

14 May 2013

Jane Flanagan
Metropolitan and Regional South Projects
Department of Planning & Infrastructure
GPO Box 39
SYDNEY NSW 2000

Dear Jane,

RE: 23 BENNELONG PARKWAY, WENTWORTH POINT – MP09_160 MOD2

I refer to your letter dated 29 April 2013 in relation to the proposed S75W modification to the approved Concept Plan for a residential development, public open space, parking and road works at 23 Bennelong Parkway, Wentworth Point.

Your letter has requested that the issues raised in the submissions are addressed, as well as the issues listed in Attachment 1 to the letter.

This correspondence addresses the issues raised in the tables below, and is also accompanied by the following additional documentation:

- Amended shadow diagrams which illustrate the increase in overshadowing associated with the proposed modification;
- A schedule quantifying the increase in overshadowing of the Nuwi Wetland;
- An amended Residential Flat Design Code assessment in relation to the proposed modification;
- Amendment to plan reference DA07_Statistics to correct an inconsistency with the deep soil figure in plan reference DA06_Area Diagrams Stage 1 DA;
- A drawing illustrating the relationship of the proposed modification to the adjacent Capri building;
- An updated architectural statement; and
- An amended Section 75W Statement with a corrected reference to car parking numbers.

1.0 Response to submissions

Six (6) submissions were received from the public and government agencies in response to the exhibition of the proposed S75W modification to the approved Concept Plan.

These submissions and the applicant's responses are contained in the table below:

Comment	Response
Resident - Sorrento Building	
<ul style="list-style-type: none">• Concern is raised in particular to the addition of a 4 storey infill extension containing eight units along the northern elevation of	<ul style="list-style-type: none">• This submission refers to the proposed modifications which were the subject of the previous MP09_160 MOD1 application. The 4 storey element which is referred to was approved by the Director of

<p>building C primarily on the basis of privacy and solar access impacts.</p> <ul style="list-style-type: none"> The modification is still on public exhibition and the Director of Major Projects has no legal authority to determine the outcome of the application when submissions are still yet to be received. 	<p>Metropolitan Projects on 22 December 2010. The proposed MOD 2 does not involve any material change to this previously approved 4 storey element along the northern elevation of building C.</p>
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Strata Manager - 19 Hill Road, Wentworth Point

<ul style="list-style-type: none"> Concern is raised in particular to the addition of a 4 storey infill extension containing eight units along the northern elevation of building C primarily on the basis of privacy and solar access impacts. 	<ul style="list-style-type: none"> This submission refers to the proposed modifications which were the subject of the previous MP09_160 MOD1 application. The 4 storey element which is referred to was approved by the Director of Metropolitan Projects on 22 December 2010. The proposed MOD 2 does not involve any material change to this previously approved 4 storey element along the northern elevation of building C.
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Resident - The Piazza, Wentworth Point

<ul style="list-style-type: none"> The increase in height of Building B will create privacy and overshadowing impacts to the community courtyard on level two of the Capri building. The eastern façade facing Capri should be interesting rather than a boring flat finish. The development should seek to protect and retain perimeter trees. No future development should go ahead without planning for childcare. The bus service to Wentworth Point is extremely limited. Bennelong Road and Hill Road are extremely congested. This development is on the intersection of these additional apartments should not be allowed to proceed for safety concerns. The park to be delivered as part of the proposal will be surrounded by buildings, be in shadow throughout winter and is not large enough. The current proposal has the highest storeys on the street and creates a tunnelled streetscape. No increase in height should be 	<ul style="list-style-type: none"> The common courtyard at level two of the Capri building is already overlooked by a large number of apartments within the Capri development and is not a private open space area. Due to the orientation of the subject site in relation to the adjacent Capri building, and the location of additional proposed height, there is no increase in overshadowing of the level 2 common courtyard in the Capri building, as evidenced in the amended shadow diagrams provided by Turner architects. The proposed modification relates only to a Concept Plan, not a detailed proposal. The eventual design of the façade facing the Capri building will exhibit design interest and architectural merit. The proposed amended does not result in any change in relation to retention of trees. The applicable planning controls do not require the provision of a child care facility for the proposed development. The location is well served by public transport facilities, which will ultimately be improved with the provision of a new pedestrian bridge linking the suburb with Rhodes. These attributes combined with a high capacity of local road and utility infrastructure is such the area has the capacity to support the proposed modification. The proposed modifications are relatively minor having regard to the scale of the approved development and will not result in any safety concerns due to the location of the site at the intersection of Bennelong Road and Hill Road which
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allowed on the northern face of any of the buildings.	<p>would warrant refusal of the amendment.</p> <ul style="list-style-type: none"> • The proposed modifications do not result in any change to the size of the park, or a significant difference to the relationship of the buildings to the park having regard to the scale of the approved development, or any significant increase in the overshadowing of the park. The proposed modification will continue to provide a positive relationship with the park. • The proposed modification is for a minor amendment to the approved concept plan being generally for one additional storey above some of the approved buildings which does not generate a tunnel effect in comparison to the approved development. • The majority of the buildings have an eastern or western orientation. There is a limited increase to the height of the northern end of the development, which does not compromise the ability to achieve compliance with the solar access requirements for the detailed design of the development.
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Roads and Maritime Services

