



Berry and Walker Streets – North Sydney

*State Significant
Development
Modification
Assessment*

(MP08_0238 MOD 14)

February 2020

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Glossary

Abbreviation	Definition
Council	North Sydney Council
Department	Department of Planning, Industry 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
LEP	Local Environmental Plan
Minister	Minister for Planning
Applicant	Winten Property Group
RtS	Response to Submissions
Secretary	Secretary of the Department of Planning, Industry and Environment
SEPP	State Environmental Planning Policy



1. Introduction

1.1 Background

This report provides an assessment of a request to modify the project approval (MP08_0238) for the construction of a commercial tower building at No.77-81 Berry Street, North Sydney.

The proposal seeks to extend the time to deliver the public artwork (as required in Condition E9).

The request has been lodged by Winten Property Group (the Applicant), pursuant to section 4.55(1A) of the *Environmental Planning and Assessment Act 1979* (EP&A Act).

1.2 Subject site

The site is located within the North Sydney Central Business District (CBD) in the North Sydney Local Government Area. It comprises two parcels of land (**Figure 1**).



Figure 1 | Location of the site (Base source: Nearmap)

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 Mode') to the north. This part of the site previously contained the Berry Street Shopping Centre, which has been demolished and construction of the approved commercial tower has commenced.

The northern portion of the site, known as 88 Walker Street, 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.

1.3 Approval History

On 25 February 2010, the then Minister for Planning granted project approval (MP08_0238) for a mixed-use commercial/hotel development comprising:

- demolition of existing buildings on both sites, including a pedestrian bridge
- excavation of four basement levels at 77-81 Berry Street, and two basement levels at 88 Walker Street
- construction of a part 28, part 37 storey commercial and retail building at 77-81 Berry Street with vehicular access via Little Spring Street
- construction of a 33 storey, 200 room hotel at 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
- 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 13 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	Amend the 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 (88 Walker Street), retention of existing stormwater infrastructure, reconfiguration of basement levels, internal alterations including reduction of 2,537 square metres (m ²) 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), 11,824m ² GFA and a retail unit fronting Denison Street, internal and external alterations, reconfiguration of the site access and amendments to public domain and landscaping.	24.05.2017
MOD 8	Increase building height by 2.2 metres, 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 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.	02.10.2018
MOD 11	Amendment to the construction hours.	21.12.2018
MOD 12	Amendments to Condition G12 to allow four car parking spaces to be used as storage, and minor building reconfigurations.	16.04.2019
MOD 13	Minor amendments to the eastern and western building façade and reconfiguration of the landscaping with Berry Square.	08.08.2019



2. Proposed Modification

The Applicant has lodged a modification request (MP 08_0238 MOD 14) seeking to extend the time to deliver the public art required in Condition E9.

The proposal seeks to amend Condition E9 as follows:

E9 Public Art

The applicant shall submit an Arts Plan for the proposed development to Council's Arts and Culture Officer for approval. The applicant shall consult with Council's Arts and Culture Officer in the design and execution stages of the Art Plan. The Artwork shall be installed in accordance with the approved Art Plan prior to completion and issue of ~~any interim~~ **the final** Occupation Certificate ~~for the approved buildings (but excluding the initial works).~~

The Applicant contends the extension of time is required to allow further structural engineering investigations, procurement processes and ongoing consultation with Council.



3. Statutory Context

3.1 Section 75W and Modification of Minister's Approval

The project approval (MP08_0238) was originally granted under Part 3A of the EP&A Act. This means the project satisfied the definition of a 'transitional Part 3A project' under clause 2(1) Schedule 2 to the *Environmental Planning and Assessment (Savings, Transitional and Other Provisions) Regulation 2017* (ST&OP Regulation), which came into effect on 1 March 2018.

Under the ST&OP Regulation, projects the subject of existing Part 3A approvals remain transitional Part 3A projects until they are transitioned to State significant development (SSD) (clause 3(1)-(2), Schedule 2). As of 1 March 2018, new proposals to modify existing Part 3A project approvals can only be determined once the project has been declared to be SSD by the Minister for Planning, and the relevant provisions to modify an SSD consent under Part 4 of the EP&A Act apply.

On 3 July 2018, an Order was published in the New South Wales Government Gazette transitioning the Part 3A project approval (MP08_0238) to SSD. The application has been lodged under section 4.55(1A) of the EP&A Act for a modification involving minimal environmental impact.

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 2**.

Table 2 – Section 4.55 (1A) Matters for consideration

Section 4.55 (1A) Evaluation	Consideration
a) that the proposed modification is of minimal environmental impact, and	Section 5 of this report provides an assessment of the impacts associated with the proposal.
b) that the development to which the consent as modified relates is substantially the same	The Department is satisfied that the proposed modifications will have minimal environmental impact and is substantially the same development as originally approved, as it only seeks approval for an

development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all), and	extension of time for the delivery of the public art on site.
c) the application has been notified in accordance with the regulations, and	The modification has been notified in accordance with the regulations. Details of the notification are provided in Section 4 of this report.
d) any submissions made concerning the proposed modification have been considered	The Department received one submission on the proposal and this has been considered in Section 5 of this report.

3.3 Approval Authority

The Minister for Planning is the approval authority for the application. However, the Director, Regional Assessments may determine the application under delegation as:

- Council has not made any objection
- a political donation disclosure statement has not been made
- no 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
- 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 remains generally consistent with the EPIs.



4. *Engagement*

4.1 Department's Engagement

The request was made publicly available on the Department's website and referred to North Sydney Council (Council).

In its submission **Council** advised that it had no objection to the proposed modification.



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
- the submission from the Council
- requirements of the EP&A Act.

This modification seeks to amend Condition E9 to extend the time to deliver public art on the site. The Applicant states that the extension of time is to allow further structural engineering investigations, procurement processes and ongoing consultation with Council.

In response to a request for information from the Department, the Applicant also confirmed that an interim occupation certificate will be sought in April 2020 with the final occupation certificate being sought in November 2020.

Council have no objection to the proposed modification.

The Department considers the proposed modification to be acceptable as it would not result in any adverse amenity impacts and will not change the built form of the development. The extension of time will allow the engineering, procurement and consultation with Council to be finalised to ensure the delivery of high quality public art.

The Department also notes that the extension will still require the art work to be provided prior to final occupation of the building, which the Applicant advises will be in November 2020.



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 proposal will not result in any adverse amenity impacts and will not change the built form of the development
- it will allow the engineering, procurement and consultation with Council to be finalised to ensure the delivery of high quality public art
- it will ensure that the art work is delivered prior to the final occupation of the building, which the Applicant advises will be in November 2020.

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



7. Recommendation

It is recommended that the Director, Regional Assessments, as delegate of the Minister for Planning:

- **considers** the findings and recommendations of this report
- **determines** that the application MP08_0238 (MOD 14) falls within the scope of section 4.55(1A) of the EP&A Act
- **accepts** and adopts all of the findings and recommendations in this report as the reasons for making the decision to grant approval to the application
- **modifies** the consent MP08_0238
- **signs** the attached modification of approval (**Appendix B**).

Recommended by:



Ellen Nicholson

Planning Officer, Regional Assessments



Silvio Falato

Team Leader, Regional Assessments



8. Determination

The recommendation is: **Adopted by:**



10 February 2020

Brendon Roberts

A/Director

Regional Assessments



Appendices

Appendix A – List of Documents

<https://www.planningportal.nsw.gov.au/major-projects/project/26256>

Appendix B – Notice of Modification

<https://www.planningportal.nsw.gov.au/major-projects/project/26256>