



Planning Assessment Report

Development Application DA No.143-6-2005

1 SUMMARY

This report is an assessment of the proposed development the subject of Development Application number DA 143-6-2005.

The application as lodged seeks consent for the erection of two apartment buildings containing 372 residential apartments, childcare centre for 40 children, car parking for 483 vehicles and associated strata subdivision.

The Minister for Planning is consent authority under Clause 6 of *State Environmental Planning Policy (State Significant Development) 2005*.

It is recommended that the development application be **granted consent** subject to conditions and limited to the following description:

- (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).

2 BACKGROUND

2.1 Site Context

The Subject Site (the Site) is located within 1 Mary Street, Rhodes in the Canada Bay Council Local Government Area and is known as Lot 62 (Tag "D").

The development application was lodged with the Department on 9 June 2005 in accordance with the *Environmental Planning and Assessment Act, 1979* (the Act).

The Site is located within Rhodes Peninsula and is within the land known as Precinct A identified in *Sydney Regional Environmental Plan No.29—Rhodes Peninsula* (Dark blue line at Tag "D"). Precinct A forms the south-western part of the Peninsula. The Precinct is bound by the Great Northern Railway Line to the east, Oulton Avenue to the south, Homebush Bay to the west, and, to the north, Mary Street, Marquet Street, and the lands at 40 Walker Street and 10-16 Marquet Street. The Rhodes Railway Station is located close to the north eastern edge of Precinct A.

The Site results from previous subdivisions of Precinct A granted under previous development consents. This staged subdivision identifies the Site as being bound by Marquet Street to the east, Mary Street to the south, Shoreline Drive to the west, and the boundary with 10-16 Marquet Street to the north. (Tag "D").

A site visit was conducted on 28 June 2005.

2.2 *Relevant approvals*

Prior to the gazettal of SREP 29, Concord Council granted consent to the remediation of land at 1 Mary Street in DA 98/99.

After the gazettal of SREP 29 in November 1999, the Minister granted consent to the following principal development applications in Precinct A and identified on the map tagged “D”:

- DA 310-11-2001 — Subdivision, bulk earthworks, retail shopping centre with bulky goods retailing, commercial offices, and development for 130 residential units (Lots 1, 2 and 6).
- DA 375-12-2001 — Development of two commercial office buildings, subdivision, use of stratum in adjoining retail development for car parking, pedestrian/cycleway connections, and related road infrastructure (Lot 2 and 6).
- DA 99-3-2003 — Residential development over two lots comprising a total of 223 residential units, bulk earthworks, car parking totalling 292 units, infrastructure, ancillary landscaping work, and strata subdivision (Lots 3 and 4).
- DA 223-5-2003 — Landscaping, servicing and drainage of public domain, recreational cycleway, lighting and street furniture, road design, and associated infrastructure works.
- DA 427-9-2003 — Eight residential buildings comprising a total of 150 units, and 174 basement car spaces, excavation and bulk earthworks, ancillary infrastructure, and subdivision (Lot 5).
- DA 514-12-2003 — Three residential buildings comprising a total of 157 units and 187 basement car spaces, excavation and bulk earthworks, ancillary infrastructure, and subdivision (Lot 8).
- DA 453-10-2003 — Four residential buildings comprising a total of 97 units and 125 basement car spaces, excavation and bulk earthworks, ancillary infrastructure, and subdivision (Lot 10).
- DA 475-11-2003 — Three residential buildings (comprising a total of 95 units and 123 car spaces, excavation, bulk earthworks, and strata subdivision) and landscaping of Sevier Avenue and Neighbourhood Park (Lot 9).
- DA 520-12-2003 — Four residential buildings comprising a total of 220 units and 276 car spaces, excavation, bulk earthworks, and strata subdivision (Lot 7).
- DA 502-12-2003 — Four integrated residential buildings comprising a total of 111 units and 154 car spaces, excavation, bulk earthworks, and strata subdivision (Lot 11).

