



**Planning &
Infrastructure**

MODIFICATION REQUEST:

14-18 Boondah Road, Warriewood

***MP10_0177 MOD 7 - Modifications to Allow
Staged Strata Subdivision***

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

April 2012

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1. BACKGROUND

1.1 The Site

The subject site, 14-18 Boondah Road, Warriewood, is located in the Warriewood Valley Release Area within the Pittwater Local Government Area (LGA). The site is irregular in shape, has an area of 8.118 hectares and frontages of 293 metres to Boondah Road and 273 metres to Macpherson Street. Vehicular access is available from both road frontages. The land slopes approximately 2.5 metres to the rear (south) towards the wetlands.

The site locality and site boundary is illustrated in **Figure 1**.



Figure 1: The Site (Source: Google Maps, 2012)

1.2 Previous Approvals

On 18 January 2011, the Planning Assessment Commission (PAC) approved a Concept Plan (**MP09_0162**) for a multi-unit housing development and childcare centre, private and public open space, parking, road works, pedestrian and cycle pathway, landscaping and ecological rehabilitation works.

The PAC also issued Stage 1 Project Approval (**MP10_0177**) for a development comprising:

- demolition of the existing buildings and structures on site and tree removal;
- excavation, earthworks and flood mitigation works;
- construction of 7 residential buildings apartments with associated pools and gymnasium;
- childcare centre;
- external road works, internal public access roads, pedestrian and cycle way; and
- ecological rehabilitation and landscaping works.

1.3 Previous Modifications

On 15 July 2011, the PAC approved a modification application (MP10_0177 MOD 1) in relation to the Stage 1 Project Approval which included the deletion of the second basement level and provision of a total of 474 spaces within a single level basement. Condition B13 was modified to provide for a car parking rate of 2 resident car parking spaces per 2 bedroom unit and 1 visitor car parking space per 5 units.

On 12 October 2011, the Director-General approved a modification application (MP10_0177 MOD 2) in relation to the Stage 1 Project Approval which involved the modification of Condition C19 – Ground water to allow for the installation of a permanent pumping system to ensure the basement is free of stormwater.

On 15 November 2011, the PAC approved a modification application (MP10_0177 MOD 3) in relation to the Stage 1 Project Approval which involved the amendment to the basement car park plan including the deletion of a vehicular entry/exit point.

On 15 December 2011, the PAC approved a modification application (MP 09_0162 MOD 1) in relation to the Concept Plan to delete the internal road, re-align the bicycle path routes, amend the requirements of Accessible Units and amend the car parking provision.

On 12 January 2012, the PAC approved a modification application (MP10_0177 MOD 5) in relation to the Stage 1 Project Approval to amend Condition C21 relating to CPTED measures within the basement car park for the painting of the soffit.

1.4 Other Modifications Currently Proposed

On 25 October 2011, the proponent submitted MP10_0177 (MOD 4) to the department in relation to the Stage 1 Project Approval to amend the timing, funding and extent of works required Boondah Road, Macpherson Street and Pittwater Road reserves and stage landscaping. This application is under assessment.

On 11 January 2012, the proponent submitted MP10_0177 (MOD 6) to the department in relation to the Stage 1 Project Approval for the deletion of the internal roadway linking Macpherson Street and Boondah Road and replacement with two private roads and realignment of the bicycle path route. It is noted that this modification application includes a bicycle path through the site which is to be accessible to the public. Should an easement for public access be required, the easement is to be addressed in the Development Application submitted to Pittwater Council. This application is under assessment.

1.5 Development Application Submitted to Pittwater Council

The department notes that an integrated Development Application (N0383/11) is currently being assessed by Pittwater Council for Torrens Title Subdivision of the subject site.

Works in accordance with the approval are currently being carried out on the site.

