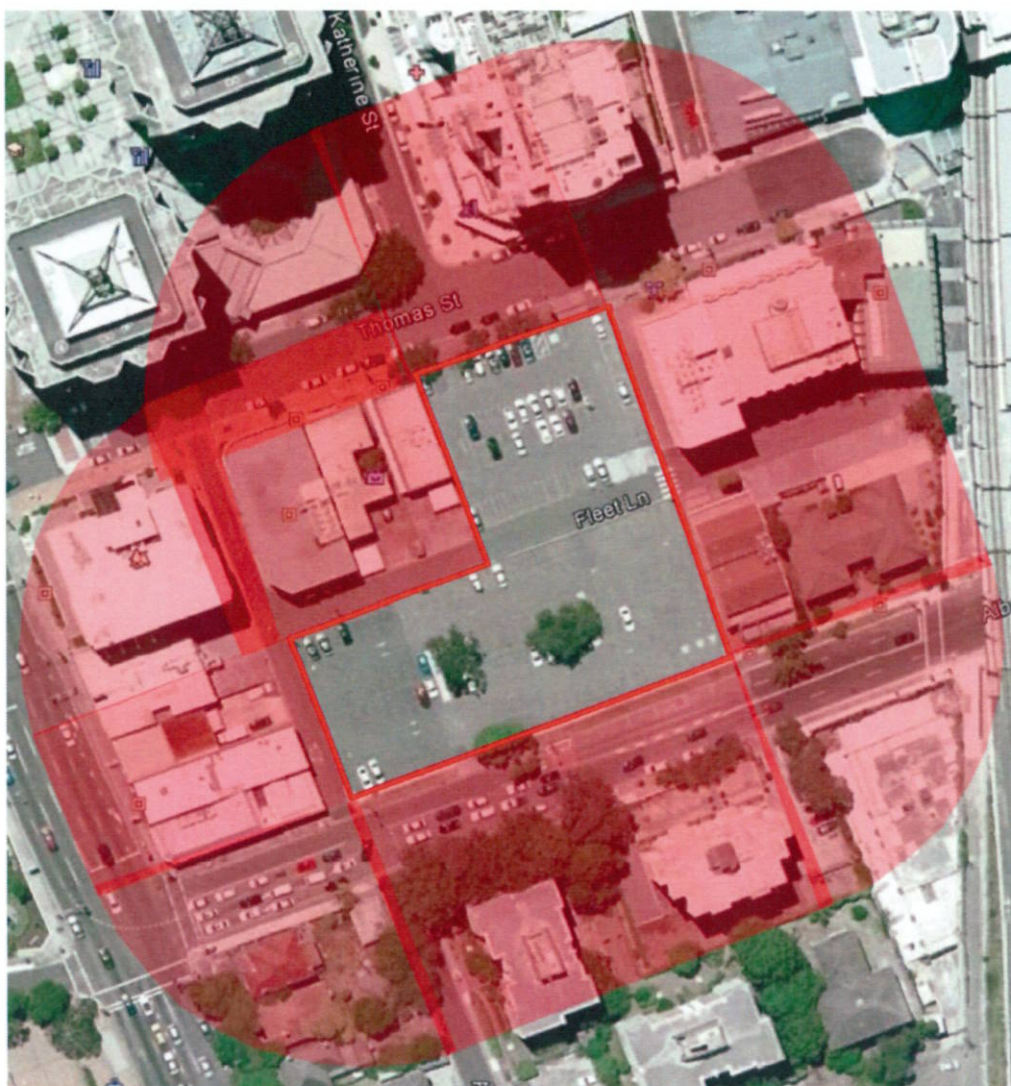
We remain committed to irrigating the landscaped areas via a rainwater harvesting system and complying with BASIX. As such, condition B10 as amended in our letter dated the 1 May 2012 remains our position.

#### **Condition B11 – Management of Stormwater**

Council raise no objection to our proposed amendment. No further comment required.

#### **Condition C14 – Dilapidation Report of Council Property**

Following advice from our Engineer and site inspections, the wording of the current condition implies Meriton will be liable for any damage to Council's property to a distance of 50m. This condition must be modified as Council property to a distance of 50m will NOT be related to our site as shown in the map below.



For example footpaths, kerbs, gutters, nature strips, and the like, which are located to the south of the site, and along the Pacific Highway are located too far away from the site to be effected by our construction works. Any construction works by others, or created by other unknown sources that damage Council's property then has to be paid by Meriton, which for obvious reasons is unreasonable and we cannot accept.

