



# 157-163 Cleveland Street, Redfern

## Response to Issues SSD 4949-2011 – Mod 6

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## I.0 Introduction

This Response to Issues report has been prepared on behalf of our client, Urbanest Pty Ltd, and relates to the modification application MOD 6 to SSD 4949 at 157-163 Cleveland Street, Redfern. The Department of Planning and Infrastructure (DP&I) issued a letter on 12 December 2013 requesting that a response be provided to the submissions received and additional information be provided in response to the DP&I comments.

The DP&I comments are outlined and responded to in section 2.0 of this report. The submissions received include two responses from government referrals, from Urban Growth NSW and City of Sydney. Their comments are addressed in sections 3.0 and 4.0 respectively.

## 2.0 Response to Department of Planning and Infrastructure

Issues raised by DP&I are considered in Table 2-1 below.

**Table 2-1 Response to DP&I comments**

#	Comment	Response
1	The Department considers that a key assessment issue relates to the ability to establish a direct comparison between your project and the University of Sydney student accommodation referred to in your application.	A direct comparison has been drawn between the Urbanest Cleveland Street facility and the University of Sydney (USyd) Abercrombie Street Precinct student accommodation, as well as other USyd student accommodation. This is discussed in the responses below.
2	Further justification is required in relation to how the proposed operation is similar in intent and delivery of affordable housing as the nearby University of Sydney student accommodation. The department notes that the University of Sydney is a not for profit organisation and has directly invested in the provision of subsidised housing for its students and is not intended to cover the broad student housing market as per this development.	<p>Urbanest's operations are similar in the intent and delivery of affordable housing as compared to the Abercrombie Street Precinct accommodation. Though not a university itself, Urbanest works closely with universities throughout the design stages, delivery and operation of its student accommodation facilities. Throughout the Urbanest Cleveland Street development there has been continued collaboration with USyd. An agreement was recently made between the two organisations to reserve the beds at Urbanest Cleveland Street exclusively for USyd students. Further, Urbanest Cleveland Street has been listed on USyd's website as one of the six on-campus living (self-catered) student accommodation services at the Camperdown campus. This is a clear acknowledgement that Urbanest Cleveland Street is similar in its intent and delivery of affordable housing, and provides a comparable service (in terms of cost, location and facilities) to USyd's other accommodation.</p> <p>It is noted that USyd is a not-for-profit organisation, however this does not mean that there are inherent differences between the "intent and delivery" of student housing by the two organisations. Both organisations are seeking to provide the same service, in similar locations and for the same demographic. This means that Urbanest is required to compete directly with universities and other not-for-profit organisations on a like for like basis irrespective of any subsidies that may be provided for other student accommodation. Price point is the primary consideration for students looking for accommodation and this provides the most effective form of price regulation and affordability of facilities such as Urbanest Cleveland Street.</p> <p>University provided accommodation is often located in more convenient, on or near, campus locations, which is added competition for external providers such as Urbanest. This is the case with USyd accommodation and in particular, the Abercrombie Street Precinct accommodation.</p> <p>It is noted that the Urbanest Cleveland Street facility will have wider affordable housing benefits, as it will offer affordable accommodation to students of other Australian education facilities, including those that do not provide their own student housing. This may include, for example, students from the local TAFEs and private colleges in the vicinity of 157-163 Cleveland Street.</p>
3	Further justification is required about how housing affordability will be secured in the future to ensure it satisfies the consistent social benefits of affordable housing as intended under the Redfern Waterloo Affordable Housing Contributions Plan 2006.	<p>The student market is intrinsically one of the most price sensitive accommodation markets, whereby affordability is at the forefront of housing choice. As stated above, Urbanest is required to compete directly with universities and other not-for-profit organisations on a like for like basis irrespective of any subsidies that may be available. Price point is the primary consideration for students looking for accommodation and these students provide the most effective form of price regulation and affordability of facilities such as Urbanest Cleveland Street.</p> <p>As a commercial provider, Urbanest's facilities have higher financial hurdles to achieve and lower tolerance for vacancies. If the accommodation does not satisfy the affordability and amenity demands of the students, it will no longer be financially viable.</p> <p>The Urbanest Cleveland Street facility would need to remain affordable in</p>

#	Comment	Response
		<p>the future by virtue of the fact it can only be occupied by students, and therefore must remain affordable to continue to be attractive to this demographic. This would have also been the underlying assumption of the PAC in determining the Abercrombie Street Precinct application, given they did not require an analysis or comparison of price, but simply accepted that the accommodation would alleviate pressure on affordable housing in the longer term because of the nature of the use.</p> <p>This also suggests that the University's prices are a driver and indicator of affordability and being subject to the same market forces, what urbanest is required to continue to remain competitive with into the future"</p> <p>Condition 8 was also imposed on the Cleveland Street development requiring a restrictive covenant be made to restrict the use of Urbanest Cleveland Street to student housing. This will ensure its continued use for student accommodation into the future.</p>

### 3.0 Response to UrbanGrowth NSW

The following table provides a response to the issues raised by UrbanGrowth NSW.

