



Office of Sustainable Development Assessment and Approvals, Urban Assessments

Planning Assessment Report

Application to Modify Development Consent

MOD 20-2-2005 modifying DA 388-8-2003

1 SUMMARY

This report is an assessment of the proposed development the subject of Development Application Modification number MOD 20-2-2005 modifying DA 388-8-2003 under section 96 (1A) of the Act lodged by Walker Constructions Group on 19 March 2004.

The application seeks to modify Development Application DA 388-8-2003 approved by the Minister on 13 August 2003.

The site is located at 2-4 Mary Street, Rhodes in the City of Canada Bay Council 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 approved.

1.1 Relevant approvals / modifications:

Council previously approved the use of the site as a car parking area used in association with an approved commercial/industrial use. This use had existing use rights.

There have been recent development applications granted consent by the Minister:

- north of the site at 18-22 Walker Street and 24-32 Walker Street, and
- south of the site at 1 Mary Street, where the same Applicant (Walker Constructions Group) have lodged several development applications for the purposes of residential, commercial, landscaping, and retail shopping purposes.

Since the granting of the development consent in 2003, the Applicant lodged a modification in November 2004 (MOD 115-11-2004). This modification has been subsequently withdrawn.

2 THE PROPOSED MODIFICATIONS

The Applicant is seeking to modify the approved development consent by replacing the approved "local shops" with "shops". The following conditions within the development consent will require amendment by changing the reference from "local shops" to "shops":

- A2, B3, B11, B23, E8 and G5.

An additional condition (G10) is proposed by the applicant to restrict the type of shops that can be located within the building to maintain their local context.

3 STATUTORY FRAMEWORK

The modification involves an amendment to the commercial and retail floor space "cap" contained within REP 29. The applicant has provided the department with legal advice indicating that the provisions of Section 96 operate so as to provide the vehicle to consider the

breach in the “cap”. This advice has been accepted by the Department’s legal officers, however a full merit consideration is required in the normal manner.

The proposed modifications are permissible within the Residential and Mixed Use zones under clause 11 of SREP 29.

3.1 Instrument of consent and other relevant planning instruments.

Pursuant to clause 5 of SREP 29, the Minister is the consent authority for development on land within Rhodes Peninsula.

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.11—Traffic Generating Development* (SEPP 11),
- *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),
- *Renewing Rhodes Development Control Plan* (Rhodes DCP),

The relevant environmental planning instruments for this modification are as follows:

- SREP 29,
- Rhodes DCP,

3.2 Legislative context:

The development application was local development pursuant to Division 2, Part 4 of the Act and SREP 29.

The development was integrated and advertised development pursuant to section 91 of the Act. Approval was sought for the development under the *Road Act, 1993* for providing vehicle connections to a public road.

Integrated development approval is not deemed necessary for this modification under Section 96 of the Act as the modifications do not fall within 40 metres of a waterway and does not involve any roadways under the Road Act.

4 CONSULTATION / PUBLIC EXHIBITION

The application was notified, in accordance with the Regulations.

Notifications – landowners/occupiers	12 state and local government agencies, 1 non-government organisation
Newspaper advertisements	Not advertised
Site notices	No site notice
Exhibition dates	Start: 24 February 2005 End: 14 March 2004
Exhibition venues	No venue

No submissions were received in regard to the modification.

5 CONSIDERATION

The application is considered to meet the pre requisites of Section 96(1A) of the Act in that the proposed modifications are considered to be of minimal environmental impact, and that the development as modified is considered to be substantially the same development as that to which consent was originally granted.

Initially, the applicant was seeking to vary the definition of "local shops" to accommodate the proposed uses. However, when it became apparent that "spare" retail floor space may be available, because of the way the Bowling Alley was calculated in SREP 29, the issue altered simply to increase the "shop" area within the building.

The Department has sought independent advice on the merit of this and other S96 Modification applications that have been lodged by Walker Corporation in relation to the consents granted in Precinct A of the Rhodes Peninsula. 's proposal from Messrs Collins and Furlong and a copy of their final report is on file.

In order to facilitate the consideration of this application, the Department by letter dated 4 October, 2004 advised the applicant of the need to submit additional details and justification for the proposal in terms of retail limits, car parking and traffic impacts.

In this regard the applicant has provided the following reports to the Department.

