

5 June 2015

Determination Report

Discovery Point Concept Plan Modification No. 4 – Increase to Gross Floor Area and Above Ground Parking (MP10_003 MOD 4)

1. INTRODUCTION

Discovery Point Pty Limited (the Proponent) has submitted an application to modify the Concept Approval for a mixed use development at the site known as “Discovery Point” located at 1 Princes Highway, Wolli Creek. The modification application has been lodged pursuant to Section 75W of the *Environmental Planning and Assessment Act 1979* (EP&A Act) which continues to apply to transitional Part 3A projects.

The site lies approximately eight kilometres south of the Sydney CBD and less than one kilometre west of Sydney Airport. Discovery Point sits above the Wolli Creek railway station and is bounded by the Princes Highway, Cooks River, the Illawarra and East Hills railway lines and Magdalene Terrace.

The site is located within the Rockdale Local Government Area and has a total area of 7.8 hectares. Development of the site is currently underway, with a number of buildings either completed or under construction.

2. PROPOSAL

Background to the Approved Concept Plan

On 5 May 2011, the Director-General as delegate for the then Minister for Planning and Infrastructure granted Concept Approval (MP10_003) for a mixed use development at Discovery Point comprising:

- indicative building envelopes for 14 buildings with a maximum gross floor area of 132,000m²
- a maximum car parking provision of 2,240 car spaces
- public open space
- road works and landscaping

The Concept Approval also includes development design guidelines to inform the detailed design of each building.

The Concept Approval superseded a Master Plan development application approval for the site issued by Rockdale City Council in 2001.

Three Section 75W Modifications to the Concept Approval have been approved by the Department of Planning and Environment (“the Department”) as well as two Part 3A transitional project applications for Buildings 1 and 6. Rockdale City Council and the Sydney Region East Joint Regional Planning Panel have also approved development applications for Buildings 2, 4, 7, 8, 9 and 10. As noted above, these approvals have either been completed or are under construction.

Proposed modification

On 15 May 2014, the Proponent submitted a modification request to allow:

- 10,685m² of additional residential gross floor area (GFA) within the existing approved building envelopes to allow a maximum GFA of 142,685m² across the Discovery Point site
- 4,390m² of additional above ground parking GFA (2 levels) within ground floor podium levels of Buildings 11, 12 and 13 to allow a maximum above ground parking GFA of 13,590m² across the Discovery Point site
- reduced overall car parking provision maximum from 2,240 cars to 2,100 cars
- amendments to the Discovery Point Development Design Guidelines in relation to landscaping and communal open space provision.

The modification request was exhibited by the Department from 4 June to 21 July 2014. Three authority submissions were received from Council, Transport for NSW and Roads and Maritime Services with Council objecting to the modification. No public submissions were received.

Subsequent to the exhibition, the Proponent provided a response to issues raised in submissions by way of a Response to Submissions report (RtS). The RtS provided further information and justification in support of the modification application.

3. DELEGATION TO THE COMMISSION

The modification request has been referred to the Commission for determination under Ministerial delegation dated 14 September 2014 as Council objected to the proposed modification. The matter was received by the Commission on 4 May 2015.

The Commission panel nominated to determine the modification application comprised Mr Joe Woodward PSM (Chair) and Ms Lynelle Briggs AO.

4. SITE VISIT

The Commission members visited the site and surrounding area on 20 May 2015.

5. DEPARTMENT'S ENVIRONMENTAL ASSESSMENT REPORT

The Department's Environmental Assessment Report identified the following key issues:

- Density
- Built form
- Car parking
- Residential amenity
- Public benefits
- Design guidelines.

The Department's Report recommends approval of the modification application. It considers that the proposed increase in GFA is consistent with state and metropolitan strategic policy aimed at providing higher density housing close to excellent public transport. It also considers that the proposed modifications will not result in unacceptable urban design or residential amenity impacts and that reducing the overall provision of parking will reduce traffic generation and promote sustainable transport choices. In relation to public benefits, the Department concludes that the proposal will generate minimal additional demand for public facilities and amenities and that section 94 contributions will be payable for the increased dwelling yield.

In summary, the Department is satisfied that the proposed modification is reasonable and that the impacts have been satisfactorily addressed.

