

14 May 2014

Mr Dan Keary
Director of Industry, Social Projects and Key Sites
NSW Department of Planning and Infrastructure
23 - 33 Bridge Street
SYDNEY NSW 2001

Dear Mr Keary,

**Section 75W Modification Application No. 4 (Major Project MP 10_0105)
Nos. 44-46 Walker Street, Rhodes**

This letter has been prepared by Urbis Pty Ltd on behalf of Waterpoint Site 1 – Lessor Pty Ltd under the provisions of Section 75W of the *Environmental Planning and Assessment Act 1979* (the Act).

This Section 75W application seeks to modify Project Application MP10_0105, (granted by the NSW Department of Planning and Infrastructure on 21 April 2011) as modified by Modification 1 (granted on 26 September 2012) and Modification 2 (granted on 29 January 2013) for Sites 2A and 3A, Walker Street, Rhodes.

This application relates to Building C only and seeks to:

- Modify the project description in Schedule 1 of the consent to reflect the proposed modifications.
- Modify Condition 1 of the consent to amend the approved plans to change the use of Building C common areas on Basement Level 2 to retail space with mezzanine and reconfiguration of the lobby; and
- Modify Condition 34 of the consent to amend the off street parking space provision. We note that the approved total parking number does not change. The proposal reduces the number of resident spaces and increases the number of retail spaces.

The proposed modification is the subject of Section 75W of the Act as the works do not constitute a 'radical transformation' to the project application. The proposal will not alter the approved envelope and will not significantly alter the appearance of the building. A minor change only is proposed to the basement level glazing on the north, south and western elevations of Building C.

The submission contains: a summary of the development consent history; the statutory framework for the application; the conditions of project approval requested to be modified; a description of the proposed modifications; an environmental planning assessment; and a conclusion.

1 Development Consent History

The Project Approval was granted by the Planning Assessment Commission in 2011. Subsequent modifications to the Project Approval pursuant to Section 75W of the Act have been submitted to, and approved by, the Department of Planning and Infrastructure (DPI). They are summarised in the following sections.

1.1 MAJOR PROJECT MP 10_0105

Major Project MP 10_0105 was granted consent on 21 April 2011 by the Planning Assessment Commission for a development as described at Schedule 1 of the Project Approval as follows:

- 735 residential dwellings contained within five buildings ranging in height from 6 to 25 storeys;
- Retail tenancies totalling 1050m² within the lower levels of buildings A, D and E;
- Basement car park over three levels containing 773 spaces; and Provision of external communal open space areas adjacent to Buildings B and C.

1.2 MAJOR PROJECT MP 10_0105 MOD 1

Major Project MP 10_0105 MOD 1 was granted consent on 26 September 2012 by the Department of Planning and Infrastructure to:

- Increase the retail tenancies from 1050m² to 1348m²;
- Increase retail parking spaces by 3, from 8 to 11;
- Provide for adaptable car parking spaces to have a minimum width of 3600mm (x 5400mm) and permitting sharing of space with adjacent walkways and other adaptable car parking spaces;
- Permit as-built levels to vary +/- 30mm from the levels (SSL"s) shown on the drawings.

1.3 MAJOR PROJECT MP 10_0105 MOD 2

Major Project MP 10_0105 MOD 2 was granted consent on 29 January 2013 by the Department of Planning and Infrastructure:

- Change 8 x three bedroom apartments to 16 x one bedroom apartments within Building A;
- Increase residential parking spaces by 6;
- Amend the podium level parking to permit Council vehicle access to the central (upper) podium level;
- Amend the podium level and level 1 basement to remove the accessible public toilets in the south east corner and provide a storeroom on both levels, also for Council use (public toilets will be provided in Councils preferred location);
- Alter the roof line, east and west facing balconies of Building B; and
- Include revision A-2 of drawing A-0205.

