



Mount Street Commercial and Retail Development

*State Significant
Development
Modification Assessment
(08_0241 MOD 9)*

May 2019

© Crown Copyright, State of NSW through its Department of Planning and Environment 2019

Cover photo

Photomontage of Corner of Mount and Walker Street (Source: Rice Daubney)

Disclaimer

While every reasonable effort has been made to ensure this document is correct at time of printing, the State of NSW, its agents and employees, disclaim any and all liability to any person in respect of anything or the consequences of anything done or omitted to be done in reliance or upon the whole or any part of this document.

Copyright notice

In keeping with the NSW Government's commitment to encourage the availability of information, you are welcome to reproduce the material that appears in MP 08_0241 MOD 9 Report. This material is licensed under the Creative Commons Attribution 4.0 International (CC BY 4.0). You are required to comply with the terms of CC BY 4.0 and the requirements of the Department of Planning and Environment. More information can be found at: <http://www.planning.nsw.gov.au/Copyright-and-Disclaimer>.



Glossary

Abbreviation	Definition
AHD	Australian Height Datum
BCA	Building Code of Australia
CIV	Capital Investment Value
Consent	Development Consent
Council	North Sydney Council
Department	Department of Planning and Environment
EIS	Environmental Impact Statement
EP&A Act	<i>Environmental Planning and Assessment Act 1979</i>
EP&A Regulation	Environmental Planning and Assessment Regulation 2000
EPI	Environmental Planning Instrument
ESD	Ecologically Sustainable Development
LEP	Local Environmental Plan
Minister	Minister for Planning
RtS	Response to Submissions
Secretary	Secretary of the Department of Planning and Environment
SEPP	State Environmental Planning Policy
SRD SEPP	<i>State Environmental Planning Policy (State and Regional Development) 2011</i>



Contents

Glossary	iii
1. Introduction	1
1.1 Background	1
1.2 Approval History	2
2. Proposed Modification	3
3. Statutory Context	5
3.1 Part 3A Transition to State Significant Development	5
3.2 Scope of Modifications	5
3.3 Consent Authority	6
3.4 Environmental Planning Instruments	6
4. Engagement	6
4.1 Response to Submissions	7
5. Assessment	7
5.1 Changes to Conditions	7
5.2 Café Tenancy Façade Changes	8
6. Evaluation	8
7. Recommendation	9
8. Determination	9
Appendices	10
Appendix A – Environmental Assessment	10
Appendix B – Submissions	10
Appendix C – Notice of Modification	10



1. Introduction

This report is an assessment of a request to modify the Project Approval (MP 08_0241) for a commercial and retail development at 86-96 and 100 Mount Street, North Sydney. The request has been lodged by Urbis on behalf of Laing O'Rourke Mount Street Pty Ltd (the Proponent) pursuant to section 4.55(1A) of the *Environmental Planning and Assessment Act 1979* (EP&A Act). It seeks approval for minor changes to a ground level retail tenancy to relocate a door and changes to the timing of Conditions B7, E5, E7, E9, E11, E14, G5 and G6.

1.1 Background

The subject site is located at 86-96 and 100 Mount Street in the centre of North Sydney CBD. It is bound by Spring Street to the North, Walker Street to the east and Mount Street to the south. An existing office tower adjoins the western boundary of the site. The closest residential property to the site (Beau Monde Apartments at 77-81 Berry Street) is located approximately 140 metres north of the site. The site is located 500 metres north of North Sydney Station (refer to **Figures 1** and **2**).



Figure 1: Site location (Source: Google Maps)

Construction of the commercial building on the site is well progressed (**Figure 2**).



Figure 2: Aerial photo showing construction on the site (Source: Nearmap)

1.2 Approval History

On 25 May 2010, the then Minister for Planning granted concept approval (MP08_0241) for:

- demolition of existing buildings on the site
- construction and use of a 38 storey commercial and retail building
- excavation for five levels of basement, providing a maximum of 97 car parking spaces
- vehicular access and loading docks via Spring Street
- construction of a through-site pedestrian link with associated public domain works.

At the same time, the then Minister for Planning also approved the project subject to conditions (MP08_0241). Pursuant to section 75P(1)(c) of the EP&A Act, no further environmental assessment was required.

The project approval has been previously modified on seven occasions, as summarised in **Table 1**.

