

**Report to the Director General on an application for a Site Compatibility Certificate  
State Environmental Planning Policy (Affordable Rental Housing) 2009**

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**SITE:** 27 Leeds Street, Rhodes

**APPLICANT:** Mecone (on behalf of Fife Capital and St George Community Housing)

**PROPOSAL:**

The proposal involves the demolition of a two storey warehouse building which covers the majority of the site and construction of three buildings ranging in height from 4 to 15 storeys and with an approximate floor space ratio of 2.96:1. The proposal includes:

- Two towers, including a podium, with heights of 4, 6,9 and 11 storeys, sitting perpendicular to the Parramatta River waterfront,
- A 3-sided perimeter building, with heights of 7, 13 and 15 storeys, framing the boundaries at Blaxland Road, Leeds Street and industrial land to the east.

The proposed development would comprise 450 dwellings, of which 226 would be affordable rental housing, managed by St George Community Housing over the next 10 years.

**LGA:** Canada Bay

**SITE CONTEXT:**

The site has an area of 10,095 sqm and currently occupies a two storey warehouse building. It is rectangular in shape and is part of an industrial land precinct which extends to the east along Leeds Street. The site is zoned IN1 General Industrial under Canada Bay LEP 2008.

To the west, the site adjoins a railway line and beyond the railway line is Rhodes West, which contains mixed use developments. A recent LEP amendment increased the permissible building height at Rhodes West from 4-12 storeys to 25 storeys. The site has a Parramatta River frontage to the north, adjoins industrial uses to the east, and single storey detached dwellings to the south.

**BACKGROUND:**

On 9 April 2010, the applicant lodged a request for a Site Compatibility Certificate for a development proposal on the subject land to construct 500 residential units, including 251 affordable housing units, contained in 3 buildings ranging in height from 4 to 16 storeys and with a floor space ratio of approximately 5:1. The proposal comprised 212 1-bedroom units (142 affordable), 239 2-bedroom units (95 affordable) and 49 3-bedroom units (14 affordable).

Current Site Compatibility Certificate

On 2 September 2010, a Site Compatibility Certificate was issued for the proposed development. In accordance with Clause 37(7) of the ARH SEPP, the Certificate specified that the applicant was required to satisfy the following requirements (details of which were to be included in a master plan and any subsequent Development Application):

- (1) The development is to be reconfigured to ensure that the amenity of surrounding residential areas is not adversely affected. Matters to be given particular attention include overshadowing and overlooking;

- (2) The applicant is to investigate the introduction of a Green Travel Plan and reducing on-site parking;
- (3) The applicant is to investigate extending Blaxland Road to the waterfront;
- (4) Public foreshore access should be provided on-site;
- (5) The applicant is required to demonstrate that the relevant objectives of the ARH SEPP have been met; and
- (6) The applicant is required to include a thorough contextual analysis demonstrating that the development is compatible with its surrounds.

#### Comments by Department's Development Demographic Analysis Team

At the time of issue of the original Site Compatibility Certificate, the applicant had not comprehensively satisfied the requirements of the ARH SEPP, that the proposed change of use had demonstrated compatibility with the site's surrounds. The Department's Development Demographic Analysis Team (Employment Lands Development Program) had reviewed the 2010 proposal, in terms of its proposal to use existing industrial land for residential purposes, and provided the following comments:

- *There is potential for land use conflict between the proposed residential and current industrial uses.*
- *The application does not satisfactorily address the Metropolitan and draft Subregional Strategies, where the policy is that any further rezoning from industrial will need to be very strongly justified in regard to both the site and surrounding context, especially given that new provision of industrial land in the subregion is unlikely.*
- *The use of the site for residential purposes would reduce capacity to cater for local industrial services, such as auto services, construction supplies, local warehousing and printing.*
- *The studies submitted with the application do not show how the ongoing use of the site is economically unfeasible. There has been a growth of 18% in the number of jobs located in Inner West subregion employment lands between 2001 and 2006.*
- *Approving this Site Compatibility Certificate will have ramifications for other employment lands where residential rezonings are being sought and needs careful consideration and substantially more justification than has been provided.*

