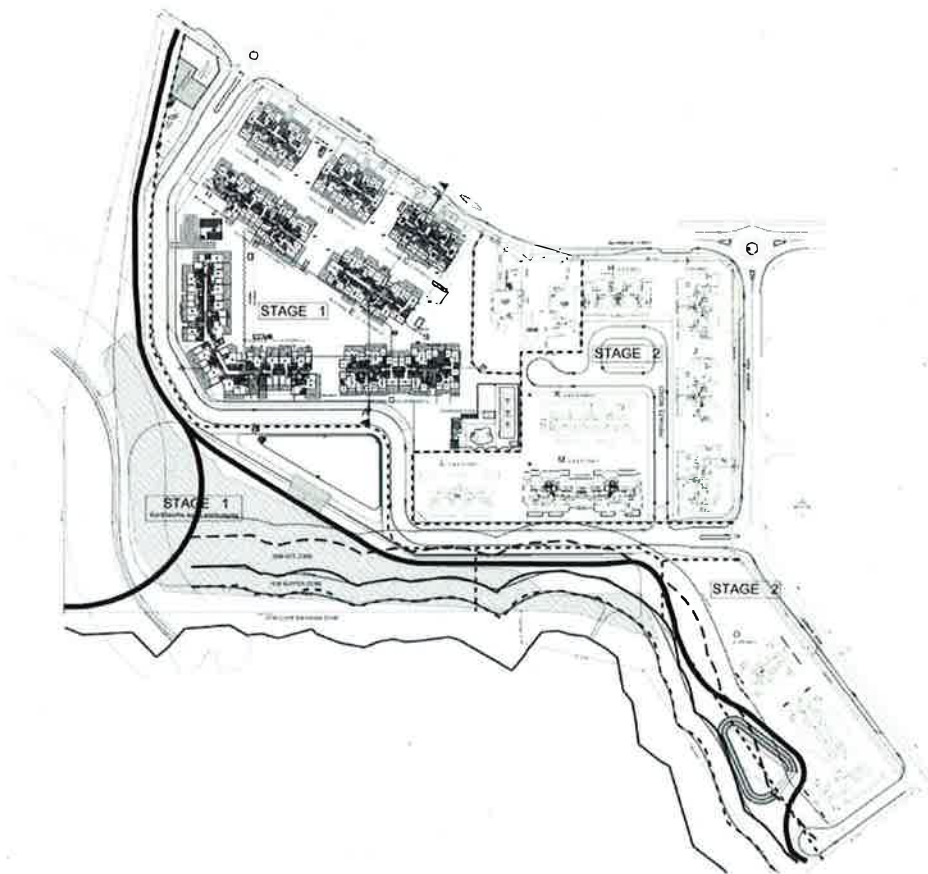




**MODIFICATION REQUEST:
Residential and Child Care Centre
Development
14-18 Boondah Road Warriewood
MP09_0162 MOD 2 and MP10_0177 MOD 11**



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

October 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 is currently being developed in accordance with the approved Stage 1 Project Approval (MP 10_0177).

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



Figure 1: The Site

1.2 Previous Approvals

On 18 January 2011, the Planning Assessment Commission (PAC) approved a Concept Plan (MP 09_0162) for a multi-unit housing development and child care 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 (MP 10_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 seven residential apartment buildings 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

A number of modifications have been pursued by the Proponent. These applications are summarised in **Table 1** below.

