

Friday, 15 November 2013

Mr Mark Schofield
Team Leader - Industry, Social Projects and Key Sites
NSW Department of Planning and Infrastructure
23 - 33 Bridge Street
SYDNEY NSW 2001

Dear Mr Schofield,

**Section 75W Modification Application No. 3 (Major Project MP 10_0105)
44-46 Walker Street, Rhodes**

1 Introduction

This letter has been prepared by Urbis Pty Ltd on behalf of Waterpoint Site 1 Lessor Pty Ltd and Waterpoint Site 2 Lessor Pty Ltd in response to the NSW Department of Planning & Infrastructure (DoPI) request for additional information dated 22 October 2013, with regard to MP10_0150 MOD 3 (the Modification).

The Modification was exhibited from 29 August 2013 – 27 September 2013. The DoPI received one submission from the City of Canada Bay Council (Council). It is acknowledged that the DoPI also received submissions from the NSW Office of Environment and Heritage; Roads and Maritime Services, and Transport for NSW, who did not raise any concerns. There were no submissions received from the local community. The issues raised by the Council are addressed in the table at **Attachment 1**. The purpose of this letter is to address the issues raised by the DoPI, namely:

- Floor space;
- Location of wintergardens;
- Additional units;
- Numeric comparison between the approved development and the proposed modifications; and
- Overall building height

It is noted that the issues outlined above relate to clarifications for the proposal and do not concern the design or planning merits of the proposed modifications. These issues are addressed in turn below.

A Deed of Variation to the VPA is being prepared to address the proposed increase in the overall gross floor area for the development. A Deed of Variation was not requested by the Department of Planning with the approval of Major Project MP 10_0105 MOD 1 and 2. The Proponent, however in the interests of all parties, wishes to include all approved and proposed GFA with the proposed Deed of Variation so there is consistency between the VPA and approved development, as modified.

2 Floor Space

2.1 GROSS FLOOR AREA DEFINITION

The Department have requested clarification that the definition used to calculate GFA for the proposed modification is the definition contained in Canada Bay Local Environmental Plan 2008 (CBLEP 2008). It is confirmed that the GFA definition for Rhodes West contained at Clause 4.4 (2A) of the CBLEP 2008 has been used to calculate the GFA of the Modification.

Separate calculations of the gross floor area of the development under the following Environmental Planning Instruments have been requested:

- Sydney Regional Environmental Plan (SREP 29);
- Canada Bay Local Environmental Plan 2008 (CBLEP 2008); and
- Canada Bay Local Environmental Plan 2013 (CBLEP 2013)

As noted above the gross floor area (GFA) has been calculated in accordance with the definition contained in the *Canada Bay Local Environmental Plan 2008* (CBLEP 2008) (Cl. 4.4(2A)). This is the relevant definition as it was the applicable at the time of lodgement of the original Major Project Application MP 10_0105. Subsequent modification applications (MOD 1 & 2) have been assessed and determined by the Planning Assessment Commission with reference to CBLEP 2008.

Clause 4.4 (2A) of the CBLEP 2008 contains a specific definition of GFA that applies to Rhodes West including the subject site, as follows:

“gross floor area, of a building in Rhodes West Precinct, means the total of the areas of each floor of the building excluding any of the following:

- (a) areas occupied by columns, fin walls, shade devices and any elements, projections or works outside the general lines of the outer face of the external walls,*
- (b) areas occupied by lift towers, cooling towers, machinery and associated plant rooms, ancillary storage space and vertical air conditioning ducts,*
- (c) areas used for car, coach and bicycle parking required to comply with any development control plan and any areas that provide internal access to that parking,*
- (d) areas provided for the loading and unloading of goods and for waste management,*
- (e) areas set aside for communal recreation use within a residential building,*
- (f) areas occupied by balconies or terraces that have walls less than 1.5 metres high,*
- (g) areas of enclosed balconies used for residential purposes,*
- (h) areas provided for common or public purposes, including arcades and circulation space”.*

GFA is defined under the now repealed SREP 29, as follows:

“gross floor area means the sum of the areas of each floor of a building, where the area of each floor is taken to be the area within the outer face of the external enclosing walls as measured at a height of 1,400 millimetres above each floor level, excluding:

