

4 June 2012

Dr John Roseth  
Chair  
Sydney East Region  
Joint Regional Planning Panel  
23 – 33 Bridge Street  
Sydney NSW 2000

Dear Dr. Roseth,

**RE: DA527/2011 – 27 Leeds Street, Rhodes – Response to Canada Bay City Council's Assessment Report**

I am writing to you in regard to DA527/2011 for the site located at 27 Leeds Street, Rhodes, which is scheduled to be considered at the Joint Regional Planning Panel (JRPP) meeting on Wednesday 6 June 2012. We have reviewed Canada Bay City Council's (Council) assessment report for the development application (DA) and find that there are numerous inaccuracies and a misunderstanding of what is being sought for approval regardless of our previous discussions and correspondence with Council.

In essence Council's assessment report relates to two key matters, which are:

- 1) Validity and application of Site Compatibility Certificate (SCC); and
- 2) Compliance with Section 79C of the *Environmental Planning and Assessment Act 1979* (the Act).

The above is discussed in detail within this letter. However, a summary of the key issues and general response to the issues is provided below.

**Summary of Key Issues**

*1) Development has not been made on behalf of social housing provider.*

Stage 1 Development Application and Site Compatibility Certificate have been made and issued on behalf of St. George Community Housing and the land owner. Notwithstanding this, and in accordance with Clause 35 of the SEPP (Affordable Rental Housing) 2009 it is the development itself not the application which needs to be by or on behalf of an Affordable Housing provider.

*2) Compatibility with surrounding development including type, bulk and scale*

The proposed development is of a similar bulk, scale and type of development as development in Rhodes West. In addition, the Proponent proposes to reduce the scale of the development, including proposed 18 storey foreshore building to be reduced to 6 levels and middle site building of 20 storeys reduced to 11 storeys.

*3) Development application not accompanied by Master Plan in accordance with clause 41 of Sydney Regional Environmental Planning Policy (Sydney Harbour) 2005*

The Department of Planning and Infrastructure have agreed that the Stage 1 Development Application can be made under Clause 83C of the *Environmental Planning and Assessment Act 1979 (the Act)*.

*4) Proposal would generate unacceptable overshadowing and overlooking*

The proposal would not generate any adverse overshadowing as documented by the overshadowing analysis. Further, the proposed reduction in scale of the proposal allows for a high level of amenity to be achieved for future residents and surrounding development. In addition, the nature of the proposal being infill development is similar in context to development in Rhodes West. The proposal provides the required separations from adjoining properties.

*5) Proposal does not satisfy Objectives of the Act*

The proposal achieves the Objectives of the Act including:

- Provides a significant amount of affordable housing;
- Provides public open space and embellishment of public domain;
- Does not have an adverse impact on the environment. The proposal achieves a high level of amenity. The proposal provides an improved environment through public access to the foreshore, which includes a 20m setback between the foreshore and development, and public domain landscaping embellishment;
- The site will provide direct access to the harbour foreshore and create previously unavailable view corridors to and from the water. In addition, the impact of the proposal on the John Whitton Bridge view corridors will be positive.

Refer to detailed discussion found in Table 1 of this letter for full list of outcomes.

*6) Proposal does not achieve State Environmental Planning Policy No.65 – Design Quality of Residential Flat Buildings (SEPP 65) requirements*

The proposal has been designed to achieve relevant requirements of SEPP 65 including minimum solar access and cross ventilation requirements. The scale and density of the development does not have an impact on the local amenity and amenity of future residents. In addition, the proposed reduction in scale would further contribute to providing a high level of amenity for future residents and surrounding development.

*7) Detailed Phase 2 contamination assessment has not been provided*

The proposal is for a Stage 1 DA, which only seeks approval for the proposed development envelope and not the carrying out of any development on the site. A preliminary contamination assessment has been undertaken, which established a low risk of contamination. Subsequent detailed development applications on the site will be accompanied by Stage 2 Contamination Assessments to include on site testing.

*8) The proposal would have an adverse social and economic impact on the locality*

The proposed development offers over 7,000m<sup>2</sup> of public open space, including direct public access to be provided to the foreshore, which has the ability to link to the West Rhodes water front. In addition, the applicant proposes to enter into a Voluntary Planning Agreement (VPA) to provide the wider community with additional public benefits. The proposal will allow key workers to locate within the area meaning more teachers, nurses and fire fighters located close to their places of work.

Further, the existing site is an outdated vacant industrial facility. There is a declining trend in the need for this type of industrial facility on the foreshore. Industrial users prefer modern facilities in closer proximity to national road networks. The applicant has not been able to secure a lease since a long term tenant relocated to a better located modern facility in November 2011.

*9) The proposal does not provide sufficient car parking and would have an adverse impact on local traffic*

A traffic report accompanying the application concluded that no additional traffic flow would be generated by the proposal over the existing use. More conservative generation numbers were then modeled and were found to have no material impact on the proposed upgraded intersection of Blaxland Road and Leeds Street. In addition, the proposed development provides more than Council's required number of car spaces. The proposal allows for approximately 530 spaces, while Council only require 473 spaces.

*10) The proposal will have an adverse impact on local views and vistas*

No public access is currently available over the site and the existing facility presents a degraded industrial facility to the water. The proposal opens up the site and creates a view axis to the foreshore from the corner of Leeds Street and Blaxland Road. In addition the proposal will be set back 20 metres from the foreshore. The setback area will be public accessible space.

Detailed discussion on all issues raised by Council is provided below.

### **Validity and application of Site Compatibility Certificate**

Legal advice provided by King&Wood Mallesons concludes that the application satisfies relevant sections of the Act and is capable of lawful approval. Refer to **Attachment 1** for the legal advice.

### **Compliance with Section 79C of the *Environmental Planning and Assessment Act 1979* (the Act)**

Council in their assessment report lists 16 recommendations to support their recommended outcome for the DA. We note that there are a number of points in the recommendations that we have previously responded to Council, however Council has ignored our response on those matters. As such, we have tabled the 16 points made by Council in the assessment report and provided a response on each matter. Refer to Table 1 on the following page.

Table 1 – Response to Council's assessment report recommendations

SEPP 65 Rules of Thumb Compliance		
Item	Rule of Thumb	Assessment
1	Pursuant to Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act, 1979, the proposed development is considered unsatisfactory as it fails to satisfy the provisions and requirements of State Environmental Planning Policy (Affordable Rental Housing) 2009 as the development application has not been made by or on behalf of a Social Housing Provider as required by Clause 35 of this planning instrument.	<p>Schedule 2 of the SCC clearly states that the application has been made on behalf of St. George Community Housing, which is a Social Housing Provider. Therefore, clause 35(1) of the SEPP is satisfied.</p> <p>St. George Community Housing is currently in an agreement with the subject site's land owner, BH Australia 1 Pty Ltd to provide at least 50% affordable housing as per clause 38(1)(a) of the Affordable Rental Housing SEPP.</p> <p>This was further reinforced by St. George Community Housing's letter dated 25 January 2012, which was provided to Council as part of the formal response to Council's request for additional information. See letter enclosed at <b>Attachment 2</b>.</p> <p>Despite the above Clause 35 of the State Environmental Planning Policy (Affordable Rental Housing) 2009 states that it is the development and not the application for the proposal that needs to be by or on behalf of a social housing provider.</p>
2	Pursuant to Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act, 1979, the proposed development is considered unsatisfactory as it fails to satisfy the provisions and requirements of State Environmental Planning Policy (Affordable Rental Housing) 2009 as the proposed development is not considered to be compatible with surrounding land uses.	<p>The SCC was issued by the DG of DP&amp;I on 2 September 2010. The DG in issuing the SCC formed the opinion the site meets the relevant requirements of the Affordable Rental Housing SEPP, including clause 34, which relates to maximum required distance from a train station entry. Council has mistakenly applied the SEPP in their assessment of distance from a train station. Walking distance is only applicable to Division 1 of the SEPP and not Division 5 which this application comes under.</p> <p>In addition, a detailed assessment of clause 37(7) of the Affordable Rental Housing SEPP, which relates to the making of the SCC was</p>

