

24 October 2014

The Commission issued its determination report for the modification applications to the concept plan and stage 1 project application (Shepherds Bay) on 16 October 2014 with the signed instruments of approval. Following the release of the determination report, the proponent raised concern in relation to the reporting of issues discussed in the Commission's meetings with stakeholders including the public meeting (Section 5 of the determination report).

Following careful consideration of the concern raised, the Commission decided to update the relevant part of the determination report to address the concern. The changes are minor and do not materially affect the Commission's reasons of its determination of the applications.

24 October 2014

MODIFICATION REQUEST – CONCEPT PLAN AND STAGE 1 PROJECT APPLICATION AT SHEPHERDS BAY FORESHORE, MEADOWBANK (MP09_0216 MOD 1 & MP09_0219 MOD 1)

1. INTRODUCTION

Marks and Robertson Pty Ltd (“the Proponent”) has lodged two applications seeking to modify the approved Concept Plan (MP09_0216) and Stage 1 Project Application (MP09_0219) relating to the development of the Shepherds Bay foreshore under Section 75W of the EP&A Act. The modifications seek primarily to amend the indicative staging, timing of open space provision, storey height, internal layout, dwelling mix and yield. Other modifications include amendment to various conditions of consent including design excellence, built form residential amenity and ESD measures requirements.

In respect of the proposed modifications to the Stage 1 Project Application (MP09_0219), the Commission notes that following inspection of the site, it is concerned that non-complying works have been undertaken on site. Accordingly this matter has been referred to the Department of Planning and Environment for compliance investigation and appropriate action. Notwithstanding this current investigation the role of the Commission is to determine the application before it on merit.

2. BACKGROUND

The Planning Assessment Commission NSW (PAC) approved the Concept Plan and Stage 1 Project Application for the redevelopment of the Shepherds Bay foreshore area on 6 March 2013 subject to modification and conditions. As approved the Concept Plan approval comprises:

- The redevelopment of the site for mixed use residential, retail and commercial purposes
- 12 building envelopes incorporating basement car parking
- Infrastructure works to support the development
- Publicly accessible open space and through site links, and
- Pedestrian and cycle pathways.

Further, as approved the Stage 1 Project Application, comprised:

- 3-10 storey residential development
- Basement car parking
- Communal open space and a publicly accessible foreshore link.

In approving the original Concept Plan and Stage 1 Project Application in 2013 the PAC conditioned the projects to achieve outcomes as follows:

- Reduction in dwelling density to take account of existing and emerging neighbourhood character and environmental capacity of the site
- Reduction in the maximum building height overall from 15 storeys to 10 storeys as well as reductions in height of buildings adjacent to existing developments and the river foreshore
- Imposition of a requirement that all future development applications be consistent with SEPP 65 requirements for design quality and amenity of residential flat buildings, as well as the Residential Flat Design Code (RFDC)

- The provision of a contiguous public open space of at least 3,000m², for active/passive recreational needs of residents; to be made available before the issue of the occupation certificate for Stage 1
- A requirement for greater set back from the river foreshore
- An increase in the width of view corridors to a minimum of 20m, and
- The provision of parking consistent with the relevant Ryde City Council DCP requirements.

These modifications / conditions were imposed by the PAC “to ensure that the development is responsive to the character of the area, will not result in adverse visual or environmental impacts and will provide benefits to both the future and existing community”. Additional information was also required to be submitted for approval particularly in relation to the Concept Plan including a public domain plan, Water Sensitive Urban Design (WSUD) Plan and pedestrian and cycleways access plan.

On 24 June 2013 the Department of Planning and Environment approved amended plans for the Concept Plan to address requirements imposed by the PAC and on 8 August 2013 amended plans to address requirements imposed on the Stage 1 Project Application.

On 1 November 2013 two applications were lodged requesting modifications under Section 75W to the approved Concept Plan and Stage 1 Project Application respectively. The environmental assessments were publicly exhibited from 16 January 2014 until 3 March 2014. A total of 134 submissions were received from the public as well as one from Ryde City Council, all objecting to the proposed modifications.

On 28 March 2014 a combined Response to Submissions (RTS) Report was submitted which indicated that the following two aspects of the Concept Plan modification application were no longer being pursued:

- Amendment to allow the community facility to be provided at an alternate location to Stage A or split between multiple locations; and
- Amendment to allow for an increase in height and reduction in setbacks to the Stage A site (formerly Stage 5).

