

15 July 2011

**Section 75W modification to a residential development
at 14-18 Boondah Road, Warriewood**

Background

On 18 January 2011, the Planning Assessment Commission (the Commission) approved a concept plan proposal for the site and a project application for Stage 1 development subject to conditions and certain design modifications and layout changes including reduction in building height and maximum yield of 60 dwellings per hectare.

The approved Stage 1 proposal comprised 7 residential buildings with 2 levels of basement parking for 471 cars. The change to building height and density required by the Commission has reduced the number of apartments from 295 to 226.

Following the Commission's approval, the proponent submitted amendment plans to meet the design modifications required by the Commission's determination, namely reduction in building height and density and compliance with the SEPP 65 Residential Flat Design Code (RFDC).

The Director General approved the amendment plans in March 2011 and a construction certificate was issued accordingly. In April 2011, Pittwater Council challenged the Commission's approvals in the Land and Environment Court. During the review process, the amendment plans were revoked as they had included the deletion of one level of basement car park. This was not included in the design modifications required by the Commission and as a result required a modification application to the original approval. A new set of amendment plans (excluding the deletion of the basement car parking level) was subsequently approved by the Director General and a modification application to delete one of the basement levels parking was submitted.

The Modification

The subject modification application includes:

- A reduction of 1 level of basement car parking with associated podium adjustments; and
- Amendment of the floor layout of units in Buildings A, B and C to include a study in some apartments

Delegation to the Commission

On 28 May 2011 the Minister for Planning and Infrastructure, the Hon Brad Hazzard MP, delegated his power to determine the application to the Planning Assessment Commission.

The Commission members nominated to determine the application were Ms Janet Thomson, (chair), Mr Garry Payne AM and Mr Richard Thorp.

Meeting with the Department of Planning and Infrastructure

The Commission met with Departmental staff, Mr Michael Woodland and Ms Amy Watson on 16 June 2011 for a briefing. The discussion focused on the reasons for the modification application. In brief, the Department concluded that:

- The proposed residential parking provision meets Pittwater Council's DCP requirements.
- Visitor parking is in accordance with the RTA Guide to Traffic Generating Development.
- Council's DCP permits tandem parking.
- Storage units and bicycle parking spaces are satisfactorily addressed and meet the RFDC requirements.
- The revised basement parking layout still maintains 53.4% of the site as deep soil planting.
- The provision of studies in Buildings A, B and C will increase the variety of dwelling types and have no adverse impact on density, height or floor space.

It is the Department's view that the reduction of one level of basement parking would mean less excavation and less environmental impact. The Department concluded that the proposed modification is considered reasonable and is generally consistent with the terms of project approval.

Meeting with Pittwater Council

On 16 June 2011, the Commission met with Pittwater Council representatives, Mr Steve Evans, Ms Lisa Cordoba and Ms Amy Allan. Council advised the Commission that they had not had time to review the proposed modification as they had just received the referral. Council intended to make a submission and confirmed that a written submission would be submitted to the Commission on 1 July 2011.

The Commission received Council's submission on 2 July 2011. Council maintained that the earlier concept plan and Stage 1 project approvals were invalid and therefore this application should not be determined until the Land and Environment Court handed down its judgement. Issues raised in Council's submission included:

- The proposed modifications do not comply with DCP 21's requirements in terms of number of visitor spaces, parking for removalist trucks or service vehicles, car washing space, and secure storage spaces.
- Bicycle spaces are not secure or enclosed.
- Tandem parking would result in manoeuvrability issues and inefficiency with flow on effects on parking, safety and traffic within and outside the site.
- The disperse nature of visitor parking would result in spaces not being used by visitors with flow on effects on on-street parking.
- Issues relating to Crime Prevention Through Environmental Design have not been addressed, in terms of number of dead ends and blind corners, particularly near serviceable areas and storage areas that create unsafe conditions.
- Other issues relating to car parking included:
 - carparking plan is not clearly notated;
 - a lack of information on how the basement level is to be ventilated; and
 - at certain locations, the basement carpark protrudes 1.8m to 3m above the natural ground;
- Some of the proposed studies are of a sufficient size and dimensions to be easily used as another bedroom and there is no mechanism to ensure that these rooms will not be used as a bedroom. In circumstances like this, the study areas should be considered as bedroom and the developer contributions should be recalculated to reflect the revised dwelling mix.
- The application is not supported by clear and accurate documentation and information to enable detailed assessment.

Meeting with the Proponent

The Commission met with the Proponent, Meriton Apartments Pty Ltd represented by Mr Harry Triguboff AO, Mr Walter Gordon, Mr Alan Johnson and Mr Bruce Masson. The purpose of the meeting is for the Commission to understand the proponent's response to Pittwater Council's submission, which was received on 7 July 2011.