**Table 3-1 Response to UrbanGrowth NSW comments**

#	Comments	Response
1	The original proposal sought to gain exemption from the affordable housing contribution. This was given detailed consideration by the DP&I in its assessment report and a condition requiring the contribution was imposed. The recommendation was accepted by the Planning Assessment Commission (PAC).	<p>This statement is incorrect. No exemption was sought from the affordable housing contribution in the original proposal, rather it reviewed the proposal against the Section 94A contributions. It argued that:</p> <ul style="list-style-type: none"> <li>the definition of affordable housing in the Affordable Housing SEPP is unable to be used as a measure for the affordability of student accommodation as it does not comprise a 'household' by ABS definitions,</li> <li>although the definition could not be applied, the proposed student accommodation was a form of affordable housing,</li> <li>should this be supported, the development would be exempt to <b>Section 94A</b> contributions under Clause 25J of the EP&amp;A Act.</li> </ul> <p>The DP&amp;I did not support this approach as the development was not being made on behalf of a community organisation or housing provider.</p> <p>The DP&amp;I's report did not discuss the application of the Section 94F affordable housing contributions in any detail. It simply stated that the Minister may impose a condition requiring the applicant to pay an affordable housing contribution and that it is recommended. No further justification for this decision was provided.</p> <p>Nevertheless, since this application was lodged, the position of the PAC on this issue has been clarified through their determination of the Abercrombie Street Precinct student housing ; being that student accommodation is a form of affordable housing and to be exempt from the payment of Section 94F contributions.</p>
2	The statutory context of the proposal and its liability for payment of the contribution under the Redfern-Waterloo Housing Contribution Plan has not altered since the determination.	It has always been unclear how student accommodation fits in the legalisation. Since this time there has been a clarification from the DP&I and the PAC. The Minister may choose to impose a condition for the payment of Section 94F contributions; it is not a mandatory requirement. We are therefore within our statutory rights to seek an amendment to the approval.
3	The provisions of Section 94F of the EPA Act 1979 do not apply to the Contribution Plan which is a legal instrument originally created by the Redfern-Waterloo Act 2004 and saved by the Growth Centres (development Corporations) Act 1974. Any exemptions are outlined in the Contributions Plan and the proposal does not qualify for an exemption.	We are of the opinion that our original statement outlined in our submission is correct. In any case, we have made justification in this submission that the affordable housing contributions should not be payable due to several reasons. These are summarised in section 5.0.
4	The development consent included some benefits such as SEPP 1 variation regarding FSR and also included some liabilities such as contribution payments. The conditions of consent were 'accepted' by the applicant in that construction commenced in accordance with the conditional approval. Now, there months before completion, a second attempt seeking deletion of the condition has been made.	Section 96 applications are the legal mechanism to amend conditions of consent. Whether these conditions were considered "acceptable" at the time of determination is not a relevant consideration in the assessment of a section 96 modification application. There is also no time limits relating to when Section 96's can be submitted.

#	Comments	Response
5	The Sydney University development was different to the proposal in that it also involved many public domain improvements and other public benefits of several million dollars, and non-commercial aspects related to university functions.	These benefits provided by the development were only relevant to the reduction in Section 94A contributions, not the Section 94F Affordable Housing contributions. Public benefit is only a consideration in the application of Section 94A contributions. Accordingly, the Section 94A contributions payable for the Abercrombie Street Precinct were significant reduced. Urbanest has paid the full and maximum amount payable for Section 94A contributions on the Cleveland Street development (i.e. 2% of the cost of the development).
6	Student housing does not alleviate the need for affordable housing. It is a different 'market' to affordable housing and the product is also different. It is a commercial venture, unlike affordable housing, no guaranteed rental level or link to ability to pay is provided. Also unlike affordable housing, rental levels are able to exceed the local affordable rental levels and it is noted that the proposal appears to concentrate on median rent levels.	<p>This issue was addressed in detail in the s96 application. As agreed by both the PAC and DP&amp;I, student housing does assist in relieving pressure on the local demand for housing.</p> <p>It reduces pressures on other forms of affordable housing such as boarding houses that students may otherwise reside. This was acknowledged in the DP&amp;I's assessment report for the Abercrombie Street Precinct DA which states 'the student accommodation building should be excluded from the calculations of the AHCP [Affordable Housing Contribution Plan] contribution as student housing will provide accommodation for a sector of the population in need of affordable housing (despite not technically being defined as affordable housing in the EP&amp;A Act), thereby alleviating pressure on existing and future affordable housing stock within the RWA precinct'.</p> <p>The affordability of student accommodation is market led. In order to remain competitive with other student housing providers such as Universities, Urbanest must provide similar or lower rents. The Section 96 report submitted with this application only looks at median rents as an avenue to establish an alternative measure of affordability to the 'affordable housing' definition. Housing NSW identifies affordable housing as that 20% or more below the median rent. The report demonstrates how Urbanest satisfy this.</p> <p>It is also noted that there was also no requirement for "guaranteed rental levels or links to ability to pay" nor justifications of rental levels required in the Abercrombie Precinct approval.</p>