The condition should be reworded to reflect a more balanced approach (see below).

*"Dilapidation Report of Council's Property*

*C14 - The proponent is to submit a dilapidation report including a photographic record of Council's property ~~extending to a distance of 50m~~ **immediately adjoining the subject site**, detailing the physical condition of items such as, but not exclusively to, the footpath, roadway, nature strip, and any retaining walls.*

*The developer may be held liable to ~~any recent damage to public infrastructure in the vicinity of the site,~~ **immediately adjoining the subject site** ~~where such damage is not accurately recorded under the requirements of this condition~~ prior to the commencement of works. In this regard, the damage deposit lodged by the proponent may be used by Council to repair such damage on Council's property.*

*This dilapidation report shall be submitted to Council and the Principal Certifying Authority."*

**Condition C15 – Dilapidation Report**

We note that Council raise no objection to the proposed wording. However, a recent letter from the adjoining owner dated the 22 June 2012 is recommending the wording of the Dilapidation condition be reworded as follows.

*"A dilapidation report including a photographic record is to be prepared by a practicing Structural Engineer, at no cost to council or adjoining property owners, detailing the structural adequacy of adjoining properties, including Council's property, and their ability to withstand the proposed excavation.*

*This report must include any measures required to be incorporated to ensure that no damage will occur during the course of works to **reduce the likelihood of damage during the course of works**. The report shall be submitted to the PCA and relevant adjoining property owners including Council."*

Following consideration of this submission, we accept the above reworded condition as outlined in the submission from the adjoining owner.

**Condition E40 – Affordable Housing**

Meriton firmly objects to handing over all units on level 3 to Council for Affordable Housing. The provision of Affordable Housing is a complex matter and should not be left to a number property development companies who undertake large apartment projects. Affordable Housing must be addressed by the wider community through Section 94A contributions at a local government level or through a broader State Government taxation system.

Notwithstanding the above, the time this application was being prepared and up until the time of approval, the Sydney Regional Environmental Plan (REP) No. 5 was the governing planning instrument covering the CBD and did not require Affordable Housing Units. This still remains the same as there is no gazetted local environmental plan that amends or repeals, the REP to provide Affordable Housing.

We note that the draft Willoughby LEP 2012 which has recently come off public exhibition, seeks to replace the Sydney REP. Whilst there are planning clauses relating to Affordable Housing in the draft LEP, for all intent and purposes a "draft" LEP does not override the Sydney REP No. 5, which as previously stated, has no provisions for Affordable Housing until there is ministerial approval and gazettal. The draft LEP is only to be given "some" weight in assessing applications.

In this regard, Clause 6.8(2)(c) of the draft LEP states that development consent must not be granted unless consideration has been given to **whether** an affordable housing condition **should** be imposed on the consent. The wording of this proposed clause therefore gives the consent authority (Planning and Assessment Commission on this occasion), a choice as to whether or not any Affordable Housing condition should be imposed at all.

We cannot describe strongly enough our opposition to dedicating residential units to Council for Affordable Units, as it puts the commercial viability of the project at significant risk. The commercial viability of projects will always fail when significant costs are added, and on this occasion, it is conditions requiring the dedication of units back to council for the provision of Affordable Housing.

Conditions of consent and LEPs for that matter must be in-line with what is happening in the market and wider economy. Councils in general introduce Affordable Housing conditions and controls in times of significant rises in house prices and then do not remove the controls when the economy is struggling.

It may have been suitable for the previous owner to accept conditions that imposed dedication of units for Affordable Housing, because at the time, house prices were rising and the remaining units to be sold would have attracted a higher price to offset the loss of sales from units being dedicated back to Council. The rise in house prices at the time the previous owner was accepting Affordable Housing conditions no longer prevail. There will be **no way** of "clawing back" financial losses from units that are not dedicated to Council, as unit prices for the foreseeable future are flat, if not in decline (as being evident in recent ABS and recent Real Estate Institute data).

The market has always determined where people can afford to live. If a purchaser cannot afford to buy or rent in a particular location, then a more affordable place to live is sought. This is the character of the residential property market, and policies that try to intervene with the market inevitably fail which causes housing not being built making housing unaffordable as the supply falls away. Given the market conditions that currently prevail, it is reasonable and justifiable to remove the requirement to dedicate units to Council for Affordable Housing from the Major Project Approval.

In accordance with Section 79C of the Environmental Planning and Assessment Act 1979, consideration can be given to the economic impacts. Significant evidence is provided in this letter justifying removal of the Affordable Housing conditions and Statement of Commitments from this Major Project Approval.

