



Berry and Walker Streets – North Sydney

*Section 4.55(1A)
Modification Assessment
(08_0238 MOD 11)*



October 2018

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Glossary

Abbreviation	Definition
Council	North Sydney Council
Department	Department of Planning and Environment
EP&A Act	<i>Environmental Planning and Assessment Act 1979</i>
EP&A Regulation	<i>Environmental Planning and Assessment Regulation 2000</i>
EPI	Environmental Planning Instrument
ESD	Ecologically Sustainable Development
LEP	Local Environmental Plan
Minister	Minister for Planning
Applicant	Multiplex Construction Pty Ltd
RtS	Response to Submissions
Secretary	Secretary of the Department of Planning and Environment
SEPP	State Environmental Planning Policy



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1. Introduction

1.1 Background

This report is an assessment of a request to modify the Project Approval (08_0238) for the construction of a commercial tower at No. 77-81 Berry Street, North Sydney, in the North Sydney local government area.

The request has been lodged by Ethos Urban on behalf of Multiplex Construction Pty Ltd (the Applicant), pursuant to section 4.55(1A) of the *Environmental Planning and Assessment Act 1979* (EP&A Act). The proposal seeks to extend the approved construction hours.

1.2 Subject site

The subject site is located at the centre of the North Sydney Central Business District (CBD) and comprises two parcels of land, as shown at **Figure 1**.

The southern part of the site comprises 77-81 Berry Street (also known as 1 Denison Street), which is bound by Spring Street to the south, Denison Street to the west, Little Spring Street to the east and a residential building at 77 Berry Street (known as 'Beau Monde') to the north. This part of the site previously contained the Berry Street Shopping Centre. The centre has been demolished and construction works have commenced on the site. The northern portion of the site comprises Berry Square which is located to the north of the Beau Monde building. Surrounding buildings comprise a mixture of residential, commercial, retail and office uses. Those adjacent developments range in height from one storey to approximately 40 storeys.

The site is located 500 metres north of North Sydney Railway Station. The approved Victoria Cross Sydney Metro Station is located directly to the west of the site. Construction works for the station have commenced.

Figure 1 | Location of the Berry and Walker Streets Site (Base source: Nearmap)



1.3 Approval History

On 25 February 2010, the then Minister for Planning approved Major Project (MP 08_0238) for a mixed- use commercial / hotel development comprising:

- demolition of existing buildings on both sites, including the pedestrian bridge;
- excavation of four basement levels at 77-81 Berry Street, and two basement levels at No. 88 Walker Street;
- construction of a part 28, part 37 storey commercial and retail building on the southern portion of No. 77-81 Berry Street with vehicular access via Little Spring Street;
- construction of a 33 storey x 200 room hotel at No. 88 Walker Street, including a connecting service tunnel below Little Spring Street;
- provision of 42 public car parking spaces and 10 motorcycle spaces;
- reconstruction of the Tower Square pedestrian bridge; and
- off-site works, including public domain and landscaping, a new pedestrian plaza on Denison Street, public forecourt to Spring Street, through-site road between Denison and Little Spring Streets, road re-alignments/ partial public road closures, tree planting, paving, street furniture and lighting, and public art.

The Project Approval has previously been modified on ten occasions as outlined in **Table 1**.

Table 1 – Summary of Modifications

Reference	Description of Modification	Approved
MOD 1	Amend the building envelope, reduce building heights, change building design, external facades, internal layout, public domain and reinstatement of an underground service tunnel.	11.03.2011
MOD 2	Staging of construction, changes to development contributions and deletion of off-site car parking works.	18.01.2012
MOD 3	Extension of construction hours for internal fit outs.	10.04.2012
MOD 4	Amendments to staging of construction and initial works.	29.10.2014
MOD 5	Deletion of hotel component (No. 88 Walker Street), retention of existing storm water infrastructure, reconfiguration of basement levels, internal alterations including reduction of 2,537 square meters (m2) GFA and realignment of Denison Street pedestrian bridge.	16.03.2015
MOD 6	Expansion and redesign of the lower ground and basement levels, increased car, motorcycle and bicycle parking spaces, changes to public car parking arrangements, and amendments to storm water infrastructure.	25.05.2017
MOD 7	Provision of an additional seven storeys (to RL 210.65), 11,824 m2 GFA and a retail unit fronting Denison Street, internal and external alterations, reconfiguration of site access and amendments to public domain and landscaping.	24.05.2017