SEPP 65 Rules of Thumb Compliance

Item	Rule of Thumb	Assessment
		<p>provided as part of the application. This assessment and application demonstrates the following key objectives of the Affordable Housing SEPP are met, namely:</p> <ul style="list-style-type: none"> <li>▪ To ensure that new development is compatible with surrounding land uses;</li> <li>▪ To ensure development is within 800m of a Railway Station;</li> <li>▪ To provide at least 50% affordable housing for at least a 10 year period; and</li> <li>▪ Is compatible with the design principles under SEPP 65.</li> </ul> <p>The site is located in a highly accessible area, is consistent with the context of the area, will provide affordable housing managed by a community housing provider and is compatible with the SEPP 65 design principles.</p> <p>A detailed 29 page contextual analysis has been prepared by Marchese Partners, which identified a number of options for redevelopment of the site. The preferred option is a design response to the site constraints and opportunities and is compatible with its surrounds.</p>
3	<p>Pursuant to Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act, 1979, the proposed development is considered unsatisfactory as it fails to satisfy the requirements of the Site Compatibility Certificate issued by the Minister for Planning on 2 September 2010, which makes the proposal permissible on the site under State Environmental Planning Policy (Affordable Rental Housing) 2009, as the application was not accompanied by a Master Plan (now Development Control Plan by virtue of Clause 95 Schedule 6 Savings – Transitional and Other Provisions of the Environmental</p>	<p>We disagree with Council that the application fails to satisfy the requirements of the SCC. DP&amp;I advised that a staged development application could be lodged with Council under Section 83C of the <i>Environmental Planning and Assessment Act 1979</i> (the Act) regardless of the site being located within the Strategic Foreshore Site under the <i>Sydney Regional Environmental Planning Policy (Sydney Harbour Catchment) 2005</i> (Sydney Harbour SREP) and subject to clause 46 of the Sydney Harbour SREP. Refer to letter from DP&amp;I at <b>Attachment 3</b>. Further, it is our understanding that the savings and transitions provisions do not apply as Section 83C of the Act in this instance</p>

SEPP 65 Rules of Thumb Compliance

Item	Rule of Thumb	Assessment
	<p>Planning and Assessment Act 1979) as required under Clause 41 of Sydney Regional Environmental Planning Policy (Sydney Harbour Catchment) 2005 as the subject site is part of a Strategic Foreshore Site identified under Part 4 of this planning instrument.</p>	<p>prevails.</p> <p>The assessment of clause 41 of the SREP included an assessment of clauses 13, 14 and 15 of the SREP. The assessments found that the proposal development does not have an adverse impact on the Sydney Harbour/Parramatta River. Refer to <b>Attachment 4</b> for both assessments.</p> <p>Further to the above and in relation to preparing a Masterplan, an assessment of clause 46 of the SREP was undertaken. The assessment demonstrates that the proposal would not have an adverse impact on the subject site and surrounding area in relation to traffic and access, provision of infrastructure, provides significant open space and landscaping for public benefit, protects any natural assets and does not have a visual impact on the foreshore or obstruct important vistas to heritage items and enhances the foreshore.</p>
4	<p>Pursuant to Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act, 1979, the proposed development is considered unsatisfactory as it fails to satisfy the requirements of the Site Compatibility Certificate issued by the Minister for Planning on 2 September 2010, which makes the proposal permissible on the site under State Environmental Planning Policy (Affordable Rental Housing) 2009, particularly in relation to the requirement to reconfigure the development to address issues of overshadowing and overlooking. It is considered that the proposal will result in unacceptable overshadowing and overlooking impacts on the properties to the south of the site, the Leeds Street and Blaxland Road pedestrian areas, a substantial number of the proposed units with the building facing Leeds Street and returning around the Blaxland Road and eastern side of the site, and the proposed</p>	<p>A thorough review was undertaken of the proposed Stage 1 Development envelope, which resulted in reconfiguring the proposal. The analysis took into consideration overshadowing and amenity of adjacent properties as well as the amenity of the proposed units within the development envelope.</p> <p>The reconfiguration of the proposal resulted in better amenity for adjacent properties as well as for future residents by producing a design that does not have an adverse overshadowing impact on adjoining properties. The overshadowing analysis found that the most overshadowing would only occur in the winter solstice between 9am and 11am, and between 2pm and 4pm. At all other times there is minimum overshadowing produced that would have a negative impact. In addition, the internal common open space achieves a high level of amenity with at least 2-3 hours of solar access being available</p>

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Item	Rule of Thumb	Assessment
	communal open space area within the development.	<p>on all days throughout the year.</p> <p>In regard to overlooking the proposal is of a similar scale as the Rhodes West development. We note that the nature of the development does not pose an adverse overlooking impact on neighboring properties as the general view from higher levels of the development will be over roof tops of lower scale development. The situation is common throughout Sydney. An example of this situation is the Horizon building in Darlinghurst. Further, the location of the common open space with units facing into it is also common throughout the Sydney Metropolitan area.</p>
5	<p>The proposed development does not satisfy the Objects under Section 5(a) (ii), (iv), (v), (vii) and (viii) and 5(b) of the Environmental Planning and Assessment Act, 1979, as the proposed development was not submitted with a Master Plan (now Development Control Plan by virtue of Clause 95 Schedule 6 Savings – Transitional and Other Provisions of the Environmental Planning and Assessment Act 1979) and therefore does not promote and co-ordinate the orderly and economic use of the land and increase the opportunity for public involvement and participation in the environmental planning and assessment process that would be undertaken with a Master plan (DCP).</p>	<p>We strongly disagree with this point made by Council. The proposed development promotes and co-ordinates the orderly and economic use of land as per the evidence provided with the SCC application and the Stage 1 DA. The proposal has been designed in consideration of future development on adjoining properties and ensures that any development on adjoining properties can meet the required separations and SEPP 65 criteria.</p> <p>In regard to other Objectives of the Act, the proposal achieves the following:</p> <ul style="list-style-type: none"> <li>▪ Provides significant amount of affordable housing;</li> <li>▪ Provides public open space and embellishment of public domain;</li> <li>▪ Would provide upgrade of utilities and infrastructure, which are to be detailed in future detailed DAs;</li> <li>▪ Does not impact on any threatened species, population and ecology. There are no threatened species or ecology on the site. The site is a vacant industrial site;</li> </ul>



SEPP 65 Rules of Thumb Compliance

Item	Rule of Thumb	Assessment
		<ul style="list-style-type: none"> <li>▪ Does not have an adverse impact on the environment. The proposal achieves a high level of amenity. The proposal provides an improved environment through public access to the foreshore, which includes a 20m setback between the foreshore and development, and public domain landscaping embellishment;</li> <li>▪ Does not impact on natural resources, forests and conservation areas. The site is in a built up suburban area;</li> <li>▪ The proposal does not impact on any heritage items, including John Whitton Bridge; and</li> <li>▪ Does not impact on any important views and vistas to the foreshore and river.</li> </ul> <p>In regard to economic use of land, a detailed economic assessment supported both applications that came to the conclusion that</p> <ul style="list-style-type: none"> <li>▪ there is a declining trend for blue collar workers in the Rhodes;</li> <li>▪ the types of industrial uses allowable on the Rhodes Peninsula are more limited as a result of the new residential development in the immediate area;</li> <li>▪ viable large factory/warehouse facilities require 24 hour access for heavy vehicles including B Double trucks; and</li> <li>▪ There is no demand for these warehouse/factory sites in Rhodes in comparison to better located facilities in other parts of Sydney.</li> </ul> <p>Consequently, the subject site and other warehouses in the area have either been left vacant or are under-utilised.</p>

