

**SECTION 96(1A) MODIFICATION
APPLICATION - ASSESSMENT REPORT
Fit-out and use of Commercial Building C4,
Barangaroo South (SSD 5582 MOD 1)**



Secretary's
Environmental Assessment Report
Modification of consent under section 96(1A) of the
Environmental Planning and Assessment Act, 1979

October 2015

© Crown copyright 2015
Published October 2015
Department of Planning and Environment
www.planning.nsw.gov.au

Cover Photograph: Artist's impression of the proposed development
(Source: Applicant's EIS for SSD 5582)

Disclaimer:

While every reasonable effort has been made to ensure that this document is correct at the time of publication, the State of New South Wales, 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 upon the whole or any part of this document.

1. INTRODUCTION

This report provides an assessment of a section 96(1A) modification application (MOD 1), lodged by Lend Lease (Millers Point) Pty Ltd (the Applicant), seeking to modify development consent (SSD 5582) to remove the requirement to obtain a 5-Star NABERS energy rating for the fit-out and first use (tenancy) of Commercial Building C4 (C4) at Barangaroo South. Specifically, the application seeks approval to delete Condition F10 (NABERS rating).

1.1 Site Description

Barangaroo is located on the north-western edge of the Sydney CBD. The site is bounded by the Sydney Harbour foreshore to the north and west, Hickson Road and Millers Point to the east, and King Street Wharf/Cockle Bay/Darling Harbour to the south. The Barangaroo precinct is divided into three parts: the Headland Park; Barangaroo Central; and Barangaroo South. C4 is located within Block 2 of the approved Barangaroo Concept Plan at Barangaroo South (**Figure 1**).

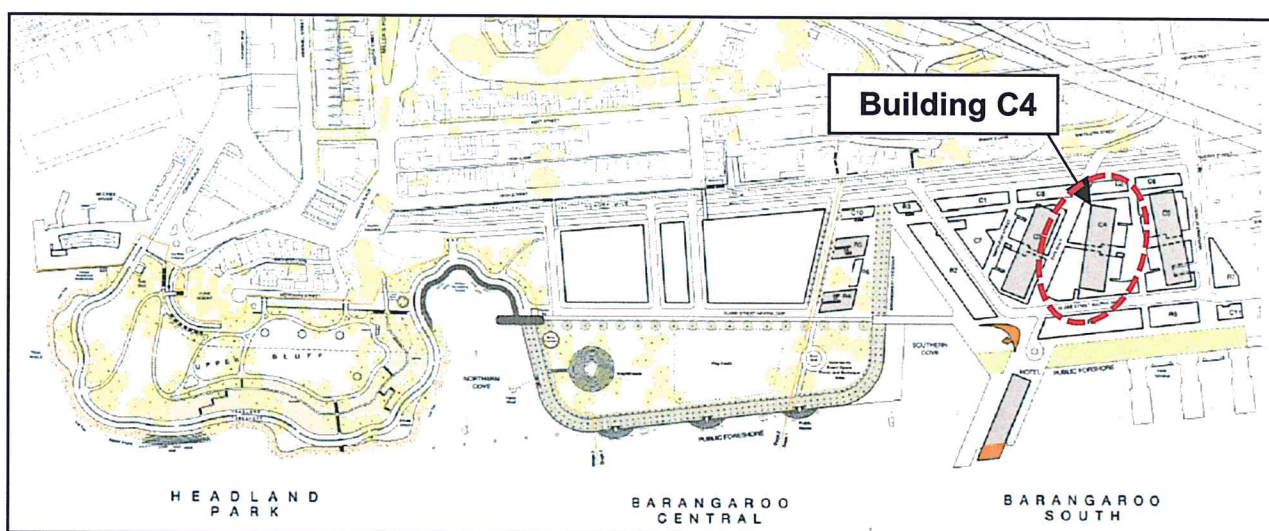


Figure 1: Site location plan

1.2 Background to Development Approval

MP06_0162- Barangaroo Concept Plan

On 9 February 2007, the then Minister for Planning approved the Barangaroo Concept Plan (MP 06_0162) to guide the renewal of the Barangaroo site for a mix of land uses including residential, retail and commercial and public recreation.

The Concept Plan approved a set of built form principles and urban design controls to guide development within the mixed use zone.

In summary, six (6) modifications have been approved since the Concept Plan was originally approved. An eighth modification (MOD 8) is currently proposed by Lend Lease. MOD 8 was publicly exhibited between the 18 March and 1 May 2015 and is currently being assessed by the Department.

The detailed planning history of modifications to the Concept Plan for Barangaroo is provided at **Appendix F**.

