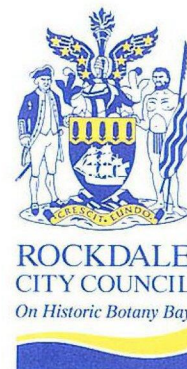
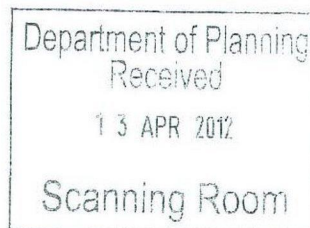


11 April 2012



Our Ref: F10/9
Contact: Simon Porter, 9562 1691

Natasha Harras
Department of Planning & Infrastructure
GPO Box 39
SYDNEY NSW 2001



Dear Natasha Harras

Re: Request for Modification of Concept Plan Approval Discovery Point (MP10_0003)

Thank you for your letter dated 21 March 2012 notifying Council of the request by Australand Holdings Limited to modify the concept plan for Discovery Point (MP10_0003).

Council has no issue with the applicant's request to modify the Concept Plan Approval to:

- Modify Condition A2
- Modify Condition A5
- Modify Condition B3

Council does not support the applicant's request to modify the Concept Plan Approval to:

- Modify Schedule 3 Condition 1
- Modify the Development Design Guidelines, in relation to Solar Access

The requested modifications to the Development Design Guidelines in relation to Solar Access requirements are not supported because they inappropriately devalue the role of direct sunlight for spatial amenity and sustainable design. They also have the potential to significantly reduce the quality of future development in Discovery Point.

Council is concerned that the applicant argues for a relaxation of Solar Access requirements in the Development Design Guidelines based on more detailed solar analysis, consideration of other factors affecting amenity, and site constraints. However, this detailed solar analysis is not provided, nor is there any guarantee that those units which do not achieve the solar access requirements would also benefit from the any of the other factors which improve amenity. A relaxation of the Development Design Guidelines should not be supported without a detailed level of design documentation against which to assess the request.

The development assessment process for individual buildings is the appropriate place to consider variations to the Development Design Guidelines. At this stage there is insufficient design documentation to assess the merits of any variations against other amenity factors, or to take into account specific site constraints.

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Following is a detailed response to the applicant's request to modify section 5.2 *Solar Access* of the Development Design Guidelines, as outlined in sections 2.0 *Background to the Modifications* and 3.2 *Proposed Modification to Development Design Guidelines* of their Section 75W report. This includes a response to the arguments given in support of the proposed modifications contained in sections 4.0 *Environmental Assessment*, 5.0 *Macro Considerations* and 6.0 *Examples of Holistic Considerations of Amenity*.

Detailed response to request to modify section 5.2 Solar Access of the Development Design Guidelines

2.0 Background to the Modifications

The Section 75W report explains that this request is based on more detailed analysis of solar access on a floor by floor basis taking into account overshadowing as well as orientation. Where as the building envelopes in the concept plan were only based on the analysis of a typical floor layout.

This analysis is not included with the Section 75W report and there is no evidence provided which demonstrates the connection between units which receive poor solar access and those that achieve high levels of other amenity measures.

Without detailed analysis or design documentation this is concerning because a typical floor analysis would have already factored in the orientation of units, including where they intend to orientate toward views or certain outlooks in preference to solar access. It was on this analysis that the building envelopes and current Development Design Guidelines were based, in conjunction with the current 70% solar access target to offer sufficient design flexibility.

A more detailed analysis, looking at over-shadowing would not be further affected by a choice in orientation between solar access and outlook. This sort of analysis would reveal those units on lower levels which remain overshadowed for long enough periods of the day to not be able to achieve the solar access targets. This is problematic because these units are also likely to be on too low-a-level of a building to benefit from views or particularly significant outlooks.

Without an assessment of the detailed solar access analysis, including the likely floor layouts of future stages (which was the basis for this request for modification to the Development Design Guidelines) these modifications are not supported. The information provided in the Section 75W is insufficient to assess the need to relax the solar access requirements, particularly in relation to other amenity and design issues. The appropriate place to assess these issues and any variations to the Development Design Guidelines is at the DA stage where the assessment officer will have all the necessary information to make an informed judgement on the merits of a specific proposal.

3.2 Proposed Modification to Development Design Guidelines

Council does not support the proposed modifications to the Development Design Guidelines. The proposed changes devalue the importance of solar access and significantly reduce the solar access requirements of new development. This has the potential to significantly reduce the quality of future development in discovery point.

