



12596
22 October 2014

Carolyn McNally
Secretary
NSW Department of Planning and Environment
23-33 Bridge Street
SYDNEY NSW 2000

Dear Ms McNally

**SECTION 96(1A) MODIFICATION APPLICATION
WESTPAC GROUP COMMERCIAL BUILDING C4 FITOUT, BARANGAROO SOUTH**

On behalf of Lend Lease (Millers Point) we hereby submit an application pursuant to section 96(1A) of the *Environmental Planning and Assessment Act, 1979* (EP&A Act) to modify Development Consent SSD 12_5582 relating to the Westpac fit-out and use of Levels 1 to 28 of Commercial Building C4, Barangaroo South.

The modification relates to deleting Condition F10 pertaining to a 5-Star NABERS certification.

1.0 CONSENT PROPOSED TO BE MODIFIED

Development consent SSD 12_5582 was granted by the Minister on 8 April 2014 for the fit-out of Levels 1 to 28 of Commercial Building C4 in Barangaroo South (the C4 base building was approved under MP 10_0025).

The ESD Report submitted with the DA proposed that "Westpac will use *reasonable endeavours*" to design the fitout, "so as *to be capable of* achieving or exceeding a 5 star rating in respect of NABERS Energy for the tenancy". However, Condition F10 of the consent, requires the development to obtain a 5 Star NABERS rating certification, stating:

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.

Lend Lease and Westpac are continuing to work towards a tenancy capable of achieving or exceeding a 5 Star NABERS rating, which is consistent with the aspiration expressed in the ESD Report. However, neither party made a commitment to achieving this capability, nor to obtaining certification of a NABERS 5 star rating. Condition F10 places a reporting obligation on Lend Lease in addition to their already substantial commitment to obtain a 6 Green Star certification for the base building. It is considered unreasonable that an aspirational element of the ESD Report relating to the capabilities of the fit out be interpreted as a commitment to obtaining a certification and imposed as a requirement by condition of consent, especially in the context of the significant commitments to sustainability already being achieved for the precinct.

It is also noted that due to the amendments made to *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* earlier in the year, the Westpac tenancy fit-out can now be undertaken as complying development. Under the complying development process they would have no obligation to obtain a 5-Star NABERS rating certification.

2.0 PROPOSED MODIFICATIONS TO CONSENT

The proposed modification seeks approval for the deletion of "Condition F10 NABERS Rating".

There is no physical modifications to the approved development proposed.

3.0 SUBSTANTIALLY THE SAME DEVELOPMENT

Section 96(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 development, as proposed to be modified, is substantially the same development as that originally approved in that it does not involve any physical changes to the approved development and only relates to the deletion of a condition.

4.0 ENVIRONMENTAL ASSESSMENT

Section 96(1A) of the EP&A Act states that a consent authority may modify a development consent if "it is satisfied that the proposed modification is of minimal environmental impact". The following assessment demonstrates that the development, as proposed to be modified, will be of minimal environmental impact.

The proposed modification will not result in any environmental impacts as the existing approvals in place will ensure that a sustainable outcome will be achieved independent of the satisfaction of Condition F10. Specifically:

- Condition B8 of the subject DA ensures that the fitout works will not affect the base building's achievement of a 6-Star rating;
- Condition B28 and Commitments 16 and 17 of the base building DA commit to achieving a 6 Star Green Star rating for the base building as well as a range of other sustainability measures; and
- The Concept Plan Statement of Commitments commit Lend Lease to achieving a wide variety of best practice sustainable measures.

In light of the existing framework in place to ensure that a world leading sustainable development is achieved on the site, the removal of Condition F10 will have no impact on sustainability.

5.0 CONCLUSION

The proposed modification seeks to delete Condition F10 relating to the NABERS.

In accordance with section 96(1A) of the EP&A Act, Council may modify the consent as:

- the proposed modification is of minimal environmental impact; and
- is substantially the same development as development for which the consent was granted.

We trust that this information is sufficient to enable a prompt assessment of the proposed modification request. Should you have any queries about this matter, please do not hesitate to contact me on (02) 9956 6962 or mrowe@jbaurban.com.au.

Yours faithfully,



Michael Rowe
Principal Planner