SEPP 65 Rules of Thumb Compliance

Item	Rule of Thumb	Assessment
6	<p>The proposed development is not a Staged Development with the meaning of Section 83 of the Environmental Planning and Assessment Act, 1979, as the proposed development has not satisfied the criteria for such applications as listed in Section 83B of the Act and therefore the provisions of Section 83C (2) and (3) of the Act cannot be relied upon to overcome the requirement for the submission of a Master plan (DCP) under Clause 46 of the Sydney Regional Environmental Planning Policy (Sydney Harbour Catchment) 2005.</p>	<p>Council's interpretation of Section 83C(2) of the Environmental Planning and Assessment Act 1979 is incorrect. In addition, it is apparent that Council have dismissed the legal advice dated 2 February 2012 (refer to <b>Attachment 5</b>) that was submitted to them previously as well as the DP&amp;I's letter dated 21 November 2011 from Neil McGaffin, Executive Director Planning Operations, which acknowledges that Section 83C is applicable. Refer to DP&amp;I letter at <b>Attachment 3</b>. Specifically, DP&amp;I's letter states that the application of Section 83C is possible if clause 46 of the SREP is addressed. A detailed assessment of clause 46 of the SREP was provided to Council, which demonstrates that that the Stage 1 DA is suitable for the site. Refer to assessment of clause 46 at <b>Attachment 6</b>.</p> <p>The assessment of clause 46 previously provided to Council and found at <b>Attachment 6</b> includes a discussion on the proposed future staging of the development.</p>
7	<p>Pursuant to Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act, 1979, the proposed development is considered unsatisfactory as it fails to satisfy the provisions of State Environmental Planning Policy No 65 - Design Quality of Residential Flat Buildings, particularly Design Quality Principles 1, 2, 4, 6, 7, and 9 and the requirements of Residential Flat Design Code.</p>	<p>We strongly disagree with this claim by Council as a thorough assessment of SEPP 65 principles was undertaken as part of the Stage 1 DA design development. In regard to principles 1, 2 and 4 the proposal is of a similar scale as the Rhodes West development. The scale and density of the development does not have an impact on the local amenity and amenity of future residents.</p> <p>In relation to principle 6 the proposal offers significant landscaping and public domain works. Details of the proposed landscaping and dedication of land is to be provided as part of the future detailed DAs on the site. In accordance with the Heritage Impact Assessment submitted to Council the proposal would not detract from the heritage value of the John Whitton Bridge, in fact the proposal would bring the bridge to the attention of a wider audience.</p>

SEPP 65 Rules of Thumb Compliance

Item	Rule of Thumb	Assessment
8	<p>Pursuant to Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act, 1979, the proposed development is considered unsatisfactory as the potential contamination of the site has not been fully investigated under Clause 7 of State Environmental Planning Policy No. 55 – Remediation of Land (SEPP 55) through the submission of a Phase 1 and 2 Site Investigation. Failure to fully undertake this assessment also does not satisfy the requirements of Clause 46 Sydney Regional Environmental Planning Policy (Sydney Harbour Catchment) 2005.</p>	<p>We disagree with Council interpretation of the application of Clause 7 of SEPP 55. Clause 7 of SEPP 55 states:</p> <p><i>“7 Contamination and remediation to be considered in determining development application</i></p> <p><i>(1) A consent authority must not consent to the carrying out of any development on land unless:</i></p> <p><i>(a) it has considered whether the land is contaminated, and...”</i></p> <p>The proposal is for a Stage 1 DA, which only seeks approval for the proposed development envelope and not the carrying out of any development on the site. A preliminary contamination assessment has been undertaken, however it is proposed that detailed contamination assessments are to be undertaken as part of subsequent detailed development applications on the site.</p> <p>In addition, we have provided Council with a detailed assessment of clause 46 Sydney Harbour Catchment SREP, which has been ignored by Council in their assessment report. Refer to <b>Attachment 6</b> for the clause 46 assessment.</p>
9	<p>Pursuant to Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act, 1979, the proposed development is considered unsatisfactory as it fails to satisfy the provisions of State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 as a BASIX assessment and Certificate has not been submitted with the development application.</p>	<p>We strongly disagree with Council's interpretation of when A BASIX certification is required for a development application. The proposal is for a Stage 1 DA. The proposal does not seek to carry out a development but seeks approval for the development envelope.</p> <p>A BASIX assessment requires detailed development to be resolved in order to generate an index on how sustainability is achieved. Examples of the detailed items required to be included are; amount and type of insulation to be used, types of water fittings and fixtures, size and use of rainwater tanks, installation and use of gas boosted heating and solar water heating and types of energy fittings and fixtures.</p>

SEPP 65 Rules of Thumb Compliance

Item	Rule of Thumb	Assessment
		<p>It is obvious that Council lack understanding in the detail calculation methodology of BASIX as it is not possible to produce a BASIX certificate for a Stage 1 building envelope DA.</p>
10	<p>Pursuant to Section 79C(1) (c) and (b) of the Environmental Planning and Assessment Act, 1979, the proposed development is considered unsatisfactory in that the site is not considered to be suitable for a development of the type, size, scale, bulk and height proposed and the development is likely to have adverse impacts on the natural and built environment surrounding the site and will have adverse social and economic impacts on the locality.</p>	<p>The proposed development is generally of a similar bulk and scale to development in Rhodes West. Notwithstanding this, the joint partners St George Community Housing and BH Australia Leeds 1 Pty Ltd are prepared to reduce the bulk and scale to more closely align with councils feedback on the proposal. In saying this we disagree with Council that the development is likely to have an adverse impact on the environment, economy and social aspects as a result of bulk and scale. This is discussed further below.</p> <p><b>Environment</b></p> <p>The proposed envelope has been designed based on detailed analysis to demonstrate that SEPP 65 principles can be met for the subsequent detailed development applications. This relates not only to development on the subject site but has also taken into consideration the ability for the adjoining property to be developed in the future. Further, the application demonstrates that the overshadowing does not pose a detrimental impact on surrounding development nor on the amenity of future residents within the proposed development.</p> <p><b>Economic</b></p> <p>The existing site is a vacant warehouse facility that makes up an under-utilised industrial precinct. Detailed economic assessment that supports the application has found that there is no demand for this type of industrial facility in Rhodes due to modern and better located facilities in other parts Sydney. In addition, the economic assessment found that there is a significant declining trend in blue workers located in Rhodes.</p>

SEPP 65 Rules of Thumb Compliance

Item	Rule of Thumb	Assessment
		<p>Further, the proposed development would greatly support the economy by providing affordable housing for key workers, giving them an opportunity to save sufficient funds for potential home ownership and the ability to locate near their work and contribute to the local economy.</p> <p><b>Social</b></p> <p>The proposed development offers up to 251 affordable housing units for key workers. Therefore, we strongly disagree that the proposal is not suitable development for the site and for Rhodes, and does meet Section 79C of the Act. The proposal would significant contribute to the social diversity of the area.</p>
11	<p>The proposal is also not supported as it is inconsistent with the NSW State Plan 2012, the Sydney Metropolitan Strategy, the Inner West Draft Subregional Strategy, the Canada Bay Local Planning Strategy and the Canada Bay Local Environmental Plan 2008.</p>	<p>Detailed assessment of relevant plans and policies including these referred to be Council were undertaken as part of the preparation of the Statement of Environment Effects (SEE). Section 4 of the SEE provides the assessment.</p> <p>Therefore, we disagree with Council that the proposal is inconsistent with the plans identified. The assessment found that the proposal meets key actions of the relevant documents which include:</p> <p><b>Sydney Metropolitan Strategy</b></p> <ul style="list-style-type: none"> <li>▪ Action B1.3 Aim to locate 80 per cent of all new housing within the walking catchments of existing and planned centres of all sizes with good public transport</li> <li>▪ Action D1.1 Locate at least 70 per cent of new housing within existing urban areas and up to 30 per cent of new housing in new release areas</li> </ul>

Item	Rule of Thumb	Assessment
		<p><b>Inner West Draft Sub-regional Strategy</b></p> <p>Inner west Subregion Draft Subregional Strategy (Draft Inner West Subregional Strategy) identifies a housing target of 10,000 additional dwellings for Canada Bay by 2031. The Strategy plans for increasing housing capacity in existing areas, focused around centres and corridors that take advantage of public transport and existing services. Whilst the Strategy does not indicate where the 10,000 additional dwellings are to be located within Canada Bay, it is proposed that the majority of future dwelling growth be located in centres, or following past trends where a growing proportion of development has occurred within centres that are defined as being within 800m of a train line or bus routes.</p> <p><b>Canada Bay Local Planning Strategy</b></p> <p>Council state that SGS Economics and Planning have identified that there would be a demand of 24,250sqm of additional local industrial land in Canada Bay based on population projections. We strongly disagree with this as economic analysis undertaken by Location IQ has identified in point 5 above that:</p> <ul style="list-style-type: none"> <li>▪ there is a declining trend for blue collar workers in the Rhodes;</li> <li>▪ the types of industrial uses allowable within Rhodes is more limited as a result of the new residential development in the immediate area;</li> <li>▪ viable large factory/warehouse facilities require 24 hour access for heavy vehicles including B Double trucks; and</li> <li>▪ There is no demand for these warehouse/factory sites in Rhodes in comparison to better located facilities in other parts of Sydney.</li> </ul>