RMS has reviewed the proposed modifications and raised no objections, subject to the developer providing the relevant level of contribution towards the identified road network improvements and associated funding arrangements which are reflected in the DCP 2004 and the Homebush Bay West Precinct Section 94 Development Contribution Plan 2004.	Noted. The development will provide the contribution as required.
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Sydney Olympic Park Authority

<ul style="list-style-type: none"> • The increase in height may have adverse impacts on the amenity of the future residents of the subject site and Capri development, as well as setting a precedent for non-compliance with building heights. • The Department should also take into consideration that there may be further proposed increases to floor space and building height in future Part 4 applications, which will be assessed and determined by Auburn Council. • The supporting documents show overshadowing of the nearby Nuwi Wetland, the ecological 	<ul style="list-style-type: none"> • The proposed modification is accompanied by a Residential Flat Design Code assessment and indicative plans prepared by Turner Architects which demonstrate that the proposed amendment to the building envelopes does not compromise their ability to contain a detailed design which is capable of achieving the necessary amenity requirements. In particular, the illustrative plans achieve a minimum of 2 hours solar access to more than 70% of living spaces and also a minimum of 60% cross-flow ventilation. <p>There is very little difference to the relationship of the proposed modification with the adjacent Capri building in comparison to the approved concept plan, and the proposed increase of only 1 storey does not result in any change to the separation distance and therefore privacy relationship, and also resulting in a negligible increase in overshadowing.</p>
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<p>impact of this overshadowing is not discussed in any way in the Statement.</p>	<p>Whilst S79C of the <i>Environmental Planning and Assessment Act 1979</i> does not technically apply to this assessment, the principle outlined in S79C(3A)(c) is relevant in that the consent authority should consider the provisions of a DCP only in connection with the assessment of the subject application. Precedent is not a matter for consideration, and the merits for variation to the height limit in the DCP are specific to the particular attributes and location of the subject site, which warrant the proposed variation to the height limit.</p> <ul style="list-style-type: none"> • The proposed amendment seeks consent for modified building envelopes, within which the detailed design of the buildings will be contained. It will be the responsibility of Auburn Council to undertake an assessment of consistency with the concept plan upon lodgement of the detailed development applications. • Amended shadow diagrams accompany this correspondence which accurately depict the increase in overshadowing of the Nuwi Wetland associated with the proposed modification. A schedule quantifying the increase in overshadowing of the Nuwi Wetland is also provided. <p>The amended shadow diagrams and schedule demonstrate that the proposed modification results in no increase in overshadowing of the Nuwi wetland at the summer solstice; only 1.1% increase in overshadowing at 9am with no increase for the remainder of the day at the equinox; and a 2.4% increase at 9am, 1.5% increase at 10am, 0.9% increase at 11am, 0.3% increase at 12pm, and no increase for the remainder of the day at the winter solstice.</p> <p>Therefore the increase in overshadowing of the Nuwi wetland as a result of the proposed modification is negligible at the middle of winter, and nil throughout the warmer months of the year.</p> <p>Ecological advice obtained by the applicant indicates that there will be no difference to bird life as migratory birds arrive in September and depart in March, whereas the increase in overshadowing resulting from the proposed modification, albeit very minor, are experienced during the winter period.</p> <p>There are no estuarine salt marsh vegetation issues. The area is principally mangrove colony on the perimeter and will not be damaged. The other area is mud flats. There is ample evidence of the survival of mangroves under brief shadows.</p> <p>Having regard to the particularly minor increase in overshadowing of the Nuwi wetland, it is considered that the proposed modification will</p>
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	result in minimal impact to the ecology of the Wetland.
Auburn City Council	
<ul style="list-style-type: none"> The proposed modification appears to, in part, justify the additional height of buildings with reference to the proposed amendment No. 1 to the Homebush Bay West DCP. This amendment is not yet approved and should not be used as justification for the proposed departure from the height control. An appropriate level of visitor parking (0.2 spaces per dwelling) should be provided. Car parking and vehicular access should comply with Australian Standard AS2890. Provision should be made on site for waste collection. Compliance should be achieved with SEPP 65 and the “rules of thumb” associated with the Residential Flat Design Code. 	<ul style="list-style-type: none"> The proposed additional height is justified primarily on the grounds of the gateway location of the site, the minor change to the approved concept plan, the lack of detrimental impact associated with the proposed modification, and compliance with the floor space available within Precinct F. The merits of additional 1 storey, based on these factors alone, is sufficient to support the proposed variation to the height control. Notwithstanding this, it is still considered relevant for the Department of Planning & Infrastructure to consider the proposed modification within the context of the significant increase in height contemplated under amendment No. 1 to the Homebush Bay West DCP. The proposed car parking provision complies with the provisions of Part 4.3.2 Parking of the Homebush Bay West DCP. Whilst the DCP provides a minimum and maximum for residential car parking, there is no mandatory minimum required for visitor parking and nil visitor parking could be provided and remain compliant with the DCP control. Notwithstanding this, the proposal development provides 40 visitor car parking spaces. The 0.2 spaces per dwelling suggested by Auburn Council is the maximum possible visitor car parking provision which can be provided, which is considered an unreasonable request which is onerous. Whilst S79C of the <i>Environmental Planning and Assessment Act 1979</i> does not technically apply to this assessment, the principle outlined in S79C(3A)(a) is relevant, with this provision stating: <i>if those provisions (in a DCP) set standards with respect to an aspect of the development and the development application complies with those standards—the consent authority is not to require more onerous standards with respect to that aspect of the development</i> The proposal visitor car parking provision is in full compliance with the relevant provision of the DCP and is considered acceptable. Car parking and vehicular access will comply with Australian Standard AS2890. There is no requirement for on-site waste collection within the Homebush Bay West DCP and no other developments within Wentworth Point have been required to provide on-site waste collection. The

