



Strategic Sites and Urban Renewals, Urban Assessments

Planning Assessment Report

Application to Modify Development Consent

MOD 68-5-2005 modifying DA 375-12-2001

1 SUMMARY

This report is an assessment of the proposed development the subject of Development Application Modification number MOD 68-5-2005 modifying DA 375-12-2001 under section 96(2) of the Act lodged by Walker Corporation on 25 May 2005.

The application seeks to modify Development Application DA 375-12-2001 approved by the Minister on 11 September 2002 by adding two storeys to the approved (but, not built) "Building 4" of 10 storeys.

The site is located at 1 Mary Street, Rhodes in the Canada Bay local government area.

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

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

1.1 *Relevant approvals / modifications:*

The development consent granted on 11 September 2002 for DA 375-12-2001 was for the following:

- erection and use of two commercial buildings (Buildings 3 and 4);
- subdivision of two separate Lots 3 and 4 on which Buildings 3 and 4 are each located and the associated public right of way, easement for light and air and right of access over ramps and driveways;
- use of stratum in the adjoining retail development for car parking;
- vehicle access comprising separate ingress and egress connections to South St;
- pedestrian/cycleway connection to/from the railway station and along South St connecting to Urban St/Mangrove St; and completion of road infrastructure.

The Development Application has been subject to previous modifications. These modifications comprise the following:

MOD 95-11-2002 approved on 12 December 2002:

- Allowed the use of car parking designated for commercial buildings to be used as overflow parking for adjoining retail uses after normal business hours on weekdays and on weekends.

MOD 87-9-2004 approved on 7 October 2004:

- Amended conditions 3.4 and 12.7.1 to extend office parking use for overflow retail parking to public holidays.

MOD 113-11-2004 approved on 1 December 2004:

- Amended condition 14.10 to allowing the occupation certificate for the retail centre to be released prior to the upgrade of Rhodes Railway Station.

MOD 119-11-2004 approved on 20 November 2004:

- Amended condition 1.5 to correct the commercial GFA distribution between Buildings 3 and 4.

MOD 12-1-2005 approved on 10 February 2005:

- Amended condition 1.4 to correct the reference to “ retail floor space” to “local shops”.

MOD 143-9-2005 approved on 16 November 2005:

- Amended condition 12.7.1 to delete requirement for leasing car park.

The Development Application is also subject to other applications for modification. These applications comprise the following:

MOD 27-3-2004:

- Bulk excavations, basement works and alteration of conditions of consent to allow an additional 175 car spaces and an additional basement level.

MOD 19-2-2005:

- Conversion of 298m² of “Local Shops” in Building 3 to “Shops”.

Another application for modification under s96 (1A) has been lodged to a previous Development Consent (310-11-2001), which would require modification of the floor space allocation to building 4 should this modification be approved. This is subject to a separate report.

2 THE PROPOSED MODIFICATIONS

The applicant is seeking to modify conditions 1.1 and 1.4 of the approved development to permit:

- the addition of two floors to 12 storeys to the commercial Building 4 utilising the same design, colour and materials, and
- as a consequence of the additional floors, increase the floor area of the building by 4,718 m² to a total of 28,471 m² GFA.

3 STATUTORY FRAMEWORK

3.1 Statement of permissibility

The proposed use is permissible within the Residential and Mixed Use zones pursuant to clause 11 of *Sydney Regional Environmental Plan No.29—Rhodes Peninsula* but would not be permissible in a development application as the resultant gross floor area would exceed the allowable limit of 50,000m² under clause 15 to which variation cannot be made by means of *State Environmental Planning Policy No.1—Development Standards*.

However, legal advice has been confirmed that such a restriction would only apply to the granting of consent to a development application under section 80 of the Act and does not apply to the modification of a development consent under section 96 of the Act. Accordingly, the floor space prohibition under clause 15 of *SREP 29* does not

preclude the approval of the modification application but it is still a relevant matter to be considered under section 96(3) of the Act.

