



MODIFICATION REQUEST:
Albert Avenue & Thomas Street, Chatswood – Thomas
Street Car Park
(MP09_0066 MOD 2)
Amendment of various conditions



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

October 2012

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Published October 2012
NSW Department of Planning & Infrastructure
www.planning.nsw.gov.au

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1. BACKGROUND

1.1 The Site

Commonly known as the Thomas Street Car Park, the site comprises eleven 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.

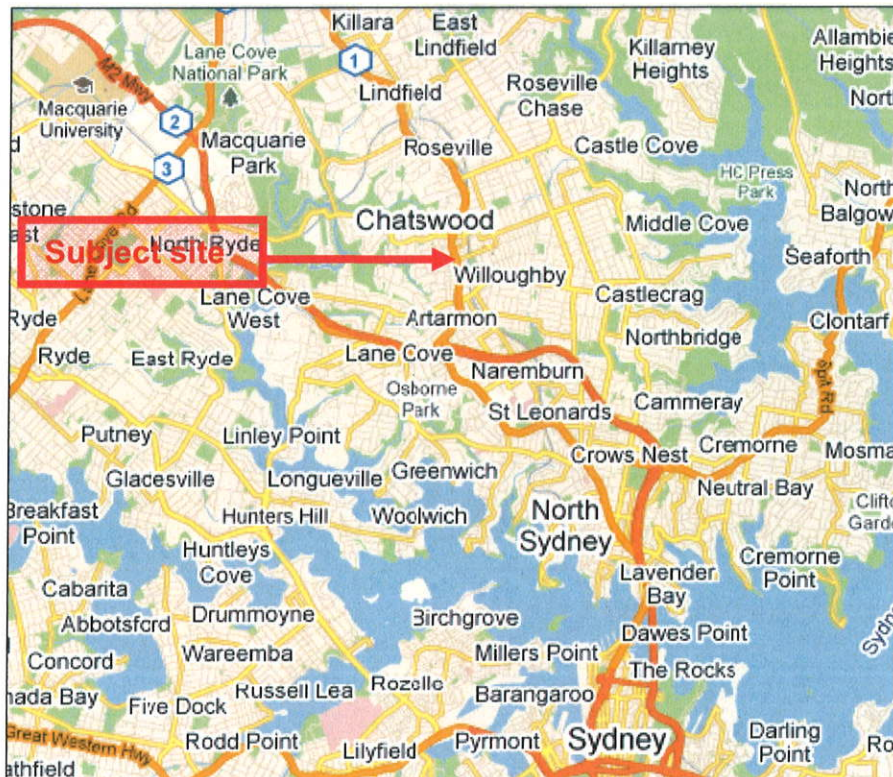


Figure 1: Regional context of the subject site

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 of 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.

