

3 October 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. 6 (Ref: Major Project MP 10_0105)
Nos. 40-42 and 44-46 Walker Street, Rhodes**

This Report has been prepared by Urbis Pty Ltd on behalf of Waterpoint Site 2 – 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), Modification 2 (granted on 29 January 2013) Modification 3 (granted on 1 July 2014), Modification 4 (granted on 9 September 2014) and Modification 5 (granted on 29 July 2014) for 40-42 and 44-46 Walker Street, Rhodes.

This application relates to Building D only and seeks to modify Condition 1 of the consent to amend the approved plans to convert the dual key apartment on Level 6 to two separate units.

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 external appearance of the building.

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.

Major Project MP 10_0105 MOD 3 was approved by the Minister on 1 July 2014.

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 was approved by the Minister for Planning on 9 September 2014.

1.6 MAJOR PROJECT MP 10_0105 MOD 5

Major Project MP 10_0105 MOD 5 was lodged with the Department of Planning and Environment on 26 May 2014. The proposed modification to the approved mixed use development relates to Building C only and seeks to modify the approved plans in Condition 1 to provide a private roof garden for Units 19.04 and 19.05.

Major Project MP 10_0105 MOD 5 was approved by the PAC on 29 July 2014.

1.7 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.

1.8 SUBDIVISION DA 157/2013

An application for the stratum and strata subdivision of Buildings A, B and C was approved by Council on 28 June 2013.

1.9 SUBDIVISION DA 157/2013

An application for stratum subdivision of Buildings D and E was approved by Council on

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 2011.

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:

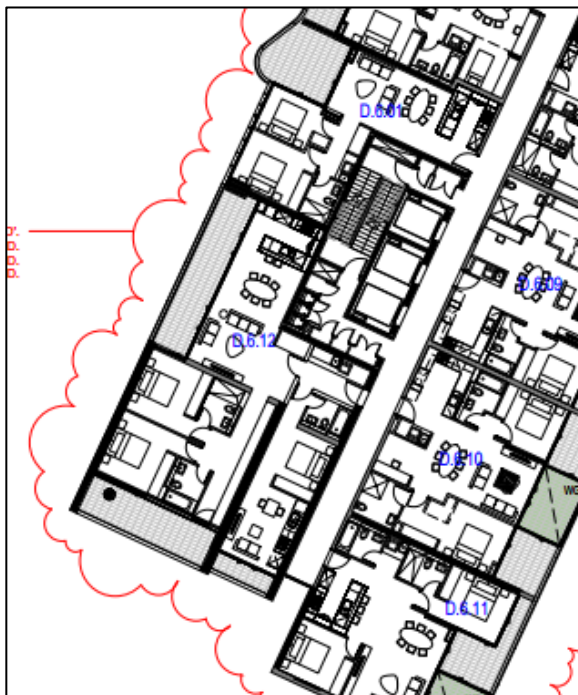
- A-0209 MOD 6 – Level 06 Plan

4 Description and Rationale of Proposed Modifications

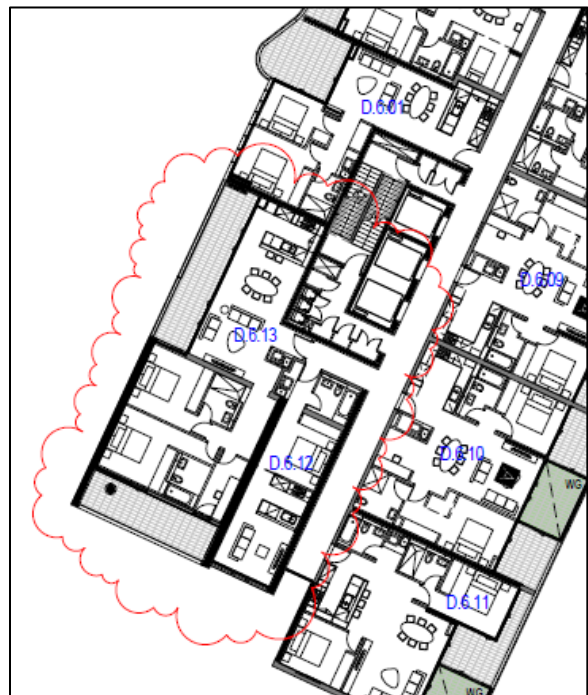
The proposed modification relates to Level 6 in Building D only and seeks to convert Dual Key apartments D6.12 to two separate units D6.12 and D6.13 (refer to Figure 1). This will increase the number of units by one from 759 to 760 across the five buildings. D6.12 will be a studio and D6.13 will be a two bedroom unit to respond to market demand for more of these types of dwellings.