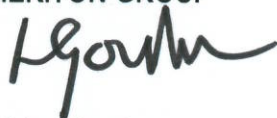
As such, our position is to delete Condition E40 from the Major Project Approval and delete any reference to Affordable Housing Units from the Statement of Commitments.

It is critical to get conditions correctly reflecting the current economic conditions to stimulate housing construction in New South Wales.

Should you require any further information, please do not hesitate to contact me in the first instance.

Yours faithfully

**MERITON GROUP**

A handwritten signature in black ink, appearing to read 'W Gordon', written over the printed name.

Walter Gordon

**Manager Planning and Development**

# **ANNEXURE 1**

## Appendix 2: Local government authorities with accessible and adaptable provisions for residential housing

LGA	Source of accessible and adaptable provisions:	Summary of application of Standard AS 4299 Adaptable Housing
Armidale Dumaresq	DCP J – Design for Access and Mobility (POL 057)	Where residential developments (medium-density) include five or more dwellings, 10% are to be built to an 'adaptable' design (level unspecified)
Ashfield	DCP for Access, Adaptability And Mobility (1998)	10% of residential flats are to be adaptable; 10% of townhouses and villas are to be adaptable. Access to upper level by stair platform lift or ramp
Auburn	DCPs (2005) Multiple Dwellings 9; Residential Flat buildings	For multiple dwellings and residential flat buildings, where more than 5 units then 10% are to be adaptable at Class C of AS 4299
Bankstown	LEP and D2 p34 adaptable housing DCP (2005) 9.1 - Where there is multi-unit development a minimum of 25% to be built to 'suit a range family types';	For villas where more than 10 dwellings, 1 in each additional 10 to be adaptable. In residential flat buildings where more than 10 units then 1 adaptable plus 1 for every additional 50 units.
Baulkham Hills	LEP and DCP 3-7, 12-14; ESD Objectives 7 and 9 'take into consideration'	For townhouses (DCP 4, 5.19), villas (DCP 7, 5.21) and apartment buildings (DCP 6, 5.23) - 5% of the total built to AS 4299 -5% Class B standard; All dual occupancy (DCP 5, 4.23) dwellings built to specification in AS 1428.1
Bega Valley	DCP - 1. 4. Life cycle housing controls p. 49/50	In developments where five or more units, at least one to be built to AS 4299 on ground floor or stairlift)
Bellingen	DCP 17 - Equity of Access (2003) p 8 and 9 Section 14	Where more than one dwelling in a residential development, at least half to meet the requirements of an adaptable checklist (Section 14)
Blacktown	DCP 2006 Part C Residential Flat Building 7.6.12 access	For residential flat development, 10% of the total number to be designed to disability requirements of AS 1428.1
Blue Mountains	LEP cl 109; C5.6; DCP's, multi dwelling (D4.12.1) Dual occupancy (d3.12.1), Granny flat (D2.12.1)	DCPs specify a range of adaptable housing ratios and required standards (A, B or C) for developments related to the slope of the block.
Botany Bay	DCP Access (1996)	Multi-unit development of less than ten units where at least one adaptable to AS4299 are exempt from the DCP.
Byron	C 7.10 of DCP 2002 and Draft DCP 2006	Where multiple development units, 10% of the total to be adaptable units.
Cessnock	DCP 58 Access and mobility (2004)	In multiple developments for each 4 or more units, 1 additional unit to be adaptable (i.e. adaptable units will comprise 20% of the total)
Holroyd	DCP 4A cl 23, DCP5 cl 25, DCP 44 Clause 4.4.6+ Precinct plans i.e. Greystanes Residential, former CSIRO Site	In three-story development, 35% of any ground level dwelling shall be compliant with the requirements of AS 4299.
Hornsby	Hornsby LEP (1994) and Access and Mobility DCP	10% of SEPP 5 development units to be adaptable
Hunters Hill	DCP 23 Access and Mobility	Applies to all land in the LGA with the exception of some residential dwellings

**Appendix 2 (continued – part 2)**  
**NSW local government authorities with accessible and adaptable provisions for residential housing**