MOD 8	Increase building height by 2.2 meters, internal layout and increase substation size.	08.09.2017
MOD 9	Amendments to the retail floorplate, building entrance, commercial lobby, public domain and basement layout, while updating the Landscape Plan, the Public Domain Plan and amending the conditions to facilitate construction staging.	24.04.2018
MOD 10	Amendments to external façade, the addition of a recessed lighting element within the roof profile, minor integral reconfigurations including a minor increase in commercial GFA, and an updated landscape design for Berry Square	02.10.18



2. Proposed Modification

The Applicant lodged a modification request (08_0238 MOD 11) seeking approval to amend Condition D1 and D1A to extend the approved construction hours.

A comparison of the current and proposed hours is summarised in **Table 2**

Table 2 - Summary of proposed modifications

Day Range	Approved Works	Proposed Works			Changes
		Standard Works	Additional Impact Works	Low	
Mon-Fri					
Standard construction works	7.00am – 5.00pm	7.00am – 6.00pm	No change		+ 1 hour
internal fit out works	6.00pm – 10.00pm	No Changes	No change		No change
Saturday					
Standard construction works	8.00am - 1.00pm	8.00am - 3.00pm	3.00pm – 5.00pm		+ 2 hours standard works + 2 hours low impact works
internal fit out works	1.00pm – 10.00pm	No Changes	No change		No change
Sunday					
	No construction works	No construction works	No construction works		No change

The modification is requested on the basis it would speed up the overall construction period and reduce the overall impact of construction upon surrounding residential and commercial buildings.

The modification request was accompanied by an updated acoustic assessment and an updated Construction Environmental Management Plan (CEMP)



3. Statutory Context

3.1 Section 75W and Modification of a Minister's Approval

The project was originally approved under section 75J of Part 3A of the EP&A Act and was a transitional Part 3A project under Schedule 2 to the *Environmental Planning and Assessment (Savings, Transitional and Other Provisions) Regulation 2017* (EP&A (ST&OP) Regulations).

Following amendments to the EP&A Act and the associated EP&A (ST&OP) Regulations that commenced on 1 March 2018, the power to modify Part 3A approvals under former section 75W has been wound up for modification applications submitted after 1 March 2018. In order to modify a transitional Part 3A approval, the Minister for Planning can declare the development to be SSD by order under clause 6 of Schedule 2 of EP&A (ST&OP) Regulations. If a declaration is made the approval becomes a development consent which can be modified under Part 4 of the EP&A Act if it meets the relevant test.

On 3 July 2018, the Director, Regional Assessments (as delegate of the Minister for Planning) made an order under clause 6 of Schedule 2 declaring the development the subject of the project approval to be SSD. This order was published in the NSW Government Gazette on 6 July 2018 took effect from that date.

The effect of this order is that the:

- the project approval is taken to be a development consent under Part 4 for the carrying out of the development
- the modification request is taken to be an application to modify under section 4.55 of the EP&A Act.

3.2 Scope of Modification

Section 4.55(1A) of the EP&A Act outlines the matters that a consent authority must take into consideration when determining an application that seeks to modify an SSD application and results in minor environmental impacts.

The matters for consideration under section 4.55(1A) of the EP&A Act that apply to the modification of the project approval have been considered in **Table 3**.

Table 3 – Section 4.55(1A) Matters for Consideration

Section 4.55(1A) Evaluation	Consideration
a) that the proposed modification is of minimal environmental impact, and	The application seeks approval to modify the approved construction hours. Section 5 of this report provides an assessment of the impacts associated with the proposal. The Department is satisfied that the proposed modifications will have minimal environmental impacts.

b) that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all), and	The Department is satisfied the modification is substantially the same development as originally granted as it only seeks approved for minor variations to the approved construction hours.
c) the application has been notified in accordance with the regulations, and	The modification application has been notified in accordance with the regulations. Details of the notification are provided in Section 4 of this report.
d) any submission made concerning the proposed modification has been considered.	The Department received submissions from North Sydney Council and a public submitter. Details of the submissions and the Department's consideration can be found in Section 4 of the Report

3.3 Approval Authority

The Minister for Planning is the approval authority or the request. However, the Executive Director, Key Sites and Industry Assessments may determine the request under delegation as:

- Council has not made an objection;
- a political donation disclosure statement has not been made; and
- less than 25 public submissions were received objecting to the proposed modification

3.4 Environmental Planning Instruments

The following EPIs are relevant to the application:

- State Environmental Planning Policy (State & Regional Development) 2011;
- State Environmental Planning Policy (Infrastructure) 2007;
- State Environmental Planning Policy No. 55- Remediation of Land; and
- North Sydney Local Environmental Plan 2013.