As relevant to MOD 1, the Department notes that the Concept Plan approval does not include any conditions or commitments specifically in relation to achieving a 5-Star NABERS rating for the fit-out of C4. The Department notes that Commitment 64 requires commercial buildings (as built) to achieve a Green Star 5-Star rating only.

Commercial Building C4 (MP 10 0025)

On 3 March 2011, the then Minister for Planning approved the construction of the base building of C4. The project approval has been modified on three occasions to alter the gross floor area (GFA) GFA and car and bicycle parking requirements, and permit the progressive validation of remediation works within the project area. The project approval, as modified, currently permits:

- the construction of 99,097 m² of GFA comprised of:
 - 2,338 m² of retail floor space;
 - 95,140 m² of commercial floor space; and
 - a 1,619 m² office lobby.
- the allocation of 161 commercial car parking spaces, four retail car parking spaces, 36 loading spaces, and 293 bicycle parking spaces within the basement car park for the exclusive use of the occupants of commercial building C4;
- 127 at-grade bicycle parking spaces adjacent to Hickson Road;
- the creation of business signage zones at tower and podium level;
- the installation of temporary public domain works, hoardings and construction banners within the C4 project area; and
- installation of utility services.

Condition B28 of this project approval requires that the building be designed to achieve a minimum 6 Star Green Star design rating under Green Building Council of Australia's Office Rating Tool (version 3). In addition, the Statement of Commitments includes the following:

- Commitment 16: to achieving a 6 Star Green Star Office Rating and to targeting the initiative set out in the ESD Report prepared by ARUP (November 2010), as submitted with the application. ARUP's Report advises that the office component of C4 will be designed to achieve a 5-Star+30% NABERS energy base building office rating and a 6 Star Green Star Office Design rating; and
- Commitment 17: to achieving the ESD Performance Indicators for potable water consumption, reduction in Greenhouse Gas emissions, use of renewable energy, micro climate, landscaping, transport and waste as detailed in the approved Concept Plan (Mod 4) Statement of Commitment (refer comment on MP06_0162 above).

Fit-out and Use of Level 1 to 28 of Building C4 (SSD 5582)

On 4 April 2014, a State significant development application (SSD 5582) for the fit-out and use of Levels 1 to 28 of C4 was approved by the Department.

The Department notes that the Director General's Environmental Assessment Requirements for this project were originally issued on 19 September 2012, and subsequently amended on 13 March 2013, to remove the requirement for the fit-out to achieve a 'minimum 6-Green Star' Office interiors rating, given concerns raised by Lend Lease in relation to the uncertainty and difficulty around achieving this rating.

The Department notes that the amended DGRs instead required the Applicant to submit an ESD Report to demonstrate that the fit-out works would not affect the 6-Green Star rating for the base building.

The Applicant's documentation stated that one of the objectives for the fit-out of C4 is to use reasonable endeavours to design a fit-out capable of achieving a 5-Star NABERS energy rating.

Having regard to the above, the project approval issued for SSD 5582 includes the following condition relevant to the buildings sustainability outcomes, which is proposed to be deleted as part of this modification application:

- **Condition F10 (NABERS Rating):** Within six months of the issue of the final Occupation Certificate, a copy of the documents certifying that the application achieves a 5-Star NABERS rating as specified in the Westpac Tenancy, Barangaroo South Ecologically Sustainable Design (ESD) Report Development Application prepared by Lend Lease and dated 20 May 2013, shall be provided to the Director-General.

1.3 Background to the National Australian Built Environment Rating System (NABERS)

NABERS is a voluntary national rating system for Australian buildings, tenancies and homes that measures the environmental performance of their use, including energy efficiency, water usage, waste management and indoor environment quality of a building or tenancy and its impact on the environment.

NABERS does this by using measured and verified performance information and converting them into a star rating scale from one (1) to six (6) stars. A 6-Star rating demonstrates market-leading performance, while a 1-star rating means the building or tenancy has considerable scope for improvement.

NABERS provides four environmental rating tools - NABERS Energy, NABERS Water, NABERS Waste and NABERS Indoor Environment - to measure the actual operational performance of existing buildings and tenancies. The NABERS ratings for offices can be used to measure the performance of a tenancy, the base building or the whole building. The tenancy rating (as relevant to MOD 1) includes only the energy or resources that the tenant controls.

The NSW Office of Environment and Heritage administers and manages NABERS nationally on behalf of Commonwealth, state and territory governments and has been consulted in relation to MOD 1, as detailed in **Section 4.2** of this report.

2. PROPOSED MODIFICATION

2.1 Modification Description

The proposed modification, SSD 5582 MOD 1, hereafter referred to as MOD 1, seeks approval to remove Condition F10 of the development consent (SSD 5582).