SEPP 65 Rules of Thumb Compliance

Item	Rule of Thumb	Assessment
		<p>In addition, Canada Bay Local Planning Strategy identifies a short to medium term housing capacity target for the Council area of 10,300 new dwellings. As provided in the SEE, <i>“Mecone has identified that the dwelling supply in the short and medium term in both the Employment and Housing Study, and the Strategy leads to a shortfall of up to 2,900 dwellings in the local government area. Therefore, in order to meet the shortfall local centres, would be required to be developed more intensely”</i>.</p> <p>In addition, Council acknowledge the undersupply of affordable housing as a significant issue in the local government area, which is reflected in their Housing Objectives, which states:</p> <p><i>Objective H2 Provision of a greater share of Low Cost and Affordable Housing</i></p>
12	<p>Pursuant to Section 79C(1) (b) of the Environmental Planning and Assessment Act, 1979, the proposed development is considered to have unsatisfactory impacts on the road network surrounding the subject site and does not provide adequate on site parking facilities for visitor vehicles, bicycles and removals/service vehicles.</p>	<p>The proposed development includes an envelope for the intended basement car parking, which has been designed to provided car parking as per Council's requirements. The proposal provides three levels of car parking. The envelope has been designed to allow for up to 531 car spaces. Council's requirements under their <i>Residential – controls for detached dual occupancies, multi dwelling housing &amp; housing residential flat buildings Development Control Plan (DCP)</i> require a maximum of 473 car spaces. Of this amount Council require approximately 120 visitor car spaces. Even though the design has allowed for these spaces we feel that this is extreme given that the site is located in close proximity to public transportation. Therefore, this figure will be reviewed as part of the detailed design of future development applications on the site. In addition, the provision of bicycle spaces and service vehicles are to be reviewed as part of the</p>

SEPP 65 Rules of Thumb Compliance

Item	Rule of Thumb	Assessment
		<p>detailed design given that there would be sufficient space to accommodate both these items.</p> <p>In relation to the surrounding streets and the immediate intersection at Blaxland Road and Leeds Street, Council and the Roads and Maritime Services (RMS) have proposed an upgrade of the intersection. The landowner welcomes discussions and negotiations with Council and the RMS in upgrading the intersection.</p>
13	<p>Pursuant to Section 79C(1) (b) of the Environmental Planning and Assessment Act, 1979, the proposed development is likely to have unsatisfactory impacts on views and vistas to and from the waterway and foreshore and to and from the public domain as no provision has been made for the creation of view corridors through and across the site to the waterway and the foreshore and the proposed bulk, height, scale and siting of the proposed buildings is likely to adversely impact on existing views and vistas.</p>	<p>The proposed development offers significant public domain to the foreshore. Details of the dedication of relevant open space will be provided to Council as part of subsequent detailed DAs. The Proponent has already had numerous discussions with Council staff in relation to future development contributions of which public domain dedications are included.</p> <p>In addition, the proposal would not have an impact on important views or vistas, including to the John Whitton Bridge. A detailed Heritage Impact Statement was provided to Council during the assessment process. Refer to <b>Attachment 7</b> for the report.</p>
14	<p>Pursuant to Section 79C(1) (b) of the Environmental Planning and Assessment Act, 1979, the proposed development is likely to have an adverse impact on the heritage significance of the John Whitton (Meadowbank) bridge which is a heritage item on the State Heritage Register under the Heritage Act 1977 and a local heritage item under the Canada Bay Local Environmental Plan 2008 and the Ryde Local Environmental Plan 2010. The proposal will block important views of this bridge from the public domain and the scale of the development would overwhelm the bridge.</p>	<p>A detailed Heritage Impact Statement was prepared and submitted to Council. The Heritage Impact Statement found that the proposed development does not have an adverse impact on any heritage items and specifically the John Whitton Bridge. Refer to <b>Attachment 7</b>.</p> <p>Importantly, the proposal provides for large public accessible open space along the foreshore encouraging views along the river and to the heritage bridge. This would provide significant public benefit as currently public access on this part of the site to the foreshore is not available. In addition, the proposal would provide further significant public benefit through landscaping and public domain embellishment.</p>



SEPP 65 Rules of Thumb Compliance

Item	Rule of Thumb	Assessment
15	Pursuant to Section 79C(1)(b) of the Environmental Planning and Assessment Act, 1979, the proposed development is considered unsatisfactory as the development application does not include any details for the management and reduction, storage and transportation of waste generated by the development.	The proposed development is a Stage 1 DA, which seeks an envelope approval. Subsequent detailed development applications will be prepared for individual buildings on the site. The detailed DAs will provide all relevant information as to reduction, storage and management of waste generated by the development.
16	Pursuant to Section 79C(1)(e) of the Environmental Planning and Assessment Act, 1979, and having regard to the above reasons, approval of the application is not in the public interest.	<p>We strongly disagree with Council that the proposed development is not in the public interest based on the following:</p> <ul style="list-style-type: none"> <li>▪ The proposal provides a significant public benefit by providing a maximum of 251 affordable housing units, which is aimed at providing housing for key workers in the community;</li> <li>▪ The proposal has been the successful recipient of NRAS funding for the affordable housing units, which is a Federal Government initiative and has a major impact on the economy by stimulating housing in the community;</li> <li>▪ The proposal provides significant public domain, open space and access to the foreshore that is currently unavailable to the public;</li> <li>▪ The proposal does not have a detrimental impact on surrounding development due to overshadowing;</li> <li>▪ The proposal does not include any development within the immediate waterway to the site and therefore does not have an impact on the water ecology;</li> <li>▪ The proposal is generally of a similar or lesser bulk and scale as the Rhodes West development area;</li> </ul>

## SEPP 65 Rules of Thumb Compliance

Item	Rule of Thumb	Assessment
		<ul style="list-style-type: none"><li data-bbox="1193 309 2033 368">▪ The proposal responds to the changing nature of the area as industrial uses in Rhodes are in severe decline; and</li><li data-bbox="1193 389 2047 485">▪ The proposal provides a high level of amenity for future residents without producing an adverse impact on the existing amenity in the area.</li></ul>

Based on the above response it is considered that Council have misinterpreted the role of a Stage 1 DA and have also ignored key information presented to them in relation to relevant clauses of the Sydney Harbour SREP and legal advice on the application Section 83C of the Act.

Further, the application demonstrates that the proposed development would achieve the key principles of SEPP 65 and a high level of amenity, including solar access and cross ventilation requirements.

Notwithstanding this, the joint partners St George Community Housing and BH Australia Leeds 1 Pty Ltd are willing to reduce the bulk and scale of the proposed development envelopment, which significantly addresses Council's main concerns with the proposal. The amended proposal would result in the following:

- A reduction in the total number of apartments from 500 units to 396 units (198 affordable and 198 market units); and
- A reduction in building heights across the site from a maximum of 20 storeys to a maximum of 15 storeys, with a reduction in foreshore buildings heights from 16 storeys to 6 storeys.

Indicative images of the existing proposed development and amended proposal are provided below in Figures 1 and 2 for your consideration.



