

1 November 2018

10051

David McNamara
Director – Key Sites Assessment
Department of Planning and Environment
GPO Box 39
SYDNEY NSW 2001

Dear Mr McNamara,

Barangaroo – Block 4 Remediation, Land Forming and Excavation Works (SSD 5897) Modification Application No. 1 (Remove Part of Retaining Wall)

This application has been prepared by Ethos Urban on behalf of Lend Lease (Millers Point) Pty Ltd (Lendlease), pursuant to section 4.55 of the *Environmental Planning and Assessment Act, 1979* (EP&A Act) to modify Development Consent SSD 5897 relating to remediation and associated land forming works of Block 4, Barangaroo.

This Section 4.55 Modification Application relates to minor changes in the design and delivery of the retention wall structures at Block 4 approved under SSD 5897, as a result of the subsequent approval of the Crown Sydney Hotel Resort (SSD 6957), and is the second Modification Application to SSD 5897 (the first Modification Application was withdrawn).

Approval is now sought as part of this Modification Application for changes to the permanent retention wall system to rationalise the boundary of the Block 4 remediation site with the Crown Sydney Hotel Resort, taking into account the permanent retention wall system now constructed by Crown as well as the use of part of Block 4 by Crown for the resort's basement car park.

This report identifies the consent to be modified, describes the proposed modifications and provides a planning assessment of the relevant matters for consideration contained in section 4.55(2) and 4.15(1) of the EP&A Act. It should be read in conjunction with the Environmental Impact Statement (EIS) prepared by JBA dated November 2013 and is accompanied by:

- Revised Site Plans and Sections (**Attachment A**).
- A contaminated land assessment addendum prepared by AECOM, dated 14 September 2018 (**Attachment B**).
- Advice from an EPA accredited Contaminated Sites Auditor, dated 18 September 2018 (**Attachment C**).

1.0 Background

1.1 EPA Declaration Area

Parts of Barangaroo are contaminated and are the subject of a Declaration by the Environment Protection Authority (EPA) as a Remediation Site under the *Contaminated Land Management Act 1997*, including land that was originally identified as Part Lot 5 and Part Lot 3 in Deposited Plan 876514 (but is now identified as Part Lot 214 DP 1221076). The EPA Declaration Area coincides with the known footprint of the former Millers Point gasworks. The EPA has issued a Management Order (No. 20151402) to the Barangaroo Delivery Authority (BDA), as the land owner, to address the EPA Declaration.

1.2 SSD 5897

In November 2013 Lendlease submitted a State Significant Development (SSD) Application (SSD 5897) to seek approval for the remediation of contaminated land within part of the EPA Declaration Area known as Block 4 (Block 4 is also now known as Stage 1B). SSD 5897 was accompanied, amongst other things, by a Remedial Action Plan (RAP), titled *Remedial Action Plan, NSW EPA Declared Remediation Site 21122 and Block 4 (Stage 1b) Development Works, Barangaroo, Millers Point, NSW (VMP/Block 4 RAP)* – which also applied to Block 5 and parts of Hickson Road at Barangaroo.

SSD 5897 was approved under delegation on 10 November 2014, authorising:

- Remediation works including land within the EPA Declaration Area (No. 21122) and adjacent areas;
- Construction of a groundwater retention wall;
- Bulk excavation within the groundwater retention wall.
- Diversion and augmentation of stormwater infrastructure.
- Erection of temporary enclosures for excavation and remediation works.
- Tree removal and management, demolition of existing structure on site and associated works.

SSD 5897 has not been previously modified (a modification application submitted in December 2016 was withdrawn).

Remediation and bulk excavation works within Block 4 have commenced and are currently ongoing. The perimeter retention wall system has been constructed as a combination of permanent and temporary retention walls as envisaged by SSD 5897.

The remaining parts of the EPA Declaration Area (being Block 5 and parts of Hickson Road) have been the subject of other SSD approvals. Remediation of Block 5 received development consent under SSD 6533 (approved December 2015). Remediation of Hickson Road was approved under SSD 6617 (approved August 2016).

1.3 Consultation

Lendlease has undertaken a range of engagement and consultation processes as part of the remediation and excavation works at Block 4. Consultation has included Sydney Water, the Department of Planning and Environment, the EPA, City of Sydney Council, and the BDA.

The BDA is supportive of the proposed modification, demonstrated by the issue of the BDA landowners consent that accompanies the application.

2.0 Proposed Modifications to the Consent

The proposed modification comprises changes to permanent retention wall system reflecting detailed design refinements, and taking into account the subsequently approved Crown Sydney Hotel Resort. The proposed modifications are described in more detail below.

2.1 Proposed Modification to Development

SSD 5897 approved the installation of a permanent retention wall system surrounding Block 4. The Block 4 perimeter retention wall system is facilitating the Block 4 development remediation works as well as the Stage 1B excavation and landforming works. The extent of the Block 4 perimeter retention wall system as approved is shown in **Figure 1** and **Figure 2**.

Subsequent to the issue for consent for SSD 5897, the Crown Sydney Hotel Resort (SSD 6957) was approved on 28 June 2016 on land immediately to the west of Block 4. The Crown Sydney Hotel Resort includes a new perimeter retention system that will be fully integrated with the Stage 1B retention wall system with direct physical connections to create a unified groundwater retention wall system. The Crown Sydney Hotel Resort will use part of the Stage 1B basement (i.e. part of Block 4), meaning that the requirement for a perimeter retention wall in this part of what will now be an integrated basement for the resort is contradictory to SSD 6957. Crown Sydney Hotel Resort perimeter retention system and basement excavation area is known as Stage 1C, and its location and extent are shown in **Figures 3 to 7**, which comprise extracts from the plans and sections approved as part of SSD 6957.

The purpose of the modification application is therefore to modify SSD 5897 to clarify the extent and location Block 4 perimeter retention wall system, in relation to the new Stage 1C boundary and approved Crown Sydney Hotel Resort development. The plan and section showing the extent of the perimeter retention wall as it is proposed to be modified are provided in **Attachment A**, and an extract is provided in **Figures 8 and 9**.