2. PROPOSED MODIFICATION

The application seeks to amend the Project Approval (MP10_0177) to introduce staged strata subdivision over the whole of the land to which the Project Approval applies, being Lot 20 DP 1080970. The proponent is seeking approval for strata subdivision for Buildings A, B, C, D, E, F, G and the Pool Building, being all of the buildings approved under the Project Approval.

As demonstrated in **Figure 2**, the strata subdivision of these buildings will be carried out in stages with an initial strata plan being registered for Buildings B, C and E. Future strata plans of subdivision will be registered for all or some of the remaining approved buildings, being Buildings A, D, F, G and the pool building in an order to be determined by the proponent.

The application is also accompanied by a Strata Development Contract which provides details of the strata scheme.

Figure 3 demonstrates the proposed Torrens Title subdivision of the subject site currently being assessed by Pittwater Council.

GENERAL LAYOUT OF BUILDINGS
Stage 1: Buildings B, C and E
Stage 2: Buildings A, D, F, G and the Pool Building

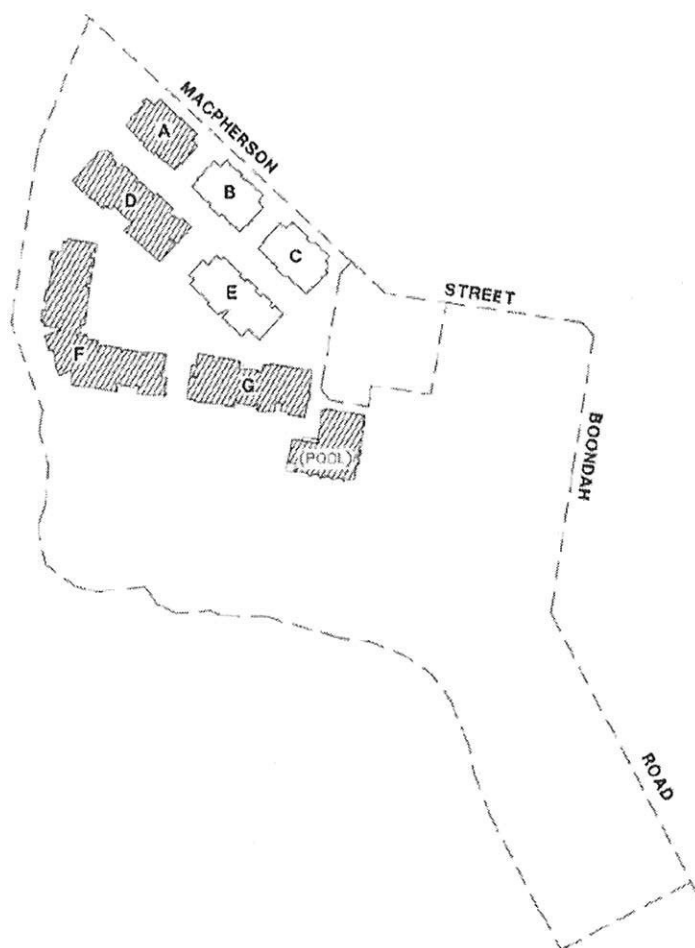


Figure 2: Site Plan demonstrating the layout of the residential and community facility (pool) buildings of Stage 1 on the subject site.