A further submission was received from Ryde City Council in relation to the RTS report, reinforcing Council’s objections to the remaining proposed modifications.

As noted above the subject report relates to both the Concept Plan and Stage 1 Project Application modification, as described in the Secretary’s Assessment Report. As amended by the RTS report, the proposed modifications are as follows:

Concept Plan Modifications:

- Amendment to the Buildings Storey Plan to allow for additional storeys at ground level in Stages 1 to 4 and to reflect the approved height of Stage 1
- Expansion of the basement building envelope of each Stage beneath landscaped / open space areas and also to expand / connect the basement building envelopes between Stages 2 and 3 and Stages 4 and 5
- Revision of construction staging
- Revised timing of the delivery of the open space to be in conjunction with Stage 3 (rather than Stage 1)
- Provision of an additional storey to provide a 6 storey element to the building on the corner of Belmore Street and Constitution Road
- Flexible application of the solar access requirement of the RFDC
- Amendment of ESD measures

- Amendments to terms of approval, future environmental assessment requirements (FEARs) and Statement of Commitments.

Stage 1 Project Application Modifications:

- Modification of dwelling mix and increase in dwelling yield (from 207 to 246 dwellings)
- Revision of the grading of the foreshore link and provision of a stairway at its northern end connecting it to Nancarrow Avenue
- Provision of apartments located at the lowest levels fronting Belmore Street, Hamilton Crescent and foreshore link
- Provision of an additional underground car parking level, reduction of the basement setback to the north and an increase of 65 car parking spaces (from 277 to 342)
- Revised timing of the delivery of the open space to be in conjunction with Stage 3 rather than Stage 1
- Rearrangement of internal building layouts, car parking layouts and provision of balconies
- Revision of schedule of external finishes
- Amendment of ESD measures and
- Amendment to conditions and Statement of Commitments.

3. DELEGATION TO THE COMMISSION

On 14 August 2014 the modification applications were referred to the Planning Assessment Commission (the Commission) for determination under Ministerial delegation as more than 25 objections were received and the local Council objected to the applications. Ms Gabrielle Kibble AO nominated Ms Abigail Goldberg (chair) and Mr Richard Thorp to constitute the Commission to determine the project. Ms Goldberg chaired the previous Commission which determined the original Concept Plan and Stage 1 Project Applications.

4. ASSESSMENT REPORT

The Secretary's Assessment Report prepared by the Department identified the following key issues:

- Density / dwelling numbers
- Car parking provision
- Foreshore link / open space design
- Additional storeys at lower levels
- Residential amenity
- Basement design
- Staging, and
- Height of corner element at Belmore Street / Constitution Road.

The report concluded, that many of the requested amendments are acceptable but that some matters could not be supported or should be amended. These particular matters are outlined below:

Modification sought	Department's position
Concept Plan	
Increase in dwelling density	Supported subject to car parking spaces being capped.
Provision of additional storeys at lower levels	Supported but limited to single storey and only at Stages 2, 3 and 4.
Relaxation of RFDC amenity requirements	Compliance with RFDC should be required except for solar access where performance criteria can be met.

Deferral of delivery of Nancarrow Avenue road extension and road upgrade works from Stage 2 to Stage 4	Supported subject to provision of temporary pedestrian link and updated road design. Other road upgrade works to be delivered at Stage 2.
Deferral of intersection works from Stage 4 to Stage 5	Intersection works to be tied to delivery of 800 th dwelling.
Project Application	
Deferral of delivery of foreshore link from Stage 1 to Stage 2	Foreshore link should be delivered at Stage 1. New condition B2A is recommended.
Foreshore link northern staircase contains five switchbacks.	The staircase design has been amended to provide two switch-backs and includes seating/resting areas. The department supports this revision.
12 apartments inserted at lower levels.	One of the 12 apartments inserted at lower levels provides poor amenity and should be deleted. New condition B2B is recommended.
Provision of service infrastructure/utilities outside building envelopes without Council approval.	Council's approval for future service infrastructure/utilities should be required if located outside building envelope. Condition B27 is updated accordingly.

