

# Statement of Environmental Effects

## Section 96 Application

100 Bennelong Parkway, Sydney Olympic Park

MOD 2 - Amend building heights to respond to new road infrastructure

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# 1 Introduction

## 1.1 Overview

This Statement of Environmental Effects (SEE) accompanies an application made pursuant to Section 96(1A) of the *Environmental Planning and Assessment Act 1979* (EP&A Act) to modify Development Consent SSD 6246 for the construction of a multi-storey residential development at 100 Bennelong Parkway, Sydney Olympic Park.

A modification to the approved building height is proposed to respond to an adjustment in the construction design of new road infrastructure following development approval which has resulted in the roads and footpaths surrounding the development being raised above the levels identified in the original DA documents (specifically the new road being constructed between Buildings A and B, and Building C. The ground floor level of the proposed development must be raised to address the raised height of the road

The proposed modification to SSD 6246 will not result in additional storeys being introduced to the approved buildings, nor will it result in changes to the gross floor area (GFA) of the approved development. Excavation depths will be reduced.

## 1.2 Pre-Lodgement Consultation

The modification has been discussed with the Sydney Olympic Park Authority (SOPA) and SOPA has provided in-principle support to the lodgement of the application (refer to **Annexure 3**). It is noted that SOPA has recommended the introduction of a dwarf retaining wall to prevent mulch and plant litter from landscaping spilling onto the footpaths and to assist in retaining suitable soil depths for proposed courtyard trees positioned over slabs. We believe that this requirement can be dealt with through the introduction of a condition of consent and are agreeable to such a condition being imposed.

It is anticipated that the Department of Planning and Environment (DP&E) will consult with SOPA during the assessment of the application.

## 1.3 Structure of Report

This Statement:

- Describes the site and its surrounding area;
- Details the nature of the proposed development; and
- Undertakes an assessment of the proposal under the heads of consideration in Section 79C (1) of the *Environmental Planning and Assessment Act, 1979*.

## 2 Site and Surroundings

The site comprises 100 Bennelong Parkway, Sydney Olympic Park, an irregular shaped parcel of land which is bound to the east by Bennelong Parkway and the railway line to the west. It has an area of approximately 1.504 hectares.

The site is situated within the Auburn Local Government Area (LGA), within Sydney Olympic Park. It is located approximately 14 km to the west of Sydney CBD and 8 km to the east of Parramatta CBD.

The Sydney Olympic Park Master Plan 2030 provides a vision for the sustainable development of Sydney Olympic Park. The masterplan divides the area into nine precincts. The site is located within the “Parkview Precinct” at the eastern edge of Sydney Olympic Park, which is envisaged to be an area characterised by a transition in scale from larger development along Australia Street to lower built form along Bennelong Parkway connecting with the parklands.

**Figure 2: Site Plan**



Existing development in the surrounding area includes a mix of residential, commercial, sporting and entertainment uses. No. 102 Bennelong Parkway, immediately to the north, comprises a four storey commercial building. Further north development consists of campus style business parks which include a range of commercial, light industrial and educational uses surrounded by extensive parking and landscaped grounds.

To the east and south the site is situated opposite Bicentennial Park.

The rail line is situated immediately to the west.

## 3 Proposed Modifications

### 3.1 Existing Development Consent (SSD 6246)

Conditional approval was granted to State Significant Development Application SSD 6246 by the Planning Assessment Commission (PAC) on 27 February 2015. The approved development comprises:

- Two separate buildings ranging in height from four to eight storeys and eight to ten storeys containing 331 dwellings.
- A childcare centre for 90 children.
- Basement and ground level parking.
- Pedestrian and street network.
- Associated landscaping.
- Subdivision.