The EIS for MOD 1 states that, despite seeking approval to delete Condition F10, the Applicant and Westpac are continuing to work towards achieving this goal. However, the Applicant states that neither it nor Westpac made a commitment to obtaining certification of a NABERS 5-Star rating for the tenancy. Therefore, the Applicant requests that Condition F10 be deleted on the following basis:

- it is unreasonable as achieving a 5-Star NABERS energy was an aspirational element of the EIS;
- the C4 building approval (MP 10_0025) already requires the Lend Lease to obtain a minimum 6-Star Green rating for the design of the building;
- the NABERS rating system does not recognise Westpac's activity based working practices which reduce tenancy energy use including;
 - the use of 'workpoints' (i.e. hot desks) which allow more efficient energy use per workstation;
 - greater flexibility in working hours and location resulting in an underestimation of 'rated hours'; and
 - increased provision of back-of-house information technology 'in the cloud' or on the internet as opposed to in the building (e.g. online remote access to servers and data storage).
- there is no statutory requirement to achieve a NABERS rating for a tenancy under the EP&A Act, applicable EPIs or the Barangaroo Concept Plan; and

- the fit-out could have been undertaken as complying development due to amendments made to *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* in 2014 with no obligation to obtain a 5-Star NABERS.

No other modifications to the approved development are proposed in MOD 1.

The Applicant's modification application is provided at **Appendix A**.

3. STATUTORY CONTEXT

3.1 Modification of Approval

Section 96(1A) of the EP&A Act requires the consent authority to be satisfied that the following matters are addressed in respect of all applications which seek modifications to approvals:

1. *That the proposed modification is of minimal environmental impact.*

The Department is satisfied that the proposed modification will have minimal environmental impact. Relevant environmental impacts are considered in **Section 5** of this report.

2. *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 modified proposal is substantially the same development for which consent was originally granted as it would result in no physical changes to the approved development.

3. *It has notified the application in accordance with the regulations.*

Refer to **Section 4** of this report.

4. *It has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.*

Submissions are considered in **Section 5** of this report.

3.2 Environmental Planning Instruments

Under section 79C of the EP&A Act, the consent authority is required to take into account the relevant provisions of any State Environmental Planning Policy or Environmental Planning Instrument (EPI) that applies to the carrying out of the proposal. The following EPIs apply to the carrying out of the proposal:

- *State Environmental Planning Policy (State and Regional Development) 2011 (State and Regional Development SEPP);*
- *State Environmental Planning Policy (Major Development) 2005 (MD SEPP); and*
- *Sydney Regional Environmental Plan (Sydney Harbour Catchment 2005) (Sydney Harbour Catchment REP).*

An assessment of compliance with the EPIs was considered in the determination of the original application (SSD 5582). The Department has considered the modification application against the objectives and aims of these instruments and is satisfied that the proposal as modified continues to be generally consistent with the provisions of these State policies.

The Department notes that C4 is located in the B4 mixed use zone pursuant to Part 12 of Schedule 3 of the MD SEPP. An objective of the B4 mixed use zone is to implement the principles of energy efficiency, travel demand management and other sustainable development practices as part of the development assessment process. Additionally, Clause 19 (Design Excellence) of Part 12 Schedule 3 of MD SEPP requires that the consent authority must have regard to (amongst other things) whether the building will meet sustainable design principles when considering whether a building achieves design excellence.

In determining MP10_0025, the Department was satisfied that the project achieved an acceptable level of compliance with these relevant provisions of the MD SEPP. Specifically, that the project could achieve a minimum 6-Star Green Star design rating under Green Building Council of Australia's Office Rating Tool (version 3), as required by Condition B28 and Commitments 16 and 17 of the project approval (refer to discussion in **Section 1.2** above). In determining SSD 5582, the Department was also satisfied that fit-out works would not affect the 6-Green Star rating for the base building and in this regard, remained consistent with the Concept Plan (refer discussion in **Section 1.2** above).

Having regard to the above and the relevant provisions of the MD SEPP, the Department is satisfied that the proposal will achieve (and retain) an acceptable level of compliance. In particular, it is noted that the tenancy fit-out will not affect the base building achieving a 6-Star Green Star rating required by Condition B8 of the consent (SSD 5582) or the sustainability commitments which underpin the Concept Plan approval (refer **Section 1.2** of this report).

3.3 Permissibility

The site is zoned B4 mixed use under Part 12 Schedule 3 of the MD SEPP. The development is permissible with consent on the subject site and the subject modification does not give rise to any permissibility issues.