The applicant provides arguments in support of their proposed modifications relating to the consideration of the value and importance of various other amenity measures. However,

Council believes this issue was sufficiently considered when the building envelopes in the concept plan were developed, and that the current solar access target (70%) offers adequate flexibility to mediate the need to meet other amenity measures as well as solar access.

Council's concern is that the proposed modifications to the Development Design Guidelines go beyond what is necessary to provide design flexibility, and would in reality allow a large number of single aspect units which are either south facing or severely overshadowed. This issue, and the potential for this outcome, has not been covered or adequately addressed in the applicant's Section 75W report. This is a significant issue because, despite repeated reference to the issue of amenity in the Section 75W report, the proposed modifications will allow up to 50% of units to receive less than 2 hours direct sunlight in mid-winter (not Winter Solstice), regardless of whether they benefit significantly from any other amenity measures.

This is an extremely low proportion of a development. It amounts to only half of the units within a building, or even less in some cases as the intent is to measure this target across all buildings. In practical terms, for a building to only achieve this 50% target it would mean that the lower half of the building is in constant shadow or that it contains predominantly single aspect units, many of which would be south facing. Such large numbers of significantly overshadowed or single aspect units is a very poor outcome and would result in very poor housing stock, regardless of the attributes of the Discovery Point precinct. This outcome is well away from what is regarded as best practise.

Further to this, the impact of the proposed modifications is more significant than initially apparent. In addition to the reduction in the percentage solar access target, there is also a change to when this target is measured, as well as the inclusion of currently approved buildings in the overall Solar Access Schedule. This means that the solar access figures are artificially inflated by existing approvals meaning that future buildings would be able to achieve even lower Solar Access than the proposed 50% target. This outcome is regarded as unacceptable.

Further to these issues discussed, Council also has the following concerns in relation to specific aspects of the proposed modifications.

Heading

The proposed change of the heading for section 5.2 of the Development Design Guidelines is a significant change which devalues the benefits of direct solar access. Council does not support this change or the reduction in the significance of solar access which it implies.

Solar access and daylight access are both important factors affecting the amenity of apartments. They are however two separate considerations which are not interchangeable. Daylight provides light and contributes to the ambience of a space whereas direct sunlight (solar access) provides passive heating of a space as well as contributing greater levels of light and ambience, particularly in the cooler months. It also reduces reliance on energy for heating purposes.

The distinction between solar access and daylight access should not be removed, nor should the requirements for solar access be substituted with daylight access requirements.

Objectives

The removal of the current objective relating to solar access is not supported. This objective clearly articulates the importance of solar access, particularly to habitable rooms and private open space, with reference to the concept plan envelopes. Council does not see any reason to remove this objective, even if changes are proposed to the Controls which achieve it.

The proposed objective 'To provide direct sun access where site constraints and orientation permit' is not an acceptable replacement. This is because it removes the requirement to achieve solar access to habitable rooms and private open space, creating an opportunity for solar access to be achieved where it does not actually contribute to the passive heating or amenity of a unit.

This objective also contains a qualifying statement which reduces its strength by stipulating a broad and general circumstance under which the applicant need not achieve the objective. Objectives should not contain qualifying statements such as this. It is the role of Controls to set suitable standards and provide allowances for extenuating circumstances. In this specific case the building envelopes have already been developed taking into account the site constraints and orientation.

The addition of the two objectives relating to daylight access is acceptable, but only if the current solar access objective is maintained.

The final objective proposed is not supported and provides unnecessary allowance for the applicant not to achieve appropriate solar access. SEPP 65 and the RFDC do not prioritise amenity measures, and this practice should not be supported. It is the role of the assessing officer to factor all these measures into their assessment, and where one or more of them are absent or in conflict, weigh the merits of each specific case.

Controls

Council does not support the proposed modifications to the Development Design Guideline Controls. They seek to significantly relax the solar access requirements, not only by reducing the numerical target from 70% to 50% but also by changing how this is measured, as well as adding the opportunity for applicants to not comply with the standards.

