



MODIFICATION REQUEST:

***Discovery Point Concept Plan Modification 1
MP 10_0003 MOD 1***

Discovery Point, 1 Princes Highway, Wollongong

Proposed by Discovery Point Pty Ltd

***Modification of solar access to Building 6 and
modification of building separation between
Building 2 and adjoining building.***



Director-General's
Environmental Assessment Report
Section 75W of the
Environmental Planning and Assessment Act 1979
June 2012

ABBREVIATIONS

CIV	Capital Investment Value
Council	Rockdale City Council
Department	Department of Planning & Infrastructure
DGRs	Director-General's Requirements
Director-General	Director-General of the Department of Planning & Infrastructure
EA	Environmental Assessment
EP&A Act	<i>Environmental Planning and Assessment Act 1979</i>
EP&A Regulation	Environmental Planning and Assessment Regulation 2000
EPI	Environmental Planning Instrument
GFA	Gross Floor Area
LGA	Local Government Area
MD SEPP	State Environmental Planning Policy (Major Development) 2005
Minister	Minister for Planning & Infrastructure
PAC	Planning Assessment Commission
Part 3A	Part 3A of the <i>Environmental Planning and Assessment Act 1979</i>
PEA	Preliminary Environmental Assessment
PPR	Preferred Project Report
Proponent	Discovery Point Pty Ltd
RFDC	Residential Flat Design Code, 2002
SEPP 65	State Environmental Planning Policy No. 65 (Design Quality of Residential Flat Development)

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1. BACKGROUND

1.1 Site Description

The site is known as 1 Princes Highway, Woll Creek and is located on the western side of the Princes Highway, approximately 8 kilometres south-west of the Sydney CBD. The site is located within the Rockdale Local Government Area and is bounded by the Princes Highway, Cooks River, the Illawarra and East Hills Railway Lines and Magdalene Terrace (**Figure 1 and 2**).

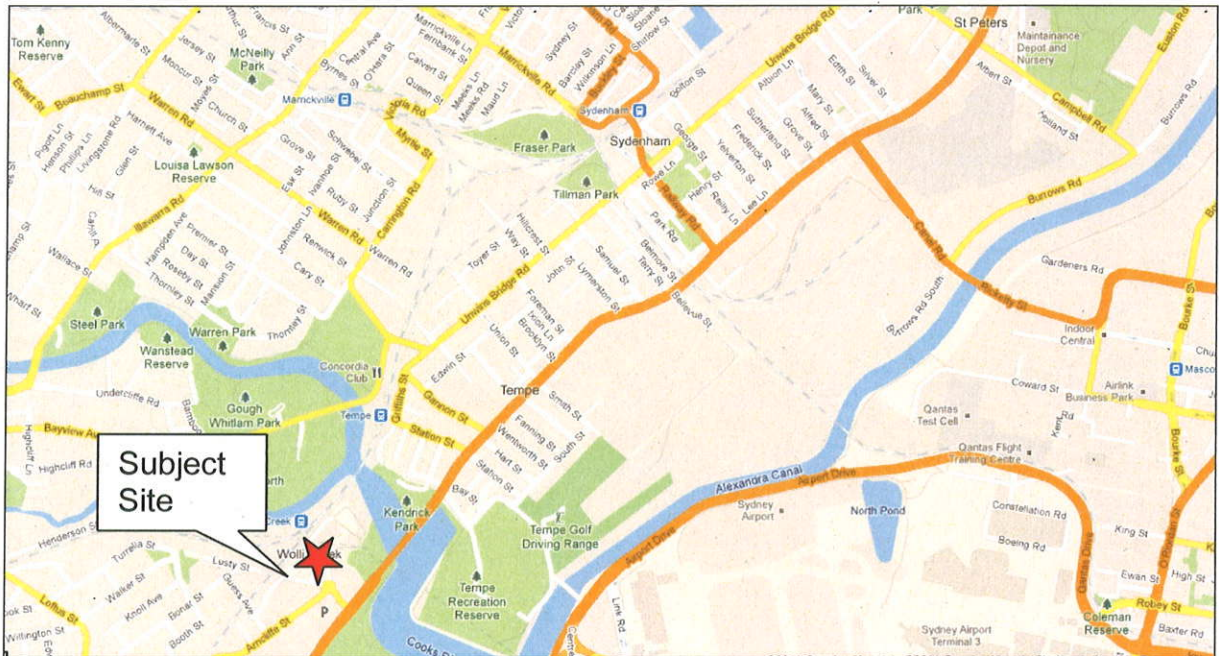


Figure 1: Site Location (Source: Google Maps, 2012)



