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2 June 2022

Anthony Witherdin  
Director – Key Sites Assessment  
Department of Planning and Environment  
4 Parramatta Square, 2 Darcy Street  
Parramatta NSW 2150

Dear Mr Witherdin,

## **ATLASSIAN OFFICE AND HOTEL DEVELOPMENT SECTION 4.55(1A) APPLICATION TO AMEND SSD-10405 8-10 LEE STREET HAYMARKET**

This letter has been prepared by Urbis on behalf of Vertical First Pty Ltd in support of a Section 4.55(1A) application to modify Development Consent SSD-10405 for the Atlassian Office and Hotel Development at 8-10 Lee Street Haymarket (the **Atlassian Central Development**).

The modification application seeks to amend the north-eastern corner wall of the basement levels, drafting of conditions of consent and the drafting of the definition of 'Construction/Building Work' contained in the consent document. The application has been prepared in accordance with the *Environmental Planning and Assessment Act 1979 (EP&A Act)*, the *Environmental Planning and Assessment Regulations 2000 (the Regulations)*, and the DPE 'State Significant Development Guidelines – Preparing a Modification Report' having regard to the category of modification and scale of the proposed changes.

This letter is accompanied by the following documentation:

- Amended Architectural Plans prepared by BVN and Shop dated 10 April 2022 (**Appendix A**)
- Archaeology Statement prepared by Urbis Archaeology dated 5 May 2022 (**Appendix B**)

### **1. BACKGROUND**

The Atlassian Central Development is the catalytic project for the creation of TechCentral which will transform the Western Gateway Sub-precinct into a new technology and innovation precinct to support and grow the industry nationally.

The Atlassian Central Development is located within the Central State Significant Precinct, which recognises the value and significance of the Precinct to realise the Government's aim to establish a globally competitive precinct for technology and innovation.

The State Significant Development (**SSD**) application SSD-10405 sought approval for:

- Partial deconstruction and reconstruction of the Inwards Parcels Shed and associated structures at ground and lower ground level for conservation and adaptive reuse.
- Demolition of existing structures
- Construction of a 39 storey tower above the reconstructed Inwards Parcels Shed including:
  - 8,196sqm of tourist and visitor accommodation,
  - 63,281sqm of commercial office GFA
  - 2,542sqm of retail / food and drink GFA within the Inwards Parcel Shed and basement levels.
- Basement parking, servicing and end of trip facilities
- Hard and soft landscaping
- Subdivision and stratum subdivision of the site.

Consent was granted for SSD-10405 on 15 October 2021 subject to conditions.

## 2. PROPOSED MODIFICATIONS

This Section 4.55(1A) application proposes to modify SSD-10405 as summarised in the following subsections.

### 2.1. RETAINING WALL DESIGN CHANGE

A minor modification is proposed to the north-eastern corner of the basement levels to accommodate the alignment of the basement structure. The proposed realignment seeks to resolve structural complexities in the tower mega-column structure while remaining within the Site boundary.

Refer to Amended Architectural Plans provided at **Appendix A** and the Archaeology Statement provided at **Appendix B**.

### 2.2. DEFINITION OF 'CONSTRUCTION / BUILDING WORK'

The definition of 'Construction / building work' is included in the definitions section of the Consent. The definition outlines what constitutes construction, but also includes a list of activities which are excluded. The list of exclusions from the definition of "Construction / Building work" states 'demolition and deconstruction activity' which was added to clarify these works could be undertaken on the Site despite the Site being listed as State Heritage Significant.

The proposed modification to this definition seeks to remove the last paragraph of the definition, which appears to be at odds with the intent of the list of exclusions as its application to the Site results in all the exclusions on the Site having no effect.

Two minor additional are also proposed, that being the inclusion of hazmat removal, as well as services isolation are inserted as works that can be excluded from construction. Hazmat removal and services isolation are a standard scope of works undertaken as part of site preparation / enabling works and its introduction is proposed to ensure absolute clarity for the project.

The reasons for which these changes are proposed include:

- The SSD application provided details of the demolition and dismantling process that will be satisfied, and that these works would be undertaken prior to the issuing of a Construction Certificate.
- The Construction Certificate Staging outlined in Condition A7 does not include a Construction Certificate stage for demolition and dismantling works. It is further noted that a Construction Certificate cannot be provided for such works.
- Consultation with DPE during the preparation of the conditions of consent indicated that the demolition and dismantling works of the heritage items were not captured within the scope of 'building works' and therefore would not require a Construction Certificate to be undertaken.

