

Friday, 2 December 2011

Anthony Witherdin
Acting Director, Metropolitan Projects
NSW Department of Planning and Infrastructure
22-33 Bridge Street
Sydney NSW 2000

Architecture
Urban Design
Planning
Interior Architecture

Attention: Anthony Witherdin
Acting Director, Metropolitan Projects

**RE: 128 Herring Road, Macquarie Park
Section 75W Modification to MP 09_0195 Project Application for Subdivision**

Dear Anthony,

We write on behalf of Toga Macquarie Developments Pty Ltd, developers of a portion of the property at 128 Herring Road, Macquarie Park, to submit a Section 75W application to modify the Concept Plan Application MP 09_0195 consent. The Concept Plan Approval for a mixed use residential and retail development was granted by the NSW Department of Planning and Infrastructure (formerly, NSW Department of Planning) on 20 January 2011 and amended by MOD1, with consent granted on 11 July 2011.

Architectus Sydney
Level 3 341 George Street
Sydney NSW 2000 Australia
T 61 2 8252 8400
F 61 2 8252 8600
sydney@architectus.com.au
www.architectus.com.au

Auckland
Brisbane
Melbourne
Shanghai
Sydney

This report describes an application made under Section 75W of the *Environmental Planning and Assessment Act 1979* (historical version up to 8 July 2011, as per Planning Circular PS 11-021) (EP&A Act). The application is made under a historical version of the Act, as Major Project Application MP 09_0195 was approved under the now repealed Part 3A of the EP&A Act. Under this application, it is proposed to modify Condition A2 of the Project Application Consent MP 09_0195 Conditions of Approval, as modified by MOD1 to amend the approved Consent Plan drawings to accommodate residential units at the Lower Ground Floor of Building C. The description of the number of storeys of Building C is proposed to be changed from '12 residential storeys + 1 part podium', to 'part 12/part 13 residential storeys'.

The proposal seeks to amend the Concept Plan MP 09_0195 MOD 1 plans for Building C at the podium level, to provide residential units where car parking spaces are currently permitted. Additional units will not increase Gross Floor Area or overall building height nor diminish the number of car parking spaces within the development. An additional part level of car parking will accommodate the car parking from the lower ground level.

This change will result in a superior urban design outcome. Residential units at the lower ground level will enhance the building address to the new street and activate the building surrounds to the north and west.

The report should be read in conjunction with the following attached documentation:

- **Attachment A:** Conditions of Approval MP 09_0195, issued by the NSW Department of Planning and Infrastructure.
- **Attachment B:** Conditions of Approval MP 09_0195 MOD 1 issued by the NSW Department of Planning and Infrastructure.
- **Attachment C:** Proposed Concept Plan Modification 2 drawings prepared by Turner + Associates.

Architectus Group Pty Ltd
ABN 90 131 245 684

Managing Director:
David Sainsbery
Nominated Architect
NSWARB 5551
ARBV 13176

- **Attachment D:** Preliminary Architectural drawings of Building C & D Development Application including lower ground floor, ground floor plan, longitudinal section, North Elevation and South Elevation, prepared by Architectus Group Pty Ltd.

An application form and fee are submitted separately.

1. Site and locality

The subject site is located on part of 128 Herring Road, Macquarie Park, within the City of Ryde Local Government Area (LGA). The subject site is part of the Morling College site at 120-128 Herring Road, Macquarie Park.

The site is bounded by Herring Road to the southeast, Morling College to the southwest, Macquarie University and University Creek to the northwest and Dunmore Lang College to the northeast.

The area of the site subject is 1.312 hectares, and has a frontage length of 120 metres to Herring Road.

The site is legally described as Lot B in Deposited Plan 368446 and Lot 1 in Deposited Plan 876482.

2. Development consent history

This application seeks to modify Concept Plan Application MP 09_0195 for a mixed use retail and residential development.