3.4 Delegation

On 16 February 2015, the Minister for Planning delegated responsibility for the determination of modifications under section 96 of the EP&A Act on land that is identified as the 'Barangaroo Site' in the MD SEPP to the Executive Director, Infrastructure and Industry Assessments where:

- a political disclosure statement has not been made;
- there were less than 25 submissions in the nature of objection;
- the Executive Director forms the opinion that:
 - the modified development would be generally consistent with the approved Barangaroo Concept Plan MP 06_0162; and
 - any submission made the City of Sydney Council has been considered in the assessment of the application.

The proposal complies with the terms of the delegation as a political disclosure statement has not been made in relation to the application, there were fewer than 25 submissions of objection, the modified development would be generally consistent with the Concept Plan and the City of Sydney Council's submission has been considered in the assessment of the application (**Section 5**).

Accordingly, the application is able to be determined by the Executive Director under delegation.

4. CONSULTATION

The application was notified in accordance with the *Environmental Planning & Assessment Regulation 2000*. The modification request and Statement of Environmental Effects were made available on the Department's website between 5 November 2014 and 18 November 2014. The application was also referred to the City of Sydney Council for comment.

The Department received one submission from the City of Sydney Council (**Appendix B**) objecting to the modification application, as detailed in Section 4.1 below.

No public submissions were received.

4.1 Public Authorities

City of Sydney Council (Council)

Council has advised of its objection to the modification application on the following grounds:

- the proposal will limit the sustainability performance of the building and possibly set a negative precedent for other buildings in Barangaroo;
- energy use and carbon emissions from a tenancy contribute up to 50% of a building's sustainability impact and a decrease in tenancy efficiency would negatively impact on the overall environmental performance of the building;
- NABERS measures performance once a building is occupied (not the building design) and is the clear method to confirm that the performance benchmark has been met;
- Green Star measures design and as-built aspects (not building performance), therefore does not on its own guarantee great environmental performance once a building is occupied; and
- not achieving a high NABERS rating for the tenancy would be at odds with Lend Lease's and Westpac's commitment to best practice sustainability.

4.2 Response to Submissions

On 3 March 2015, the Applicant submitted a Response to Submissions (RtS) report for the proposed modification. The Applicant retains its position that Condition F10 is unreasonable and should be deleted. Specifically, the RtS advises as follows (as summarised):

- the Westpac workplace will incorporate many state of the art energy efficiency technologies. These will support Westpac in lowering their operational energy use.
- lighting and supplementary cooling are typically 40% of a tenant's energy use in modern workplaces and as a result of using the infrastructure provided appropriately, Westpac should realise a 15-25% energy saving in tenancy energy use compared to other modern buildings.
- the energy efficient technologies inherent in the Westpac workplace are not necessarily recognised within the NABERS Energy Rating system for modern workplaces. In particular, those that adopt agile working practices (or Activity Based Work (ABW) workplaces).
- ABW workplaces have the following characteristics that affect how a workplace is rated under NABERS:
 - workpoints: non-traditional working areas (or workpoints) would not necessarily be counted in the NABERS normalisation thus leading to a poorer rating with all else equal;
 - workpoint utilisation: agile working tenancies have a higher utilisation of workpoints on average, typically 75-80% average utilisation compared to 50-60% conventional utilisation. The higher utilisation leads to 20-25% more energy use per workpoint. This difference is not factored into the NABERS normalisation and therefore, leads to a poorer rating;
 - rated hours: NABERS is likely to underestimate rated hours for ABW, as occupants may at times be working in other parts of the building. Accordingly, by current measurement techniques, NABERS is likely to underestimate Rated Hours for ABW leading to a poorer rating; and
 - back of house IT: NABERS does not necessarily recognise the increase in back of house technology that has occurred over the past 10-15 years. As a result, Tenancy NABERS Energy alone is not necessarily a definitive benchmark to measure tenant energy efficiency i.e. as a tenant with back of house IT in the cloud could rate very highly under NABERS yet be less efficient than a very efficient workplace with more back of house IT services on site.

- it is inappropriate to require the use of NABERS to measure the energy efficiency of ABW until the issues identified above are better understood and the potentially accounted for within the NABERS normalisation.

In a supplementary submission dated 10 July 2015, the Applicant has also advised that Condition F10 is unreasonable having regard to the lawfully established principles for a valid condition of consent established by the Newbury Test. Specifically, it is argued that Condition F10 does not pass either the second or fourth limb respectively of the Newbury Test, including for the following reasons:

- it does not fairly or reasonably relate to the proposed development as the ESD-focused DGRs for the project referred specifically to achieving a minimum 6-star rating under the Green Star-Office Interiors rating tool and the ESD Report committed to using reasonable endeavours to design the fit-out, so as to be capable of achieving or exceeding a 5-Star rating in respect of NABERS Energy for the tenancy; and
- it is not reasonable as it can not be implemented with any certainty, as the condition relies on a review and potential changes to the NABERS tool.

