

3 July 2014

NSW Department of Planning & Environment
GPO Box 39
SYDNEY NSW 2001

By email: Matthew.Rosel@planning.nsw.gov.au

Attention: Matthew Rosel

Dear Matthew,

**RE: PROPONENT'S COMMENTS IN RESPONSE TO THE DRAFT INSTRUMENTS OF APPROVAL – VERSION 2
S75W APPLICATIONS FOR SHEPHERDS BAY – MP09_0216 & MP09_0219**

I refer to the above s75w Modification Applications, the draft Instruments of Approval (version 2) provided by the Department on 30 June 2014 and our recent discussions held on 2 July 2014. We thank you for the opportunity to review the Draft Instruments of Approval, which we note are subject to review and potential amendment by the Executive Director. On behalf of the proponent, we provide clarification on the proposed conditions as follows, and request your consideration of our comments and further amendment to these conditions.

DoPE's PROPOSED AMENDED CONDITION	PROPONENT'S COMMENTS	PROPOSED ACTION
CONCEPT APPROVAL MP09_0216 MOD 1		
A2. Plans	Updates to the plan references to reflect the final submitted plans as summarised in our correspondence dated 23 June 2014. As requested by the DoPE, also refer to the attached site plan which identifies the locations of Stages 2, 3 and 4 in which additional levels are sought in relation to proposed Condition 3A.	Modify
A8. Maximum Dwelling Yield (DoPE's proposed new condition)	The DoPE's new condition reads as follows: - "Maximum Dwelling Yield A8. The maximum total number of dwellings shall not exceed 2,009 dwellings."	Delete

	<p>We recognise the DoPE's preference to provide a measure in relation to density control (particularly due to a concern regarding traffic generation in the area), however we consider that it is unnecessary to introduce a new condition in this respect. The proposed limit of 2,009 dwellings is based on an indicative yield which itself was based on an indicative dwelling mix. This should be flexible and subject to alteration over time due to market conditions.</p> <p>It is noted that the Concept Application (MP09_0216) was independently assessed by ARUP. The ARUP report dated November 2012 considered the traffic impact for the entirety of the Meadowbank Employment Area (MEA) and also assumed that the Concept Plan site accounts for <u>over 2,000 dwellings</u>. The report provided a series of recommendations for recommended upgrades which form the Concept Approval. Given these traffic and infrastructure improvements are capable of catering for over 2,000 additional dwellings attributed to the Concept Plan site, it is considered unnecessary to limit the total number of dwellings to 2,009, being less than that considered in the independent ARUP report.</p> <p>Notwithstanding the above, is noted that the PPR dated July 2012 was also accompanied by an indicative gross floor area (GFA) of 203,500sqm (being 2,005 dwellings at the indicative mix).</p> <p>It is preferred that this condition is deleted. However, if a quasi density control is required, it is suggested that a maximum GFA of 203,500sqm is provided in its place. This will allow flexibility to respond to market demands in respect of dwelling type, size and function.</p>	
1. Design Excellence (Currently omitted in condition set)	<p>Following discussions, we withdraw the request to modify this condition due to uncertainty in relation to the outcome and timing of the design excellence process at this point in time.</p> <p>It is formally requested to retain the condition as approved, with the exception of amending the reference to Stage 5 to be changed to 'Stage A' to be consistent with the revised staging.</p>	Retain as approved, and update reference to Stage 'A.'
3A. Maximum Storeys	We recognise the DoPE's concern with regard to clearly identifying the locations on Stages 2, 3 and 4 which will have substantial level changes as a result of the existing street	Modify