1. *Economic Assessment Review - Rhodes Peninsula Retail. Hirst Consulting Services Pty Ltd.*
2. *Retail Floor space Variations - Rhodes Peninsula. Hirst Consulting Services.*
3. *Rhodes Waterside Shopping Centre -Review of Traffic, Transport and Parking Characteristics. Transport and Traffic Planning Associates.*

These consultants provided the independent advice to the Department on these matters during the preparation of REP 29. The Department has sought independent advice on the merit of the proposal from Messrs Collins and Furlong and they have reviewed the Consultant reports. In their final report to the Department they conclude as follows

The retail consultant's view based on the data collected in the preparation of each report is that the increase in retail area as proposed in the applications is reasonable. The proposals currently submitted represent increases in floor space of 1543 sqm, leaving an additional increase of approximately 1500 sqm for further expansion.

The traffic consultant concludes that the centre at present has not reached the projected traffic peaks and that the peak traffic generation is on weekends and not week day peak periods as originally expected. Secondly, the peak parking demands are well below the available number of spaces. In his opinion the proposals for additional floor space and alternate uses will have no detrimental effect on either traffic or car parking capacity.

These conclusions are supported by the independent review that we have undertaken. The reports have been prepared on the basis of sound investigation of the expected

retail, traffic and parking estimations used, in preparing the supporting documentation for SREP 29 and the actual outcomes.

Similarly, Walker Corporation in submitting its covering documentation has arrived at uses and layouts for the local shops that are commensurate to the area's needs and reflective of the local nature of those facilities.

Based on all of the above we consider that the current Section 96 Applications are sound and that sufficient justification has been provided to support them on town planning and commercial/economic grounds.

A copy of their final report is on file.

5.1 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 State Environmental Planning Policy 56 - Sydney Harbour Foreshores and Tributaries and Sydney Regional Environmental Plan No 29 – Rhodes Peninsula. It is considered that the proposed development complies with the statutory controls and the relevant aims and objectives.

5.2 Issues

5.2.1 Breach of Floor space “cap”

- Issue:** The proposal will result in an increase in the retail and associated uses floor space within precinct A above the 25000 square metres allowed within REP29.
- Raised by:** Urban Assessments
- Consideration:** As mentioned earlier in this report, the applicant has provided legal advice indicating that Section 96 can be used to vary the statutory caps contained in REP29. This legal position has been confirmed and accepted by the Department.
- Secondly, the independent consultants (Hirst Consulting) have confirmed that in considering the quantum of retail floor space to be included in the centre, prior to the preparation of REP29, they advised the Department that the maximum 25000 square metres should not include the Cinemas. However in drafting REP 29 the Cinemas were included in the definition of retail and associated uses, thus diluting the available retail space by approximately 3000 square metres.
- The increased shop space sought by this proposal was considered by Hirst Consulting who further opined that the additional uses are an appropriate activity to be included in the retail and associated uses category and thus the amendment now proposed would meet the intent of a District Centre as originally recommended by the Consultants.
- Resolution:** Condition 1.4 to be amended to accommodate change.

5.2.2 The modification will not be “substantially the same development”

- Issue:** The proposal will result in the development not being the same as was approved.
- Raised by:** Urban Assessments
- Consideration:** The approval granted in DA 388-8-2003 permitted the operation of retail tenancies within the building, albeit as “local shops”. The only restriction arising from this

definition is the maximum floor area of each use.

However, the area available within the building remains as approved and whilst the proposed uses are permissible within the zone. The remaining issue is the "cap" within REP 29 and this has been addressed in section 5.3.1 above..

Resolution: No further action required.

5.2.3 No economic impact, parking or traffic assessment

Issue: The application as lodged did not include a justification in terms of any economic, traffic or parking impact. These issues were of primary importance in the preparing REP 29 and determining the caps and need to be addressed.

Raised by: Urban Assessments

Consideration: This information has subsequently been provided by the applicant and has been dealt with elsewhere in this report.

Resolution: No further action required.

6 CONCLUSION

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

The proposed development as modified is considered to be substantially the same development as that originally approved.

The application has been considered with regard to the matters raised in section 96 (1A) and 79C of the Act.

The application has been notified in accordance with the Regulations. No submissions were received.

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

7 RECOMMENDATION

It is recommended that the Minister for Planning pursuant to Sections 81 and 96 (1A) of the *Environmental Planning and Assessment Act, 1979* and clause 122 (2) of the *Environmental Planning and Assessment Regulation, 2000*:

- (A) **approve** the application to modify the development consent DA 388-8-2003 (tagged "A"), and
- (B) authorise the Department to carry out notification of determination of the application to modify the consent.

Prepared by:

Endorsed by

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