In summary, the critical changes and the issues which Council has identified with them are:

- The reduction in the solar access requirement from 70% to 50% units is a significant relaxation of the current controls. The proposed 50% target is less than most of the precedents which the applicant puts forward in support of their request. As previously discussed no analysis or design documentation is provided in support of this change. Without this detail against which to assess the applicant request this modification should not be supported.
- The change in wording of the time at which solar access is to be measured, from 21 June (winter solstice) to mid-winter could potentially relax the solar access requirements more substantially. This may not have been intended by the change in wording, but mid-winter is different to Winter Solstice or 21 June. It is easier to achieve solar access mid-winter.
- Solar access targets are proposed to be assessed over the entire site, not individual buildings. However, by spreading the targets over the development site means some individual buildings would achieve very poor solar access. The buildings identified as receiving the worst solar access do not necessarily benefit from other amenity measures. Further to this, there is no guarantee that future variation would not be sought to these targets (either to the concept plan or at DA stage). This would mean

that buildings could be approved with very low solar access figures under the assumption that this would be compensated for elsewhere in the Discovery Point Precinct. Only for future variation from the controls to occur, further reducing the solar access performance of the entire site. This reinforces the need for more detail, to ensure that further future variations are not sought.

- The inclusion of indicative targets for individual buildings includes those already approved or under assessment. This artificially inflates the figures because the buildings which achieve the highest percentages of solar access are those already approved. This means that future buildings would only need to achieve an even lower target because the average is lifted by the existing approvals.
- The addition of the final control offers the applicant the opportunity to not comply with these reduced targets, on the same basis upon which the targets are been reduced. If this clause is included then it is not necessary to relax the solar access requirements. Similarly, if the solar access requirements are relaxed to address this issue, it is not necessary to include this additional control which permits further variations from the numerical standards.

4.0 Environmental Assessment

4.1.1 Holistic Consideration of Amenity

To support the proposed modification, the applicant's Section 75W report argues for a holistic approach to amenity which considers other amenity issues in addition to solar access. As identified in the Section 75W report the Development Design Guidelines contain controls pertaining to other amenity issues. It is the role of the development assessment process to consider all these issues and provide a holistic assessment of a proposal, including where variations are sought. This would be done with all the necessary information and design documentation. The Controls do not need to be relaxed as requested to allow this holistic consideration at the DA stage to occur.

4.1.2 Principle 1: Context

Many of the factors the applicant identifies as contributing to a dwelling unit's amenity are actually not measures of amenity. Most of factors listed are attributes of the Wolli Creek Centre. Whilst these attributes were important considerations in the initial master planning for the Wolli Creek area they should not be considered adequate compensation for units to have poor levels of amenity. A unit with no natural ventilation or solar access has poor amenity regardless of whether or not it is only a short walk to the railway station and regional parks. The applicant is arguing there is benefit from certain external attributes which have no bearing on the internal amenity of a dwelling unit.

Those factors attributes of the Wolli Creek Village that do not directly affect the amenity of a unit, nor conflict with the provision of solar access are:

- Expansive park and water views
- Close proximity to major public transport infrastructure
- Close proximity to shops and services

Solar access controls should not be relaxed based upon the argument that a development site benefits from a number of positive attributes because they do not affect the amenity of individual units, nor do they conflict with providing amenity to units. Most of these attributes

are common to a significant proportion of high density residential development in Sydney and are principles that underpin the determination of areas suitable for urban consolidation.

4.1.3 Principle 7: Amenity

Those factors identified which do affect the amenity of a unit, such as privacy and natural ventilation, are covered by SEPP 65 and the RFDC. The Section 75W report rightly identifies that these factors are not prioritised in the RFDC. This is because they are all important and should be considered in unison. This means that achieving one measure of amenity should not be an argument for been excused from achieving another. In the case of the proposed modifications to the Concept Plan it would mean that it would be inappropriate to relax the solar access controls without adequate analysis of solar access and all other amenity measures. This is why such variations and assessment should be made at the DA stage when all the information is available and a proper assessment can be made as envisaged by the RFDC.

The Section 75W report identifies that the RFDC has no 'rule of thumb' relating to views. This is because views are a luxury. Although they may add to the quality and appeal of a unit but do not contribute to its basic amenity requirements. It is agreed that views and outlook are important design considerations and, like all other design considerations, should be assessed and taken into account in the development assessment process. Views can also be temporary in nature, or can change over time. They are be difficult to measure.

It is accepted that in some instances there may be a conflict between achieving different amenity measures. In these instances the merits of the particular case need to be considered and a judgment made as to which is more important, or an alternate or innovative solution found. This should only be necessary where achieving different amenity measures conflicts, such as maintaining privacy whilst achieving natural ventilation.

There is flexibility in the current Development Design Guidelines to allow for these circumstances, recognising that solar access cannot always be achieved. Beyond this it is the role of the development assessment process to assess any variations on their individual merits, where a holistic approach to amenity is taken. Without detailed design information that shows where conflicts exist between achieving solar access as well as other amenity measures an argument for a relaxation of controls cannot be supported.