3 *THE PROPOSED DEVELOPMENT*

3.1 *Development, as lodged*

The proposed development as lodged seeks consent for the:

- Erection of two apartment buildings containing 372 residential apartments, childcare centre for 40 children, car parking for 483 vehicles and associated strata subdivision

3.2 Amended Plans (25 August 2005)

On 25 August 2005, the Applicant amended the development as lodged with amending plans. These plans involved amending the development as follows:

- development of 4 buildings (instead of 2) interconnected over basement parking,
- reduction in the number of units from 372 to 340 and associated car parking,
- reduction in the amount of gross floor area from 39,081.8 square metres to 36,241.7 square metres,
- achievement of floorplates of 750 square metres above 6 storeys, as per the *Renewing Rhodes Development Control Plan*,
- amendments to the number of units sharing a lobby and corridor,
- amendments to the basement to improve internal safety and security,
- refinement of street address of building, particularly on Marquet Street, and
- inclusion of windows to bathrooms to reduce reliance on mechanical ventilation.

On assessment of the amending plans, the Applicant was informed that significant planning issues still remained with the design of the development as amended.

3.3 Amended Plans (24 August 2005)

On 21 October 2005, the Applicant further amended the development as amended. These amending plans included amending the development as follows:

- development of 6 buildings (instead of 4) interconnected over basement parking,
- reduction in gross floor area from 36,241.7 square metres to 32,289.2 square metres,
- reduction in the number of units from 340 to 307 and associated car parking,
- reduced building bulk and achievement of building setbacks,
- greater articulation of the building facade and of levels above 6 storeys, and
- reduced wall height adjacent to Marquet Street and Shoreline Drive

These amendments differ from the development application submitted but do not give rise to any additional impacts compared to the development applications as lodged or previously amended. Accordingly, these amendments were accepted as a replacement application in accordance with clauses 55 and 90 of the *Environmental Planning & Assessment Regulation 2000* (the Regulations). In accordance with clause 90 of the Regulations further notification of the application was not undertaken (or alternatively, describe re-notification process), and the Applicant was advised of the acceptance of the amended plans on 4 November 2005.

4 STATUTORY FRAMEWORK

4.1 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*.

4.2 Instrument of consent and other relevant planning instruments

Pursuant to clause 6 of the *State Environmental Planning Policy (State Significant Development) 2005* (SSD SEPP) and the savings and transitional provisions of the *State Environmental Planning Policy (Major Projects) 2005*, the Minister is the consent authority for development on land within Rhodes Peninsula under Part 4 of the Act.

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

- *State Environmental Planning Policy No.1—Development Standards* (SEPP 1),
- *Draft State Environmental Planning Policy No.1—Development Standards* (SEPP1),
- *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.56—Sydney Harbour Foreshores and Tributaries* (SEPP 56),
- *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),
- *Draft State Regional Environmental Plan (Sydney Harbour Catchment) 2004* (Draft Sydney Harbour Catchment SREP),
- *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*.

4.3 Legislative context

The proposed development is state significant development pursuant to Part 4 of the Act, SREP 29 and the SSD SEPP.

The proposed development is integrated development pursuant to Section 91 of the Act as approval is required under the *Roads Act, 1993* for the purposes of a vehicular crossover at Mary Street into the proposed development. The approval authority is the City of Canada Bay Council.

4.4 Other statutory provisions

A draft Development Control Plan has been prepared by the Department to assist with the interpretation of the Draft Sydney Harbour Catchment SREP. The title of this draft Development Control Plan is as follows:

- *Draft Sydney Harbour Foreshores and Waterways Area Development Control Plan 2004* (Draft Sydney Harbour Foreshores and Waterways Area DCP),

Section 79C (1) (a) does not require a consent authority to consider draft Development Control Plans when evaluating development applications. However, a draft Development Control Plan is a matter of public interest and, pursuant to Section 79C (1) (e), the Draft Sydney Harbour Foreshores and Waterways Area DCP formed part of the consideration on the merits of the development application.

