



Sustainable Development Assessments, Urban Assessments

Planning Assessment Report

Application to Modify Development Consent

MOD 187-12-2005 modifying DA 143-6-2005

1 SUMMARY

This report is an assessment of the proposed development the subject of Development Application Modification number MOD 187-12-2005 modifying DA 143-6-2005 under section 96(2) of the Act lodged by Meriton Apartments Pty Ltd on 6 December 2005.

Development Application DA 143-6-2005 was approved by the Minister on 17 November 2005.

The site is located at Lot 12, 1 Mary Street Rhodes in the City of Canada Bay Council area.

The Minister for Planning is consent authority for modifications to consents the Minister has granted.

Under the instrument of delegation dated 5 April 2006 and having regard to the Guidelines for Delegates, it is considered appropriate that the application be determined under delegation by the Executive Director of Sustainable Development Assessments.

It is recommended that the modification application be **approved**.

1.1 *Relevant approvals / modifications:*

DA 143-6-2005 was lodged with the Department on 9 June 2005 and sought consent for the erection of two apartment buildings containing 372 residential apartments, a childcare centre for 40 children, car parking for 483 vehicles and associated strata subdivision.

The Minister granted consent to DA143-6-2005 on 17 November 2005 for the following:

- (1) six interconnected residential buildings comprising no more than 307 units and a Gross Floor Area of no more than 32,283.2 square metres
- (2) basement car parking of no more than 413 cars,
- (3) a childcare centre accommodating no more than 40 children, and
- (4) subdivision (including strata subdivision).

The Development Application has been subject to the following modification applications;

MOD 191-12-2005 was approved under delegation by the Acting Deputy Director General in January 2006. It sought approval for the following changes:

- Level 1 - Reduction in basement footprint, resulting in additional deep soil zone adjacent to the cycleway.
- Level 2 - Reduction in basement footprint, resulting in additional deep soil zone adjacent to the cycleway.
- Use of void area for parking spaces. (This replaces area reduced from Level 1)
- Level 3 - Reduction in basement footprint, resulting in additional deep soil zone adjacent to the cycleway.
- Level 4 - Reduction in basement footprint, resulting in additional deep soil zone adjacent to the cycleway.

MOD 34-3-2006 was lodged on 13 March 2006. The application seeks approval to amend condition D11(1) to permit extended construction hours. The modification has not yet been determined.

MOD 58-4-2006 was approved under delegation in May 2006. Consent was granted to amend the Relative Levels (RLs) of the floor and ceiling heights of level 6 and above of Buildings C & D.

MOD 63-5-2006 was lodged on 2 May 2006 to amend the RLs for levels in Buildings A, B, E & F. The application has not yet been determined.

2 THE PROPOSED MODIFICATIONS

The modification application originally proposed an additional 16 units and 16 carparking spaces. The distributions of units was as follows; five (5) units in Building F adjacent to the cycleway, seven (7) units in Building F above the swimming pool and four (4) units in Building C above the basement entry.

Following a series of amendments, the applicant is now seeking to modify the approved development to provide an additional seven (7) units (4 x 2 bedroom units and 3 x 3 bedroom units) on the western side of Building F above the swimming pool and gymnasium facilities. No additional car parking is proposed to be provided.

The additional seven units will increase the floor area of the approved development by 975.1 square metres.

The approved western wing of Building F above the swimming pool and gymnasium provided one unit on each of the seven levels. The proposed additional units are to be located on the northern side of these units. The units do not have a street frontage.

3 STATUTORY FRAMEWORK

3.1 *Statement of permissibility*

The development is permissible within the Mixed Use zone pursuant to clause 11 of *Sydney Regional Environmental Plan No.29—Rhodes Peninsula*.