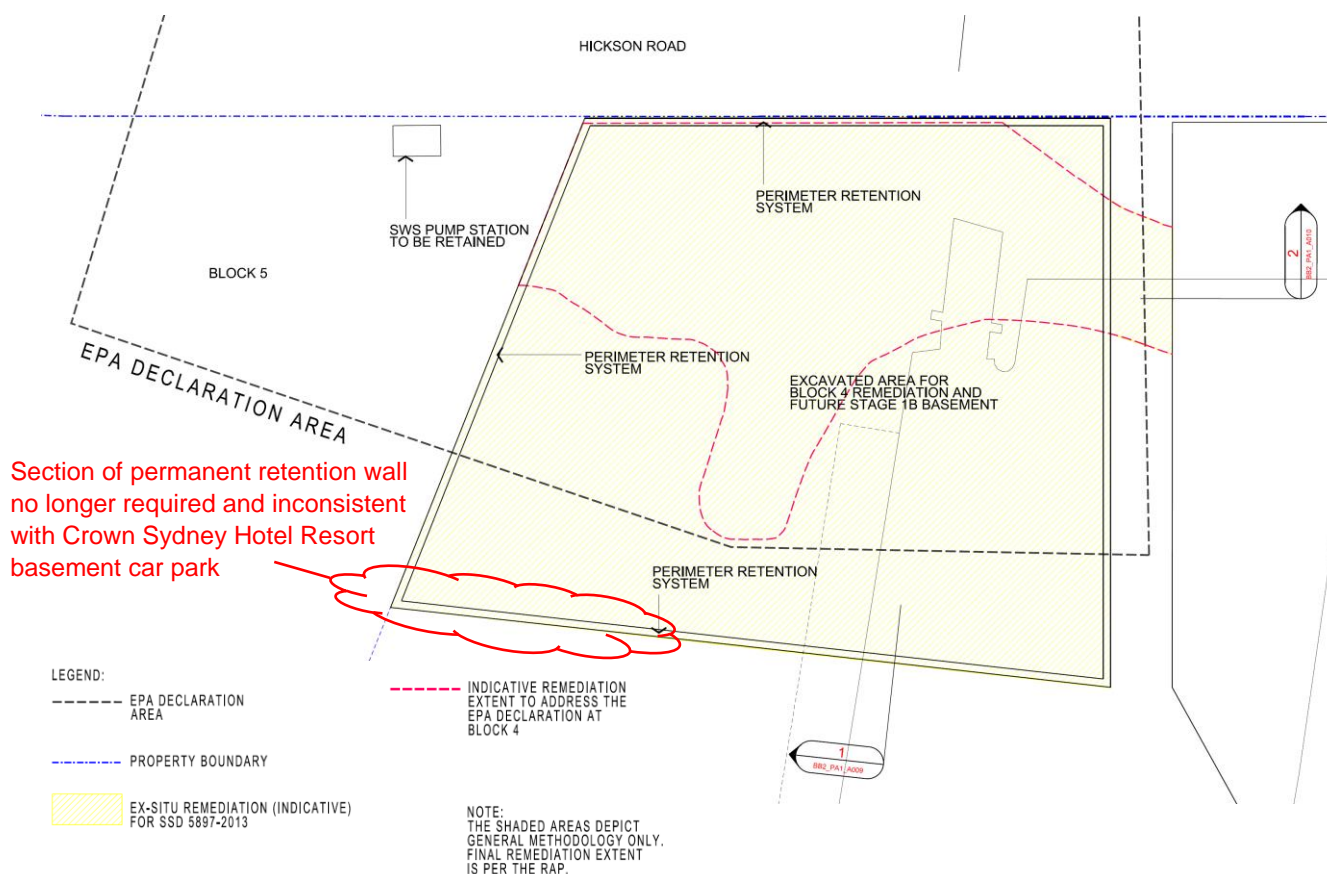


Figure 1 – Approved extent of Block 4 retention wall system

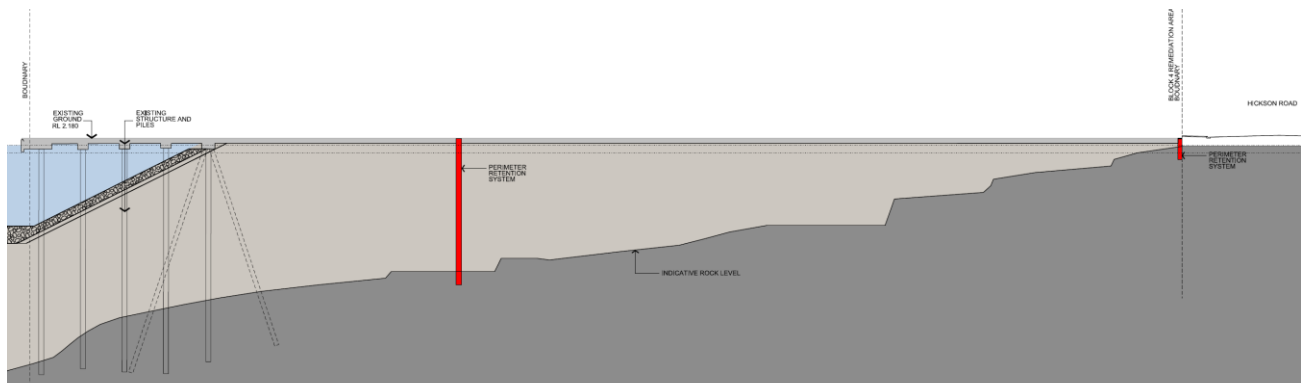


Figure 2 – Approved extent of Block 4 retention wall system (Section 1 – not affected by proposed modification)