Figure 2: Concept Plan Site (Source: Proponent's Report)

1.2 Concept Plan and Major Project Approvals

Concept Plan Approval MP 10_0003

On 5 May 2011, the Director General, as delegate for the Minister for Planning granted Concept Approval (MP10_0003), for the use of the site for a mixed used development with associated public open space; indicative building envelopes for 14 buildings to a maximum height of 79.65AHD; basement level, ground level and above ground parking; road works to support the development; public pedestrian and cycle pathway; and landscaping areas throughout the site. The Concept Plan approval included approval of "Development Design Guidelines" to inform the detailed design of each building at the project application stage. Condition A5 of the Concept Plan approval requires that *"All future development of the site shall generally be consistent with the Development Design Guidelines..."*

Major Project Approval MP10_0030

On 19 March 2012, the Deputy Director General, as delegate for the Minister for Planning granted Project Approval (MP10_0030), for construction of Stage 1, being mixed use buildings 1B and 1C providing a total of 130 apartments and retail area of 2197m². The proposal also included associated basement parking, landscaping, public domain and road infrastructure works, enabling bulk earthworks on adjacent sites and temporary access to Wolli Creek Station.

Major Project Approval MP10_0031

In October 2011 the proponent also submitted a project application (MP10_0031) for a residential development (known as Stage 6) which includes a 13 storey building with 88 units. At the time of writing, the application has not been determined and is still under assessment. A key issue with the proposal is that it involves a significant deviation from the solar access requirements specified by the Development Design Guidelines. Instead of solar access being provided to 60% of the units as required, only 19% is achieved under the proposal. It is as a result of this issue that the proponent has submitted the Concept Plan modification request.

In accordance with the Concept Plan approval, all other stages (other than 1 and 6 which had DGRs issued prior to the approval of the Concept Plan) will be the subject of Development Applications to Rockdale City Council.

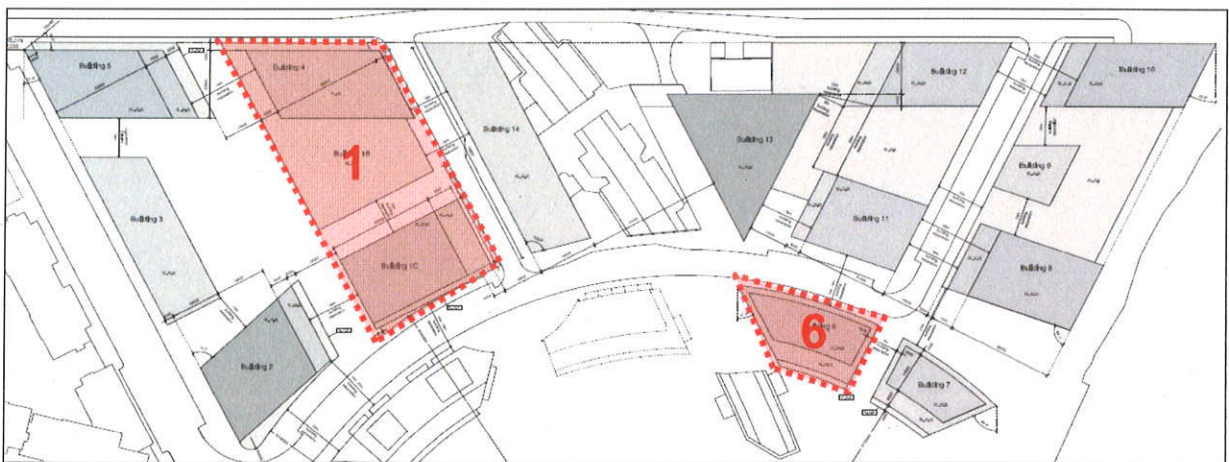


Figure 3: Approved Building Envelopes Plan indicating location of Stages 1 and 6

2. PROPOSED MODIFICATION

2.1 Modification Description

The Application originally sought to modify the Concept Plan Approval as follows:

1. Modification to Section 5.2 of the Development Design Guidelines relating to solar access. Specifically the amendments sought to delete the requirement to provide 2 hours of solar access to 60% of apartments within Building 6 and to 70% of apartments in all remaining buildings. Instead indicative solar access targets for each building were provided, ranging from 19% to 70%. A new control was sought requiring solar access to 50% of apartments across the total Discovery Point site.
2. Modification to Plan DA3-001 depicting building envelopes and building separation. The changes include modifications already made to comply with Condition B1 of the approval but also seek to correct a previous drafting error relating to the position of a separation arrow between 2 buildings (relocating the arrow from a balcony edge to a building façade).
3. Minor / administrative changes to the wording of Conditions A5; B3 and Schedule 3 Condition 1 to:
 - Permit deviations from the Development Design Guidelines and Council's Public Domain Plan and Technical Manual if agreed by the Director General (Condition A5);
 - Delete requirements in Condition B3 to amend the Development Design Guidelines (as these amendments have already been made since the original approval was issued) and add a requirement that future applications should have regard to the Development Design Guidelines as modified; and
 - Adding the words "as modified" to Schedule 3 Condition 1 of so that it now reads '*Solar access to future dwellings shall be consistent with the approved Concept Plan as modified*'.

In response to a submission from Council and following a meeting between the proponent and Council, the proponent amended the application. Changes to the building envelopes and the wording of conditions are still sought, but the changes to solar access requirements are now only sought for Building 6, by way of deleting any numerical requirement for that building only. As such a minor amendment to Section 5.2 of the Development Design Guidelines is sought as follows:

5.2 Solar Access

Objective

- 1. To provide sunlight access to private open space and habitable rooms within the development in accordance with the approved concept plan envelopes.

Controls

- 1. Development must comply with the building form, separation and site layout within the Concept Plan.
- 1. Dwellings within the Concept Plan site should receive a minimum of 2 hours sunlight to living rooms and private open space to 70% of apartments between 9am and 3pm on 21 June, with the exception of Building 6 **which is to achieve 60%.**

Other amendments were then also sought to the Development Design Guidelines to reflect the updated Building Envelopes Plan. This includes updating Figure 18 (a copy of the approved building envelopes plan) and deletion of Figure 23 (building separation diagram) as the figure is out-dated and all relevant information is depicted on the approved building envelopes plan. The building separation controls (Section 5.6 of the Guidelines) therefore have also been amended to refer to Figure 18 rather than Figure 23.

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 is appropriate because the proposal is consistent with the original Concept Plan and there will be limited environmental consequences for future Project approvals.

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 delegated his powers and functions under section 75W of the EP&A Act to the Department in cases where

- The relevant Council has not made an objection; and
- there are less than 10 public submissions objecting to the proposal; and
- a political disclosure statement has not been made in relation to the application.

Although the Rockdale Council objected to the proposed modifications as lodged, they have advised they have no objection to the amended modification request. Refer to discussion in Section 4. No public submissions were received and as there has been no political disclosure statement made for this application or for any previous related applications.

Accordingly, the Acting Director, Metropolitan and Regional Projects South, may determine the modification request under delegated authority.

4. CONSULTATION AND SUBMISSIONS

4.1 Exhibition

Under Section 75W of the EP&A 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 the modification request publicly available.

In accordance with Clause 8G of the Environmental Planning and Assessment Regulation 2000, the application to modify the approval was made publically available on the Department's website and referred to Rockdale Council for comment.

The Department received submissions from Rockdale Council. No other submissions were received.

4.2 Rockdale Council Submissions

In response to the notification of the application, Rockdale Council advised it had no issue with the request to modify the building envelope / separation plan; the change to Condition A5 to permit the Director General to approve deviations from planning documents; or the change to Condition B3 which deletes requirements already complied with.

However it advised that it did not support the proposed modification to the Development Design Guidelines in relation to solar access. The main reasons for the objection were that the current Development Design Guidelines already provide adequate flexibility; that there is not sufficient supporting information to assess or support the modifications; and that the appropriate place to consider a variation to the controls is as part of the DA process rather than at the Concept Plan stage.