Proposed Drafting of the 'construction/building work' definition is provided below:

*All physical work to enable operation including but not limited to the carrying out of works for the purposes of the development, including earthworks, and erection of buildings and other infrastructure permitted by this consent, but excluding the following:*

- *Demolition and deconstruction;*
- *building and road dilapidation surveys;*
- *investigative drilling or investigative excavation;*
- *Archaeological Salvage;*
- *establishing any temporary site offices;*
- ***Hazmat removal;***
- *installation of environmental impact mitigation measures, fencing, enabling works; and*
- *minor adjustments to services or utilities, **including service isolations.***

~~*However, where heritage items, or threatened species or threatened ecological communities (within the meaning of the Biodiversity Conservation Act 2016 or Environment Protection and Biodiversity Conservation Act 1999) are affected or potentially affected by any physical work, that work is construction, unless otherwise determined by the Planning Secretary in consultation with Heritage NSW and EESG.*~~

To ensure that the conditions of consent are interpreted in accordance with this amended definition of 'construction / building work', the word 'demolition' is proposed to be removed from several conditions within Part E of the consent. Specifically, these are conditions E25, E26, and E27.

## 2.3. PRIOR TO THE DEMOLITION AND DISMANTLING OF THE HERITAGE ITEM (PART C)

Following review of conditions included in Part C, inherent issues in the drafting of the conditions and their location within the broader Instrument of Consent have been identified. These issues have also been acknowledged by DPE, Heritage NSW and the City of Sydney.

In order to manage the timely satisfaction of certain Part C condition items, the following modifications are sought. These changes largely relate to the requirements of the condition and the stage within the construction process that it will be possible to provide the material required to satisfy the conditions. It is our position that in their current format and/or location within the consent, these conditions cannot feasibly be satisfied.

We note that the proposed amendments do not seek to alter the intent or requirements of the Conditions, rather ensure that they are suitably located within the consent to enable satisfaction.

### 2.3.1. Condition C3 – Heritage Consultant

*C3. Throughout the documentation and construction stages of the approved works the experienced heritage consultant is to:*

- (a) *prepare reports as required by this consent, including (but not limited to) reports required pursuant to **Conditions C4 to C7, D32 and D34**;*
- (b) *undertake regular site inspections;*
- (c) *maintain a diary of site inspections that includes photographs of the works, details of heritage advice and decisions arising out of each inspection and any further physical evidence uncovered during the works;*
- (d) *compile a final report, including the diary, verifying how the heritage conditions have been satisfied, and the works completed in accordance with the Conservation Management Plan; and*
- (e) *upon completion of the works submit a copy of the final report to Heritage NSW and Council.*

The following amendments to Condition C3 are proposed:

- C3 (a) – remove this subsection of Condition C3.

It is our view that this serves no purposes as the reports required by the Conditions cited in the sub-section are to be undertaken throughout the documentation and construction stages. Further, these conditions already confirm that satisfaction is required with respect to CC4.

- C3 (b) and (c) – Relocated to “*Part F – During Construction*”, as this relates to regular site inspections and maintaining a diary, which will be undertaken during construction.
- C3 (d) and (e) – Relocate to “*Part G – Prior to the Issue of an Occupancy Certificate*”. This is considered most appropriate given the final report is to be submitted ‘upon the completion of works’.

### 2.3.2. Condition C5 – Salvage and Reuse of Distinctive Elements

*C5. No work shall commence on the demolition and dismantling of the heritage item, until a Salvage and Reuse of Distinctive Elements Plan (SRDEP) for the identification and selection of heritage fabric to be salvaged and reused within the development is prepared by a suitably qualified and experienced heritage practitioner and submitted to and approved by the Planning Secretary. The SRDEP must be prepared in consultation with and endorsed by Heritage NSW and must include (but shall not be limited to):*