6. MEETINGS

6.1 Rockdale City Council

The Commission met with Council officers on 20 May 2015 to discuss the findings and recommendations of the Department's Environmental Assessment Report. Key points raised by Council included:

- the impact of the increased GFA on residential amenity and potential non-compliances with SEPP 65, particularly solar access requirements
- the lack of any additional community benefits arising from the increase in GFA which will provide significant financial benefits to the developer
- the need for additional infrastructure, particularly regional cycleway linkages and a multi-purpose community facility, to help meet the needs of the incoming population.

Council argued more generally that the fact that Section 94 contributions can only be levied for basic infrastructure limits the ability for councils to receive contributions to cover the expense of broader impacts from large scale developments such as this one.

6.2 Proponent

The Commission met with the Proponent and its consultants on 20 May 2015 to discuss the findings and recommendations of the Department's Environmental Assessment Report. The Proponent and consultants provided advice to the Commission regarding:

- the rationale and justification for the increase in floor space and additional above ground car parking
- urban design approach, including the ability to achieve solar access and natural ventilation requirements under SEPP 65
- the extent of material public benefits and section 94 contributions provided by the Proponent towards public facilities and services at Discovery Point to date.

7. COMMISSION'S CONSIDERATION

Having considered the information available to it, the Commission identified the following key issues in relation to the modification request:

- The impact of the increased GFA on residential amenity of Buildings 11-13, particularly in relation to solar access
- The appropriateness of additional above ground parking and the reduction in the maximum number of parking spaces
- Provision of additional community benefits by the Proponent.

7.1 Impact of increased GFA

The Department's report indicated that the proposal will result in 65% of apartments in Buildings 11, 12 and 13 achieving a minimum of 2 hours of solar access between 9am and 3pm during the winter solstice. This is less than the recommended 70% under the *Residential Flat Design Code* (RFDC) accompanying the *State Environmental Planning Policy No 65 – Design Quality of Residential Flat Buildings* (SEPP 65).

The Proponent advised the Commission that further detailed design had been undertaken since the Department had completed its report and that solar access for both Buildings 11 and 12 now exceeds the 70% target. In relation to Building 13, the Proponent has advised that design development now indicates that this building will achieve between 66-69% solar access between 9am and 3pm at the winter solstice. The Proponent has argued that this is reasonable as the apartments within Building 13 will still achieve excellent access to natural daylight due to the building's landmark height, triangular shape and positioning.

The Commission notes that the proposed increase in GFA will be accommodated within the existing approved building envelopes and that the Department's assessment of the original

Concept Plan found that these envelopes were acceptable in terms of residential amenity, building depth and building separation. Given that both Buildings 11 and 12 are now able to meet the 70% solar access target and that the proposed variation for Building 13 is marginal and the configuration of this building will enable daylight to be maximised, the Commission considers that the residential amenity for these buildings will be acceptable.

7.2 Car Parking

The proposed modification seeks approval for two additional levels of above ground parking and the reduction in the maximum number of car spaces across the entire site from 2,240 to 2,100 cars.

The Commission accepts the Department's assessment that the additional levels of above ground parking can be appropriately incorporated into the building design to ensure the parking is not visible from the street and in a way that does not adversely impact on the internal amenity of the apartments. The Commission also acknowledges that above ground parking has been successfully incorporated into other buildings across the Discovery Point precinct and that there are particular constraints on the subject site which make the provision of basement parking very costly.

Transport for NSW in its submission recommended that the maximum number of car spaces provided for across the precinct be reduced to 1,288 car spaces, given the site's accessibility to public transport. The Commission notes that the number of car parking spaces provided to date in the precinct already exceeds this figure. Further, it does not consider there are grounds for a significant reduction in overall car parking in the precinct having regard to the Department's advice that the car parking cap for the site was determined as part of the Concept Plan approval. The Commission agrees with the Department's assessment that the proposed modification to reduce the overall numbers of car spaces will reduce traffic generation and private vehicle usage and encourage sustainable travel.

7.3 Public Benefits/Section 94 Contributions

Council has argued in its submission that the proposal for additional GFA will result in significant private benefit to the current landholders and that the proposal should only be approved if it also results in an improved outcome for existing and future residents in this locality. To this end, it considers the Proponent should be required to enter into a Planning Agreement with Council to provide a new multi-purpose community facility and pedestrian and cycleway facilities connecting the regional recreational network.