## 4.0 Response to City of Sydney

**Table 4-1 Response to City of Sydney comments**

#	Issue Raised	Response
1	The City acknowledges that students are a group disproportionately affected by housing affordability problems and that the development will go some way to relieving pressure on the local demand for housing. However the type of student housing being provided is not consistent with the targeted type of affordable housing that the government, through legislation and plans, has committed to providing. ...The type of affordable housing that the Redfern-Waterloo Affordable Housing Contributions Plan 2006 seeks to provide is defined in the plan. The subject student housing does not constitute affordable housing as defined not is it exempt from the plan.	It has been acknowledged that the proposal is not 'affordable housing' as defined in the legislation. However this does not discount that it is an affordable form of housing which will assist in catering for the market which demands the housing provided for by the Redfern-Waterloo Affordable Housing Contributions Plan 2006. This was supported by the PAC.
2	The affordable housing definitions under the E&A Act provides certainty that rents charged to eligible persons will be affordable. It is unclear how the 'affordability' of the student housing is secured. If there is no certainty or guarantee that the student housing will be rented for the benefit of target tenants, at rents that have been established with reference to the Act or Plan; then the development should contribute towards affordable housing as per the Plan.	<p>The affordability of the Urbanest Cleveland Street facility will be ensured through the market rent values set by the University accommodation and student needs. This is discussed in detail in the responses of Table 2-1.</p> <p>Further the Abercrombie Street Precinct development required no guarantees or rents to be set in accordance with any Act.</p>
3	The Draft Redfern-Waterloo Affordable Rental Housing Strategy and Program 2011 to 2030 should be noted. This Strategy excludes student housing on the basis that it is catered for by the market. This Strategy continues to rely on the EP&A affordable housing definition and seeks alignment with the NSW Affordable Housing Guidelines.	This Strategy adopts the same definition of affordable housing as in the legislation. It cannot be applied to student accommodation as noted in response to issue 1 of Table 4-1. Urbanest's accommodation alleviates pressure on affordable housing, as has been recognised by both the DP&I and the PAC. It caters for a lower socio-economic group competing for affordable housing with other providers in the area.
4	The comparison of a one bedroom apartment accommodation does not demonstrate that the housing will be affordable because the nature and characteristics of student housing (e.g. shared facilities, smaller bedrooms, residential tenancy agreement not applicable) is different to private one bedroom apartments and studio rental properties.	<p>It is acknowledged that a one bedroom apartment is not directly comparable to the proposed student housing, in terms of services provided and how residents live and interact with each other.</p> <p>The purpose of the comparison was not necessarily to compare the nature of the accommodation, but to demonstrate that the cost of living was comparable; that if students did not have the option of living at Urbanest, they would be in the open market paying similar/higher rents. The provision of specific student accommodation alleviates pressure on other forms of affordable housing in the market.</p> <p>Nevertheless, it has been well established in this submission that the nature of student housing also means that it must remain affordable in order to attract tenants and remain viable.</p>
5	The student housing identified as contributing to the targets in the City's Affordable Rental Housing Strategy are those where the University of Sydney and University of Technology have directly invested in the provision of subsidised housing for its students. Not intended to cover market housing that has a specific target market (i.e. students).	One of the key objectives of the Strategy is to facilitate affordable student housing. It provides targets for housing that is subsidised below market rents. As discussed in Table 2-1, Urbanest Cleveland Street are in direct competition with the USyd provided and subsidised accommodation and are required to compete with these rents. Further, USyd have listed Urbanest Cleveland Street as one of their accommodation providers and have arranged for the beds to

#	Issue Raised	Response
		be reserved in the facility for their students. Further, the student accommodation provides an option for students to be removed from competing with an open market paying similar or higher rents.

## 5.0 Summary

This Response to Issues has addressed each of the comments made by the DP&I, Urban Growth NSW and City of Sydney. It provides further justification, clearly establishing a direct comparison between the Urbanest Cleveland Street Development and Abercrombie Street Precinct Student accommodation. The response demonstrates that section 94F contributions should not be payable in the circumstance. Key reasons for this include:

- The nature of student accommodation is that it must remain affordable in order to attract tenants and remain viable.
- Affordability is further secured through having to compete with other student accommodation providers providing affordable rents, irrespective of any subsidies or other incentives provided to other student accommodation operators, including the Abercrombie Street Precinct student accommodation development.
- There are not any inherent differences in the “intent and delivery” of Sydney University’s Abercrombie Street Precinct student accommodation and Urbanest Cleveland Street student accommodation, despite the University being a not-for-profit organisation. Both organisations are seeking to provide the same service, in similar locations, for the same demographic and for a comparable price.
- Student accommodation such as that proposed is an affordable form of housing that provides specifically for a lower socio-economic demographic in need of being catered for within the market. If it is not catered for, students are forced to compete within the open market.