- (a) *a comprehensive plan package including specifications, methodologies and detailed architectural plans, sections and elevations at 1:20 and 1:5 scales;*
- (b) *an assessment of the significance of heritage fabric, identification of each item of heritage fabric to be salvaged and justification for the selection of heritage fabric to be salvaged;*
- (c) *confirmation of what salvaged heritage fabric would be:*
  - (i) *incorporated and reused appropriately within the reconstructed / adapted heritage item or within the development more broadly; and*
  - (ii) *surplus to the project and either stored for reuse within the Western Gateway Sub-Precinct, Central Station Precinct or transferred to a heritage building materials dealer for recycling;*

The following amendments to Condition C5 are proposed:

- (a) – Relocate to “*Part D – Prior to the issue of a Construction Certificate*” and include reference to “Prior to the issue of CC5” as these will be satisfied prior to the Heritage Reinstatement works.
- (c) – Relocate to “*Part D – Prior to the issue of a Construction Certificate*” and include reference to “Prior to the issue of CC5”. The dismantling of the heritage items must occur in order to understand how much material is to be salvaged and subsequently reused.

### 2.3.3. Condition C7 – Photographic Archival Recording

*C7. Prior to any works commencing in relation to the demolition, dismantling and or alteration of the existing buildings and structures on the site, an archival photographic recording of the former Inwards Parcels Shed, Small Parcels Bagging Room and all associated heritage fabric is to be prepared by a suitably qualified and experienced heritage practitioner. The recording is to be in digital form, prepared in accordance with the Heritage NSW's guidelines titled 'Photographic Recording of Heritage Items using Film or Digital Capture'. Copies of the record are to be submitted to Heritage NSW and Council and prepared subject to the following procedure:*

...

- (b) *because significant fabric may remain concealed and only be exposed during construction works, the archival recording is to be undertaken in stages, prior to the removal of any significant building fabric or furnishings from the site, during the removal of fabric on site that exposes significant building fabric or furnishings, and after work has been completed on site, as considered appropriate by the conservation architect commissioned for the project*

...

It is proposed to relocate C7 (b) to “*Part G – Prior to the Issue of an Occupancy Certificate*” as this part of the condition states requires a staged approach to the archival recording with the final stage to occur “after work has been completed on site.

It is considered that this condition cannot be wholly satisfied until after construction has been completed and a full photographic archival recording, covering all stages as identified within the condition to be complete.

We note that no other changes are proposed to this condition.

## 2.4. PRIOR TO COMMENCEMENT OF CONSTRUCTION CONDITIONS (PART E)

The development is to be undertaken in several stages which were outlined in the Environmental Impact Statement (EIS) and Response to Submissions documentation. There are several conditions contained in Part E of the consent which require satisfaction prior to the commencement of construction which relate to subsequent stages of development. Specifically, Conditions E43, E45, E47, E48, and E49 are related to archaeological testing which is required to be undertaken at various stages due to the nature of the existing buildings on the Site.

The current drafting and location of these conditions in Part E of the consent requires that all archaeological testing is completed ahead of commencing heritage deconstruction. However, the location of some test pits on the Upper Ground Floor are such that they cannot be accessed until partial deconstruction of the Inwards Parcels Shed has been undertaken.

Following deconstruction of the required portion of the Inwards Parcels Shed and the demolition of the existing non-heritage structure above the archaeological test pits, piles will be installed along the eastern boundary line to prevent the undermining of Platform 1. These works are all required to be undertaken prior to the archaeological testing at the Upper Ground Level.

To allow for the required sequencing of works, this modification seeks to relocate conditions E43, E45, E47, E48, and E49 from “Part E Prior to Commencement of Construction” to “Part D Prior to the Issue of a Construction Certificate”.

In addition, to clarify the wording to align with Construction Certificate 2, E43 is proposed to be amended as follows:

*E43. Prior to the ~~commencement of construction~~ **issue of construction certificate two (CC2)**, the Applicant must prepare a Heritage Management Plan for the development to be submitted to and approved by the Planning Secretary. This plan must:*

*(a) be prepared in consultation with Heritage NSW and the Registered Aboriginal Parties (RAPs). The RAPs must be provided with a reasonable opportunity, being at least 28 days, to provide comment on the draft Heritage Management Plan;*

*(b) include a protocol for ongoing consultation with the RAPs for the duration of this project;*

*(c) include a description of the measures that would be implemented for archaeological investigations that includes at least the following:*