5. SITE VISIT AND MEETINGS

The Commission visited the site and local area on 11 September 2014.

As noted above, during the site visit the Commission noted that works had commenced on the Stage 1 site and that these works did not appear to be consistent with the current Stage 1 approval. Accordingly the Commission referred the matter to the Department for compliance investigation and appropriate action.

5.1 Meeting with Council

On 18 September 2014 the Commission met with Ryde City Council who confirmed strong objection to the proposed modifications (both Concept Plan and Stage 1 Project Application) as outlined in its submissions dated 26 February 2014 and 15 April 2014 respectively. At the meeting the primary areas of concern outlined by the Council were:

- the proponent's other developments in the LGA
- Proposal amendments "claw back" yield and height that was reduced by previous PAC approval
- Increase in density will result in adverse traffic impacts
- Need for dwelling cap in addition to car parking cap to control traffic impacts and to provide certainty of final outcome
- Need to strengthen requirements for amenity where solar access requirement under SEPP 65 and RFDC cannot be achieved
- Change in staging and separation of Stage A from the foreshore area stages has made delivery of the community facility, a social infrastructure contribution key to the project, uncertain. Council recommends a new location in the sequentially staged foreshore area, adjacent to the contiguous public open space, in the order of 2,500m² with timing of delivery prior to the development application for the 1000th dwelling, and
- Design of Nancarrow / Hamilton Crescent to be approved by Council prior to the issue of a construction certificate for Stage 2.

Council noted that it did not support the provision of additional storeys as proposed at the base of the buildings.

Additional information was also provided by Council at the meeting in relation to the wording of proposed conditions of consent, with suggested amendments identified.

On 23 September 2014 supplementary advice was provided by Council in relation to: caps applied to other Part 3A and State Significant development approvals in the LGA as well as the definition of 'deep soil' zones as outlined in the RFDC. These matters are addressed within this report.

By email dated 15 October 2014, Council provided further argument in support of the relocation of the community facility to Stages 2 or 3 with a frontage onto the space adjoining Rothesay Avenue. While Council advised that it maintained its view that this area should be a minimum of 2,500m², it acknowledged that such an area would be difficult to locate adjacent to the park without significant impacts upon the surrounding building envelopes. It therefore advised that a smaller community facility of 1,000m² in this location would be satisfactory and that the facility could be provided over two levels. It also argued that the facility should be co-located with commercial uses to help activate the space and ensure its financial viability. These matters are addressed within this report.

5.2 Meeting with Proponent

The Commission met with the Proponent on 18 September 2014. The Proponent outlined the background to the modifications noting that the proposed additional storey at the base of buildings on steep land is as a result of the level changes required to achieve unimpeded access to the adjacent foreshore links. They noted that the proposed additional units would activate the adjacent streets and foreshore links and will not result in any increase to the maximum RL approved for the site.

The Proponent further advised that they would not welcome a cap on dwelling numbers but that they were prepared to accept the proposed cap on car parking numbers following extensive negotiation with the Department.

The issue of timing of the design and construction of the Nancarrow Avenue / Hamilton Crescent extension was discussed in detail. The Proponent agreed that it was appropriate that the relevant conditions be amended to require the design of the road extension to be approved prior to the issue of any occupation certificate for Stage 1 and that the road works should be completed prior to the issue of any occupation certificate for Stage 4.

The timing, size and location of the future community facility was also discussed. The Proponent noted Council's request for the community facility to be located adjacent to the contiguous open space and delivered prior to the development application for the 1000th dwelling. They advised that they would provide further written advice on this aspect of the development. The staging of proposed Stage A (formerly Stage 5) was also discussed particularly in the light of the community facility being located within this stage within the existing approved Concept Plan.

On 24 September 2014 supplementary advice was provided by the Proponent's planning consultant in relation to: staging; the future community facility; the design of Nancarrow Avenue and plan references. These matters are addressed throughout this report.

5.3 Public meeting

On 22 September 2014 the Commission held a public meeting to hear the community's views on the Department's assessment report and recommended conditions. Seven speakers addressed the meeting (refer Appendix 1) including representatives of Ryde City Council and the local member Victor Dominello MP.

