

Development Consent – Key Sites

Section 4.38 of the Environmental Planning and Assessment Act 1979

As delegate of the Minister for Planning, I approve the Development Application referred to in Schedule 1, subject to the conditions specified in Schedule 2.

These conditions are required to:

- prevent, minimise, or offset adverse environmental impacts;
- set standards and performance measures for acceptable environmental performance;
- require regular monitoring and reporting; and
- provide for the ongoing environmental management of the development



Anthea Sargeant
Executive Director
Key Sites and Regional Assessments

Sydney

2 March 2022

SCHEDULE 1

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| Application Number: | SSD-11564741 |
| Applicant: | Lendlease (Millers Point) Pty Ltd |
| Consent Authority: | Minister for Planning |
| Site: | Part of Barangaroo South, 51A Hickson Road, Barangaroo (Lot 500 DP 1264241) |
| Development: | Staged stratum subdivision of Lot 500 to create nine allotments relating to Buildings R4A, R4B, R5, a substation and public domain areas |

CONSOLIDATED CONSENT

Summary of Modifications

| Application Number | Determination Date | Decider | Modification Description |
|--------------------|--------------------|--|---|
| SSD-1564741-Mod-1 | 13 June 2023 | Executive Director, Key Sites and Regional Assessments | Refinements to stratum lot boundaries. |
| SSD-1564741-Mod-2 | 10 October 2023 | Executive Director, Key Sites and Regional Assessments | Lot referencing amendments and refinements to stratum lot boundaries. |

FOR INFORMATION

CONSOLIDATED CONSENT

DEFINITIONS

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| Applicant | Lendlease (Millers Point) Pty Ltd, or any person carrying out any development to which this consent applies |
| Application | The development application and the accompanying drawings plans and documentation described in Condition A2 |
| BCA | Building Code of Australia |
| BC Act | <i>Biodiversity Conservation Act 2016</i> |
| Certifying Authority | A person who is authorised by or under section 6.17 of the EP&A Act to issue Part 6 certificates |
| Conditions of this consent | Conditions contained in Schedule 2 of this document |
| Construction | The demolition and removal of buildings or works, the carrying out of works for the purpose of the development, including bulk earthworks, and erection of buildings and other infrastructure permitted by this consent. |
| Council | City of Sydney Council |
| Day time | The period from 7 am to 6 pm on Monday to Saturday, and 8 am to 6 pm on Sundays and Public Holidays |
| Department | NSW Department of Planning, Industry and Environment |
| Evening | The period from 6pm to 10pm |
| EIS | Environmental Impact Statement entitled 'Building R4A, R4B & R5, One Sydney Harbour Barangaroo South Stage 1B (Fifth Stage) Subdivision', prepared by Ethos Urban dated 18 October 2021, submitted with the application for consent for the development, including any additional information provided by the Applicant in support of the application |
| EPA | NSW Environment Protection Authority |
| EP&A Act | <i>Environmental Planning and Assessment Act 1979</i> |
| EP&A Regulation | <i>Environmental Planning and Assessment Regulation 2021</i> |
| EPL | Environment Protection Licence under the POEO Act |
| Hosted short-term rental accommodation | Short-term rental accommodation provided where the host resides on the premises during the provision of the accommodation |
| Land | Has the same meaning as the definition of the term in section 1.4 of the EP&A Act |
| Incident | An occurrence or set of circumstances that causes or threatens to cause material harm and which may or may not be or cause a non-compliance Note: "material harm" is defined in this consent |
| Infrastructure NSW | The body corporate with the corporate name of Infrastructure NSW constituted under the Infrastructure NSW Act 2011 or another public authority that may be granted the powers or functions of Infrastructure NSW relating to Barangaroo in future |
| Material harm | Actual or potential harm to the health or safety of human beings or to ecosystems that is not trivial |
| Minister | NSW Minister for Planning and Public Spaces (or delegate) |
| Non-compliance | An occurrence, set of circumstances or development that is a breach of this consent |
| Non-hosted short-term rental accommodation | Short-term rental accommodation provided where the host does not reside on the premises during the provision of the accommodation |
| OEH | NSW Office of Environment and Heritage |
| Planning Secretary | Planning Secretary under the EP&A Act, or nominee |
| RTS | The Applicant's response to issues raised in submissions received in relation to the application for consent for the development under the EP&A Act. |
| Sensitive receiver | Residence, education institution (e.g. school, university, TAFE college), health care facility (e.g. nursing home, hospital), religious facility (e.g. church) and children's day care facility |
| Site | Land referred to in Schedule 1 |

