

BRIEFING DETAILS

BRIEFING DATE / TIME	Thursday, 17 August 2023, 11:30am to 12:30pm
LOCATION	MS teams

BRIEFING MATTER(S)

PPSSCC-481 – LGA – DA# - 7 Burroway Road, Wentworth Point - section 4.55(2) modification to amend DA/875/2017/A for the proposed infrastructure works on the site and concept GFA allocation. The proposed modifications include the reconfigured subdivision of the site, redistribution of GFA, changes to the location and design of Ridge Road and the modified design of the proposed park (including the provision of active open space).

PANEL MEMBERS

IN ATTENDANCE	Steve Murray (Acting Chair), Brian Kirk, Cinnamon Dunsford, Richard Thorp
APOLOGIES	NIL
DECLARATIONS OF INTEREST	Abigail Goldberg, David Ryan and Jane Fielding

OTHER ATTENDEES

COUNCIL ASSESSMENT STAFF	Katherine Lafferty, Myfanwy McNally
APPLICANT	Anna Johnston, Megan Hawley, Kate Denney
PLANNING PANELS SECRETARIAT	Kate McKinnon, Tim Mahoney
PLANNING DELIVERY UNIT	Kate Seton, Jade Hoskins

KEY ISSUES DISCUSSED

- Landcom identified themselves and the applicant and development manager delivering both approvals and construction for the site. The applicant provided a brief history of strategic and statutory planning of the site and introduced the proposal, including the originally approved development application and details of and reasons for the modifications sought.
- Regarding the modification the applicant advised that they have obtained legal advice on the point of the “substantially the same test” which concluded that the modification does not radically transform the nature of the development, noting that the modification requires consideration in the context of intervening events (namely the construction of the high school and identification of proposed playing fields)
- Council advised that they are wholly supportive of the delivery of the park and high school at the site. Council’s main concerns with the proposal involve interactions with the original consent which set up the delivery of the park utilising covenants and whether the application can be considered as a modification.

Planning Panels Secretariat

- Council advised that the planning framework for the site and precinct were substantially changed in the delivery of the high school over land to which the covenants apply and noted that the existing covenants are not addressed as part of the proposed modification application. In response, the applicant acknowledged that whilst there are covenants applicable to the site, these were imposed under a separate DA (not the one to be modified). The applicant advised that they are of the view that those conditions requiring covenants were unlawful as dedication can only be undertaken by a VPA or similar. The applicant further advised that a VPA is best entered into at the time of the development of the mixed-use development or a rezoning planning proposal. It was finally noted by the applicant that the covenants as they currently exist require resolution but not under this current proposal. Council voiced significant concern with this position, noting that it would result in uncertainty in the delivery and dedication of an important community infrastructure project (the park) and would be disruptive to the orderly development of land generally within the precinct.
- Council further advised they are not of the opinion that the modification satisfies the “substantially the same test”. Given this, Council have not completed a full merit assessment of the proposal, citing concerns with the jurisdictional planning pathway being proposed to achieve development consent. Council advised that they have communicated this to the applicant from the outset of the DA and have consistently recommended that the proposal be presented as a new DA.
- The panel questioned the Planning Proposal (PP) referenced in the SEE, its status and how it relates to the proposed modification. The applicant advised that they have withdrawn the PP as Council were going to recommend refusal and at this point of time there is no PP in the system.
- The Panel, applicant and Council briefly discussed alternate options and solutions to facilitate the development pathway given the complexities with existing covenants and whether the jurisdictional pathway is appropriate. The Panel encourages both Council and the applicant to continue this work post briefing to attempt to facilitate an agreeable outcome for all parties.
- The applicant and Council indicated they have both sought legal advice on this matter. The Panel invite both the Applicant and Council (at their discretion) to provide the Panel with their respective legal advice. The Panel will consider any advice provided and intend on making a request to DPE’s Legal Team for their position.
- The Panel indicated that they wish to be briefed again in approximately 6 weeks (28 September 2023), following receipt of legal advice and DPE’s position and to hear the outcome of further negotiation and collaboration undertaken by the applicant and Council.