	<p>levels, the approved level of the foreshore park, and the level changes required to achieve an accessible foreshore link between Stages 2 and 3.</p> <p>In response to this, please refer to the accompanying plan (S001-B) which identifies those parts of the building facades which require an additional storey to respond to the design constraints identified above.</p> <p>Therefore, the suggested wording for this condition is as follows:</p> <p>“Maximum Storeys on Steeply Sloping Topography 3A. Future Development Applications shall satisfy the ‘Maximum Number of Storeys Above Ground Level (Finished) Plan’. An exception to the maximum storey height may be given to buildings within Stages 2, 3 and the south east portion of Stage 4 on steeply sloping topography (at the locations indicated on drawing S001-B) where it can be demonstrated that:</p> <ul style="list-style-type: none"> a) the overall building height satisfies the maximum permitted RL; b) no more than 1 additional storey is provided; c) an acceptable level of amenity can be achieved for any additional apartment(s) provided in accordance with the requirements of Future Environmental Assessment Requirement 21; and d) the additional storey is required to appropriately activate the ground level.” 	
4. Built Form	<p>To ensure clarity with regard to the application of amended Condition 4, the following wording is suggested:</p> <p>“Built Form 4. Future Development Applications shall ensure that basement parking levels do not encroach into street setback areas and do not exceed 1 metre above ground level (finished) unless the criteria identified below are satisfied.</p> <p>Basement parking levels are permitted to exceed 1 metre above ground level (finished) where the following can be demonstrated:</p> <ul style="list-style-type: none"> (a) the built form of each development, including the upper parking levels, provide an aesthetically pleasing interface between the building and the public domain at pedestrian level; 	Modify – additional clause

	<p>(b) appropriate landscaping screening is provided to all facades of basement parking areas which protrude above ground level;</p> <p>(c) the basement parking areas which protrude above ground demonstrate appropriate articulation and quality materials and finishes to provide attractive buildings and streetscapes;</p> <p>(d) basement parking levels 1.2 metres above finished ground level are not regarded as storeys and are not counted as a 'storey' pursuant to the 'Maximum Number of Storeys Above Ground Level (Finished) Plan' and Condition 3A."</p>	
15A. Open Space Provision	<p>The Draft instrument of Approval (version 2) includes an additional condition 15A which reads as follows: -</p> <p>"Open Space Provision 15A. The contiguous open space required in Modification B1(b) shall be delivered prior to the issue of an Occupation Certificate for Stage 3.</p> <p>The land is to be dedicated, at no cost, to Council. Arrangements for the dedication shall be finalised before the issue of the Occupation Certificate for Stage 3. If Council does not accept the dedication, the land shall remain publicly accessible but in private ownership by the relevant body corporate and appropriately maintained."</p> <p>The foreshore link between Stages 1 and 2 is for the purpose of public access, however this link is not required to be accessible in terms of 'equitable' access for people with disabilities as per the Concept Approval. For clarity, we suggest that the reference to 'accessible' is deleted. The suggested wording is as follows: -</p> <p>"Open Space Provision 15A. The contiguous open space required in Modification B1(b) shall be delivered prior to the issue of an Occupation Certificate for Stage 3.</p> <p>The land is to be dedicated, at no cost, to Council. Arrangements for the dedication shall be finalised before the issue of the Occupation Certificate for Stage 3. If Council does not accept the dedication, the land shall provide access to the public remain publicly accessible but and be in private ownership by the relevant body corporate and appropriately maintained."</p>	Modify

<p>15B. Foreshore Link Easement for Public Access</p>	<p>The Draft instrument of Approval (version 2) includes an additional condition which reads as follows: -</p> <p>“Foreshore Link Easement for Public Access 15B. Future application/s for Stage 2 shall register an easement over the foreshore link, which is located between Stage 1 and Stage 2 (in favour of Council) providing for public access. The terms of the easement are to be approved by Council.”</p> <p>To ensure that the timing of registering this easement is clear and can be delivered pending approval by Council, it is proposed that the wording is changed as follows: -</p> <p>“Foreshore Link Easement for Public Access 15B. Prior to the issue of an Occupation Certificate for Future application/s for Stage 2, shall register shall be registered over the foreshore link, which is located between Stage 1 and Stage 2 (in favour of Council) providing for public access. The terms of the easement are to be approved by Council.”</p>	<p>Modify</p>
<p>18. Community Facilities</p>	<p>Following discussions, we withdraw the request to modify this condition due to uncertainty in relation to the outcome and timing of the design excellence process and therefore the type, amount and configuration of the community floorspace at this point in time, which is most likely to be located with Stage A.</p> <p>It is proposed to retain the condition as approved, with the exception of amending the reference to Stage 5 to be changed to ‘Stage A’ to be consistent with the revised staging.</p>	<p>Retain as approved, and update reference to Stage ‘A.’</p>
<p>21. SEPP 65 and RFDC (formerly Residential Amenity)</p>	<p>We maintain that we request this condition references ‘Natural Ventilation’ with the intention being to initiate the Natural Ventilation rules of thumb in the RFDC.</p> <p>However, as raised by the DoPE in our meeting, we accept the DoPE’s proposed wording for this condition to reference ‘cross ventilation,’ and therefore request this reference is provided throughout the condition as follows: -</p> <p>“21. SEPP 65 and RFDC Future Development Applications shall demonstrate compliance with the provisions of the <i>State Environmental Planning Policy 65 – Design Quality of Residential Flat Development</i> (SEPP 65) and the accompanying</p>	<p>Modify</p>