3.2 *Relevant planning instruments*

The environmental planning instruments, development control plans and other plans and policies applicable to the land to which the development application relate are as follows:

- *State Environmental Planning Policy No.11—Traffic Generating Development* (SEPP 11),
- *State Environmental Planning Policy No.32—Urban Consolidation (Redevelopment of Urban Land)* (SEPP 32),
- *State Environmental Planning Policy No.55—Remediation of Land* (SEPP 55),
- *State Environmental Planning Policy No.65—Design Quality of Residential Flat Buildings* (SEPP 65),
- *Sydney Regional Environmental Plan No.22—Parramatta River* (SREP 22),
- *Sydney Regional Environmental Plan No.29—Rhodes Peninsula* (SREP 29),
- *State Regional Environmental Plan (Sydney Harbour Catchment)*,
- *Sydney Harbour and Parramatta River Development Control Plan for SREP No.22 and SREP No.23* (Sydney Harbour and Parramatta River DCP),
- *Renewing Rhodes Development Control Plan* (Rhodes DCP),
- *Rhodes Peninsula Public Domain Technical Manual* (Rhodes PDTM), and

- *Concord Section 94 Plan.*
- *Sydney Harbour Foreshores and Waterways Area Development Control Plan 2004*

3.3 **Legislative context**

Pursuant to clause 6 of *State Environmental Planning Policy (Major Projects) 2005* (MP SEPP) (then *State Environmental Planning Policy (State Significant Development) 2005*) and the savings and transitional provisions of the MP SEPP, the Minister was the consent authority for the development under Part 4 of the Act. The Minister for Planning is consent authority for modifications to consents the Minister has granted.

4 **CONSULTATION / PUBLIC EXHIBITION**

4.1 **Public Notification**

The application was notified, in accordance with the Regulations as follows;

Notifications landowners/occupiers	– 1 owners corporation of Strata titled land
Newspaper advertisements	Advertised in Sydney Morning Herald on 26 January 2006 and Inner-West Weekly on 2 February 2006.
Site notice	January 2006.
Exhibition dates	Start: 27 January 2006 End: 10 February 2006.
Exhibition venues	<ul style="list-style-type: none">▪ Department of Planning - Planning Information Centre, 23-33 Bridge Street Sydney▪ City of Canada Bay Council▪ Concord West Library

No submissions were received regarding the application.

4.2 **Referrals**

The application was referred to Auburn Council and Canada Bay Council on 23 January 2006. No response has been received from either Council.

A number of agencies were notified of the proposal including; The Department of Energy, Utilities and Sustainability, DEC, Ministry of Transport, RailCorp, NSW Health, NSW Maritime Authority, RTA, SOPA, STA & Sydney Water.

DEC were the only agency to respond to the referral. DEC stated that they did not wish to make any specific comment on the modification application. DEC responded to flag the need to ensure that redevelopment of the area is coordinated and considerate of the difficulties that will be encountered through having residential occupancy and remediation of adjacent areas occurring concurrently.

5 **CONSIDERATION**

5.1 **Section 96**

The application is considered to meet the prerequisites of Section 96(2) of the Act in that the proposed modifications are considered to be of minimal environmental impact, and that the development as modified is considered to be substantially the same development as that to which consent was originally granted.

5.2 **Section 79C**

The application and the likely impacts of the proposed development have been considered in accordance with Section 79C of the Act. It is considered that the proposed development complies with the statutory controls and the relevant aims and objectives.

Relevant issues requiring further consideration are addressed below:

SREP 29 – Clause 14 Gross floor area

Issue: The modification proposes a gross floor area (GFA) in excess of that which is permitted by Clause 14 of SREP 29.

Raised by: Urban Assessments

Consideration: It is considered that Clause 14(2) of SREP 29 has been satisfied, therefore pursuant to clause 14(3) consent may be granted for development within Precinct A that results in the total GFA of all buildings within the precinct being greater than allowed by subclause (1) but not greater than 266 500 square metres.

Based on the information available to the Department, the total approved GFA in Precinct A is approximately 266 500 square metres.