3.2 ***Instrument of consent and other relevant planning instruments***

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

- *State Environmental Planning Policy (Major Projects) 2005 (MP SEPP)*
- *State Environmental Planning Policy No.11—Traffic Generating Development (SEPP 11),*
- *State Environmental Planning Policy No.55—Remediation of Land (SEPP 55),*
- *Draft State Environmental Planning Policy No.66—Integration of Land Use and Transport*
- *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*
- *SREP No.23 (Sydney Harbour and Parramatta River DCP),*
- *Renewing Rhodes Development Control Plan (Rhodes DCP),*
- *Rhodes Peninsula Public Domain Technical Manual (Rhodes PDTM),*
- *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**

The application was notified, in accordance with the Regulations

Notifications – landowners/occupiers	The Rhodes Notification Mailing List
Newspaper advertisements	Advertised in Inner Western Suburbs and Sydney Morning Herald.
Exhibition dates	Start: 5 July 2005. End: 18 July 2005.
Exhibition venues	<ul style="list-style-type: none"> ▪ Planning Information Centre, 23-33 Bridge Street Sydney ▪ Drummoyne Citizen Services Centre, 1A Marlborough Street, Drummoyne ▪ Concord West Library, 283 Concord Road, Concord West

No public submissions from the notification were received regarding the Application.

The application was referred to the Canada Bay Council on 27 June 2005 and its submission objecting to the application is discussed in Section 5 of this report.

The application was also referred to other relevant Agencies and the issues raised by Rail Corp, Sydney Harbour and Foreshores Committee are discussed in Section 5 of this report.

5 CONSIDERATION

5.1 Section 96

In order to be approved, the application must meet the prerequisites of Section 96(2) of the Act in that the development as modified is considered to be substantially the same development as that to which consent was originally granted.

Guidance on the proper consideration of this is provided by case law in that in comparing the development as currently approved and that as modified is that it is “*essentially or materially or having the same essence*”. The comparison involves an “*appreciation, qualitative, as well as quantitative, of the developments being compared in their proper contexts (including the circumstances in which the development consent is granted)*” (Bignold J in *Moto Projects (No.2) Pty Ltd V North Sydney Council* (1999) 106 LGERA 298).

Having regard to the assessment of the application as outlined below, it is considered that it would be reasonable to make a factual finding in the circumstances that the development as modified would **not** be substantially the same development as that which was granted development consent.

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. The consideration is also given to relevant provisions of *SREP 29*.

Relevant issues requiring further consideration are addressed below.

5.3 Issues

5.3.1 Floor space limitations for commercial offices

Issue: The proposed modification would result in the floor space limitations on commercial offices within *SREP 29* to be exceeded.

Raised by: Urban Assessments

Consideration: In the making of *SREP 29*, the amount of floor space permitted for commercial offices was limited to 50,000m² with the potential for variation by *SEPP1* disabled. This is an unambiguous and purposeful intention to limit this land use and the business role of Rhodes.

This was arrived at after extensive consideration of the future role for Rhodes as a business centre and in particular, the potential impact for the development of Parramatta as the nominated regional centre for business growth as well as:

- The suitable level of employment and business for a sub-regional centre in this location having regard to limitations in functional diversity and supporting infrastructure;
- The limitations of the public transport system to access its catchment with a choice of transport options having regard to the lack of a radial

access because of its peninsula location;

- The constraints on road based transport to service business functions and commuter travel having regard to the limitation of access to a single arterial road which suffers significant congestion.
- The potential impact on cross regional road transport movements, and consequent economic impacts, from excessive traffic generation from Rhodes.

The applicants were requested to provide further substantiation in terms of the underlying land use matters that were considered prior to the gazettal of SREP 29.

An Impact Assessment undertaken by SGS Economics and Planning was provided by the applicant which investigated the potential impact of the additional floor space on surrounding centres. (SGS undertook a similar analysis for the Department in its consideration of options for commercial uses in the preparation of the REP).

While the methodology used for projecting commercial floor space demand in employment centres based on population growth within the respective LGA is not entirely accepted, its conclusions that the addition of 4,718 m² floor space would mostly impact on Ryde and Olympic Park centres and that, this would not be significant, is accepted.

The report also correctly drew attention to the adoption of a new Metropolitan Strategy and its economic and centres objectives in particular:

- The designation of Olympic Park/Rhodes as a specialised centre with an employment target that will mostly be satisfied by the SOPA 2025 Vision.
- The identification of the Parramatta to Macquarie Park link (in which Rhodes is included) as a "Potential Economic Corridor" and a key link for consideration for upgraded public transport.

However, the statements that:

- Olympic Park has a sporting/education focus is not supported by the recent announcement of the relocation of the Commonwealth Bank functions;
- Rhode's position in the broad City to Parramatta and the Parramatta to Macquarie Park Corridors uniquely position the Rhodes area for continued growth cannot be supported without a comprehensive study of its capacity constraints and the economic efficiency for continued growth in a regional context.

It is considered that the floor space limitations within the SREP is a clear and purposeful desire to limit the commercial functions at Rhodes for a number of critical reasons and that setting it aside would be inappropriate without comprehensively reviewing the REP in the context of the Region and planning policy. Should such a review lead to a conclusion that provides for additional commercial development at Rhodes, it would also consider the most appropriate location for growth and the infrastructure improvements and other support required for that growth.