Following Council's submission, the Proponent met with Council officers and subsequently amended the application with respect to solar access as described in Section 2 above.

Council also submitted a further letter clarifying its position and advised that its main concern was the whole of site approach rather than considering each building on its merits at the development assessment stage. It also advised that *"Council supports the design of Building Six and has no issue with the 19% solar access achieved. Council is satisfied that Australand has taken all reasonable steps to maximise solar access to units taking into account the overshadowing constraints and the desirable views and outlook in the opposing direction."*

As such no objection is raised by Council to the application as amended.

5. ASSESSMENT

The Department considers the key issue for the proposed modification to be solar access and amenity. The other minor modifications are also considered briefly.

5.1 Solar Access and Amenity

The requirement to provide 2 hours of solar access to 60% of units in Building 6 was based on information submitted by the proponent with the Concept Plan application, which recognised that compliance with the RFDC Rule of Thumb (requiring 70% solar access) would be difficult to achieve for that building in particular. However the methodology used by the proponent to derive the figure of 60% did not provide an accurate assessment of the real levels of solar access likely to be achieved under the proposed building envelopes. The proposed design of Building 6 as submitted in the project application would achieve 2 hours of solar access to just 19% of units mid-winter. 44% of units would receive 1 hour of solar access.

The Concept Plan calculation of 60% was based on a typical floor of the building's indicative design scheme, rather than consideration of likely solar access to each level individually. It did not take into account overshadowing to the lower levels caused by future buildings to the north also approved under the Concept Plan. Furthermore, the planning assessment at the time recognised that achievement of 60% could only be accomplished if most units were oriented to the north (rather than towards the south which has the benefit of extensive views towards Discovery Point Park and Botany Bay).

Therefore while compliance with the 60% requirement is possible, it would mean that future Buildings 7 and 11 would need to be significantly reduced in height to well below that envisaged by the building envelopes approved under the Concept Plan; and that the floor plans of Building 6 would need to be redesigned to orient most living rooms and open space areas to the north.

The extent of the reduction in the height of Buildings 7 and 11 necessary to ensure solar access to 60% of units in Building 6 is demonstrated in Figures 4 and 5 below. Such a reduction would significantly reduce the number of dwellings able to be provided on the site. It would also have the potential to result in a less harmonious appearance of the development, as the approved envelopes were designed in conjunction with surrounding built forms to ensure a congruent overall urban design outcome. There would also be a reduction in the solar access performance for Buildings 7 and 11 as there would be significantly less apartments left within those buildings that would be able to achieve solar access targets. Therefore on balance, any improvement to solar access to Building 6 is outweighed by the detrimental impacts which arise from the necessary change to Buildings 7 and 11.

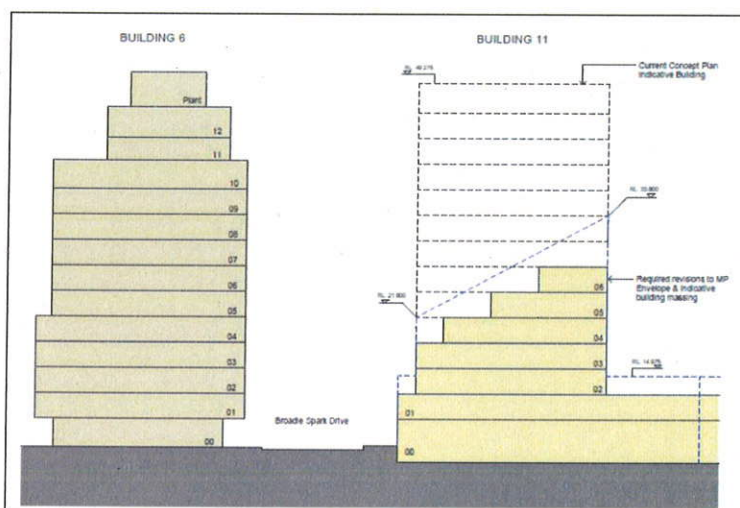


Figure 4: Impact on Building 11 from complying with 60% solar access requirement (Source: Proponent's Report)