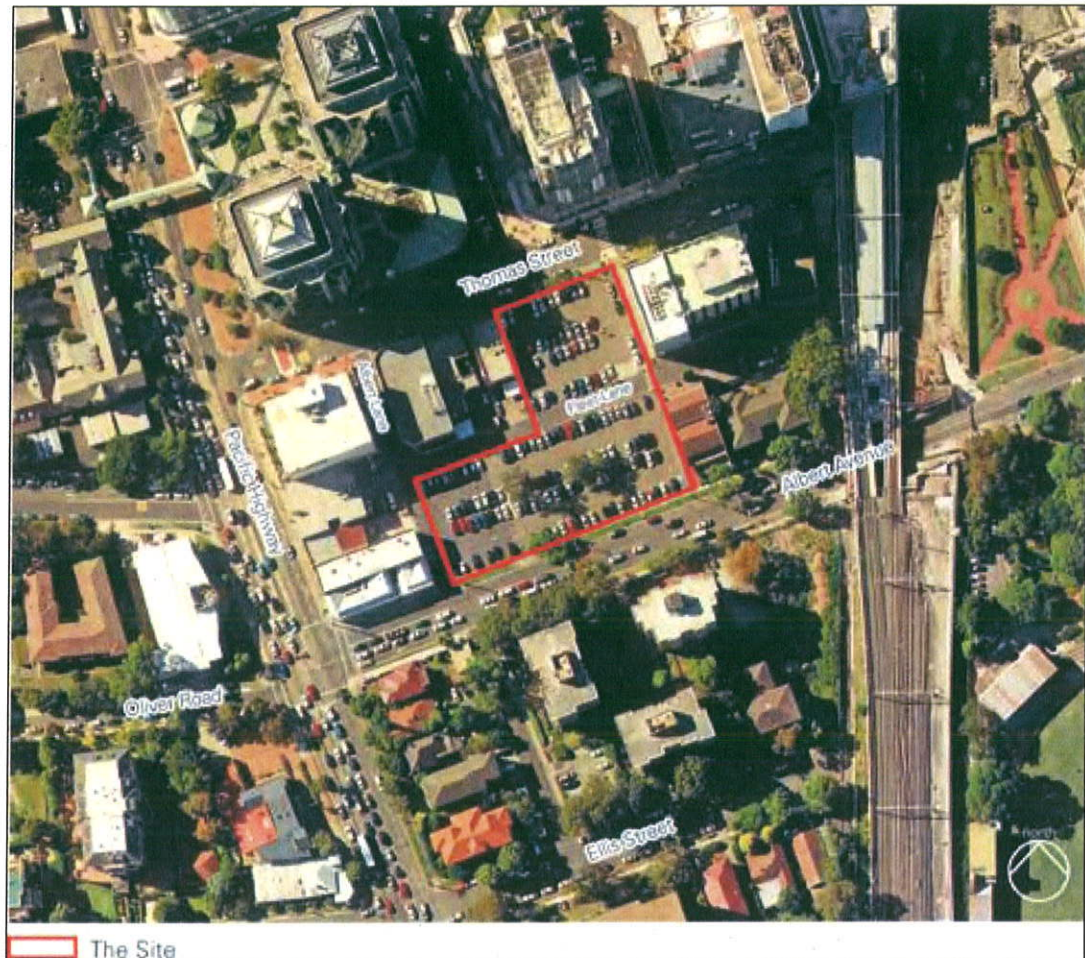


Figure 2: Aerial view of the site

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 and is 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

On 28 September 2010, the then Minister for Planning approved a Project Application (MP09_0066) for the construction of a mixed use commercial, retail and residential development contained within two towers, a basement level car park including a public car park, a through site pedestrian link and works to the public domain.

On 7 June 2012, the then A/Director, Metropolitan and Regional Projects South approved a Section 75W modification application (MP09_0066 MOD 1) for the staging of construction related conditions.

2. STATUTORY CONTEXT

2.1 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 PAC may approve or disapprove of the modification to the project under Section 75W of the Act.

2.2 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.

2.3 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.

2.4 Delegated Authority

On 14 September 2011, the Minister delegated his powers and functions under section 75W of the EP&A Act to the Planning Assessment Commission (PAC), effective from 1 October 2011, for applications made before or after 1 October 2011 other than applications made by or on behalf of a public authority. The Minister has delegated his power to the PAC in cases where:

- there has been 25 or more objections to the application;
- council has made an objection to a development; or
- there has been a reportable political donation in connection with the application, or to a previous related application.

As Willoughby City Council has lodged a submission objecting to two aspects of the proposal, the application is being referred to the PAC for determination.

3. PROPOSED MODIFICATION

On 1 May 2012, the proponent lodged a modification application seeking to amend five conditions of Major Project Approval No. 09_0066 in relation to the following:

- reduce the percentage of adaptable units from 20% to 10% and apply a bylaw to govern use of the disabled car spaces (Condition B9);
- amend requirements relating to the rainwater harvesting system and to refer to BASIX requirements instead (Condition B10);
- amendment of stormwater design to avoid issue with overland stormwater runoff in Fleet Lane (Condition B11);

- amend Condition C15 to delete the requirement for the structural adequacy of adjoining properties to be assessed; and
- changes to the scheme to allow a monetary contribution in lieu of the provision of one level of affordable housing (E40).

On 2 July 2012 and in subsequent submissions on 19 July 2012 and 3 September 2012, the proponent made several amendments to the wording of conditions relating to the dilapidation report for adjoining properties and the provision of a rainwater harvesting system. The amendment of an additional condition relating to the preparation of a dilapidation report for Council owned property was added to the application.

