



ASSESSMENT REPORT

Section 75W Modification 2 (MP05_0039 MOD 2)

179 Residential Units and Retail Facility at Lot 100, Precinct C, 42 Walker Street, Rhodes

Proposed by Meriton Apartments Pty Ltd

1. BACKGROUND

The Rhodes Peninsula is a former industrial site which is currently being re-developed for residential, retail and commercial purposes. The key areas of redevelopment and remediation, as depicted in Figure 1 and 2, relate to the:

- Precinct C – Meriton Apartments Pty Ltd (MAPL) is redeveloping the former Allied Feeds site for residential and retail purposes. The remediation of this Precinct nearing completion and residential developments are under construction; and
- Precinct B – this Precinct is also being redeveloped for residential and retail purposes. The remediation works and construction of one residential development has commenced.

Precinct A and Precinct D are completed.

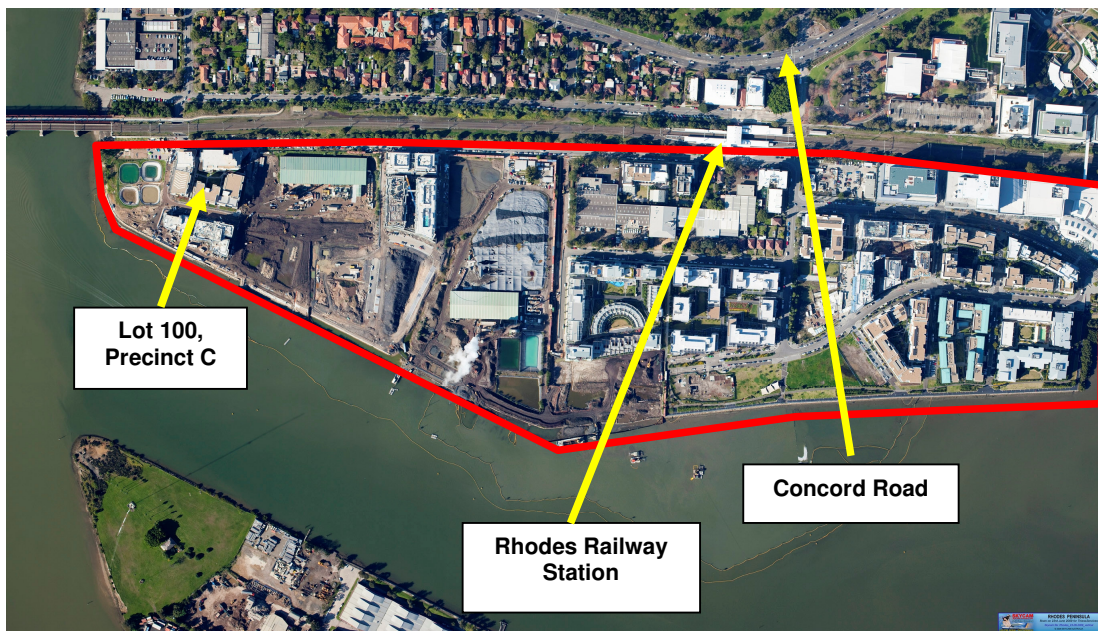


Figure 1: The Site and local context

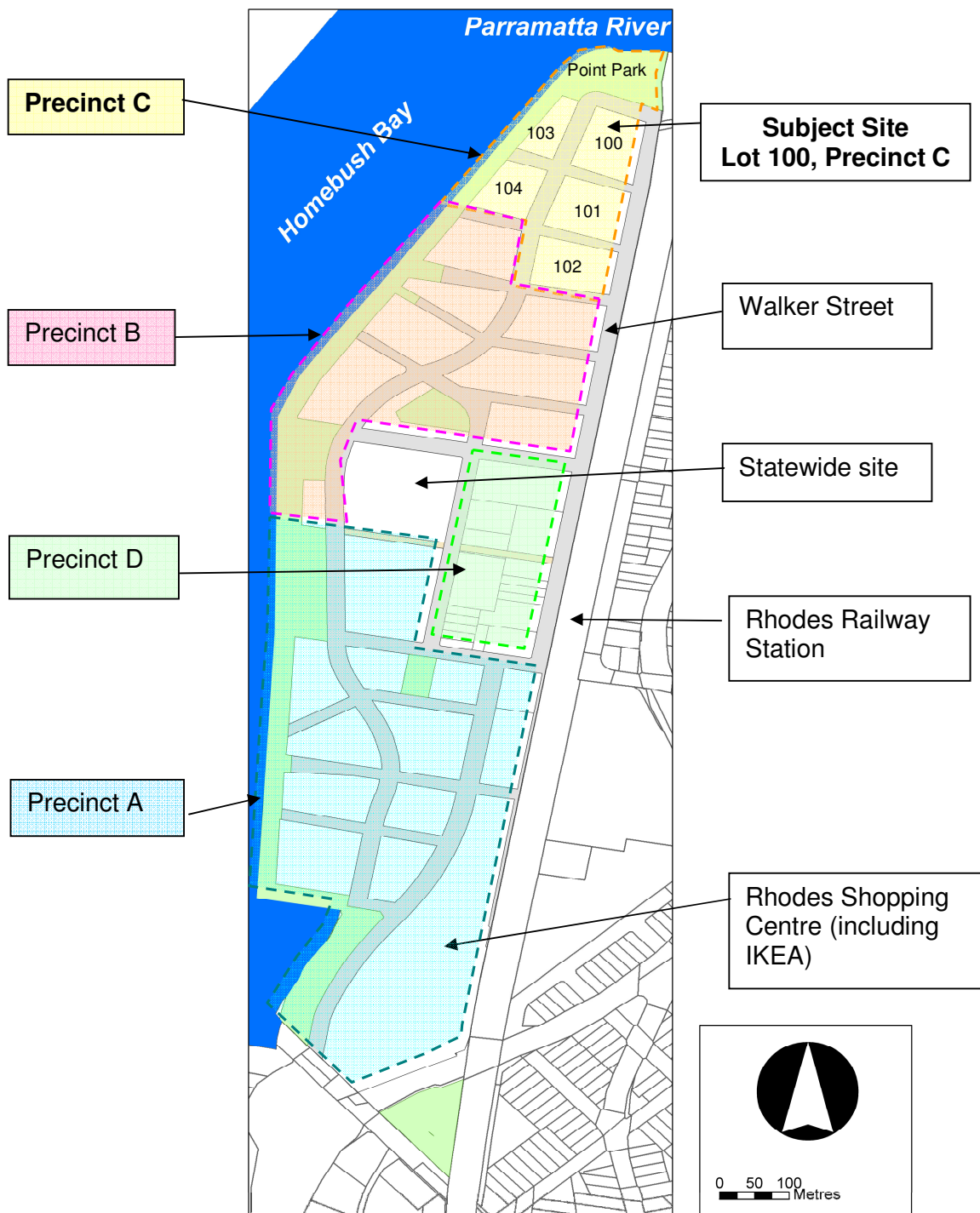


Figure 2: Subject site broken down into development precincts

The Minister was the approval authority for the above remediation works as well as a number of residential developments in the area. However, *Sydney Regional Environmental Plan No 29—Rhodes Peninsula* has been amended and Canada Bay Council (Council) is the consent authority for all residential, retail and commercial development on the Peninsula.

Precinct C

On 1 March 2006, the Minister granted Concept Plan Approval (DA 125-5-2005) for Precinct C at Rhodes Peninsula. The Concept Plan established indicative building envelopes for 5 residential lots, the maximum number of storeys for each building, indicative road layouts and private and public open space. The Concept Plan required further approvals for the development of the residential lots.

On 12 June 2007, the Minister for Planning approved the Major Project for a mixed use residential and retail development on Lot 100 within Precinct C. This approval allowed:

- 179 residential dwellings contained within three buildings with a GFA of no more than 19,153m²;
- a retail facility at ground level;
- basement car park over two levels containing a total of 201 spaces; and
- provision of landscaping works and shared facilities, including a pool and gym.

This approval was subsequently modified on 24 August 2007 to increase the size of the two basement levels, increase the parking spaces from 201 to 252 spaces, and reduce the deep soil area of the site.

However, occupation of the Lot 100 is not permitted until remediation of Precinct C is completed. In addition, should MAPL seek to occupy Lot 100 prior to completion of remediation activities on Precinct B, MAPL is required to assess the human health impacts from these activities on occupants.

As noted above, the remediation of Precinct C is nearing completion and as such MAPL is now seeking to occupy the building. On 28 November 2008, MAPL lodged a modification application with Council (relevant approval authority under delegation) to modify the project approval to allow occupation while the decommissioning of remediation equipment is occurring on Precinct C (currently not permitted under condition F1 of the project approval).

MAPL filed an appeal with the Land and Environment Court (LEC) against Council in April 2009 on the basis of a deemed refusal of the modification application. The LEC arranged a conciliation conference (key agencies and the MAPL meet on 12 and 28 May 2009) to address and resolve the issues that had been raised by Government agencies concerning the proposal. However, the key issues were not resolved at the conference and consequently on 3 June 2009 the Minister formally intervened in the proceedings.

MAPL subsequently withdrew the modification application from Council and on 8 July 2009, MAPL lodged a modification application with the Department of Planning.