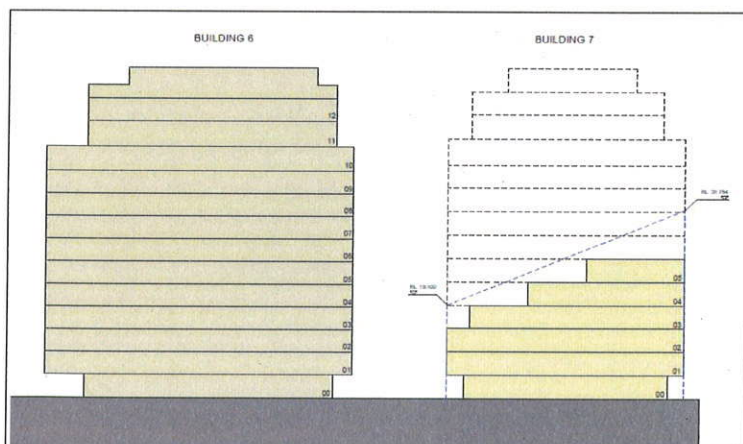


Figure 5: Impact on Building 7 from complying with 60% solar access requirement (Source: Proponent's Report)

Re-orientation of more living rooms and balconies to the north rather than towards the south is also not considered desirable as it would mean that those units could not take advantage of the amenity generated by the extensive park and district views to the south of the building. The amenity generated by those views also has the potential to off-set any reduction in amenity arising from reduced solar access.

Given the site constraints and the impacts associated with achieving compliance with solar access requirements, the Department considers that a more holistic approach to the measure of amenity could be applied to Building 6. For example, south facing units could incorporate extensive glazing to living areas to take advantage of the views but also to ensure good levels of daylight to the units, if not direct solar access (see architect's impression at Figure 6 below). Other factors contributing to amenity include room and private open space dimensions and size; natural ventilation; privacy and access. These would be considered in detail at the project application stage, but the proponent has demonstrated that Building 6 could achieve reasonable levels of amenity with 68% of apartments being naturally cross ventilated; 77% enjoying views and all units achieving minimum required apartment size and open space areas; good levels of privacy and good access to parks; public transport and retail services. Acceptable levels of energy efficiency could also still be achieved.



Figure 6: Architects impression of south facing living area at upper floor levels.
(Source: Proponent's Report)

Regardless of the proposed amendment to delete the specific requirement for solar access to Building 6, the building would still comply with the remaining control for solar access being *"development must comply with the building form, separation and site layout within the Concept Plan envelopes"* and with the objective of the controls to *"provide sunlight access to private open space and habitable rooms within the development in accordance with the approved Concept Plan envelopes"*.

On this basis the proposed modification to delete the numerical requirement for solar access to Building 6 within the Development Design Guidelines is supported.

5.2 Other Modifications

Building Separation

The proponent seeks approval of an updated version of DA3-001 depicting building envelopes and building separation. The changes include modifications already made to comply with Condition B1.

The modified plan also seeks to correct a drafting error on the Building Envelopes Plan regarding to the separation distance between proposed Building 2 and the existing building "Verge" to the south. The approved plan shows a 22m separation distance between the upper northern section of Building 2 to the edge of the balconies on the Verge building. The proponent advises it was intended that the arrow should instead point to the façade of the Verge building.