5 CONSULTATION

5.1 Public consultation

The application was notified, in accordance with the Regulations including:

Notifications – landowners/occupiers	27 Land owners 5 Occupiers 4 Owners Corporation of Strata titled land 4 Residents groups
Newspaper advertisements	Advertised in Sydney Morning Herald on 27 June 2005 and Inner Western Suburbs Courier on 28 June 2005.
Site notices	28 June 2005
Exhibition dates	Start: 28 June 2005. End: 29 July 2005.
Exhibition venues	▪ Information Centre, 23-33 Bridge Street Sydney ▪ City of Canada Bay Council, 1A Marlborough Street, Drummoyne ▪ Canada Bay Library (Concord West Branch), 283 Concord Road, Concord West

One submission was received from private members of the public regarding the Application.

Submissions were received from 3 public authorities during exhibition, namely the Roads and Traffic Authority, Sydney Water, and RailCorp. The matters raised in these submissions are considered in 5.2 and 6.2 of this report.

The Department received a copy of the views of the Sydney Harbour Design Review Panel. These are discussed in 5.2.6 below.

5.2 Referrals

5.2.1 Integrated Approval Bodies

The application was integrated development under the *Roads Act 1993* pursuant to Section 91 of the Act.

Council is the approval body for the integrated part of the proposed development. The Council did not provide its general terms to the Department before assessment was finalised.

5.2.2 Council

The application was referred to the City of Canada Bay Council on 23 February 2004 in accordance with the Regulations. Council did not respond to this letter or provide comments on the proposed development.

5.2.3 Roads and Traffic Authority

The application was referred to the Roads and Traffic Authority (RTA) on 21 June 2005. The RTA provided a response to the development application on 21 July 2005.

The proposed development is subject to SEPP 11 by virtue of the proposed car parking numbers on site. The Sydney Regional Development Advisory Committee (SRDAC), a committee of the RTA, considered the subject development application at its meeting of 6 July 2005.

The comments of SRDAC and RTA were that:

- it raised no objection to the proposed development on traffic grounds given the traffic generated from the proposed development was included in the Traffic Management Plan (TMP),
- the Applicant should make a financial contribution to the delivery of the TMP for the Rhodes Peninsula,
- the layout of the car parking areas associated with the subject development including driveways, turning paths, grades, aisle widths, sight distance requirements and parking bay dimensions) should be in accordance with the two relevant Australian standards (AS 2890.1-2004 and AS 2890.2-2002), and
- All work associated with the proposed development shall be at no cost to the RTA.

In response to these comments:

- the Site's original owner and development of much of Precinct A is understood to have contributed to the delivery of the TMP for the Rhodes Peninsula and it is inappropriate to seek additional funds from this Applicant,
- conditions are proposed that will require the layout of car parking areas to be consistent with the relevant Australian Standards (**Condition B16, Part B**), and
- it is unnecessary to impose the RTA request as to costs.

5.2.4 Sydney Water

The application was referred to Sydney Water on 21 June 2005. Sydney Water responded to the development application on 23 August 2005. The letter provided the following comments:

- The development requires a Section 73 Compliance Certificate,
- The development will be in the vicinity of or over Sydney Water pipes, structures and infrastructure and these items must comply with Sydney Water's requirements,
- The development should be connected to the Water Reclamation and Management System (WRAMS),
- The development should incorporate water conservation measures,
- The development should ensure that water and wastewater infrastructure is protected from potential risks of soil and/or ground water contamination,
- The development should satisfy Sydney Water Trade Waste requirements, and
- The development should ensure that soft landscaping does not affect Sydney Water assets.