Table 1: Previous Modifications

Concept Plan Modifications		
Modification No.	Application details	Determination
MP09_0162 MOD 1	The deletion of the internal road, re-alignment of the pedestrian/bicycle path routes, amendment to the requirements of accessible units and car parking provision.	Approved by the PAC on 15 December 2011
Project Modifications		
Modification No.	Application details	Determination
MP10_0177 MOD 1	The deletion of the second basement level and provision of a total of 474 spaces within a single level basement. Amendment to Condition B13 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.	Approved by the PAC on 15 July 2011
MP10_0177 MOD 2	Modification of Condition C19 – Ground water to allow for the installation of a permanent pumping system to ensure the basement is free of stormwater.	Approved by the Director General on 12 October 2011
MP10_0177 MOD 3	Amendment to the basement car park plan including the deletion of a vehicular entry/exit point.	Approved by the PAC on 15 November 2011
MP10_0177 MOD 5	Amendment to Condition C21 relating to CPTED measures within the basement car park for the painting of the soffit.	Approved by the PAC on 12 January 2012
MP10_0177 MOD 7	Staged strata subdivision of Buildings A, B, C, D, E, F, G and Pool Building.	Approved by the Deputy Director General on 18 April 2012
MP10_0177 MOD 4	Staging of road works within Boondah Road and Macpherson Street, staging of landscaping and deletion of requirement for cost sharing of the roundabout at the entry to the Anglican Retirement Village.	Approved by the PAC on 10 May 2012
MP10_0177 MOD 8	Amend the wording of various conditions relating to the timing of the development including C2(c), C2(d), C12(d), C12(e), F4, F12, F13, F14(a), F16 and F17.	Approved by the Deputy Director General on 23 May 2012
MP10_0177 MOD 6	Deletion of internal roadway linking Macpherson Street and Boondah Road and replacement with two private roads and realignment of the bicycle path route.	Approved by the PAC on 12 June 2012
MP10_0177 MOD 9	Design modifications to Buildings E and G including the addition of studies, storage cupboards, windows and door openings, 'pop-up' roofs and extension of a rood slab.	Approved by the DDG on 16 July 2012.
MP10_0177 MOD 10	Amendment of the ground floor level of the swimming pool building and correction of an administration error related to BASIX certification.	Approved by the DDG on 24 August 2012

2. PROPOSED MODIFICATION

The proposal seeks to modify the approved Concept Plan (MP09_0162) and Stage 1 Project Approval (MP10_0177) for the site at 14-18 Boondah Road, Warriewood. The modification request seeks approval for the following:

Modifications to the Concept Plan Approval

Proposed modifications to Schedule 3 (Future Environmental Assessment Requirements) to:

- reduce the required parking rate for two bedroom units from 2 spaces to 1.2 spaces per unit (Requirement '9'); and
- insert a new condition to require the developer to be responsible for the reconstruction of half of Boondah Road (Requirement '12').

Proposed modifications to Schedule 4 (Statement of Commitments) are to:

- amend the timing for the payment of developer contributions for Stage 2 of the development from prior to issue of the 'First Occupation Certificate' to prior to issue of the 'Final Occupation Certificate' (Commitment '1').

Modifications to the Stage 1 Project Approval

Four existing conditions are proposed to be modified to:

- require the preparation of engineering plans and specifications for 'half the width' of the frontage to Boondah Road (Condition C6);
- require the developer to construct street lighting and services to 'half the width' of the frontage to Boondah Road (Condition C10);
- require the developer to construct 'half the width' of the frontage to Boondah Road prior to issue of the Final Occupation Certificate (Condition F14); and
- revise and clarify the correct number and date of four architectural drawings identified in Condition A1 of the approved instrument.

The Department notes that the proposed changes to the Concept Plan will affect the future consideration of Stage 2 of the Concept Plan.

3. STATUTORY CONTEXT

3.1 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 Department may approve or disapprove of the modification to the project under Section 75W of the Act.

3.2 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 specific conditions and commitments on the Concept Plan and Project Application approvals and therefore, approval to modify the applications is required.

3.3 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.

3.4 Delegated Authority

The Minister has delegated his functions to determine section 75W modification applications to the Deputy Director General, Development Assessment & Systems Performance 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. However, Pittwater Council objects to the proposed modification. Furthermore, while a donation has not been disclosed in relation to this application, the proponent provided a statement disclosing a reportable political donation with the initial Concept Plan (MP09_0162).

Accordingly this modification application is referred to the Planning Assessment Commission (PAC), for determination.

4. CONSULTATION AND SUBMISSIONS

Under Section 75W of the Act, a request to modify an approval does not require public exhibition. However, under Section 75X(2)(f) of the Act, the Director-General is required to make publicly available requests for modifications of approvals given by the Minister.

In accordance with Clause 8G of the *Environmental Planning and Assessment Regulation 2000*, the application to modify the approval was made publicly available on the Department's website and was referred to Pittwater Council and the Roads and Maritime Services (RMS) for comment.