	<p><i>Residential Flat Design Code 2002 (RFDC)</i>, except where modified by this Concept Plan approval.</p> <p>In particular, future application/s shall demonstrate that:</p> <p>(a) a minimum of 60% of apartments within each stage are capable of being naturally cross ventilated; and</p> <p>(b) a minimum of 70% of apartments within each stage receive a minimum of 2 hours solar access to living areas and balconies mid winter; and</p> <p>(c) where less than 70% of apartments achieve 2 hours of solar access in mid winter, these apartments (beyond the first 30%) shall be designed to provide improved amenity by:</p> <ul style="list-style-type: none"> including extensive glazing (minimum 70% of the external façade) to living rooms; or permitting natural cross ventilation specifically to those apartments; and/or Exceeding RFDC guidelines by at least 10% in at least one of the following areas: <ul style="list-style-type: none"> increased floor to ceiling height; or increased minimum apartment areas, being greater than 50sqm for 1 bedroom, 70sqm for 2 bedroom and 95 sqm for 3 bedroom apartments. <p>(d) a minimum of 25% of open space of the site is deep soil zone.”</p>	
<p>21. SEPP 65 and RFDC (formerly <i>Residential Amenity</i>)</p>	<p>The DoPE has proposed that Condition 21 include an additional reference (d) as follows: -</p> <p>“21. SEPP 65 and RFDC</p> <p>Future Development Applications shall demonstrate compliance with the provisions of the <i>State Environmental Planning Policy 65 – Design Quality of Residential Flat Development</i> (SEPP 65) and the accompanying <i>Residential Flat Design Code 2002 (RFDC)</i>, except where modified by this Concept Plan approval.</p> <p>...</p> <p>In particular, future application/s shall demonstrate that:</p> <p>(d) a minimum of 25% of open space of the site is deep soil zone.”</p> <p>For clarification purposes, the future development application for Stages 2 and 3 will also encompass the adjoining foreshore park, and this park contributes to the ‘deep soil’ provision for the Stage 2&3 site.</p>	<p>Clarification</p>