2.1 Concept Plan MP 09_0195

The Concept Plan Application, MP 09_0195 was lodged to the Department of Planning in May 2010, and exhibited between 26 May and 25 June 2010. MP 09_0195 was approved on 20 January 2011.

2.2 Concept Plan MP 09_0195 MOD 1

On 11 July 2011, a Modification Application (MP 09_0195 MOD 1) was approved by the Director-General of the NSW Department of Planning and Infrastructure which sought to make minor modifications to Buildings B, C, D & E and modify the Concept Plan Conditions of Consent to reflect these modifications.

The above Concept Plan Application was submitted together with the following Major Project Applications for the subject site:

2.3 Subdivision Application MP 09_0217

MP 09_0217 – Subdivision Application to facilitate subdivision of the site from the Morling College site and to subdivide the development site to reflect the anticipated development outcome. The Subdivision Plan Application established the site boundaries for development on the site, as well as a new road. The Subdivision Plan Application was approved on 20 January 2011. A modification to this application to the boundaries of development lots was approved on 11 July 2011. A subsequent modification has been submitted to the NSW Department of Planning and Infrastructure to modify the type of subdivision from Torrens Title to Community title. This modification is currently being assessed by the NSW Department of Planning and Infrastructure at the time of writing this report.

2.4 Stage 1 Application MP 09_0218

MP 09_0218 – Stage 1 Project Application for a mixed use residential/retail building comprising 123 apartments, retail, associated parking and public domain works. This Project Application was also approved on 20 January 2011. A modification for this application was approved on 11 July 2011.

2.5 DA (reference number: LDA/2011/0578) for Building B

On 9 November 2011, a Development Application for Building B was submitted to the City of Ryde Council for a 12 storey residential development comprising 117 dwellings. This Development Application is currently under assessment at the time of writing this report.

Development Applications under Part 4 of the EP&A Act will be submitted to the City of Ryde Council for the remaining Buildings C, D and E.

3. Consultation with Ryde Council

Toga Macquarie Developments Pty Ltd has consulted with the City of Ryde regarding Building C and D design, as part of a prelodgement consultation for the DA. Council wish that the Concept Plan should be modified as the Concept Plan does not permit the residential use of the lower ground level. Although the overall height of the building is proposed to be consistent with the approved Concept Plan, Council advised that this modification is required.

4. The proposed modifications

It is proposed that Condition A2 of the Conditions of Approval to MP 09_0195 (as modified) be amended so that residential units proposed on the Lower Ground (podium) of Building C will therefore have part 12 and part 13 residential storeys.

It is proposed that Condition A2 (as modified) be amended to read as follows , with modifications noted in **red**:

'Condition A2 Development in Accordance with Plans and Documentation

The approval shall be generally in accordance with MP09_0195 and with the Environmental Assessment (May 2010) prepared by Urbis, except where amended by the Preferred Project Report (September 2010) prepared by Urbis, and, additional information to the Preferred Project Report (October 2010), and drawings prepared by Turner and Associates, Architects, Turf Design, Landscape Architect, and Taylor Thomson Whitting, Consulting Engineers as amended by the Section 75W modification dated 24 March 2011 prepared by Urbis including amended plans prepared by Turner and Associates Architects and associated documentation;

Concept Plans by Turner + Associates, Architects			
Drawing No	Revision	Name of Plan	Date
A103	H I	09047 Site Context Plan Proposed Future	18/03/11 30/11/11
A170	B	09047 Relocated carparking and temporary sales office	2/09/10
A108	B	09047	30/09/10
A110	B	09047	30/09/10
A122	N	09047	29/09/10
A123	N	09047	29/09/10
A124	O	09047	29/09/10
A125	P	09047 Illustrative Plan B1 RL 63.3	01/03/11
A126	Q	09047 Illustrative Herring Road Floor Plan	01/03/11
A127	R	09047 Illustrative Typical Floor Plan	01/03/11
A128	I	09047	29/09/10
A129	P Q	09047 Illustrative Roof Plan	04/03/11 30/11/11
A136	G	09047 Illustrative East Elevation	01/03/11
A137	G	09047 Illustrative North Elevation	01/03/11

