

10 May 2012

**Section 75W modification to the Stage 1 residential development
at 14-18 Boondah Road, Warriewood (MP10_0177)**

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.

Since the approval in January 2011, 5 modification applications have been approved.

The Modification

The subject modification application includes:

- Staging of landscape works to be completed prior to issue of a final Occupation Certificate for Stage 1;
- Staging of works within Macpherson Street and Boondah Road;
- Amendment to provide for cost sharing (to be paid by Council) for the construction of the roundabout at the intersection of Macpherson Street and the entry to the Anglican Retirement Villages;
- Sharing the cost of Pittwater Road improvement works with Council and Roads and Maritime Services;
- Removing the road works requirement to the frontage of 5 and 7 Macpherson Street or cost of works to be deducted from the required s94 contributions;
- Any additional cost of raising the level of Boondah Road or other flood infrastructure works in association with the improvement/reconstruction of Boondah Road to be funded by Council; and
- Removing the requirement for street lighting and placement/relocation of services underground for the frontage of 5 and 7 Macpherson Street.

Delegation to the Commission

This application meets the terms of Ministerial delegation dated 14 September 2011 for the Planning Assessment Commission's determination.

The Commission members nominated to consider and determine the application were Mr Richard Thorp (chair) and Ms Donna Campbell.

The Department's Assessment Report and Recommendation

The Department's assessment concluded that some of the proposed modifications are reasonable and consistent with standard Council practice. These included the staging of the upgrade of Macpherson Street and Boondah Road; staging of the landscaping work to align with staged construction of the site; the deletion of cost sharing requirement for the remaining works of the roundabout at the entrance to the ARV site.

The Department does not support the cost sharing of the improvement works in Pittwater Road as it maintains the need for the improvement works is a result of the proposal. It also considers the requirement for the proponent to upgrade, provide street lighting and underground services to the frontage of 5 and 7 Macpherson Street remains relevant, but agrees that the works could be included as part of the future Stage 2 development.

As to the funding arrangement for the upgrade of Boondah Road and other flood infrastructure works, the Department considers this matter should be agreed between the Council and the proponent as part of Stage 2 development.

Meeting with Stakeholders

On 8 May 2012, the Commission met separately with Pittwater Council and the Proponent to hear their views on the Department's recommendation.

Pittwater Council

Pittwater Council was represented by Mr Chris Hunt and Ms Liza Cordoba. The key issues discussed at the meeting included:

- The statement in the Department's report in relation to the cost of improvement works in Pittwater Road may create expectation that cost could be recouped in future, whereas the legislation or Departmental guidelines make no provision for retrospective credit or monetary refund for works that have not been included in s94 Contributions Plan.
- Similarly, a statement in relation to the upgrading of Boondah Road also raised the proponent's expectation to negotiate cost when upgrading of Boondah Road should be the responsibility of the proponent to accommodate the necessary flood and access requirements for its development.
- Landscaping in the riparian corridor should not be deferred and must be completed prior to the issue of an Occupation Certificate for any building in Stage 1 as the landscaping is necessary to stabilise the flood retention area and foreshore to the wetland edge to minimise pollution incidents downstream.
- Council preferred the whole Macpherson Street to be upgraded as part of Stage 1 project to provide better environment and amenity to residents.
- Council understood there is a requirement for the ARV development to pay for the roundabout at the entrance to the ARV. It would not insist in keeping the condition. However, as Meriton's heavy vehicles are now the main users of the roundabout and has all the equipments on site, the Council considered it would be fair and easy for it to complete the roundabout.

The Proponent

The Proponent, Meriton Apartments Pty Ltd was represented by Mr Peter Spira and Mr Walter Gordon. The issues discussed at the meeting included:

- The strategic review indicated over 2300 dwellings could be accommodated in the Valley. Meriton's proposal is less than 20% of the total. Therefore, the improvement works in Pittwater Road should be funded from a future s94 Contributions Plan. Council should undertake the works, and Meriton would contribute 20% of the total cost.
- 5-7 Macpherson Street is a development site. Any improvement works should be funded by the developer or Council which could recoup the cost in future via s94 contributions.