#### Comments by Department's Urban Designer

The Department's Urban Designer had reviewed the 2010 proposal and concluded that the proposal, as submitted, was unacceptable in terms of bulk and scale. The Urban Designer identified a more appropriate bulk and scale solution, which would position taller buildings along the southern boundary and reduce the overall density of the proposal so that the tallest building is up to 12 storeys and located at the southwest corner. This approach would be consistent with recent residential development along Parramatta River including Homebush Bay West, Rhodes Peninsula, Meadowbank and Breakfast Point which locate taller buildings away from the foreshore. The Urban Designer also suggested that approximately 320 dwellings could be accommodated on the site while retaining an optimal design and orientation of buildings.

#### Master Plan Requirements

The subject land is incorporated into a larger Strategic Foreshore Site, pursuant to Part 4 of *Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005* (Harbour REP) (see Figure). Under Clause 41 of the Harbour REP, development consent must not be granted for the carrying out of development on a strategic foreshore site unless there is a master plan for the site and the consent authority has taken this into consideration. On 17 November 2010, the Minister refused a request to waive the master plan requirements for the Development Application. The Minister considered that the preparation of a master plan in this particular case was necessary because:

- (1) The nature of the proposed development is such that it would be inconsistent with the scale and type of development in the remainder of the employment land precinct;
- (2) The proposed development would affect a large part of the strategic foreshore site (approximately 10,000 sqm); and

- (3) There are insufficient planning controls to guide the development of the site as proposed in the Site Compatibility Certificate application for residential development submitted under the ARH SEPP.

On 21 November 2011, the Department informed the applicant that, while a master plan waiver would not be supported, a staged Development Application under section 83C of the *Environmental Planning and Assessment Act 1979* (EP&A Act) could be lodged in place of the master plan requirement, provided that the staged Development Application fully addresses the matters listed under Clause 46 of the Harbour REP.



Figure – Leeds Street Strategic Foreshore Site boundary under Harbour REP

#### Development Assessment and Application for a fresh Certificate

On 6 June 2012, the Sydney East Regional Panel unanimously refused the Development Application, noting that the existing building height and scale of the Rhodes West development was considerably less than that proposed in the Development Application, while the buildings at Rhodes West are set further back from the foreshore. The Regional Panel also noted that the application had not fulfilled the requirement of the Site Compatibility Certificate to undertake a "thorough contextual analysis in the master plan and development application, demonstrating that the development is compatible with its surrounds". The Regional Panel considered that this analysis should extend at least to the Strategic Foreshore Site.

Following submission of the Development Application, the applicant submitted an alternative proposal, reducing the number of dwellings proposed from 500 to 425, including 213 affordable units, and comprising building heights of between 4 and 15 storeys and a floor space ratio of 2.96:1. Council decided not to accept this alternative proposal as an addendum to the original Development Application and the Regional Panel agreed with this decision. An application for an "extension" of the existing Site Compatibility Certificate was lodged on 9 July 2012. Upon receiving advice from the Department that the ARH SEPP does not recognise an "extension" of a current certificate, the applicant proposed a revised development on 7 August 2012 comprising 450 residential units, of which 226 would be used for affordable housing purposes.

## PERMISSIBILITY STATEMENT

The site is zoned IN1 General Industrial under Canada Bay Local Environmental Plan 2008 (CB LEP). Residential flat buildings are not permissible under the current zone. However, Clause 34 of the ARH SEPP applies:

*"This Division applies to the following land, but not if development for the purposes of a residential flat building is permissible on the land under another environmental planning instrument:*

1. *land in the Sydney region that is within 800 m of:*
  - (i) *a public entrance to a railway station or light rail station, or*
  - (ii) *in the case of a light rail station with no entrance – a platform of the light rail station."*

The subject site is within 800 metres walking distance to the Rhodes Railway Station. In addition, Clause 35 of the ARH SEPP stipulates that Division 5 of the ARH SEPP applies for the purposes of a residential flat building:

- (a) *by or on behalf of a public authority or social housing provider; or*
- (b) *by a person who is undertaking the development with the Land and Housing Corporation"*

The applicant has indicated that the application has been made on behalf of a social housing provider, St George Community Housing.