A138	E	09047 Illustrative West Elevation	01/03/11
A139	I	09047 Illustrative South Elevation	17/03/11
A141	H	09047 Illustrative Section AA	18/03/11
A142	F	09047 Illustrative Section BB	01/03/11
A143	F	09047 Illustrative Section CC	01/03/11
A144	G	09047 Illustrative Section DD	01/03/11
A145	G	09047 Illustrative Section FF	01/03/11
A146	E	09047 Illustrative Context Sections	01/03/11
A161	I J	09047 Illustrative Control Plan	17/03/11 30/11/11
A162	G H	09047 Illustrative Urban Control Elevations	17/03/11 30/11/11

Landscape Plans by Turf Design, Landscape Architect

Drawing No	Revision	Number of Plan	Date
L4	E	Project No. 0924	24/09/10
L5	E	Project No. 0924	24/09/10
L6	E	Project No. 0924	24/09/10
L7	C	Project No. 0924	13/09/10
L8	D	Project No. 0924	24/09/10
L9	C	Project No. 0924	13/09/10
L10	C	Project No. 0924	13/09/10
L11	C	Project No. 0924	13/09/10
L12	C	Project No. 0924	13/09/10
L13	A	Project No. 0924	13/09/10
L14	B	Project No. 0924	13/09/10
L15	B	Project No. 0924	13/09/10

Stormwater Engineering by Taylor Thomson Whitting, Consulting Engineers

Drawing No	Revision	Number of Plan	Date
C102	P8	091679	29/09/10
C103	P7	091679	29/09/10
C104	P7	091679	29/09/10
C105	P6	091679	29/09/10
C202	P8	091679	29/09/10
C203	P8	091679	29/09/10
C204	P9	091679	29/09/10
C209	P8	091679	29/09/10
C302	P7	091679	29/09/10
C402	P7	091679	29/09/10
C502	P7	091679	29/09/10
C601	P9	091679	29/09/10
C602	P9	091679	29/09/10

Except for as modified by the following drawings:

Architectural drawings of Building C & D by Architectus Group Pty Ltd			
Drawing No	Revision	Name of Plan	Date
DA01-004	A	Building C – Lower Ground Building D - Ground	01.12.2011
DA01-005	A	Building C – Ground Floor Building D – Level 01	01.12.2011
DA02-001	A	North-East Elevation	01.12.2011
DA02-002	A	South-West Elevation	01.12.2011
DA03-001	A	Longitudinal Section – Sheet 1	01.12.2011

5. Rationale for proposed modifications

The proposed modification to the Concept Plan, are justified as follows:

- No increase in the maximum permitted Gross Floor Area is proposed;
- No increase to the overall maximum height is proposed;
- The introduction of residential units at the lower ground level of Building C will activate the space between Buildings C and D. The current design provides a blank car park wall up to 3 metres in height to the north, east and south elevations. **Figures 1 to 6** provide a comparison between the approved Concept Plan MOD 1 drawings and the preliminary DA architectural drawings.