Resolution: An ad hoc increase in commercial floor space above the REP limitation as proposed cannot be supported and accordingly, the application should be refused.

5.3.2 **Urban design, visual, overshadowing and other impacts**

- Issue:* The increased building height would have unacceptable visual impacts from excessive height, bulk and scale, undermine the urban design approach for the peninsula, obstruct views from parklands, cause additional overshadowing and impact on public amenity.
- Raised by:* Canada Bay Council, Sydney Harbour and Foreshore Committee, Meriton Apartments, Urban Assessments
- Consideration:* Building 4 as approved (but, not built) currently represents the northern most commercial building at Rhodes as well as the tallest and largest scaled building on the Peninsula. The building also has a large floor plate, in excess of that permitted in the DCP for taller buildings, which in turns substantially increases its actual and perceived bulk.
- 10 storeys of a commercial building is generally equivalent in height to a 13 storey residential building. An increase of an additional 2 commercial floors would result in a building with a height greater than a 15 storey residential building.
- The tallest residential buildings at Rhodes are two slender towers of 11 storeys at the corner of Rider Boulevard and Shoreline Drive and adjoining Building 4 to the north, which was approved to suitably step building heights down to the 8 storey building at the corner of Walker and Mary Streets from Building 4.
- The approved building height immediately opposite Building 4 at Rider Boulevard is 8 storeys with an extension to 9 storeys. Accordingly, the modification would lead to a differential of 6 to 7 storeys leading to a disproportionate scaling of the street.
- The Sydney Harbour and Foreshore Committee has drawn attention to the adverse impact such a large scale building would have on views to the city from the markers in the Millennium Parklands opposite Homebush Bay. Other impacts have been raised such as the increase in shadowing to the public domain and other buildings (such as the delay in morning sun to the opposing apartments). The applicant has not provided revised shadow diagrams.
- The applicant has provided an inadequate assessment on the visual impact of the proposal. It is noted that the comparisons of photomontages and cross sections provided within the documentation show the modified building consistently at a lesser scale distorting any worthwhile comparison.
- However, from the information submitted to judge the visual effect of the modified building, it is overwhelmingly clear that it would excessively dominate the built form of the peninsula when viewed from long, medium and shorter viewpoints. In particular,
- The long range view provided from near the corner of Concord and Victoria Roads, Ryde demonstrates that the building as approved already dominates the built form of the Peninsular which is just acceptable given its position on the ridge and the urban design intention to reflect the ridge in building heights. However, when modified, this domination becomes excessive and begins to undermine the ability to read the peninsula as a whole.
 - The medium range view provided from Concord Road, Rhodes demonstrates how the building as approved scales significantly but reasonably from the foreground east of the railway whereas the

modified building imposes itself excessively as the amount of building above the foreground disproportionately increases in scale providing a more dramatic transition inappropriate in this context.

- The short range view provided does not show the modified building in context to surrounding buildings as approved. However, given the significant difference to surrounding approved heights discussed above, it is considered that the modified building would be completely out of scale with surrounding buildings.

While no views have been provided from sensitive locations such as the waterways, it is likely that the modified building would have an adverse impact. It is noted that in the assessment of the DA that the Sydney Harbour Design Review Panel had regard to its horizontal form and emphasis which diminishes with additional height.

Resolution: The increased bulk and scale is comprehensively excessive in its context and would cause unacceptable environmental impacts and accordingly, the application should be refused.

5.3.3 Distribution of Floor Space within Precinct limitations

Issue: The proposed increase in commercial floor space will reduce opportunity within the overall floor space limitations and distribution for development for other landowners in the Precinct.

Raised by: City of Canada Bay Council, Meriton Apartments, Urban Assessments

Consideration: Meriton Apartments expressed the concern that approval of the modification application will reduce the amount of floors space able to be permitted within a development consent for its development within the same precinct because of restrictions in the use of SEPP 1. Meriton considered that the over concentration of floor space in building 4 will not allow for the proper development of the remainder of the precinct and undermine the object of the Act for orderly and economic development.

Council has noted the significant breach in floor space permitted above 6 storeys as permitted by Clause 16, Height of Buildings in SREP 29 and would not support the application on this basis alone. It is noted that the issue of the impacts and distribution of bulk above 6 storeys was comprehensively assessed and reported on in the determination of DA 475-11-2003. This arose because of the significant volume of floor space above 6 storeys consumed by the commercial buildings 3 and 4 which restricted the ability of other buildings heights in the Precinct to be adequately moderated to achieve the REP's urban design objectives while maintaining floor space distribution within the REP limits.