- Meriton should only be responsible to construct half of Boondah Road as is the case with Macpherson Street. This is also consistent with standard practice. Cost of adjustment of Boondah Road level and other flood infrastructure requirements should be Council's responsibility.
- The roundabout at the ARV entrance is part of the ARV development consent. Meriton is required to construct the roundabout at the intersection of Macpherson Street and Boondah Road as part of its development consent.
- Stage 1 is being constructed in stages and occupation of buildings is staged accordingly. Landscaping works in the area to be occupied will be completed when the area is occupied. However, landscaping in the riparian area will be of no direct immediate benefit to residents in the area to be occupied. Therefore it is reasonable to defer the requirement to complete the landscape works in the riparian corridor prior to the final occupation of Stage 1.

Commission's Comments and Determination

Following careful consideration of the Director General's assessment report and associated document, and the discussions at the meeting with Pittwater Council and the Proponent, the Commission agrees with the Department's conclusion that:

- the improvement to Pittwater Road should remain the responsibility of the proponent;
- the required upgrading works for Boondah Road is a matter to be considered at the future Stage 2 application; and
- the requirements for local road upgrade, underground services and street lighting to the frontage of 5 and 7 Macpherson Street should remain the responsibility of the proponent.

The Commission does not agree with the Department's recommendation that upgrading of the eastern half of Macpherson Street including 5 and 7 Macpherson Street to be deferred to Stage 2. The Commission accepted Pittwater Council's view that the ARV has upgraded the northern side of Macpherson Street almost up to the intersection of Boondah Road. To leave half of the southern side of Macpherson Street in a condition that is not compatible with the remainder of the street until an unknown future date for improvement will have a negative impact on the environment, residential amenity and road safety. Therefore Recommended condition C6n is modified to read:

- n. Works within the road reserve may be constructed in Stages as part of Stage 1 (this approval) and Stage 2 (subject to a future development application) as follows:
 - i. Macpherson Street works including 5 and 7 Macpherson Street fronting the development site are to be completed prior to the final Occupation Certificate being issued for Stage 1.
 - ii. The Boondah Road works are to be completed as part of a future Stage 2 development application, if they are not completed as part of Stage 1.

The Commission agrees with the Department that staged landscaping work is appropriate and does not accept Council's argument that landscaping works in the riparian corridor must be completed prior to occupation of any buildings in Stage 1. Existing approval conditions require stormwater and pollution control measures to be implemented to minimise potential impacts on the wetland.

The application is approved subject to the conditions recommended by the Department as modified by the Commission. Attachment 1 is the Instrument of Approval.

A handwritten signature in black ink, appearing to read "Richard Thorp". The signature is fluid and cursive, with the first name and last name clearly distinguishable.

Richard Thorp
Commission Member

A handwritten signature in black ink, appearing to read "Donna Campbell". The signature is cursive and somewhat stylized, with the first name and last name clearly distinguishable.

Donna Campbell
Commission Member

Attachment 1

Instrument of Approval

Notice of Modification 4

Section 75W of the *Environmental Planning & Assessment Act 1979*

As delegate of the Minister for Planning and Infrastructure under delegation dated 14 September 2011, the Planning Assessment Commission of New South Wales modifies the project approval referred to in schedule 1, as set out in schedule 2.



Richard Thorp
MEMBER OF THE COMMISSION



Donna Campbell
MEMBER OF THE COMMISSION

Sydney

10 May 2012

SCHEDULE 1

Project Approval:

MP 10_0177 granted by the Planning Assessment Commission on 18 January 2011.

For the following:

Stage 1 Project Approval for demolition of the existing buildings and structures on site, tree removal, excavation, earthworks, flood mitigation works, construction of 7 residential buildings, basement parking, childcare centre, external road works, internal public access roads, public pedestrian and cycle way, Asset Protection Zone, environmental buffer areas, ecological rehabilitation and landscaping works.

At:

14-18 Boondah Road, Warriewood (Lot 20 in DP 1080979).

SCHEDULE 2

The project approval is modified as follows:

- a) Condition C2 is amended by the insertion of the **bold and underlined** words/numbers and deletion of the ~~struck out words/numbers~~ as follows;

C2 Landscaping of the Site

- a. Detailed landscape construction plans to be prepared by a registered landscape architect generally in accordance with schematic landscape plans as prepared by Site Image P/L (Landscape Masterplan SM10041 LA 101.B). Detailed plans are to incorporate the matters detailed in this condition and prepared in conjunction with the Vegetation Management Plan as outlines in the Total Earth Care report, including:

- i. **Public Domain**
The entrances into the development, off Boondah Road and Macpherson Street are to:
 - Be embellished with street tree planting to the central median (400 litre in size) incorporating structural soil to accommodate 12m³ root volume per tree. 4-6m tree spacing to landscape edges along entryway with 400 litre tree species and grasses/groundcovers at 4-6m².
 - Incorporate entry identification of the estate name and feature paving stencilling to roadway.
 - At least 2 metered watering points.
- ii. **Street Trees/Garden Areas to Road Verges (Boondah/Macpherson Street and Internal Access Roadways)**
 - 400 litre street trees (as indicated on plan).
 - No turf to road verge areas, garden areas planted in accordance with Warriewood Valley Landscape Masterplan in relation to species @ 4-6 plants per m².
- iii. **Internal Access ways (between Buildings A, B, C and F, G):**
 - Central access path to be 2.4m in width reinforced concrete (exposed aggregate/coloured concrete or unit paving on concrete). Trees to pathway to be at 6m centres along the pathway and installed at 200 litre sizes.
 - Gardens to all external planters in public domain to incorporate planting two per m² and include 200 litre trees as indicated on concept plan. All gardens to have minimum 500mm depth of soil medium.
 - Waterproof membranes to all on slab areas to be independently certified by waterproofing/membrane specialist as being fit for purpose and being effectively installed.
 - All playground/fitness equipment to be in accordance with AS4685, AS4486 and AS4422. All equipment as installed is to be independently certified as complying with the nominated standards prior to use by the public.
 - All plant material is to be certified as complying with NATSPEC specifications prior to installation.
- iv. **Building Setbacks to Macpherson Street/Boondah Road Frontages:**
 - Setback areas to be extensively landscaped to screen the building form. Tree planting to be as per the landscape plans hereby approved and incorporate 200L/400L tree sizes.
 - Three copies of a detailed Landscape Plan, drawn to scale, by a qualified landscape architect/ consultant, must be submitted to and approved prior to any relevant Construction Certificate for any works being issued.

- b. The Riparian Corridor, including the Wetland Riparian edge, is to be planted in accordance with condition B26 and in accordance with the adopted *Warriewood Valley Urban Release Area Landscape Masterplan and Design Guidelines (Public Domain) 2006* **prior to issue of the final Occupation Certificate for Stage 1.**
- c. All landscaping in the approved plan **for a part of the site within Stage 1** is to be completed prior to ~~an~~ **a final** Occupation Certificate ~~(Interim or Final) for the aboveground works being issued for that part of the site. or the use commencing, whichever is earlier.~~

Prior to release of Occupation Certificate, all landscape works need to be certified as complying with approved landscape plans by a registered landscape architect.

- d. A Landscape Management Plan is to be prepared and implemented to outline the technique and frequency of maintenance tasks during the establishment of the landscaping and on a permanent basis. The Management Plan, is to be implemented for 24 months immediately following completion of the landscaping works on site, and is to incorporate a procedure for the replacement of failed plantings, and a reconsideration of other endemic species type where plantings do not respond to the conditions as expected. Evidence of engagement of maintenance contractor for 24 months for all landscape works as constructed by the applicant to be dedicated to Council, 24 month period to be completion of all landscape works as proposed. Evidence of engagement to be submitted to and approved by certifier/Council prior to issue of Occupation Certificate

This information is to be submitted with the Landscape Plan, in conjunction with this condition.

- e. **Landscape works required by this condition only pertain to Stage 1 which incorporates Buildings A, B, C, D, E, F and G, as shown on the approved Overall site staging plan – DA01 Revision E and dated 20 July 2011.**

- b) Condition C6 is amended by the insertion of the **bold and underlined** words/numbers and deletion of the ~~struck out words/numbers~~ as follows;

C6 Existing Public Roads - Roads Act Approval (Pittwater Council acting as the road authority under the Roads Act 1993)

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 Engineering Plans and specifications are to include the following matters:

- a. Macpherson Street and Boondah Road:
Works to the full length of the Macpherson Street (including 5 and 7 Macpherson Street) and Boondah Road frontages of the development site and including works associated with the intersection access to the development, being:
- b. Kerb and Guttering (vertical faced kerb only will be permitted)
- c. Landscaping (in accordance with condition C2 above)
- d. Roundabouts at:
 - i. ~~The intersection of Macpherson Street with the Anglican Retirement Villages (ARV) sector entry road. (Remaining portion all cost sharing to be agreed between the Applicant and ARV), and~~
 - ii. ~~i.~~ At the intersection of Macpherson Street and Boondah Road - kerb and gutter, footpath and landscape construction to accommodate the future roundabout.