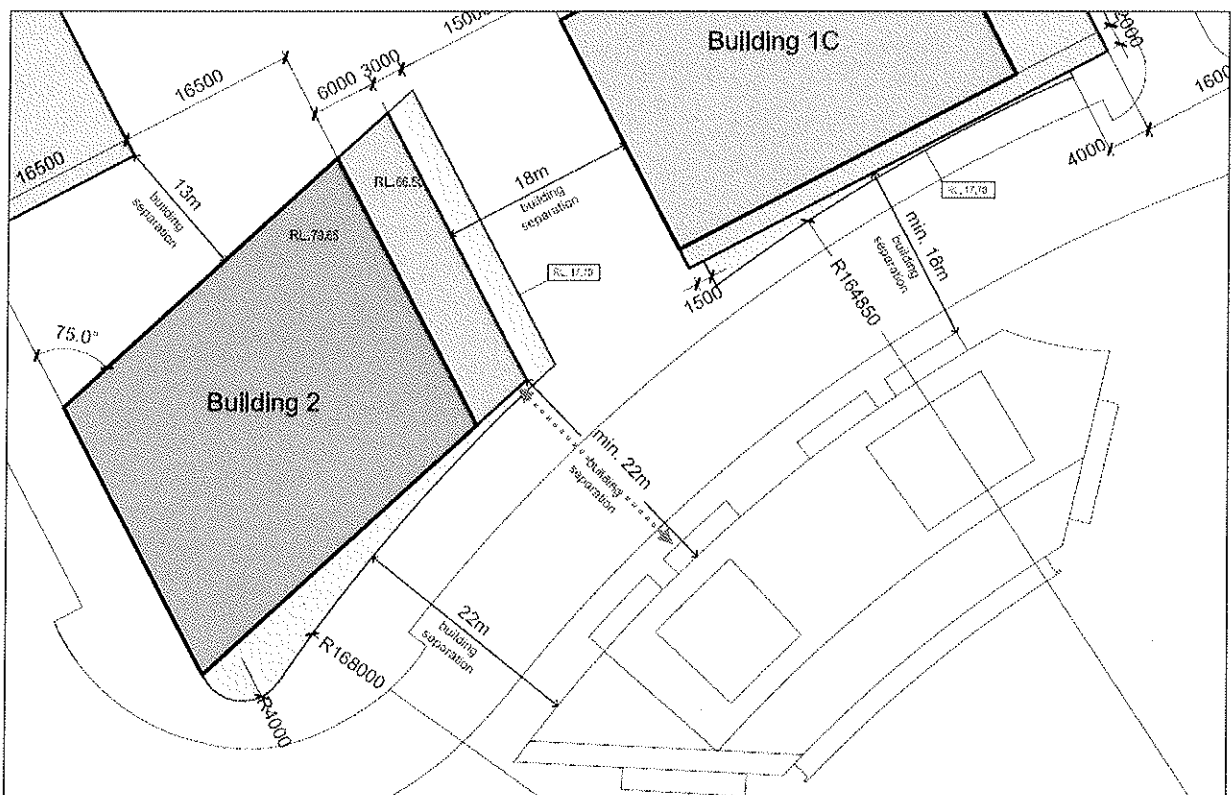


Figure 7: Extract from proposed amended Building Envelopes Plan

***** location of arrow on current plan

This dimension was not given any particular consideration in the assessment of the Concept Plan application. However applying the dimension to the façade, rather than to the balcony edge is more consistent with the scaling on the approved building envelopes plan and therefore appears to support the proponent's assertion that it was a drafting error.

The RFDC rule of thumb requires a building separation of 18 metres for 5-8 storeys in height and a separation of 24 metres for the 9th storey and above. As the Verge building only has balconies on the lower 8 floors, the separation distance from the proposed building to the balconies on the Verge will comply with RFDC regardless of the modification.

However the modification would result in a variation from the RFDC for floors 9 and above. The extent of this variation would be relatively minor: being no more than 2 metres at the northern most end of the building, increasing gradually so that the southern end of the façade fully complies with the 24m separation distance set by the RFDC.

The modification would also ensure that the northern end of Building 2 would be consistent with the setback between the Verge and the upper floors of adjoining Building 1C and therefore would result in a more consistent built form outcome.

On this basis the proposed modification is supported. Accordingly, Figure 18 of the Development Design Guidelines is also modified to be consistent with the new plan. Figure 23 showing various building separation distances is deleted as the figure is now out-dated and all relevant information is depicted on the approved building envelopes plan. The building separation controls (Section 5.6 of the Guidelines) are therefore amended to refer to Figure 18 rather than Figure 23.

Modification to permit Deviations from Guidelines

Condition A5 is proposed to be modified as follows:

*"All future development of the site shall be generally consistent with the Development Design Guidelines and Rockdale City Council's Wolli Creek and Bonar Street Public Domain Plan and Technical Manual, where amended by the Modifications in Part B and Future Assessment Requirements in Schedule 3 **or otherwise agreed by the Director General of Planning.**"*

The reason given by the proponent is that it would allow the Stage 6 project application to be considered on merit concurrently with this modification application. The Department, however considers that this Concept Plan modification would need to be approved prior to the Project Application to give effect to the above change. If this Concept Plan modification is approved, there would be no impediment to considering the Stage 6 application, regardless of whether Condition A5 is modified.