The Department undertook a comprehensive assessment of the redevelopment against the above-mentioned EPIs in its original assessment. The Department has considered the above EPIs and is satisfied that the modification is generally consistent with the EPIs.



4. Engagement

4.1 Department's Engagement

The Department notified the modification request for **14** days between **25 July 2018** and **7 August 2018**. The request was made publicly available on the Department's website, referred to North Sydney Council (Council) and residents and property owners of the adjacent Beau Monde building were notified in writing.

The Department received a total of 2 submissions, including one from Council and one objection from a member of the public.

4.2 Government agency Submissions

Council raised no concern about the extension of hours between 5.00pm and 6.00pm on weekdays, but objected to the extended Saturday construction hours between 1.00pm – 3.00pm and the use of the diesel crane outside of standard construction hours.

4.3 Public Submissions

One **public** submission was received, which raised concerns about potential impacts to traffic by extending the weekday construction hours to 6pm.

4.4 Response to Submissions

On 2 October 2018, the Applicant provided a Response to Submissions (RtS) and an additional acoustic assessment to address the submissions received from Council and the public submitter (**Appendix A**).

In response to Council's objection, the Applicant has removed the request to extend construction hours for standard works between 1.00pm to 3.00pm on Saturdays and provided an acoustic assessment of the crane use between 1.00pm-5.00pm.

The Applicant noted that issues relating to traffic management have been previously addressed in the updated Construction Management Plan, which was included with the application.

The Department made the RTS publicly available on its website and referred it to North Sydney Council for comments. Council advised it raises no concerns with the amended proposal.



5. Assessment

In assessing the merits of the proposed modification, the Department has considered the:

- previous Environmental Assessments for the project and associated modifications;
- modification application and existing conditions of approval;
- submissions from the public and Council; and
- requirements of the EP&A Act.

5.1 Extension of Construction Hours

The modification seeks to amend the construction hours as outlined in **Table 2**.

Council objected to the proposed extension of hours of construction for standard works on Saturdays from 1.00pm to 3.00pm, and recommended that from 1.00pm to 5.00pm on Saturdays, only approved low-impact works be permitted. In response, the Applicant amended Condition D1A to reflect Council's recommendation. The updated hours are outlined in **Table 4** below.

Table 4 – Amended construction hours

Table 4 – Amended construction hours

Day Range	Approved Works	Proposed Works	
		Standard Works	Additional Low Impact Works
Mon-Fri			
Standard construction works	7.00am – 5.00pm	7.00am – 6.00pm	No Changes
internal fit out works	6.00pm – 10.00pm	No Changes	No Changes
Saturday			
Standard construction works	8.00am - 1.00pm	No Changes	1.00pm - 5.00pm including: - Services installation - jumpform and reinforcement installation - concrete finishing works - survey - basement blockwork installation - substation works in basement - podium and lobby works - façade installation - plantroom and lift works - finishing trades, and - electric and diesel crane usage.
Internal fit-out works	1.00pm – 10.00pm	No Changes	No Changes
Sunday	No construction works	No construction works	No construction works

Council also raised concern about the acoustic impacts of cranes operating outside standard hours on Saturdays.

The Applicant submitted an acoustic impact assessment (noise report) to assess the potential noise impacts associated with the use of the electric and diesel cranes on nearby sensitive receivers.

The noise report identified the nearest sensitive receivers are the residential apartments within the Beau Monde tower building, located immediately to the north, and the commercial properties adjoining the site. The Department is satisfied the noise report has appropriately identified the key sensitive receivers potentially impacted by the proposal.

The relevant guideline governing construction noise from the site (as confirmed in Council's Development Control Plan 2013) is the EPA's *Interim Construction Noise Guideline* (ICNG). The applicable noise criteria for works outside standard construction hours of the ICNG is background +5 dB(A) L_{eq} .