The information submitted by Walker Corporation in support of a separate modification application (MOD 64-5-2006) for additional floor space on Lot 62 within Precinct A of Rhodes Peninsula, the total approved GFA in Precinct A is 266 322 square metres. The modification application submitted by Walker proposes to add the stated shortfall to the approved development on Lot 62.

The subject modification (MOD 187-12-2005) seeks to increase the floor space on Lot 12 by 975.1sqm, thus exceeding the floor space cap.

In accordance with clause 14(4) of SREP 29, State Environmental Planning Policy No.1 –Development Standards does not apply to the floor space control in clauses 14(1) or 14(3). According to current legal advice, a SEPP 1 objection is not required for S96 applications. It is therefore legally possible to vary the floor space control. The fact that it is legally possible does not preclude a merit assessment of the proposal.

The GFA control has been designed to limit impacts from uses contained within the site.

The application as amended proposes no additional car parking for the additional residential floor space however the use will generate some demand for amenity and services, result in traffic and transport impacts and increase the demand on local infrastructure. The capacity of the site and local area to accommodate the additional demand and impacts has not been adequately addressed by the applicant.

The approval of a variation to the floor space controls may set a precedent which other developers within Precincts A, B & C could reasonably rely on to increase the development yield on their sites. The cumulative impact of the approval of any variation to the floor space on the demand for infrastructure and services and the amenity impacts of the increases to the intensity of uses should therefore be taken into consideration.

A site by site consideration of any variation to the floor space controls may result in uncoordinated development within Rhodes Peninsula.

The most appropriate method to consider a variation floor space controls in SREP 29 would be to undertake a review of SREP 29 and revisit the studies carried out to determine the current floor space cap to determine the capacity available in the local infrastructure and services to the support additional floor area.

Resolution: The cumulative impact of any variation to the gross floor area control needs to be considered. However, the impacts resulting from this modification are not significant due to the absence of increased car parking.

SREP 29 - Clause 16 Height

Issue: The proposed development does not comply with the height control in SREP 29.

Raised by: Urban Assessments

- Consideration:* Clause 16 of SREP 29 states that a portion of a development may exceed the height limit. Specifically, clause 16(2) provides that not more than 5% of the total gross floor area allowed within Precinct A may be located above the 6th storey with a height of 9 or 10 storeys and, clause 16(3) states that not more than 4% of the total gross floor area allowed in Precinct A may be located above the 6th storey in buildings with a height of 7 or 8 storeys.
- The approved development in Precinct A has a total of 7.3% of the gross floor located at a height of 9 or 10 storeys and 5.2% of the gross floor area located in buildings with a height of 7 and 8 storeys.
- The approval of the existing non-compliance was based on providing an allowance for the significant amounts of gross floor area above the 6th storey consumed by the 8 and 10 storey commercial building approved as part of the mixed use zone within Precinct A. For the purposes of assessing compliance with the height control, the residential and mixed use components of Precinct A were considered separately. Using this method of assessing compliance with the height control, the approved residential component within Precinct A is at the maximum permitted at both a height of 7 and 8 storeys and 9 and 10 storeys, leaving no spare capacity to approve additional floor space at these levels.
- Building F has an approved height of 9 storeys. The application is seeking additional floor area on levels 7, 8, & 9. Specifically, the application seeks consent to provide an additional 310.6 square metres at the height of 7 & 8 storeys and 155.3 square metres at the height of the 9th storey.
- Resolution:* The cumulative impact of any variation to the height control needs to be considered. However, the impacts resulting from this modification application alone are not significant.

SEPP 65

- Issue:* Part 4 of SEPP 65 requires a S96(2) application to a development to which SEPP applies to be accompanied by a design verification statement. A design verification statement was not provided with the application as required.
- Raised by:* Urban Assessments
- Consideration:* The applicant was informed that a design verification statement was required prior to the determination of the application. A satisfactory statement has now been provided.
- Resolution:* The submission requirements for a S96(2) application subject to SEPP 65 have now been satisfied.