- (a) columns, fin walls, shade devices, and any elements, projections or works outside the general lines of the outer face of the external wall, and*
- (b) lift towers, cooling towers, machinery and associated plant rooms, and ancillary storage space and vertical air conditioning ducts, and*
- (c) such car, coach and bicycle parking as is required to comply with any development control plan and any internal access to that parking, and*
- (d) space for the loading and unloading of goods, and any waste management areas, and*
- (e) floor area set aside for communal recreational use within a residential building (not exceeding 5% of the gross floor area of the building, calculated on the basis that this floor area has been included), and*
- (f) any terraces and balconies with walls less than 1.5 metres high, and*
- (g) enclosed balconies used for residential purposes (not exceeding 5% of the gross floor area of the building, calculated on the basis that this floor area has been included), and*
- (h) common or public areas, including arcades and circulation space”.*

The difference between the CBLEP 2008 and the SREP 29 definitions for gross floor area is the exclusion of enclosed balconies (wintergardens) and communal recreational spaces from the gross floor area calculations. SREP 29 excluded up to 5% of the total GFA of the development if used for enclosed balconies and up to 5% of the total GFA of communal recreational spaces. The definition in the CBLEP 2008 does not have the same caps on the exclusion of these spaces from the calculation of GFA.

CBLEP 2013 is not a relevant consideration for this application.

Council's submission suggests that the floor space under the VPA, which equated to 2.71:1 FSR was rounded up to 2.8:1 FSR to account for a future change in the definition of floor space, however the increase in rounded is 3.3%, and the difference between the SREP 29 and standard instrument definition is known to be approximately 10%. Moreover, if the rounding to account for the future standard instrument occurred this would be reflected in the FSR standards for other sites the subject of CBLEP 2008 (Amendment No. 1). From our experience on other sites at Rhodes West developed under CBLEP 2008 (Amendment No. 1), this was known not to be the case.

2.2 WINTERGARDENS

The existing Project Approval (as modified) accommodates 2818m² of wintergardens across Buildings C, D and E. This equates to approximately 5% of the total GFA of the approved development (i.e. 2818m²/56,513m²). The Modification proposes an additional 1,213m² wintergardens in Buildings C, D and E. The proposed additional wintergardens have not been included in the GFA calculations. As outlined above, the GFA has been defined in accordance with the definition in CBLEP 2008. The CBLEP 2008 (Amendment 1) gross floor area definition exclude (amongst others):

“(g) areas of enclosed balconies used for residential purposes”.

3 Location of wintergardens

3.1 BUILDING C

The wintergardens proposed on the western façade have been achieved by enclosing the approved balcony areas. The wintergardens are contained within the approved building envelopes as illustrated in the plans submitted as **Attachment 2**.

3.2 BUILDING D

The Modification includes internal reconfigurations and amendments to the eastern and western building facades. The proposed Building D footprint is therefore different to that approved under MP10_0105 MOD 2. The proposed Building D envelope has been modified as a result of squaring up facades and reducing voids. The relationship between the approved footprint and the proposed wintergardens is illustrated on the plans submitted as **Attachment 2**.

3.3 BUILDING E

The wintergardens proposed on the southern façade enclose the approved balconies. The relationship between the approved footprint and the proposed wintergardens is illustrated on the plans submitted as **Attachment 2**.

4 Additional units and GFA

The Department have requested clarification of the proposed number of additional units, their location and the level of additional GFA proposed. The following subsections provide schedules for each of the buildings to be modified:

4.1 BUILDING C

The Modification proposes a reduction of 3.7m² in Building C, which is the cumulative difference related to minor variations due to design development.

TABLE 1 – BUILDING C – REDUCED GFA

	APPROVED GFA (M ²)	PROPOSED GFA (M ²)
Total	12,246.7	12,243 (-3.7)

4.2 BUILDING D

Table 1 below outlines the location of additional units and GFA (as defined under the Clause 4.4 (2A) of the CBLEP 2008) in Building D.