<p>24B. Road and Pedestrian Infrastructure Upgrades</p>	<p>The DoPE proposes the following wording for new condition 24B: -</p> <p>“Road and Pedestrian Infrastructure Upgrades</p> <p>24B. Future Development Application/s for Stage 2 shall include the following Infrastructure works:</p> <ul style="list-style-type: none"> (a) installation of a temporary east/west pedestrian link, which connects Belmore Street with Nancarrow Avenue and generally follows the alignment of the Nancarrow Avenue extension. The pedestrian link shall be publicly accessible on a 24 hour basis and maintained until the provision of the Nancarrow Avenue extension; (b) Underdale Lane Local Area Traffic Management (LATM) measures; (c) installation of a pedestrian crossing facility at Bowden Street / Nancarrow Avenue; and (d) installation of roundabout at Belmore Street / Rothesay Avenue. <p>The detailed design is to be prepared by a suitably qualified engineer in accordance with Council’s requirements and to be submitted to Council’s for approval before the lodgement of any future development application for Stage 2. All works must be completed by the proponent prior to the issue of the occupation certificate for Stage 2.”</p> <p>In relation to part (a) of the new condition, we recognise the DoPE’s desire to provide a temporary pedestrian pathway link which connects Belmore Street with Nancarrow Avenue. However such a link would compromise the construction of the road and extensive infrastructure and civil works, require a covered walkway and conflict with the construction works for the buildings. Such a pathway also poses a security and safety risk to the public and will require CCTV surveillance and extensive security measures. Furthermore, this road link does not currently exist, and therefore the introduction of this link is unnecessary.</p> <p>Given resident access from Hamilton Crescent to Stage 1 is provided via the private pathway within the Stage 1 site, it is considered that this resident access is sufficient.</p> <p>Therefore, it is suggested that the temporary (informal) pedestrian access is provided from the foreshore link stairs to the east of Stage 2, and connects with Stage 2 to provide resident access along the northern facade of Stage 2 to the</p>	<p>Modify</p>
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	<p>junction of Nancarrow and Hamilton Crescent.</p> <p>The suggested wording for new Condition 24B is as follows: -</p> <p>“Road and Pedestrian Infrastructure Upgrades</p> <p>24B. Future Development Application/s for Stage 2 shall include the following Infrastructure works:</p> <p>(a) installation of a temporary east/west pedestrian link, which connects the stairway at the northern end of the foreshore link between Stages 1 and 2 to Nancarrow Avenue along the northern boundary of Stage 2. The pedestrian link shall provide access to residents on a 24 hour basis and maintained until the provision of the Nancarrow Avenue extension (note: this temporary pedestrian access is not a public right of access);</p> <p>(b) Underdale Lane Local Area Traffic Management (LATM) measures;</p> <p>(c) installation of a pedestrian crossing facility at Bowden Street / Nancarrow Avenue; and</p> <p>(d) installation of roundabout at Belmore Street / Rothesay Avenue.</p> <p>The detailed design is to be prepared by a suitably qualified engineer in accordance with Council's requirements and to be submitted to Council's for approval before the lodgement of any future development application for Stage 2. All works must be completed by the proponent prior to the issue of the occupation certificate for Stage 2.”</p>																													
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B2A. Amended Foreshore Link	<p>As a Construction Certificate has already been issued pursuant to MP09_0219, it is suggested that the wording in this condition is modified to refer to 'the relevant Construction Certificate' as follows: -</p>	Modify																												

	<p>“Amended Foreshore Link</p> <p>B2A. Prior to the issue of a the relevant Construction Certificate the design of the foreshore link shall be amended in accordance with the Optional Foreshore Link Landscape Plan Rev A dated 30 April 2014.”</p> <p>Moreover, it is requested that in all conditions where prior to ‘a’ construction certificate is required that reference be made to be “prior to the relevant construction certificate.” We have highlighted those such conditions below.</p>	
B2B. Deletion of Apartment LG24	<p>As a Construction Certificate has already been issued pursuant to MP09_0219, it is suggested that the wording in this condition is modified to refer to ‘the relevant Construction Certificate’ as follows: -</p> <p>“Deletion of Apartment LG24</p> <p>B2B. Prior to the issue of a the relevant Construction Certificate amended plans shall be submitted for the department’s endorsement that show the deletion of apartment LG24 from the lower ground floor level and the redesign of the building and landscaping/foreshore link in this location to achieve: ...”</p>	Modify
B27. Service Infrastructure / Utilities	<p>Concern is raised with regard to the interpretation and application of this condition. It is requested that this condition is replaced with the specific wording within the Concept Approval (Condition 10 of MP09_0216) which covers all other stages on the site, which is easier to understand and implement. The suggested wording is as follows:</p> <p>“Service Infrastructure / Utilities</p> <p>Future Development Applications shall provide for utility infrastructure, including substations, within the building footprint, wherever possible. If this is not possible, infrastructure shall be located outside of the public domain and appropriately screened.”</p> <p>It is noted that the substation which was located at the corner of Hamilton Crescent and Belmore Street was located on an allotment which is not owned by the proponent, and has since been removed. The Stage 1 Project Application Mod 1 provides a replacement substation within the boundaries of the site.</p>	Modify