Figure 2 – Existing proposal indicative design

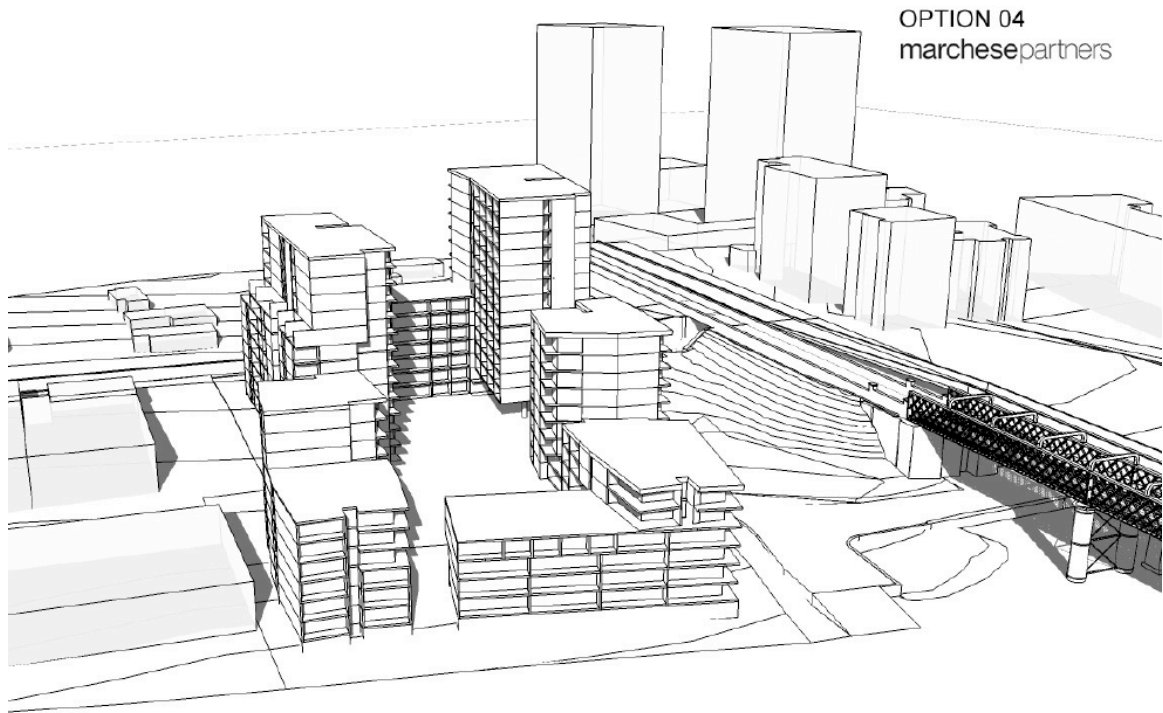


Figure 2 – Amended proposal indicative design

We believe that the amended proposal is more closely aligned with Council's comments in relation to the proposal.

Further, we stress that the application seeks a Stage 1 Development approval, which is to establish the development envelope. As such, the site would be the subject of subsequent detailed DAs and would be subjected to usual rigours of Development Application assessment by Council.

Based on our response we request that the JRPP either:

- 1) Approve the proposed development; or
- 2) Defer the determination of the application subject to Council accepting amended plans and assessing the amended scheme.

Should you have any queries, please do not hesitate to contact me on 02 8667 8668.

Yours sincerely,

Michael Gheorghiu

# Attachment 1 – Legal advice on application, June 2012



1 June 2012

Sydney East Joint Regional Planning Panel  
Panel Secretariat  
23-33 Bridge Street  
Sydney NSW 2000

Dear Sir

**JRPP 2012SYE006 – City of Canada Bay DA527/2011– Residential Flat Development comprising 500 units with 251 units being for Affordable Housing. 27 Leeds St Rhodes (“DA”)**

We act for Fife Capital, asset managers for BH Australia Leeds 1 Pty Ltd the owners of the subject site at 27 Leeds Street, Rhodes. We refer to the Panel meeting of the Sydney East Joint Regional Planning Panel (“Panel”) to be held 6 June 2012 at which the DA is to be considered by the Panel. We have reviewed the DA Assessment Report prepared by assessing officer Ms Narelle Butler of the City of Canada Bay Council (“Council”) and provided to the Panel on 21 May 2012. We are instructed by our client to respond in relation to the following legal issues identified in the Assessment Report:

- 1 Permissibility
  - By or on behalf of a social housing provider
  - Land to which Division 5 applies
  - Currency and validity of the Site Compatibility Certificate
- 2 Staged development application.

By way of summary, the Council’s report is incorrect in its assessment of these matters. The detailed discussion which follows demonstrates the flaws in the report and makes it clear that the Panel has power to approve the application.

**Permissibility**

The Assessment Report has made a number of incorrect assertions in relation to the permissibility of the development in the DA which we address below.

- *By or on behalf of a social housing provider*

The Council has incorrectly applied the requirements of Clause 35 of Division 5 of Part 2 of *State Environmental Planning Policy (Affordable Rental Housing) 2009* (“**Affordable Housing SEPP**”) in relation to development to which Division 5 applies.

The Assessment Report incorrectly asserts at page 47 in Recommendation 1 and in a number of other places that the development fails to satisfy the provisions and requirements of Division 5 of the Affordable Housing SEPP as the development application has not been made by or on behalf of a Social Housing Provider as required by Clause 35 of the Affordable Housing SEPP.

Clause 35 of the Affordable Housing SEPP does not require that the development application be made by or on behalf of a social housing provider. Clause 35(1)(a) provides that Division 5 of Part 2 of the Affordable Housing SEPP applies to **development** (our emphasis) on land to which this Division applies, for the purposes of a residential flat building by or on behalf of a public authority or social housing provider. It is not the application that is the issue which determines whether Division 5 of the Affordable Housing SEPP applies but the development itself. Development is defined in section 4 of the *Environmental Planning and Assessment Act 1979* ("**EPA Act**") broadly to include the use of land, the subdivision of land, the erection of a building, the carrying out of a work, and the demolition of a building or work. Accordingly, if development for the purposes of the erection, and or use of a residential flat building is by or on behalf of a social housing provider, Division 5 of Part 2 of the Affordable Housing SEPP will apply without any requirement that the development application be made by or on behalf of a social housing provider.

The Statement of Environmental Effects dated December 2011 lodged with the DA application by Mecone Pty Ltd ("**Mecone**"), expressly provides that the application has been prepared on behalf of BHAL and St George Community Housing to support a Stage 1 Development Application for the demolition of existing structures and construction of a new residential development that includes market housing and affordable housing. Further, and consistent with the requirement of clause 38 of Division 5 of the Affordable Housing SEPP, the proposal provides for a mix of housing in which at least 50% of the accommodation will be used for the purposes of affordable housing and where St George Community Housing, a registered community housing provider, has entered into a Memorandum of Understanding with BHAL to manage all of the affordable housing and has already secured funding from the National Rental Affordability Scheme to support the supply of 251 affordable housing places within the Leeds Street proposal.

The development is, for these reasons permissible under the SEPP.

- *Land to which Division 5 applies*

The Council has again incorrectly applied Division 5 of the Affordable Housing SEPP, this time in relation to the land to which the Division 5 applies.

The Assessment Report asserts at page 15 that the development the subject of the DA fails to meet two of the three Accessible Area criteria contained in the Affordable Housing SEPP and only just satisfies the remaining criteria. The Council identifies the Accessible Area criteria as those expressly defined in as "accessible area" in Clause 4(1) of the Affordable Housing SEPP and asserts that the development is not within "walking distance" of two of the three identified public transport access points. Even if this were the correct test for Division 5, the definition of 'accessible area' is such that satisfaction of only one of the public transport criteria would satisfy the definition of accessible area and even Council concedes that the property is within 400 metres walking distance of a bus stop used by a regular bus service that has at least one bus per hour in the relevant time periods.

However, the definition "accessible area" in Clause 4(1) is not used in Division 5. Clause 34 of Division 5 of the Affordable Housing SEPP provides that Division 5 applies to land in the Sydney region that is within 800 metres of a public entrance to a railway station or light rail station or, in the case of a light rail station with no entrance – a platform of the light rail station. There is no requirement in Clause 34 of Division 5 that this distance represents "walking distance". We are

instructed that Rhodes Station entrance is within 800 metres of the south western corner of the property. Accordingly, the development satisfies the requirement of Clause 34 of the Affordable SEPP and is on land to which Division 5 applies. Again, the correct conclusion is that the development is permissible under the SEPP.

- *Site Compatibility Certificate*

In March 2010 Mecone applied on behalf of St George Community Housing and FIFE Capital under s37 of Division 5 of the Affordable Housing SEPP for a site compatibility certificate for residential development at 27 Leeds Street, Rhodes to include both market and affordable housing. On 2 September 2010 the Director-General issued to Mecone a site compatibility certificate under Clause 37(5) of the Affordable Housing SEPP ("**Site Compatibility Certificate**") certifying that in his opinion:

- The site at 27 Leeds Street, Rhodes is suitable for more intensive development; and
- The development for the construction of 500 residential units of which 251 would be used as affordable rental housing for 10 years together with associated carparking is compatible with the surrounding environment, having had regard to the criteria specified in clause 37(6) (a), (b) and (c).

The Site Compatibility Certificate was issued subject to conditions in accordance with Clause 37(7) Affordable Housing SEPP.

The Council incorrectly asserts at page 17 of the Assessment report that the Site Compatibility Certificate is invalid as the application for the Certificate, being made by Fife Capital, was not made by or on behalf of the owner of the land and nor was the owner's consent to the making of that application provided to the Director-General.