4.2 Matrix of amenity

The table provided lists the various attributes of the Wolli Creek Centre and some amenity measures, but is not a detailed analysis tool. The matrix is done at a building by building level and does not analyse individual units. As previously discussed there is no detailed assessment or guarantee that individual units which do not achieve solar access will instead benefit from any, let alone all, of these other factors. This is not adequate justification for a relaxation of the Development Design Guidelines, and is one of the major issues with the proposed modifications.

5.0 Macro Considerations

Council recognises the importance of the Discovery Point and Wolli Creek area but does not find any of the macro considerations discussed to be justification of a relaxation of the Development Design Guidelines or move substantially away from what is considered best practice. In fact, the significance of the area is justification for ensuring a high quality

building design is achieved. Council sees that the proposed relaxations will have a significant impact on the quality of dwelling units built in the Wolli Creek Village.

6.0 Examples of a Holistic Consideration of Amenity

The identified precedents presented in the Report 75W do not share a lot in common with the Discovery Point Precinct. Whilst the precedents are affected by significant site constraints, Discovery Point is a large site with few constraints that affect solar access. There is no existing development to the north overshadowing the site, nor is the Discovery Point Concept Plan site awkwardly shaped or oriented. Discovery Point also benefits from significant views in multiple directions.

Because of these differences in site constraints, and a number of other factors detailed below, Council does not believe these precedents provide sufficient evidence or justification to support of the proposed modifications to the Development Design Guidelines.

It should also be noted that the solar access targets achieved or permitted for most of these precedents are still higher than the proposed 50% target.

6.1 Pavilions on the Park, Duntroon Avenue St Leonards

This precedent has a very constrained site orientation, being a narrow site running north south. The variation here was a result of this site constraints, which is not the case at Discovery Point.

6.2 Royal Newcastle Hospital Site

In this precedent reference is made here to overshadowing from existing buildings to the north, which does not occur in Discovery Point. It is also important to note that the solar access target was only reduced to 58%, and was for '3 hours sunlight' as opposed to 2 hours.

6.3 Top Ryde City

This precedent involves the construction of apartments on top of an existing building. This obviously has much greater constraints than the Discovery Point Precinct. The discussion on this precedent also makes reference to a detailed design study. As already raised this has not been provided with the Section 75W report.

6.4 Sydneygate, Bourke Street Waterloo

In this precedent the variations to the solar access targets were approved at the DA stage of each block, not at the concept plan stage as is the case for Discovery Point. That meant that the variations could be properly assessed based on the detailed design documentation. In addition these solar access targets were only reduced to 56% and 67%, which is higher than those proposed by the applicant.

6.5 Bishop v City of Sydney Council

This precedent is the retrofit of an existing building where solar access could not be achieved regardless of unit design. This is a completely different situation to Discovery Point, and in this case it is appropriate given the constraints that high levels of all other amenity measures are ensured as compensation.

6.6 Draft Green Square Development Control Plan

This precedent, while offering flexibility, is not a variation or reduction in the numerical standards as proposed in the request to modify the Development Design Guidelines. It is also important to note that the quoted clause emphasises the importance of basic amenity factors i.e. natural light and ventilation, rather than contributory factors such as views or attributes of the precinct such as access to transport infrastructure.

Conclusion

Council does not support the request for modification to the Development Design Guidelines in relation to solar access. The proposed modifications devalue the significance of solar access and have the potential to significantly reduce the quality of units in future developments in Discovery Point. In summary, it is our opinion that:

- The current Development Design Guidelines provide adequate flexibility for a portion of units to not achieve the solar access targets, whether as a result of site constraints or conflicting amenity considerations.
- There is not sufficient supporting information, either detailed analysis or design documentation, to properly assess let alone support the proposed modifications.
- In particular, there is insufficient analysis on a unit by unit basis to provide certainty that individual units which do not achieve solar access requirements will also benefit from higher levels of other amenity measures.
- Wolli Creek and the Discovery Point Precinct have few site constraints which affect solar access and would justify a relaxation of solar access controls.
- The positive attributes of the Wolli Creek and Discovery Point precinct, and the adequate achievement of other amenity measures is not a valid justification for the relaxation of solar access controls.
- The appropriate place to consider variation to controls and assess conflicts between competing amenity measures is the DA process.

Should you have any queries in relation to the above, please do not hesitate to contact Simon Porter, Urban Designer on 9562 1691.

Yours faithfully



David Dekel
Manager Urban and Environmental Strategy