4.1 Council

Pittwater Council objects to the proposed reduction in the car park rate for two bedroom units on the basis that:

- the approved car park rate was established in response to factors influencing demand in the local area such as public transport, accessibility, geography and socio-economic status;
- walking distances to public transportation nodes is not considered accessible. Furthermore, the existing provision of public transport is limited in its service, frequency and destinations;
- the Pittwater LGA is largely isolated from the rest of Sydney and as such residents rely heavily on private car usage which is reflected in high rates of car ownership; and
- a comparison of 2006 to 2011 ABS Census data demonstrates a trend towards higher rates of private car ownership by people who live in units.

Council also objects to the proponent seeking confirmation to be responsible for the half width reconstruction of Boondah Road as:

- it is inherent in the wording of the conditions prepared by the PAC that they purposely required the full width of Boondah Road to be reconstructed;
- the development extends into flood prone land and as such, requires the entire width of Boondah Road to be raised. This construction of Boondah Road should therefore be carried out at the one time; and

- the allowance noted in Council's Section 94 Contributions Plan for improvement works to Boondah Road is insufficient to accommodate the scale of infrastructure required for the subject development.

Council supports the request to modify the timing of the payment of developer contributions noting:

- developer contributions for Stage 1 have already been paid; and
- no issue is raised to the proposed payment of developer contributions being made prior to the issue of the Final Occupation Certificate for Stage 2 of the development.

4.2 Roads and Maritime Services (RMS)

RMS did not object to the proposed reduction in car park spaces but raised issues including:

- the reduction in car park spaces should be compensated with appropriate public transport infrastructure and this should be financed by the developer; and
- as Boondah Road is a local road, Council is the appropriate authority to comment on its reconstruction.

4.3 Public Submissions

No public submissions were received for the development.

5. ASSESSMENT

The Department considers the key issues for the proposed modification to be:

- car parking rate for two bedroom units; and
- extent of reconstruction works to Boondah Road.

5.1 Car parking rate for two bedroom units

The proposal seeks to amend the Concept Plan and reduce the car parking rate associated with two bedroom units for Stage 2 of the development from 2 to 1.2 car spaces. The Department notes that this issue was previously considered in the assessment of the previous proposal to modify the Concept Plan (MOD 1). The Proponent has now submitted specialist documentation to support the reduced parking rate including a 'Residential Green Management Plan' and a supporting letter prepared by Cardno (NSW/ACT) Pty Ltd.

Proponent's justification

The documentation submitted with this modification request includes a Residential Green Travel Plan and letter prepared by Cardno providing the following justification:

- the reduced rate is consistent with NSW State Government strategic objectives regarding sustainable transport;
- the reduced rate is above the RMS development guidelines for medium density housing;
- other councils do not require such high rates; and
- 2006 ABS census data suggests that most people living in units within Pittwater do not require 2 car parking spaces.

Council comment

Council objects to the reduced parking rate for two bedroom units on the basis that:

- public transportation to the site is limited in its frequency and destination;
- Council's comparison between 2006 and 2011 census data indicates a trend towards an increase in the overall rate of car ownership as well as an increase in the proportion of households possessing 2 or more cars per unit; and
- supporting documentation provided for this modification does not consider the determining factors influencing local demand including public transport, accessibility, geography, socio-economic status, the locality and large developments.

Department's consideration

The Department notes that the proponent has previously sought to reduce the approved car park rate for two bedroom units on previous applications which were determined by the PAC. A copy of the Director General's Environmental Assessment report for the most recent request (MP09_0162 MOD 1) is attached (**Appendix C**)

Table 2: Proposed, recommended and approved car park rates for 2 bedroom units

Application	Proposed rate	Department's Recommended rate	PAC's rate	Approved
Concept Plan MP09_0162	1.5	1.5	2	
Project Approval MP10_0177 MOD 3	1.57	1.57	2	
Concept Plan MP09_0162 MOD 1	1	1.5	2	

In the assessment of the applications identified in **Table 2**, the Department considered a rate of 1.5, 1.57 and most recently, 1.5 to be appropriate (for 2 bedroom units) on the basis that:

- they achieve a balance between addressing local car parking needs and reducing car reliance;
- the RMS did not object to any of the applications and the rates do not exceed RMS development guidelines for traffic generating development;
- bus stops are within accessible walking distances to the site, and Sydney Buses have indicated their intent to review bus services once the development is completed; and
- the proposed rate exceeds the 2006 Census data for the Pittwater LGA regarding household car ownership for 2 bedroom units (1.29 cars per unit).