A copy of the RtS and the supplementary submission is provided at **Appendix C**.

The RtS has been made publicly available on the Department's website and was forwarded to Office of Environment and Heritage- NABERS National Administrator (OEH-NNA) for comment. In response, OEH-NNA has advised that it does not support the removal of the Condition F10 for the following reasons (**Appendix D**):

- no evidence has been provided to demonstrate why a 5-Star NABERS Energy rating can not be achieved;
- the 5-Star NABERS Energy rating target has been reached by institutions in the banking sector operating under ABW arrangements and provides strong evidence that such targets are not only achievable but are part of the sustainability program of progressive financial institutions;
- OEH-NNA has advised that the NABERS Energy ratings assess the environmental performance and more specifically, the energy efficiency of buildings in operation. While OEH-NNA recognises that the developer has committed to achieving a 6-Star Green Star rating, OEH-NNA advise that the Green Star rating is a complement to a NABERS Energy rating and by no means is a replacement of it. In this regard, it is advised that a Green Star rating helps to ensure the inclusion of sustainable features in the tenancy design, while the NABERS Energy rating ensures such features actually result in an energy efficient tenancy once in operation.
- in response to the issues raised by Lend Lease in its RtS in relation to the ABW practices: OEH-NNA advise:

- workpoints and workpoint utilisation: there are ongoing investigations to determine whether activity-based working (ABW) practices have an impact on NABERS ratings. This has included working closely with Lend Lease. The impacts of this style of working will be fairly accounted for in the ratings based on the evidence collected;
- rated hours: the rated hours for a tenancy are assessed as the hours of the day when a minimum of 20% occupancy is reached. This assessment ensures that ABW tenancies will not be unfairly assessed as operating with lower hours than offices under more traditional arrangements;

Tenancies with ABW arrangements may be assessed with higher hours than traditional tenancies. As Lend Lease mentions, ABW offices typically operate at around 80% of their maximum occupant capacity, compared to just 50-60% in typical offices. This allows them to reach the 20% occupancy threshold significantly faster than traditional offices (all else equal). This would result in longer rated hours for ABW tenancies, which would boost rather than penalise their rating; and

- **back of house IT:** The portion of the back of house IT area, includes the portion that directly services the needs of the operating tenancy. OEH-NNA advise that experience has shown that tenancies similar to Westpac have a very small portion of IT equipment will need to be included in the rating as a large proportion of these are used to service customers and the parts of Westpac not located in the building.
- OEH-NNA also advise that:
 - 37% of tenancies certified under NABERS over the past two years have achieved a NABERS Energy rating of 5-Stars or higher, proving this is an attainable target with existing technology;
 - a 5-Star NABERS Energy rating has been achieved by other tenants operating ABE arrangements, such as the Commonwealth Bank of Australia in the Darling Quarter precinct, also developed by Lend Lease; and
 - no modelling of the impact of these issues has been offered.

The Department has subsequently convened a number of meetings with OEH-NNA to discuss the outcomes of its investigation into ABW practices and their potential impacts on NABERS ratings. In recent correspondence dated 20 August 2015 (**Appendix D**), OEH-NNA has advised (as summarised):

- ● the study commissioned by NABERS National Administrator to evaluate the impacts of ABW practices on NABERS tenancy ratings is now complete;
- the study was conducted by an independent consultancy with experienced NABERS Assessors and included a study of real data obtained from two ABW workspaces: a large financial institution and a property group headquarters; and
- the study demonstrated that a ABW workplace is fairly accounted for in NABERS tenancy rating and that ABW is an efficient way of operating a workplace. The study identified a 1-2 star improvement in the NABERS tenancy energy rating, compared to an equivalent conventional office space, due to lower energy use in the tenancy as a direct result of ABW practices.

Based on the above, OEH-NNA has confirmed to the Department that the existing NABERS rules and rating system will accurately evaluate the energy efficiency of tenancies with ABW configurations and that no changes are required to the NABERS rules or rating tools.

5. CONSIDERATION OF PROPOSED MODIFICATION

5.1 Compliance with the Concept Plan Approval

○ As detailed in **Section 1.2** above, the Concept Plan approval does not include any conditions or commitments specifically in relation to achieving a 5-Star NABERS rating for the fit-out and operation of C4. In this regard, the Department notes that the requirement for achieving a recognised energy rating is limited to the terms of Commitment 64, which requires there to be an environmental focus on strategies for Water, Energy, Micro-Climate, Environmental Quality / Amenity, Landscape, Transport, Waste and Materials for the development and for the design and construction of commercial buildings in Barangaroo South to achieve a Green Star 5-Star rating only.