In response to these comments, the comments are generally noted. In particular,

- The developer is duty bound to seek a Section 73 Compliance Certificate (which is reinforced by an advisory note—**AN1, Advisory Notes**) and this certificate issued

can include specific requirements to ensure the protection of Sydney Water's infrastructure and to ensure trade waste requirements are met by the Applicant,

- Conditions (**Condition B17, B18, and B19, Part B**) require further landscaping details to be provided as a separate approval and Sydney Water's requirements should be considered at that stage,

5.2.5 RailCorp

The application was referred to RailCorp on 21 June 2005. RailCorp responded to the development application on 21 July 2005. The letter provided the following comments:

- the development should comply with RailCorp's guidelines on noise and vibration
- the applicant should provide an electrolysis report to assess the risk from stray currents resulting from rail activities, and
- during construction, no cranes and other aerial operations should extend above or be within 3 metres of the railway corridor.

In response to these comments, these issues are not considered relevant as the Site is more than 150 metres from the railway corridor.

5.2.6 Sydney Harbour Design Review Panel

The Applicant sought the views of the Sydney Harbour Design Review Panel (SHDRP) before lodging the development application on 22 April 2005. The SHDRP raised concerns with:

- raised concern at the design relationship of the buildings facing Shoreline Drive, and
- had concerns of cross-ventilated units.

The SHDRP suggested no recommended changes, but stressed their support for the scheme relied on quality of materials employed on the site, particularly the sandstone wall to Shoreline Drive.

The Department has considered the matters raised by the SHDRP in the assessment of the development application. The outcome from these considerations is as follows:

- The design relationship of the buildings facing Shoreline Drive is adequate and does not require significant design changes,
- The number of cross-ventilated units were improved as a result of amendments to the plans lodged by the Applicant on 21 October 2005, and
- A condition of consent requires the quality of materials to be the subject of a separate approval before the issuing of a Construction certificate (**Condition B4 (3), Part B**).

5.3 Internal consultations

The Department's regional team has been consulted regarding the application concerning the SEPP 1 Objection. At the time of finalising assessment, the regional team had not raised any matters concerning this issue.

6 CONSIDERATION

6.1 *The Environmental Planning & Assessment Act*

6.1.1 *Section 79C*

The application and the likely impacts of the proposed development have been considered in accordance with Section 79C of the Act. Significant issues are discussed below in Section 6.2.

In summary, the Site is considered suitable for the proposed development. Submissions have been considered and the significant issues raised in submissions are discussed in Section 6.2.

6.2 *Issues*

6.2.1 *Gross floor area sought on the Subject Site*

Issue: The appropriate amount of gross floor area sought on the subject site

Raised by: Urban Assessments

Consideration: Precinct A, which includes the Subject Site, has a maximum GFA in SREP 29 of 266,500 square metres. This maximum may only be achieved providing the open space is dedicated to the Minister. The GFA cannot be further increased except through amendments to SREP 29.

At the time of lodgement, 221,297 square metres had been granted consent within Precinct A, leaving a total of 45,203 square metres of GFA. The proposed development as lodged sought a gross floor area (GFA) of 39,081.8 square metres. This represents nearly 86.5% of the GFA remaining in Precinct A.

It is common knowledge in the planning profession and allied fields that it is possible to identify the appropriate density by examining the extent of the development non-compliance with key planning controls and its achievement of objectives and aims of the instruments. In the context of a maximum GFA in SREP 29, a key objective and aim is the orderly and economic use and development of land.

The development as lodged on the Subject Site incorporated a large degree of non-compliance with planning controls, objectives, aims and planning principles, particularly issues of orderly and economic use and development of land. The extent of these non-compliance were significant, particularly in regards to the issues of scale and built form.

In this context, the density of development as lodged by the Applicant on the Subject Site of 39,081 square metres was **not** sustainable.

The Applicant was advised that the gross floor area of 39,081.8 square metres was not sustainable and that amendments would be necessary to reduce the GFA. The Applicant submitted amending designs on 25 August 2005 reduced the GFA on site to 36,241.7 square metres. An assessment of this amending plan identified that, whilst it represented a more compliant scheme, the development continued to reflect the unamended design by incorporating non-compliance with the same planning controls, objectives and aims. Consequently, the amended plan was considered to be **not** sustainable for the same reasons as above.