2. PROPOSED MODIFICATION

MAPL is seeking to modify the project approval under section 75W of the EP&A Act by amending Condition F1. The condition as approved states:

F1 Issuing of Occupation Certificates

No Occupation Certificate (including interim certificates) shall be issued prior to the completion of remediation activities in Precinct C. In this regard, a Site Audit Statement is to be prepared in accordance with the Contaminated Land Management Act 1997 and completed by a site auditor accredited by the Environmental Protection Agency. The site audit statement shall be provided to the PCA verifying that the whole of 42 Walker Street (also known as Precinct C), is fully remediated in accordance with development consent DA 233-7-2002.

The condition essentially prohibits any occupation of the approved buildings whilst remediation was still occurring within Precinct C. MAPL is seeking approval to modify the project to allow occupation to occur once treatment of contaminated lands has been completed but whilst decommissioning, excavation and filling activities are still occurring (subject to a human health risk assessment).

In addition, it is proposed to add a number of commitments to the approved Statement of Commitments as set out in Schedule 3 of the project approval relating to dust and noise monitoring and management in Precinct C (refer **Appendix A**).

3. STATUTORY CONTEXT

Council was the approval authority for the modification under delegation from the Minister for Planning and MAPL had originally lodged the modification application and supporting documentation with Council. However, on 4 March 2009, the delegation to Council was repealed, and the power and discretion to determine the subject Section 75W application now resides with the Minister for Planning.

The Minister delegated her powers and functions as an approval authority to modify certain project approvals under section 75W of the EP&A Act to the Executive Director, Major Projects Assessment. This modification application meets the terms of this delegation, and accordingly, the Executive Director may determine the application under delegated authority.

4. CONSULTATION

Under section 75W of the EP&A Act, the Department is not required to notify or exhibit the application. However, the original modification application was publicly notified by Council from 24 February 2009 to 10 March 2009 for a period of 14 days. In addition, Council consulted with the Department of Environment and Climate Change (DECC), NSW Health and the Department.

The Department also met with representatives from DECC, NSW Health and Council on a number of occasions to discuss the proposal. The Department is therefore satisfied that the consultation undertaken by Council is appropriate.

The Department received 4 submissions on the proposal, 3 from Government agencies (DECC, NSW Health and Council) and one from the general public.

Submissions from Government Agencies

DECC does not object to the proposal, however did raise concerns about potential impacts from dust, noise and odour on residents within Lot 100. NSW Health also raised similar concerns. Both the DECC and NSW Health detailed a number of requirements and principles to be met in respect of the mitigation of human health risk on residents within Lot 100 and these matter have been incorporated into the recommended condition of approval (see Section 5).

Canada Bay Council does not object to the proposal provided suitable measures are implemented to minimise and manage potential impacts to residents.

Public Submissions

One (1) submission was received from the public. That submission was made on behalf of the Rhodes Community Consultative Committee and raised a number of general issues relating to:

- air quality and exposure risk
- odour
- noise
- the uncertainty of risk assessments (as set out in the submitted Human Health Risk Assessment (HHRA) report)

5. CONSIDERATION

The Department has assessed the application on its merits and considers that the key issue relates to potential human health and amenity impacts to residents of Lot 100 from nearby construction and remediation activities.

To support its modification application, MAPL commissioned a human health risk assessment (HHRA) to investigate the potential human health impacts to residents of Lot 100 from the:

- decommissioning and removal of remediation equipment from Precinct C;
- ongoing remediation of Precinct B; and
- construction of the remaining lots on Precinct C.

The HHRA focused on the potential human health impacts relating to:

- air toxins and odour from the remediation works being undertaken at Precinct B;
- dust from the surrounding constructions works on Precinct C; and
- noise from the surrounding construction and remediation works.

The HHRA indicates that risks to human health from air toxins from the remediation of Precinct B would be low. However, residents would be exposed to elevated levels of noise and dust from construction activities on Precinct C, as well as odour emissions from the remediation of Precinct B.

It is noted that the treatment of contaminated soil on Precinct C has ceased and remediation equipment is in the process of being dismantled. It is expected that all remediation equipment would be removed in the next 4 to 5 weeks. Therefore, health risk from the remediation of Precinct C is considered to be low.

Consideration

Air Toxins and Odour

The HHRA assessment was prepared generally in accordance with the *Environmental Health Risk Assessment Guidelines for Assessing Human Health Risks from Environmental Hazards*. In this regard, the HHRA assessed the acute (short term) and chronic (long term) exposures to chemicals of concern. Potential exposure to chemicals of concern predominantly relate to the inhalation of volatile organic chemical from the excavation of contaminated soil and sediments from Precinct B as well as the inhalation of emissions from the treatment plant located on Precinct B.

This assessment indicates that risks to human health from air toxins from the remediation of Precinct B would be low, however, residents could be exposed to odour emissions from remediation works.