Furthermore, Clause 38 stipulates that 50% of the accommodation must be used for affordable housing for 10 years and Clause 39 requires the continued application of SEPP 65. The applicant has indicated that it intends to comply with these requirements.

## CLAUSE 37(6)

The Director General must not issue a certificate unless the Director General:

- (a) has taken into account any comments received from the council within 14 days after the application for the certificate was made; and
- (b) is of the opinion that the development concerned is:
  - (i) compatible with the surrounding land uses having regard to the matters set out in clause 37(6)(b); and
  - (ii) not likely to have an adverse effect on the environment and does not cause any unacceptable environmental risks to the land.

## COMMENTS FROM COUNCIL

On 24 July 2012, Canada Bay Council provided comments to the Department on the application. Council recommends that the application be refused for the following reasons:

- There is no compelling evidence to indicate that this application is made by or on behalf of a Social Housing Provider;
- The subject land is zoned IN1 General Industrial under the Canada Bay LEP 2008 and draft Canada Bay LEP 2012. The last approval on the site was for manufacturing under DA No 92/2003. The proposed residential use is incompatible with the industrial uses contemplated under the current and proposed zoning and the approved use of the site.
- The proposed height and density of the development is incompatible with the approved uses on the adjoining industrial land to the east.
- The proposed height and density is incompatible with the existing and approved use of low-density land to the south.
- The proposal seeks to replace industrial uses on the land with residential development. As established by the draft Inner West Subregional Strategy, Canada Bay Local Planning Strategy, Canada Bay LEP 2008 and draft LEP 2012, the preferred future use of the site is for industrial purposes.

- There is no precedent for the bulk and scale of the development on the eastern side of the railway line in Rhodes.
- The Rhodes West Master Plan has resulted in high-rise development on the western side of the railway line. However, there is no justification for assuming that the same planning decisions and outcomes could be adopted for the area on the eastern side of the railway line.
- The development does not provide for community facilities which will be required by the future residents or contribute to the supplementation of existing or future planned services.
- The applicant has not addressed the requirement included in the current certificate, and reiterated in the Sydney East Regional Panel's refusal of the Development Application, to undertake a "thorough contextual analysis in the Master Plan and Development Application, to demonstrate that the development is compatible with its surrounds". The Panel considered that this analysis should extend at least to the strategic foreshore site identified in the Harbour REP, of which the site forms a part.

## **COMPATIBILITY WITH SURROUNDING LAND USES**

The Director General must not issue a certificate unless he is of the opinion that the development concerned is compatible with the surrounding land uses having regard to the following matters:

### **1. The existing uses and approved uses of land in the vicinity of the development (clause 37(6)(b)(i))**

The land immediately adjoining the application site is either zoned R2 low density residential (south side of Leeds Street) or IN1 General Industrial, (east of the application site). Existing development surrounding the application site generally meets the zone objectives for that zone and recent approval activity (IKEA Development Application approval at 1-3 & 5 Leeds Street Rhodes in 2010) has not departed from the zoning objectives in this locality.

The application site is zoned IN1 General Industrial where residential development is not permitted. The proposal would represent the first departure from the zoning controls in this location.

It is acknowledged that significant mixed use and high density residential development has been approved on Rhodes Peninsula on the western side of the railway line. It is also noted that the railway line presents a demarcation and land use discord between the higher-density residential development in Rhodes West and the lower-density residential and industrial land to the east.

While the proposal displaces industrial activity in Rhodes, it is considered that the proposal has demonstrated merit to warrant a Site Compatibility Certificate. The grounds for this are:

- It would deliver new affordable housing stock within an 800-metre walking catchment of a railway station.
- The site is the only industrial-zoned property in Rhodes situated within this 800-metre catchment and therefore the only industrial-zoned property that would qualify for consideration under the ARH SEPP. There is no substantial evidence to suggest that a change of use of this specific site for residential purposes would impede the continued functioning of the remaining industrial land.