The Applicant provided further amending plans on 21 October 2005. These designs involved a further reduction in a GFA to 32,283.2 square metres. An assessment indicates that the proposed development better represents the orderly and economic use and development of land through complying with scale and built form controls. The development is therefore sustainable and, whilst there are some non-compliance issues remaining, these are no longer significant to withhold a consent and may be dealt with by condition or waived.

Resolution: The GFA of 32,283.2 square metres sought by the proposed development is sustainable and better represents the orderly and economic use and development of

land through complying with scale and built form controls.

6.2.2 Acquisition of land zoned open space

Issue: Access to gross floor area above 205,000 square metres and dedication of land zoned open space

Raised by: Urban Assessments

Consideration: Clause 19 requires that the Minister acquire land that is zoned open space.

At the time of evaluating this development application, Precinct A had:

- development consents for 221,297 square metres, and
- further development applications had been lodged seeking 45,150 square metres, including the 32,289.2 square metres of the proposed development on the subject site.

Consequently, the total amount of floor space sought by the Applicant in Precinct A is 266,447 square metres. This amount exceeds the figure in Clause 14 (1) of SREP 29 of 205,000 square metres and, pursuant to Clause 14 (2) and (3), 266,500 square metres is available to the Applicant if they dedicate free of cost to the Minister all land zoned open space free.

Clause 19 of SREP 29 indicates that the Minister may acquire all land zoned open space unless the land might be reasonably required as a condition of development consent. The Applicant has no control or ownership over land zoned open space and, strictly speaking, should be required to wait until there is a legal agreement between the Minister as Corporation Sole and the owner of land zoned open space within Precinct A. This, however, does not represent the equitable or orderly development of land within Precinct A.

The owner of the land zoned open space has made clear to the Department in various documentation accompanying development applications lodged and in meetings since 2001 that they would develop above 205,000 square metres and would dedicate land to the Minister free of cost. As such, there are various development consents that the owner has activated that require positive covenants providing unrestricted access to that land. This owner is proposing to enter into a deed of agreement with the Minister as Corporation Sole to finalise the transfer of land.

In this context, it is considered appropriate to grant consent to the development knowing that arrangements are in place to permit the release of land identified in Clause 14(3) of SREP 29, namely 266,500 square metres.

Resolution: The proposed development is acceptable.

6.2.3 Landscaping

Issue: Landscaping design for the communal open space within the Subject Site and the pedestrian / cycleway along the northern edge of the Subject Site

Raised by: Urban Assessments

Consideration: The proposed development provides a landscaping concept plan for the communal open space and that part of the pedestrian cycleway intended in the Rhodes DCP to connect the Foreshore Park with the Rhodes Railway Station.

The level of detail provided in the landscape concept plan is too scarce and does not provide sufficient certainty on the adequacy on the quality of the design of this space. This is particularly when the pedestrian / cycleway is likely to be dedicated to the Council for public ownership at some future date.

Therefore, it is appropriate to request that the Applicant provide additional information for further approvals on landscaping. This information would include:

- details on the cycleway and that it is consistent with the requirements of the Rhodes DCP,

- details on the communal open space, and
- require a wind impact report to determine whether the landscape design and tree species chosen will ameliorate wind impacts on residents and people using both the public domain outside the site and communal open space within the Site.

Resolution: Conditions (**Condition B17, B18 and B19, Part B**) require that the Applicant provide for further approval details on the landscaping of the cycleway and public domain and that the landscaping of these areas include consideration of wind impacts.

6.2.4 Dedication of pedestrian / cycleway

Issue: Process and flexibility to ensure pedestrian / cycleway is capable of being dedicated to Council

Raised by: Urban Assessments

Consideration: The Rhodes DCP identifies a pedestrian / cycleway connecting the Foreshore Park and Rhodes Railway Station. Half of the pedestrian cycleway between Shoreline Drive and Marquet Street is located within the Subject Site.