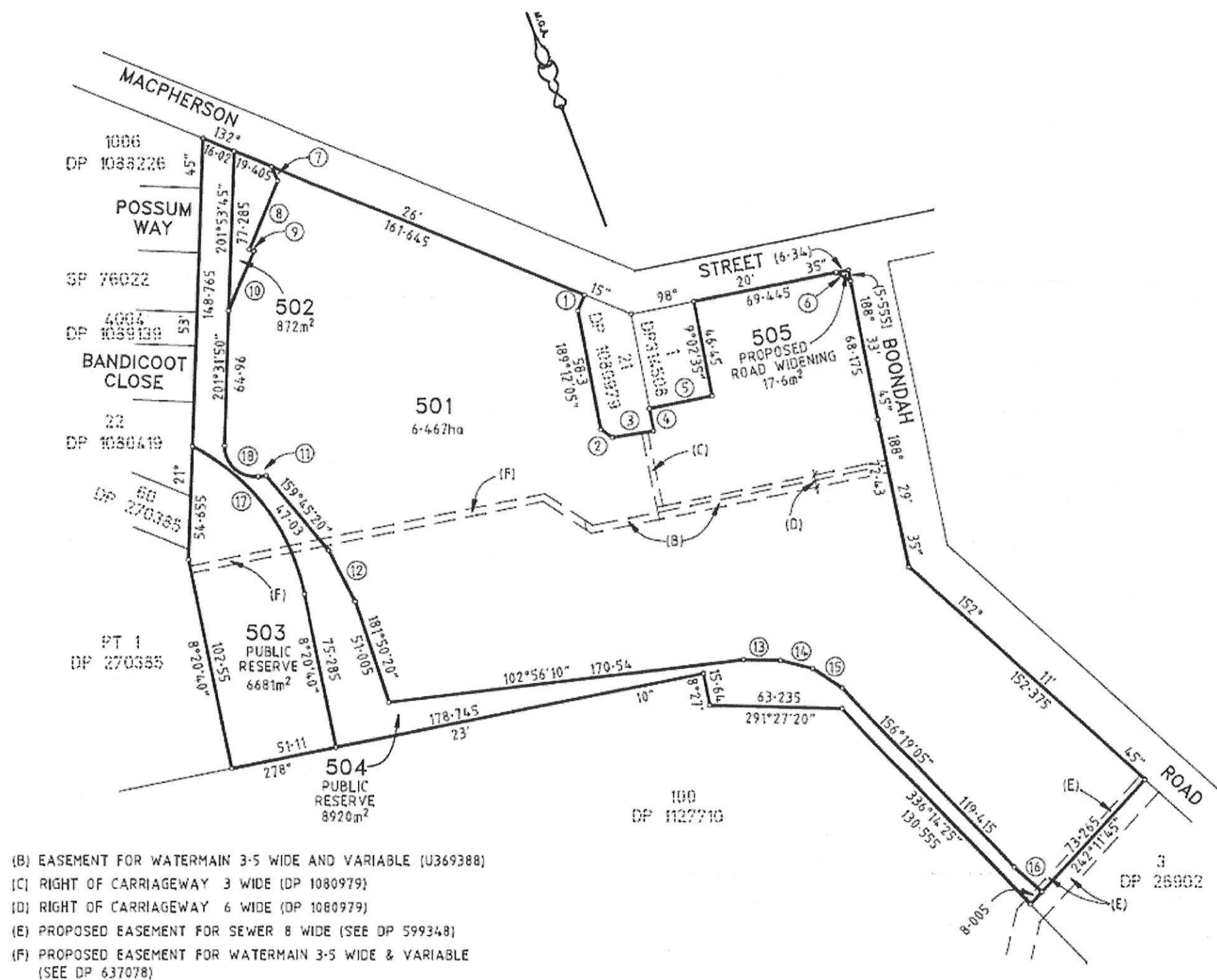


Figure 3: Proposed Torrens Title Subdivision of the subject site (subdivision application currently being assessed by Council N0383/11).

3. STATUTORY CONTEXT

3.1 Continuing Operation of Part 3A to Modify Approvals

In accordance with clause 3 of Schedule 6A of the EP&A Act, section 75W of the Act as in force immediately before its repeal on 1 October 2011 and as modified by Schedule 6A, continues to apply to transitional Part 3A projects.

Consequently, this report has been prepared in accordance with the requirements of Part 3A and associated regulations, and the Minister (or his delegate) may approve or disapprove the modification of the project under section 75W of the Act.

3.2 Modification of the Minister's Approval

The modification of the Minister's Approval by way of section 75W of the Act is appropriate because the proposal is consistent with the original Approval.

