

27 June 2019

2190205

Ms Carolyn McNally
Secretary
Department of Planning & Environment
320 Pitt Street
SYDNEY NSW 2000

Dear Ms McNally,

MODIFICATION TO SSD 5249-2012

This application has been prepared by Ethos Urban on behalf of Lawson Square Pty Ltd, pursuant to section 4.55(1A) of the *Environmental Planning and Assessment Act, 1979* (EP&A Act) to modify Development Consent SSD 5249-2012 relating to 1 Lawson Square, Redfern (the site).

The modification proposes the following:

- Re-instate the originally approved commercial use on Levels 1 to 5 in Tower 1.
- Enlarge the communal balconies attached to the commercial tenancies on Levels 1 to 5 in Tower 1.
- Revise the residential unit numbers and mix.

This application identifies the consent, describes the proposed modifications, and provides an assessment of the relevant matters contained in Section 4.55(1A) of the EP&A Act. This application is accompanied by:

- Amended Architectural Plans (**Appendix A**) and
- Amended SEPP 65 Design Verification Statement (**Appendix B**).

1.0 Consent Proposed to be Modified

Development consent SSD 5249 was granted by the NSW Minister for Planning on 18 December 2014 for the Lawson Square Development. The consent approved the following development:

“Additions and alterations to the two existing 12 storey office towers to create an 18 storey mixed use development comprising:

- *Retail and commercial uses at the ground floor of both towers and at levels 1-5 of the western tower;*
- *156 residential units;*
- *Basement car and bicycle parking; and*
- *Public domain works”*

1.1 Previous Modifications

SSD 5249 has so far been modified five times. These modifications are summarised in **Table 1**. It is noted that a modification (MOD 6) was submitted in August 2018 and withdrawn in October 2018.

Table 1 – Summary of Modifications to SSD 5249

Modification Number	Modification Summary	Approval Date
MOD 1	Section 96 (1A) modification for the following: - Relocation of the commercial tenancy to Tower 2 (eastern tower); - Conversion of Levels 1 to 5 in Tower 1 (western tower) to residential; - Modification of the elevation to reflect the change in uses; - Relocation of the ground floor retail from Tower 2 to Tower 1; and - Revised unit numbers and mix.	29 October 2015
MOD 2	Section 96 (1A) modification for the following: - Adjustments to the building envelope and levels to retain the existing floorplate; - Amendments to the articulation and materiality on the building facades; - Minor increase to the total number of units; - Modifications to the substation chambers; and - Amendments to the driveway and entrances.	6 April 2016
MOD 3	Section 96 (2) modification for the following: - Amended privacy screens; - Amended glazing treatment to the commercial levels; - Conversion of Level 3 and 4 in Tower 2 from commercial to residential use; - Minor increase to the total number of units; - Minor internal reconfigurations; and - Reconfiguration of the mechanical services and plants within the building and on the roof.	4 August 2017
MOD 4	Section 96 (1A) modification for the following: Apartment reconfigurations and apartment mix modifications;	29 January 2018
MOD 5	Section 4.55(1A) modification for the following: to add two, private, rooftop terraces to Tower 2, and make internal modifications to the layouts of apartment numbers T2-17.01 and T2-17.02.	21 March 2018

2.0 Proposed Modifications to the Consent

The following discussion describes the proposed modifications subject to this application.

2.1.1 Re-instatement of the commercial floors in Tower 1

It is proposed to re-instate the originally approved commercial use on Levels 1 to 5 within Tower 1. The proposed modification will result in an increase in the currently approved commercial floor space from 1,936m² to 3,721m². This is a net increase of 711m² of commercial floor space above the commercial floor space originally approved under SSD 5249. It is noted that the proposed modification will not increase the total floor space approved under MOD 5 (12,993m²).

2.1.2 Enlarge the commercial balconies in Tower 1

It is proposed to provide large centrally located north facing balconies on the commercial floors on Levels 1 to 5 on Tower 1. To achieve this the glass line has been setback in the central portion of the façade on Levels 1 to 5 on Tower 1 (refer **Figure 1** below).

2.1.3 Revised unit numbers and mix

The deletion of residential units on Levels 1 to 5 on Tower 1 has resulted in an adjustment to the number and mix of units across the development. These changes have been outlined below in **Table 2** below.