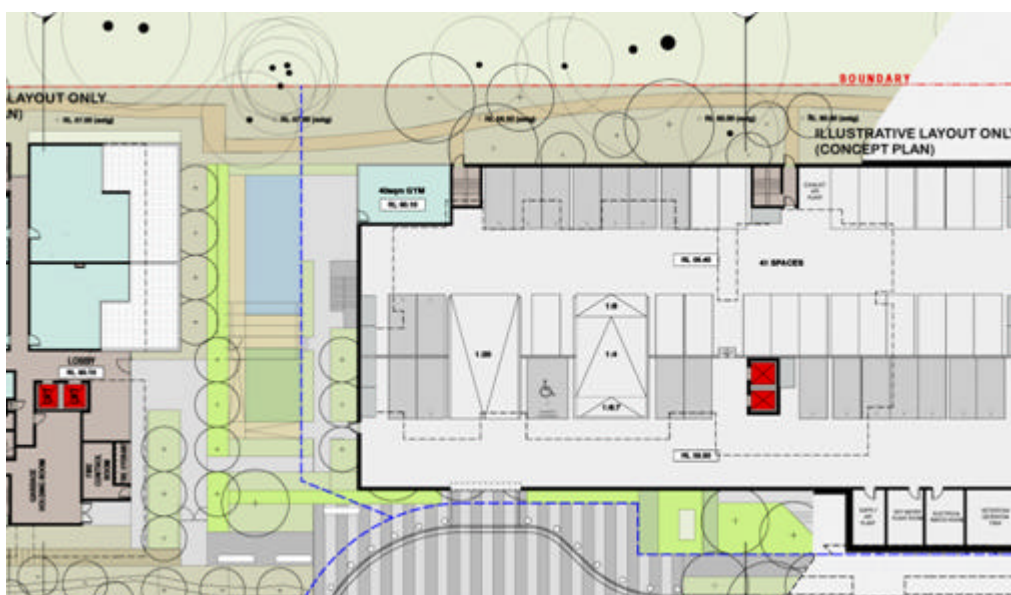


Figure 1 Indicative Lower Ground Floor from Concept Plan MOD 1

The indicative ground floor plan provides blank wall address to the north, east and south.

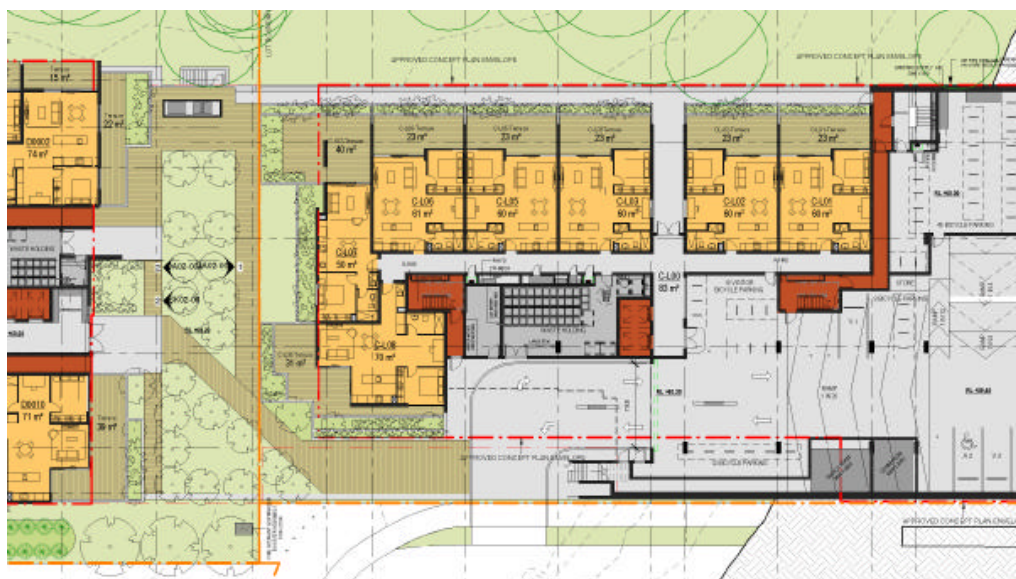


Figure 2 Preliminary DA Lower Ground Floor Plan

The proposed Lower Ground Floor Plan provides an improved address to the street and communal space, prepared by Architectus Group.



Figure 1 Indicative Concept Plan MOD 1 North Elevation
The approved car park provides an undesirable blank street address.