3.3 Consistency with the Concept Plan Approval

The proposed modification of the Project Approval is generally consistent with the Concept Plan Approval (MP09_0162) and will not result in significant changes to the development including the land uses, building envelopes and parking provision.

3.4 Environmental Assessment Requirements

Section 75W (3) of the EP&A Act provides that the Director-General may notify the proponent of environmental assessment requirements (DGRs) with respect to the proposed modification that the proponent must comply with before the matter will be considered by the Minister.

In this instance, following an assessment of the modification request, it was not considered necessary to notify the proponent of environmental assessment requirements pursuant to Section 75W (3) with respect to the proposed modification, as sufficient information was provided to the department to consider the application.

3.5 Delegated Authority

The Minister has delegated his functions to determine Part 3A applications to the department where:

- the relevant Council has not made an objection, and
- a political disclosure statement has been made, but only in respect of a previous related application; and
- there are less than 10 public submissions objecting to the proposal.

No submissions have been received from the public and although Council has made a submission this is only to recommend conditions and Council has not objected to the proposal.

The proponent provided a statement disclosing a reportable political donation with the previous Concept Plan (MP09_0162).

Accordingly this modification application is referred to the Deputy Director-General, Development Assessment and Systems Performance for determination.

4. CONSULTATION AND SUBMISSIONS

In accordance with Section 75X (2) (f) of the EP&A Act, the Director-General is required to make the modification request publicly available. The modification request was made available on the department's website and referred to Pittwater Council for comment. No submissions were received from the public.

4.1 Pittwater Council

Pittwater Council provided a submission to the modification, however only to provide comments and recommend conditions. Council has not made an objection to the proposal. A summary of the issues raised is as follows:

- the subject application is required to be approved prior to the integrated Development Application for subdivision of the land which is currently being assessed by Council (N0383/11);
- the staged strata subdivision is required to be generally consistent with the Project Approval, in particular with regard to number of dwellings and parking and storage areas;
- Condition A6(2) 'Land Subdivision' of the Project Approval be amended to specifically delete any reference to the creation of "*individual lots for containing dwelling and any utility lots (garages, storage areas, etc.)*";
- the addition of a condition in relation to car parking requiring:
 - car parking spaces and storage areas to be provided commensurate with the number of bedrooms contained in each dwelling in accordance with Condition B13;
 - the 46 visitor parking spaces, emergency and delivery vehicle spaces, car washing space and bicycle spaces are to be "Common Property" and readily available for use; and
- modifications to the wording for Conditions F2, F14, F15 and F16 requiring any associated infrastructure (including roads, drainage and other civil engineering works within and external of the development site) and services required by the Project Approval (MP10_0177) to be completed prior to the release of the approved linen plan of subdivision.

The department notes that since this time, Pittwater Council have advised the department that it has reached agreement with the proponent on the procedural requirements for the Torrens and Strata Subdivision on the site. These agreed requirements are set out in the recommended modifications to Condition A6(2) and conditions in Section H (in Appendix C).

4.2 Proponent's Response to Submissions

The proponent provided a response to issues raised in Council's submission and provided further information as follows:

- the proponent seeks amendments to the wording of Condition A6(2) 'Future Subdivision of the Land' to clarify that further land subdivision requires the consent of Council, however strata subdivision is provided by the subject application (MP10_0057 MOD 7) and does not required further Council consent;
- the proponent advised that the proposed additional condition requiring '*car parking spaces and storage areas to be provided commensurate with the number of bedrooms contained in each dwelling*' contradicts the parking rate as approved by the PAC in the Project Approval (MP10_0177);
- the proponent accepts the proposed additional condition requiring the visitor spaces, emergency and delivery vehicle spaces, car washing space and bicycle spaces to be "Common Property" and readily available for use;
- the proponent accepts the proposed additional condition requiring the strata subdivision to recognise the parking spaces and storage areas as Part Lots rather than individual lots in the linen plan. The remainder of the basement parking is to be 'Common Property;'

- the proponent does not accept the proposed condition seeking a restrictive covenant on the parking spaces. The proponent considers this restrictive covenant to be onerous as the use of these spaces are to be marked on the title plan; and
- the proponent seeks to amend Council's proposed condition requiring associated infrastructure to be completed prior to the release of the approved linen plans of subdivision. Alternatively, the proponent seeks the wording of Condition F2 to be maintained, as this condition already states that the Section 73 Certificate is required prior to the release of the plan of subdivision. The proponent seeks the wording for Conditions F14, F15 and F16 to be amended to require the works to be undertaken "prior to the Final Occupation Certificate."