TABLE 2 – BUILDING D – ADDITIONAL UNITS AND GFA

LEVEL	APPROVED UNITS	PROPOSED UNITS	APPROVED GFA (M ²)	PROPOSED GFA (M ²)
PODIUM (Retail)	0	0	477.7	648 (+170.3)

LEVEL	APPROVED UNITS	PROPOSED UNITS	APPROVED GFA (M ²)	PROPOSED GFA (M ²)
1	10	11 (+1)	783	817 (+34)
2	10	11 (+1)	783	817 (+34)
3	10	11 (+1)	783	817 (+34)
4	10	11 (+1)	783	817 (+34)
5	12	12 (+1)	902	946 (+44)
6	12	12 (+1)	902	950 (+144)
7	8	8	646	646 (0)
8	8	8	646	646 (0)
9	8	8	632	646 (+14)
10	8	8	632	646 (+14)
11	8	8	632	646 (+14)
12	8	8	632	646 (+14)
13	8	8	632	646 (+14)
14	8	8	632	646 (+14)
15	8	8	632	646 (+14)
16	8	8	632	646 (+14)
17	8	8	632	646 (+14)
18	8	8	632	646 (+14)
19	8	10 (+2)	629	650 (+21)
20	8	10 (+2)	629	650 (+21)
21	8	10 (+2)	629	650 (+21)
22	8	10 (+2)	629	650 (+21)
23	8	10 (+2)	629	650 (+21)
24	8	10 (+2)	629	650 (+21)
TOTAL	208	224 (+16)	16,785m²	17,464m² (+679m²)

4.3 BUILDING E

Table 3 provides the additional GFA in Building E.

TABLE 3 – ADDITIONAL GFA IN BUILDING E

LEVEL	APPROVED GFA	PROPOSED GFA
B02		
B01	384.9	417 (+32.1)
PODIUM	758	785 (+27)
1	758	785 (+27)
2	758	785 (+27)
3	758	785 (+27)
4	758	785 (+27)
Total	4174.9	4342 (+167.1)

4.4 TOTAL NUMBER OF UNITS

Table 4 provides a summary of the approved number of dwellings for the Major Project MP 10_0105, and as modified in MOD 1, and MOD 2 and the proposed number of dwellings as a result of the current MOD 3.

TABLE 4 – TOTAL UNITS APPROVED AND PROPOSED

MP 10_0105	MOD 1	MOD 2	MOD 3
735	735	743	759

5 Table of comparison – Approved and Proposed development

Table 5 provides a comparison between the approved development (as modified) and the Modification with regard to, total floor space, retail floor space, and residential floor space, total number of units, unit mix and car parking.

TABLE 5 – APPROVED AND PROPOSED DEVELOPMENT FIGURES

ITEM	APPROVED	PROPOSED	VARIATION
Total Floor Space	56,513m ²	57,351m ²	+838m ²
Retail Floor Space	1348m ²	1528m ²	+180m ²
Residential Floor Space	55,165m ²	55,823m ²	+658m ²
Wintergardens	2818m ²	4037m ²	+1213m ²
Total Units	743	759	+16
Unit Mix			
▪ 1 bed / studio	306	356	+50
▪ 2 bed	415	387	-28
▪ 3 bed	22	16	-6
Residential Parking	743	759	+16

5.1 DEED OF VARIATION

A Deed of Variation to the VPA is being prepared to address the proposed increase in the overall gross floor area for the development. The preparation of the Deed of Variation has begun, and we request that the Department include an appropriate condition in any future approval of this Modification to allow the public notification of the Deed of Variation to occur post-determination.

A Deed of Variation was not requested by the Department with the approval of MOD 1 and 2. The Proponent, however in the interests of all parties, wishes to include all approved and proposed GFA with the proposed Deed of Variation so there is consistency between the VPA and approved development, as modified. The Deed of Variation to the VPA will include all GFA under the approved MOD 2 and proposed MOD 3 as outlined in **Table 6**.

TABLE 6 – APPROVED AND PROPOSED GFA MP 10_0105, MOD 2 & MOD 3

APPLICATION	GFA (M2)		
	RESIDENTIAL	RETAIL	TOTAL
MP 10_0105	54,936m ²	1050m ²	55,986m ²
MP 10_0105 MOD 2	55,165m ²	1,348m ²	56,513m ²
MP 10_0105 MOD 3	55,823m ²	1,528m ²	57,351m ²
Total Additional GFA	887m²	478m²	1,365m²

6 Overall building height

The approved maximum building height for Building D is RL 98.700 (82.5m). The maximum building height for the site under the CBLEP 2008 is 82m. The Project Approval exceeds the maximum building height for the site. The Modification seeks to increase the maximum Building D height to RL 99.300 (83.1m) to accommodate a revised roof plant configuration and the inclusion of an architectural roof feature at the top of the building. The proposed modifications represent a 0.6 metre increase to the Project Approval building height. This is discussed in further detail below.

