

30 October 2013

**Determination of modification applications
to the Concept Plan (MP09_0162 Mod 4) and Stage 1 Project Application,
14-18 Boondah Road (MP10_0177 Mod 13), Warriewood (Childcare Centre)**

1. DELEGATION TO THE COMMISSION

The above modification applications lodged by Meriton Property Services Pty Ltd (the proponent) have been referred to the Planning Assessment Commission (the Commission) for determination under Ministerial delegation dated 14 September 2011. The delegation is authorised because Pittwater Council (the Council) objected to the proposal and more than 25 submissions in the nature of objections were received by the Department of Planning and Infrastructure (the Department).

The Commission constituted to determine the application consists of Mr Garry Payne AM (chair) and Mr David Furlong.

2. APPROVAL SOUGHT TO BE MODIFIED

On 18 January 2011, the Commission approved a concept plan for multi-unit housing development and associated infrastructures including a child care centre on the site. The Stage 1 project application was also approved for the construction of 7 residential buildings and a single storey child care centre, which was subject to a future Development Application for its use. On 29 August 2012, Council approved the fit-out and use of the childcare centre for 32 children and parking for 8 vehicles.

3. THE SUBJECT MODIFICATION APPLICATIONS

There are two applications, which seek approval to modify the approval granted for the Concept Plan and Stage 1 project application. The proposed modifications include:

1. Amendments to the architectural plans approved in the Concept Plan and Stage 1 Project;
2. Amendment to the conditions of Stage 1 project relating to the description of the child care centre and maximum number of children permitted within the centre and
3. Subdivision of Lot 504 into two lots, Lot 601 for the childcare centre and Lot 602 (the balance of Lot 504 to be dedicated to council).

In essence, the applications seek to increase the size of the child care centre from 32 places to 100 places with corresponding increase in car parking to be provided adjacent to the site on the overland flow path area.

The applications were amended following public submissions. The proposal before the Commission for determination is:

Concept Plan to be amended:

1. To include a 2-storey child care centre with a maximum GFA of 694.5m²;

2. To construct a parking area for 25 cars located on the overland flow path, an area to be dedicated to council; and
3. No change to the existing dedication of land to Pittwater Council.

Stage 1 Project to be amended as follows:

1. To construct a child care centre with a maximum of 90 places;
2. To operate the child care centre between 6am and 8pm Monday to Friday, and the outdoor play areas will be used between 8am and 6pm; and
3. Parking for 25 vehicles with a turning area within the site at the MacPherson Street end.

4. THE ASSESSMENT REPORT

The assessment report provided an in-depth analysis of the following key issues: built form, flooding impacts and risk; section 94 contributions and offsets; traffic impacts and access arrangements; and noise impacts.

The report found:

Built form

The original approval of the child care centre provided no setback from MacPherson Street but now seeks a 2m setback for landscaping to be provided to soften the building bulk and improve streetscape. The 2 storey building is consistent with existing development of 2 to 4 storey development in the surrounding areas.

Flooding impacts and risk

The assessment concluded that the design of the car parking area is acceptable with appropriate conditions requiring the overland flow path to be maintained free of obstruction and for Council to be consulted during the design process. To address the issue of risk, it recommends a condition requiring the preparation of a Flood Emergency Management Plan in consultation with Council, the State Emergency Service and Police.

Section 94 contributions and offsets

1. The Department agreed with Council that the overland flow path, where the proposed car parking is to be located, should be retained by the proponent or the operator, not be dedicated as public open space and relevant section 94 contributions payable should be amended accordingly. Condition B25 is recommended to be amended to ensure future maintenance of the flow path remains with the proponent/operator of the child care centre.
2. With regard to Council's request to reconsider the suitability of the dedicated land for open space and the associated value attributed to the offset area, the Department was of the view that the issue was thoroughly considered during the assessment of the concept plan and there is insufficient justification to revisit the issue.

Traffic impacts and access arrangements

The assessment report concluded that the proposed child care centre would have minimal impacts on traffic movements and pedestrians in the area or users of the car park across the

site. With regard to the design of the car park, the Department agreed with Council that the width of parking spaces should be increase to 2.7m which can be achieved by reducing the width of the two landscaped areas and the deletion of one parking space closest to the proposed driveway. Notwithstanding the recommended reduction of one car parking space, the provision still meets RMS requirements.

Noise impacts

The Department supports the recommended noise mitigation and management measures contained in the proponent's noise consultant's report to address potential noise impacts. Measures include the construction of a 1.8m fence along the western boundary and restriction the number of children within in the outdoor play areas at any one time and the outdoor play areas not be used before 8am and after 6pm. Conditions are included in the recommended approval accordingly.

Conclusion

The assessment report concluded that the site can reasonably accommodate the proposed facility with acceptable traffic, noise and flood risk impacts. The proposed modification applications are recommended by the Department for approval subject to conditions.

5. SITE VISIT

The Commission members visited the site on the 28 October 2013.

6. MEETINGS

On 22 October 2013, the Commission met separately with Pittwater Council and the proponent to hear their respective views on the assessment report and its recommendation. The Commission also held a public meeting on 28 October 2013 to allow public input on the assessment report and recommendations.

6.1 Pittwater Council

Council discussed the following issues of concern with the Commission:

1. Council believed the whole of the overland path should not be dedicated as public open space as it questioned the public benefit of such land. It also raised concern about future maintenance responsibility.
2. Visual impact of the child care centre building is another concern. Council considered the setback from MacPherson Street is inadequate to allow landscaping to screen the building and the façade requires more articulation to improve its architecture design.
3. Sought confirmation that Council will be able to receive the revised s94 contribution in lieu of the dedication of open space (overland flow path) as stage 2 already been approved for development;

Council also sought reconsideration of the dedication of Lot 504 to Council as the land is highly flood affected and cannot be used as active open space. Council preferred to have a cash contribution in lieu of the land dedication so that it can use the contribution to acquire land that can be used as active open space. Council also questioned the attributed value of the dedicated land.