<b>LGA</b>	<b>Source of accessible and adaptable provisions:</b>	<b>Summary of application of Standard AS 4299 Adaptable Housing</b>
Hurstville	DCP 19 Access and Mobility DCP 24 Housing for Seniors or People with a Disability (2005)	10% of residential flat buildings must meet the adaptable access provisions for seniors housing
Kogarah	DCP Residential Design Guide 2005, Accommodation for old people and People with Disability	All multi-unit development to be adaptable (3.11.2) For terraces, villas, townhouses and residential flat development, 10% of units to be adaptable (3.11.1)
Ku-ring-gai	DCP 31 Access and refs other DCPs eg 55	Ensure that dwellings suitable for the disabled are provided in new multi-unit development
Lane Cove	DCP No 5 Access and Mobility 2.5 p30	In Class 2 developments, 10% of units to be adaptable
Leichhardt	DCP no. 32 Design for Equity of Access and Adaptability (1997)	In the development of medium-density residential flats, 10% of the total are to be adaptable.
Manly	DCP Access incorporating the Access policy 1996	Access to AS 4299 for 1 unit where 4 or more units built; requires provision for a stairlift in SEPP 5 developments and for all new aged and disability residential buildings.
Marrickville	LEP 2001 and DCP 31 Equity of Access and Mobility	10% of all multi-unit housing or residential flat development to be adaptable (LEP Clause 64)
Mosman	<b>LEP</b> and DCP Residential 5.15	All ground floor units in multi-unit developments to meet AS 4299 and BCA requirements
Newcastle	NDCP 2005 Note provisions for bonus FSR in 6.2 and 6.3	6.2 City East 6.3 City West May be bonus FSR where 'public benefit'
North Sydney	DCP 2001 6.1b.v, 7.1.a.ii (DCP 2002?)	For mixed use and multi-unit development, a minimum of 10% as adaptable housing.
Parramatta	DCP 2005	Specifies standards to be taken into account.
Penrith	<b>LEP</b> and DCP 2000 Residential Land-access all types	Specifies some adaptability provisions for dual occupancy, villas, two story town houses and apartment development
Pittwater	DCP 21 Part C	For multi-unit developments, 50 % to be adaptable housing to Class B; For SEPP seniors development, 50% to be adaptable class A; For shop-top housing 25% to be adaptable housing to Class B
Randwick	6 DCPs - Multi-unit housing 5.4, Backpackers 3.5 and 4 area DCPs	For multi-unit accommodation developments, disability access set at a ratio of 1:15. For backpackers accommodation, a minimum of 1 accessible room (to sleep 4) in each development.

**Appendix 2 (continued – part 3)**  
**NSW local government authorities with accessible and adaptable provisions for residential housing**

<b>LGA</b>	<b>Source of accessible and adaptable provisions:</b>	<b>Summary of application of Standard AS 4299 Adaptable Housing</b>
Rockdale	DCP 40 Housing for Elderly and People with a disability (1998)	All Residential and 3(a) zones and certain 5(a) zones. Self care units, hostels, nursing homes and retirement villages require 50% accessible for wheelchairs.
Ryde	DCP 2006 at 9.6 and Urban Housing @ 3.11 Accessibility	In any development, 10% of total sole occupancy units are to be adaptable (9.2)
Sutherland	<b>LEP 2000</b> (draft 2006) and DCP Housing for Older people or People with a Disability 2003	Seniors housing requires Accessible Entry to AS 4299; For hostel and residential care developments, 10% of the units required to be wheelchair accessible to AS 1429 (S.9 pp. 4-6)
Sydney	<b>LEP</b> and City of Sydney Access DCP 2004 Part 5 Adaptable Housing	Requires for Multiple Unit development, that around 10% meet adaptability standards.
Warringah	<b>LEP -only</b> Schedule 16 Principles and standards for housing for older people or people with disabilities	Provisions for development of Housing for older people or people with a disability are in the policy schedule to the LEP. They mirror SEPP 5 provisions.
Waverley	DCP 26 Access for people with Disabilities 1999	For multi-unit developments, 1in 10 units are required to be adaptable.
Willoughby	WDCP Part C pC75 ( previously: DCP 14 Access, Mobility and Adaptability)	For multi-unit developments between 10 and 50% are required to be adaptable (6.3)
Wingecarribee	DCP Residential Development 4.18	For Medium level density, 1:3 dwellings to be adaptable; Dual occupancy developments
Wollongong	DCP 49 Residential Development, April 2006 12.16	For multi-unit dwelling developments, where greater than 6 units, 10% of the total must be adaptable.
Woollahra	<b>WLEP</b> 1995 CI 2 and Access DCP (2004)	For development of residential flat buildings, 1in 10 units must be adaptable (3.2)
Wyong	DCP 2005 Chapter 64	For multiple dwellings and residential flats, 10% to be designed as suitable to AS 4299 (11.1)