Resolution: Meriton Apartments has been granted consent for the development of its site within the Precinct and as such, would now not be affected by this application. The issue, however, is acknowledged while the impacts of the excess of floor space above the 6 storey limitation is considered further below.

5.3.4 Transport Implications

Issue: The additional commercial floor space will have transport implications and impacts.

Raised by: Rail Corp, City of Canada Bay Council, Urban Assessments

Consideration: Rail Corp has requested that if the additional commercial floor space is approved then recalculation of contributions for the upgrade to the Rhodes Rail Station should occur in accordance with the Transport Management Plan.

Canada Bay Council expressed concern that without a definitive study (including origin, destination, pedestrian, public transport, and all weather accessibility) that the increase in commercial floor space without appropriate additional car parking cannot be supported.

The applicant provided a Review of Traffic, Transport and Parking Characteristics which concludes that the proposal will not have an impact on traffic generation as no additional car parking would be provided. The study is acknowledging minor impacts for increased business functions but also that the mode split to public transport would be improved as more people will be relying on public transport.

The Review's conclusions are generally supported.

A reduced ratio of employee to car parking provision would lead to an increase potential for "rogue" parking in adjoining areas by commuters requiring management by Council as an unavoidable consequence of managing car travel demand through car parking restrictions to reduce car travel.

However, it is noted that the Applicant has submitted another modification application seeking additional car parking for this building on the basis of the travel characteristics of future tenants and available traffic capacity. This appears to be at odds with this application in that the current supply of car parking for the building is considered to be too low for potential tenants yet it is requesting additional floor space in this application, which would reduce the ratio of parking per employee.

As commercial offices are a significant generator of travel, it would be reasonable to accede to Rail Corp's request for re-examination of contributions to the Rail Station upgrade under the TMP should the application be approved.

Resolution: An inconsistency remains between the Applicant's arguments in support of this application and the separate application for additional car parking. Also, should the application be approved, a revision of the relevant aspects of the Transport Management Plan raised by Rail Corp is warranted.

5.3.5 Development Not Substantially The Same

Issue: The development as modified may be considered not substantially the same as that approved as required by s96(2) of the Act.

Raised by: Canada Bay Council, Meriton Apartments, Urban Assessments

Consideration: The applicant has presented argument citing case law as to why it would be reasonably open to the Minister to consider the modified development as substantially the same as that approved and thereby, be authorised to approve the modification.

This is considered a reasonable argument but only without having regard to all the circumstances of the development, its original approval and its physical context.

Numerically, the modification may not seem to be a "radical transformation" from the original when measured in floor space of the total amount of

buildings approved in that application or even in the change of height.

However, when similarly viewed from the amount of floor space permitted by the REP to be above 6 storeys and the large floor plate of the building in excess of that permitted by the DCP, then the differences may be regarded as a “radical transformation” particularly as:

- the effect of mass at higher levels is significantly greater than that at lower levels;
- this mass will be at a height significantly greater than surrounding buildings;
- the massing is in stark contrast to more slender forms of the taller surrounding residential buildings.

It is also relevant that when the development application was approved, it was with the knowledge that the proposed commercial floor space was within the limits provided by the REP and indeed, approval of more floor space would not be within the power of the consent authority.

Also, the variations permitted in the original determination to development standards within the REP and the DCP were also in the context of a range of circumstances and an assessment of the proposal. For example, the tolerance of allowing large floor plates in the higher portion of building is related to the overall scale of the building and its visual effect in its built form context. Should the building have been originally considered at a height 20% taller, then it may well have been preferable to demand that the bulk of the building be altered towards more slender vertical forms.

Resolution: On balance and in the proper contexts including the circumstances in which the development consent was granted, it is considered on a number of grounds that the development as modified is not substantially the same as that approved and therefore, beyond the power of the Minister to approve.

6 CONCLUSION

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

The proposed development as modified is considered **not** 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. All submissions received in the period prescribed by the Regulations have been considered.

On balance, it is considered that the proposed development as modified is **not** acceptable and should **not** be approved.

7 RECOMMENDATION

It is recommended that the Minister for Planning pursuant to Sections 80 and 96(2) of the *Environmental Planning and Assessment Act, 1979* and clause 122 (2) of the *Environmental Planning and Assessment Regulations, 2000*:

- (A) **refuse** the application tagged "A", and
- (B) authorise the Department to carry out notification of determination of the application to modify the consent.

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