However such a change would permit future applications which significantly deviate from the Development Design Guidelines or the Public Domain Plan to be considered without the need for a further modification to the Concept Plan.

This is not considered necessary as the condition already permits a degree of flexibility. It currently only requires development to be "generally consistent" with the planning documents. Furthermore, Condition 3 of Schedule 3 also allows for variations from the Public Domain Plan and Technical Manual following discussions between the Proponent and Council. As all other future applications will be the subject of Development Applications to Rockdale City Council, it is not considered appropriate for the Director General to be involved with deviations from the Public Domain Plan.

The Department considers that all future applications should be generally consistent with the Development Design Guidelines. Any significant variation may result in a development that is not consistent with the Concept Plan approval, and therefore should be the subject of a formal modification application.

The one exception to this however is with regard to the solar access requirements for future buildings. The proponent has demonstrated that there is likely to be further deviations in future applications with respect to solar access (as the methodology for calculating solar access at the Concept Plan stage has been shown to be flawed). Rockdale Council advocates that such variations should be considered on a case by case basis rather than take a whole-of-site approach. The Department agrees and accepts that any such deviations could be considered without undermining the objectives of the Concept Plan approval. An amendment to Schedule 3, Condition 1 (see below) is recommended to allow deviations from the solar access control to be assessed by Council through the DA process.

As such the proposed modification to Condition A5 is not supported.

Deletion of Condition B3

The Department agrees that the requirements in Condition B3 to amend the Development Design Guidelines can be deleted as these amendments have already been made. The revised Development Design Guidelines were approved by the Department on 13 February 2012. Condition B3 is recommended to be deleted in its entirety.

Amendment to Schedule 3, Condition 1

Schedule 3 Condition 1 requires amongst other things that *"Solar access to future dwellings shall be consistent with the approved Concept Plan"*

The proponent seeks to add the words 'as modified' to recognise the current modification.

The Department considers that to give clarity to the condition, as well as flexibility as discussed above, the best approach would be to include the latest version of The Development Design Guidelines within the list of approved plans and documents in Condition A2 and to amend Schedule 3 Condition 1 to read:

"Solar Access to future dwellings should be generally consistent with the approved Development Design Guidelines in Condition A2. A deviation from the controls may be supported by the Consent Authority where it is demonstrated that building design maximises solar access and amenity in light of site constraints".

6. CONCLUSION AND RECOMMENDATIONS

The proposal seeks to modify the Concept Plan approval to allow for reduced solar access provision to Building 6. Other modifications include a minor change to building separation between Building 2 and the Verge building, and modifications to permit future deviations from Solar access requirements to be considered by the Consent Authority on merit.

The Department has assessed the application on its merits and is satisfied that despite the reduced level of solar access, the modified Concept Plan will ensure an acceptable level of amenity for residents within the development and the surrounding area. It also allows for an appropriate degree of flexibility in the assessment of future applications by Rockdale Council. The modified proposal will still achieve the same objectives as the original Concept Plan Approval and will not result in any significant changes to the overall development as approved.

It is therefore recommended that the modification be approved in accordance with the modification instrument.

7. RECOMMENDATION

It is recommended that the A/Director, Metropolitan & Regional Projects South:

- **consider** the findings and recommendations of this report;
- **approve** the modification, subject to conditions, and;
- **sign** the attached instrument of modification

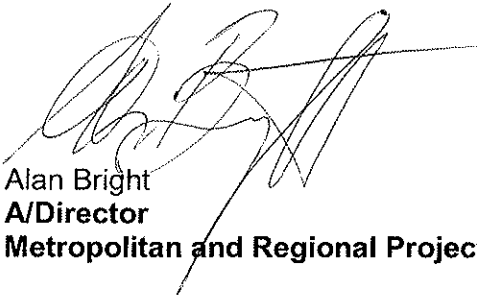
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