Rhodes Peninsula Development Control Plan 2000 (RDCP)

- Issue:* Traffic and parking impacts
- Raised by:* Urban Assessments
- Consideration:* The modification application originally proposed an additional 16 car parking spaces. Due to concerns raised by Urban Assessments regarding the traffic impacts which were likely to result from additional vehicular movements, the application was amended such that no additional car parking is to be provided.
- The approved development provided car parking in excess of the minimum requirement therefore in order to satisfy the car parking requirements in Clause 5.6.3(1) of the RDCP the applicant has redistributed the car parking to ensure that 1 car space will be provided to each new unit.
- As no additional car parking is to be provided, the additional floor space will not generate any additional traffic movements from resident's vehicles. A minor increase in the number of visitor vehicle movements can be expected. RDCP specifies a maximum visitor parking provision of 1 space per 10 units, therefore no additional

	visitor parking is required.
<i>Resolution:</i>	The proposal complies with the car parking requirements in Rhodes Peninsula DCP 2002 therefore the proposal is considered to be acceptable in this regard.
<i>Issue:</i>	Number of units served by a common lift lobby
<i>Raised by:</i>	Urban Assessments
<i>Consideration:</i>	<p>Clause 5.2.2 of RDCP states that to avoid long corridors the number of units served by a common lobby should be no more than 6 per floor, except in buildings within a high proportion of cross over and two storey apartments where the maximum is 15 units per circulation floor. A preliminary assessment of the application for an additional 16 units identified a non-compliance with this control.</p> <p>The amended proposal for an additional 7 units, results in 4 units being served by a lift lobby on levels 6, 8, 10 and 11, 3 units served by the lift on level 12 and 17 units being served by two lifts on levels 7 and 9.</p> <p>The Residential Flat Design Code provides a 'rule of thumb' for internal amenity which states that the number of units accessible from a single corridor should be limited to 8.</p> <p>With the exception of Levels 7 and 9, the proposal complies with the requirements of RDCP and the Residential Flat Design Code. It is considered that the articulation of the corridor and the provision of natural lighting will ensure that an adequate level of amenity is provided to the internal corridors on levels 7 and 9 despite the minor variation proposed.</p>
<i>Resolution:</i>	An adequate level of amenity is provided to the internal corridor despite the minor non-compliance proposed.
<i>Issue:</i>	Separation distances
<i>Raised by:</i>	Urban Assessments
<i>Consideration:</i>	<p>An assessment of the proposal for an additional 16 units raised concerns with the separation distances between units in Building F and identified a potential non-compliance with the separation distances required by clause 5.2.9 of RDCP.</p> <p>To ensure privacy between dwellings, clause 5.2.9 of RDCP requires the following minimum separation distances to be provided between openings of different dwellings;</p> <ul style="list-style-type: none">- 6m between non-habitable rooms- 9m between habitable and non-habitable rooms- 12m between habitable rooms <p>The minimum distance of separation between the bedrooms of the proposed units and the bedrooms of other units within Building F on levels 6, 7 & 8 is approximately 6m. The distance of separation between the bedroom windows proposed on levels 9 & 10 and the balconies of other units in Building F on these levels is less than 12m.</p> <p>In a letter dated 6 April 2006 the applicant has indicated that the potential privacy impact could be overcome through the provision of louvred privacy screens.</p> <p>The planning principle established in <i>Meriton v Sydney City Council</i> [2004] NSW LEC 313 relating to the protection of visual privacy states that overlooking from bedrooms is considered less objectionable than overlooking from a living room as people tend to spend less waking time in a bedroom. The principle also notes that privacy is more difficult to protect in high density areas and that other devices can be used to protect privacy including skewed windows and fixed louvres.</p> <p>Based on this planning principle, it is considered that given only a small number of units will be affected and that the visual privacy impact results from oblique views from bedrooms windows, the provision of fixed louvred privacy screens would</p>