CONSOLIDATED CONSENT

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| Short-term rental accommodation | A dwelling used by the host to provide accommodation (including Hosted short-term rental accommodation and Non-hosted short-term rental accommodation) in the dwelling on a commercial basis for a temporary or short-term period |
| SLEP 2012 | Sydney Local Environmental Plan 2012 |
| SSD | State significant development |
| TfNSW | Transport for New South Wales |

FOR INFORMATION

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SCHEDULE 2

PART A ADMINISTRATIVE CONDITIONS

OBLIGATION TO MINIMISE HARM TO THE ENVIRONMENT

- A1. In addition to meeting the specific performance measures and criteria in this consent, all reasonable and feasible measures must be implemented to prevent, and if prevention is not reasonable and feasible, minimise, any material harm to the environment that may result from the construction and operation of the development as described under Schedule 1, and any rehabilitation required under this consent.

TERMS OF CONSENT

- A2. The development may only be carried out:
- (a) in compliance with the conditions of this consent;
 - (b) in accordance with all written directions of the Planning Secretary;
 - (c) in accordance with the EIS and RtS;
 - (d) in accordance with the management and mitigation measures
 - (e) in accordance with Section 4.55(1A) Modification 1 to SSD 11564741 titled 'Stage 1B (Stage 5) Subdivision, Barangaroo South' and accompanying appendices, prepared by Ethos Urban and dated 21 December 2022
 - (f) in accordance with Section 4.55(1A) Modification 2 to SSD 11564741 titled 'Stage 1B (Stage 5) Subdivision, Barangaroo South' and accompanying appendices, prepared by Ethos Urban and dated 8 August 2022

| Architectural (or Design) Drawings prepared by GeoStrata | | | |
|--|----------|---|------------|
| Sheet Number | Revision | Name of Plan | Date |
| Sheet 1 of 12 sheets | 04 | Plan of Proposed Subdivision Level 1 – Location Plan | 01/06/2023 |
| Sheet 2 of 12 sheets | 05 | Plan of Proposed Subdivision Basement Level 4 | 01/06/2023 |
| Sheet 3 of 12 sheets | 05 | Plan of Proposed Subdivision Basement Level 3 | 01/06/2023 |
| Sheet 4 of 12 sheets | 04 | Plan of Proposed Subdivision Basement Level 2 | 01/06/2023 |
| Sheet 5 of 12 sheets | 05 | Plan of Proposed Subdivision Basement Level 1 | 01/06/2023 |
| Sheet 6 of 12 sheets | 05 | Plan of Proposed Subdivision Basement Level 0 | 01/06/2023 |
| Sheet 7 of 12 sheets | 05 | Plan of Proposed Subdivision OSH – R4A, R4B, R5 Buildings | 01/06/2023 |
| Sheet 8 of 12 sheets | 04 | Plan of Proposed Subdivision OSH – R4A, R4B, R5 Buildings | 01/06/2023 |
| Sheet 9 of 12 sheets | 04 | Plan of Proposed Subdivision OSH – R4A, R4B, R5 Buildings | 01/06/2023 |
| Sheet 10 of 12 sheets | 04 | Plan of Proposed Subdivision OSH – R4A, R4B, R5 Buildings | 01/06/2023 |
| Sheet 11 of 12 sheets | 04 | Plan of Proposed Subdivision OSH – R4A, R4B, R5 Buildings | 01/06/2023 |
| Sheet 12 of 12 sheets | 04 | Plan of Proposed Subdivision OSH – R4A, R4B, R5 Buildings | 01/06/2023 |

INCONSISTENCY BETWEEN DOCUMENTS

- A3. Consistent with the requirements in this consent, the Planning Secretary may make written directions to the Applicant in relation to:
- (a) the content of any strategy, study, system, plan, program, review, audit, notification, report or correspondence submitted under or otherwise made in relation to this consent, including those that are required to be, and have been, approved by the Planning Secretary; and
 - (b) the implementation of any actions or measures contained in any such document referred to in condition A3 (a).
- A4. The conditions of this consent and directions of the Planning Secretary prevail to the extent of any inconsistency, ambiguity or conflict between them and a document listed in condition A2. In the event of an inconsistency, ambiguity or conflict between any of the documents listed in condition A2, the most recent document prevails to the extent of the inconsistency, ambiguity or conflict.