6.2 Proponent

The proponent outlined the history of the site to the Commission and the meeting focused on issues concerning the overland flow path. These included:

1. The purpose of the overland flow path – according to the proponent, the area to be dedicated has always been for drainage purposed, not open space.
2. The proposed car parking deck will be over the PMF level and the bottom of the flow path will be constructed to minimise erosion.
3. The southern end of the flow path has already been regenerated.
4. There will only be low level planting along MacPherson Street to minimise blockage to the flow path.
5. It argued that the second half of the flow path is visually and physically connected to the open space and reserve area, hence should be in Council ownership as part of the wider public reserve.

The Commission sought clarification on the subdivision of Lot 504 as it was not clear whether the subdivision was still part of the application.

6.3 Public Meeting

On Monday, 28 October the Commission held a public meeting at the Mona Vale Memorial Hall to hear community comments on the assessment and recommended conditions. Four people spoke at the meeting (see attachment 2).

Issues raised at the public meeting were similar to those in the submissions to the Department.

7. COMMISSION'S CONSIDERATION

The Commission found that the issues raised in public, Council and agency submissions have been satisfactorily addressed in the assessment report and where appropriate, conditions have been recommended to ensure minimal impacts or deal with residual issues.

There is only one issue that the Commission considers it should comment on. It is the subdivision of Lot 504. In response to a question from the Commission, the Department verbally advised that a draft subdivision plan was lodged with the EA to subdivision Lot 504 into Lots 601 and 602. Lot 601 is for the development of the car park for the child care centre and Lot 602 is the remaining land of Lot 504. However, the PPR proposed no change to the land to be dedicated to Council and only sought air stratum for the car park.

The Department disagreed with the air stratum proposal and recommended that the car parking area should be excluded from the dedication of land and a corresponding s94 contribution should be paid to Council. To clarify the subdivision issue, the Department recommended an additional condition (C26) to require an updated subdivision plan.

C26 Updated Plan of subdivision

An updated plan of subdivision generally consistent with the draft plan of subdivision prepared by JBW Surveyors dated 5/3/13 (showing the re-subdivision of Lots 502 and

504 in DP1175520) is to be registered. This updated plan of subdivision shall provide:

- a) a single lot that accommodates the childcare centre and car parking area (indicated as Lot 601 on the draft plan of subdivision) which is burdened by an easement required by Condition C25(b) via an appropriate mechanism (or as otherwise agreed by Council); and*
- b) positive covenants for the remainder of existing Lot 504 (indicated as Lot 602 on the draft plan of subdivision) as currently provided on DP1175520 registered on 13/7/2012 (or as otherwise agreed by Council).*

The Commission noted Lot 504 has been registered with an associated positive covenant under S88B of the *Conveyance Act 1919* that benefits Council. The positive covenant “cannot be released, varied or modified without the consent of Council”. The construction of the car park above the overland flow path creates a need to alter the proposed subdivision pattern and will also require a variation to the terms of the positive covenant. The Commission accepted the Department’s advice that this is a matter to be negotiated between the proponent and the Council.

Following careful consideration of the information and advice provided, the Commission determined that the approval of the development of the child care centre and associated parking area does not need to include the approval of subdivision of Lot 504 to create Lots 601 and 602 as proposed in the draft plan (ref 123899 dated 5/3/13) as this matter can be dealt with within the realm of Part 4 of the Act. However, it will require the consolidation of the existing childcare centre site (Lot 502) and the area of the proposed parking area (part of Lot 504) into a single lot. The new lot should be registered before the issue of the first occupation certificate for the childcare centre. Recommended condition C26 is amended to read:

C26 Lot consolidation for the childcare centre

Lot 502 (the site of the child care centre) and part Lot 504 (the child care centre car parking area) shall be consolidated into a single lot and registered before the issue of the first occupation certification for the childcare centre.

The new lot shall include an easement as required by condition C25(b) with an appropriate mechanism or as otherwise agreed by Council.

A copy of the registered plan shall be provided to the Director General and the Council for record purposes.

The Commission notes Council’s concern regarding the revised s94 contribution. The concept plan approval includes a statement of commitments development contribution for Stage 2 which has been amended from \$6,221,675.36 to \$6,614,275.36 and is payable prior to the issue of the Final Occupation Certificate.

8. COMMISSION’S DETERMINATION

The Commission has carefully considered the assessment report and associated documents, views expressed at various meetings with stakeholders and information provided before, at

or after these meetings and is satisfied that the issues raised in public submissions and by Pittwater Council have been adequately addressed and the recommendation for approval subject to conditions is reasonable. The applications are approved subject to recommended conditions as amended by the Commission.

A handwritten signature in black ink, appearing to be 'Garry Payne', with a stylized 'G' and a horizontal line extending to the right.

Garry Payne AM
Member of the Commission

A handwritten signature in blue ink, appearing to be 'David Furlong', with a stylized 'D' and 'F'.

David Furlong
Member of the Commission

Attachment 1
List of Speakers

Planning Assessment Commission Public Meeting
Warriewood childcare centre
(Concept Plan Mod 4 and Stage 1 Project Mod 13)

Date & Time: Monday, 28 October 2013, 4pm

Place: Mona Vale Memorial Hall, 1606 Pittwater Road, Mona Vale

1. Pittwater Council: Ms Lisa Cordoba and Mr Chris Hunt
2. Mr Chris Hornsby
3. Mr Angus Gordon
4. Ms Jo O'Sullivan