We are instructed that the appropriate authority to make the application was obtained from the owner of the land. In any event, this allegation is not one that can be properly determined by the Panel. The certificate was granted by the DG who must be taken to have been satisfied that the requirements of clause 37 of the SEPP had been met. If the Council wishes to assert that the certificate is invalid, the appropriate forum for it to do so would have been by way of a legal challenge to the validity of that certificate.

The Council further incorrectly asserts at pages 16 and 17 of the Assessment Report that, because elements of the proposed development have been amended from those in the 2010 submission to the Director-General, the Site Compatibility Certificate is no longer current or valid.

The Site Compatibility Certificate was issued by the Director-General in respect of the development described in Schedule 2 of the Certificate. Schedule 2 refers to three elements which read together constitute the "development" for which the Site Compatibility Certificate was issued:

1. the application made by Mecone on behalf of Fife Capital and St George Community Housing;
2. the project described as the construction of 500 residential units of which 251 would be used as affordable rental housing for 10 years and associated carparking; and
3. requirements for the reconfiguration and redesign of the proposal to address, among other things, issues of overshadowing and overlooking, extension of Blaxland Road and public





foreshore access along with further information to be included in future masterplan and subsequent development applications.

The Site Compatibility Certificate not only contemplates, but expressly requires, that the final design of the 'development' is different from that in the original application. The DA has been prepared in response to the requirements in Schedule 2 of the Site Compatibility Certificate. However, the development remains consistent with the application made by Mecone in 2010 and the substance of the development remains as described in Schedule 2 of the Site Compatibility Certificate being for "the construction of 500 residential units of which 251 would be used as affordable rental housing for 10 years and associated carparking".

For these reasons, the JRPP has power under the SEPP to proceed to grant consent to the application.

### Staged development application

The *Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005* ("**SREP SHC**") Foreshores and Waterways Area Map identifies 27 Leeds Street, Rhodes as a strategic foreshore site. Clause 45 SREP SHC requires the preparation of for a master plan for a strategic foreshore site. The Site Compatibility Certificate issued on 2 September 2010 required the preparation of a masterplan for the site, including those matters identified in Schedule 2, under which subsequent development applications would be made.

As Council has correctly identified on page 19 of the Assessment Report, the *Environmental Planning and Assessment Regulation 2000* was amended by the *Environmental Planning and Assessment Amendment Act 2005* which changed the requirements to prepare masterplans. Clause 95 to Schedule 6 of the EPA Act provides that where a relevant environmental planning instrument required a masterplan to be prepared before the grant of development consent, that provision is to be construed as requiring a development control plan ("**DCP**") under section 74D of the EPA Act.

Further, Clause 98 to Schedule 6 of the EPA Act operates with respect to Masterplan requirement in SREP SHC to the effect that a staged development application satisfies the requirement to prepare a DCP or masterplan, provided any staged development application contains the information required to be included in the DCP (masterplan) by the environmental planning instrument or the regulations.

Clause 46 of the SREP SHC should therefore be read as setting out the information to be included in the preparation of a staged development application for 27 Leeds Street. While Clause 46(2) lists a number of matters to be illustrated and explained in the staged development application, this list is not intended to be applied in an unqualified manner. The staged development application is to illustrate and explain proposals for a number of matters "where appropriate".

It is not a relevant consideration that Council does not support the use of the provisions for staged development applications under section 83 of the EPA Act as an alternative to a masterplan under Clause 46 of the SREP SHC (see page 23 of the Assessment Report). The current legislative regime lawfully provides for this arrangement and the requirements of clause 46 have been incorporated into the preparation of the applicants Stage 1 development application by the operation of section 83C(3) EPA Act.

On 23 December 2011, Mecone lodged a staged development application under section 83 of the EPA Act. At page 21 of the Assessment Report, Council has asserted that the proposed development is not a Staged Development within the meaning of section 83 of the EPA Act as the proposed development has not satisfied the criteria for such applications as listed in section 83B of the Act. Council's reasons for this assertion exhibit a manifest lack of understanding of the staged development application regime in section 83 of the EPA Act.



The DA application satisfies each of the elements of section 83B as set out below:

- the applicant expressly identifies this Stage 1 application as a staged development application (s83B(2));
- the Stage1 development application sets out concept proposals for the future development of the site for which detailed proposals for separate parts of the site are to be the subject of subsequent development applications. Those concept proposals include building envelopes, number and apartment mix for proposed market and affordable housing dwellings, car parking spaces, envelope FSR, future café uses, landscaping and communal open space on site, public domain works including footpath upgrade and foreshore access (s83B(1));
- the applicant in this Stage 1 development application is not seeking consent authorising the carrying out of development on any part of the site until consent is subsequently granted to carry out development following a further development application in respect of that part of the site (s83B(3)(a)). The terms of any consent granted on the determination of this stage 1 development application must reflect this requirement (s83B(4)).

For these reasons, the application is capable of lawful approval by the Panel.

Yours sincerely



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Email [debra.townsend@au.kwm.com](mailto:debra.townsend@au.kwm.com)

Encl.

# Attachment 2 – Letter from St George Community Housing



## St George Community Housing Limited

Level 3, 8 Crofts Avenue, Hurstville NSW 2220  
PO Box 348, Hurstville BC NSW 1481  
Ph: (02) 9585 1499 Fax: (02) 9585 1564 ABN: 32 565 549 842

*Better lives, stronger communities through affordable, quality housing*

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25 January 2012

Ben Fife  
Fife Capital  
Level 1, 89 York Street  
Sydney, NSW 2000

Dear Ben,

### Leeds Street, Rhodes

I refer to our recent discussions regarding the above development project. Having reviewed the relevant comments in the letter dated 11 January 2012 from City of Canada Bay Council, I can confirm the following:


1. St George Community Housing Pty Ltd and Fife Capital's development entity BHAL entered into a Memorandum of Understanding to forge a strategic alliance to support the creation of a new housing development at Leeds Street Rhodes. The MOU was agreed in December 2010.
2. The MOU confirmed the roles of the parties, with BHAL having responsibility for managing the approval process, and SGCH tasked with securing Affordable Housing funding.
3. St George Community Housing secured funding from the National Rental Affordability Scheme in July 2011, to support the supply of 251 Affordable Housing places within the Leeds Street development.
4. The NRAS application confirmed the partnership arrangement and roles of SGCH and BHAL.
5. BHAL and St George Community Housing are currently developing the detailed terms of the strategic alliance, as set out in the MOU.

I trust the contents of this letter are sufficient for your purposes.

Yours Sincerely

Frank Lyons  
General Manager Development & Construction

Attachment 3 – Letter from  
Department of Planning on Section  
83C of the EP&A Act





**COPY**

Mr Ben Hendriks  
Mecone  
Suite 804, 185 Elizabeth Street  
Sydney NSW 2000

11/20350

Dear Mr Hendriks

I refer to your letter of 2 November 2011 providing additional information in support of your request that the Minister waive the masterplan requirement for development at 27 Leeds Street, Rhodes under clause 45(2) of the Sydney Harbour Catchment SREP 2005 (Harbour REP).

The information you provided is considered to be insufficient to support a masterplan waiver. However, I understand that you plan to lodge a staged Development Application (DA) for the development certified under the Site Compatibility Certificate. In this instance, section 83C of the *Environmental Planning and Assessment Act 1979* allows for the masterplan requirement to be dispensed with so long as the staged DA addresses the requirements listed under clause 46 of the Sydney Harbour Catchment REP 2005.

A staged DA can therefore be lodged directly with the consent authority without the need for the Minister to waive the masterplan requirements under clause 45(2) of the Harbour REP, provided that the matters identified in the DA respond to the items listed under clause 46 of the Harbour REP. Please be mindful that the staged DA needs to fully address the matters listed under clause 46 of the Harbour REP to qualify.


I trust this information is of assistance.

Should you have any further enquiries about this matter, I have arranged for Ms Danijela Karac-Cooke, Plan Making and Urban Renewal - Sydney East Planning Teams, of the Department of Planning and Infrastructure to assist you. Ms Karac-Cooke can be contacted on telephone number (02) 9228 6207.