6.1 ARCHITECTURAL ROOF FEATURE

The architectural roof feature is considered to be an appropriate addition and may be carried out for the reasons below:

- The roof feature provides visual interest to the top of the building and will conceal the roof plant when viewed from the east.
- The roof feature does not accommodate any advertising structures;
- The roof feature is not capable of modification to include floor space; and
- The roof feature is contained along the eastern façade of Building D. It is comprised of a flat roof supported by uprights and does not contain any significant bulk and any additional overshadowing will be minimal.

6.2 REVISED ROOF PLANT

The approved height of the roof plant is RL 98.700 (82.5m). The Modification proposes a minor increase in height of 0.4 metres to the top of the roof plant, resulting in a height of 82.9 metres. There is no proposed increase to the roof plant footprint.

The proposed variation to the maximum height limit, in addition to that approved under the Project Approval, is considered acceptable. While development standards in local environmental plans are not strictly applicable to transitional Part 3A projects, justification to vary the Height of Buildings development standard, under the requirements of Cl. 4.6 of the CBLEP 2008, is submitted as **Attachment 3**.

7 Conclusion

Billbergia Development Pty Ltd appreciates the opportunity to respond to the issues raised by the DoPI and the City of Canada Bay Council with regard to the Modification of MP10_0105. We trust that the information provided in this letter addresses the issues and allows the assessment of the Modification to proceed in a timely manner. Please feel to contact the undersigned via email (mdonaldson@urbis.com.au) or by phone (8233 9953) if further clarification is required.

Yours sincerely,



Murray Donaldson
Associate Director Planning

Attachments

- A Response to the City of Canada Bay Council submission
- B Architectural plans illustrating the proposed wintergardens and the approved building envelope
- C Canada Bay Council LEP 2008: Clause 4.6 Exceptions to Development Standards

CC

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ATTACHMENT A

RESPONSE TO THE CITY OF CANADA BAY SUBMISSION

TABLE 7 – RESPONSE TO THE CITY OF CANADA BAY SUBMISSION

ITEM	RESPONSE
1. Floor Space in Precinct B Billbergia has signed a Voluntary Planning Agreement (VPA) with Council regarding the amount of Floor Space which is to be built on Sites 2A and 3A at 40 Walker Street. Initially this amount of floor space was worked out based upon a Memorandum of Understanding reached between Renewing Homebush Bay (RHB) and Billbergia in (August 2008) about the sharing/ allocation of remaining floorspace in Precinct B between the two Companies (Billbergia bought sites 1A,2A and 3A from RHB). The Memorandum was based on compliance with the cap of floorspace in Precinct B as part of SREP29 (Clause 14) and the subsequent Precinct B Master Plan.	Noted and agreed
2. Agreements relating to “additional ” floor space Subsequent to establishment of the above DOP “approved” floor space, “additional “ floorspace which was agreed to in the VPA, was based on floor space shared out amongst developers in the Stage One Rhodes West Master Plan via: ▪ Consideration of sizes of sites, and consensus reached amongst developers in the Rhodes West Developer Consortium; ▪ Testing by Urban Design Consultant (shadows, built form, spatial considerations, views from the water, SEPP65 considerations etc) as part of detailed design workshops which allowed building footprints to be indicated in Council’s Rhodes West Development Control Plan, and which then facilitated the subsequent Development Application	Noted and agreed. The Voluntary Planning Agreement has established the floor space cap.