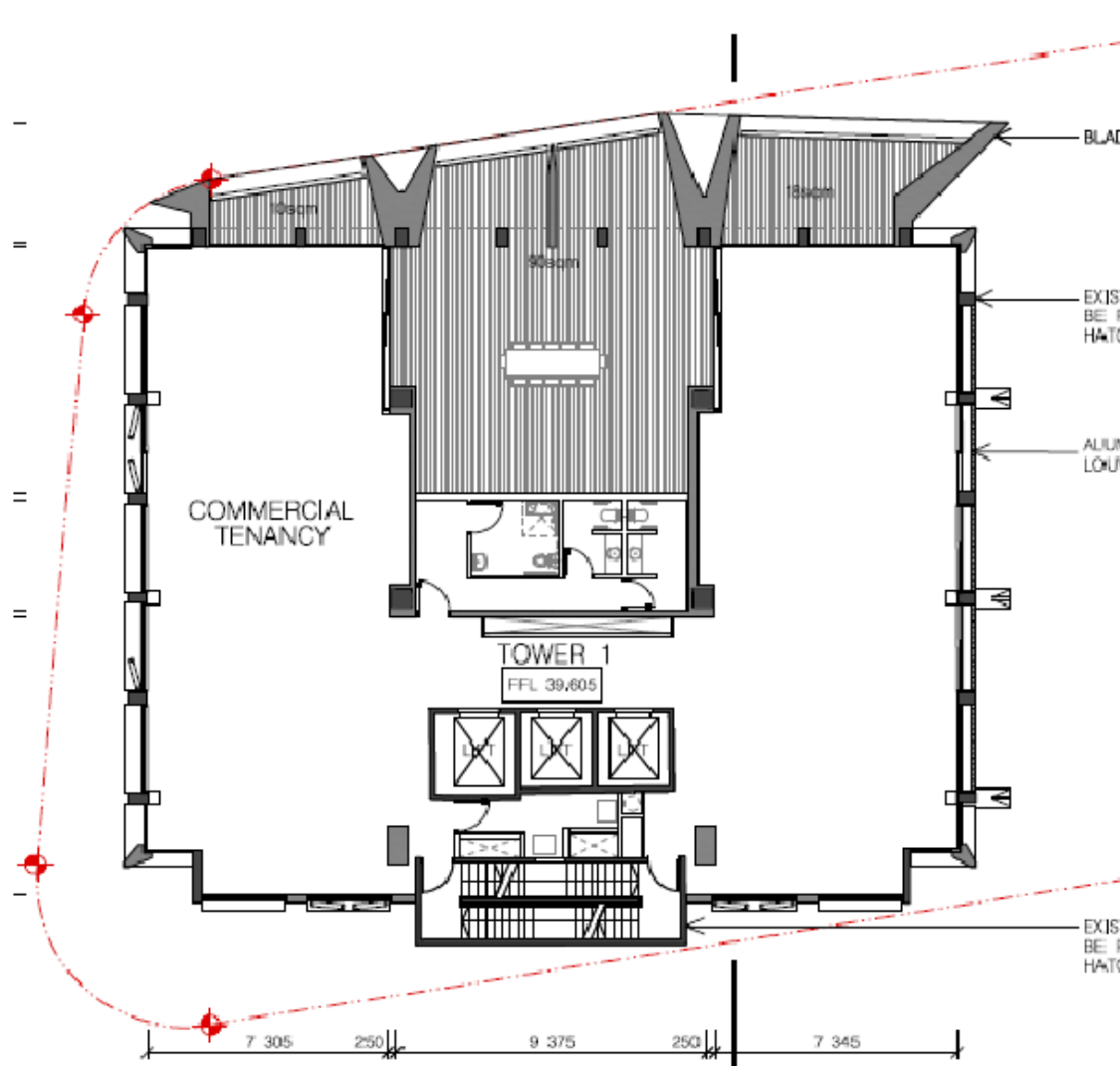


Figure 1: Proposed typical Tower 1 commercial level

Source: Candalepas Associates + Wendy Lewin

Table 2 – Key changes to existing development

Description	Original SSD 5429	4.55(1A) Modification	Difference
Total gross floor area	12,741 m ²	12,993m ²	+1.98% No change to GFA approved under MOD 5
Number of Units	156	151	-5
- Studio apartment	34	46	+12
- 1 bedroom unit	67	54	-13
- 2 bedroom unit	55	49	-6
- 3 bedroom unit	0	2	+2