In consideration of the justification provided by the Proponent, the Department notes that the Residential Green Travel Plan identifies strategies to reduce car dependency and promote sustainable means of transportation. However, the Department does not consider the document to be compelling for the purpose of reducing the parking rate on the basis that:

- the strategies outlined are conceptual and are not enforceable in the development;
- the Green Travel Plan provides little information or justification that has not already been considered in determining a car parking rate for the development; and
- the existing Concept Approval requires the submission of a Green Travel Plan as a future assessment requirement for Stage 2 of the development.

Further to the above, the Department notes that there is little additional justification in Cardno's letter to amend the car parking rate for two bedroom units that has not previously been considered. Therefore, the Department maintains that a rate of 1.5 spaces per 2 bedroom unit is considered more appropriate in this instance given the justifications provided for previous applications listed in **Table 2** remain valid to the subject application.

It is noted that the PAC approved an increased rate of 2 car spaces per 2 bedroom unit as part of two previous modification applications to the Concept Plan (MP09_0162 MOD 1) and the Stage 1 Project Approval (MP10_0177 MOD 3) on the basis that it was not convinced that there was sufficient new information available to justify the proposed reductions.

5.2 Extent of reconstruction works to Boondah Road

The proposal seeks confirmation that the developer shall be responsible for the reconstruction of half the width of Boondah Road as it relates to the frontage of the subject site. The Department understands that the proponent has submitted this modification request as a result of a dispute with Council over the extent of works to be undertaken to Boondah Road as part of the Stage 2 works.

Proponent's justification

The Proponent justifies the half width reconstruction of Boondah Road for the following reasons:

- Council's Warriewood Valley Section 94 Contributions Plan (Contributions Plan) identifies a contribution of \$2,331,060.61 toward the half width reconstruction of Boondah Road; and
- the nearby Anglican Retirement Village development approved by Council on Macpherson Street (Consent No. N0102/05) was only required to construct half of Macpherson Street. This is likely to have occurred in Warriewood applications where new development is proposed next to an existing road.

Council's comment

Council objects to the Proponent's request on the basis that:

- the contribution identified in Council's Contributions Plan for the reconstruction of Boondah Road did not anticipate the scale of infrastructure now required to support the approved development;
- the full width reconstruction of the road should be undertaken at the one time given the development site extends into flood prone land requiring a lift of the road level; and
- the site on the opposite side of Boondah Road (Sydney Water facility) is not part of the developable land associated with the Warriewood land release. It is Council's view therefore, that the PAC intended for the developer to reconstruct the full width of Boondah Road, which is inherent in the wording of the related conditions of consent.

Department's consideration

The Department has considered the points raised by the Proponent and Council and notes the key issue is whether it is reasonable to require the Proponent to reconstruct the half or full width of Boondah Road.

The Department has reviewed its assessment of the original Concept Plan which includes the Warriewood Valley Traffic Report (Halcrow Report) carried out by Halcrow (independent review carried out for the Department in its assessment of the Concept Plan) which incorporated consideration of the Warriewood Valley Roads Masterplan (Roads Masterplan) prepared for Council by Masson Wilson Twiney.

The independent Halcrow Report concluded that the subject development would not result in a significant increase in traffic flow in the area. In particular, it was identified that the increase in traffic flow in Boondah Road as a result of the development would remain within an appropriate traffic volume. Notwithstanding this, the Proponent proposed additional intersection upgrades including two roundabouts (in accordance with Council's Roads Masterplan). The Concept Approval required upgrades to the intersections of Pittwater Road and Warriewood Road to cater for additional traffic resulting from the development. The intersection improvements approved as part of the Concept Plan were consistent with Council's Roads Masterplan. The Department notes that the assessment of the Concept Plan required no specific upgrades to the Boondah Road roadway to cater for additional traffic as a result of the development.

In its assessment of the modification request, the Department has further reviewed the Roads Masterplan and notes that it sets out a standard requirement for developers to provide kerb and guttering and half road reconstruction for all street frontages of development sites to existing roads.