Noise monitoring was undertaken to determine the background levels for the site on Saturday. The unattended noise monitoring undertaken by ALC in Little Spring Street (adjacent to the Beau Monde apartments) provided a

measurement of 57 dB(A) between 1.00pm and 5.00pm. Further testing by Norman Disney & Young (NDY) measured a rating background level (RBL) at the roof of Beau Monde Apartments of 62 dB(A) during the day.

The background levels are therefore considered to range between 57 and 62 dB(A) for the Beau Monde apartments, and the applicable noise criteria is therefore between 62 and 67dB(A) (Background + 5 dB(A) L_{avmax}). The ICNG sets a maximum external noise criteria of 70 dB(A) for commercial properties.

The noise report predicted noise levels at nearby sensitive receivers to determine whether the proposal would comply with the applicable noise criteria for residential properties. The Department has taken a conservative approach and used 62 dB(A) as the criteria, to ensure the impacts under a worst-case scenario are acceptable. The results are presented in **Table 5**.

Table 5 – Noise assessment of Diesel Crane

Position	Lifting dB(A)Leq(15 min)	Idle dB(A)Leq(15 min)	Construction Noise Criteria dB(A)Leq(15 min)	Compliance
Exhaust Facing Measurement	65	61	62	3dB(A) exceedance for lifting
Exhaust Away From Measurement	62	58		Yes

The report also noted:

- the electric crane generates little noise and is located far away from the nearest receiver, therefore would not have any impact
- the works would take place outside of business hours, therefore would not impact on adjacent commercial properties.

As indicated above, the noise report predicts noise from diesel crane generally complies with the ICNG noise emission criteria at nearby sensitive receivers (with the exception of a 3dB(A) exceedance for the lifting with the exhaust facing the receiver).

The Department notes the exceedance by 3dB(A) for lifting occurs only when the exhaust is facing the receiver, which would not occur for the entire time the crane is in use. However, the Department has recommended a new Condition D1A (ee) stating that works between 1:00 pm and 5:00 pm on Saturdays must not exceed 62 dB(A) to ensure compliance with the ICNG criteria. This would potentially require additional noise attenuation measures or a change in operational procedures to meet the noise criteria.

The Department notes Council reviewed the RtS and the updated noise assessment and raised no objection, subject to the modified Condition D1A.

The Department considers the proposed extended hours and the use of the crane are acceptable as:

- the extension of standard works between 5.00pm - 6.00pm on weekdays would reduce the overall construction timeframe

- the noise report has demonstrated the use of the cranes between 1.00pm and 5.00pm on Saturdays would not adversely impact surrounding receivers
- Recommended condition D1A (ee) permits a maximum noise level of 62dB(A) on Saturdays between 1.00 pm and 5:00 pm to ensure compliance with the ICNG criteria.
- Existing Condition D1A (f) requires the construction hours to revert back to those originally approved should complaints be received and noise exceedances be substantiated.



6. Evaluation

The Department has assessed the proposed modification in accordance with the relevant requirements of the EP&A Act. The Department's assessment of the proposed modification concludes the following:

- the extension of construction hours would result in faster construction timeframes, reducing the duration of construction impacts on neighbouring properties;
- a new condition D1A (ee) has been imposed to ensure it complies with the ICNG criteria
- low impact works are considered to be acceptable between the hours of 1.00pm to 5.00pm on Saturday.

Consequently, it is recommended that the modification be approved subject to the recommended conditions.



7. Recommendation

It is recommended that the Executive Director, Key Sites and Industry Assessments, as delegate of the Minister for Planning:

- **Considers** the findings and recommendations of this report;
- **Determines** that the application (08_0238 MOD 11) falls within the scope of Section 4.55(1A) of the EP&A Act;
- **Accepts** and adopts the findings and recommendations in this report as the reasons for making the decision to grant approval to the application;
- **Modifies** the approval (08_0238); and
- **Signs** the attached modification of approval (**Appendix B**)

Recommended by:

Anthony Witherdin
Director
Regional Assessments



8. Determination

The recommendation is: **Approved by:**

Sargeant
Anthea Sargeant
Executive Director
Key Sites and Industry Assessments

21/12/18

Appendices

Appendix A – Relevant Supporting Information

Appendix B – Notice of Modification

Appendix A – Relevant Supporting Information

The following supporting documents and supporting information to this assessment report can be found on the Department's website at:

1. Modification request
http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=9496
2. Submissions
http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=9496
3. Response to Submissions
http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=9496

Appendix B – Notice of Modification

A copy of the notice of modification can be found on the Department's website at:

http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=9496