- e. Road shoulder and road pavement construction, including pavement design and treatments for half road construction up to the road centre line or formation of recently construction pavement to pavement design criteria in Macpherson Street (4 x 106 ESA pavement design criteria).
- f. Footpath/cycleway 2.5m wide in Macpherson Street including 5 and 7 Macpherson Street, and 2.5m wide footpath/cycleway in Boondah Road.
- g. Associated road drainage for Macpherson Street and Boondah Road.
- h. Indented parking bays in accordance with the requirements of the Warriewood Valley Roads Masterplan.
- i. Indented bus bays in locations and to the requirements of Sydney Buses.
- j. Incorporation of the design and construction recommendations of the Arborist's Report referred to in condition C2 above necessary to achieve the retention of Bangalay Sand Forest where it is outside the approved development zone.
- k. Dedication of 12.5m² Road Reserve land being a splay corner (5 metres x 5 metres) at the intersection of Macpherson Street and Boondah Road to allow the construction of a roundabout.
- l. No vehicle access (other than for temporary construction works) permitted from any private property to either Boondah Road or Macpherson Street other than via the approved access road network.
- m. Entry treatments into the site:
 - i. The entry treatment for the internal through-road linking Macpherson Street and Boondah Road is to include kerb returns and pedestrian/cycle refuge at the intersection of the roadway with Macpherson Street and Boondah Road.
 - ii. The southern-most entry treatment for the internal road at Boondah Road (south of Building P) is to be designed and constructed as a standard access driveway and gutter crossing in accordance with Council driveway standards
- n. **Works within the road reserve may be constructed in Stages as part of Stage 1 (this approval) and Stage 2 (subject to a future development application) as follows:**
 - i. **Macpherson Street works including 5 and 7 Macpherson Street fronting the development site are to be completed prior to the final Occupation Certificate being issued for Stage 1.**
 - ii. **The Boondah Road works are to be completed as part of a future Stage 2 development application, if they are not completed as part of Stage 1.**
- c) Condition C10 is amended by the insertion of the **bold and underlined** words/numbers and deletion of the ~~struck out words/numbers~~ as follows;

C10 Services

- a. Street lighting facilities to the development street frontages of the site and to the full length of the existing Public Road reserve frontages to Macpherson Street (including 5 and 7 Macpherson Street) and the frontage to Boondah Road) to be provided at the full cost of the developer and in accordance with the requirements of Energy Australia.
- b. All services, including electrical and telecommunications for the proposed lots, shall be provided underground. The location of any trenching and if required, a pad mounted substation(s) shall have regard for future and proposed landscaping in the public domain.

- c. All existing and new utility services and adjustments to those services including overhead power supply and communication cables located in the adjacent Public Road reserve verge are to be placed and/or relocated underground for the full length of the road reserve frontages (Macpherson Street including 5 and 7 Macpherson Street, and Boondah Road) of the development site at the full cost to the developer.
 - d. **Staging of works is to be in accordance with the staging set out in Condition C6.**
- d) Condition F14 is amended by the insertion of the **bold and underlined** words/numbers and deletion of the ~~struck-out words/numbers~~ as follows;

F14 Works within Council's road reserve

- a. Prior to the issue of ~~an~~ **a final** Occupation Certificate for the buildings **in each stage**, all works in the public roads (Macpherson Street and Boondah Road) described in the plans required in the Construction Certificate **(in accordance with the staging as outlined in Condition C6)** must be constructed.
 - i. A certificate submitted by a Chartered Professional Engineer confirming, to the satisfaction of the Principal Certifying Authority, that the works in the public road reserve comply with Council requirements.
 - ii. Photographic evidence of the condition of the street trees and road reserve, including the area adjoining the site after the completion of all construction, must be submitted to the Principal Certifying Authority showing that no damage has been done and if damage has been done that it has been fully remediated. The photographs shall be accompanied by a statement that no damage has been done (or where damage has been remediated, that Council has approved that work). In this regard Council's written agreement that all restorations have been completed satisfactorily must be obtained prior to the issue of any Occupation Certificate.
 - iii. Restoration of all damaged public infrastructure caused as a result of the development to Council's satisfaction. Council's written approval that all restorations have been completed satisfactorily must be obtained and provided to the Private Certifying Authority with the Occupation Certificate application.

END OF MODIFICATIONS TO MP 10_0177