Observations of similar residential development sites demonstrate that this is a common requirement for greenfield development sites that are of a similar scale in the nearby area. In particular, **Figure 2** provides a view of nearby Garden Street showing the eastern side of the road has been upgraded / reconstructed along the frontage of the site that has been recently redeveloped for a more intensive residential use. The Department notes the western side of the street remains in its original condition despite the fact that the Pittwater LEP 1993 zones

the site Non-Urban B and therefore is not likely to be redeveloped for any residential purpose or the like that may trigger a road reconstruction requirement.



Figure 2: Looking south along Garden Street nearby the subject site. The eastern (left) side of the road has been upgraded / reconstructed along the frontage of the redeveloped site. The western side remains in its original condition.

Noting this, the Department considers that Council's request to reconstruct the entire width of Boondah Road is inconsistent with both its policy requirements and what is commonly required for similar development nearby (including cases where the opposite side of the street is unlikely to be developed).

Further, the Roads Masterplan provides some clarification of the nature of capital works intended to be utilised by the contributions identified in Council's Contributions Plan (which sets aside \$2,331,060.61) which describes the widening of Boondah Road along its existing alignment above flood level and provide a floodway for overbank flows.

The Department acknowledges Council's points in relation to the likelihood of future development on the opposite side of Boondah Road. However, the Department's observations are that this has not been applied elsewhere in the nearby area and in any case, the Department considers that it is unreasonable to require the developer to fulfil additional road construction works on the basis on the likelihood of development of nearby sites. Moreover, Council's Contribution Plan sets aside money for reconstruction works to Boondah Road

The Department considers that the resolution of any road level requirements and the relationship with the opposite half of Boondah Road may be resolved with Council as part of the assessment of the Development Application for Stage 2 as it is an aspect of the development that would be better coordinated between the Proponent and Council and may be set out through the consent requirements.

The Department has considered Council's comments on this matter and considers the requirement for full road reconstruction cannot be supported for the following reasons:

- the assessment of the original Concept Plan did not envisage any upgrades to Boondah Road to cater for additional traffic as a result of the approved development;
- Council's adopted Roads Masterplan only requires half road width reconstruction for developments in Warriewood Valley (which appears to be applied for similar development nearby); and
- Council's Contributions Plan provides funds for works to Boondah Road and envisages any adjustments to road levels.

Therefore, based on the abovementioned points, the Department considers that it is reasonable to require the Proponent to reconstruct the half width of Boondah Road.

6. CONCLUSION

The Department has assessed the proponent's request to modify the Concept Plan Approval and Stage 1 Project Approval and has considered Council's submission in response to the proposal. Council maintains objections to the reduced parking rate for two bedroom units for the future Stage 2 development and request by the proponent to be responsible for only the half width reconstruction of Boondah Road.

The Department raises no issue to the amendment of Condition A1 of the Stage 1 Project Approval as it relates to the revision and clarification of correct plan references.

The Department does not support the proposed car park rate of 1.2 car spaces per two bedroom unit for Stage 2. Consistent with the assessment of previous applications, the Department considers a rate of 1.5 to be more appropriate in this instance. In this regard, the wording of Condition 9 in Schedule 3 of the Concept Plan is recommended to be modified to reflect this rate.

With regard to the extent of reconstruction works to Boondah Road, the Department considers it reasonable for the developer to be responsible for the half width rather than the full width reconstruction of Boondah Road given the findings of a traffic report prepared for the Concept Plan and the requirements of Council's Warriewood Valley Roads Masterplan.

Also, the revised Statement of Commitment for the Concept Plan alters the timing for the payment of developer contributions for Stage 2 of the development. Council raises no objection to this change. Noting Council's support for this change, the Department recommends this be approved.

The rewording of conditions in response to the above recommendations is set out in the Department's Recommended Modifying Instrument in **Appendix D**.

7. RECOMMENDATION

It is recommended that the Planning Assessment Commission:

- (A) **Consider** the recommendations of this report;
- (B) **Approve** the modifications, subject to conditions; under Section 75W of the *Environmental Planning and Assessment Act. 1979*, and
- (C) **Sign** the attached Instrument of Modifications (**Appendix D**).


Director
Metropolitan & Regional Projects South

17/10/2012


Executive Director
Major Projects Assessment

16/10/12


Deputy Director-General
Development Assessment &
Systems Performance

17/10/12