APPLICABILITY OF GUIDELINES

- A5. References in the conditions of this consent to any guidelines, protocol, Australian Standard or policy are to such guidelines, protocols, Standards or policies in the form they are in as at the date of this consent.
- A6. However, consistent with the conditions of this consent and without altering any limits or criteria in this consent, the Planning Secretary may, when issuing directions under this consent in respect of ongoing monitoring and management obligations, require compliance with an updated or revised version of such a guideline, protocol, Standard or policy, or a replacement of them.

INCIDENT NOTIFICATION, REPORTING AND RESPONSE

- A7. The Planning Secretary must be notified through the major projects portal immediately after the Applicant becomes aware of an incident. The notification must identify the development (including the development application number and the name of the development if it has one), and set out the location and nature of the incident.
- A8. Subsequent notification must be given and reports submitted in accordance with the requirements set out in **Appendix 1**.

NON-COMPLIANCE NOTIFICATION

- A9. The Planning Secretary must be notified through the major projects portal within seven days after the Applicant becomes aware of any non-compliance. The Certifier must also notify the Planning Secretary through the major projects portal within seven days after they identify any non-compliance.
- A10. The notification must identify the development and the application number for it, set out the condition of consent that the development is non-compliant with, the way in which it does not comply and the reasons for the non-compliance (if known) and what actions have been, or will be, undertaken to address the noncompliance.
- A11. A non-compliance which has been notified as an incident does not need to also be notified as a noncompliance.

REVISION OF STRATEGIES, PLANS AND PROGRAMS

- A12. Within three months of:
- (a) the submission of an incident report under condition A8;
 - (b) the approval of any modification of the conditions of this consent; or
 - (c) the issue of a direction of the Planning Secretary under condition A2 which requires a review.

The strategies, plans and programs required under this consent must be reviewed, and the Department must be notified in writing that a review is being carried out.

If necessary to either improve the environmental performance of the development, cater for a modification or comply with a direction, the strategies, plans and programs required under this consent must be revised, to the satisfaction of the Planning Secretary. Where revisions are required, the revised document must be submitted to the Planning Secretary for approval within six weeks of the review.

Note: This is to ensure strategies, plans and programs are updated on a regular basis and to incorporate any recommended measures to improve the environmental performance of the development.

STAGED STRATUM SUBDIVISION

- A13. Lot 500 may be subdivided into a number of stages, comprising of one or more of the following nine stratum lots:
- (i) Lot 601 - R4A Residential
 - (ii) Lot 602 - R4A Retail
 - (iii) Lot 603 - R4B Residential
 - (iv) Lot 604 - R4B Retail
 - (v) Lot 605 - **Substation**
 - (vi) **Lot 701 - R5 Residential**
 - (vii) Lot **702** - R5 Retail
 - (viii) Lot **703** - R5 Residential A
 - (ix) Lot 600 - Residue Lot

Note: future stages of subdivision to create additional lots are to be subject to a separate approval, as relevant.

The applicant may carry out the staged stratum subdivision of the buildings/structures within any of the approved Lots by preparing and lodging for registration a stratum plan which includes any, all or part of the buildings/structures identified above.

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STAGE VARIATIONS

A14. The scope, order and extent of works within each stage detailed in Condition **A13** above may be varied due to market conditions, servicing constraints and the requirements of the conditions of approval.

The progressive release of lots within each stage may occur subject to separate Subdivision Certificates.

DEVELOPMENT EXPENSES

A15. It is the responsibility of the Applicant to meet all expenses incurred in undertaking the development, including expenses incurred in complying with conditions imposed under this consent.

LIMITATION OF CONSENT

A16. The Applicant shall comply with all relevant prescribed conditions of development consent under Part 4, Division 2 of the EP&A Regulation.

LEGAL NOTICES

A17. Any advice or notice to the consent authority shall be served on the Secretary.

END OF SECTION A

FOR INFORMATION

PART B PRIOR TO ISSUE OF SUBDIVISION CERTIFICATE/S

REQUIREMENTS OF EP&A ACT 1979 – APPLICATION FOR A PART 4A CERTIFICATE

- B1. In undertaking the subdivision approved under the consent, the Applicant must comply with the requirements of Part 4A the Environmental Planning and Assessment Act 1979 in relation to the issue of a Subdivision Certificate.
- For the purposes of this approval, the issue of a Subdivision Certificate/s is restricted to the subdivision defined by the description under Schedule 1.