The Department notes that Condition C2 (Design Excellence) of the Concept Plan approval establishes the Design Excellence requirements with respect to the future development of Barangaroo South. Specifically, C2(4) requires that a design review panel be established for design excellence competitions and furthermore, that they have regard to amongst other things (as relevant to MOD 1) "*whether the building meets sustainable design principles in terms of sunlight, natural ventilation, wind, reflectivity, visual and acoustic privacy, safety and security and resource, energy and water efficiency*". In conjunction with its consideration of the design excellence

provisions in the MD SEPP (refer to **Section 3.2**), the Department, in approving MP10_0025, determined that:

- the project achieved design excellence (as required by Condition C2);
- the C4 design (base building) achieved a 6-Star Green Star Office Design Rating in accordance with Commitment 64 (noting that Commitment 64 sets a requirements for commercial buildings to achieve a minimum 5-Star Green Star rating); and
- the project adequately incorporated the principles of ESD in accordance with the objectives of the EP&A Act.

Further to the above, in its determination of SSD 5582, the Department determined that the fit-out of C4 would not affect the approved 6-Green Star rating for the base building (MP10_0025) and in this regard, remained consistent with the Concept Plan approval.

Having regard to the above, the Department acknowledges that the requirement to achieve a 5-Star NABERS rating system did not form part of the Concept Plan approval and is unrelated to the committed 6-Green Star rating which applies to the design and construction of the base building i.e. NABERS is a measure of building performance and not design. Therefore, the Department is satisfied that the project as modified by MOD 1 would remain consistent with the Concept Plan approval for the reasons stated above.

5.2 NABERS Rating System

As detailed in **Section 2**, MOD 1 proposes the deletion of Condition F10. The removal of the condition is justified, amongst other reasons, on the premise that 5-Star NABERS rating was an 'aspirational' element of the application (SSD 5582) in that the Applicant has sought to use reasonable endeavours to achieve this rating. Further, it will not compromise the attainment of 6-Green Star rating for the base building.

In the supplementary submission provided by the Applicant (**Section 4.2**), it is also argued that Condition F10 can not be lawfully imposed, including because it can not be implemented with any certainty i.e. given it relies on potential changes to the NABERS rating tool to recognise the agile work practices of Westpac.

Council has raised objection to the removal of Condition F10 based on a number of grounds (refer to **Section 4.1**), including for the following reasons:

- that the proposal will limit the sustainability performance of the building;
- NABERS is the clear method to confirm that the performance benchmark has been met; and
- not achieving a high NABERS rating for the tenancy would be at odds with Lend Lease's and Westpac's commitment to best practice sustainability.

Notwithstanding Council's objection, the Department notes that Sydney DCP 2012 does not mandate the environmental performance of buildings. Instead Council encourages applicants to use environmental building rating tools such as Green Star. Further, Sydney DCP 2012 states that Council will only impose a condition of consent requiring a certified environmental rating where this has been volunteered by the applicant.

Further to the above, OEH-NNA has also reviewed the application (refer to **Section 4.2**) and has advised that it does not support the removal of Condition F10 because no evidence has been provided that the tenancy would not be able to achieve a 5-Star NABERS. In addition, following the completion of its investigation into the ABW practices, OEH-NNA has confirmed that the NABERS rating tool will not disadvantage the AWB practices employed by Westpac.

The Department has carefully considered the Applicant's justification for the removal of the Condition F10 and both Council's and OEH-NNA objections to the removal of Condition F10.

Whilst the Department concurs with the comments of Council and OEH-NNA, and acknowledges that the retention Condition F10 would be preferable from an ESD perspective, the Department has concluded as follows:

- the NABERS rating systems is not mandated and, therefore, is a voluntary rating system;
- the attainment of a 5-Star NABERS rating is not a requirement of either the Concept Plan Approval or the Project Approval (MP10_0025);
- the proposed fit-out (SSD 5582) only sought to use reasonable endeavours to design the fit-out so as to be capable of achieving or exceeding a 5-Star NABERS rating; and
- Lend Lease has already fulfilled the Commitments provided in the Concept Plan Approval and conditions of the Project Approval (MP10_0025) which requires that the construction of C4 achieves a 6-Star Green Star Office rating.

On the basis of the above, and in line with the Applicant's commitment to use 'reasonable endeavours' to achieve a 5-Star NABERS rating, the Department recommends that MOD 1 be approved subject to the following modifications to Condition F10:

F10 (NABERS Rating): ~~Within six months of the issue of the final Occupation Certificate, a copy of the documents certifying that the application achieves a~~ *The applicant is to use reasonable endeavours to achieve a* 5-star NABERS rating as specified in the Westpac Tenancy, Barangaroo South Ecologically Sustainable Design (ESD) Report Development Application prepared by Lend Lease and dated 20 May 2013., ~~shall be provided to the Director-General.~~

6. CONCLUSION

The modification application has been assessed in accordance with the matters for consideration under section 96 (1A) and 79C of the EP&A Act, and all relevant environmental planning instruments, and is considered to comply with all relevant requirements.