However, the development does constitute a significant and unprecedented departure from the existing land uses on the eastern side of Rhodes Peninsula. Therefore, the Department recommends that the applicant be required to undertake a thorough contextual analysis prior to lodging a new Development Application, demonstrating that the proposed change of use and



scale of development on the subject land can be compatible with the **existing** functions of the surrounding industrial and low-density residential-zoned land that comprises the eastern section of Rhodes Peninsula.

**2. The impact that the development (including its bulk and scale) is likely to have on the existing uses, approved uses and uses that, in the opinion of the Director General, are likely to be preferred future uses of that land (clause 37(6)(b)(ii))**

The desired future character of this precinct is outlined in the draft Inner West Subregional Strategy, as well as Council's Local Planning Strategy and draft Canada Bay LEP 2012, which identifies this site as land to be retained for industrial uses. The application site is part of a 0.8 hectare industrial land precinct. The proposed use of the site for residential flat buildings is potentially incompatible with the existing and preferred future use of the land.

The Department's Urban Designer's comments on the 2010 proposal are noted, specifically recommendations that the taller buildings of the proposal are sited away from the foreshore, consistent with recent developments such as Rhodes West, and that approximately 320 dwellings could be accommodated on the site while retaining an optimal design and orientation of buildings. It is also noted that, in refusing the Development Application for this proposal, the Regional Panel had disagreed with the applicant's contention that the proposed setback from the waterfront was consistent with setbacks at Rhodes West.

The amended 2012 proposal has addressed certain issues of bulk, scale and orientation. The application indicates that the taller buildings are to be sited towards the Leeds Street frontage and perpendicular to Parramatta River, to reduce perceived bulk and overshadowing when viewed from the waterfront. The proposal to construct 450 dwellings is still in excess of the yield recommended by the Department's Urban Designer. Further, while the amended proposal addresses the issue of setback from the waterfront, there remain outstanding issues regarding the development's interface with adjoining industrial premises to the east and low-density housing to the south.

The Department considers that these outstanding matters do not prevent a Site Compatible Certificate from being issued, subject to the requirement that the applicant prepare a thorough contextual analysis prior to lodging a new Development Application, demonstrating that the bulk and scale of the proposed residential flat buildings are compatible with the existing built forms of the surrounding industrial and residential-zoned land.

**3. The services and infrastructure that are or will be available to meet the demands arising from the development (clause 37(6)(b)(iii))**

The site is located within an established urban area serviced by water, sewerage and electricity. The applicant has submitted a report indicating that services including water, sewer, gas, electricity and telecommunications can be made available to service the site. The applicant would need to demonstrate that the proposed development can be adequately serviced by the required infrastructure and outline any infrastructure upgrade requirements at the DA stage.

The traffic report submitted in support of this application indicates that:

- the existing road network operates at a good level of service;
- on street parking is typically generated by surrounding industrial and residential uses with some spare parking available;
- the proposed development is expected to generate a similar level of vehicle trips to existing development and would therefore not cause adverse effect on the operating conditions of the existing road network;
- proximity of good public transport in the vicinity including access to retail facilities would reduce traffic generation and

- a Green Travel Plan is proposed to promote the use of alternative transport choice.

Clause 36(4) of the ARH SEPP stipulates that car parking is not required in relation to affordable rental housing. The Department supports the introduction of a Green Travel Plan. This would be considered in detail at DA stage and would need to take into account destination/origin issues as well as the cumulative impact on traffic as a result of the proposed density increase at Rhodes West.

## **EFFECT ON THE ENVIRONMENT**

The Director General must not issue a certificate unless he is of the opinion that the development concerned is not likely to have an adverse effect on the environment and does not cause any unacceptable environmental risks to the land:

### **1. Adverse effects on the environment and unacceptable environmental risks to the land (clause 37(6)(c))**

Canada Bay LEP 2008 identifies the application site as being affected by Class 2 Acid Sulfate Soils. Development on site can be carried out but certain measures need to be implemented to ensure that the Acid Sulfate Soils are not disturbed or exposed. Whilst an environmental constraint, this matter can be managed, details of which would need to be considered at the DA stage.