The modification request now seeks approval for the following amendments to the Project Approval:

- reduce the percentage of adaptable units from 20% to 10% (Condition B9);
- amend requirements relating to the rainwater harvesting system (Condition B10);
- amendment of stormwater design to avoid issue with overland stormwater runoff in Fleet Lane (Condition B11);
- amend Condition C14 to delete the reference to the 50m extent of Council property required to be assessed by the dilapidation report; and
- amend Condition C15 to reword the requirement in relation to the dilapidation report for adjoining properties as suggested by the adjoining property owner.

4. CONSULTATION AND SUBMISSIONS

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.

4.1 Council

On 22 May 2012, Willoughby City Council made a submission objecting on the basis that:

- the approved target of 20% of dwellings to be provided as adaptable is significantly lower than the requirement of 50% required under Willoughby Development Control Plan (WDCP) and the creation of adaptable provisions is not onerous on the part of a developer to achieve;
- the application of technical standards is standard practice for other similar developments in the LGA, BASIX provides minimum standards that can easily be improved upon and the developer should be a market leader in sustainable initiatives; and
- the provision of affordable housing units and their transfer to Council was a fundamental element of the development of the site and will result in a more equitable distribution of low to middle income earners in the locality.

On 27 July 2012 and 5 September 2012, Council provided responses to the proponent's amended application maintaining their objection to two of the amended conditions relating to the reduction in adaptable units and preparation of a dilapidation report of Council property. The proposed amendment of these conditions is further discussed under the assessment section of this report.

On 4 September 2012, Council withdrew their initial objection to the amendment of the rainwater harvesting system condition (B10) in response to a further amendment to its wording submitted on 5 September 2012 by the proponent.

4.2 Public Submissions

On 25 June 2012, a submission was received from the Executive Committee of the adjoining commercial property (No.12 Thomas Street) raising issue with the proposed rewording of the condition relating to a dilapidation report for adjoining properties (C15).

This included a suggestion that the wording of the condition should be amended to make reference to a reduction in the likelihood of damage occurring to adjoining properties.

The Department notes that the proponent has since sought to amend the wording of Condition C15 in accordance with this suggestion and Council has accepted the proposed rewording.

5. ASSESSMENT

The Department considers the key issues to be:

- provision of adaptable units; and
- dilapidation report of council property.

5.1 Provision of adaptable units

The proposal seeks to reduce the required provision of adaptable units from 20% to 10% of total residential units in the development.

Proponent's justification

The proponent justified the reduction in adaptable units on the basis that:

- the proposed reduction complies with the minimum requirement (10%) outlined in the Department's Metropolitan Plan for Sydney 2036 (Metropolitan Plan) which has been adopted in the planning instruments of many councils;
- there is insufficient demand in the market for the creation of adaptable housing units; and
- SEPP (Housing for Seniors or People with a Disability) 2004 is the principal policy for the provision of adaptable units.

Council's comment

Willoughby City Council objects to the reduction in adaptable units for the following reasons:

- the currently approved target of 20% is already lower than the requirement under WDCP of 50%;
- the target of 10% specified in the Metropolitan Plan is a minimum standard and a number of councils have standards that exceed this target;
- potential demand for adaptable housing in Willoughby is high due to the higher proportion of people over the age of 70 compared with the rest of Sydney; and
- the adaptable housing provision is complementary to the SEPP (Housing for Seniors or People with a Disability).

Department's comment

The Department has reviewed the proponent's justification and Council's comments and note that in its original assessment of the application, the Department recommended that 20% of units within the development be provided with adaptable design provisions. This requirement was based on the Residential Flat Design Code, which requires the provision of barrier free access to 20% of the development. This requirement does not specifically state that 20% of units be designed as adaptable units however in the absence of a more specific requirement at the time, the Department considered the application of this figure to be reasonable.

The Department's Metropolitan Plan for Sydney 2036 (the Metropolitan Plan) was finalised following the approval of the Project Application. Action D2.2 of the Metropolitan Plan specifies a minimum target of 10% of all new multi-unit residential development be made adaptable for use by seniors or people with a disability. The target is based on the proportion of people with a disability and a projection of Sydney's aging population.

The Department is in agreement with Council that demand for adaptable housing will increase due to Sydney's aging population. However, as noted above, the minimum target of 10% specified in the Metropolitan Plan was derived from this expectation.