The proposed development remains generally silent on the terms and arrangements for the pedestrian / cycleway to be accessible and fails to address who may own the cycleway in the future.

In this context, it is appropriate to impose conditions on the consent that ensure that access is maintained over the pedestrian / cycleway and that arrangements are set up to ensure that there are limited obstacles to dedicating the pedestrian / cycleway to the likely public authority, that being Council.

Resolution: Conditions (**Condition E1 and E3, Part B and Condition F1, Part F**) require the Applicant to:

- provide unrestricted access over the pedestrian / cycleway,
- ensure that a separate torrens lot is created for the pedestrian / cycleway, and
- ensure that these measures are instituted, along with landscaping, prior to the buildings being available for occupation.

7 CONCLUSION

The Minister for Planning is the consent authority.

The application has been considered with regard to the matters raised in section 79C of the Act and Council were consulted and provided general terms of approval under the Integrated Development Provisions within the Act.

The application has been notified in accordance with the Regulations. All submissions received in the period prescribed by the Regulations have been considered.

On balance, it is considered that the proposed development is acceptable and should be approved.

8 CONSULTATION WITH APPLICANT – DRAFT CONDITIONS

The Applicant was asked to comment on the draft conditions of consent on 6 October 2005. The Applicant responded on 20 October 2005 identifying general acceptance of the draft conditions and submitted amending plans that incorporated many of the recommended draft conditions. The Applicant also requested some changes to the draft condition and these are identified below along with the Department's response.

Applicant's comment	Department's response
The condition should correctly identify the absolute GFA permissible on the site	Agreed.
The entry to lift lobbies have been dealt with on amended plans	The entries proposed are not clear and, in one case, could be described as torturous. The condition is still valid and should remain.
The condition for building depth be amended due to a grammatical error (double negative)	Amended plans lodged on 21 October 2005 have concluded that this condition is no longer necessary
The condition requiring an access consultant report's be deleted	Discussions with the Applicant indicated that they no longer object to this condition and will now engage an access consultant for this report.
The condition concerning the childcare design is clear that separate approval from the Department of Community Services is not required before the issue of a construction certificate	The intention of this condition has been clarified with the Applicant and made clear that it is not the intention to require separate approval from the Department of Community Services
The conditions requiring the land to be remediated is unnecessary as the land has previously been remediated,	The conditions relating to this matter have been deleted from the consent
The car parking allocation condition be amended to reflect those numbers arising from the amended plans,	Agreed.
The conditions for landscaping should be amended to require the resolution of landscaping design prior to the issue of construction certificate for landscaping works,	Landscaping works are not subject to a Construction Certificate process. It is recommended that changes are made to ensure that landscaping details are completed before approval of above ground works, instead of basement works.
The condition concerning road works are unnecessary as none are proposed,	Agreed and the condition has been deleted.
The condition concerning external lighting clarify when the condition is applicable,	Agreed.
The hours of work on Saturday should commence at 7am instead of 8am,	Agreed.

9 RECOMMENDATION

It is recommended that the Minister for Planning

- (A) **form the opinion** that the application is state significant development pursuant to clause 6 of *State Environmental Planning Policy (State Significant Development) 2005* by virtue of the development being described in clause 8 (e), Schedule 2 of that policy,
- (B) **waive** the requirement for a masterplan pursuant to Clause 14 (3) of *State Environmental Planning Policy No.56—Sydney Harbour Foreshores and Tributaries*
- (C) **grant** consent to the application subject to conditions (Tagged “A”), pursuant to section 80 (1) and 80A of the *Environmental Planning and Assessment Act, 1979* (as amended) and clause 6 of *State Environmental Planning Policy (State Significant Development) 2005*, and
- (D) **authorise** the Department to carry out post-determination notification.

Prepared by:

Endorsed by

Antony Pedroza

Robert Black

A\ Senior Planner, Urban Assessments Director, Urban Assessments