B29. Road Works	<p>As a Construction Certificate has already been issued pursuant to MP09_0219, it is suggested that the wording in this condition is modified to refer to 'the relevant Construction Certificate' as follows: -</p> <p>"Road Works</p> <p>B29. Prior to the issue of the first relevant Construction Certificate, the proponent shall submit detailed plans and specifications to Council for approval of..."</p>	Modify
B29. Road Works	<p>Condition B29 includes an additional component which reads as follows (additional component identified in bold): -</p> <p>"Road Works</p> <p>B29. Prior to the issue of the first relevant Construction Certificate, the proponent shall submit detailed plans and specifications to Council for approval of:</p> <ul style="list-style-type: none"> (a) Nancarrow Avenue extension; (b) Nancarrow Avenue Area Local Traffic Management (LAMT) measures and all road reserve upgrades including pedestrian footpaths and cycleways; and (c) Implementation of left-in/left-out arrangement at Belmore Street/Hamilton Crescent intersection. <p><u>To ensure that sufficient roadway reserve width is provided and that there is appropriate level transition, the design of the Nancarrow Avenue extension shall take account of the approved northern staircase of the foreshore link located between Stage 1 and Stage 2 and the Stage 1 building basement (as approved by MP09_0219 MOD1).</u></p> <p>The detailed design of the above works is required as part of this development application. Works are to be completed prior to the occupation of the Stage 2 and 4 developments pursuant to the Concept Plan."</p> <p>We recognise that the DoPE's intent of this condition is to ensure that the connection and levels of civil infrastructure for the northern staircase of the foreshore link and the Nancarrow Avenue extension are consistent.</p> <p>For clarification purposes, we wish to confirm that the above condition does not seek to increase the approved width of the Nancarrow Avenue extension and associated infrastructure. Given this, we suggest the wording in this condition is modified</p>	For clarification

	<p>(in bold) as follows: -</p> <p>“Road Works</p> <p>B29. Prior to the issue of the first relevant Construction Certificate, the proponent shall submit detailed plans and specifications to Council for approval of:</p> <ul style="list-style-type: none"> (a) Nancarrow Avenue extension; (b) Nancarrow Avenue Area Local Traffic Management (LAMT) measures and all road reserve upgrades including pedestrian footpaths and cycleways; and (c) Implementation of left-in/left-out arrangement at Belmore Street/Hamilton Crescent intersection. <p>To ensure that sufficient roadway reserve width is provided and that there is appropriate level transition, The <u>roadway and verge</u> design of the Nancarrow Avenue extension shall take account of the approved <u>level and location</u> of the northern staircase of the foreshore link located between Stage 1 and Stage 2 and the Stage 1 building basement (as approved by MP09_0219 MOD1).</p> <p>The detailed design of the above works is required as part of this development application. Works are to be completed prior to the occupation of the Stage 2 and 4 developments pursuant to the Concept Plan.”</p>	
B37. ESD	<p>As a Construction Certificate has already been issued pursuant to MP09_0219, it is suggested that the wording in this condition is modified to refer to ‘the relevant Construction Certificate’ as follows: -</p> <p>“ESD</p> <p>B37. The relevant Construction Certificate Plans are to include ESD measures in accordance with the base targets within the ESD Guidelines Report prepared by Ecospecifier Consulting dated October 2010. Where no base target is provided within this report, the development should strive to achieve the stretch target (where relevant and feasible).</p> <p>In accordance with the EnviroDevelopment philosophy, four of the categories will be targeted to show ‘industry best practice’. Where the categories of water and energy are applied, BASIX will be used to test ‘industry best practice’ for water and energy, which will be treated as 10% better than the BASIX pass mark.”</p>	Modify

We appreciate your ongoing efforts to assist with finalising the assessment of these s75W applications, and appreciate your consideration of the further amendments above, in the interest of enabling the clear application of the Concept Approval and the Stage 1 Project Approval which avoids any undue obstruction to future approvals and construction processes.

Should you have any queries with regard to the above, please feel free to contact me on 8270 3500.

YOURS SINCERELY



**SUSAN E FRANCIS
EXECUTIVE DIRECTOR
CITY PLAN STRATEGY AND DEVELOPMENT**

Attached: R+M's Proposed new plan which identifies the locations of the steeply sloping building edges in blue (reference S001/B).