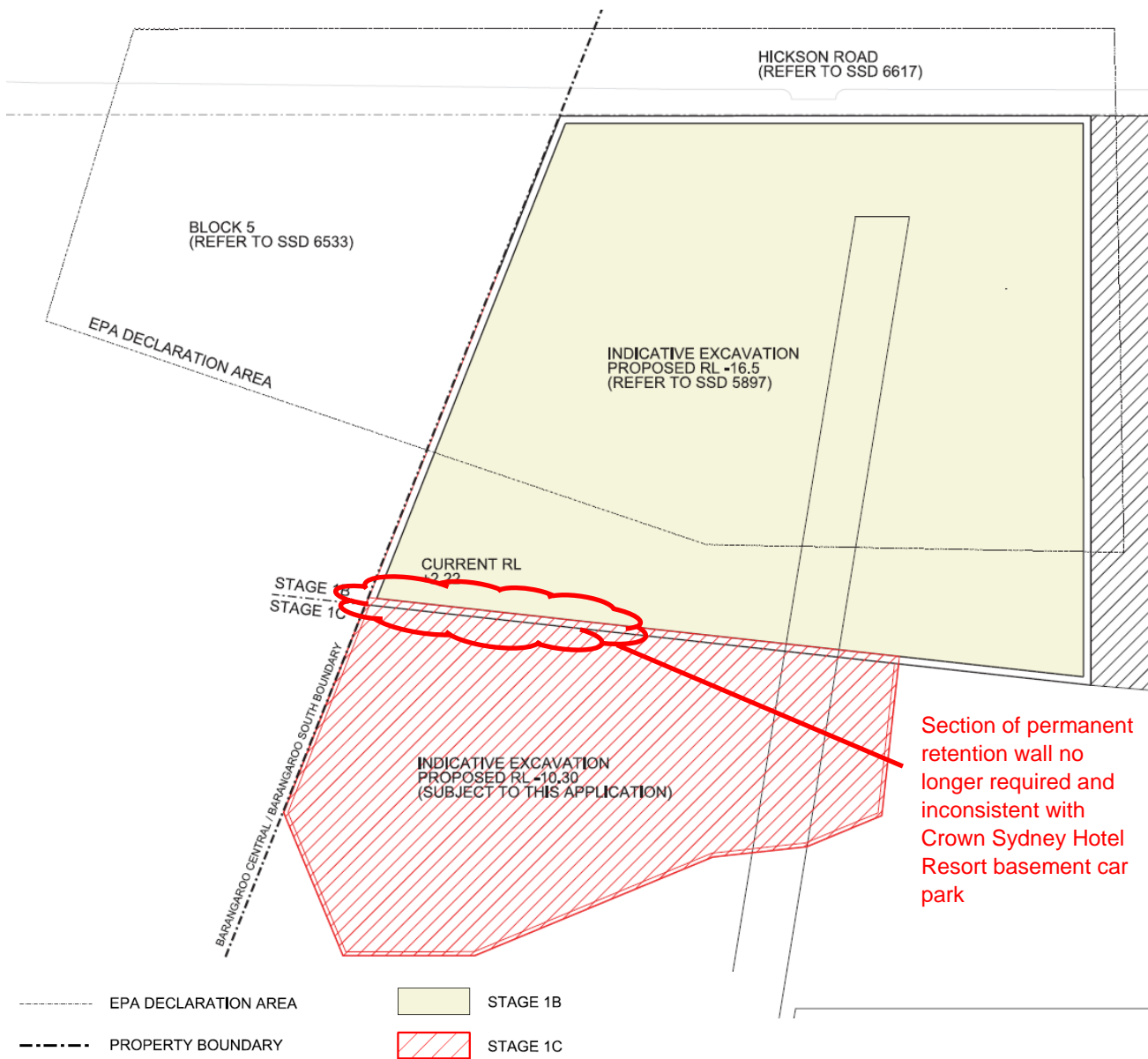


Figure 3 – Approved extent of Crown Sydney Hotel Resort retention wall system and excavation area (Stage 1C)

As shown in Figure 3, the Crown Sydney Hotel Resort perimeter retention system relies on part of the Block 4 perimeter wall system along the boundary between Stage 1B and Stage 1C. SSD 6957 therefore obtained approval to construct this part of the Block 4 perimeter retention wall, either as part of the permanent perimeter retention wall system or as a temporary retaining wall to facilitate excavation, if it was not already constructed under SSD 5897.