Key issues raised by speakers included:

- Traffic congestion and impact of additional dwelling numbers / yield
- Need for cap to be imposed on dwelling numbers to control adverse traffic and parking impacts over the life of the development
- Need for minimal rate of parking provision to be applied to development
- Need for certainty to be provided in relation to community facility provision
- Uncertainty in relation to design of Nancarrow Avenue link
- Non-compliance of apartments with SEPP 65 solar access requirements and resultant poor amenity of many of proposed units in favour of increased yield
- Lack of certainty in timing of required infrastructure to support development (and future community)
- Increase in dwelling yield, based on amended plans for Stage 1 and reduction in unit size, could be substantially greater than additional 380 dwellings as identified in the Secretary's report
- Parking a major issue and limit on parking will just shift problem on to surrounding streets
- Concern regarding traffic impacts (noise and air pollution) of connection of Rothesay Avenue and Bowden Street for residents of Shepherds Bay Village
- Road infrastructure insufficient to cater to demand generated by development (need another independent traffic study)
- Lack of pedestrian access to station from site along Constitution Avenue and incomplete cycleway connections in area
- Concern regarding timing of contiguous open space area within Stage 3 rather than Stage 1
- Need to reaffirm PACs previous decision to reduce scale of the development
- Overdevelopment of site and quality of development
- Community seeks certainty, further variations should be publicly advertised.

One speaker indicated support for the development noting that more people in the area could support local businesses, the local school and employment. She also noted that many people in the local area walk to local facilities and the train station, which may be impeded by too many cars parked on local streets, but that traffic on Constitution Road could be improved by installation of lights at the existing pedestrian crossing adjacent to the railway station.

A number of written submissions against the proposals were received by the Commission before and at the public meeting. The submissions reiterated issues raised previously in writing and at the public meeting.

6. COMMISSION'S ASSESSMENT

The Commission has reviewed the Secretary's assessment report as it relates to both the Concept Plan and Stage 1 Project Application modifications. Associated documents, submissions from the Council, the community, and the views expressed at various meetings including the public meeting and written submissions prior to and at the public meeting were also considered in detail.

The Commission placed a priority on the following matters:

- Certainty of the delivery of infrastructure for new and existing residents at appropriate timing
- Respect for the built form objectives of the approved plans
- Achievement of a density of apartments, traffic and parking appropriate to the site and local context.

Taking these matters into account, the Commission's assessment of key issues in relation to the Concept Plan and Stage 1 Project Application modifications (respectively) is provided below:

6.1 Additional storey at the lower level of buildings

Concept Plan

In the Commission's view it is reasonable that a maximum of one additional storey (as recommended by the Department) be allowed on steeply sloping land in Stages 1, 2 and 3 at the lowest level of proposed buildings where the ground level of the adjacent street or foreshore link has been regraded, as it recognises that this regrading can achieve a greater area of level, useable public open space linking in to the existing foreshore public open space. Under these circumstances, the additional storey will also activate the building frontages adjacent to the proposed foreshore links and enhance surveillance opportunities.

However, the Commission does not consider that the situation for Stage 4 is comparable, and does not consider an additional storey warranted at this location. Accordingly the Commission considers that proposed condition 3A should be amended to remove the reference to "the south east portion of Stage 4" and rather allow a maximum of one additional storey within Stages 1, 2 and 3 only.

Stage 1 Project Application

The Stage 1 Project Application includes 12 new apartments within the lower levels of the buildings (upper basement – 8 apartments, Lower ground – 2 apartments and ground – 2 apartments). The insertion of these units at the lower levels will result in an additional storey over and above that already approved by the Department subsequent to the Concept Plan approval, but will not exceed the maximum RL imposed by the PAC. In accordance with the above consideration of the Concept Plan, the additional storey is approved.

The Commission notes that the Department has recommended that Unit LG24 on the lower ground level be deleted due to sub-standard amenity. The Commission supports this action. The matter is further addressed in section 6.3 below.

6.2 Traffic, car parking and dwelling yield

Concept Plan

Concern has been raised by Ryde City Council and the community that the proposed amendments to the Concept Plan (and Stage 1 Project Application) will result in a substantial increase in dwelling yield within the development across the life of the Concept Plan, which in turn will result in unacceptable traffic, on-street parking and other impacts.