1.4 MAJOR PROJECT MP 10_0105 MOD 3

Major Project MP 10_0105 MOD 3 was lodged with the Department of Planning and Infrastructure and exhibited from 29 August 2013 to 27 September 2013. The proposed modifications to the approved mixed use development relate to Buildings C, D and E, as follows:

- Provide 16 additional units;
- Increase gross floor area by 853m² (including 634m² of additional residential floor space and 219m² of additional retail/commercial floor space);
- Provide 1 additional adaptable car parking space; and
- Modifications to Schedule 1, Conditions 1 and 34 of the project approval.

Draft Conditions of Consent have been received for Major Project MP 10_0105 MOD 3 and we understand the application is awaiting delegated approval.

1.5 SUBDIVISION DA 6/2012

Development consent was approved on 6 March 2012 for the subdivision of four existing lots into five to facilitate the current land ownership arrangements.

1.6 SUBDIVISION DA 157/2013

An application for the stratum and strata subdivision of the site was approved by Council on 28 June 2013.

2 Statutory Framework

2.1 PART 3A TRANSITIONAL PROJECTS

Following the repeal of Part 3A of the Act on 1 October 2011, the project continues to be subject to Part 3A of the Act pursuant to the transitional provisions provided in Schedule 6A of the Act. Clause 2 of the Schedule states, inter alia:

“2 Transitional Part 3A projects

- 1) *The following are, subject to this Schedule, transitional Part 3A projects:*
 - (a) *an approved project (whether approved before or after the repeal of Part 3A),*
 - (b) *a project that is the subject of an approved concept plan (whether approved before or after the repeal of Part 3A),*
 - (c) *a project for which environmental assessment requirements for approval to carry out the project, or for approval of a concept plan for the project, were last notified or adopted within 2 years before the relevant Part 3A repeal date (unless the environmental assessment is not duly submitted on or before 30 November 2012 or on or before such later day as the Director-General may allow by notice in writing to the proponent),*
 - (d) *a project for which an environmental assessment (whether for approval to carry out the project or for approval of a concept plan for the project) was duly submitted before the relevant Part 3A repeal date.”*

As the project is the subject of a Project Approval, Part 3A of the Act continues to apply.

2.2 SECTION 75W OF THE ACT

Pursuant to Part 3A of the Act (as in force prior to its repeal), Section 75W provides that the proponent may request the Minister to modify the Minister's approval for a project. Such modifications may include:

- (a) *revoking or varying a condition of the approval or imposing an additional condition of the approval, and*
- (b) *changing the terms of any determination made by the Minister under Division 3 in connection with the approval.*

Section 75W does not limit the circumstances in which the Minister may modify a determination made under Division 3.

Clause 3 of Schedule 6A of the EP&A Act states that Part 3A provisions and any State Environmental Planning Policies made under Part 3A will continue to apply to transitional Part 3A projects.

“3 Continuation of Part 3A—transitional Part 3A projects

- 1) *Part 3A of this Act (as in force immediately before the repeal of that Part and as modified under this Schedule after that repeal) continues to apply to and in respect of a transitional Part 3A project.*
- 2) *For that purpose:*
 - (a) *any State environmental planning policy or other instrument made under or for the purposes of Part 3A, as in force on the repeal of that Part and as amended after that repeal, continues to apply to and in respect of a transitional Part 3A project,”*

Part 3A, as in force immediately before the repeal of that Part of the Act, required the Minister's approval for the carrying out of projects identified in Section 1 of this letter. It is noted that under Clause 3 of Section 75R of Part 3A, environmental planning instruments (other than State Environmental Planning Policies) do not apply to or in respect of an approved project. Therefore, consideration of environmental planning instruments (other than State Environmental Planning Policies) is not required in relation to a proposed Section 75W modification. Notwithstanding this, an environmental assessment of the proposed development is provided at Section 5 of this report, having regard to the, the following EPIs and policies:

- State Environmental Planning Policy No. 65: Design Quality of Residential Flat Development and the NSW Residential Flat Design Code 2002;
- Canada Bay Local Environmental Plan 2013; and
- Rhodes West Development Control Plan.

3 Proposed Modification

This submission seeks to modify the project description in Schedule 1 and Conditions 1 and 34 of the Project Approval. The proposed modifications are outlined below.