ITEM	RESPONSE
process. The bonus floor space was in addition to the “approved” floor space which Billbergia had purchased from RHB (reflected in the Memorandum of Understanding) and part of which was used up in Site 1A. Therefore, in finalising the Rhodes West Stage One Master Plan involving VPAs, Council ensured that “approved” floor space was what could have been realised under SREP 29 and the Precinct B Master Plan, and that the “additional” amount of floor space agreed to in the Billbergia VPA was locked in. The VPA established in effect a “new cap”.	
3. Comparison of floorspace under SREP29 definition and Standard template definition Amendment 1 to CCB LEP 2008 replaced SREP29 and rounded up the Floor Space applicable to the site, to 2.8:1, in anticipation of Council’s Comprehensive Plan which was to have a more stringent definition of floorspace than SREP29 based on the new Standard Template definition. The “rounding process” was done on the understanding that the development is “capped” anyway by the amounts referred to in the VPA (ie with a FSR of 2.71:1). It is incorrect of the developer to argue that the site has spare floor space capacity based on the SREP29 definition of floorspace. Calculations of floor space under both SREP29 and the new current Standard Template definition must be provided so that they can be compared, and so that it can be properly assessed as to whether the 2.8:1 in the LEP has been breached and to what extent. In this regard, it is noted that significant numbers of winter gardens	Refer to discussion under ‘Floor Space – Calculation of floor space’ in body of the letter. The Standard Instrument definition of floor space does not apply to Major Project MP 10_0105 or subsequent modifications. It is not clear why Council refer to the Standard Instrument definition in rounding for the purpose of defining an FSR standard under the Canada Bay LEP 2008 (Amendment No. 1), which repealed SREP 29. A special GFA definition for Rhodes West was introduced into Clause 4.4 (2A) of CBLEP 2008. The rounding up from 2.71:1 to 2.8:1 FSR is 3.3% and the deference between the SREP 29 and standard instrument difference is known be approximately 10%, with the inclusion of common circulation space and enclosed balconies. The difference between the GFA definitions in SREP 29 and CBLEP 2008 (Amendment No. 1) are explained in the main body of this response letter. The

ITEM	RESPONSE
have not been included in the floor space totals, and that if this component is added (as it should be), then the amount of variation of floorspace from that which was approved, is considerably greater than is currently appreciated in the Modification Report. Both calculations based on the two definitions should be requested so that they can be compared, understood and properly assessed. In other words, it is necessary to compare “apples with apples” when considering the floorspace limit, and the winter gardens should not be excluded.	differences are that the CBLEP 2008 definition excludes all enclosed balconies used for residential purposes, whereas SREP 29 excludes up to 5% of the total GFA used for wintergardens, as well as excluding common circulation space and communal recreational facilities, also up to 5% of the total GFA.
4. VPA Monetary Contribution towards Retail Floor Space The VPA requires additional retail floor space to be paid for at the rate of \$1,000 per square metre. The Precinct B Master Plan provided the approved level of retail/commercial floors pace in Precinct B for the purpose of the VPA.	Noted. The approved retail floor space under the Precinct B Master Plan for the subject site was 1050m². MOD 2 approved a total of 1348sqm of retail GFA, an increase of 298m². The proposed MOD 3 has a total of 1528m², a further increase of 180m². The total additional retail GFA above the Precinct B Master Plan approved retail GFA is 478m².
5. Public Notification and Council resolution to vary the VPA There is a VPA in place between Billbergia and Council, and any increases in floor space, commercial and/or residential, require a draft Deed of Variation to the VPA and public notification. Any amendment to the VPA requires a resolution of Council. This process should be undertaken prior to any approval of the S75W Modification by the Department.	Refer to the discussion under ‘Floor Space – Deed of Variation’ in the body of the letter. The Proponent requests the Department to condition the proposed MOD 3 approval to require the Deed of Variation to be prepared in consultation with Council and executed prior to the issue of an Occupation Certificate for the additional floor space.
6. Inconsistencies in reference to CPI Council wishes to mention that there are some inconsistencies with the DOP’s	It is requested that the Department liaise with Council to confirm the correct indexing of development contributions, and advise the Proponent, by way of draft conditions of

ITEM	RESPONSE
previous modification regarding the CPI Index. (Condition 22 of Mod 2)	approval.
7. Height Limit It is also noted that the LEP limits the height of the development to 82m. The proposal (page 27) refers to a height of 84m.	Refer to the discussion under 'Overall Building Height' in the body of the letter.

ATTACHMENT B

ARCHITECTURAL PLANS ILLUSTRATING THE WINTERGARDENS AND THE APPROVED
BUILDING ENVELOPE

ATTACHMENT C

CANADA BAY LEP 2008: CLAUSE 4.6 EXCEPTIONS TO DEVELOPMENT STANDARDS

CLAUSE 4.6 EXCEPTIONS TO DEVELOPMENT STANDARDS

Clause 4.3 of the CBLEP 2008 states that:

“(2) The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.”