Description	Original SSD 5429	4.55(1A) Modification	Difference
Unit Mix (%)			
- Studio apartment	22%	31%	+9%
- 1 bedroom unit	43%	35%	-8%
- 2 bedroom unit	35%	33%	-2%
- 3 bedroom unit	0%	1%	+1%

2.2 Modifications to Conditions

The proposed modifications described above necessitate amendments to the consent conditions which are identified below. Words proposed to be deleted are shown in ~~**bold strike through**~~ and words to be inserted are shown in ***bold italics***.

Development Description

A3 The Applicant shall carry out the project generally in accordance with the:

- Environmental Impact Statement (EIS) prepared by SJB Planning, dated February 2013;
- Response to Submissions (RtS) prepared by SJB Planning, dated 12 September 2013 and Revised RtS prepared by SJB planning, dated 14 April 2014;
- As amended by the Section 96(1A) Modification prepared by JBA, dated 11 September 2015; and
- As amended by the Section 96(1A) Modification prepared by JBA Urban Planning Consultants, dated 7 December 2015, and supporting letters prepared by Candelepapas Associates dated 29 February 2016 and 3 March 2016;
- As amended by the Section 96(2) Modification prepared by JBA Urban Planning Consultants dated 16 March 2017 and Attachments; and
- As amended by the Section 96(1A) Modification prepared by Ethos Urban dated 31 August 2017 and attachments;
- As amended by the Section 4.55(1A) Modification prepared by Ethos Urban dated 7 December 2017 and amended application prepared by Ethos Urban, dated 3 February 2018;
- As amended by the Section 4.55(1A) Modification prepared by Ethos Urban dated 28 March 2019 and attachments;***
- ~~h)~~ ***i)*** following drawings as set out in the table below, except for:
 - any modifications which are Exempt or Complying Development;
 - otherwise provided by the conditions of this consent.

Architectural Drawings prepared by Candelepapas Associates and Wendy Lewin itemised below

Drawing No.	Issue	Name of Plan	Date
S96-1001	G	Site Context Analysis	09.03.17
S96-1002	G	Streetscape Elevation	09.03.17
S96-1101	G	Site Plan	09.03.17
S96-1102	G	Basement & Ground Floor Plan	09.03.17
S96-1103	G-P1	Level 1 & Level 2 - 4 Plans	09.03.17 28.03.19
S96-1104	I-P1	Levels 3-5 & Level 6-11 Plans	09.11.17 28.03.19
S96-1105	I	Level 12 & Level 13-14 Plans	09.11.17
S96-1106	I	Level 15 & Level 16 Plans	09.11.17
S96-1107	M	Level 17 & 18 Plans	13.02.18
S96-1108	M	Roof Plan	13.02.18
S96-1201	M-P1	Sections - Sheet 1 Sections AA & BB	13.02.18 28.03.19
S96-1202	M-P1	Sections - Sheet 2 Section CC	13.02.18 28.03.19

Architectural Drawings prepared by Candelepapas Associates and Wendy Lewin itemised below			
S96-1301	M-P1	Elevations Sheet 1 North Elevation	13.02.18 28.03.19
S96-1302	G	Elevations Sheet 2 Tower 1 - East & West Elevations	09.03.17
S96-1303	M	Elevations Sheet 3 Tower 2 - East & West Elevations	13.02.18
S96-1304	M	Elevations Sheet 4 South Elevation	13.02.18
S96-1401	M-P1	Area Calculations	13.02.18 28.03.19
S96-1501	I-P1	Unit Solar Study	09.11.17 28.03.19
S96-1502	M	Solar & Shadow Studies	13.02.18
S96-1503	G	Overshadowing Analysis - Sheet 1	09.03.17
S96-1504	G	Overshadowing Analysis - Sheet 2	09.03.17
S96-1851	G	Waste Management Plan	09.03.17

3.0 Substantially the Same Development

Section 4.55(1A) of the EP&A Act states that a consent authority may modify a development consent if

“it is satisfied 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)”.