3.1 PROJECT DESCRIPTION

Approved Project Description:

“Project Application for a development including:

- 743 residential dwellings contained within five buildings ranging in height from 6 to 25 storeys; -
- Retail tenancies totalling 1348m² within the lower levels of buildings A, D and E;
- Basement car park over three levels containing 789 spaces; and, provision of external communal open space areas adjacent to Buildings B & C.”

Proposed Project Description:

“Project Application for a development including:

- 743 residential dwellings contained within five buildings ranging in height from 6 to 25 storeys; -
- Retail tenancies totalling 2070m² within the lower levels of buildings A, C, D and E;
- Basement car park over three levels containing 789 spaces; and, provision of external communal open space areas adjacent to Buildings B & C.”

3.2 CONDITION 1 - GCP1 APPROVED PLANS AND SUPPORTING DOCUMENTS

The development shall be carried out substantially in accordance with the approved stamped and signed plans and / or documentation except where modified by the following:

- A-0201 MOD 4 – Level 2 Basement
- A-0202 MOD 4 – Level 1 Basement
- A-0506 MOD 4 – Elevations – BLDG C North & South
- A-0507 MOD 4 – Elevations – BLDG C East & West
- A-2901 MOD 4 (previously A-0221) – Area Calculations GFA

3.3 CONDITION 34 - CCV8 OFF STREET CAR PARKING SPACE PROVISION

Existing Condition 34:

“Car parking spaces shall be provided in accordance with the approved plans for the parking of resident and visitor vehicles on the site. In this regard, no less than 789 spaces are required and designated as follows:

CAR PARKING ALLOCATION	NUMBER
Residential Car Parking Spaces	741
Inclusive Residential Adaptable Car Spaces	112
Visitor Parking	30
Motorcycle Parking	Equiv. to 7

CAR PARKING ALLOCATION	NUMBER
Retail Parking	11
Total Spaces Agreed by this Approval	789

Proposed Condition 34:

*“Car parking spaces shall be provided in accordance with the approved plans for the parking of resident and visitor vehicles on the site. In this regard, no less than **789** spaces are required and designated as follows:*

CAR PARKING ALLOCATION	NUMBER
Residential Car Parking Spaces	739
Inclusive Residential Adaptable Car Spaces	113
Visitor Parking	30
Motorcycle Parking	Equiv. to 7
Retail Parking	13
Total Spaces Agreed by this Approval	789

4 Description and Rationale of Proposed Modifications

Condition 1

The common areas of Building C are proposed to be converted to retail floor space (see Figures 1 and 2). The additional retail floor space on Basement Level 2 is in response to market demand for retail tenancies in this location. The retail space is proposed to be designated tenantable areas in response to market interest for specific lease areas.

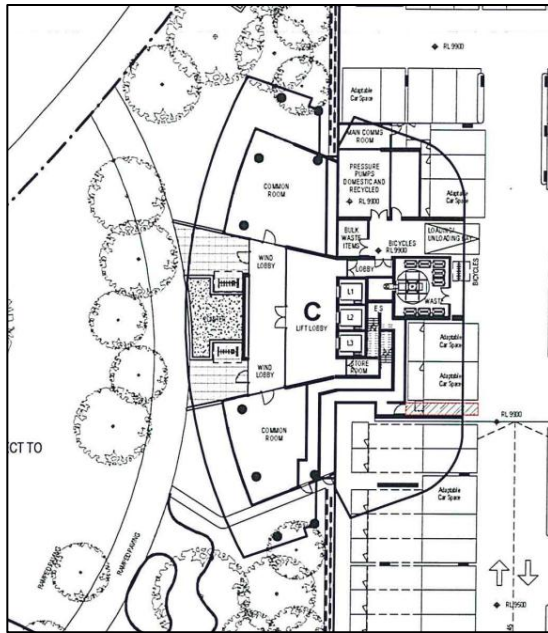
The size, configuration and location of the retail tenancies suggest they will service the day-to-day needs of local residents. As a result, these new tenancies will not impact on the financial viability of the Rhodes Shopping Centre.

