



13500
11 March 2014

Sam Haddad
Director-General
Department of Planning and Infrastructure
23-33 Bridge Street
SYDNEY NSW 2000

Dear Sir

**ADDENDUM TO SECTION 75W TO MP 10_0030
STAGE 1 MIXED USE DEVELOPMENT, DISCOVERY POINT**

A Section 75W Modification to the Stage 1 Development at Discovery Point (MP10_0030) was submitted to the Minister for Planning and Infrastructure in November 2013. An addendum to this application was submitted on 25 February 2014 relating to landscape design changes and stratum subdivision refinements. Subsequent to the submission of this addendum, it has been identified by the proponent that Condition E12 is unable to be satisfied due to its requirement for a 'positive covenant'. Despite the restriction on satisfying this condition, the intent of the condition will be achieved through the licensing of the water treatment facility under the *Water Industry Competition Act 2006* (WICA).

This addendum seeks to delete Condition E12 from the Project Approval and include a new commitment in the Statement of Commitments requiring ongoing maintenance of the water treatment facility. This addendum should be read in conjunction with the Network Operator's Licence provided at **Attachment A**.

As set out in the initial addendum, based on the timing of the current Section 75W Modification to the Stage 1 Development, it is considered more efficient and comprehensive to include this additional item in this application, rather than submit a new Section 75W Modification.

1.0 REQUIREMENT AND LIMITATION OF CONDITION E12

Condition E12 of the Project Approval is designed to secure ongoing maintenance for the water treatment facility. This condition specifies:

Positive Covenant

E12. A positive covenant pursuant to the Conveyancing Act 1919 shall be created on the title of the lots that contain the water treatment facility to provide for the maintenance of the facility.

Under Section 88BA of the *Conveyancing Act 1919*, a positive covenant can only be created in favour of a 'prescribed authority', which in the context of the condition would logically be Rockdale City Council or Sydney Water. It is not the intention for the Discovery Point water treatment facility to be operated and maintained by a prescribed authority nor has such an authority have any interest or charter to do so, rather a private company will be responsible for the operation and maintenance of the facility. As such, a 'positive covenant' is unable to be registered on the title in favour of such a private company.

2.0 OPERATION AND MAINTENANCE OF THE WATER TREATMENT FACILITY

The approved water treatment facility is to be operated by Discovery Point Water Factory Pty Ltd, a company established by Flow Systems who is a private water utility licensed under WICA that specialise in the operation and maintenance of such facilities.

A Network Operator's Licence has since been granted to Discovery Point Water Factory Pty Ltd under WICA (see **Attachment A**). This Licence establishes the operation and maintenance requirements (amongst other things) for the Discovery Point water treatment facility. In particular, an annual compliance report is required to be submitted to the Independent Pricing and Regulatory Tribunal (IPART).

The provision of the Network Operator's Licence fulfils the intent of Condition E12 in that it provides for the ongoing maintenance of the water treatment facility. In effect, whilst a positive covenant is unable to be provided, the same result of ongoing maintenance will be achieved through the enforcement of the Network Operator's Licence.

Overall, given the Discovery Point water treatment facility is not able to operate without a licence under WICA, there will always be a mechanism (without the need for a positive covenant) in place to ensure it operates and is maintained appropriately in accordance with relevant guidelines and standards.

3.0 MODIFICATIONS TO PROJECT APPROVAL AND REVISED STATEMENT OF COMMITMENTS

In light of the above, Condition E12 is proposed to be deleted from the Project Approval. An additional commitment is proposed to be included in the Statement of Commitments to address the ongoing maintenance of the water treatment facility. For completeness, the original and proposed list of commitments is reproduced below, including an additional commitment in response to Council comments.

Commitments to be added are shown in ***bold italics***.

Subject	Commitments	Approved by Whom	Timing
ESD	The Stage 1 Project Application will include those ESD measures identified in the Cundall Design Consultants ESD report (dated February 2011).	Department of Planning.	No Timing. General Statement of Commitment
Non Indigenous Archaeology	The management of the potential archaeological remains of the Gardener's Cottage and Pine House should be in line with the approved Archaeological Management Plan which covered Area 6 (Casey and Lowe 2002). As such, the likely location of these buildings should be determined through triangulation of historic plans and any remains be recorded in detail using archaeological excavation, detailed planning and GIS survey and mapping.	Department of Planning	No Timing. General Statement of Commitment
Electrolysis	The recommendations of the Stage 1 Electrolysis Analysis prepared by CPS and dated January 2011 will be implemented.	Department of Planning	No Timing. General Statement of Commitment
Active	Active frontages will be provided on both sides	The relevant	On the