LAND SUBDIVISION – SUBDIVISION CERTIFICATE

- B2. A separate application must be made to an accredited certifier to obtain the approval of the relevant plan of subdivision and issue of the relevant Subdivision Certificate under Section 6.15 of the Environmental Planning and Assessment Act 1979.

COMPLIANCE – COMPLETION IN ACCORDANCE WITH A PROJECT APPROVAL/DEVELOPMENT CONSENT

- B3. Prior to the issue of a Subdivision Certificate for a stratum subdivision, a Compliance Certificate shall be provided to the Certifying Authority demonstrating that the proposed subdivision is consistent with relevant conditions of any relevant planning approval/development consent (to the extent that they are relevant and required for that subdivision stage) issued in respect to the building (or part of the building) proposed to be subdivided. This includes, but is not limited to, any conditions relating to the allocation of the following to the respective lot/s:
- (a) The number of bicycle spaces;
 - (b) The number of car parking spaces;
 - (c) The number of motor bike spaces;
 - (d) The number of loading spaces; and
 - (e) Any services of infrastructure.

The above car parking and motorcycles spaces are to be shown as part of the relevant stratum lot.

The bicycle spaces, loading spaces, services and infrastructure can be on separate lots only if they are part of a shared basement and managed under the Building Management Statement required by B10.

EASEMENTS RELATING TO STRATUM LOTS

- B4. Prior to, or upon the issue of the first Subdivision Certificate for the subdivision of Lot 500, the proponent is to provide the Certifying Authority with an easement plan/s for authority services and infrastructure in accordance with Condition B9 and B12. Alternatively, the Certifying Authority must be satisfied that appropriate agreements or bonds are in place to provide for future easements.

EASEMENTS FOR ACCESS

- B5. Appropriate Easements for Access (or similar) are to be created over any required corridors, passages, driveways, traffic aisles, stairs and lifts, within the development that are needed to provide access from (or across) one lot to another, pursuant to Section 88B of the Conveyancing Act 1919. The Easements are to be reciprocal in nature (where applicable), granting rights of access to persons and/or vehicles, and are to be created in appropriate terms acceptable to Infrastructure NSW, with Infrastructure NSW being the authority to release, vary or modify the easement.
- B6. Prior to, or upon, the registration of the first stratum plan, appropriate ground level access easement/s are to be created to provide access to each building from the public domain for respective building owner/s, tenant/s and visitors, as relevant to the stratum lot/s, to the satisfaction of certifying authority. Each easement is to address construction staging, including any restrictions to access as a result of the construction activities including erecting hoardings.
- B7. Suitable easements for access or rights-of-way benefitting the public are to be created over the public domain areas of the residual lot at each stage in the stratum subdivision, to ensure public access to the site. The rights of public access are to be triggered by the issue of any occupation certificate for public domain works (temporary or permanent) within Barangaroo South.

If it is proposed to create easements, rights of way, restrictions or covenants, a Section 88B instrument must be provided.

COMPLIANCE CERTIFICATE

- B8. Prior to the issue of each Subdivision Certificate (as relevant), a Compliance Certificate is to be issued certifying that a registered surveyor has confirmed that the parcel boundary of the stratum plan corresponds with floors, external walls and ceilings of the relevant building/structures as constructed or alternatively, has the benefit of an appropriate easement or is the subject of appropriate provisions in the Building Management Statement, required by Condition B10, to enable the registration of the plan.

SYDNEY WATER CERTIFICATE - SUBDIVISION

- B9. Prior to the issue of a Subdivision Certificate, a Section 73 Compliance Certificate under the Sydney Water Act 1994 must be obtained from Sydney Water Corporation.

Application must be made through an authorised Water Servicing Coordinator. Please refer to the Building Developing and Plumbing section on the web site www.sydneywater.com.au then refer to "Water Servicing Coordinator" under "Developing Your Land" or telephone 13 20 92 for assistance.

Following application, a "Notice of Requirements" will advise of water and sewer infrastructure to be built and charges to be paid. Please make early contact with the Coordinator, since building of water/sewer infrastructure can be time consuming and may impact on other services and building, driveway or landscape design.

The Section 73 Certificate must be submitted to the Certifying Authority prior to a Subdivision Certificate being issued.