The retail space within Basement Level 2 has been configured to provide connectivity to the public open space and pedestrian link in the western portion of the site as well as Shoreline Avenue.

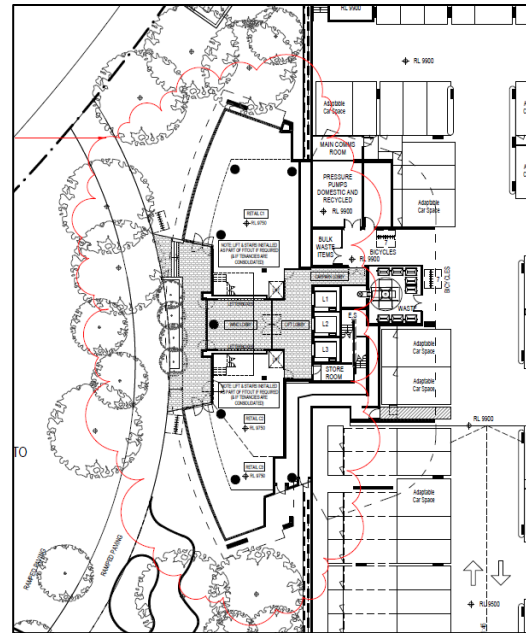
As the proposed tenancies will serve local residents, the additional retail floor space is unlikely to generate additional demand for car parking from patrons or staff. The site is located within an easy walking distance of the Rhodes Railway Station. Rhodes is also well served by public bus services and this is likely to improve in the future with the implementation of Council's strategies for the Station Precinct.

Although the proposal results in the loss of common rooms, residents will still have access to the communal open space areas on podium level and the extensive public open spaces areas throughout the site. Approved private open space areas are also maintained. In addition, residents will have access to the Rhodes Community Centre for which a DA is currently being prepared.

FIGURE 1 – BUILDING C LEVEL 2 BASEMENT

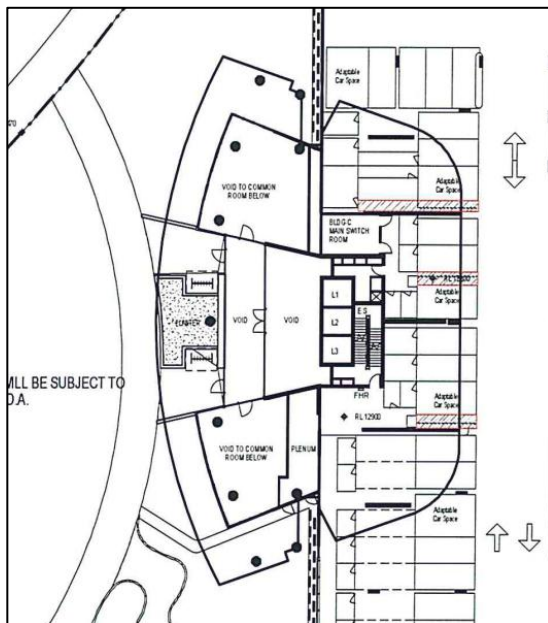


PICTURE 1 – APPROVED

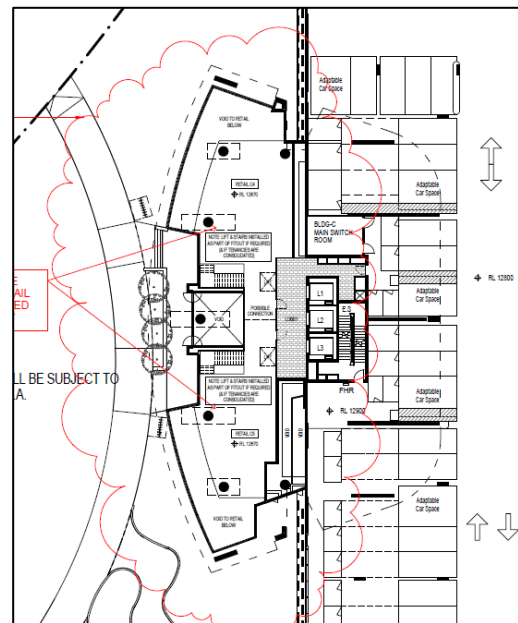


PICTURE 2 – PROPOSED

FIGURE 2 – BUILDING C LEVEL 1 BASEMENT



PICTURE 3 – APPROVED



PICTURE 4 – PROPOSED

We note that separate approval will be sought from Council for occupation of the retail tenancies, in accordance with the approval instrument for MP 10_0105.