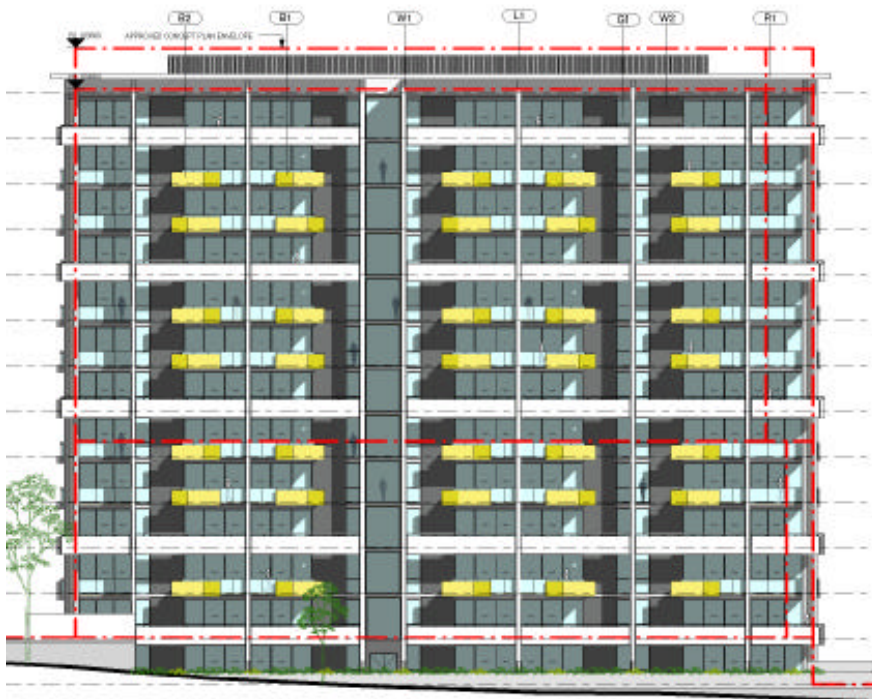


Figure 2 Preliminary DA North Elevation
As illustrated above, the proposed modification will enhance the building address at the Ground Floor to the surrounding communal areas, prepared by Architectus Group.