	<p>waste collection arrangements for the development have already been approved. The proposed modification does not relate to the issue of waste collection which has previously been resolved in the design of the development. In order to provide on-site waste collection, substantial redesign of the basement levels would be required, including a comprehensive change in levels in order to accommodate the height required for waste trucks on site. Having regard to the lack of controls requiring on-site waste management, the modest scope of the proposed modification and the profound implications of this suggestion, the provision of on-site waste collection is unreasonable in this circumstance.</p> <ul style="list-style-type: none"> • A SEPP 65 and Residential Flat Design Code assessment is provided by Turner Architects. It has been demonstrated that, having regard to the indicative nature of the floor plans, the proposed modifications to the approved building envelopes do not compromise the ability for the development to achieve compliance with the 10 principles of SEPP 65 and the “rules of thumb” of the Residential Flat Design Code.
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2.0 Response to issue raised in Attachment A

Attachment A to the letter contained five issues for further discussion. These issues are addressed below:

Issues	Response
Overshadowing	
<p>Please provide:</p> <ul style="list-style-type: none"> • an analysis of the likely impacts of increased overshadowing from the proposed modified development on the Nuwi Wetlands; • justification for the proposal in terms of any ecological impacts on the Nuwi Wetlands, particularly in light of the statement (page 29, Section 75 W Modification submission dated February 2013) that, "The additional shadow is minor and generally falls over Bennelong Parkway." • additional justification for the proposed 9 storey element against the 8 storey height limit in the <i>Homebush Bay West</i> 	<p>Amended shadow diagrams accompany this correspondence which accurately depict the increase in overshadowing of the Nuwi Wetland associated with the proposed modification. A schedule quantifying the increase in overshadowing of the Nuwi Wetland is also provided.</p> <p>The amended shadow diagrams and schedule demonstrate that the proposed modification results in the following:</p> <ul style="list-style-type: none"> • no increase in overshadowing of the Nuwi wetland at the summer solstice; • only 1.1% increase in overshadowing at 9am with no increase for the remainder of the day at the equinox; and • a 2.4% increase at 9am, 1.5% increase at 10am, 0.9% increase at 11am, 0.3% increase at 12pm, and no increase for the remainder of the day at the winter solstice.