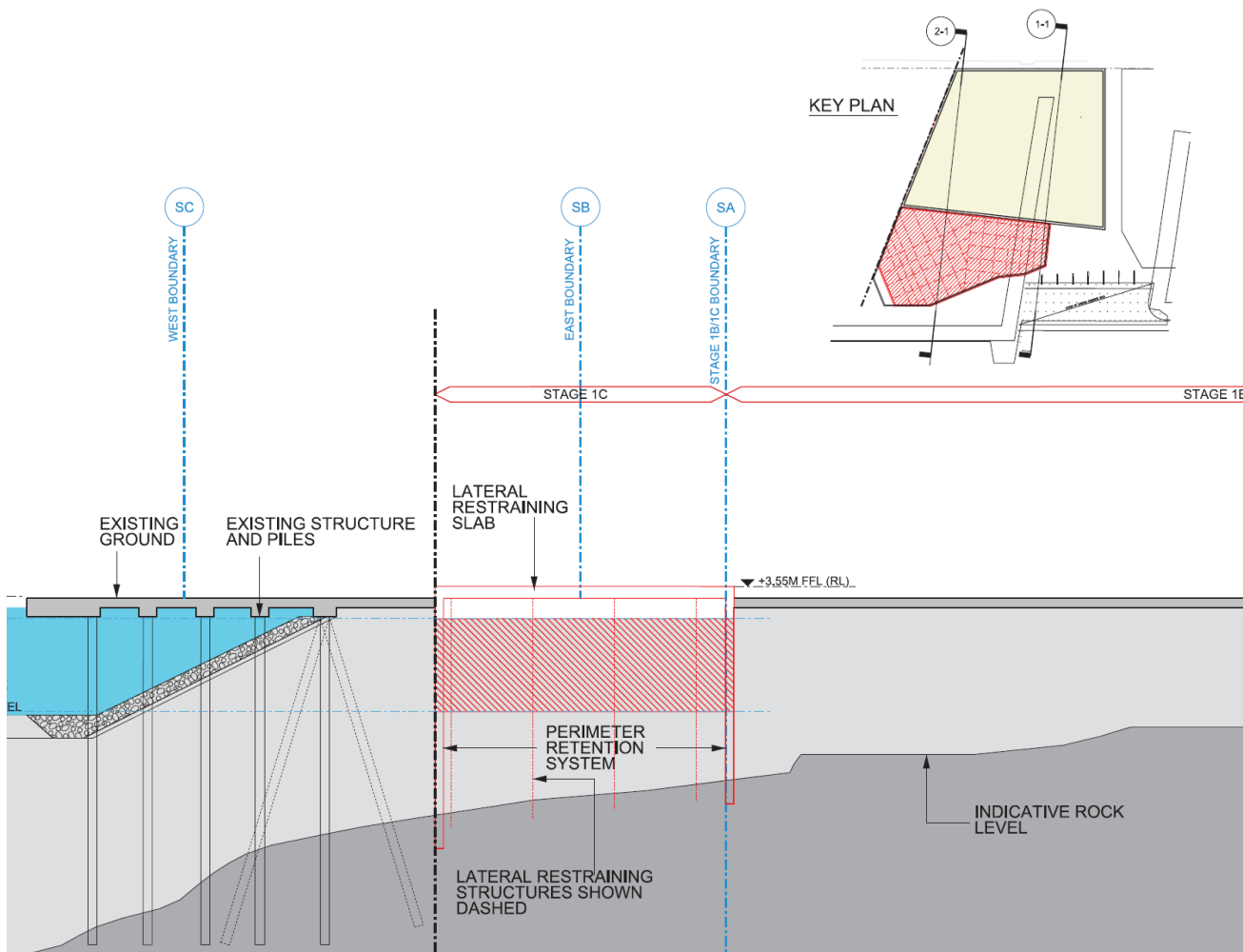


Figure 4 – Approved extent of Stage 1C retention wall system and excavation area (Section 1 – not affected by proposed modification)

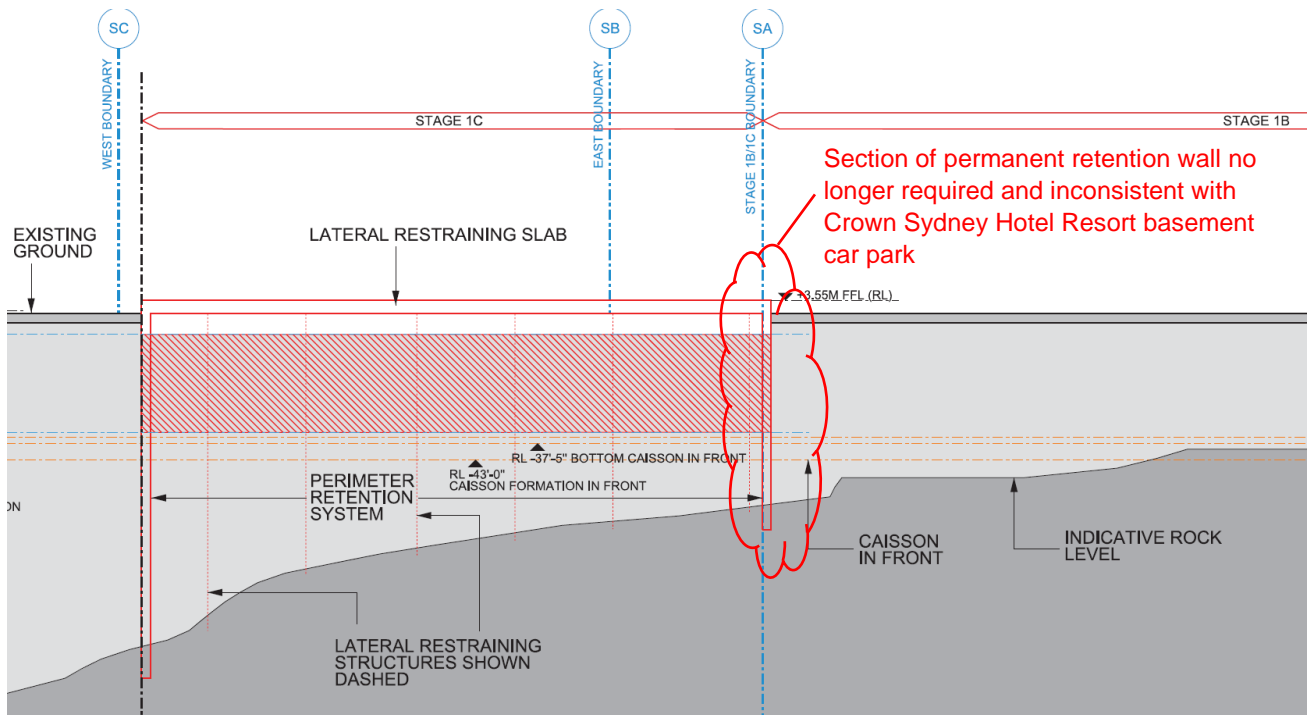


Figure 5 – Approved extent of Stage 1C retention wall system and excavation area (Section 2)

