

24 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. 5 (Major Project MP 10_0105) Nos. 44-46 Walker Street, Rhodes

This Report 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 Condition 1 of the consent to amend the approved plans to provide a private roof garden for Units 19.04 and 19.05 only.

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. The modification to the roof top of Building C will improve the appearance of the building when viewed from the upper level units in Buildings A and D, which look over the roof scape.

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 to:

- 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 modification to the approved mixed use development relates 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 MAJOR PROJECT MP 10_0105 MOD 4

Major Project MP 10_0105 MOD 4 was lodged with the Department of Planning and Environment on 14 May 2014. The proposed modification to the approved mixed use development relates to Building C only and seeks 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 Schedule 1, Conditions 1 and 34 of the project approval.

Major Project MP 10_0105 MOD 4 is on exhibition and awaiting assessment and determination.

1.6 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.

1.7 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 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 Condition 1 of the Project Approval as follows:

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:

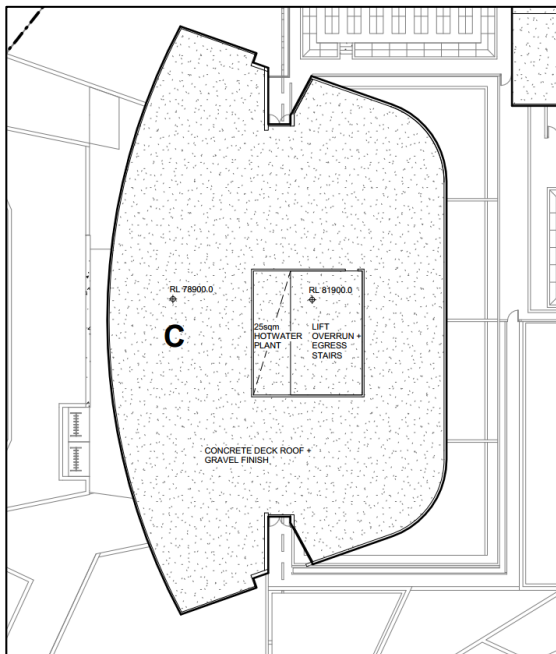
- A-0223 MOD 5 – Level 20 Plan
- A-0506 MOD 5 – Elevations – BLDG C North & South
- A-0507 MOD 5 – Elevations – BLDG C East & West

4 Description and Rationale of Proposed Modifications

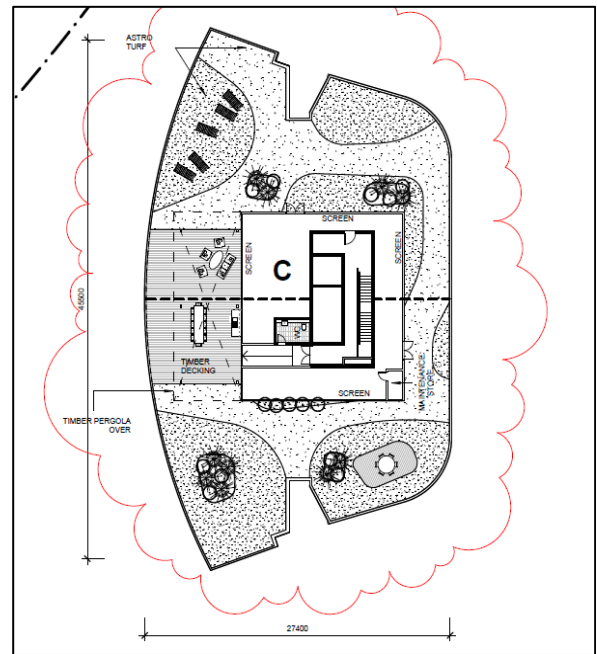
The proposed modification includes a new roof garden on Building C for the use by occupants of Units 19.04 and 19.05 (see Figure 1). The roof area will include:

- A timber deck with pergola above on the western side of the roof;
- Replace concrete and gravel finish with astro turf surface for the remainder of the roof;
- Pockets of garden planting across the roof;
- Reconfiguration and extension of the plant and lift overrun to include stairwell, toilet and maintenance store. The modified plant/stair core will continue to be screened with metal finish.

FIGURE 1 – BUILDING C LEVEL 20



PICTURE 1 – APPROVED



PICTURE 2 – PROPOSED

As approved, the roof of Building C is finished with concrete and gravel and does not provide a pleasant outlook for taller buildings to the east (Buildings A and D). The proposed roof garden will significantly improve that outlook by finishing the roof with plantings and astro turf.

As indicated, the roof garden area is exclusively for the use of two of the top floor units of Building C only. The occupants of Units 19.04 and 19.05 will have private access to the roof from Level 19 via a stairwell. The proposal does not extend the lift access to the roof, which ensures the roof remains private and not communal.