Table 1 | Summary of modifications to the project approval (MP08_0241)

MOD No.	Summary of Modifications	Approval Date
MOD 1	Increase of 6,334m ² gross floor area (GFA) (from 38,733m ² to 45,067m ²), additional 16 car parking spaces (to 113), new basement level and revised vehicular access.	16 February 2012
MOD 2	Internal and external amendments to the building and public domain, increase of 472m ² GFA (to 45,539m ²), reduction of 1.7m in overall maximum building height (to RL 198), increase roof level by 2m (to RL 196.7) and provision of a roof terrace at level 34.	10 October 2014
MOD 3	Extension of the lapsing date of the approval to 21 January 2020.	21 January 2015
MOD 4	Increase of 1.7m in maximum building height (to RL 199.7), increase GFA by 820m ² (to 46,359m ²), increase the number of car, motorcycle and bicycle spaces and other internal and external amendments to the building. This modification also amended Condition E8 (Public Art) to remove reference to two approved buildings in relation to the timing for the delivery of public art.	23 March 2016
MOD 5	Increase in GFA (to 47,186m ²), reconfiguration of basement level layouts, extension of construction and demolition hours, increase height of the roof plant (to RL 203.1) and other internal and external amendments.	13 January 2017
MOD 6	Increase in GFA (to 47,450m ²), minor changes to the north and south entry stairs, layout on levels 34 to 37 and reorganisation of visitor bicycle parking.	4 May 2017
MOD 7	Increase in GFA (to 47,458.83m ²) and changes to the timing for installation of public art.	27 June 2018
MOD 8	Amendment to the construction hours.	21 December 2018



2. Proposed Modification

The Applicant lodged a modification request (MP 08_0241 MOD 9) seeking approval for:

- Changes to the location of a café tenancy door from Walker Street to Spring Street and installing bi-fold windows on both street elevations
- Amendments to the timing of Conditions E5, E7, E9 and E11 to allow satisfaction prior to the final Occupation Certificate.

The modification to the café tenancy is requested on the basis that it would improve the streetscape and the connection between the café and pedestrians. The proposed plans are shown below at **Figures 3 and 4**.