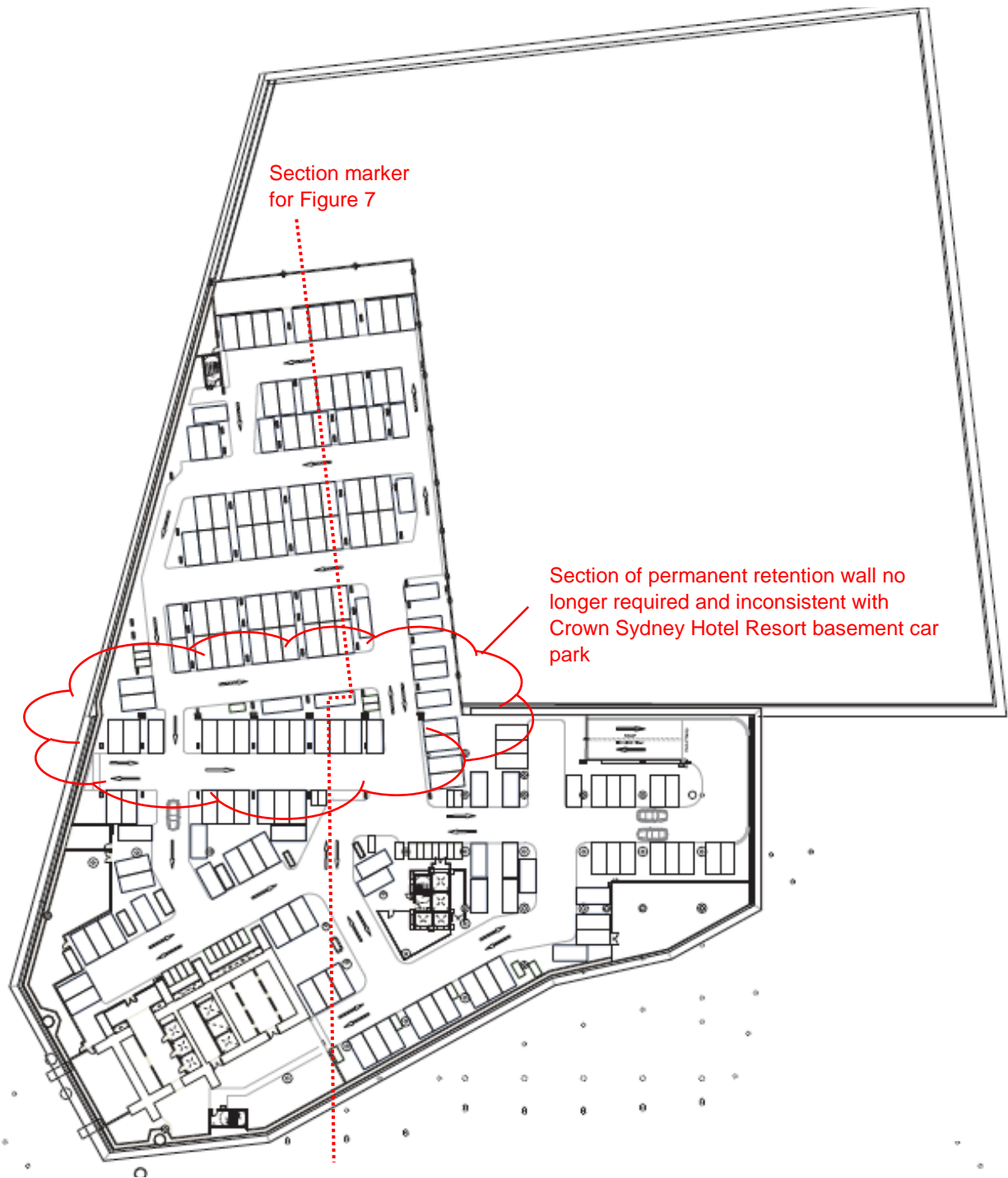


Figure 6 – Approved extent of Crown Sydney Hotel Resort basement car park

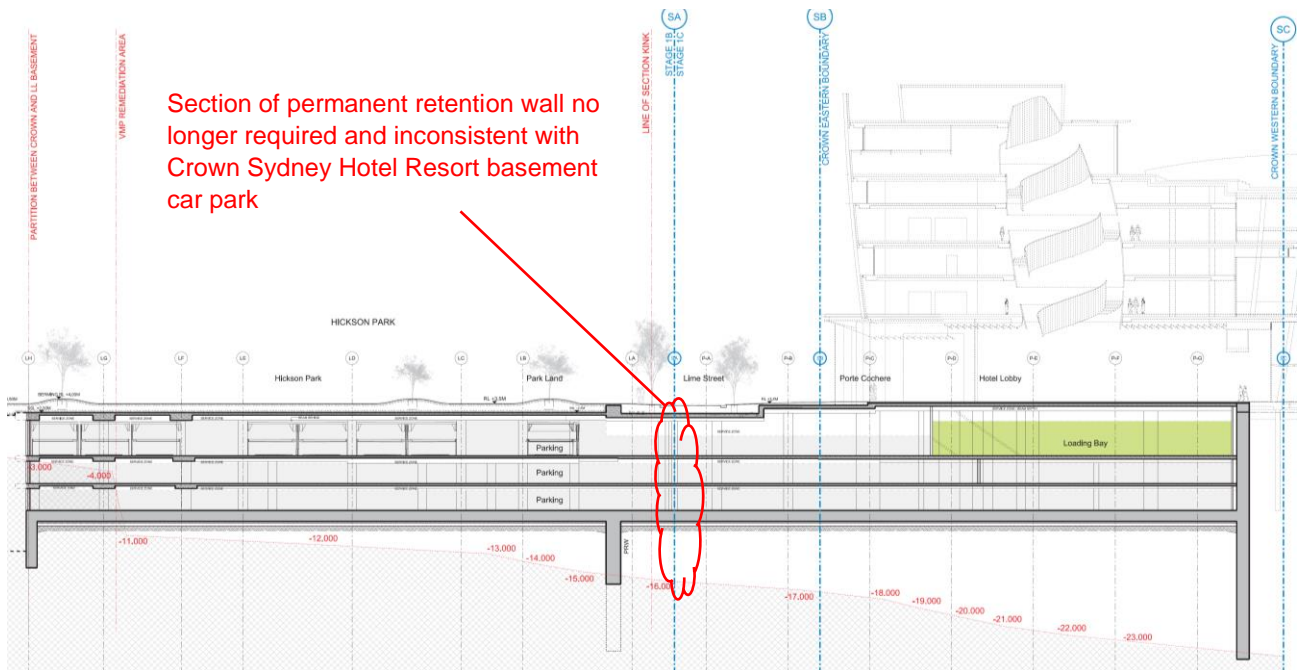


Figure 7 – Approved extent of Crown Sydney Hotel Resort basement car park (section as shown in Figure 6)

