



Planning

**SECTION 75W MODIFICATION
APPLICATION
CHANGE TO GFA CONFIGURATION**

MP 08_0057 (MOD 2)

Modification of Minister's Approval under section 75W
of the *Environmental Planning and Assessment Act*
1979

December 2010



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1. INTRODUCTION

This is a report on an application seeking to modify the project application (MP 08_0057) for the redevelopment of Darling Walk at Darling Harbour including bulk excavation, basement structure and construction of two nine-storey buildings.

The Darling Walk site is situated west of Harbour Street, south of the Western Distributor fly-over, north of the Chinese Garden and east of Tumbalong Park (**Figure 1**). The site is located within the Darling Harbour precinct and is located within the City of Sydney Local Government Area (LGA). The site comprises of an area of approximately 32,900m².



Figure 1 – Location of the Darling Walk site

On 9 July 2008, the Minister for Planning approved a concept plan (MP 06_0054) for the redevelopment of Darling Walk at Darling Harbour. The approval provided the following parameters for redevelopment of Darling Walk:

- Land uses between 64,000m² and 68,000m² gross floor area (GFA) of commercial floor space including up to 5,000m² GFA of retail floor space (retail and associated uses) and up to 1,000m² GFA for cultural, recreational and entertainment uses;
- Building footprint, height, bulk and scale;

- A maximum of 200 car parking spaces to service the commercial building and a 600 space public car park facility;
- Public domain improvements; and
- Demolition works.

On 2 January 2009, the Minister for Planning approved a major project application (MP 08_0057) for the redevelopment of Darling Walk at Darling Harbour including bulk excavation, basement structure and construction of two nine-storey buildings comprising:

- 67,827m² GFA including:
 - 64,235m² GFA of commercial floorspace;
 - 2,592m² GFA of retail floorspace; and
 - 1,000 m² GFA for a children's theatre.
- 200 car parking spaces to serve the commercial buildings;
- A 600 space public car parking facility;
- Access and egress arrangements; and
- Associated bulk excavation.

On 3 April 2009 the Director-General, as delegate for the Minister for Planning, approved modifications to the approved project including changes to the timings of various aspects of the project for compliance purposes, changes to the instrument of approval to correctly identify the proponent and an extension of the permitted hours of construction.

2. PROPOSED MODIFICATION

On 10 November 2010, JBA Urban Planning Consultants Pty Ltd on behalf of Lend Lease Development Pty Ltd, submitted a modification application under section 75W of the EP&A Act relating to the maximum GFA allocation for retail and commercial uses on the ground floor of the development.

Approval is sought to modify the consent to reconfigure the ground floor GFA allowance to allow a maximum of 5,000m² GFA of retail and commercial uses. The maximum GFA approved for the ground floor of two buildings will remain unchanged.

3. STATUTORY CONTEXT

3.1 MODIFICATION OF A MINISTER'S APPROVAL

Section 75W(2) of the *Environmental Planning and Assessment Act 1979* (EP&A Act) provides that a proponent may request the Minister to modify the approval of a project. The Minister's approval is not required if the project, as modified, will be consistent with the original approval. As the application seeks to make changes to the approved GFA configuration, the modification request requires approval.

3.2 ENVIRONMENTAL ASSESSMENT REQUIREMENTS (DGRs)

Section 75W(3) of the EP&A Act provides the Director General with scope to issue environmental assessment requirements (DGRs) that must be addressed with respect to the proposed modification. The Department considers it unnecessary to re-issue the DGRs as it considers the proposed modifications will not have any additional impact on the environmental issues considered in the original proposal.

3.3 CONSULTATION AND EXHIBITION

While section 75W of the EP&A Act does not require a modification application to be publicly exhibited, the application was placed on the Department's website in accordance with section

75X(2)(f) of the EP&A Act and clause 8G of the *Environmental Planning and Assessment Regulation 2000*.

The City of Sydney Council was notified of the proposed modifications on 11 November 2010. A response was provided to the Department on 26 November 2010 raising no objection to the modifications.

3.4 PERMISSIBILITY

The site is unzoned under the Darling Harbour Development Plan No.1 (DHDP). Parks, gardens and public utility undertakings are permissible with consent under Schedule 1 of the DHDP.

The proposal is consistent with the objectives of the DHDP as it encourages the development of tourist, educational, recreational, entertainment, cultural and commercial facilities.

4. CONSIDERATION OF PROPOSED MODIFICATIONS

The current project approval allows for 67,827m² GFA including 64,235m² GFA of commercial floorspace, 2,592m² GFA of retail floorspace and 1,000m² GFA for a children's theatre.

The proposed modification seeks to remove the cap on retail floorspace of 2,592m² and reconfigure the ground floor GFA allowance to allow a maximum of 5,000m² GFA for retail and/or commercial uses.

The proposal seeks to add flexibility to the possible tenancy uses of the ground floor by having the option to increase the available retail allowance and reducing the commercial allowance while remaining within the 5,000m² of GFA limit.

The proposed modification is consistent with the Terms of Approval of the Concept Plan which allows for up to 5,000m² of GFA of retail. The proposal does not seek to increase the total GFA of the ground floor or total maximum GFA for the site, and will not change the bulk and scale of the buildings.

The Concept Plan approved 200 parking spaces to service the new building tenants and a 600 space public car park. The parking provision under the Concept Plan was not based a commercial/retail mix as at that time the floor space mix was not known.

As there are no parking rates specified for Darling Harbour, a comparison of the Sydney LEP parking rates was made. Based on the Sydney LEP model, up to 310 car parking space could be provided for future tenants. The adopted car parking rates for the building tenants is below the Sydney LEP rates. Therefore the proposed GFA reconfiguration will not impact on required parking spaces.

5. CONCLUSION

The Department considers that the modification request is acceptable and appropriate given it is of a minor nature and will not result in any additional impacts other than those assessed in the original application. As such, the modification is supported.

6. DELEGATION

Under the Instrument of Delegation dated 25 January 2010, the Minister delegated his functions under section 75W of the EP&A Act to the Director, Government Land and Social Projects, where there are fewer than 10 public submissions in the nature of objections in respect of the modification request. As there were no public submissions, the modification application can be determined under delegation.

7. RECOMMENDATION

It is recommended that the A/Director, as delegate for the Minister for Planning:

- (a) **Consider** the findings and recommendations of this report; and
- (b) **Approve** the modification, under section 75W of the *Environmental Planning and Assessment Act 1979*; and
- (c) **Sign** the attached Instrument of Modification Approval (**TAG A**).

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