

23 December 2014

**DETERMINATION OF THE CONCEPT PLAN
FOR A RESIDENTIAL DEVELOPMENT
AT THE CHANNEL NINE SITE, WILLOUGHBY MP10_0198**

Background

On 5 March 2014 the Planning Assessment Commission of NSW approved a Concept Plan for residential development with a small non-residential component on a site primarily fronting Artarmon Road in Willoughby. The Concept Plan proposal was for:

- Indicative building envelopes for five residential flat buildings above basement parking and two rows of terrace houses, ranging in height from 3 to 12 storeys; (see Figure 1, Appendix 1)
- A Gross Floor Area (GFA) of 47,840 m² comprised of 46,290 m² residential; 500 m² non-residential (retail/food and drink/indoor recreation) located in Building F and 1,050 m² floor space in the Loft building for adaptive re-use;
- A Floor Space Ratio (FSR) of 1.6:1;
- An indicative dwelling yield of 450 dwellings, including 4% of floor space provided as affordable housing and dedicated to Council and 20% adaptable dwellings;
- Two publicly accessible parks; new internal roadways and public domain works; storm water infrastructure;
- Indicative staging for the project with four stages proposed;
- A super-lot subdivision consistent with the proposed staging; and
- Identification of permitted uses.

The Commission found the proposal, as amended by the Commission, would be beneficial to the community and that the environmental and amenity impacts of the proposal could be adequately mitigated or managed by a suite of stringent conditions. The PAC's determination differed from the recommendation in the Assessment Report prepared by the Department of Planning and Environment (the Department).

The reasons for the decision are detailed in the determination report (**Attachment 1**).

The Commission determined to approve the application as recommended by the Department subject to the recommended conditions and as amended by the Commission. The Commission's amendments were:

1. Maximum number of units 350;
2. Maximum building height of 8 storeys as shown in Figure 3 of Appendix 1;
3. Access to the site is restricted to left in/left out only;
4. Provision of a roundabout at the junction of Richardson Street and Artarmon Road;
5. Commemorative features to be incorporated within the open space to acknowledge Channel Nine's contribution to the locality;
6. Recommended condition B1(e) to be deleted;
7. No basement carpark to be protruded above existing or finished ground level; and
8. Amended plans to be submitted for the Director-General's approval reflecting all modifications in the approval conditions within 6 months from the date of approval.

Appeal to the Land and Environment Court

On 30 May 2014 the proponent, Nine Network Australia Pty Ltd, lodged an appeal to the Land and Environment Court. The application sought an appeal against the determination of the PAC who modified the proposal by the imposition of conditions, specifically relating to the maximum number of units, maximum building height and maximum Gross Floor Area (GFA).

As the PAC was responsible for the original determination, it conducted the appeal on behalf of the Minister.

On Monday 28 July 2014, Willoughby City Council filed a Notice of Motion with the Court seeking to join as a party to the proceedings. The Court granted Council's Motion.

Section 34 conference and Orders of the Court

The appeal commenced with a s34 conciliation conference on 23 September 2014. During the conference the parties agreed to defer the proceedings to enable the joint experts to review issues in further detail, including technical matters such as solar access.

The s34 conciliation conference re-commenced Friday 12 December 2014. Following the conciliation conference, a Section 34 Agreement was filed with the Court signed by all parties, including the PAC representing the Minister for Planning and Infrastructure. The s34 Agreement sought the Court to dispose of the proceedings in accordance with specified terms.

On Monday 22 December 2014, the Senior Commissioner handed down judgement in the Concept Plan proceedings. The Court ordered that the appeal is allowed, and the amended concept plan, for:

- Building envelopes for five residential flat buildings above basement level parking and two rows of terrace houses incorporating:
 - Up to 400 dwellings; and
 - Up to 500 m² floor space of non-residential uses to support the development;
- retention and adaptive re-use of No. 6 Artarmon Road for retail/commercial purposes;
- new internal roadways and other infrastructure works to support the development;
- publicly accessible open space and through site link;
- temporary exhibition homes and or exhibition village; and
- super-lot subdivision.

in the manner and subject to conditions and the Statement of Commitments set out in Schedules 1, 2 and 4 to Annexure A of the Order of the Court.

Commission's Consideration

Requirement to approve the Concept Plan in the manner determined by the Court

Section 75Q(3) of the *Environmental Planning and Assessment Act 1979*, specifies that:

"If the Court allows the appeal, the Minister is to approve the concept plan in the manner determined by the Court. The Court does not have jurisdiction to approve the concept plan or to make or direct the Minister on any determination that may be made under section 75P when giving approval for a concept plan."

Consequently, as the Minister's delegate, the Commission is required to approve the concept plan in the manner approved by the Court.

Commission Members

Since the determination of the original application in March 2014, one of the Commission members who had determined the application reached their maximum six year term in office and retired from the Commission. Consequently the Chair of the Planning Assessment Commission, Ms Lynelle Briggs AO nominated current members, Mr Paul Forward (chair) and Ms Jan Murrell to constitute the Commission to determine the application.

Consideration

As specified in section 75Q(3) of the *Environmental Planning and Assessment Act 1979* (the Act), the Commission is required to approve the concept plan in the manner determined by the Court and determine whether any future project or stage should be considered under another Part of the Act.

The parties (including their experts) agreed on further assessment requirements, and that future stages (aside from the project application proceedings that are still before the Court as a transitional part 3A project) should be considered under Part 4 of the Act during the course of the proceedings. The Commission agrees that future stages (except for the project application still before the Court) should be subject to Part 4 of the Act.

The Commission has also determined to accept the future assessment requirements as agreed to between the parties, especially as the Minister was party to those discussions.

Determination

As required under section 75Q(3), the Commission has approved the Concept Plan in the manner determined by the Court. The Commission has also accepted the recommendations regarding the future assessment requirements, as agreed by the parties to the proceedings.

A handwritten signature in black ink, appearing to read 'P. Forward'.

Paul Forward
Member of the Commission

A handwritten signature in blue ink, appearing to read 'J. Murrell'.

Jan Murrell
Member of the Commission