

13 June 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
S75W APPLICATIONS FOR SHEPHERDS BAY – MP09_0216 & MP09_0219**

I refer to the above s75w Modification Applications and the draft Instruments of Approval provided by the Department on 10 June 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 accept the proposed conditions, with the exception of the items discussed below. With respect to these items, we 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 | <p>Updates to the plan references to reflect the final submitted plans as indicated in red: -</p> <table border="1"> <thead> <tr> <th>Dwg No.</th><th>Plan</th><th>Date</th></tr> </thead> <tbody> <tr> <td>PPR 007-E</td><td>Indicative Staging</td><td>Sept 2013</td></tr> <tr> <td>Plan 2</td><td>Maximum height controls as Approved by PAC</td><td>March 2013</td></tr> <tr> <td>Figure 28 Rev 2</td><td>Indicative Building Setbacks</td><td>July 2012</td></tr> </tbody> </table> | Dwg No. | Plan | Date | PPR 007-E | Indicative Staging | Sept 2013 | Plan 2 | Maximum height controls as Approved by PAC | March 2013 | Figure 28 Rev 2 | Indicative Building Setbacks | July 2012 | Modify |
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| PPR 007-E | Indicative Staging | Sept 2013 | | | | | | | | | | | | |
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| Figure 28 Rev 2 | Indicative Building Setbacks | July 2012 | | | | | | | | | | | | |

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| 1. Design Excellence (Currently omitted in condition set) | Reference to Stage 5 to be changed to 'Stage A.' | Modify |
| 3A. Maximum Storeys | <p>The proposed Condition references the provision of additional storeys for Stages 1, 2, 3 and the south-eastern corner of Stage 4 in relation to the areas identified in Drawing S001, which is also conditioned in Condition A2. These areas are all in excess of a slope of 1:7, and are clearly identified on Drawing S001.</p> <p>The condition includes further reference to areas with a slope of 1:7 or steeper, which is considered superfluous given these areas (Stages 1, 2, 3 and the south-eastern corner of Stage 4) have already been clearly identified in Drawing S001. Therefore, reference to <i>'being a slope of 1:7 or steeper'</i> is unnecessary information and is sought to be deleted.</p> | Modify |
| 3A. Maximum Storeys | <p>Part b) of the proposed Condition provides a limitation that <i>"no more than 1 additional storey is provided"</i> for Stages 1, 2, 3 and 4. We suggest that reference to Stage 1 is deleted, as it is covered in the Project Application (MP09_0219) and would result in an inconsistency with that approval.</p> <p>In relation to Stage 3, where the approved building meets the approved 3,000m² park, the newly approved level changes in relation to that park would resulting approximately 9.3m of "building" between the level of the approved park at that point at RL 9.2 and the approved envelope of Stage 3 at RL 18.50. In this area two levels of building to activate the park would/could/should be provided. Accordingly, part (b) is suggested to be amended to read: -</p> <p><i>"no more than 1 additional storey is provided (with the exception of the southern building element of Stage 3 as it relates to the proposed park where a design resolution of more than 1 storey is appropriate)."</i></p> | Modify |
| 4. Built Form | <p>To ensure clarity with regard to the application of amended Condition 4, the following modification (in bold) is proposed:</p> <p>4. Future Development Applications shall ensure that basement parking levels do not exceed 1 metre above ground level (finished) (unless the criteria identified below are satisfied) and do not encroach into street</p> | Modify |

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| | <p>setbacks.</p> <p>Basement parking levels are permitted to exceed 1 metre above ground level (finished) where the following can be demonstrated...</p> <p>N.B. Condition 4 incorrectly references 'existing' instead of 'finished' ground levels. This reference is identified in the proposed amendment above.</p> | |
| 4. Built Form | <p>In order to effectively address the intended design outcome of this amended condition, and to ensure clarity for the future determination authority during the assessment process of detailed Development Applications, it is suggested that the following amendment (in bold) is included in Condition 4: -</p> <p>Basement parking levels are permitted to exceed 1 metre above ground level (finished) where the following can be demonstrated: -</p> <p>...</p> <p>(d) where this occurs, the basement levels are not regarded as residential storeys and are not counted as a 'storey' pursuant to the 'Maximum Number of Storeys Above Ground Level (Finished) Plan' and Condition 3A.</p> <p>N.B. Condition 4 incorrectly references 'existing' instead of 'finished' ground levels. This reference is identified in the proposed amendment above.</p> | Modify – additional clause |
| 21. (c) Residential Amenity | <p>For clarity, it is proposed that part (c) of this condition which references 'increased minimum apartment areas' is further modified to include specific reference to the RFDC and includes further clarification to ensure the effective application of this condition.</p> <p>In light of the above, the suggested wording for Condition 21 is as follows (amendments in bold): -</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</i> (RFDC), except where modified by this Concept Plan</p> | Modify |

| | <p>approval. In particular, future application 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; orpermitting natural cross ventilation specifically to those apartments; and/orExceeding 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; orincreased minimum apartment areas, being greater than 50sqm for 1 bedroom, 70sqm for 2 bedroom and 95 sqm for 3 bedroom apartments. | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
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| A002/K | K | Upper Basement Plan | 22.2.2014 | | | | | | | | | | | | | | | | | | | | | | | | | | | |
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| A154/14 | 14 | New Foreshore Link Elevation | 7.11.2014 | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 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 is easier to understand and implement. The suggested wording is as follows:</p> | Modify | | | | | | | | | | | | | | | | | | | | | | | | | | | | |

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| | <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>E24. Easement in Gross</p> <p><i>(Currently omitted in the condition set)</i></p> | <p>It is noted that the DPE has not accepted the proposal to deliver the easement for public access for the foreshore link in association with Stage 2.</p> <p>We wish to reiterate that the construction process of the foreshore link is constrained by the construction processes of Stage 2 as well as the upgrades to Hamilton Crescent and Nancarrow Avenue, and furthermore the foreshore connection to Constitution Road along Stage 5. Given the extensive works involved in relation to the items above, the northern portion of the foreshore link which connects with Hamilton Crescent will be closed until Stage 2 can be delivered and no persons will be permitted to access the foreshore link from this location for construction safety and public liability reasons. Therefore, the foreshore link could only be accessed by future occupants of Stage 1 (Project Approval).</p> <p>The requirement to provide an Easement in Gross in its current form will deliver a link which 'goes nowhere,' constrains the construction zone of Stage 2 and will likely not allow for cranes to swing over the easement during construction. It doesn't make sense to keep the condition in its current form.</p> <p>Therefore, we maintain that Condition E24. <i>Easement in Gross</i> should be amended to permit its implementation in association with the Occupation Certificate of Stage 2, as detailed in the suggested wording as follows: -</p> <p>Easement in Gross</p> <p>E24. Prior to any occupation certificate for Stage 2, an easement for public access in gross for the public to enter, pass, re-pass, use and enjoy the publicly accessible foreshore link to the west of the building is to be registered over the land in favour of Council. The terms of the easement are to be approved by Council.</p> | <p>Modify</p> |

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.

We formally request a meeting as soon as possible on receipt of this letter so that we can discuss and explain the above suggested amendments. We will contact you next week to arrange a suitable time.

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**