To address the traffic and parking impacts of any potential increase in dwelling numbers, the Department has recommended that a cap of 2,976 car parking spaces be imposed on the Concept Plan approval. This figure is based on the indicative number of dwellings (2,005) considered to be a reasonable environmental capacity for the Concept Plan site in terms of research undertaken at the time of the review of the original Concept Plan proposal.

The Department indicated in its assessment report that it did not believe a corresponding dwelling cap was required.

The Commission has carefully considered the Department's arguments and supports the proposed cap on the number of parking spaces. However it considers this limitation insufficient by itself to address the potentially significant impacts on the local area likely to arise if there is a substantial increase in dwelling numbers across the Concept Plan site. These impacts could include overflow parking on streets, congested streets inhibiting the movement of service vehicles (including waste removal vehicles), traffic impacts, impact on residential amenity, and inadequate community and public open space, particularly given that a large proportion of smaller apartments are proposed.

The Commission notes moreover that its previous decision to introduce building envelopes with a maximum RL was to ensure a contextually appropriate built form outcome as well as to reduce the

proposed density to take account of the environmental capacity of the area with regard to traffic, parking, open space provision and residential amenity.

As the proposed modifications (particularly the Stage 1 plans) intend a greater number of units than previously indicated, the Commission supports Council's recommendation that a dwelling cap of a maximum of 2,005 dwellings be imposed on the Concept Plan, in addition to the cap on parking proposed by the Department, to reinforce the objectives of the primary approval.

To further underpin the dwelling cap the Commission considers that a requirement of each Stage should be a projected dwelling forecast for the remaining Stages to ensure that the maximum number of dwellings is not exceeded.

Stage 1 Project Application

The Commission notes that the proposed modifications to Stage 1 will result in an additional 65 car parking spaces on site (over and above the existing approval) within an additional part basement level and expansion and reconfiguration of the approved basement levels. The Commission considers that in light of the recommended dwelling number and car parking caps to be applied to the Concept Plan area, the additional car parking spaces will not result in additional traffic over and above that envisaged by the approved Concept Plan. The proposed car park layout is also considered acceptable.

6.3 Residential amenity

Concept Plan

The Proponent has sought a modification to the Concept Plan approval future environmental assessment requirement (FEAR) 21 that requires:

Future Development Applications shall demonstrate compliance with the provisions of the *State Environmental Planning Policy 65 – Design Quality of Residential Flat Development (SEPP 65)* and the accompanying *Residential Flat Design Code 2002 (RFDC)*.

A relaxation of the requirement is proposed given that site orientation and slope makes it difficult to achieve the solar access requirements (min. 2 hours of solar access in mid-winter). The Commission finds the relaxation acceptable under the circumstances but agrees with Council that where solar access requirements cannot be achieved improved amenity should compensate for the lack of solar access. Accordingly an amendment has been made to FEAR 21 to require this.

Stage 1 Project Application

The Commission notes that a number of units proposed within Stage 1 do not comply with the provisions of SEPP 65 and the RFDC and would similarly not comply with proposed FEAR 21 of the Concept Plan Instrument of Approval as amended. This condition seeks to ensure that where units do not achieve the minimum solar access requirements alternative improved amenity is provided to compensate for this.

The Commission however considers that in light of the existing Stage 1 approval the non-compliance within Stage 1 is passable however should not be considered either desirable or a precedent for future stages. The Commission therefore requires that all future stages of the Concept Plan comply with the updated FEAR 21 and the relevant requirements of SEPP 65 and the RFDC.

6.4 Staging

Concept Plan

The modification to the Concept Plan seeks to renumber the proposed development stages (Stage 1 - 9 and Stage A) to reflect a change to the proposed construction sequencing. It is noted that Stage A

(formerly Stage 5) is the Church Street site, essentially a stand-alone site, which is no longer linked to the foreshore stages of the development.

The Proponent has provided advice that a design excellence process has been initiated in relation to the Church Street site and that separate staging is considered appropriate. The Commission agrees that un-coupling the staging of Stage A is appropriate, subject to the equivalent un-coupling of the delivery of the community facility which will primarily serve the new residents of the foreshore stages (refer section 6.5 below for discussion of this issue).