Yours sincerely

  
Neil McGaffin  
Executive Director  
Planning Operations

Attachment 4 – Assessment table  
clause 13, 14 and 15 of Sydney  
Harbour SREP 2005



Sydney Regional Environmental Plan (Sydney Harbour) 2005		
Clause	Description	Response
Part 2	Planning principles	
13	Sydney Harbour Catchment	
The planning principles for land within the Sydney Harbour Catchment are as follows:		
(a)	development is to protect and, where practicable, improve the hydrological, ecological and geomorphological processes on which the health of the catchment depends,	<p>Historically the site was used for light industrial purposes. These uses will cease on the site, as there are other more appropriate locations in the Sydney metropolitan area. The proposed development is for residential land uses that will see a stark improvement to the foreshore. This would have a significantly lighter environmental footprint on the foreshore. The proposed development does not include any works in the waterway that would have an impact on its ecology and function.</p> <p>Further, the proposed development will include works such as stormwater upgrades that will significantly contribute to the improvement of the hydrology of the precinct in comparison to the industrial uses previously on the site.</p> <p>Therefore, the proposed development will not have a negative impact on the function and health of the catchment.</p>
(b)	the natural assets of the catchment are to be maintained and, where feasible, restored for their scenic and cultural values and their biodiversity and geo-diversity,	<p>The Rhodes precinct, including the Rhodes West development area does not include any historical natural assets, which reflect the cultural values, bio-diversity and geo-diversity of the area prior to urbanisation. The area is a highly urbanised area, which includes industrial and residential uses. Since the gradual relocation of industrial uses from the Rhodes area, the area has seen a shift to denser residential development as demonstrated by the Rhodes West precinct.</p>



Sydney Regional Environmental Plan (Sydney Harbour) 2005

Clause	Description	Response
(c)	decisions with respect to the development of land are to take account of the cumulative environmental impact of development within the catchment,	The proposed development will have a lighter environmental footprint on the catchment in comparison to the industrial uses that predominately made up the precinct, including the Rhodes West precinct.
(d)	action is to be taken to achieve the targets set out in <i>Water Quality and River Flow Interim Environmental Objectives: Guidelines for Water Management: Sydney Harbour and Parramatta River Catchment</i> (published in October 1999 by the Environment Protection Authority), such action to be consistent with the guidelines set out in <i>Australian Water Quality Guidelines for Fresh and Marine Waters</i> (published in November 2000 by the Australian and New Zealand Environment and Conservation Council)	The various actions are to be assessed as part of the detailed development application to be lodged for consent to develop the project.  The redevelopment will include improved stormwater drainage measures, which will result in an improvement to the water quality will be achieved. Therefore, improving the environmental performance of the site from its current light industrial use.
(e)	development in the Sydney Harbour Catchment is to protect the functioning of natural drainage systems on floodplains and comply with the guidelines set out in the document titled <i>Floodplain Development Manual 2005</i> (published in April 2005 by the Department),	N/A – the site will be developed above the 1/100 year floor level
(f)	development that is visible from the waterways or foreshores is to maintain, protect and enhance the unique visual qualities of Sydney Harbour,	As identified earlier the area is a highly urbanised area, which includes industrial and residential uses. The proposed development is consistent with the type and scale of development in the Rhodes West precinct. The proposal maintains views and enhances access to the waterway. Further, the proposed development will improve the public domain access along the foreshore and will enhance the visual quality of the foreshore by replacing an aging industrial building.

Sydney Regional Environmental Plan (Sydney Harbour) 2005

Clause	Description	Response
(g)	the number of publicly accessible vantage points for viewing Sydney Harbour should be increased,	The proposal will enhance the public access to the foreshore with a foreshore promenade, as well as direct access thru the site to the foreshore and create increased opportunities for viewing the waterway.
(h)	development is to improve the water quality of urban run-off, reduce the quantity and frequency of urban run-off, prevent the risk of increased flooding and conserve water,	<p>The proposed development will include works such as stormwater upgrades to meet all relevant State and local requirements and ensure that there are no negative stormwater and flooding impacts. Further, water quality measures will be included in the proposal, for example gross pollutant traps to ensure that run-off to the waterway or into the stormwater network does not have a negative impact on the health of the river.</p> <p>Furthermore, the proposal does not include works to Blaxland Road, which has access directly to the waterway and appears to be the main flow-path for run-off.</p> <p>Given the site's topography there is unlikely to be any flooding issues on the site and the proposed development is unlikely to contribute to any negative flood impacts in the area.</p>
(i)	action is to be taken to achieve the objectives and targets set out in the Sydney Harbour Catchment Blueprint, as published in February 2003 by the then Department of Land and Water Conservation,	The development will consider and respond to the Sydney Harbour Catchment Blueprint within future development application. There is nothing in the current proposal, which would conflict with this document.

Sydney Regional Environmental Plan (Sydney Harbour) 2005

Clause	Description	Response
(j)	development is to protect and, if practicable, rehabilitate watercourses, wetlands, riparian corridors, remnant native vegetation and ecological connectivity within the catchment,	<p>The proposed development is for residential land uses that will see a stark improvement to the foreshore and which would have a lighter environmental footprint on the foreshore than the existing uses. The proposed development does not include any works in the waterway. Therefore, there is no anticipated impact on any marine life and ecology.</p> <p>In addition, given the historic industrial use on the site and in the area, there is no remnant native vegetation on the site or in the surrounding area.</p>
(k)	development is to protect and, if practicable, rehabilitate land from current and future urban salinity processes, and prevent or restore land degradation and reduced water quality resulting from urban salinity,	The proposed development is for residential land uses that will see a stark improvement from the previous industrial uses and environmental improvement of the land.
(l)	development is to avoid or minimise disturbance of acid sulfate soils in accordance with the <i>Acid Sulfate Soil Manual</i> , as published in 1988 by the Acid Sulfate Soils Management Advisory Committee.	The site is classed as ASS Class 2. A management plan will possibly be required as a condition of approval for the concept application.
14	Foreshores and Waterways Area	
The planning principles for land within the Foreshores and Waterways Area are as follows:		
(a)	development should protect, maintain and enhance the natural assets and unique environmental qualities of Sydney Harbour and its islands and foreshores,	As identified earlier the area is a highly urbanised area, which includes industrial uses and residential uses. The proposed development is consistent with the type and scale of development in the Rhodes West precinct. The proposal maintains views and access to the waterway. Further, the proposed development will improve the public domain access along the foreshore and will enhance the visual quality of the foreshore.

Sydney Regional Environmental Plan (Sydney Harbour) 2005

Clause	Description	Response
(b)	public access to and along the foreshore should be increased, maintained and improved, while minimising its impact on watercourses, wetlands, riparian lands and remnant vegetation,	The proposal will include public domain improvements to and along the foreshore including parklands and a promenade, significantly enhancing the public amenity in the area.
(c)	access to and from the waterways should be increased, maintained and improved for public recreational purposes (such as swimming, fishing and boating), while minimising its impact on watercourses, wetlands, riparian lands and remnant vegetation,	<p>Public domain access to the foreshore will be provided. The site is located along Blaxland Road, which includes a boat ramp for access to the waterway. Access from this street will be improved as a result of the development.</p> <p>Importantly, Blaxland Road, boat ramp, car park and area near fronting bridge is subject to plans by Council for upgrade. Detailed landscaping and design of the area has been prepared by Council and relevant consultants appointed by Council.</p> <p>Council have accepted tenders for the upgrade works and are likely to complete construction/upgrade works by April 2012.</p> <p>The upgrade works will result in improved public open space and also providing improved connectivity between open space, Blaxland Road and the subject site.</p>
(d)	development along the foreshore and waterways should maintain, protect and enhance the unique visual qualities of Sydney Harbour and its islands and foreshores,	The development will have no impacts on the visual qualities of Sydney Harbour being smaller in scale than the nearby Rhodes West Development Area. Moreover, the proposal will improve the visual appearance of the waterway in this location, which is currently characterised by a large decaying industrial warehouse in close proximity to the foreshore.
(e)	adequate provision should be made for the retention of foreshore land to meet existing and future demand for working harbour uses,	The proposal will provide substantial public domain improvements along the foreshore. This will compliment proposed improvements to the existing boat ramp, which provides recreational boat access to the Parramatta River.