<p><i>Development Control Plan 2004;</i></p> <ul style="list-style-type: none"> shadow diagrams for June 21 (Drawing No.s DA53 - DA55) clearly illustrating the difference between overshadowing caused by the approved development and the proposed modified development. 	<p>Therefore the increase in overshadowing of the Nuwi wetland as a result of the proposed modification is negligible at the middle of winter, and nil throughout the warmer months of the year.</p> <p>Ecological advice obtained by the applicant indicates that there will be no difference to bird life as migratory birds arrive in September and depart in March, whereas the increase in overshadowing resulting from the proposed modification, albeit very minor, are experienced during the winter period.</p> <p>There are no estuarine salt marsh vegetation issues. The area is principally mangrove colony on the perimeter and will not be damaged. The other area is mud flats. There is ample evidence of the survival of mangroves under brief shadows.</p> <p>Having regard to the particularly minor increase in overshadowing of the Nuwi wetland, it is considered that the proposed modification and variation to the 8 storey height limit under the Homebush Bay West DCP will result in minimal impact to the ecology of the Wetland. Therefore, the proposed variation to the height control is acceptable in terms of overshadowing impact.</p>
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Amenity

<p>Please provide:</p> <ul style="list-style-type: none"> a tabulated analysis of the proposal against the numerical requirements of the SEPP 65 Residential Flat Design Code and justification for any non-compliances; and; justification for the proposal in terms of potential privacy impacts on the 4 storey element of the south western corner of the Capri building. 	<ul style="list-style-type: none"> A tabulated analysis of the proposed modified envelopes against the numerical requirements of the SEPP 65 Residential Flat Design Code has been prepared by Turner Architects and accompanies this correspondence. The analysis demonstrates that the proposed modification to the approved building envelopes does not compromise the ability of the envelopes to contain a building capable of meeting the design principles of SEPP 65 and the rules of thumb contained within the Residential Flat Design Code. The south-western corner of the Capri building is 4 storeys in height and is adjacent to an approved 8 storey element at the south-eastern corner of the subject building envelope. The relationship between the two buildings, in terms of separation, occurs only up to 4 storeys and this relationship remains unchanged. <p>The proposed modification seeks an additional storey above the 8 storey element at the south-eastern corner of the subject building envelope which will not result in any difference in terms of privacy between the subject building and the 4 storey element, and the ninth storey could only allow a view down on top of the roof of the subject 4 storey element.</p>
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Deep Soil Zones

Address the requirements of *Homebush Bay West Development Control Plan 2004* at Section 5.4 of Section 75W Modification submission dated February 2013. Clarify the data for deep soil zones in terms of:

- the statement (page 16 Section 75W Modification submission dated February 2013) that the proposal does not result in any change to deep soil;
- Drawing DA07 which indicates 6,184sqm deep soil and Drawing DA06 which indicates a total 6,030sqm will be provided.

The statement at page 16 of the 75W Modification submission is correct and the proposed modification does not result in any change to the provision of deep soil for the development.

It is noted that there was no change between the deep soil figures in the approved drawings DA06 and DA07 (MOD 1) and the current proposed modification.

However, there was an error in drawing DA07 which has been corrected to correspond with the total deep soil of 6,030sqm as illustrated in drawing DA06.

It is confirmed that there is no proposed change to the deep soil provision.

Traffic and Parking

Please correct the discrepancy in the description of the proposed increase in car parking spaces (21 spaces at page 31, 66 spaces at page 32, Section 75W Modification submission dated February 2013)

Noted. The 75W Modification submission has been amended as requested and accompanies this correspondence.

Architectural Statement

The architectural statement references the original approved plans (see, for example, the drawings at Principles 5 to 8). Provide an updated architectural statement which references plans for the proposed modified development.

Noted. The architectural statement has been updated.

3.0 Conclusion

The issues raised in the submissions and Attachment 1 have been addressed.

The amended and new documentation demonstrates that the proposed modification will not result in any significant detrimental impact to the locality, and responds positively to the particular site circumstances, without adverse impact to the amenity of adjoining development. Accordingly, it is recommended that the proposed modification be approved.

Yours faithfully



Aaron Sutherland
Sutherland & Associates Planning Pty Ltd