6.5 Community Facility

Concept Plan

FEAR 18 of the approved Concept Plan requires that the community facility be provided in the future development application for Stage A (formerly Stage 5) with the amount and configuration of the floorspace to be designed in consultation with Council. Council has raised concerns that FEAR 18 is not sufficiently detailed and that in particular the size, location and timing of the provision of the required community facility is inappropriate. The key areas of concern are:

1. Lack of certainty as to when this facility will be provided,
2. Lack of convenient safe access to the site as it is located alongside a major arterial road,
3. The proposed location in Stage A is on the periphery of the Shepherds Bay area and relatively isolated from potential users.
4. The facility would need to be a destination in of itself rather than relying on other supporting uses surrounding the facility to generate activity.

Council has requested that the condition be amended to require that the community facility be located in either Stage 2 or 3 with a frontage onto the space adjoining Rothesay Avenue. Council has argued that the co-location of community facilities adjoining the open space area and a major north-south link will ensure that all elements are well utilised and of maximum convenience to the community. However, Council has acknowledged that a larger facility located adjacent to the park could have significant impacts on the surrounding building envelopes and has therefore indicated that a smaller community facility area of 1,000m² would be adequate and that the facility could be split over two levels.

Council has also requested that the use should not be simply restricted to a 'Community Facility' but should also allow for co-location of commercial / business premises to create a vibrant and viable space that is well utilised by the community.

The Proponent has offered the provision of a 2,000m² community facility space within Stage A prior to the issue of an occupation certificate for the 1,300th dwelling. The Proponent has also indicated that the current design excellence process being undertaken for the Church Street site will ensure that the type, form and quantum of community space will be delivered to Council's satisfaction.

The Commission considers the community facility should be located close to the majority of the residential population and in an area which encourages community activity and interaction. As such it considers coupling provision of the facility to the staging of the foreshore area to be appropriate, and supports Council's recommendation that a location adjacent to the contiguous open space within Stage 2 or 3 is optimal as a central location will ensure easy access for the majority of residents. It also considers that reducing the size of the community facility to 1,000m² is reasonable and that allowing for a range of activities to support and enliven the community function is appropriate. However, it does not support the use of the community facility as a de facto commercial space and considers that its core function should remain for community activities.

Accordingly the Commission has amended FEAR 18 to reflect these requirements.

6.6 Timing of Infrastructure Provision

Concept Plan

Nancarrow Avenue Extension

Council has raised concern that the change to the development staging means that the design and construction of the Nancarrow Avenue extension will not occur until Stage 4 notwithstanding that Stage 1 included a condition which required that approval of the design by Council be prior to issue of the first Construction Certificate for Stage 1. The Proponent has provided advice that it considers that FEAR 24 should be amended such that the detailed design of the Nancarrow Avenue extension infrastructure works should be submitted to Council for approval prior to the issue of the Occupation Certificate for Stage 1 and that all works shall be completed prior to the issue of the first occupation certificate for Stage 4.

The Commission agrees with the Council that the detailed design of the Nancarrow Avenue extension should be approved by Council prior to the issue of the first occupation certificate for Stage 1 and that all works shall be completed prior to the issue of the first occupation certificate for Stage 4. The Commission has therefore amended the FEAR accordingly.

Further the Department has recommended FEAR 24A which identifies infrastructure works that shall be included with Stage 2 including the installation of a temporary east / west pedestrian link connecting 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 proposed FEAR identifies that this link would be for residents, available on a 24 hour basis, and maintained until the provision of the Nancarrow Avenue extension. Council has requested that this FEAR be amended to allow public access. The Commission agrees that public access is appropriate given that the Nancarrow Avenue extension will ultimately be a public road. The Commission has therefore amended proposed FEAR 24A accordingly.

Contiguous Open Space

The Proponent has sought to alter the timing of the delivery of the contiguous open space from Stage 1 to Stage 3 to prevent damage to the space resulting from the construction of neighbouring Stages 2 and 3. The Commission considers this appropriate in the circumstances and supports the introduction of new FEAR 15A requiring the provision and completion/handover for use of the open space prior to the first occupation certificate for Stage 3 and also requiring dedication to Council.

Deferral of intersection works from Stage 4 to 5

The Proponent has requested that the Yerong Road / Belmore Street intersection works be deferred until Stage 5 by amending FEAR 25. The Secretary's report recommends that the works be tied to the development application for the 800th dwelling rather than Stage 5 of the development. The Commission notes that Council has not raised any objection to this change, which it considers appropriate.