Sydney Regional Environmental Plan (Sydney Harbour) 2005

Clause	Description	Response
(f)	public access along foreshore land should be provided on land used for industrial or commercial maritime purposes where such access does not interfere with the use of the land for those purposes,	As above.
(g)	the use of foreshore land adjacent to land used for industrial or commercial maritime purposes should be compatible with those purposes,	See submission proper above.
(h)	water-based public transport (such as ferries) should be encouraged to link with land-based public transport (such as buses and trains) at appropriate public spaces along the waterfront,	The proposed development provides an opportunity for a public transport ferry stop to be provided to support the ferry service. This opportunity is proposed to be investigated in detail during the concept preparation and development application process.
(i)	the provision and use of public boating facilities along the waterfront should be encouraged.	Existing public domain access to the foreshore will be maintained. The site is located along Blaxland, which includes a boat ramp for boating access to the waterway.
15	Heritage conservation	The site does not contain or is near any heritage item
The planning principles for heritage conservation are as follows:		
(a)	Sydney Harbour and its islands and foreshores should be recognised and protected as places of exceptional heritage significance,	The site does not adjoin any heritage items or have an impact on the heritage value of the foreshore. The site does not overlook any heritage items of exceptional significance including the foreshore and islands within the harbour.
(b)	the heritage significance of particular heritage items in and around Sydney Harbour should be recognised and conserved,	As above.

Sydney Regional Environmental Plan (Sydney Harbour) 2005

Clause	Description	Response
(c)	an appreciation of the role of Sydney Harbour in the history of Aboriginal and European settlement should be encouraged,	As identified earlier the area is a highly urbanised area, which includes industrial uses and residential uses. The site is not identified as a heritage item or is located within a heritage conservation area. The site does not adjoin any heritage items or have an impact on the heritage value of the foreshore. The developer would be open to recognising the Aboriginal and European settlement of the area somehow.
(d)	the natural, scenic, environmental and cultural qualities of the Foreshores and Waterways Area should be protected,	As above.
(e)	significant fabric, settings, relics and views associated with the heritage significance of heritage items should be conserved,	As above.
(f)	archaeological sites and places of Aboriginal heritage significance should be conserved.	As above.

Attachment 5 – Legal advice from  
Hannaford Lawyers, February 2012





# Hannaford

## LAWYERS

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Sydney NSW 2000

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Email james@hannafordlawyers.com.au

The General Manager  
City of Canada Bay Council  
Locked Bag 1470  
DRUMMOYNE  
NSW 1470

Date: 2 February 2012

Attention: Ms Narelle Butler  
Manager Statutory Planning Services

Our Ref: JEH:FC/CB 1201  
Your Ref: DA 527/2011

Dear Madam

**Re: Development Application No. 527/2011**

**Property: 27 Leeds Street, Rhodes NSW**

We act on behalf of the Applicant to the development at 27 Leeds Street Rhodes NSW which we are instructed is Fife Capital and St George Community Housing.

We have been instructed to advise our client and respond to Council's letter dated 11 January 2012.

**Permissibility:**

As acknowledged by Council the proposal is permissible under the provisions of State Environmental Planning Policy (Affordable Rental Housing) 2009 (the SEPP).

**Certificate of Site Compatibility:**

We have been provided a copy of the Certificate issued by the Director General and dated 2 September 2010. We note that Schedule 1 of the Certificate describes the site as follows:

*"The subject site is 27 Leeds Street Rhodes".*

**Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005 (the SREP)**

The subject site is also affected by the above SREP and is included on the Map Sheet No. 19 at Schedule 1 entitled "Leeds Street Rhodes.

**Staged Development Application:**

We note that our client lodged a Staged Development Application with Council on 23 December 2011.

Part 4 Division 2A of the Environmental Planning & Assessment Act 1979 (the Act) sets out the procedure for the making of a staged development application. Section 83C of the Act provides a specific legislative alternative to the preparation of a Masterplan (DCP) which would otherwise be required under Clause 46 of the SREP.



Contrary to Council's statement it is not "a means of avoiding the requirement...". The provisions of the Act prevail and it is an election which any Applicant may make.

In any event in making a staged development application the Applicant must still address the requirements listed under Clause 46.

Council's interpretation, and reliance upon, the term "Site" as referenced by the SREP in relation to the Sites identified at Schedule 1 is incorrect. The provisions at Clause 45 and the terms of the SREP clearly do not require the making of a Masterplan in relation to the whole of a "Site" being one of the "Sites" as identified on the Map(s). The requirements of making a Masterplan, where a staged development application is not proposed, is in relation to "the site", being the development site at No 27 Leeds Street Rhodes as identified in the proposal and in the Site Compatibility Certificate, being part of the Site referred to on the Map.

Furthermore, and contrary to Council's letter, where a staged development application is proceeded with, there is no requirement for a direction from the Minister pursuant to Clause 45 (2). The position is confirmed by NSW Planning & Infrastructure in their letter dated 21 November 2011 a copy of which is attached.

Section 83C (2) is not, as Council interprets, a "discretionary" power. The Act provides an alternative mechanism via the staged development application process to the preparation of a Masterplan. The Section provides that the obligation to prepare a DCP (Masterplan) may be satisfied by the alternate mechanism. Section 83C (3) then provides the assessment criteria and that obligation is mandatory. In this case that information is to address the requirements listed under Clause 46 of the SREP.

Whether the consent authority is satisfied with the information that is provided is a matter for the consent authority's consideration as in any development application assessment process. Should the Joint Regional Planning Panel (JRPP) form the view it is not satisfied by the information and the Applicant is dissatisfied with the JRPP's view the usual appeal rights apply under the Act.

#### **Points 3 to 21 Inclusive:**

The matters set out at points 3-21 of Council's letter are all matters concerning alleged deficiencies in the information submitted with the staged development and/or a request for further information in support of the application.

A staged development application is commenced by a development application that sets out concept proposals for the development of a site. Section 83B (1) of the Act provides:

*"For the purposes of this Act, a staged development application is a development application that sets out concept proposals for the development of a site, and for which detailed proposals for separate parts of the site are to be the subject of subsequent development applications. The application may set out detailed proposals for the first stage of development".*

In particular we note that the application "**may**" set out detailed proposals for the first stage of the development. However it is not a requirement that it does so.

The Staged Development Application as submitted to Council on 23 December 2011 is clearly a development application which sets out the concept proposals for the development of the site. It is not incumbent on the Applicant to provide such detailed

proposals until the submission of subsequent development applications in the process of the staging of the development.

**Conclusion:**

The Applicant is not prepared to withdraw the Staged Development Application as suggested and requests Council to proceed with the processing of the Application subject to the additional information the Applicant proposes providing under separate cover.

Should you require any further information or wish to discuss this letter please contact either Ben Hendriks of Mecone on 8667 8668 or James Hannaford of our office on 8536 1444 or 0412 895 220.

Yours faithfully,



James Hannaford

**Principal  
HANNAFORD LAWYERS.**

Please note that our office address and contact details have changed to those on this letterhead. Our new details are:

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**COPY**

Mr Ben Hendriks  
Mecone  
Suite 804, 185 Elizabeth Street  
Sydney NSW 2000

11/20350

Dear Mr Hendriks

I refer to your letter of 2 November 2011 providing additional information in support of your request that the Minister waive the masterplan requirement for development at 27 Leeds Street, Rhodes under clause 45(2) of the Sydney Harbour Catchment SREP 2005 (Harbour REP).

The information you provided is considered to be insufficient to support a masterplan waiver. However, I understand that you plan to lodge a staged Development Application (DA) for the development certified under the Site Compatibility Certificate. In this instance, section 83C of the *Environmental Planning and Assessment Act 1979* allows for the masterplan requirement to be dispensed with so long as the staged DA addresses the requirements listed under clause 46 of the Sydney Harbour Catchment REP 2005.

A staged DA can therefore be lodged directly with the consent authority without the need for the Minister to waive the masterplan requirements under clause 45(2) of the Harbour REP, provided that the matters identified in the DA respond to the items listed under clause 46 of the Harbour REP. Please be mindful that the staged DA needs to fully address the matters listed under clause 46 of the Harbour REP to qualify.

I trust this information is of assistance.

Should you have any further enquiries about this matter, I have arranged for Ms Danijela Karac-Cooke, Plan Making and Urban Renewal - Sydney East Planning Teams, of the Department of Planning and Infrastructure to assist you. Ms Karac-Cooke can be contacted on telephone number (02) 9228 6207.

Yours sincerely

  
Neil McGaffin  
Executive Director  
Planning Operations