DECC and NSW Health are satisfied that the approach undertaken to assess human health impacts is appropriate and NSW Health considers that carcinogenic risks from the remediation of Precinct B is not an issue of concern. As such, the Department is satisfied the human health risks from the occupation of Lot 100 would be low.

In relation to odour, the Department considers that there are already suitable measures in place to manage this issue at the source. Thiess Services, the contractor undertaking the remediation of Precinct B, has several measures in place to minimise and manage odour. These measures include the covering of the stockpile of contaminated material, odour monitoring and a complaints handling procedure. Thiess Services provide a monthly monitoring report to the Department and DECC and recent monitoring indicates that odour is generally not detected off site. Nonetheless, the Department recommends that future residents are notified of the potential to be exposed to odour.

Dust

The assessment of impacts from particulate matter (i.e., PM₁₀) indicates that DECC criteria for PM₁₀ (50µg/m³) could be exceeded 2 days in a year. Of concern to NSW Health is the number of days (~80 days) where incremental PM₁₀ would exceed 10µg/m³. NSW Health has indicated that incremental impacts over 10µg/m³ have been associated with increased respiratory and cardiovascular complications. DECC also raised concerns about the elevated levels of dust that residents of Lot 100 could be exposed to.

The primary sources of dust would be from emissions from haul roads (including unsealed and sealed roads) as well as earthworks.

The Department, DECC and NSW Health consider that there a range of measures that MAPL could implement to minimise and manage dust impacts, however, were concerned that insufficient information was provided on management measures to minimise potential impacts on residents.

To address these concerns, MAPL subsequently committed to a number of measures to minimise dust and noise impacts on residents of Lot 100 from surrounding construction activities, including:

- ensuring trucks carrying soil cover their loads and are not tracking dirt onto the public roads;
- sealing and curbing roads in the vicinity of Lot 100 within 6 months, with the remaining roads within Precinct C to be sealed in 12 months;
- implementing all feasible and reasonable measures to minimise dust; and
- monitoring dust emissions.

In addition, MAPL has prepared a Dust Management Plan including measures to manage and control dust, a dust monitoring program and contingencies measures should dust and criteria be exceeded.

The Department considers that the measures proposed by MAPL are generally appropriate and would ensure dust emissions from construction activities would be managed. Nonetheless, the Department has recommended conditions of approval to ensure that future residents and tenants of Lot 100 are informed of the potential to be exposed to elevated levels of dust.

Noise

The Rhodes Peninsula is currently being redeveloped for residential, retail and commercial uses. The redevelopment of the area is expected to take a number of years and therefore future residents of Lot 100 could be exposed to elevated levels of noise from construction works on Precinct C and B.

The noise assessment indicates that residents of Lot 100 could be exposed to noise levels of up to 81dBA. Based on the information provided, Lot 100 would be considered a highly noise affected residential building under the DECC guidelines for construction noise. However, it is noted that construction works would only occur during the day, with restricted hours of works on Saturdays and no works on Sundays. In addition, the noise assessment indicates that there would be a noise loss of approximately 25dBA internally with windows and doors closed.

Similarly to dust, concerns were raised that insufficient information was provided on management measures to minimise potential impacts on residents.

To minimise and manage noise impacts, MAPL proposes to:

- implement all reasonable and feasible measure to minimise construction noise associated with activities on Precinct C;
- prepare and implement a noise management plan; and
- monitor noise emissions with MAPL to notify the Department and Council of any exceedences and actions implemented to prevent or mitigate against noise emissions.

MAPL has subsequently prepared a noise management plan detailing measures to minimise and manage noise impacts. The Department considers that the measures proposed by MAPL are generally appropriate and would ensure noise emissions from construction activities would be managed. Nonetheless, the Department has recommended conditions of approval to ensure that future residents and tenants of Lot 100 are informed of the potential to be exposed to elevated levels of noise.

Summary

In summary, the Department is satisfied that the management measures proposed by MAPL together with the recommended conditions of approval would ensure that potential health and amenity impacts to residents from surrounding construction and remediation activities are managed. Specifically, the recommended conditions of approval would require MAPL to:

- provide information to all purchasers and tenants about the ongoing works at Precinct B and C, details of the duration of the works and how to obtain further information, as well as relevant contact details;
- a notation of title that details the potential risks; and
- prepare and implement procedures to handle and respond to complaints.

As such, the Department is satisfied that occupation of Lot 100 can occur prior to the finalisation of remediation activities on Precinct C (relating to decommissioning of equipment), subject to conditions.

7. RECOMMENDATION

It is recommended that the Executive Director, as delegate of the Minister for Planning:

- (A) **approve** the modification, subject to conditions, under section 75W of the *Environmental Planning and Assessment Act 1979*; and,
- (B) **sign** the attached Notice of Modification (**Appendix A**).

Prepared by:

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Approved by:

Signed 23/07/09

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APPENDIX A – NOTICE OF MODIFICATION