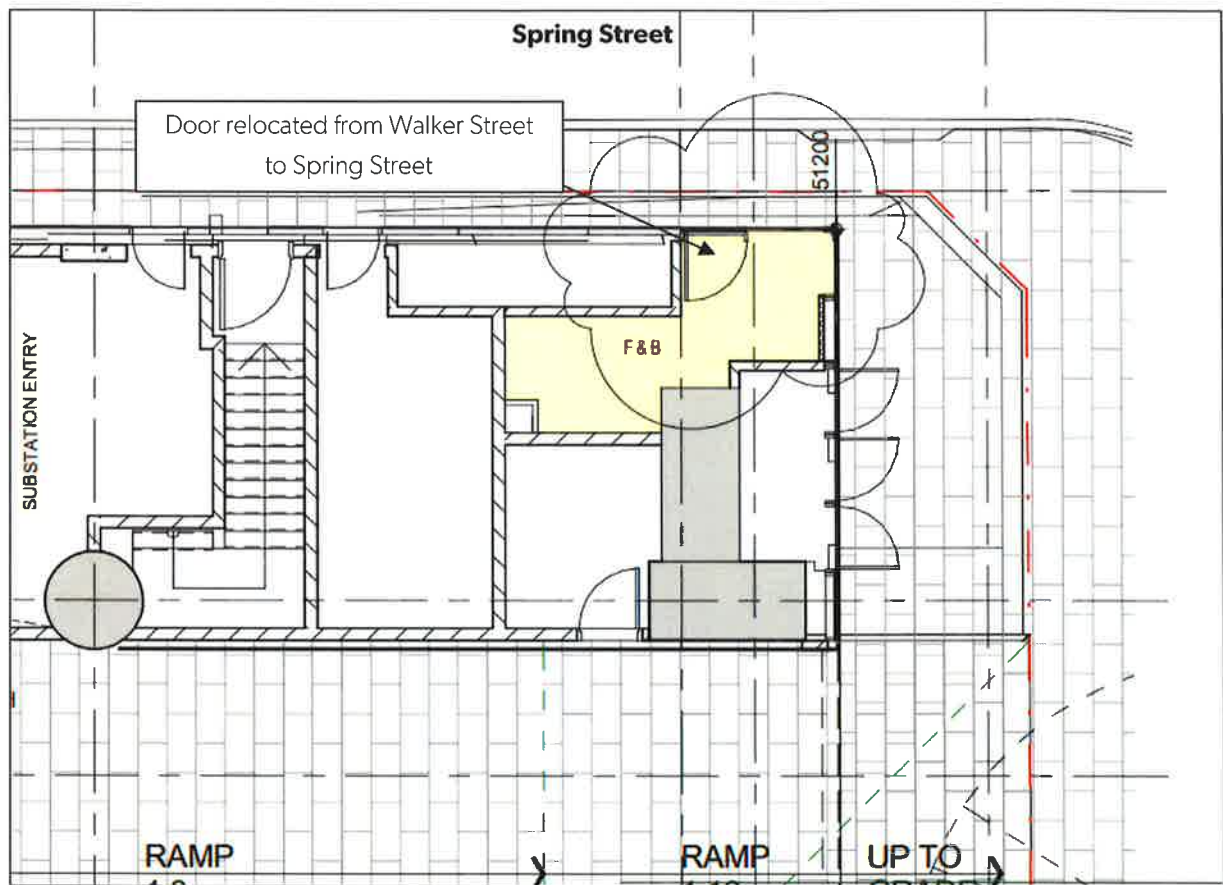


Figure 3: Changes to Café Tenancy



Figure 4: Approved (top) and proposed (bottom) elevations

The modification to the conditions is requested to allow Interim Occupation Certificates to be issued for the public domain works and allow tenants to commence fit outs, before the following conditions are satisfied:

- Condition E5- Public Infrastructure and Completion of Works
- Condition E7- Green Travel Plan
- Condition E9- Infrastructure Repair and Completion of Works
- Condition E11- Access for People with Disabilities.



3. Statutory Context

3.1 Part 3A Transition to State Significant Development

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 7 June 2018, the Director, Key Sites 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 15 June 2018 and 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 Modifications

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) Modification involving minimal environmental impact

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. 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 proposed modification seeks approval for minor changes to the building façade and changes to conditions. On this basis, the proposal would result in development that is substantially the same as the originally approved development.
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 one submission on the proposal. The issues raised in submission have been considered in Section 5 of this report.

3.3 Consent Authority

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

- the relevant local council has not made an objection; and
- a political disclosure statement has not been made; and
- there are no public submissions in the nature of objections.

3.4 Environmental Planning Instruments

The following EPIs are relevant to the application:

- State Environmental Planning Policy 55 – Contaminated Land
- State Environmental Planning Policy (Infrastructure) 2007
- State Environmental Planning Policy (State and Regional Development) 2011)
- North Sydney Local Environmental Plan 2013).

The Department has considered the proposed modifications against these EPIs, and is satisfied that the proposal continues to be consistent with the requirements of the EPIs.



4. Engagement

The Department made the modification request publicly available on its website and consulted with North Sydney Council (Council).

Council advised it raises no objection to the proposed changes to the café tenancy. It provided suggested wording for Conditions E5, E7, E9 and E11 to be satisfied prior to occupation of the building rather than prior to the issue of the final Occupation Certificate.

No **public** submissions were received.

4.1 Response to Submissions

The Proponent responded to Council's submission and advised they accept the proposed wording for Conditions E7- Green Travel Plan and E11- Access for People with Disabilities. However, they noted that a number of other conditions are required to be satisfied prior to occupation of the building, which could prevent occupation occurring by the target date, including:

- B7- Off-site Works
- E14 - Damage to Adjoining Properties
- G5 - Road Damage
- G6 - Post Construction Dilapidation Report

The Proponent requested that Council provide written confirmation that the wording 'prior to occupation of the building' would enable occupation of the commercial office space, prior to the satisfaction of conditions B7, E5, E9, E14 G5 and G6.

The Proponent also proposed a new condition requiring a bank guarantee to the value of \$50,000 as security to ensure the works required by conditions B7, E5, E9, E14, G5 and G6 are completed.

Council advised it supports the proposed wording 'prior to occupation of the building' for the additional conditions B7, E14, G5 and G6, but did not confirm that this wording would enable occupation of the commercial office space prior to satisfaction of these conditions. Council also noted the proposed bank guarantee is not accepted.



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.

The Department considers the key issue associated with the proposal are the changes to conditions and modification to the café tenancy façade.

5.1 Changes to Conditions

The proposal originally sought to modify Conditions E5, E7, E9 and E11 to require them to be satisfied prior to the issue of a **final** Occupation Certificate, rather than **any** Occupation Certificate. The Proponent modified the proposal to include Conditions B7, E14, G5 and G6, and sought confirmation that these conditions did not need to be satisfied prior to occupation of the building.

Council advised that the conditions should be satisfied prior to occupation of the building, rather than prior to the issue of a final Occupation Certificate.

The Department has assessed the merits of the proposed changes to each condition. An assessment of the proposed amendments to conditions and the Department's recommendation is provided at **Appendix D**.