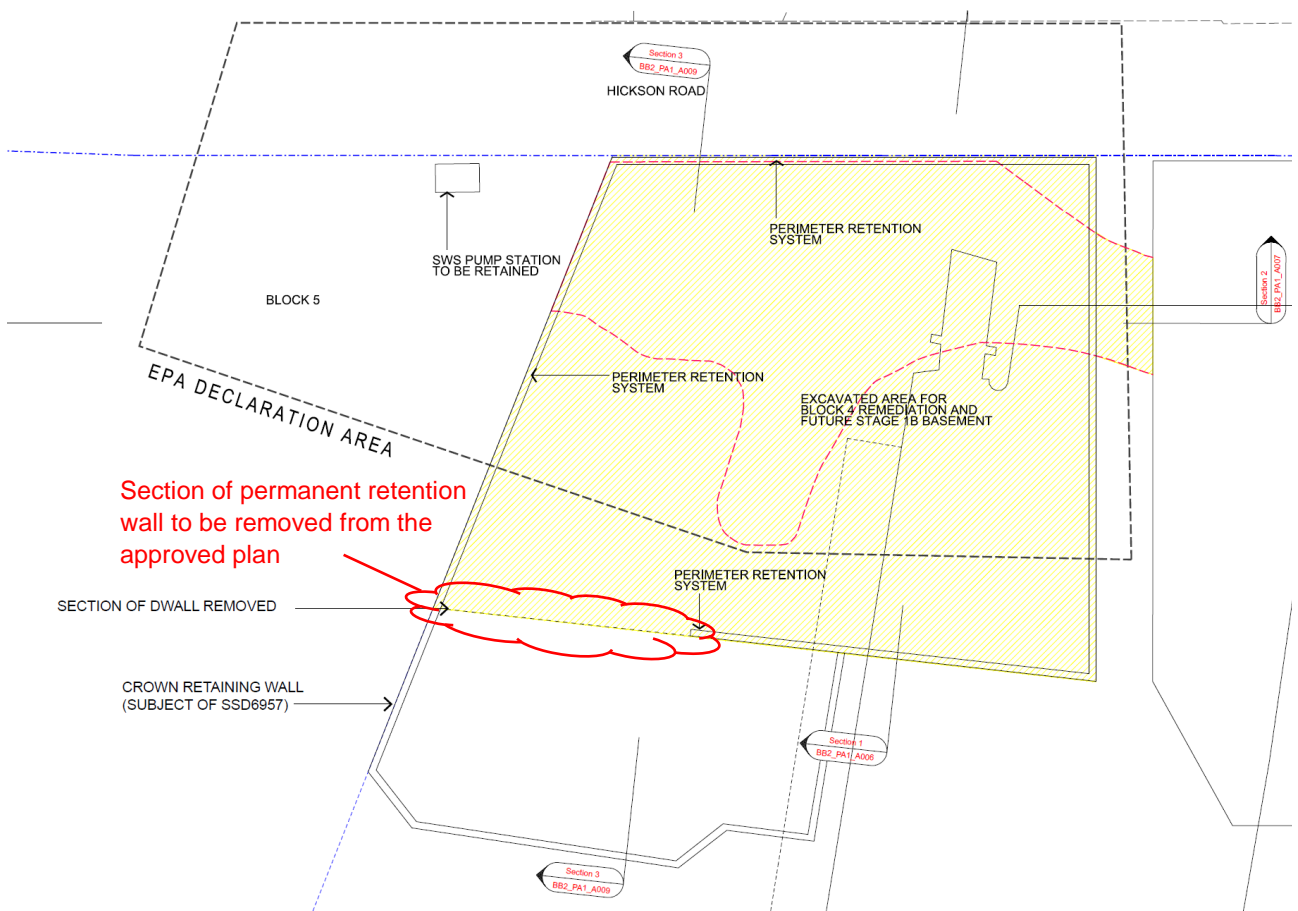


Figure 8 – Block 4 perimeter retention wall as it is proposed to be modified

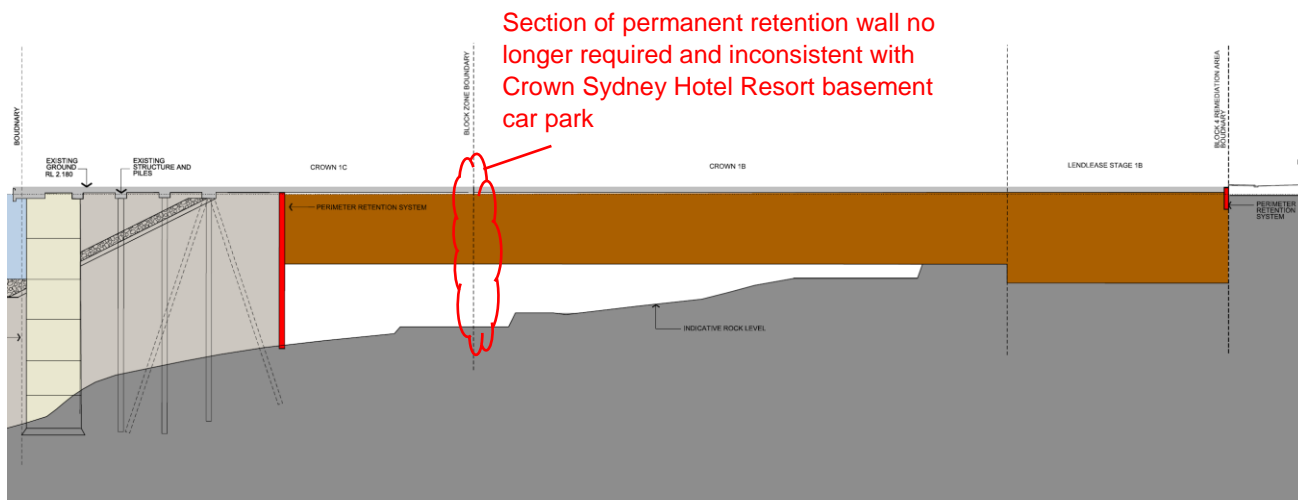


Figure 9 –Block 4 perimeter retention wall (new Section 3 – through the removed section of wall)

2.2 Modifications to Conditions

The proposed modifications described above necessitate amendments to the consent conditions for SSD 5897 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**.