The onus is on the applicant for the modification application to satisfy the Minister that the modified development will be substantially the same (*Seaforth Services Pty Limited v Byron Shire Council (No.2)* (1991) 72 LGRA 44). In general, the threshold test requires the Minister to compare the whole development as consented to the whole development to which the consent as modified relates.

The development, as proposed to be modified, is substantially the same development as that originally approved, in that:

- The proposed alterations would not transform the whole or essential character of the approved development, as the proposal to re-instate five of the originally approved commercial levels (Levels 1 to 5 in Tower 1) is entirely consistent with the original approval. The development retains 151 residential apartments, and the overall mixed-use character of the approved development will remain substantially the same.
- The buildings remain as significant 18 storey mixed use towers adjoining Redfern railway station. There will be no change to the fundamental external appearance, class of occupiers or use on the ground level or streetscape of either Tower 1 or Tower 2. The development will still be characterised as a retail / commercial development with commercial / residential above.
- The quantum of commercial floor space was not a qualitatively essential part of the approval granted by the Minister. The qualitatively essential parts of the approved development are the matters listed below, all of which remain intact, as discussed at **Section 5.0**, notwithstanding the proposed modifications:
 - Built form and urban design;
 - Impacts on surrounding development;
 - Traffic and parking, including bicycle parking;
 - Public domain; and
 - Residential amenity.

4.0 Minimal Environmental Impacts

Section 4.55 (1A) of the EP&A Act allows a consent authority to modify a development consent, provided that:

“it is satisfied that the proposed modification is of minimal environmental impact.”

Table 3 considers the cumulative environmental impacts of MOD 1 – MOD 5 and this modification against the key environmental impacts identified during the DPE’s assessment of the original development. The environmental considerations have been drawn from the Secretary’s Assessment Report (dated December 2014). They are:

- Built form and urban design;
- Impacts on surrounding development;
- Traffic and parking, including bicycle parking;
- Public domain; and
- Residential amenity

Table 3 – Analysis of additional environmental impacts

Consideration	Comment	Additional environmental impact
Built form and urban design		
Height	No change	No
Bulk	The approved modifications have reduced the bulk of the approved development by retaining the existing building envelopes, structure and floor levels. The proposed modifications to the internal configuration will not increase the approved gross floor area.	No
Built form	The proposed modifications retain the approved built form, namely two slender 18 storey towers.	No
Façade treatments	The approved modifications to the building facades were assessed by the DPE as having minimal environmental impacts (MOD 2). The modifications in MOD 3 significantly improve the internal amenity of apartments without compromising the fundamental architectural integrity of the building facades and have been addressed further in the JBA letter submitted to the DPE with MOD 3. The minor modifications proposed to the northern façade on Levels 1 to 5 of Tower 1 will not alter the fundamental structural qualities of the tower or undermine architectural language or integrity of the façade.	Minimal
Street level interface	The approved modifications retain the active frontages at ground level. The proposed re-instatement of a commercial tenancy on Levels 1-5 of Tower 1 will likely result in increased street level activity and amenity.	No
Design excellence	The approved and proposed modifications retain the overall built form, architectural design and detailing of the approved development.	Minimal
Impacts on surrounding development		
Solar access	The approved modifications have reduced the approved building envelope. The modifications proposed as part of this application do not alter the solar access to surrounding building or public space.	No