Condition 34

The car parking numbers have been changed to reflect the requirement for retail spaces. The total approved number of spaces will not change and the development will continue to satisfy parking demand on the site.

5 Planning Controls Assessment

The relevant Environmental Planning Instruments and Policies that apply to the proposal include the following:

- State Environmental Planning Policy 65 – Design Quality of Residential Flat Development (SEPP 65);
- NSW Residential Flat Design Code (RFDC);
- Canada Bay Local Environmental Plan 2013;
- Rhodes West Development Control Plan 2011.

An assessment of the proposed modifications against the relevant provisions of the above planning instruments and policies are provided in the following sub-sections.

5.1 SEPP 65 AND RFDC

The proposed modification does not change the approved building separation, depth and setbacks or the unit mix and layout. The proposal will continue to satisfy the rules of thumb in the NSW Residential Flat Design Code, as approved. The proposal is also consistent with the ten design principles of State Environmental Planning Policy 65 – Design Quality of Residential Flat Development (SEPP 65).

The proposal reduces the amount of internal common areas; however, residents will have access to the Rhodes Community Centre within 200m of Building C. We understand that a DA is currently being prepared for this significant public facility, which will include a range of multi-purpose rooms that are open to the public. The development also provides private open space in the form of balconies for each apartment and significant communal open space throughout the site. Residents will also have access to a significant amount of public open space.

5.2 CANADA BAY LOCAL ENVIRONMENTAL PLAN 2013

Canada Bay Local Environmental Plan (LEP) was gazetted on 19 July 2013 and applies to the subject site.

Land Use Zoning (Land Use Table)

The subject site is zoned R4 High Density Residential. The approved residential, retail and commercial uses are all permissible with consent. As shop top housing is permitted in the zone, the proposed retail tenancies are permissible with consent.

Height (Cl. 4.3)

The maximum height of development on the site is 82m, as provided on the Height of Buildings Map referred to under Clause 4.3 of the LEP 2013. No change is proposed to the overall height of the approved buildings.

Floor space ratio (Cl. 4.4)

The maximum Floor Space Ratio (FSR) of the site is 2.8:1, as provided on the Floor Space Ratio Map referred to under Clause 4.4.

The subject site has an area of 20,675m². The proposed modifications will result in a new GFA of 57,893m², comprising 55,823m² of residential GFA and 2,070m² of retail GFA, which equates to an FSR of 2.8:1 and complies with the maximum FSR of the LEP. The GFA per building is listed in Table 1 below.

TABLE 1 – GFA

BUILDING	SURVEYED GFA
Building A (by survey)	19,472m ²
Building B (by survey)	3,830m ²
Building C (as proposed)	12,747m ²
Building D (as per MOD 3)	17,502m ²
Building E (as per MOD 3)	4,342m ²
TOTAL	57,893m²

The additional GFA relates to the converted retail areas, which constitute floor space under Council's definition. Notwithstanding this, the proposal is consistent with the objectives of the standard. The objectives and a planning response are provided as follows:

- (a) *To ensure that buildings are compatible with the bulk and scale of the desired future character of the locality.*

Response: The additional floor space is located within the approved building envelope and does not contribute additional bulk and scale to the development. Furthermore, the proposal complies with the prescribed FSR. This ensures that the bulk, scale and desired future character of the locality are maintained.

- (b) *To provide a suitable balance between landscaping and built form.*

Response: As the additional floor space is located within the approved building envelope, the built form and landscaping will not change.

- (c) *To minimise the effects of bulk and scale of buildings.*

Response: There will be no built form and amenity impacts.

Although the proposal increases the GFA, the numeric standard is complied with and the objectives of the standard are satisfied.