Add the following documents to Condition A2:

Modification Application No. 2, prepared by Ethos Urban and dated July 2017.

Replace the 'Site Plans and Sections' referenced in Condition A2 as follows:

Drawing No.	Issue	Name of Plan	Date
Site Plans and Sections			
B00_PA1_A000	A B	Title Sheet – Mod 2	26/07/2013 11/09/2018
B00_PA1_A001	A	Aerial Location Plan	26/07/2013
B00_PA1_A002	A	Site Survey	26/07/2013
B00_PA1_A003	A B	Locality Context Plan – Mod 2	26/07/2013 11/09/2018
B00_PA1_A004	A	Demolition Plan	26/07/2013
B00_PA1_A005	B C	Permanent Retaining Wall Plan – Mod 2	26/07/2013 11/09/2018
B00_PA1_A006	A	Cross Section 1-1	26/07/2013
B00_PA1_A007	A	Cross Section 2-2	26/07/2013
B00_PA1_A008	A B	Earthworks Drawing – Mod 2	26/07/2013 11/09/2018
B00 PA1 A009	A	Cross Section 3-3 – Mod 2	14/05/2018

It is highlighted that no modification of SSD 6957 for the Crown Sydney Hotel Resort is considered to be required as this redundant section of the perimeter retention wall is already not shown in the plans approved under that consent. Further, modification of SSD 6960 for the Stage 1B basement is also not considered to be required as the approved plans specifically refer to SSD 5897 in relation to the location and extent of the perimeter retention wall system. Modification of SSD 5897 as proposed by this Modification Application is therefore considered to be sufficient to adequately rectify the inconsistency between the three consents.

3.0 Substantially the same development

The power to amend a development consent is found in section 4.55 of the EP&A Act. Section 4.55 is an independent facilitative power that is separate to the grant of a development consent. This modification application to development consent SSD-5897 is made under Section 4.55(1A) of the EP&A Act, which 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:

- The approved perimeter retention wall system was designed and approved prior to the Crown Sydney Hotel Resort, and did not contemplate excavation to the west of Block 4. The Crown Sydney Hotel Resort has altered the interface along the western boundary of Block 4, and includes a new permanent retention wall system west of Block 4 that makes part of the Block 4 perimeter wall system redundant. The Crown Sydney Hotel Resort is now approved (SSD 6957), including the construction and use of an integrated basement car park through the section of redundant perimeter retention wall.
- A combination of temporary and permanent retention walls has been constructed to facilitate the excavation and remediation of Block 4 and Stage 1C work areas. In relation to the ongoing delivery excavation and remediation works under 5897:
 - The proposed modification will not change the extent of remediation or excavation approved under SSD 5897, either laterally or in depth. The physical footprint of works under SSD 5897 will not change and no new land will be affected.
 - The proposed modification will not change the excavation or remediation methodology established for Block 4 under SSD 5897.
 - The proposed modification will not change the remediation outcomes to be achieved under SSD 5897, and will not undermine the achievement of any remediation objectives established for Block 4 under SSD 5897.
 - The proposed modification will result in no perceptible change to the nature of excavation and remediation works observed or experienced from outside the site or from the public domain.
 - The proposed modification will result in no perceptible change to the use of the land above the redundant section of retaining wall, and will not affect any development or landscaping works at ground level or within the public domain above the redundant section of retaining wall.

The proposed modification therefore is considered to reflect a minor design refinement resulting from coordination with the Crown Sydney Hotel Resort, and is limited to ensuring that SSD 5897 is consistent with the arrangement already approved for the Crown Sydney Hotel Resort under SSD 6957. Accordingly, the consent authority may be satisfied that the modified proposal represents substantially the same development for which consent was originally granted and the modification of development consent SSD 5897 can therefore lawfully be approved under Section 4.55 of the EP&A Act.

4.0 Environmental assessment

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 proposed modification is of minimal environmental impact”. Under Section 4.55(3) the consent authority must also take into consideration the relevant matters to the application referred to in Section 4.15(1) of the EP&A Act.

The following assessment considers the relevant matters under Section 4.15(1) and demonstrates that the development, as proposed to be modified, will be of minimal environmental impact.

4.1 Section 4.15(1)(a) Planning Instruments

The EIS submitted with SSD 5897 assessed compliance against the relevant environmental planning instruments. As outlined above, the proposed modification seeks approval to avoid the construction of a small part of the permanent perimeter retention wall system to ensure consistency with the approved Corn Sydney Hotel Resort under SSD 6957. The proposed modification will therefore not change the assessment of compliance with the relevant planning instruments. **Table 1** provides a summary of compliance with relevant planning instruments.