- (i) Aboriginal cultural heritage research questions;*
- (ii) the proposed staging and timing of excavations in relation to the development phases;*
- (iii) a staged testing and excavation methodology;*
- (iv) detailed triggers for expansion of any test pits to salvage excavation;*
- (v) a methodology for the excavation of features such as, but not limited to, hearths, knapping floors and middens etc;*
- (vi) artefact analysis methodology;*
- (vii) identified stop points where additional consultation with RAPs, Heritage NSW and the Secretary may be required if significant Aboriginal objects are identified;*
- (viii) sampling and dating methodology;*
- (ix) short term and long term care and control of any Aboriginal objects;*
- (x) reporting requirements;*

*(d) include measures to prevent harm to any Aboriginal objects outside the construction boundary;*

*(e) include a program to monitor and report on the effectiveness of any mitigation and management measures in protecting or limiting harm to Aboriginal objects;*

*(f) ensure any workers on site receive suitable Aboriginal cultural heritage induction(s) prior to carrying out any activities which may disturb Aboriginal sites, and that suitable records are kept of these inductions;*

*(g) include a Trigger Action Response Plan that included stop work provisions, notification protocols and significance assessment protocols to manage key risks to Aboriginal heritage, including:*

- (i) the discovery of any potential human remains;*
- (ii) the discovery of previously unidentified Aboriginal objects within the construction footprint; and*
- (iii) managing unauthorised ground disturbance.*

## 2.5. RELOCATING CONDITIONS FROM PART E TO PART C OF THE CONSENT

In co-ordination with the request for the amendment to the definition of 'construction / building works' a review of all conditions has been undertaken to ensure timing for satisfaction of affected conditions aligned to the construction phases. Several conditions have been identified which are proposed to be relocated to 'Part C Prior to Commencement of Demolition / Dismantle of Heritage' to ensure that satisfaction of these conditions is achieved prior to work relating to demolition / dismantling of heritage is commenced. These conditions are E9, E10, E13, E14, E15, E16, E17, E18, E19, E20, E21, E22, E23, E24, E29, E30, E31, E32, E33, E40 and E50. These conditions will therefore be required to be renumbered within Part C to reflect this change.

Following consultation with TfNSW and Sydney Trains, the following amendments are also proposed:

- That Conditions E37, E38 and E39 are retained in Part E and also duplicated in Part C.
- Condition D46 is retained as is in Part D and also duplicated in Part C with the following amendment:

*Prior to the ~~issue of construction certificate one (CC1)~~ **commencement of any demolition**, the Applicant must contact TfNSW to confirm whether it requires the following matters to be addressed. If TfNSW confirms any of the following matters need to be addressed, the Applicant shall prepare/action the required details in consultation with TfNSW and submit evidence to the Certifier of Sydney Trains' endorsement(s) of the final details. The details include the:*

- (a) preparation of a Risk Assessment/Management Plan and detailed Safe Work Method Statements for the proposed works;*
- (b) preparation of a Track Monitoring Plan (including instrumentation and the monitoring regime during excavation and construction phases);*
- (c) need to obtain public liability insurance cover. If insurance cover is deemed necessary this insurance be for sum as determined by TfNSW and shall not contain any exclusion in relation to works on or near the rail corridor, rail infrastructure and must be maintained for the duration specified by TfNSW*

- (d) *need to lodge a Bond or Bank Guarantee for the duration of the works. The Bond/Bank Guarantee shall be for the sum determined by Sydney Trains.*

**Note:** *The Applicant should contact TfNSW External Interface Management team to obtain the level of insurance required and/or Bond or Bank Guarantee for the proposal required under sub-points (c) and (d)*

## **2.6. MODIFICATION OF TIMING FOR CONDITIONS RELATING TO PUBLIC DOMAIN WORKS**

The Atlassian Central development will be undertaken in a number of stages as outlined in the EIS documentation. The public domain conditions are proposed to be modified to align to the staging of construction. As works related to the public domain will not be undertaken until Construction Certificate 5 (CC5), the modification seeks to relocate Condition E52, E53, E54, E55, E56, and E57 from “Part E Prior to Commencement of Construction” to “Part D Prior to the Issue of a Construction Certificate”. This will also enable the bonds and guarantees to be calculated based on current costs and cover any design development undertaken over this period.