In response, the Proponent has advised that it has not only paid full Section 94 contributions of around \$24 million to date but has also provided additional material public benefits at Discovery Point in the order of \$35 million for capital expenditure on a range of facilities, including open space, foreshore rehabilitation, pedestrian and cyclist facilities, roads and parking, and stormwater infrastructure. These facilities are to be maintained by the residents of the development in perpetuity and will be generally available for use by the broader community. The cost of the material public benefits has also not been offset against Section 94 contributions.

The Commission notes the following:

- The Proponent will be required to pay Section 94 contributions for the additional dwelling yield as a result of the proposal
- The infrastructure to be funded under Council's Section 94 Contributions Plan will remain the same, notwithstanding the extra number of units. This means that Council will receive additional Section 94 funds as a result of the proposal to fund the same infrastructure
- Both the multi-purpose community facility and pedestrian/cycleway facilities connecting to the regional network are identified as items under Council's Section 94 Contributions Plan.

Whilst the Commission acknowledges that the proposal will result in significant financial benefit to the Proponent, it considers that the extent of material public benefits provided by the Proponent is significant and will benefit the broader community. The Commission also agrees with the Department's assessment that the proposal will generate minimal additional demand for community facilities, pedestrian and cycle facilities, and open space. Given that the Council will receive full Section 94 contributions for the extra dwellings, the Commission considers that further contributions from the Proponent are not warranted.

As a general comment, the Commission notes that the Proponent's Statement of Commitments includes an offer to enter into a Voluntary Planning Agreement with either the Council or the Minister for Planning for the payment of developer contributions. This offer has not been taken up and to date the Proponent has paid section 94 contributions to Council in accordance with the Section 94 Contributions Plan. Council has recommended that any VPA should be with the Council and not the Minister. The Commission agrees it is appropriate that it be between the Council and the Proponent given the advanced stage of the development and the arrangements that have been in place to date regarding the provision of material public benefits by the Proponent. Accordingly, the Statement of Commitments in the Instrument of Approval has been amended to remove reference to the Minister for Planning as being a possible party to any future VPA.

7.4 Other issues

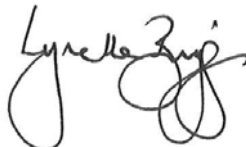
With regard to the proposed amendments to the Discovery Point Design Guidelines, the Commission accepts the Department's assessment that the changes are minor and will provide consistent controls in line with the approved development applications and proposed modifications.

8. COMMISSION'S CONSIDERATION

Following careful consideration of the Department's assessment report, relevant documentation and views expressed at the meetings with Council and the Proponent, the Commission approves the modification application. The conditions recommended by the Department are supported subject to the Statement of Commitments being amended as outlined in this report and noted in the instrument of approval.



Mr Joe Woodward PSM
Commission Member



Ms Lynelle Briggs AO
Commission Member

Appendix 1 Meeting Notes

Meeting with Rockdale City Council		
Meeting note taken by Nicola Gibson	Date: Wednesday, 20 May 2015	Time: 11:00am
Project: Modification Request - Discovery Point Concept Plan (MP10_0003 Mod 4)		
Meeting place: Office of the Planning Assessment Commission		
Attendees: PAC Members: Ms Lynelle Briggs AO, Mr Joe Woodward PSM (Chair) PAC Secretariat: Ms Nicola Gibson (external consultant) Rockdale City Council: Mr Stephen Kerr (Director City Planning & Development), Mr David Dekel (Manager Urban and Environmental Strategy)		
The purpose of the meeting is to provide Rockdale Council the opportunity to raise any issues/concerns with respect to the Department of Planning and Environment's Assessment Report		
<ul style="list-style-type: none"> Mr Kerr advised that most of the issues raised in Council's original submission on the modification have been satisfactorily addressed in the Proponent's Response to Submissions Report However, Council remains concerned that the residential amenity for a number of the apartments in Blocks 11, 12 and 13 will be substandard and not meet the requirements of SEPP 65. The buildings approved to date have maximised the gross floor area (GFA) available within each of the building envelopes, enabling the Proponent to now argue for additional dwellings. However, extensive masterplanning was undertaken for the site and it was never intended that the GFA in each of the building envelopes would be fully utilised - the number of dwellings in the Concept Approval took this into account. Mr Kerr advised that in Council's view the Proponent should be required to comply with SEPP 65 Council is also concerned that the Proponent will achieve significant financial gain from the increase in floorspace but without providing any additional public benefit. It was noted that the Proponent has been levied Section 94 contributions towards the provision of infrastructure and has also provided additional contributions of around \$34 million towards a range of facilities and amenities on site. Most of these contributions have been works-in-kind. However, Mr Kerr noted that there is likely to be a significant shortfall in section 94 contributions because of unforeseen infrastructure costs. The proposed VPA is of concern because it would provide insufficient funding, it caps any increase in section 94 contributions, and it would allow Ministerial approval to the exclusion of Council. Given the additional dwellings that are proposed as a result of the modification and resulting financial benefit to the Proponent, Council considers that there are valid grounds for additional public benefits to be provided. Council is seeking a new community facility on site for use by the general public as well as pedestrian/cycle facilities, particularly to link in with the surrounding regional cycleway network. It was advised that although Tempe House and St Magdalene Church are available for community use, they are not "fit for purpose" Council has identified the construction of a pedestrian/cyclist bridge over Wolli Creek as a priority although it does not have funds to undertake this work. The estimated cost of the bridge is around \$3 million. In addition to this, a cycle path under the railway would be necessary. <p>The Proponent has not agreed to provide additional contributions although Mr Kerr noted that there had been some initial discussions regarding the use of a shopfront space for the community facility.</p>		
Outcomes/Agreed Actions/Documents: The PAC members noted the issues raised by the Council representatives. No outcomes or actions were identified and no documents were tabled.		
Meeting closed at 12:00pm		