Further to the above, the Proponent has reached agreement with Pittwater Council on the requirements for any approval issued by the department. These agreed requirements are set out in the recommended modifications to Condition A6(2) and conditions in Section H (in Appendix C).

5. ASSESSMENT

The department considers the key issues for the proposed modification are:

- consistency with Project Approval;
- staging;
- restrictive covenant;
- completion of associated infrastructure; and
- covenants.

5.1 Consistency with Project Approval

The proposed strata subdivision plans have been assessed against the approval (as modified). The proposed strata subdivision is consistent with the approved development in terms of:

- apartment numbers (226);
- car parking numbers and allocations in accordance with Condition B13 (being a total of 474 spaces comprising 46 unstacked visitor spaces, 362 spaces in a stacked formation allocated to 2 and 3 bedroom units and unstacked spaces to studio and 1 bedroom apartments);
- building footprints and heights; and
- community facilities (pool and gymnasium)

To ensure the strata plan is consistent with the approved development, the addition of Condition H4 is also recommended which requires the proponent to submit a survey report and surveyor's certificate to the certifying authority prior to the release of a strata certificate which confirms that:

- the floors, external walls and ceilings depicted in the proposed strata plan for the buildings correspond to those of the building as constructed;
- the floors, external walls and ceiling of the building as constructed correspond to those depicted in the building plans that accompanied the construction certificate for the buildings; and
- any facilities required by the development approval for the building (such as parking spaces, terraces and courtyards/open space) have been provided in accordance with those requirements.

The proposed modifications seek approval for strata subdivision and as such, the proponent seeks amendments to the wording of Condition A6(2) with the intent of clarifying that consent for Strata subdivision is provided by the subject application (MP10_0177 MOD 7) and separate approval is not required from Council. The Department supports the proposed amendment of this condition with the intent of providing consent for strata subdivision from one approval body.

Subject to amendments to condition A6(2) and the inclusion of Part H conditions regarding the requirements for strata subdivision, the department considers the proposed Strata Plan to be consistent with the approval and is satisfactory.

5.2 Staging

As demonstrated in **Figure 2**, the proposed strata subdivision will be carried out in stages with an initial strata plan being registered for Buildings B, C and E. Future strata plans of subdivision will be registered for all or some of the remaining approved buildings, being Buildings A, D, F, G and the pool building in an order to be determined by the proponent.

The application is also accompanied by a Draft Strata Development Contract which provides details of the second stage of the development for future purchases of the first stage. The existing conditions together with the Strata Development Contract will provide sufficient amenity/certainty to future residents as the building are constructed and subsequently occupied in stages.

The Strata Development Contract has been referred to an external legal consultant who has advised that the contract is acceptable and recommended conditions to allow for the flexible staging within the initial strata subdivision. The conditions are set out in Condition A7.

The Modification Application (MP10_0177 MOD 7) does not seek to amend the construction of Stage 1 and the existing conditions relating to construction management, noise and hours of construction are considered by the department to be relevant to the proposed development.

5.3 Restrictive Covenant

Council has requested the addition of a condition requiring a restrictive covenant to be imposed on the subject and any future strata subdivisions of the site prior to the release of the approved linen plan of subdivision. The restrictive covenant will ensure that residential and visitor spaces, emergency and delivery vehicle spaces, car washing spaces and bicycle spaces are not used in a manner inconsistent with the Project Approval (MP10_0177), requiring the car parking spaces and bicycle spaces to be "Common Property" and readily available for use.