The modification is for internal planning changes only and there will be no changes to the elevations.

FIGURE 1 – BUILDING D LEVEL 6



PICTURE 1 – APPROVED



PICTURE 2 – PROPOSED

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);

- Draft State Environmental Planning Policy 65 – Design Quality of Residential Flat Development (SEPP 65) (Amendment No. 3) and draft Apartment Design Guide;
- NSW Residential Flat Design Code (RFDC);
- Canada Bay Local Environmental Plan 2013; and
- 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 (RFDC), 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, separation, depth and setbacks or the unit layout. The size of the studio unit is consistent with the recommended minimum 40sqm size of studio units in the RFDC. The internal planning changes result in a reduction of GFA by 5m², by definition. There is no change to the visible bulk and scale of the building.

The proposal converts a three bedroom dual key unit to a studio and two bedroom unit. This assists in addressing housing affordability by increasing housing choice and providing a mix of housing types to cater for different budgets and housing needs.

The area of the approved balcony is incorporated into the studio unit, and replaces the balcony with large sliding doors behind a balustrade off the living space is provided, which will function similar to a Juliet-type balcony. This type of balcony design is appropriate in noisy locations, which is recognised in the RFDC. The occupants of the studio unit will also have excellent access to usable public open space in the immediate vicinity.

On this basis, Principles of context, scale, built form and density remain satisfied. Social dimension and housing affordability is also addressed. Accordingly, the modification satisfies the relevant design principles of SEPP 65.

5.2 DRAFT APARTMENT DESIGN GUIDE

A number of changes are proposed to SEPP 65, together with the new Apartment Design Guide - which replaces the Residential Flat Design Code – and these are now on exhibition for public comment. The changes are designed to increase the supply of well designed, affordable apartments, to introduce greater consistency in the adoption of basic design principles, and to encourage more innovative design.

The key change relevant to this application is the inclusion of car parking rates in the draft Apartment Design Guide. The draft Guide states that sites within 400m of a railway station or light rail stop in nominated inner and middle ring metropolitan Sydney areas, which includes Canada Bay are not required to be allocated with car spaces. The site is within 350m of Rhodes Railway Station and therefore does not have a parking requirement. The proposal does not alter the approved car parking provision and will encourage use of public transport by the occupants of the additional studio unit.

5.3 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 D 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 D.

Floor Space Ratio (Cl. 4.4)

The maximum Floor Space Ratio (FSR) of the site is 2.8:1 (57,890m²), as provided on the Floor Space Ratio Map referred to under Clause 4.4. The approved development MP 10_0105 MOD 4 has a GFA of 57,894m², which exceeded the permitted FSR under the LEP. However, the Department of Planning and Environment considered the GFA would have inconsequential impacts. The proposal reduces the GFA by 5m² to 57,889m², which complies with the LEP. This minor change will not affect the VPA between the proponent and Council, and does not require a variation to the VPA. Provisions in the VPA exist to accommodate minor variations in the calculation of GFA for the purposes of determining VPA contributions.

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

5.4 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. These provisions are not relevant to the proposal as the envelope is maintained. The relevant controls relate to unit mix. The DCP encourage diversity in housing types to cater for a variety of socio-economic, age, ethnic and other circumstances. The proposal converts a three bedroom dual key apartment into a studio and two bedroom apartments, which better caters to the housing needs of the area. It contributes more affordable housing to the stock and achieves greater diversity.

Accordingly, the proposed modification is considered to be consistent with the relevant objectives and controls of the DCP.

6 Environmental Assessment

6.1 BUILT FORM AND APPEARANCE

There are no changes to the elevations, appearance of the building or envelope. Accordingly, there will be no streetscape, visual amenity or built form impacts resulting from the modification.

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.

The proposal is consistent with the amendments to SEPP 65 and the new Apartment Design Guide.

(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 decreases the approved GFA, however this will not affect the operation of 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, Council and any government agencies 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 change in apartment mix will help with housing choice and affordability, which is in the public interest.

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, Modification 2 on 29 January 2013, Modification 3 on 1 July 2014, Modification 4 on 9 September 2014 and Modification 5 on 29 July 2014) 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, Director, or myself on (02) 8233 9900.

Yours sincerely,



Alaine Roff
Senior Planner