Meeting with Proponent		
Meeting note taken by Nicola Gibson	Date: Wednesday, 20 May 2015	Time: 12:30pm
Project: Modification Request - Discovery Point Concept Plan (MP10_0003 Mod 4)		
Meeting place: Office of the Planning Assessment Commission		
Attendees: PAC Members: Ms Lynelle Briggs AO, Mr Joe Woodward PSM (Chair) PAC Secretariat: Ms Nicola Gibson (external consultant) Proponent: Mr Nigel Edgar (General Manager, Australand), Ms Kara Krason (Planning Director, Australand), Alexis Cella (Associate, JBA), Lisa-Maree Carrigan (Director, Group GSA), John Dawson (Development Director, Australand)		
The purpose of the meeting is to provide the Proponent an opportunity to brief PAC members on the application and respond to Department of Planning and Environment's Assessment Report		
<ul style="list-style-type: none"> Mr Edgar briefed the PAC Members on the history of the project and outlined the rationale/justification for the increase in floorspace being sought in the modification It was noted that Australand has made significant contributions towards the provision of new infrastructure through both the payment of Section 94 Contributions and additional works/enhancements to the value of \$34.4 million. Ms Krason noted that many of the facilities provided by Australand (e.g. open space) had not been offset by Council against Section 94 contributions Mr Edgar emphasised that Australand had provided considerable public benefits for both future residents of the precinct as well as the wider public beyond that which would normally be required. Australand therefore does not believe that further contributions towards public facilities and services are warranted as a result of the proposed concept plan modification. Ms Carrigan advised that development applications for Buildings 11 and 12 have now been lodged and both buildings will achieve the 70% solar access requirement under SEPP 65 as well as cross ventilation requirements. Many of the apartments also benefit from views. Ms Carrigan advised that she expects Building 13 will also be able to achieve compliance with SEPP 65 solar access and cross ventilation requirements. Mr Woodward queried why two additional levels of above ground parking were required. It was advised that there are a series of constraints across the site, including major stormwater pipes, Railcorp easement and high water table, which make the provision of basement parking very costly. It was advised that a number of the other buildings in the precinct had successfully incorporated above ground parking, and that particular care was being taken to ensure the above ground parking was integrated into the development and would not be visible from the street. It was also noted that Council had not raised any concerns regarding this issue. Transport for NSW's submission seeking a significant reduction in car parking numbers across the site was discussed. It was advised that the proposed car parking numbers are supported by Council and have been a long standing requirement. It was also noted that the modification involved a slight overall reduction in parking numbers. No further comment was provided. 		
Outcomes/Agreed Actions/Documents [tabled at meeting /to be provided]: Two illustrations of the site layout and building designs were tabled at the meeting. The Proponent agreed to provide PAC members with the following information by Monday 25 May 2015: <ul style="list-style-type: none"> copies of the latest plans for Buildings 11, 12 and 13 an assessment of the buildings against key requirements of SEPP 65 breakdown of contributions/works-in-kind/material public benefits provided to date at Discovery Point open space benchmarking information 		
Meeting closed at 1:30pm		