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Dear Mr Woodland

SECTION 75W APPLICATION TO MAJOR PROJECT APPLICATION MP 10_0177 (PROJECT APPROVAL) AT 14 – 18 BOONDAH ROAD, WARRIEWOOD (LOT 20, DP 1080979) - CONDITIONS C6 & F15

INTRODUCTION

Pursuant to Section 75W of the Environmental Planning and Assessment Act, 1979, a "Modification of Approval" is sought to vary Condition C6 and F14, F15 of Project Approval MP10_0177 at 14 -18 Boondah Road, Warriewood.

EXISTING CONDITION – C6

Currently Condition C6 states that, "*Engineering Plans and specifications for all roads, drainage and other civil engineering works within an existing Public Road reserve along the Macpherson Street frontage (including 5 and 7 Macpherson Street) and along the Boondah Road frontage, must be submitted to and a written approval under Section 139 of the Roads Act obtained from Council prior to the issue of the relevant Construction Certificate.*" The Condition then itemises specific engineering issues that need to be addressed in subclauses, a, b, c, d, e, f, g, h, i, j, k, l, and m. A full copy of the Project Approval is enclosed in **Annexure 1**.

JUSTIFICATION FOR AMENDMENTS

It is necessary to amend the timing of construction and related works, pertaining to Boondah Road only. This is required for the following reasons:

- The construction of Boondah Road is not directly required during Stage 1. All Stage 1 buildings (A, B, C, D, E, F and G) may be accessed via Macpherson Street;
- It creates an unnecessary burden on the cash flow of the project; and
- Financial resources are required from Stage 1 to fund Stage 2 of the project to ensure the viability of the overall development.

PROPOSED MODIFICATIONS

A caveat is proposed to be inserted into Condition C6 which is currently entitled, "Existing Public Roads – Roads Act Approval (Pittwater Council acting as the road authority under the Roads Act 1993) as follows:

"n. All references to Boondah Road in Condition C6 while relevant to the overall development, will be deferred until the construction and final occupation of Buildings H, I, J, K, L, M, N, O and P. Thereby providing access to Stage 2 of the development."

EXISTING CONDITION – F15

It is proposed to delete Condition F15, "Works within Pittwater Road" of Project Approval, MP 10_0177 dated the 18 January 2010 which refers to the construction of a slip lane from Pittwater Road into Warriewood Road. A full copy of the Project Approval is contained in **Annexure 1**.

JUSTIFICATION FOR AMENDMENT

Condition F15 should be deleted for the following reasons:

1. Insufficient nexus (causal, physical and temporal) between the development and the proposed Pittwater Road slip lane works.

In order for there to be a nexus between the new development, and the need for new services generated by the development, there needs to be a causal, physical and/or temporal nexus that the services or facilities being levied must apply to the proposed development. Each of the nexus relationships of the development to the slip way is detailed below.

Causal Nexus

Causal nexus is the direct relationship of the development and the relationship it has on existing infrastructure and services.

The Pittwater slip lane works are not required as a direct result of the approved residential flat buildings at 14-18 Boondah Road alone. The slip lane is needed to service the entire Warriewood Valley and any residents or business trips coming from the northern parts of the Pittwater Local Government area into Warriewood to access open space, business and the Warriewood Shopping centre. Refer to **Annexure 2** for a map of the catchment area, which is an extract from the Section 94 Plan, No. 15 Warriewood Valley. This map identifies the area covered within the Pittwater Section 94 Contributions Plans and the associated traffic works which reflect the needs of the entire catchment area and not solely upon one development. Therefore, causal nexus has not been correctly interpreted.

Physical Nexus

The physical nexus is based on the location of the site to the service/infrastructure provided. The Pittwater Road slip lane is located approximately 1 kilometre from the development site. Given the distance of the intersection from the site and the fact that there are at least another 8 means of access and egress out of Warriewood Valley, it is unreasonable to have Meriton pay for the full cost of the road widening.

Temporal Nexus

Temporal nexus is the reasonable timeframe on services/infrastructure to be provided by Council by using their Section 94 Contributions Plan, No.15, which was adopted in 2008. Council's Section 94 Contributions Plan identifies the slip way works under the budget for 2011. An extract from the Section 94 Plan is enclosed in **Annexure 3**.

These works were identified as a need in September 2008 based on the needs of the entire Warriewood/Ingleside area. This is approximately two years prior to the approval of Project Approval (MP10_0177) which was in January 2011. Therefore there is no direct 'temporal' relationship in terms of timing between the Boondah Road development and the need for the slip way works.

2. The costs associated with the traffic and transport upgrades (including the Pittwater Road slip lane) are already included into the Section 94 calculations, as levies per dwelling, therefore Pittwater Council would be 'double dipping' by imposing an additional financial burden on the applicant; and
3. The condition is unlawful because Meriton is paying for the slip lane through Section 94 contributions, whilst at the same time it is intended that it will pay for the construction.

PROPOSED MODIFICATIONS

It is proposed to Delete Condition F15 from Project Approval MP10_0177.

CONCLUSION

The proposed modification to Condition C6 simply requests that the construction of the Boondah Road works be deferred so that they are linked to the appropriate construction phase of the project, being Stage 2.

With reference to Condition F16 it is clear that there is an insufficient nexus between the development and the Pittwater Road slip lane for Meriton to construct and then also pay through Section 94 contributions. Further, the costs are already included in the levies and this is a case of 'double dipping' by Council. As such Meriton requests Condition F15 be deleted from Project Approval MP 10_0177 dated 18 January 2011.

Should you have any queries please do not hesitate to contact me in the first instance.

Yours faithfully

MERITON APARTMENTS PTY LIMITED



WALTER GORDON

Manager Planning and Development