The Department's assessment has found that the proposed modification would not negatively impact on the environmental performance of C4, would remain compliant with Concept Plan approval and MP10_0025, and furthermore, would allow Lend Lease and Westpac flexibility to voluntarily achieve a 5-Star NABERS rating.

It is therefore recommended that the MOD 1 be approved subject modification to Condition F10 as recommended above.

7. RECOMMENDATION

It is recommended that the Executive Director, Infrastructure and Industry Assessments:

- a) **form** the opinion that:
 - the modified development would be generally consistent with the Barangaroo Concept Plan; and
 - the City of Sydney Council's submission has been considered in the assessment of the application.
- b) **consider** the findings and recommendations of this report;
- c) **approve** the modification under delegated authority; and
- d) **sign** the attached Instrument of Modification for SSD-5582 MOD 1.

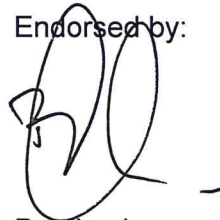
Prepared by: Sara Roach

Endorsed by:



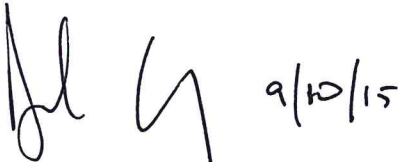
Cameron Sargent
Team Leader
Key Site Assessments

Endorsed by:



Ben Lusher
Acting Director
Key Site Assessments

Approved by:



Daniel Keary
Acting Executive Director
Infrastructure and Industry Assessments

APPENDIX A MODIFICATION REQUEST

See the Department's website at:

http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=6790

APPENDIX B SUBMISSIONS

See the Department's website at:

http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=6790

APPENDIX C RESPONSE TO SUBMISSIONS

See the Department's website at:

http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=6790

APPENDIX D SUBMISSIONS FROM OEH-NNA

See the Department's website at:

http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=6790

APPENDIX E MODIFYING INSTRUMENT

APPENDIX F BARANGAROO CONCEPT PLAN – PLANNING HISTORY

Barangaroo Concept Plan MP 06_0162

The then Minister for Planning approved the Barangaroo Concept Plan (MP 06_0162) on 9 February 2007.

The Concept Plan approval allowed for:

- mixed use development involving a maximum of 388,300 sqm of gross floor area (GFA) contained within eight blocks on a total site area of 22 hectares (ha);
- approximately 11 ha of new public open space/public domain, including a 1.4 kilometre (km) public foreshore promenade;
- a maximum of 8,500 sqm GFA for a passenger terminal and a maximum of 3,000 sqm GFA for active uses that support the public domain within the public recreation zone;
- built form design principles, maximum building heights and maximum GFA for each development block within the mixed use zone;
- alteration of the existing seawalls and creation of a partial new shoreline to the Harbour;
- retention of the existing Sydney Ports Corporation Port Safety Operations and Harbour Tower Control Operations including employee parking; and
- an underground car park beneath the northern headland park, containing approximately 300 car parking spaces.

The capital investment value (CIV) of the approved Concept Plan was \$1.5 billion with up to 16,000 operational jobs

The following outlines the subsequent 7 modification approvals to the Concept Plan:

MP 06_0162 MOD 1

On 25 September 2007, the Executive Director, Strategic Sites and Urban Renewal, as delegate of the Minister for Planning, approved a minor modification to the approved Concept Plan to correct minor typographical errors and re-wording of the design excellence terms. This modification did not alter the maximum GFA or mix of uses.

MP 06_0162 MOD 2

On 16 February 2009, the then Minister for Planning approved a second modification to the Concept Plan to increase the GFA of commercial uses by 120,000 sqm in Blocks 2, 3, 4 and 5, to a total overall GFA of 438,000 sqm. The modification increased the total maximum GFA for Barangaroo to 508,300 sqm (an increase of 120,000 sqm or 31 per cent over the whole site).