The proposed modifications are not affected by any other LEP controls.

5.3 CANADA BAY DEVELOPMENT CONCTROL PLAN 2013

The Rhodes West DCP provides detailed public domain and private domain controls, to support the Canada Bay LEP 2013 land use provisions and development standards.

General and site-specific controls in the DCP relate mostly to built form, building bulk, articulation and address and diversity of apartment types. These provisions are not relevant to the proposal as the envelope and unit mix are not changing. The relevant controls relate to car parking.

The additional retail space in Building C is 504m². A total of 11 car spaces are approved for the 1,348m² of retail space. This is a rate of 1 space per 123m². The Rhodes West DCP has a rate of 1 space per 40m² of retail GFA. The proposal generates a parking demand of 4 spaces, on the basis of 1 space per 123m². The proposal increases the allocation of retail spaces from 11 to 13. Although the number of retail spaces does not strictly comply, the proposal is considered appropriate for the following reasons:

- It is consistent with the objectives of the transport strategy for Rhodes West to reduce car dependence and promote the use of walking, cycling and public transport.
- The size, configuration and location of the retail tenancies suggest they will service the day-to-day needs of local residents who live directly above or within the development site. The tenancies are not likely to draw on a wider catchment beyond the development site and Rhodes Peninsula.
- As the retail tenancies will cater to local residents who will use other modes of transport there is not likely to be a significant increase in demand for car parking from patrons or staff.
- The site is located in close proximity to a variety of public transport options, including:
 - i. Regular and frequent trains operate on the T1 Northern Line between Hornsby, Epping, Strathfield, Rhodes Station and the City.
 - ii. Bus stop on Walker Street, near Timbrol Avenue provides bus service on Route 458 between Macquarie Park and Burwood.
 - iii. A Ferry wharf in Meadowbank provides a ferry services, F3 Parramatta River, between Parramatta River and Circular Quay.
- The site is physically constrained and cannot accommodate additional spaces. The environmental condition of the site, documented in the Site Management Plan, submitted with the original MP 10_0105, limited further excavation of the site to create additional car parking spaces.

Accordingly, the proposed modification is considered to satisfy the parking demand and is consistent with the objectives of the DCP.

6 Environmental Assessment

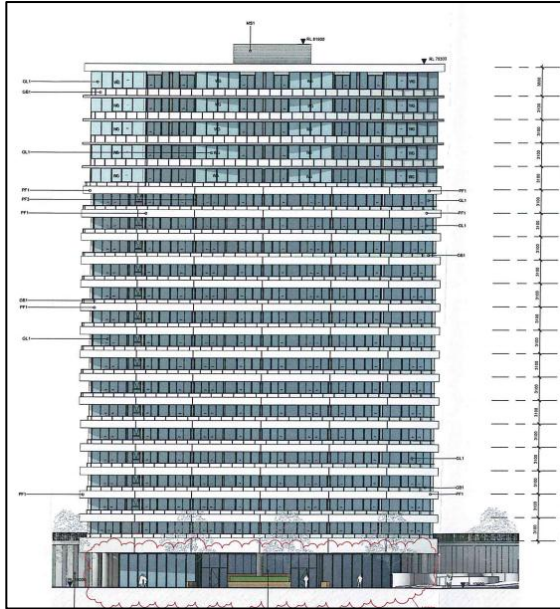
6.1 BUILT FORM AND APPEARANCE

As the proposal is for a change of use and internal reconfiguration of the basement floor plans of Building C only, there will not be any natural or built environment impacts. The approved building envelope will not change and will therefore maintain a consistent streetscape appearance as approved.