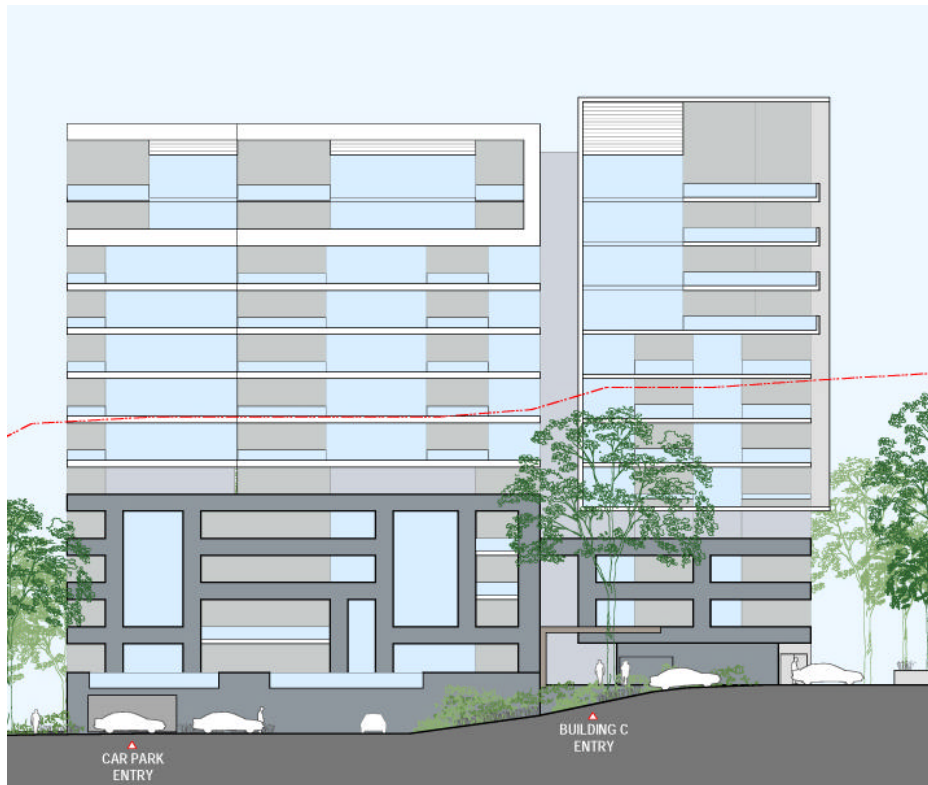


Figure 3 Indicative Concept Plan MOD 1 South Elevation
The approved Concept Plan provides poor street address to the New Road.



Figure 4 Preliminary DA South Elevation
The proposed modifications will approved street address and surveillance, prepared by Architectus Group.

- Residential units at the lower ground level will improve passive surveillance of the new street. The common open space between Buildings C & D and the common walkway on the northern side of Building C which links Building D to the common facilities between Building A and B.
- The proposed modifications is consistent with the objectives of the Ryde DCP 2010 provision (Part 4.5, Provision 6.3.8.i) which restricts the protrusion of basement parking above ground level to no more than 1.2 metres for no more than 60% of the building frontage and aim to conceal basement car parking from public view.

6. Relevant statutory controls

The following statutory planning controls are applicable to the subject site:

- *State Environmental Planning Policy No 55 – Remediation of Land (SEPP 55)*

SEPP 55 requires that an assessment is made of the level of contamination of a site prior to the carrying out of development on land. It is also required that a site be remediated to an appropriate level for proposed future use.

A Commitment has been made under the MP 09_0195 Concept Plan Approval to implement the recommendations of a Phase I Preliminary Assessment prepared by Douglas Partners (December 2009). A Phase 2 Contamination Assessment has been undertaken by JBS Environmental Pty Ltd. The proposed modification will not impact on the undertaking of these recommendations.

- *State Environmental Planning Policy No 65 – Design Quality of Residential Flat Development.*

The proposed modifications is consistent with the following SEPP 65 Design Quality Principles and Rules of Thumb Guidelines of the Residential Flat Design Code (RFDC), in terms of:

- Safety and security: The proposed modification will enhance safety and security by encouraging passive surveillance of communal areas and the public domain surrounding Building C and between Building C and D.
- Context: The proposed modifications will improve response to local context, including the site's topographic characteristics and provides an improved urban design outcome by minimising an unsightly protrusion of basement parking.
- Aesthetics: The proposed modifications will significantly enhance the building aesthetics, particularly at the ground floor plane surrounding Building C and when viewed from the new street.

- *State Environmental Planning Policy (Major Development) 2005 (Major Development SEPP)*

The subject site was approved under the former Part 3A of the *Environmental Planning and Assessment Act 1979* (EP&A Act) in accordance with the Major Development SEPP. The proposed Building C will facilitate a variation to the approved Concept Plan, MP09_0195 with regards to the Podium Level reconfiguration.

- *Ryde Local Environmental Plan 2010 (Ryde LEP 2010)*

The Ryde LEP 2010 is the primary environmental planning instrument applicable to development within the City of Ryde local government area. The proposed modification will not result in any inconsistencies with the Ryde LEP 2010 B4 Mixed Use zoning provisions and objectives. The proposed modification to the number of storeys will not result in any further inconsistencies with the Ryde LEP 2010, beyond what has been approved in the Concept Plan.