The Department agrees with Council that the satisfaction of above-mentioned conditions should not be delayed to prior to the final Occupation Certificate or secured by a bank guarantee as it could delay the provision of infrastructure works, damage repair works and the provision of access for people with a disability. As such, the Department has recommended alternative timing for the conditions, to ensure they are satisfied at a suitable stage.

Overall, the Department considers the proposal is acceptable, subject to the revised timing recommended for the conditions outlined in **Appendix D**, as it would:

- ensure the works required under Conditions B7, E5, E7, E11, E14, G5 and G6 are completed at an appropriate stage
- allow for Interim Occupation Certificates to be issued for public domain works, as requested
- provide flexibility for the timing of satisfaction of these conditions, subject to agreement from Council and Roads and Maritime Authority.

5.2 Café Tenancy Façade Changes

The proposal seeks to relocate a café tenancy door from Walker Street to Spring Street and install bi-fold windows on both street elevations as shown in **Figures 3 and 4**.

The Department notes the proposed modifications to the café tenancy are acceptable as:

- the door would open inwards to the café and would not impact pedestrian movement along Spring Street
- no change to the building envelope or operation of the café tenancy is proposed
- the introduction of bi-fold windows would improve connection between the café to the street
- Council raised no objection to the proposed changes to the façade.

The Department therefore considers the proposed changes to the façade of the café tenancy are acceptable and would not result in any adverse amenity impacts.



6. Evaluation

The Department has assessed the modification application and supporting information in accordance with the relevant requirements of the EP&A Act. The Department's assessment concludes that the proposed modification is appropriate as it:

- would ensure the works required under Conditions B7, E5, E7, E11, E14, G5 and G6 are completed, whilst allowing for interim Occupation Certificates to be issued for public domain works
- provide flexibility for the timing of satisfaction of these conditions, subject to agreement from Council and Roads and Maritime Services.
- not result in any adverse amenity impacts as a result of the minor changes to café tenancy façade.

Consequently, it is recommended that the modification be approved subject to the recommended 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 MP 08_0241 MOD 8 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
- **modify** the consent MP 08_0241
- **signs** the attached modification instrument (Appendix C).

Recommended by:

Emma Butcher
Planning Officer
Regional Assessments



8. Determination

The recommendation is: **Adopted by:**

Anthony Witherdin
Director
Regional Assessments



Appendices

Appendix A – Environmental Assessment

<https://www.planningportal.nsw.gov.au/major-projects/project/11356>

Appendix B – Submissions

<https://www.planningportal.nsw.gov.au/major-projects/project/11356>

Appendix C – Notice of Modification

<https://www.planningportal.nsw.gov.au/major-projects/project/11356>

Appendix D – Assessment of Changes to Conditions

Proposed Amendment	Assessment	Recommendation
The proposal seeks to clarify that B7 – Off- Site Works, which currently requires satisfaction prior to the issue of a Construction Certificate, is not required to be satisfied prior to occupation of the building.	- The Department notes this condition requires the Proponent to undertake upgrade works to the intersection at Mount and Walker Streets to a value of \$10,000. - The Proponent has advised the Department that the intersection upgrade works have been completed and will be inspected by RMS imminently, to confirm if the condition has been satisfied. - The Department considers it is appropriate for the intersection works to be completed prior to the issue of an Occupation Certificate as it would cater for the additional traffic that will be generated once the building is occupied. - The Department therefore recommends the condition be amended to require satisfaction prior to the issue of any Occupation Certificate for the building. However, the Department has also built some flexibility into the condition to allow an alternative timing, if agreed to in writing by Roads and Maritime Services.	- The Department recommends Condition B7 be deleted from Section B- Prior to Issue of a Construction Certificate, and moved to Section E- Prior to Occupation or Commencement of Use. - The Department recommends a new Condition E24 requiring the off-site works to be completed prior to the issue of any Occupation Certificate for the building, or as otherwise agreed to in writing by Roads and Maritime Services.
The proposal seeks to change the timing of Conditions E5- Public Infrastructure Repair and Completion Works from prior to the issue of any Occupation Certificate to prior to the issue of a final Occupation Certificate.	- The Department notes this condition requires the completion of all works in the road reserve and rectification of any damage to public infrastructure prior to the issue of any Occupation Certificate. - The Proponent sought to modify the timing of this condition to prior to the issue of a final Occupation Certificate, to allow for Interim Occupation Certificates to be issued for works within the public domain.	The Department recommends a modified Condition E5 requiring satisfaction prior to the issue of any Occupation Certificate for the building, or as otherwise agreed to in writing by the Manager, Development Services of

Council.