Table 1 – Compliance with relevant environmental planning instruments

Instrument	Assessment
SEPP (State & Regional Development)	The proposed modification will not change the nature, extent or purpose of the approved development. Further, it will not substantially alter the total capital cost of the development, to the point of being below the threshold for State Significant Development. As such, the application of the State & Regional development SEPP to SSD 5897 will not change.
SEPP (State Significant Precincts) 2005	The aims of the SSP SEPP are to facilitate the redevelopment of important sites such as Barangaroo for the benefit of the State and provide for the development of major sites for a public purpose. The modification application will not impact on the approved development's consistency with the approved Barangaroo Concept Plan.
SEPP 55 – Remediation of Land	The proposed modification will not change the remediation outcomes to be achieved under SSD 5897, and will not undermine the achievement of any remediation objectives established for Block 4 under SSD 5897. As such, the application of the SEPP 55 to SSD 5897 will not change.
SEPP (Infrastructure)	The provisions of the Infrastructure SEPP apply more during the consideration and assessment of the original SSDA in terms of requirements and referrals for development applications (i.e. not modification applications). Further referral of this modification application to relevant agencies and approval bodies is not considered necessary, given that the proposed changes will not affect services, utilities or any public infrastructure.
SEPP (Miscellaneous Consent Provisions) 2007	The proposed modification is consistent with the objectives of the SEPP and does not trigger any new matters for consideration.
SREP Sydney Harbour Catchment	The proposed modified development does not affect compliance with the key relevant matters for consideration and does not trigger any new matters for consideration.
Sydney Harbour Waterways Development Control Plan 2005	The proposed modification does not alter the approved development's compliance with the controls of the DCP and does not trigger any new matters for consideration.

4.2 Section 4.15(1)(b) Impact on the Environment

The EIS submitted with the original SSDA addressed the likely impacts of the development. The proposed modified development does not give rise to any material alteration to the assessment of the potential impacts considered as part of the original SSDA, as demonstrated below.

4.2.1 Contamination Assessment

AECOM has undertaken a review of the proposed modification against *Remedial Action Plan (RAP), NSW EPA Declared Remediation Site 21122 and Block 4 (Stage 1b) Development Works, Barangaroo, Millers Point, NSW* (the VMP / Block 4 RAP) which was endorsed as part of the approval of SSD 5897 and forms the basis of the approved remediation works. This review is documented in **Attachment B**.

Under the VMP / Block 4 RAP the permanent retention wall around the perimeter of Block 4 basement was necessary to avoid the need for the development of ecological risk-based criteria for ecological protection at Block 4.

AECOM considers that construction of the Stage 1C perimeter retention wall (which is now constructed) that includes physical connection to the Block 4 perimeter retention wall system effectively performs the same function as construction of the redundant section proposed to be removed. That is, it will minimise groundwater migration

from Block 4 to the nearest sensitive receptor Darling Harbour and, therefore, will comply with the requirements of the VMP / Block 4 RAP.

It is highlighted that the removal of the redundant section of the Block 4 perimeter retention wall was envisaged under SSD 6957, and its associated *Remedial Action Plan, Crown Hotel Development (Part of ORWN Area), Barangaroo South*, which concluded that the Stage 1C groundwater retention wall would effectively replace the redundant section of the Block 4 groundwater retention wall, and that not constructing the redundant section of the Block 4 perimeter retention wall would not affect validation of the Stage 1C remediation works.

AECOM therefore conclude that perimeter retention wall system as it is proposed to be modified will minimise groundwater migration from Block 4 to the nearest sensitive receptor Darling Harbour and, therefore, complies with the requirements of the VMP / Block 4 RAP. Consequently, it is considered that the redundant section of the Block 4 perimeter retention wall system does not need to be installed to meet the requirements of the VMP / Block 4 RAP, and an addendum to the VMP / Block 4 RAP is not required.

The AECOM review of the proposed modification has been assessed by an EPA accredited Contaminated Sites Auditor (**Attachment C**). The Auditor agrees with the AECOM conclusions noting that there is an ongoing Site Audit which will review the validation performed and conclude as to the suitability of the site for its intended use.

4.2.2 Environmental Controls During Construction

The proposed modification involves removing the need to construct a part of the permanent perimeter retention wall system. As such, it represents a small reduction in the total quantum of physical works being undertaken at Block 4 under SSD 5897. The proposed modification will result in no perceptible change to the nature of excavation and remediation works observed or experienced from outside the site or from the public domain. As such, no perceptible change is likely to occur in relation to the temporary construction related environmental impacts associated with the works under SSD 5897. The existing excavation and remediation environmental controls relating to air quality, noise and vibration, water, traffic, tree protection, visual amenity, heritage, waste management, hazard management, and overall environmental management remain relevant and will not require amendment.

4.3 Section 4.15(1)(c) Suitability of the site for the proposed development

The proposed modification will not alter the suitability of the site for the development. The proposed modification is a minor design refinement resulting from coordination with the Crown Sydney Hotel Resort, and is limited to ensuring that SSD 5897 is consistent with the arrangement already approved for the Crown Sydney Hotel Resort under SSD 6957.

4.4 Section 4.15(1)(d) Submissions made

Any submissions made on subject modification application will be duly considered and addressed.

4.5 Section 4.15(1)(e) The public interest

The proposed modifications to the approved development are considered to be in the public interest as they will ensure appropriate coordination and consistency in approved plans between SSD 5897 and SSD 6957, without undermining any remediation objectives or environmental protections for Block 4 remediation works.

5.0 Conclusion

The proposed modifications will ensure coordination and consistency between the Block 4 excavation and remediation works (under SSD 5897), and the Crown Sydney Hotel Resort (under SSD 6957), without undermining any remediation objectives or environmental protections for Block 4 remediation works.

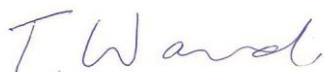
The proposed modification is considered to be of minimal environmental impact as it involves removing the need to construct a part of the permanent perimeter retention wall system and therefore represents a small reduction in the total quantum of physical works being undertaken at Block 4 under SSD 5897, with minimal changes to environmental impacts during the works. Further, the Stage 1C perimeter retention wall system effectively replaces the redundant section of the Block 4 perimeter wall, ensuring that the remediation objectives of the VMP / Block 4 RAP are still achieved.

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

- the proposed modification is of minimal environmental impact; and
- 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.

Yours sincerely,



Tim Ward
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