

11 February 2014

## **NSW Planning Assessment Commission Determination Report Lewisham Estate Concept Plan Modification 4, Marrickville LGA**

### **Background**

The Proponent has concept approval to redevelop a 13,000m<sup>2</sup> site in Lewisham, within the McGill Street Precinct. The approval is for 7 buildings ranging from 4 to 10 storeys, largely for residential purposes, with retail and commercial uses on the ground and basement levels, 3,000m<sup>2</sup> of public open space is also to be provided.

Marrickville Council adopted a Masterplan for the redevelopment of the McGill Street Precinct in 2009. In granting approval to the concept plan, in 2012, the Planning Assessment Commission (as delegate for the Minister for Planning and Infrastructure) found that the future development of the site should be as closely aligned to the Masterplan and the Marrickville LEP 2010 as possible. The Commission also found that the central open space is a key component of the Masterplan, providing much needed open space. The Commission took a firm view that at least 50% of the central open space should receive a minimum of 2 hours of sunlight during mid winter, and also set minimum parameters for the size and width of the open space. The Commission acknowledged in its determination report, that the central open space requirements it was imposing would likely require a reduction in the development density sought.

### **Modification Application**

The Proponent is now seeking to modify the terms of the Concept Plan approval to reduce the solar access requirements for the open space. The existing terms of approval specify that: *"at least 50% of the central open space must receive a minimum of 2 hours solar access in mid winter"*. The Proponent is seeking to reduce this to 30% of the central open space.

### **Delegation to the Commission**

On 23 December 2013 the Department of Planning and Infrastructure referred the modification to the Commission for determination. Ms Gabrielle Kibble AO chair of the Planning Assessment Commission nominated Mr Garry West (chair) and Ms Jan Murrell to constitute the Commission to determine the modification.

### **Department's Assessment Report**

The Department's Assessment Report assessed the reduction in solar access to the central open space. The Report notes that the Department's original assessment of the proposal had deemed the original application acceptable - for 2 hours of solar access to 20% of the central open space, between 10 am and 1 pm. Consistent with this original assessment the Department has found this proposal for 2 hours of solar access to at least 31.9% of the space during mid winter is acceptable. The Department also noted that solar access improves significantly at other times of the year.

The Department lists the different FSR and dwelling yields able to be achieved at various solar access levels and emphasises the site's ability to accommodate a higher density, given

its proximity to public transport. The Department found that the building height reductions required to comply with the solar access requirements were not justified and recommended the solar access requirement be reduced to 30% of the central open space, rather than the existing 50% requirement.

## **Meetings**

### Marrickville Council

On 22 January 2014 the Commission met with a representative of Marrickville Council to discuss Council's objection to the proposed modification. Council indicated it was generally supportive of the original determination which indicated the development should be closely aligned to the Masterplan and Marrickville Local Environmental Plan (LEP) 2010.

Council noted that the Proponent had purchased the site with the current controls in place. Council remains of the view that the development should comply with its FSR control of 1.7:1. Council acknowledged this would result in a lower gross floor area than the 39,000m<sup>2</sup> the Proponent is trying to achieve. Council indicated the park will be big enough to accommodate both active and passive uses and will be a multifunctional space. Council did not agree with the Proponent's suggestion that the space was only envisaged as a thoroughfare to the light rail station.

Council provided plans for the proposed park, which would include a playground and a number of other spaces and landscaping.

### Proponent

Following the meeting with the Marrickville Council representative the Commission met with representatives for the Proponent. The Proponent indicated it had tried to meet the 50% requirement but it got to the point where it felt the site wasn't achieving the high density it should accommodate, being so close to public transport.

The Proponent noted that:

- the park is not large and suggested it would really only serve as a thoroughfare link to the light rail station and the Masterplan only identified the park as a small greenspace and no play equipment is shown in those documents;
- only a lower level of solar access has been achieved at Green Square of less than 30%;
- the reduced solar access would only occur for a few weeks in mid winter;
- the park does not lend itself to multifunctional uses, e.g. it would not be a place to kick a ball around (sports facilities are provided elsewhere) and it was suggested that there are plenty of other parks in the area;
- the playground would be shaded anyway to provide sun protection;
- Marrickville Council's Development Control Plan does not require 50% solar access to be achieved and the Department of Planning has not insisted on this either;
- the site is zoned industrial and that Council has not identified the park in any of its section 94 development contribution plans; and
- it would lose 80 to 100 units which would be inconsistent with the Metropolitan Plan for Sydney, which prioritises housing close to transport nodes and there are 3 or 4 transport nodes near this site.