It is proposed, in the interest of clarity that Conditions E52, E53, E54, E55, E56, and E57 each be modified to insert at the beginning of each of these conditions:

***“Prior to the issue of Construction Certificate five (CC5),...”***

## **3. SECTION 4.55 ASSESSMENT**

The proposed modifications have been assessed in accordance with section 4.55(1A) of the EP&A Act in the following sections of this correspondence.

### **3.1. MINIMAL ENVIRONMENTAL IMPACT**

The proposed modifications will have minimal environmental impact for the reasons listed below:

- The adjustment to the north-eastern basement wall is within the site boundary where archaeological investigations have been undertaken and no impacts from this minor realignment have been identified.
- The proposed changes relate to the timing of compliance with the conditions to respond to the construction sequence and will not result in any new or additional environmental impacts.
- The proposed re-wording of ‘*construction / building works*’ will not alter the development ultimately achieved on the Site, and seek to align the consent with the intended delivery of the development as identified throughout the original SSDA assessment.

Based on the above, the proposed modifications can be assessed in accordance with section 4.55(1A) of the EP&A Act.

### **3.2. SUBSTANTIALLY THE SAME DEVELOPMENT**

The development as modified will remain substantially the same as the approved development as it will not alter the overall built form, environmental impacts, land uses or activities on or surrounding the Site.



Accordingly, the proposed modifications can be assessed as a modification to the original development in accordance with section 4.55(1A) of the EP&A Act.

## **4. SECTION 4.15 ASSESSMENT**

The application has been assessed in accordance with the relevant matters for consideration listed in Section 4.15 of the EP&A Act.

### **4.1. ENVIRONMENTAL PLANNING INSTRUMENTS**

The proposed modifications have been reviewed and assessed in accordance with the relevant State and local environmental planning instruments, including:

- *State Environmental Planning Policy (Planning Systems) 2021*
- *State Environmental Planning Policy (Transport and Infrastructure) 2021*
- *State environmental Planning Policy (Resilience and Hazards) 2021*
- *State Environmental Planning policy (Biodiversity and Conservation) 2021*
- *Sydney Local Environmental Plan 2012*
- *Western Gateway Sub-precinct Design Guide 2021*
- *Sydney Development Control Plan 2012*

The development as modified will continue to comply with the relevant provisions of all these controls, as the modifications will not result in any change to the proposed built form, delivery or future use of the Site.

### **4.2. PLANNING AGREEMENT**

No planning agreements are relevant to this proposal.

### **4.3. REGULATIONS**

The application has been prepared in accordance with the relevant provisions of the *Environmental Planning and Assessment Regulation 2000*.

### **4.4. LIKELY IMPACTS OF THE PROPOSAL**

The proposed modifications have been assessed considering the potential environmental, economic and social impacts, and no additional impacts will result from the modifications.

### **4.5. SUITABILITY OF THE SITE**

The site is considered highly suitable for the development as modified for the following reasons:

- The modifications will deliver the same development as originally approved.
- The modifications will facilitate the delivery of the anchor building within the new TechCentral Precinct and will support the long-term development of the new technology and innovation precinct in central Sydney.

- The modifications will not result in any new non-compliances with planning controls

## **4.6. SUBMISSIONS**

It is acknowledged that submissions arising from the public notification of this application will need to be assessed by DPE.

## **4.7. PUBLIC INTEREST**

The modified proposal is considered in the public interest for the following reasons:

- The proposed modifications are consistent with relevant State and local strategic plans and complies with the relevant State and local planning controls.
- No adverse environmental, social or economic impacts will result from the proposed modifications.
- The uses within the building are permissible with consent and are consistent with the zone objectives and will remain unchanged from those originally approved.

## **5. CONCLUSION**

The proposed modifications have been assessed in accordance with section 4.55(1A) and section 4.15 of the EP&A Act and are considered appropriate as summarised below:

- The proposal is to correct a minor error in the approval documentation.
- The proposal is substantially the same development.
- The proposal satisfies the applicable planning controls and policies.
- The social and economic impacts are acceptable.
- The proposal remains suitable for the site.
- The proposal is in the public interest.

Having considered all relevant matters, we conclude that the proposed modifications are appropriate for the site and approval is recommended, subject to appropriate conditions of consent.

Please do not hesitate to contact me should you wish to discuss our application in greater detail.

Yours sincerely,

A handwritten signature in black ink, appearing to read "D. Blakely".

Danielle Blakely  
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