6.7 Basements

Concept Plan

The Proponent has sought to amend the Concept Plan to allow for the joining of basements between Stages 2 and 3 and Stages 4 and 5 and construction of basements beneath the internal courtyards of each stage and the foreshore links between the stages. This would currently not be allowed by virtue of FEAR 4 which requires that basements are located below the building footprint only. In addition the Proponent seeks to modify FEAR 4 to allow basements to exceed 1m above finished ground level when certain performance standards are met, that is:

- An aesthetically pleasing interface is achieved
- Appropriate landscape screening is provided and
- Appropriate articulation is achieved and quality materials/finishes are used.

In relation to the joining of basements between Stages 2 and 3 and Stages 4 and 5, the Commission considers this to be appropriate subject to the Concept Plan achieving the overall requirement of 25% of open space within the site being deep soil area (in accordance with the RFDC) and subject to there being no encroachment into street setbacks. The Commission notes that the Secretary's report recommends an amendment to FEAR 21 in this regard.

In relation to the height of basements above finished ground level, the Commission notes that the Secretary's report recommends an amendment to FEAR 4 to allow basements to exceed 1m above ground level (finished) in the identified circumstances and further noting that basement parking levels up to 1.2m above finished ground level are not regarded as a storey. The Commission does not agree that basements should be allowed to project more than 1m above finished ground level given that the finished ground level is being contoured by the Proponent and having regard to the additional storey that is proposed to be allowed at the lower level of buildings on steep land (Stages 1-3). The Commission also notes that under Ryde Local Environmental Plan 2010 the definition of basement is as follows:

***basement** means the space of a building where the floor level of that space is predominantly below ground level (existing) and where the floor level of the storey immediately above is less than 1 metre above ground level (existing).*

The Commission has therefore amended recommended FEAR 4 to allow for the connection of basements between Stages 2 and 3 and Stages 4 and 5 but not to otherwise allow basements to extend more than 1m above finished ground level or beyond the building footprint.

Stage 1 Project Application

The Commission notes that the proposed modifications to Stage 1 seek to extend the basement levels beneath the proposed building into the street setback on the Nancarrow Avenue / Hamilton Crescent frontage. Previously the setback to this street was 7.1m of deep soil area. As proposed in the modification, the setback has been reduced to a maximum of 6.4m with 3.5m being deep soil area. The basement levels under the building extend approximately 3.0m into the setback and outside the footprint of the building. On the ground level this area is generally proposed to be in the form of landscape planters approximately 1500mm wide separated by retaining walls (approx. 1400mm in height / 800mm above FFL). Soil depths of between 450mm – 1000mm are proposed.

The Commission considers that to ensure appropriate landscaping and street tree growth within the street setbacks, basements within the Concept Plan area should generally not be allowed to extend outside of the footprint of the building above.

However having reviewed the approved landscape treatment of the Nancarrow Avenue setback, the Commission considers that the proposed landscape treatment will result in a minimal albeit passable outcome. The proposed modification is therefore accepted at this location, although undesirable as a precedent going forward as a repeat of this approach across the Concept Plan area would result in adverse landscape and streetscape impacts. The Commission therefore reiterates that future Stages are to comply with FEAR 4 (as amended) as follows:

Future Development Applications shall ensure that basement parking levels do not exceed 1 metre above ground level (finished) and are located below the building footprint (with the exception of basements connecting Stages 2 and 3 and Stages 4 and 5) without encroachment into street setback areas

In addition the Commission considers that the current landscape concept plan for Stage 1 is inadequate as it does not show the location, number, size and types of plant species to be planted

nor does it provide any detail in relation to street trees. Accordingly two new conditions (Condition B3A and B3B) are proposed to require additional detail to be provided for approval by Council prior to the issue of the Construction Certificate.

6.8 ESD targets

Concept Plan

FEAR 22 requires base targets for ESD as well as stretch targets where no base target is provided. The Proponent has requested that FEAR 22 be amended to allow for greater flexibility. The Secretary's report has recommended that FEAR 22 be amended to reaffirm the requirement to comply with the base targets but to make clear that the stretch targets are aspirational only. Furthermore the Department considers it appropriate to include a requirement that the development achieve targets in four of the six ESD categories to show 'industry best practice' and in relation to water and energy 10% better than Basix will be used to determine "industry best practice".