Consideration	Comment	Additional environmental impact
Privacy	There is no change to the building separation distance to 157 Redfern Street. Approved modifications to openings on the southern façade of Tower 2 are further than 24m from 157 Redfern Street as demonstrated in MOD 3.	No
View impacts	The approved modifications have reduced the approved building envelope.	No
Traffic and parking		
Car parking	There is no change to the approved car parking. The site is located immediately adjacent to Redfern railway station which provides high frequency connections to the greater Sydney metropolitan area. The approved parking provision can accommodate the demand created by the reduction in residential units and the increased commercial GFA. It is noted that the parking provisions of the Sydney LEP 2012 do not strictly apply to the site, however they provide a guide for parking requirements in the Redfern area. The LEP parking requirements are maximums. If the LEP controls which apply to the surrounding area were applied to the proposal, a maximum of 8 commercial spaces would be required.	No
Servicing	No change	No
Traffic	As there is no change to the approved car parking, there will be no significant alterations to the impact of the development on the surrounding road network	No
Bicycle parking and facilities	6 additional bike spaces for residents were approved under MOD 3. The proposed modifications do not seek to delete the requirement to provide end of trip facilities on construction certificate plans.	No
Public domain		
Public domain	The approved modifications to the public domain (MOD 1) were assessed to have a minimal impact by the DPE.	Minimal
Residential amenity		
Solar access	The proposed modifications will result in 72% of apartments receiving 2 hours solar access in mid-winter. This is a minor reduction to the originally approved 79%. The development as proposed to be modified will still exceed the minimum ADG requirement of 70%.	Minimal
Natural ventilation	The proposed reduction in apartments has resulted in a minor reduction in the percentage of apartments that receive natural ventilation. The development as proposed to be modified will still exceed the minimum ADG requirement with over 60% of apartments still to receive natural cross ventilation.	Minimal
Building depth	The approved modifications to the building envelopes have reduced the building depth.	No
Building separation	The approved modifications to the building envelopes have reduced the building separation.	No
Communal open space	No change	No
Storage	The approved modifications include ample space for residents to store their belongings.	No

Consideration	Comment	Additional environmental impact
Wind impacts	The approved modifications do not seek to delete the condition requiring the provision of wind mitigation devices on the south facing balconies of Tower 2.	No

Table 3 demonstrates that individually, the proposed modifications will have minimal if any additional environmental impacts beyond those originally considered by the DPE during their assessment of SSD 5249. It is our view, that the likely cumulative impacts of the proposed modifications when compared to the original development remain minimal and the proposed MOD 7 falls within the scope of section 4.55 (1A).

In this regard, the proposed modifications can be assessed under the provisions of Section 4.55(1A), and given the specific reasons for the minor amendments, there is no requirement for the proposed modification to be advertised or notified.

5.0 Environmental Assessment

As stated above the Secretary's Assessment Report for SSD 5249–2012 identified the following key assessment issues:

- Built form and urban design;
- Impacts on surrounding development;
- Traffic and parking, including bicycle parking;
- Public domain; and
- Residential amenity

The following discussion demonstrates that the proposed modifications do not compromise the merits of the existing approval or provide any significant additional environmental impacts.

5.1 Compliance with statutory plans

The proposed modifications do not affect the developments compliance with the relevant environmental planning instruments. This is summarised in **Table 3** below:

Table 4 - Compliance with the relevant statutory planning instruments

Instrument	Comment
State Environmental Planning Policy (State and Regional Development) 2011	The proposed modifications do not alter the developments consistency with the relevant provisions of the SEPP.
State Environmental Planning Policy (State Significant Precincts) (2005)	The proposed modifications do not alter the developments consistency with the relevant provisions of the SEPP.
State Environmental Planning Policy 65 (Design Quality of Residential Flat Development)	The proposed modifications do not alter the developments consistency with the relevant provisions of the SEPP.
State Environmental Planning Policy (Infrastructure) 2007	The proposed modifications do not alter the developments consistency with the relevant provisions of the SEPP.
State Environmental Planning Policy (Urban Renewal) 2010	The proposed modifications do not alter the developments consistency with the relevant provisions of the SEPP.
State Environmental Planning Policy (BASIX) 2004	The proposed modifications do not alter the developments consistency with the relevant provisions of the SEPP.
State Environmental Planning Policy 55 (Remediation of Land)	A Phase 1 Site Assessment was submitted within SSD 5249 which concluded that the site is suitable for the proposed development under the assumption that waste management may be required to address potential contamination from past fill being placed on the site. This modification will not alter the findings of the Phase 1 Site Assessment.

5.2 Built Form and Urban Design

Height, bulk and built form visual impacts

The proposed modification will not create any additional impacts for the following reasons:

- No changes are proposed to the approved height in metres or height in storeys.
- The proposed modifications will not increase the 7.65:1 FSR approved under MOD 5.
- There are no changes proposed to the location or vertical massing of the towers.
- There are only minimal changes proposed to a portion of the northern building façade on Levels 1 to 5 of Tower 1 (refer to Section 2.1.2).

Street Level interface

The proposed modifications will re-instate Tower 1's originally approved lower level commercial use. It is noted that this modification does not seek to change the requirement to satisfy condition B2 'Design Changes'.