The proponent has advised they do not accept the proposed condition seeking a restrictive covenant on the parking spaces as it is considered to be onerous as the use of these spaces are to be marked on the title plan.

The department does not consider the imposition of a restrictive covenant necessary as the Strata Plan will provide a clear demarcation of resident and visitor spaces, emergency and delivery vehicle spaces, car washing spaces and bicycle spaces. Accordingly the department recommends the inclusion of a condition requiring the residential and visitor spaces, emergency and delivery vehicle spaces, car washing spaces and bicycle spaces be clearly marked on the strata plan and the car parking spaces (Condition H3).

5.4 Completion of Associated Infrastructure

Council has requested modifications to Conditions F2 'Section 73 Compliance Certificate,' F14 'Works within Council's road reserve,' F15 'Works within Pittwater Road' and F16 'Certification' to ensure that associated infrastructure (including roads, drainage and other civil engineering associated within and external of the development site) and services required by the Project Application (MP10_0057) are completed prior to the release of the approved linen plan.

The proponent has raised concern with regard to the timing of these requirements and the lodgement of the plans to the Lands Title Office, and has proposed that the conditions be imposed "Prior to the Final Occupation Certificate."

The department notes that Condition F2 is already required to be satisfied prior to the release of the plan of subdivision, Conditions F14 and F16 are required to be satisfied prior to the issue of an Occupation Certificate, and Condition F15 is required to be satisfied prior to the issue of the Final Occupation Certificate.

Considering these Conditions are required to be satisfied prior to the occupation of the premises, the department does not consider it necessary to require the infrastructure related works to be completed prior to the release of the approved linen plan. The department supports the wording of Conditions F2, F14, F15 and F16 as approved to ensure that the registration of the strata plans are achieved in a timely manner, in conjunction with the future occupation of the premises.

5.5 Covenants

Condition A6(2) of the Project Approval requires a further development application to be submitted to Council for its assessment for any future subdivision of the land. The application is required to address the creation of suitable binding legal mechanisms including for the maintenance of the water management facilities, roads and parking areas, Buffer Areas, Weed Management, continual maintenance of landscape vegetation, Asset Protection Zones, the gymnasium and swimming pool, and any other proposed common facilities.

Council is currently assessing Integrated Development Application No. N0383/11 for Torrens Title subdivision of the subject site. **Figure 3** above demonstrates the proposed plan of subdivision.

The strata plans submitted with the subject application demonstrate covenants for an easement for the watermain, rights of carriageway and an easement for sewer which satisfy the requirements of Condition A6(2). It is noted that Council does not object to these covenants.

As such, the department considers that the proposed staged strata subdivision and imposition of covenants for the development is satisfied.

6. CONCLUSION

The proposal seeks to modify the Project Application to permit staged strata subdivision of the development. The proposed strata subdivision is consistent with the Project Approval including the parking requirements for the development. The proposed modifications do not change the original assessment as to the site's suitability for this development.

The department has assessed the application on its merits and the proposed modification is considered reasonable and will not result in any significant changes to the development as approved.


7. RECOMMENDATIONS

The department recommends conditions provided in Appendix C to ensure that the strata subdivision of the approved buildings can occur in accordance with the requirement of the Project Approval and other statutory requirements.

It is recommended that the Deputy Director-General, Development Assessment and Systems Performance:

- (a) **consider** the findings and recommendations of this report;
- (b) **approve** the proposed Strata Development Contract;
- (c) **approve** the modifications under delegated authority, under Section 75W of the Environmental Planning and Assessment Act 1979; and
- (d) **sign** the attached instrument of Modification for MP10_0177 (MOD 7).

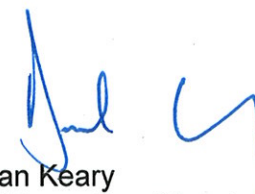
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