The Commission considers that the proposed amendment to the FEAR is acceptable as rationalised by the Department.

6.9 Height on corner of Constitution Road and Belmore Street

Concept Plan

The Commission agrees that it was the intention of the original approval to allow development on the corner of Constitution Road and Belmore Street to a maximum height of 6 storeys consistent with the height of development across Belmore Street to the east. It therefore supports the proposed amendment to FEAR 3 to allow an exception to the 5 storey Constitution Road maximum on this corner as part of Stage 4.

6.10 Maximum Number of Storeys Above Ground Level (Finished) Plan title

Concept Plan

The Commission notes that the proposed maximum number of storeys plan prepared by the Proponent is entitled "Indicative Concept Plan Storeys Plan". The Commission considers that the title of the plan is not appropriate and should reflect the intent of the plan, that is, to set a maximum storey height to be complied with in future applications. Accordingly a new condition is proposed which requires the submission of an amended plan to be approved by the Secretary within 1 month of the date of the Concept Plan modification approval (Condition B3).

7. COMMISSION'S FINDINGS AND DETERMINATION

The Commission has carefully considered the Secretary's Assessment Report and the recommended conditions of approval, submissions on the Concept Plan and Stage 1 Project Application modifications, issues raised at the public meeting as well as supplementary information and public comments received after the public meeting.

After detailed consideration of the evidence, the Commission has determined to approve the Concept Plan modifications as recommended by the Secretary subject to a number of amendments. Amendments include:

- Additional storey – A maximum of one additional storey permitted for Stages 1, 2 and 3 only. No additional storey to be allowed on the south east portion of Stage 4
- Dwelling cap - Inclusion of a dwelling cap across the Concept Plan site of a maximum of 2,005 dwellings with a requirement that with each Stage a projected dwelling forecast is received for remaining Stages demonstrating that the total maximum number of dwellings will not be exceeded
- Residential amenity – amendment to require greater residential amenity for units where solar access requirement under the RFDC cannot be met

- Community facility – amendment to require the community facility to be located primarily at ground level adjacent to the contiguous central open space in either Stage 2 or 3 and delivered as part of the development application for the 1000th dwelling.
- Nancarrow Avenue Extension – amendment to require detailed design prior to the issuing of the occupation certificate for Stage 1 and delivery of all works prior to the issue of the occupation certificate for Stage 4. Further proposed temporary pedestrian access is available to the public in lieu of road extension.
- Basements – amendment to retain existing requirement that basements shall not exceed 1m above finished ground level, or extend beyond the building footprint other than to allow connection of basements beneath Stages 2 and 3 and Stages 4 and 5.

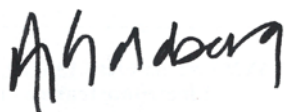
The Commission has amended the Concept Plan Instrument of Approval to reflect this determination, in particular via amendments to the following conditions and future environmental assessment requirements:

- Proposed FEAR 3A (Maximum Storeys on Steeply Sloping Land)
- Condition A5 (Maximum Gross Floor Area and Dwelling Cap)
- New FEAR 1A Dwelling Cap
- FEAR 4 (Basements)
- FEAR 18 (Community Facilities)
- FEAR 21 (SEPP 65 and RFDC)
- FEAR 24 (Nancarrow Avenue Extension and Road Reserve Upgrades)
- FEAR 24A (Road and Pedestrian Infrastructure Upgrades)

Further the Commission has determined to approve the Stage 1 Project Application modifications as recommended by the Secretary subject to changes to the timing of the design and delivery of Nancarrow Avenue road extension and two new conditions requiring further landscape detail.

Accordingly the Commission has amended the Stage 1 Project Application Instrument of Approval to reflect this determination in particular amendment to condition B29 in relation to the Nancarrow Avenue road extension and inclusion of conditions B3A and B3B in relation to landscaping.

The Commission notes that aspects of the design of Stage 1 are considered marginal in quality and if repeated throughout the concept plan area will result in a cumulative impact detrimental to local amenity.



Ms Abigail Goldberg
Commission Chair



Mr Richard Thorp
Commission Member