Subject	Commitments	Approved by Whom	Timing
Frontages	of the pedestrian thoroughfare between Buildings 1B and 1C through either specialty shops, cafe dining or clear visual links into a supermarket tenancy.	consent authority.	detailed fit out plans.
Environmental and Construction Management	The following Management Plans will be issued prior to works commencing for each stage: - Construction Management Plan - Construction Traffic Management Plan - Erosion and Sediment Control Plan - Waste Management Plan - Dust Control Plan. - Acid Sulphate Soil Management Plan.	-	Prior to issue of CC
Railcorp requirements	The preparation of the required procedures, safety plans, methodologies and assessment reports required by Railcorp will be submitted prior to those specific works commencing.	Railcorp	Prior to construction commencing
Contamination	The fill material for the neighbourhood park is to be suitable for open space land uses in accordance with relevant guidelines. If it were proposed to use soils sourced from the site these would need to be validated to confirm they are of suitable quality.	Relevant Certifying Authority	Prior to works commencing
Indigenous Archaeology	Further archaeological investigation is required in the Zone 2 area of the Stage 1 development area. This part of the Precinct has not been investigated previously. Prior to commencement of construction works in this area a test excavation programme should be carried out by a suitably qualified archaeologist to ascertain whether intact archaeological material is present here.	-	During construction
Excavation	Excavation method statements are to be prepared by the excavation contractor.	Relevant Certifying Authority	Prior to issue of CC
Accessibility	Ensure an accessible path of travel to and within common-use facilities in line with DDA Premises Standards and AS1428.1:2009. Ensure the designs of the three adaptable units are compliant with AS4299 and AS1428.1:2009.	Relevant Certifying Authority	Prior to issue of CC
Infrastructure and Services	- New communications fibre or copper services are to be installed in accordance with Telstra, NBN and the Australian Communications Authority Requirements; and - The external roadway and public lighting will be installed in accordance with AS1158. - Street fire hydrants are to be provided on the Authorities water main, in accordance with Sydney Water requirements. - Fire hydrants and fire sprinklers are to be provided as required by the BCA and relevant Australian Standards (all as confirmed with the NSW Fire Brigades);	Relevant Certifying Authority	Prior to issue of CC

Subject	Commitments	Approved by Whom	Timing
	- Supplementary hydrants and hose reels will be installed to provide sufficient coverage to all areas as required by the relevant Australian Standards; and - Each building will have a fire control centre to comply with BCA.		
Stormwater	Additional stormwater sumps and grates will be constructed to limit surface stormwater depths.	Relevant Certifying Authority	Prior to issue of CC
Acoustic and Vibration	The following measures are required to mitigate noise impacts from road and aircraft noise: - laminated glazing will be appropriate for rooms where the majority of the facade is glazed; and - Lower specification glazing is suitable for rooms with small windows. Mechanical plant noise is to be mitigated through standard use of attenuators, acoustic louvres, barriers, enclosures, and the appropriate location and orientation of air inlets / outlets and items of plant.	Relevant Certifying Authority	Prior to issue of CC
Public Domain	Details of Rights of Way and Easements will be provided as part of future subdivision applications.	The relevant consent authority	With future application.
Car Share	Provision of one on-street care share space for Stage 1, in consultation with residents and commercial operator.	-	During early operation of the development.
Temporary Parks	The temporary parks on sites 3 and 5 are to be reinstated in the following circumstances: - Twelve months after the issue of occupation certificates for the buildings on Stages 2 and 4; and - In the event development consent has not been issued for the construction of buildings on site 3 or site 5. Reinstatement of sites 3 and 5 is to include the removal of hoardings, levelling and turfing of the sites.	The relevant consent authority	12 months after the issue of occupation certificates for Stages 2 and 4 buildings.
Recycled Water Treatment Facility	<i>Future applications should include details on the infrastructure for connections and reticulation of the Recycled Water Treatment Facility for each relevant stage.</i>	<i>Private Certifying Authority</i>	<i>With future applications</i>
	<i>The Recycled Water Treatment Facility is to be operated and maintained at all times in accordance with a Network Operator's Licence granted under the Water Industry Competition Act 2006.</i>	<i>Private Certifying Authority</i>	<i>During operation of the development.</i>

4.0 CONCLUSION

The proposed removal of Condition E12 is required as the condition is unable to be achieved in its current form. A new commitment is to be included in the Statement of Commitments to require the ongoing maintenance of the water treatment facility in accordance with the Network Operator's Licence issued by the Minister for Finance and Services under the *Water Industry Competition Act 2006*. The issue of this licence ensures that the water treatment facility will be appropriately operated and maintained throughout the life of the development. We trust this is all the information you require to complete your assessment of this application, should you have any queries about this matter, please do not hesitate to contact me on 9956 6962 or bhoskins@jbaplanning.com.au.

Yours faithfully

A handwritten signature in blue ink, appearing to read 'B. Hoskins', with a stylized flourish at the end.

Brendan Hoskins
Urban Planner