The Proponent indicated it would achieve full compliance with SEPP 65 for the units and that a less stringent solar access requirement for the public open space would improve the affordability of the housing on this transit oriented site.

## **Commission's Consideration**

In considering the application and the reasons put forward in support of the modification, the Commission makes the following comments.

### Density

The Proponent expressed concern about the commercial viability of the project and suggested that a substantial redesign would be required to meet the existing solar access requirements, resulting in significant loss of developable floor space. This Commission notes that the original determination report for the proposal acknowledged that the effect of the solar access condition for the central open space was likely to reduce the development density, "*either through height or building bulk reduction*". The Department's assessment indicates that to achieve the 50% solar access during mid-winter then the floor space ratio (FSR) would need to be reduced to 2.13:1. The Commission notes that this is still well above the Council control of 1.7:1.

### Open Space

The Proponent has argued that the open space is not large enough to be a full multi-purpose facility and would only be used as a thoroughfare to the light rail connection. Marrickville Council argued that while the central open space is of a smaller size, configuration and location than shown in the indicative masterplan at the same time the park is a relatively big space and will be large enough for both passive and active uses. Council indicates that it was always intended to be more than a thoroughfare and that it will be a multifunctional space. The Commission acknowledges the space will not be able to accommodate full size playing fields or the like, but notes the park is big enough to support a proposed playground and other spaces. Potential uses of the space includes children's birthday parties, barbeques and picnics; as well as offering a place to sit and read a book or enjoy a coffee. During the winter months warm sunny spaces are likely to attract these uses and the level of solar access could reasonably be expected to influence the level of use during the winter months.

The Commission acknowledges that modern playgrounds are often partially covered with shade sails. Nonetheless the Commission considers that there is a significant difference between shade from a building, and that from a shade cloth as shade cloth still allows some light and warmth to penetrate, just as most native evergreen trees still allow some dappled sunlight through.

The Commission acknowledges that the McGill Street Precinct Master Plan does not specify a solar access requirement for open space. Nonetheless the Master Plan included a larger 4,451 m<sup>2</sup> space, and shadow diagrams in the master plan suggest a large portion of this would receive winter sun during the afternoon (see Figure 1). The Marrickville Development Control Plan for 2011 specifies that in relation to solar access for adjoining non-residential uses, the Council will consider the merits of the case.

The Department noted in its original assessment of the concept plan that significant reductions in Proponent's building height would be necessary to achieve adequate solar access to 50% of the open space area in mid winter, consequently the Commission was aware of the implications of imposing this requirement when it added it to the terms of approval.



**Figure 1: Indicative Masterplan shadow diagrams** Source: McGill Street Precinct Master Plan (2009)

#### High Density Transit Oriented Development

The Department and the Proponent have argued that the site has capacity to supply additional housing as it has excellent access to public transport. The Proponent also suggested that additional dwellings would improve affordability and that reducing the density would be inconsistent with the Metropolitan Plan for Sydney. The Commission agrees that the site's central location is ideal for housing, but considers there is also merit in providing high quality public open space in central locations such as this. High density housing should be designed to provide solar access and amenity to public open space.

#### Green Square will have less solar access

The Proponent indicated that, during mid winter, solar access at Green Square would cover less than 30% of the square, and argued that this proposal should not be required to meet a more stringent control. The Commission is not persuaded that the situation at Green Square is relevant to the current situation, nor should it be used as a benchmark, and notes that there are other developments where more stringent controls are applied, for the provision of solar access to public open space.

#### **Commission's Determination**

The Commission has considered the merits of the solar access requirements for the open space and is satisfied the current requirement achieves an appropriate balance of public amenity for the open space and residential floor space on the remainder of the site, noting the FSR achievable would still be higher than the Council's control for the site.

The Department recommended that if the Commission decided to refuse the modification, it should add a requirement for revised plans to be submitted for approval to demonstrate compliance with the 50% solar access requirement. Consequently the Commission has added the following words to B3 of the concept plan approval:

*"Amended plans demonstrating compliance with this modification shall be submitted to, and approved by, the Director-General".*

Accordingly the modification application number 4 is refused and the requirement for at least 50% of the central open space to receive a minimum of 2 hours of solar access in mid winter is retained.

A handwritten signature in blue ink that reads "Garry West". The signature is fluid and cursive, with a small flourish at the end.

Garry West  
Member of the Commission

A handwritten signature in blue ink that reads "Jan Murrell". The signature is fluid and cursive, with a large initial "J" and "M".

Jan Murrell  
Member of the Commission