- The maximum building height for the site is 82 metres.
- The maximum building height approved under the Project Approval is 82.5 metres.
- The maximum building height for the Modification of Building D is 82.9 metres.
- The proposed building height represents a 0.5% increase to the building height approved under the Project Approval.

This Section addresses Clause 4.6 objection to vary the height control. Strict compliance with Clause 4.3 is considered unnecessary in the circumstances for the following reasons:

1. The objectives of the CBLEP 2008 maximum height control are achieved notwithstanding the technical non-compliance.
2. The objectives of the CBLEP 2008 R4 High Density Residential zone are achieved notwithstanding the technical non-compliance.
3. The proposal complies with applicable planning policy provisions.
4. There are sufficient environmental planning grounds to support the proposed variation.

Each issue is addressed in turn below.

1. Assessment of the CBLEP 2008 ‘Height of buildings’ objectives

The proposal satisfies the applicable height objectives for the reasons outlined in the table below.

TABLE 8 – CBLEP 2008 BUILDING HEIGHT OBJECTIVES

OBJECTIVE	ASSESSMENT
a) <i>to ensure that buildings are compatible with the height, bulk and scale of the existing and desired future character of the locality</i>	The proposed building height represents a 400mm (0.5%) increase above the approved building height. The increase is minimal and will not alter the buildings compatibility with the desired future character of the Rhodes West.
b) <i>to minimise visual impact, disruption of views, loss of privacy and loss of solar access to existing development,</i>	The proposed increase in building height is minimal and will not have any material impacts. The addition of the architectural roof feature will minimise the perceived bulk of the roof plant when viewed from the east of the site.

OBJECTIVE	ASSESSMENT
c) <i>to minimise the adverse impact of development on heritage conservation areas and heritage items,</i>	The proposed variation will have no impact on the significance of any heritage items or conservation areas.
d) <i>to reduce the visual impact of development when viewed from the Parramatta River as well as other public places such as parks, roads and community facilities.</i>	The proposed architectural roof feature will reduce the visual impact of the minimal increase in height.

2. Assessment of the CBLEP 2008 R4 High Density Residential zone objectives

The proposal satisfies the applicable zone objectives for the reasons outlined in the table below.

TABLE 9 – CBLEP 2008 – R4 HIGH DENSITY RESIDENTIAL ZONE OBJECTIVES

OBJECTIVE	ASSESSMENT
▪ <i>To provide for the housing needs of the community within a high density residential environment.</i>	The Modification will provide an additional 18 units in a high density residential development.
▪ <i>To provide a variety of housing types within a high density residential environment.</i>	The Modification will provide a mix of unit types, sizes and layouts to provide housing choice and variety.
▪ <i>To enable other land uses that provide facilities or services to meet the day to day needs of residents.</i>	The proposed Modification will maintain the retail and commercial floor space to enable the development to provide land uses to meet the day to day needs of the future residents.

3. Assessment against applicable Planning Policy Provisions

The Modification is consistent with the objectives of the relevant planning policies as discussed under Section 5.3 of the Section 75W Modification submission.

4. There are sufficient environmental planning grounds to support the variation

- The approved Building D height is 82.5 metres. This equates to a minimal 0.6% increase to the CBLEP 2008 maximum building height of 82 metres.
- The Modification seeks to increase the approved building height by 400mm (82.9 metres) to accommodate the revised roof plant arrangement. There is no increase to the number of building storeys. This will equate to a 0.5% variation to the approved building height and result in a 1% (900m) variation to the CBLEP 2008 maximum height limit.
- The additional height is located on the roof plant only and is setback from all four building edges. The proposed architectural roof feature will obscure and reduce the visual impact of the roof plant when viewed from Parramatta River to the east.

- The additional 400mm height to the centrally located roof plant is not anticipated to create material impacts with regard to the following:
 - Solar access to adjoining private and public open space; and
 - The desired future character and built form of the area.

For the reasons outlined above, compliance with the CBLEP 2008 maximum building height is considered to be unnecessary, and the proposed variation is acceptable in the circumstances.