- *Ryde Development Control Plan 2010 (Ryde DCP 2010)*

The proposed modifications will improve consistency against the objectives and provisions of the Ryde DCP 2010. In particular, the proposal reduces the amount of basement parking area protruding above existing ground level, consistent with Council's DCP. Part 4.5, Provision 6.3.8.i, of the Rhodes DCP 2010 restricts the protrusion of basement parking above ground level to no more than 1.2 metres for no more than 60% of the building frontage. The Statement of Environmental Effects for Building C DA will assess in detail the relevant provisions of the Ryde DCP 2010.

7. Environmental assessment

This section assesses the proposed modifications against the relevant legislation and planning considerations.

7.1 Section 75W modification of Minister's approval

Section 75W of the EP&A Act states the following:

'75W Modification of Minister's approval

- (1) *In this section:*

"Minister's approval" means an approval to carry out a project under this Part, and includes an approval of a concept plan.

"modification of approval" means changing the terms of a Minister's approval including:

- a) *revoking or varying a condition of the approval or imposing an additional condition of the approval, and*
 - b) *changing the terms of any determination made by the Minister under Division 3 in connection with the approval.*
- (2) *The proponent may request the Minister to modify the Minister's approval for a project. The Minister's approval for a modification is not required if the project as modified will be consistent with the existing approval under this Part.*
- (3) *The request for the Minister's approval is to be lodged with the Director-General. The Director-General may notify the proponent of environmental assessment requirements with respect to the proposed modifications that the proponent must comply with before the matter will be considered by the Minister.*
- (4) *The Minister may modify the approval (with or without conditions) or disapprove of the modification.*
- (5) *The proponent of a project to which section 75K applies who is dissatisfied with the determination of a request under this section with respect to the project (or with the failure of the Minister to determine the request within 40 days after it is made) may, within the time prescribed by the regulations, appeal to the Court. The Court may determine any such appeal.*
- (6) *Subsection (5) does not apply to a request to modify:*
- (a) *An approval granted by or as directed by the Court on appeal, or*
 - (b) *A determination made by the Minister under Division 3 in connection with the approval or a concept plan.'*

The proponent, Toga Macquarie Developments Pty Ltd, requests the NSW Department of Planning and Infrastructure, as the consent authority, to approve the proposed modifications to the approved Project Application for Subdivision MP 09_0195 (as modified).

No provisions of Section 75W of the EP&A impose any prohibition or limitations on the proposed modifications. Therefore it is considered that the proposed modifications satisfy the provisions of this Section.

The modifications are described in detail in **Section 3** above.

8. Conclusion

The Proponent has discussed the development of Building C with the City of Ryde Council, which has prompted submission of this modification.

The proposed modification under Section 75W of the EP&A Act will allow for residential units at the lower ground floor of Building C, approved under MP 09_0195 (as modified), an area currently approved as a car park podium. This change will provide a significant improvement by activating the surrounding common and public areas of the site. Eliminating the blank car park podium walls facing the surrounding spaces will increase natural surveillance. No significant adverse environmental affects will result from the proposed modification.

Accordingly, it is recommended that this Section 75W modification application be approved by the NSW Department of Planning and Infrastructure.

Should you have any further queries in regards to the proposed Section 75W application, please do not hesitate to contact the undersigned on 8252 8400.

Yours sincerely,



Murray Donaldson
Associate Director
Architectus Group Pty Ltd

cc. Rob Thomas, Toga Macquarie Developments Pty Ltd, rthomas@toga.com.au
Steve Jakubiw, Toga Macquarie Developments Pty Ltd, sjakubin@toga.com.au

Attachment A: Conditions of Approval MP 09_0195, issued by the NSW Department of Planning and Infrastructure.

Attachment B: Conditions of Approval MP 09_0195 MOD 1 issued by the NSW Department of Planning and Infrastructure.

Attachment C: Proposed Concept Plan Modification 2 drawings prepared by Turner + Associates.

Attachment D: Preliminary Architectural drawings of Building C & D including lower ground floor, ground floor plan, longitudinal section, North Elevation and South Elevation, prepared by Architectus Group Pty Ltd.