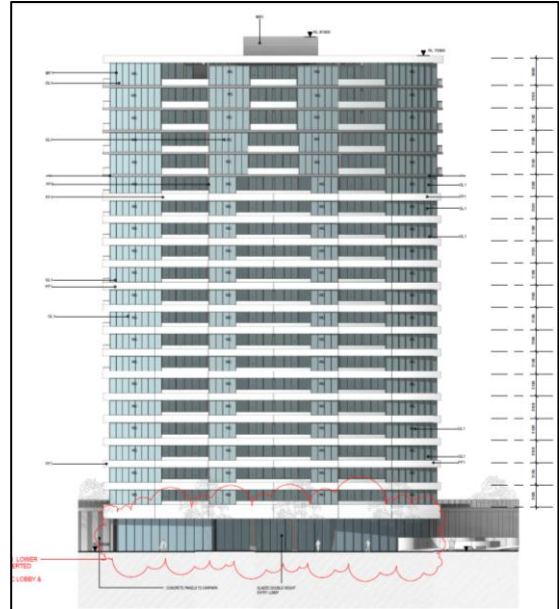
Minor changes are proposed to the approved elevations at the basement levels. The façade changes relate to a revised lobby layout and glazing along the north, south and west (Shoreline Avenue)

elevations. In our opinion, the appearance of the building will not significantly change as a result of the proposal and the approved form of the development and future character of the area will be maintained (refer to Figure 4).

FIGURE 3 – BUILDING C WEST ELEVATION



PICTURE 5 – APPROVED(MP_0105 MOD 1)



PICTURE 6 – PROPOSED MOD 4

7 Section 79C Consideration

The matters referred to in Section 79C of the Environmental Planning and Assessment Act 1979 also need to be considered in the assessment of the proposed modification. Each of the matters relevant to the proposal is assessed below:

(a)(i) Any environmental planning instrument.

The proposed modification has been assessed in accordance with the relevant planning controls. The application has been submitted in accordance with the requirements of Section 75W of the Environmental Planning and Assessment Act 1979.

The proposed modifications do not impact on compliance of the development with any provisions of the state, regional and local planning controls.

(a)(ii) Any proposed instrument that is or has been the subject of public consultation.

None relevant to the proposal.

(a)(iii) Any development control plan.

The proposed modifications will not result in any changes to the existing level of compliance with the DCP.

(a)(iiia) Any planning agreement or any draft planning agreement.

The maximum GFA and FSR for development on the subject site were set through the preparation of the Rhodes West Master Plan and the VPA between Billbergia and the City of Canada Bay Council. It is noted that MOD 1 and MOD 2 have been approved and increased the total approved GFA that had been considered at the time of executing the VPA. The VPA includes provisions that permit additional GFA, subject to VPA contributions.

(a)(iv) The regulations

None relevant to proposal.

(a)(v) Any coastal zone management plan

None relevant to the proposal.

(b) the likely environmental, social and economic impacts

The proposed minor amendment to the approval will not result in any significant environmental, social or economic impacts.

(c) The suitability of the site

The proposed modification will not result in any changes that would affect the suitability of the site to accommodate the proposed development.

(d) Any submissions

It is acknowledged that any submissions arising from the public notification of the Section 75W application will need to be assessed by the Minister. Urbis would appreciate being made aware of any issues raised by residents during the notification period to enable the proposal to be reviewed and/or amended, if considered appropriate and necessary.

(e) The public interest

It is considered that the proposed modification will not have any significant impacts on the natural or built environment and is in the public interest. The additional retail floor area will support the residential development and satisfy the day to day needs of residents, without detracting from the shopping centre to the south.

8 Summary and Recommendation

The Section 75W Modification application is entirely appropriate and may be approved by the Minister (or her delegate), on the basis that the proposed modifications do not constitute a radical transformation to the Project Approval and there will not be any detrimental natural and built environmental impacts.

Based on the above, it is considered that the proposed modification to the Project Description and Conditions 1 and 34 of the Project Approval (MP10_0105, as modified by Modification 1 on 26 September 2012 and Modification 2 on 29 January 2013 may be approved under the provisions of Section 75W of the Environmental Planning and Assessment Act 1979.

If you would like to discuss the application, please do not hesitate to contact me on (02) 8233 9927.

Yours sincerely,

A handwritten signature in blue ink, reading 'Alaine Roff'. The signature is fluid and cursive, with the first name 'Alaine' being more prominent than the last name 'Roff'.

Alaine Roff
Senior Planner