- The Department considers these works should be completed prior to the issue of any Occupation Certificate for the building, to ensure public infrastructure surrounding the site is in a suitable state before use of the building.
 - However, as the works relate to Council assets, the Department considers an alternative timing may be acceptable, subject to agreement by Council.
 - The Department therefore recommends Condition E5 be updated to require satisfaction prior to the issue of any Occupation Certificate for the building, or as otherwise agreed to in writing by the Manager, Development Services of Council.
 - The Department considers this timing is acceptable as it would allow Interim Occupation Certificates to be issued for the public domain works and ensure any public infrastructure works required by the condition are completed in a timely manner.
 - The Department notes this condition requires a Green Travel Plan outlining public and alternative transport options for the site to be submitted to Council prior to the issue of the Occupation Certificate.
 - The Proponent sought to modify the timing of this condition to prior to the issue of a final Occupation Certificate, to allow for Interim Occupation Certificates to be issued for works within the public domain.
 - The Department considers the provision of a Green Travel Plan is not essential before any occupation of the building occurs and the provision of the plan prior to a final Occupation Certificate would still ensure all occupants of the building are made aware of available transport options
 - The Department recommends a modified Condition E7 requirement satisfaction prior to the issue of a final Occupation Certificate.
- The proposal seeks to change the timing of Condition E7- Green Travel Plan from prior to the issue of **the** Occupation Certificate to prior to the issue of the **final** Occupation Certificate.

The proposal seeks to change the timing of Condition E9- Infrastructure Repair and Completion Works from prior to the issue of any Occupation Certificate to prior to the issue of the final Occupation Certificate.	The Department notes this condition is a duplicate of Condition E5, and recommends it be deleted.	The Department recommends Condition E5 is deleted.
The proposal seeks to change the timing of Condition E11- Access for People with Disabilities from prior to the issue of any Occupation Certificate to prior to the issue of the final Occupation Certificate.	- The Department notes this condition requires provision for access and facilities for persons with a disability in accordance with the Building Code of Australia prior to the issue of any Occupation Certificate. - The Department considers access for persons with a disability should be completed prior to the issue of any Occupation Certificate, to ensure adequate access arrangements are in place for all components of the development, including public domain, prior to use. - The Department therefore recommends this condition remain unchanged.	No change.
The proposal seeks to clarify that Condition E14- Damage to Adjoining Properties, which currently requires satisfaction prior to the issue of a final Occupation Certificate, is not required to be satisfied prior to occupation of the building.	- The Department notes this condition requires a certificate stating that no damage has resulted to adjoining properties during construction to be submitted to Council and the PCA, or rectification of any damage to adjoining properties to be completed, prior to the issue of a final Occupation Certificate. - The Department considers the completion of these works prior to the final Occupation Certificate is acceptable, and the condition should remain unchanged.	No change.
The proposal seeks to clarify that Condition G5- Road Damage, which currently requires satisfaction prior to the issue of any Occupation Certificate, is not required	The Department notes this condition requires the Proponent to cover the cost of repairing any damage caused to Council or public assets prior to the issue of any Occupation Certificate.	The Department recommends a modified Condition G5 requiring satisfaction prior to

to be satisfied prior to occupation of the building.

- The Proponent sought to modify the timing of this condition to prior to the issue of a final Occupation Certificate, to allow for Interim Occupation Certificates to be issued for works within the public domain.
- The Department considers these works should be completed prior to the issue of any Occupation Certificate for the building, to ensure public infrastructure surrounding the site is in a suitable state before use of the building.
- However, as the works relate to Council assets, the Department considers an alternative timing may be acceptable, subject to agreement by Council.
- The Department therefore recommends Condition G5 be updated to require satisfaction prior to the issue of any Occupation Certificate for the building, or as otherwise agreed to in writing by the Manager, Development Services of Council.
- The Department considers this timing is acceptable as it would allow Interim Occupation Certificates to be issued for the public domain works and ensure any public infrastructure works required by the condition are completed in a timely manner.

- The proposal seeks to clarify that Condition G6- Post Construction Dilapidation Report, which currently requires satisfaction post-construction, does not need to be satisfied prior to occupation of the building.

- The Department notes this condition requires a dilapidation report to determine if any damage has occurred to adjoining buildings or infrastructure to be submitted to the PCA post-construction.
- The Department considers the current timing of this condition is acceptable and the condition should remain unchanged.

the issue of any Occupation Certificate for the building, or as otherwise agreed to in writing by the Manager, Development Services of Council.

- No change.