As the currently approved figure of 20% was adopted in lieu of a more specific requirement at the time of the initial determination, the Department considers it appropriate to reassess the provision of adaptable units with regard to the requirements of the more recently adopted Metropolitan Plan. In addition, it is acknowledged that the figure of 10% is a 'minimum' standard and should be applied in proportion to the level of demand in the area.

The Department notes Council's comment regarding the high demand in the Willoughby LGA for adaptable housing due to the higher proportion of the population over the age of 70 years compared to the rest of Sydney.

The Department has obtained demographic data from the Australian Bureau of Statistics 2011 Census in order to objectively understand the age profile of people residing both in high density residential development within the Chatswood CBD and the Willoughby LGA in comparison to the broader Sydney Metropolitan Area.

Area	% aged 65+
Chatswood CBD	11
Willoughby LGA	12.6
Sydney Metropolitan Area (excludes Central Coast)	12.4

Table 2: 2011 ABS Census data, % of population in the Chatswood CBD, Willoughby LGA and Sydney Metropolitan over 65

The age profile data (shown in **Table 2** above) indicates the proportion of the population over the age of 65 residing within the Chatswood CBD (11%) is less than the same age group across the Willoughby LGA (12.6%) and the Sydney Metropolitan Area (12.4%). The Department therefore does not accept that demand for adaptable dwellings is higher in this instance given that the proportion of elderly people residing within the Chatswood CBD is less than the Sydney Metropolitan Area.

Based on the above, the Department considers the reduced rate for the provision of adaptable units proposed by the proponent (10%) to be appropriate in this instance.

5.2 Dilapidation report of Council property

The proposal seeks to amend Condition C14, which requires the preparation of a dilapidation report for Council property within a distance of 50m of the site. The proponent wishes to amend the wording of the condition to replace reference of land within 50m of the site with 'immediately adjoining the subject site'.

Proponent's justification

The Proponent justifies the amendment of the condition on the basis that:

- footpaths, kerbs, gutters and the like situated along the Pacific Highway are located a significant distance away and therefore would not be affected by construction works occurring on the site; and

- any damage to council property created by others or unknown sources would have to be paid for by the developer.

Council's comment

Council disagrees with the proposed amendment of the condition as:

- a distance of 50m of the subject site is considered reasonable in this instance to account for construction related traffic movements;
- it is in the proponent's best interest to carry out the dilapidation report as there are no construction works currently taking place within a 50m radius of the site; and
- the term 'immediately adjoining the subject site' does not cover the area that will be potentially impacted by construction related traffic movements.

Department's comment

The Department considers the current wording of Condition C14 to be appropriate in this instance as the proposed rewording does not account for the possibility of damage caused by the movements of excavation and construction related vehicles to and from the site.

Additionally, the current wording of the condition identifies a clearly definable boundary for the dilapidation report to assess and the purpose of the condition is to protect the interests of all parties involved including the proponent.

The Department therefore considers it appropriate to retain the condition in its current form.

6. CONCLUSION

The Department has assessed the proponent's application and has considered submissions and the proponent's response to submissions. Council maintains two objections relating to the reduction in adaptable units and the preparation of a dilapidation report of Council property.

In this regard, the Department:

- supports the proposed amendment to decrease the provision of adaptable units from 20% to 10% as it is consistent with the requirements of the Department's Metropolitan Plan for Sydney 2036 and the level of demand based on the demographic character of the area surrounding the subject site (Chatswood CBD);
- is in agreement with Council that the proposed rewording of the condition relating to the preparation of a dilapidation report of Council property is inappropriate as it does not account for potential damage caused by construction related traffic movements; and
- raises no issue with the remaining conditions proposed to be amended as part of this application.

The recommended rewording of the conditions is set out in the Department's Recommended Modifying Instrument of Approval in **Appendix C**.

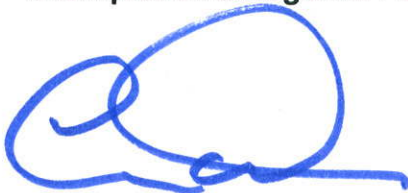
7. RECOMMENDATION

It is recommended that the Planning Assessment Commission:

- (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**).



**Team Leader
Metropolitan & Regional Projects South**



**A/Deputy Director-General
Development Assessment &
Systems Performance**

15.10.12