BUILDING MANAGEMENT STATEMENT

- B10. Prior to the first Subdivision Certificate for the stratum subdivision of the development, a **Building Management Statement** must be prepared in the approved form prescribed by Schedule 8A of the *Conveyancing Act 1919*. The Building Management Statement is to apply to the development as a 'united building'. The Building Management Statement must be submitted to the satisfaction of Certifying Authority and is to include details in relation to the following matters:

- (a) the use, operation and arrangements for the supply of services, maintenance and upgrading of infrastructure of each stratum lot within the subdivision;
- (b) the ongoing maintenance, upgrading, redevelopment and structural adequacy of each stratum lot within the subdivision; and
- (c) any other matters which the Certifying Authority considers relevant and pertinent to the issue of the Subdivision Certificate.

- B11. Prior to the issue of any subsequent Subdivision Certificate for the stratum subdivision of the development, a modified Building Management Statement for the development as an 'united building' OR a new Building Management Statement must be prepared in the approved form prescribed by Schedule 8A of the *Conveyancing Act 1919*. The Building Management Statement must be submitted to the satisfaction of the Certifying Authority and is to include relevant details in relation to those matters listed at Condition B10 above.

AUSGRID ELECTRICAL INFRASTRUCTURE

- B12. The applicant shall liaise with Ausgrid in order to finalise any easements, leases and/or rights of way in favour of Ausgrid.

RESTRICTION ON RESIDENTIAL DEVELOPMENT

- B13. A documentary Restriction on Use of Land is to be created over the residential lots in the Subdivision Plan (shown on the plan as Lots 601, 603, 605 and 607), pursuant to Section 88B or 88D of the *Conveyancing Act 1919*, in terms to the satisfaction of Infrastructure NSW requiring the apartments within that lot not to be used for the purpose of a hotel, serviced apartments, boarding house, tourist and back-packer accommodation, with Infrastructure NSW being the authority to release, vary or modify the restriction.

However, nothing in the restriction can exclude or restrict any Short-term rental accommodation (for example, AirBNB) that is permissible in accordance with any relevant environmental planning instrument or legislation (even where the restriction could otherwise prevent such a use).

RESTRICTION ON USE OF CAR SPACES AND STORAGE SPACES

- B14. A documentary Restriction on Use of Land is to be created over the lots in the Subdivision Plan that contain parking (nominally), pursuant to Section 88B or 88D of the *Conveyancing Act 1919*, appurtenant to Infrastructure NSW, in terms to the satisfaction of Infrastructure NSW requiring that the on-site car parking spaces and storage spaces, exclusive of service spaces, are not to be used other than by a resident, tenant or occupant of the lots, with Infrastructure NSW being the authority to release, vary or modify the restriction.

STREET ADDRESSES OF LOTS

- B15. In accordance with Clause 60(c) of the Surveying and Spatial Information Regulation 2017, the street addresses for each lot must be shown on the final plan of subdivision.

END OF SECTION B

APPENDIX 1 INCIDENT NOTIFICATION AND REPORTING REQUIREMENTS

WRITTEN INCIDENT NOTIFICATION REQUIREMENTS

1. A written incident notification addressing the requirements set out below must be emailed to the Planning Secretary through the major projects portal within seven days after the Applicant becomes aware of an incident. Notification is required to be given under this condition even if the Applicant fails to give the notification required under Condition A7 or, having given such notification, subsequently forms the view that an incident has not occurred. Written notification of an incident must:
 - a. identify the development and application number;
 - b. provide details of the incident (date, time, location, a brief description of what occurred and why it is classified as an incident);
 - c. identify how the incident was detected;
 - d. identify when the applicant became aware of the incident;
 - e. identify any actual or potential non-compliance with conditions of consent;
 - f. describe what immediate steps were taken in relation to the incident;
 - g. identify further action(s) that will be taken in relation to the incident; and
 - h. identify a project contact for further communication regarding the incident.
2. Within 30 days of the date on which the incident occurred or as otherwise agreed to by the Planning Secretary, the Applicant must provide the Planning Secretary and any relevant public authorities (as determined by the Planning Secretary) with a detailed report on the incident addressing all requirements below, and such further reports as may be requested.
3. The Incident Report must include:
 - a. a summary of the incident;
 - b. outcomes of an incident investigation, including identification of the cause of the incident;
 - c. details of the corrective and preventative actions that have been, or will be, implemented to address the incident and prevent recurrence; and
 - d. details of any communication with other stakeholders regarding the incident.