In brief, the proponent advised that:

- The current modification application does not involve any changes to the RL levels of the first level of the basement car park. The application is just for the deletion of the lower basement parking level. Hence the said protrusion is part of the Stage 1 project application approval already granted.
- The proposed parking provision complies with Council's DCP 21 as follows:
 - Council's submission to the PPR in October 2010 confirmed that visitor parking should comply with RTA requirements.
 - Removalist trucks and other service vehicles will share the loading area for garbage trucks. The area will be managed by the on-site manager.
 - The one surplus car parking space will be designated as car wash bay.
 - The storage areas comply with the requirements of the Residential Flat Design Code.
 - The bicycle parking complies with AS2890.3.
 - The DCP permits tandem parking provided spaces are allocated to the same unit.
 - Visitor parking spaces are designed to locate near the lift lobby of each building and are not randomly dispersed as illustrated by Council.
 - A CCTV and intercom system will be installed within the basement level to provide appropriate crime prevention measures.
 - Ventilation will be via mechanical and natural means and will comply with relevant Australian Standards and the Building Code of Australia.
- The study areas are internal areas with no windows and do not meet the Building Code of Australia in terms of natural light and ventilation to be classified as bedroom.

Department of Planning and Infrastructure Comment on Pittwater Council's Submission

The Department provided its comments on the Council's submission via a letter to the Commission dated 11 July 2011. The Department did not support Council's concerns in relation to the modification application. The following is a brief summary of the Department's comments:

- In the absence of an order from the Land and Environment Court that the approvals are invalid, there is no legal impediment to the Commission's considering and determining the application.
- The Department remains satisfied that Building E complies with the relevant provisions of the Residential Flat Design Code.
- Condition B3 requires the proposed car park to meet Australian Standards 2890.1-2004 and 2890.2:1989.
- Pittwater DCP21 requires parking to comply with the RTA *Guide to Traffic Generating Development* where the land use is not listed in the DCP. Further, Council has previously indicated that it would support visitor parking that is consistent with the RTA guideline for the development.
- The Department noted that all tandem spaces would be allocated to the same unit and has recommended a condition to ensure visitor spaces and units with 1 space are not stacked. It is also of the view that tandem parking is unlikely to create a

significant increase in vehicle movements or adverse traffic impacts in the basement or on the local road network.

- Condition B4 requires any accessible parking requirements to meet relevant Australian Standards and the Building Code of Australia.
- As to parking loading/unloading and car washing, the Department noted the proponent's comments that the garbage loading area would be shared as a loading/unloading area for other services and the extra space could be used for car washing. The Department recommends the Commission to consider allocating a designated space for car washing and require appropriate construction as a wash bay.
- The design and provision of bicycle racks comply with Condition B13 and meet the relevant Australian Standard.
- The provision of storage unit within individual apartment or in the basement or both is acceptable and those in the basement could be designed to be accessible.
- The Department considered that safety can generally be managed through good lighting and signposting/delineation. However, the Commission may consider imposing a condition requiring security measures to be installed in the basement.
- The Department raised no issue with the internal modifications to Buildings A, B and C to include studies and minor reconfigurations within the units as these works resulted in changes to achieve compliance with the RFDC. The studies are too small and lack solar access and natural ventilation to be capable of conversion into bedrooms. Thus there is no reason to adjust the Section 94 contributions.
- The proposed modification would maintain the minimum deep soil planting area requirement of 50% of the site contained in Council planning controls
- The car parking ventilation design is a matter for the Certifying Authority to consider at the construction certificate stage.

Commission's Comments and Determination

Following careful consideration of the Director General's assessment report, Council's submission and the proponent's response to Council's submission and DOP response to the Pittwater submission, the Commission is satisfied that the issues raised by Pittwater Council have been satisfactorily addressed by the Proponent and the Department. Particularly the Commission noted that:

- The earlier approvals still stand and the court challenge is not a matter for this Commission to consider.
- DCP21 permits stack parking if the spaces are for the same unit. The applicant has indicated that experience in other developments where stack parking occurs indicates that residents understand the parking conditions and would manage accordingly. However, the Commission considers that there should be an amendment to the proposed condition B13d to ensure that stacked spaces are allocated to one unit on title.
- The proposed studies in Buildings A, B and C are too small in size and located in the middle of the units with no direct solar access or natural ventilation to be used as a bedroom.
- Pittwater Council previously agreed that visitor parking should be consistent with the RTA guidelines and the proposed number of spaces meets the RTA requirements.
- It is proposed to use the extra parking space as a car washing space. The Commission agreed and a condition is included accordingly to ensure a designated space with appropriate environmental controls is provided for car washing.
- The proponent proposed to install CCTV and intercom for the basement level to ensure the security and safety of the basement car park. The Commission considers it is appropriate to include a condition to ensure the proposed measures are implemented and properly maintained.

- There are conditions in the earlier approval to ensure that car parking design and layout, provision of bicycle racks and accessible parking will meet the relevant Australian Standards and Building Code of Australia.
- The Department confirmed that Building E complies with RFDC.

The Commission agrees with the Department's conclusion that the deletion of the lower basement level of car park will reduce excavation with flow on environmental benefits of minimising potential impact on groundwater. Hence the application should be approved subject to conditions recommended by the Department of Planning with minor amendment to Condition B13d and additional conditions in relation to car washing space and security.

Condition B13d should be amended to read "... 2 stacked spaces must be allocated **on title** to a single apartment...". Additional conditions include Conditions C21 and F20 concerning Crime Prevention Through Environmental Design measures and Conditions C22 and F21 in relation to car washing space.

Attachment 1 is the Instrument of Approval.



Janet Thomson
Commission Member



Garry Payne AM
Commission Member



Richard Thorp
Commission Member

Attachment 1

Instrument of Approval