MP 06_0162 MOD 3

On 11 November 2009, the then Minister for Planning approved a third modification to the Concept Plan, generally meeting the requirements of the Concept Plan approval relating to the northern headland and northern cove, with other changes as follows:

- the reinstatement of a headland at the northern end of the site with a naturalised shape and form including a build up of height and a landscaped connection to physically link Clyne Reserve to allow direct pedestrian access from Argyle Place;
- an enlargement of the northern cove to achieve a greater naturalised shape, form and edges (note this modification and the one above were required modifications in the terms of the original Concept Plan, contained in Modification B1 and B2, and following recommendations made in the jury report regarding the original winning competition scheme);

- the consequential re-alignment of Globe Street to turn right towards Hickson Road immediately south of the enlarged cove, rather than continuing north around the headland;
- the consequential removal of development Block 8 and part of Block 7 and redistribution of the associated land use mix;
- the demolition of three heritage items being the Sandstone Seawall; the Sydney Ports Harbour Control Tower; and the MWS & DB Sewage Pumping Station; and
- amendments to the Statement of Commitments relating to the preparation of relevant plans and strategies so that work can commence in stages.

This modification slightly reduced the approved GFA and mix of uses, with a resulting total GFA of 501,000 sqm (comprising 489,500 sqm of mixed uses and 11,500 sqm for the passenger terminal and active uses in the open space zone).

MP 06_0162 MOD 4

On 16 December 2010, the then Minister for Planning approved a fourth modification to the Concept Plan. The modified Concept Plan provides for the following:

- a maximum of 563,965 sqm mixed uses GFA, including residential, commercial and retail uses which includes:
 - a maximum of 128,763 sqm of residential uses
 - a maximum of 50,000 sqm of tourist uses GFA; and
 - a maximum of 39,000 sqm of retail GFA.
- a maximum of 4,500 sqm of active uses GFA (3,000 sqm of which will be in Barangaroo South);
- a minimum of 12,000 sqm of community uses GFA (10,000 sqm of which will be in Barangaroo South);
- approximately 11 hectares of new public open space/public domain, with a range of formal and informal open space serving separate recreational functions and includes a 2.2 km public foreshore promenade;
- built form principles, maximum building heights and GFA for each development block within the mixed use zone;
- public domain landscape concept including parks, streets and pedestrian connections; and
- alteration of the existing seawalls and creation of a portion of the new shoreline to the Harbour.

In order to accommodate the changes made to the Concept Plan, Schedule 3 of Part 12 of the MD SEPP was concurrently amended. The amendment rezoned parts of the Barangaroo site and the adjoining areas from 'RE1 Public Recreation' and 'W1 Maritime Waters and Transport' to 'B4 Mixed Use' and 'RE1 Public Recreation'. Modifications to the distribution of GFA and building heights were also included in the amendment.

MP 06_0162 MOD 5

This modification was lodged in February 2011, and proposed modifications to clarify the outcomes with respect to the distribution of community uses GFA across the Barangaroo site, and to correct a number of minor typographical errors. This application was subsequently withdrawn on 22 March 2011.

MP 06_0162 MOD 6

On 25 March 2014, the Planning Assessment Commission approved MOD 6 to the Barangaroo Concept Plan. The approved modifications include:

- the realignment of the development block boundaries for Blocks 3, 4A and 4B;
- revisions to the Urban Design Controls to reflect the changes to the Block boundaries for Blocks 3, 4A and 4B;

- change the requirement for a 'minimum' of 12,000 sqm of community uses gross floor area (GFA) to be delivered to a 'maximum';
- allow architectural roof elements and building management units to be excluded from the maximum height limit definition; and
- specify the car parking rates for 'other' uses thus removing the requirement to comply with City of Sydney Council's current car parking rates.

MP 06_0162 MOD 7

On 11 April 2014, the then Minister for Planning and Infrastructure approved a seventh modification to the Concept Plan to allow the construction, operation and maintenance of a concrete batching plant to supply concrete for the construction of future development under this Concept Plan at Barangaroo South.

MP 06_0162 MOD 8

On 20 March 2015, the Applicant lodged MOD 8 to the Barangaroo Concept Plan which generally seeks to:

- increase the total maximum GFA and height limits of development blocks at Barangaroo South;
- amend the development block configurations of Block Y and Block 4;
- amend the GFA allocated to various land uses within Barangaroo;
- amend the Barangaroo site boundary due to the north-eastern relocation of the hotel and relocate the Pier;
- amend public domain areas and reduce the size of the Southern Cove; and
- introduce a new set of Design Guidelines to guide the future development within Barangaroo South.

This modification application is currently being considered by the Department.

MP 06_0162 MOD 9

On 15 April 2014, the then Executive Director, Development Assessment Systems & Approvals, as delegate of the Director-General, issued modified Director-General's environmental assessment requirements for the preparation of a section 75W application (MOD 9) which proposes to modify the Barangaroo Concept Plan approval (MP 06_0162) as it relates to Barangaroo Central and the Headland Park. Specifically, MOD 9 includes increases in GFA, the redistribution of GFA and land uses across the development blocks, modification to the development blocks and building envelopes, and a redistribution of public domain areas.

MOD 9 has not yet been lodged with the Department.