Design Excellence

The proposed modifications do not alter the fundamental design elements of the approved development with regard to the overall built form, architectural design and detail. It is noted that the modification does not seek to amend the requirements of condition B2 'Design Changes'.

5.3 Impacts on Surrounding Development

As the proposed changes are generally internal in nature, impacts on surrounding developments will be minimal.

Solar access

No additional overshadowing to the northern façade of the residential building at 157 Redfern Street will occur as a result of the proposed internal changes to Tower 1.

Privacy

The proposed commercial tenancies and changes to Tower 1 will not result in any additional overlooking impacts to 157 Redfern Street.

View Impacts

The proposed internal changes to Tower 1 will not create any additional impacts beyond those considered during the original assessment of SSD 5249-2012.

5.4 Traffic and Parking

Car Parking

The current approval includes the use of 20 basement parking spaces under Tower 1 & 2; and 80 parking spaces at the nearby development at 7-9 Gibbons Street, Redfern of which a maximum of 52 spaces can be used by commercial tenants. The re-instatement of commercial uses on Levels 1 to 5 in Tower 1 will not require any changes to parking requirements for the following reasons:

- The site is adjacent to Redfern Station which provides high frequency connections to the entire Sydney Trains network as well as regular connections to the Central Coast, Newcastle, the Blue Mountains and the Illawarra. Future tenants will be able to access the site easily via public transport.
- It is noted that the parking provisions of the Sydney LEP 2012 do not strictly apply to the site, however they provide a guide for parking requirements in the Redfern area. It is also noted that the LEP parking provisions

are maximum requirements. If the LEP controls which apply to the surrounding area were applied to the proposal, a maximum of 8 commercial spaces would be required.

The approved parking will meet the requirements of the development as proposed to be modified.

Servicing

There are no changes proposed to the approved servicing arrangements.

Traffic

No additional parking spaces are required for the proposed modifications. The site is adjacent to Redfern Station which provides high frequency connections to the greater Sydney metropolitan area. There are not anticipated to be any additional traffic impacts beyond those considered during the assessment of SSD 5429-2012.

Bicycle Parking and Facilities

No changes are proposed to the approved bicycle parking and associated facilities.

5.5 Public Domain

No changes are proposed to the Public Domain.

5.6 Residential Amenity

No changes are proposed to the following elements approved under SSD 5249-2012:

- Building depth;
- Building separation;
- Communal open space;
- Storage;
- Wind mitigation measures.

A Design Verification Statement has been prepared by Candalepas Associates and is appended at **Attachment B**. The proposal as modified is consistent with the relevant requirements of the SEPP 65 and the *Apartment Design Guide* (ADG).

The residential apartments have a separate entrance and lift lobby to the commercial tenancies. Access to residential levels will be controlled via swipe card or similar.

Solar Analysis

An updated solar analysis has been prepared and is appended within **Attachment A**, 72% units will receive 2 hours of direct sunlight between 9am-3pm, which meets the requirements of the ADG.

5.7 Unit Mix

The unit mix remains the same as that approved under MOD 5. The resultant additional commercial space is consistent with the objectives of *Business Zone – Commercial Core* in the Redfern-Waterloo area under *State Environmental Planning Policy (State Significant Precincts) 2005*.

5.8 Road and Railway Acoustic Impacts

The re-instatement of the commercial use on Levels 1 to 5 of Tower 1 will not result in any additional impacts requiring mitigation.

6.0 Conclusion

The proposed modifications to SSD 5249–2012 are the result of the further design development post approval and will enable the site to accommodate the most suitable outcomes for both residential and commercial components, while meeting all requirements under the relevant legislation.

In accordance with Section 4.55(1A) of the EP&A Act, the Department may modify the consent as:

- The consent, as proposed to be modified, is substantially the same development as that originally approved with minimal environmental impact;
- The assessment of the likely environmental impacts demonstrates that the proposed modifications will not have any adverse impacts beyond those considered during the assessment of SSD 5249-2012; and
- The proposed modifications do not alter the development's compliance with the relevant statutory instruments.

In light of the above, we respectfully recommend that the proposed modification is supported. We trust that this information is sufficient to enable a prompt assessment of the proposed modification request.

Yours sincerely,



Jim Murray
Associate Director
+61 2 9956 6962
JMurray@ethosurban.com
\\