A Stage 1 Contamination Assessment has also been carried out which concludes that the site has low risk of contamination. The existing roof of the building contains asbestos, removal of which would need to comply with regulations on asbestos removal. Details of this could be considered at the DA stage.

Overall, the proposal is unlikely to cause any adverse environmental impacts. Measures can be included at DA stage to ensure that any environmental risk is managed or mitigated.

## **OTHER RELEVANT MATTERS**

Under Clause 41(1) of the Harbour REP, the consent authority must not grant development consent for carrying out development of a strategic foreshore site unless there is a master plan for the site. The purpose of the master plan is to outline how the principles outlined under Part 2 of the Harbour REP and any other relevant Environmental Planning Instrument are addressed.

The application site is part of a strategic foreshore site and hence a master plan is required before the consent authority is able to grant development consent on the site.

Under the provisions of Clause 41(2) of the Harbour REP, the Minister may waive the requirement for a master plan:

- (a) *if satisfied that preparation of a master plan is unnecessary because of:*
  - (i) *the nature of the proposed development, or*
  - (ii) *the fact that the proposed development will affect only a small proportion of the site, or*
  - (iii) *the adequacy of other planning controls applying to the proposed development*
- (b) *for such other reason as the Minister considers sufficient, so long as the Minister is satisfied that the proposed development will not compromise the application of the planning principles set out in Clause 13, 14 and 15 of the Harbour REP.*

The Minister refused to waive the master plan requirements for the 2010 request, in part due to the significant bulk and scale the development would introduce to the strategic foreshore site,

but also due to the lack of detail provided by the applicant for the context of the site in relation to the adjoining land uses.

The requirement for a master plan under the Harbour REP remains valid. The Department has notified the applicant that a staged Development Application prepared under section 83C of the EP&A Act will satisfy the requirement to prepare a master plan under the Harbour REP. Any future Development Application will still need to satisfy the requirements of Clause 46 of the Harbour REP.

## **CONCLUSION**

It is considered that a detailed master plan or equivalent staged Development Application for the site can resolve outstanding issues with regard to:

- the bulk, scale and orientation of buildings that apply to the proposed development; and
- the proposed change of use on the site in the context of the existing functions of the surrounding industrial and low-density residential land uses.

While the subject land has been identified as land to be retained for industrial purposes, on balance, the provision of 450 dwellings that would include 226 affordable housing dwellings, in close proximity to a railway station and a specialised centre outweighs this loss of industrial capacity. Further, the site is also the only industrial-zoned property in Rhodes that would qualify for consideration under the ARH SEPP and there is no substantial evidence to suggest that a change of use for residential purposes would impede the continued functioning of the remaining industrial land.

It is acknowledged that the proposed bulk and scale is unprecedented on the eastern side of the railway line at Rhodes. Therefore, it is recommended that a Site Compatibility Certificate be issued for the proposed development subject to further design analysis being undertaken for the proposed development and its surrounds. Specifically, the applicant should ensure that the configuration of buildings minimises overshadowing and overlooking both within and around the site. A thorough contextual analysis should also be prepared as part of the master plan and development application to demonstrate that the nature and scale of the proposed new use can co-exist with the existing built forms and functions of the land to the east of the railway line on Rhodes Peninsula.

Given the close proximity of Rhodes Railway Station and the Specialised Centre, coupled with the substantial increase in residents expected as a result of the proposed development, it is considered appropriate that the applicant take all reasonable steps to minimise traffic movement impacts on the existing road network. This should be considered at the master plan and development application stage. It is recommended that the applicant be required to investigate the introduction of a Green Travel Plan and reduction of on-site car parking, and also to investigate potential improvements such as extending the adjoining Blaxland Road to the waterfront and providing public foreshore access on the site.



## RECOMMENDATION

- It is RECOMMENDED that the report be endorsed.

*Grant 29/8/12*  
Regional Director  
Sydney Region East

*[Signature]* 30.8.12  
Executive Director  
Planning Operations

*Shaddadi*  
Director General

*9/9/2012.*