Given that the roof garden is not a communal area, there are not likely to be any significant amenity impacts, particularly in terms of aural and visual privacy for occupants of surrounding buildings. That is, the roof will not be used for entertaining purposes for the whole of the building.

Units 19.04 and 19.05 have private balconies on the western elevation. It is unlikely that residents will use the shared roof area more than their private balconies. Furthermore, the roof is likely to only be used in good weather, not year round.

The nearest adjoining building is Building B, which is a maximum of 6 levels and well below the proposed roof terrace. The height difference ensures there will be any additional privacy impacts on Building B.

Building C is over 65m from Building A and over 60m and 75m from Buildings E and D, respectively. The significant separation between the roof terrace and Buildings A, D and E ensures that there will not be any privacy impacts on the residents of those developments.

Building C is also approximately 45m from development on Site 3C, Shoreline Avenue and is separated by a roadway. This significant separation ensures there will not be any privacy impacts on the existing and future developments on the neighbouring 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 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 proposed modification does not change the approved built form, floor space, separation, depth and setbacks or the unit mix and layout. On this basis, Principles of context, scale, built form and density remain satisfied.

The proposal increases the amount of open space allocated to Units 19.04 and 19.05 and improves the landscape quality, amenity and aesthetics of the building:

- The landscape design proposed roof garden optimises useability of the roof while maintaining privacy and respecting neighbours' amenity;
- Building C is separated from Buildings A, D and E and considerably higher than Building B to ensure the visual and aural privacy of residents is maintained. The amenity of development on neighbouring sites is also maintained as a result of generous building separation.
- The proposal improves the aesthetics of the building through the textures, materials and colours on the roof. This will significantly improve the outlook for the upper levels of taller Buildings A and D when compared to the approved roof scape of Building C.

Accordingly, the modification satisfies the relevant design principles of SEPP 65.

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. The proposal retains the approved residential use of Building C and the works are therefore permitted 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 building.

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 roof garden is not calculated as gross floor area under Council's definition and the approved FSR will not change.

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

5.3 CANADA BAY DEVELOPMENT CONTROL 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.

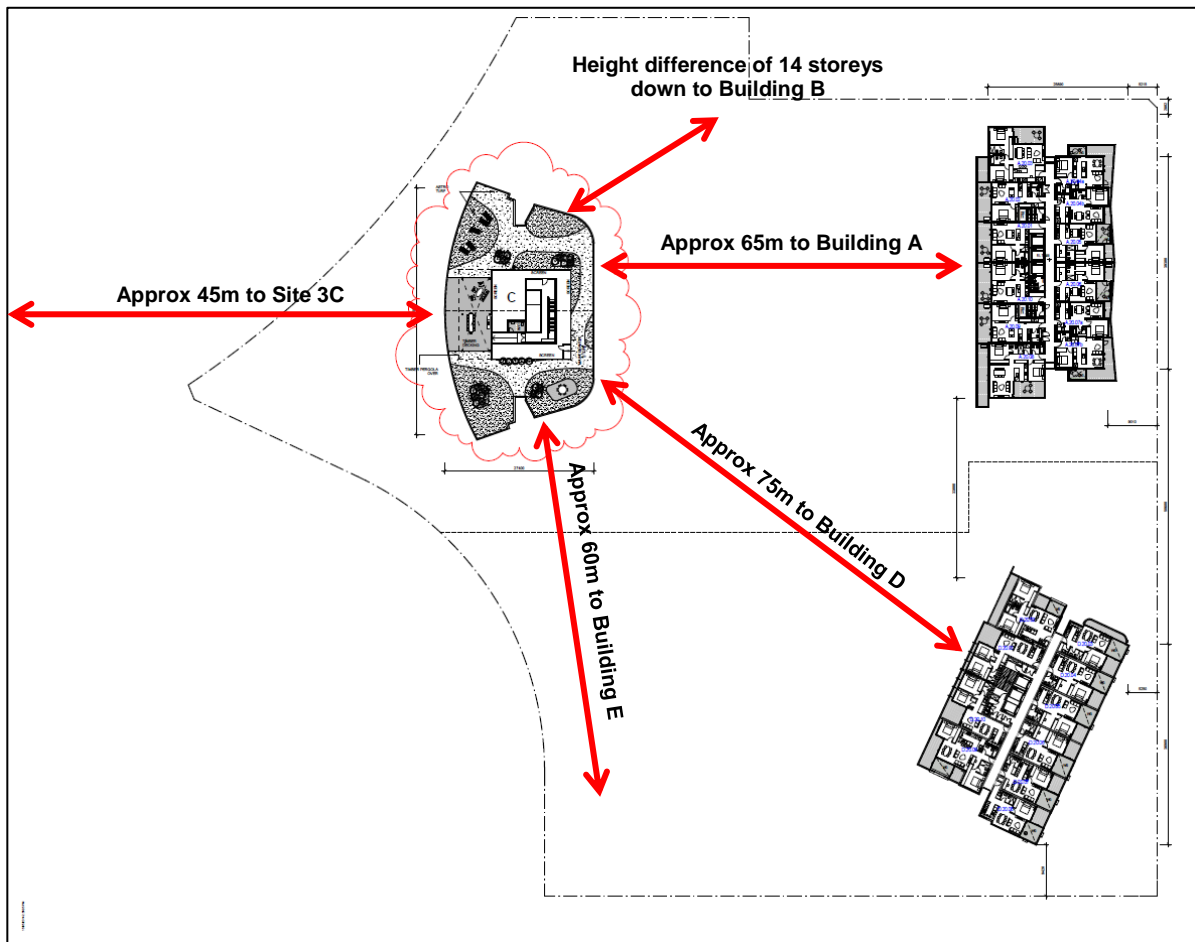
General and site-specific controls in the DCP relate mostly to built form and building bulk, articulation and address and diversity of apartment types. These provisions are not relevant to the proposal as the envelope is generally maintained and the unit mix is not changing. The relevant controls relate to privacy. The DCP encourages the protection of aural and visual privacy through building siting, separation and design of private open spaces. The proposal has been designed so as not to impact on privacy of nearby buildings and adjoining properties. This has been achieved through:

- The use of the roof area by Units 19.04 and 19.05, rather than by all occupants of the building. This will ensure the roof will not become a platform for entertainment by a large number of residents. Given that the roof will be under private ownership, shared between two units, it likely to

be used less than if it were communal. Units 19.04 and 19.05 will have controlled private access to the roof from Level 19 via a stairwell.

- Building B is a maximum of 6 levels and well below the proposed roof terrace. There are not anticipated to be any opportunities for overlooking of Building B.
- Building A is over 65m from the roof garden. Buildings D and E are 75m and 60m away, respectively. The significant separation between the roof terrace and Buildings A, D and E ensures that there will not be any privacy impacts on the residents of those developments (see Figure 2).
- Building C is also approximately 45m from development on Site 3C, Shoreline Avenue and is separated by a roadway. This significant separation ensures there will not be any privacy impacts on the existing and future developments on the neighbouring site.

FIGURE 2 – SEPARATION DISTANCES



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

6 Environmental Assessment

6.1 BUILT FORM AND APPEARANCE

Minor changes are proposed to the roof level of Building C. The maximum height of the building will not change and the envelope will generally be retained. Minor changes are proposed to the plant and lift core. However, as this structure is not increasing in height and is considerably setback from all building edges it will not result in any natural or built environment impacts. The approved building envelope is not significantly changing and the proposal will therefore maintain a consistent streetscape appearance as approved.

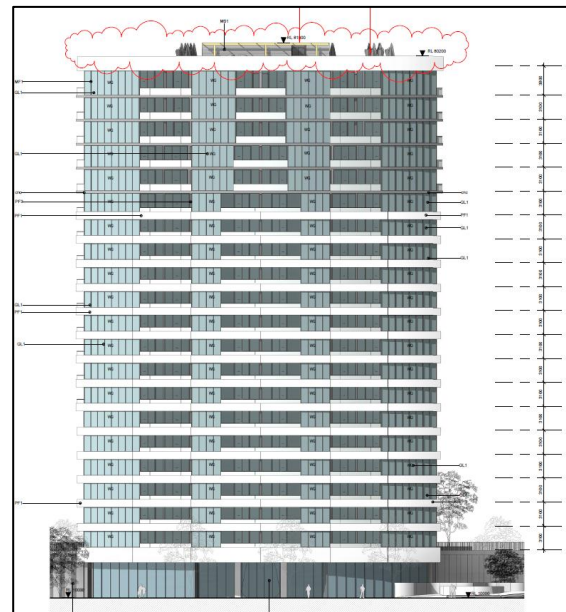
Minor changes are proposed to the approved elevations at the roof level. The façade changes relate to the slight increase in size of the plant and lift/stair structure, the pergola above the roof deck and the plantings. In our opinion, the elevational appearance of the building will not significantly 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 3).

In our opinion, the appearance of the building when viewed from the taller Buildings A and D will improve. The proposal will replace the approved concrete and gravel finishes on the roof with plantings and astro turf. This will provide a green outlook from the taller buildings and improve the aesthetics of the roof scape.

FIGURE 3 – BUILDING C WEST ELEVATION



PICTURE 3 – APPROVED(MP_0105 MOD 1)



PICTURE 4 – PROPOSED MOD 5

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 proposal does not increase the approved GFA and will not effect on the existing VPA between Billbergia and the City of Canada Bay Council.

(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. As demonstrated in this submission, the roof garden is generously separated from adjoining and nearby buildings and will not impact on aural or visual privacy.

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 Condition 1 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 Murray Donaldson, Associate Director or myself on (02) 8233 9900.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'Alaine Roff', with a stylized flourish at the end.

Alaine Roff
Senior Planner