- adequately mitigate the privacy impacts arising from the proposed additional units.
- The privacy screens are not shown on the plans submitted therefore if this is deemed to be an acceptable solution to mitigate the privacy impacts of the proposed units, a condition will be required to be included on the consent.
- Resolution:* A condition of consent can be included (subject to the agreement of the applicant) to require fixed louvre privacy screens on the bedroom windows of the proposed units on levels 6, 7,8,9 & 10 to mitigate the privacy impacts arising from the proposed modification.
- Issue:* Impact of proposed modifications on the street frontage
- Raised by:* Urban Assessments
- Consideration:* A preliminary assessment of the modification application for 16 units raised concerns regarding the impacts of the modifications on the street frontages of the development.
- The amended application proposes 7 units, all of which are located to the west of Building F which is within the internal space of the development. None of the proposed units have a street frontage. The units are also not in a position which will interfere with views through or into the development from the public domain and will not therefore contribute significantly to the overall visual bulk of the development as viewed from the public domain.
- Resolution:* It is considered that the proposed modification will not significantly impact on the visual bulk of the development as viewed from the public domain.
- Issue:* Provision of storage space
- Raised by:* Urban Assessments
- Consideration:* Clause 5.5.5(7) of RDCP requires storage to be provided to every dwelling. Half of the required storage is to be located within the dwelling, not forming part of a bedroom or kitchen. Provision is to be made for storage at the following rates:
2 bedrooms – 10 cubic metres
3+ bedrooms – 12.5 cubic metres
- The applicant has advised that the proposed 2 bedroom apartments will contain 1.82 cubic metres of storage space within the apartments and the remainder being allocated to approved storage space within the car parking basement levels. The 3 bedrooms apartments will contain 3.24 cubic metres of storage space within the apartment (excluding a bedroom or kitchen), with the remainder being provided in approved storage areas in the basement levels.
- Whilst half the required storage is not provided in the dwelling, each unit will still have access to the required amount of storage.
- The applicant has also advised that a construction certificate plan will be submitted to a Certifying Authority showing storeroom space in accordance with the total storage area required under the DCP.
- Resolution:* The variation to the requirement for half the required storage to be located within the dwelling is acceptable given the small number of units which are the subject of this modification application and considering the intent of the control is achieved as the total amount of storage provided complies with the DCP requirement.

6 CONCLUSION

The Minister for Planning is the consent authority for modifications to consents he has granted.

The proposed development as modified is considered to be substantially the same development as that originally approved.

The application has been considered with regard to the matters raised in section 79C of the Act. The application has been notified in accordance with the Regulations. No submissions were received in the notification period.

Whilst it is acknowledged that the impacts from this proposed modification are not significant, the precedent and cumulative impacts of this variation from the GFA set in SREP 29 warrant serious consideration.

The impacts from the proposed modification are not significant. Therefore, should the Executive Director be of the opinion that the cumulative impact of future modifications can be appropriately managed, it is recommended that the application be approved.

6 CONSULTATION WITH APPLICANT – DRAFT CONDITIONS

The Applicant was asked to comment on the draft conditions on 19 May 2006. The applicant advised that no objections were raised to the draft conditions on 19 May 2006.

7 RECOMMENDATION

Should the Executive Director be of the opinion that the cumulative impact of future modifications can be appropriately managed, it is recommended that the Executive Director pursuant to Sections 81 and 96(2) of the *Environmental Planning and Assessment Act, 1979* and clause 122 (2) of the *Environmental Planning and Assessment Regulations, 2000*:

- (A) **approve** the application subject to conditions (tagged “A”), and
- (B) Amend SREP 29 to prohibit future increases of the Gross Floor Area.

For Executive Director Approval

Endorsed by

Michael File
Team Leader, Urban Assessments

Heather Warton
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