A Section 96 (1A) application has been lodged with DP&E for minor internal and external changes to SSD 6246 (that modification application is referred to throughout this statement as “MOD 1”). In summary, the works proposed under MOD 1 involve the following:

- Internal layout changes to specified units to improve functionality and amenity.
- Adjustments to the two servicing and plant rooms at parking level 1 including the relocation of a chamber substation.
- Introduction of additional windows within specific apartments.
- Substitution of windows to the western building façade with glazed louvres to address the requirements of Sydney Trains.

The current proposal, the subject of this Section 96 (1A) application (referred to throughout this statement as “MOD 2”), does not impact on, or alter the changes proposed under MOD 1.

It is anticipated that MOD 1 will be determined prior to any consent being issued in respect of the current application (MOD 2). Accordingly, for the purposes of this application, the modifications proposed under MOD 1 have been incorporated onto the architectural drawings as if approved. It is acknowledged that, should design changes be required to MOD 1 during the course of its assessment, or in the event that the application is refused, the plans accompanying this application must be updated accordingly.

### 3.2 Reason for the Modification

As the detailed design work associated with the implementation of the SSD consent progresses opportunities to refine and improve the approved development scheme are being explored. In this regard a number of minor alterations to the design are proposed largely to address the requirements of statutory authorities together with practical improvements to specific apartments to meet the needs of prospective purchasers (as identified through the marketing process for the development).

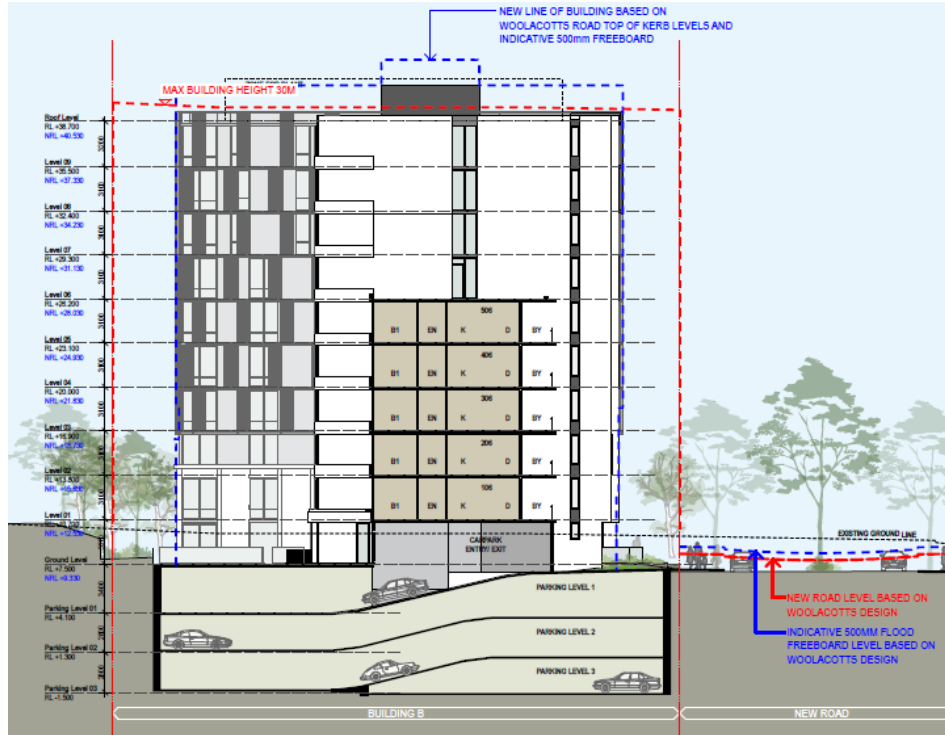
The detailed design of future road infrastructure surrounding the site has also been progressed by the Sydney Olympic Park Authority. To create the new road between Buildings A and B, and Building C excavation of the existing ground is required, this will result in the lowering of the ground levels surrounding the site. The levels originally planned for the new roads were used to inform the design of the proposed development and dictated the ground floor level of the proposal. However, through detailed construction design planning for the road it has been

identified that the extent of excavation required is less than originally planned. This is largely in response to the flood planning levels for the area.

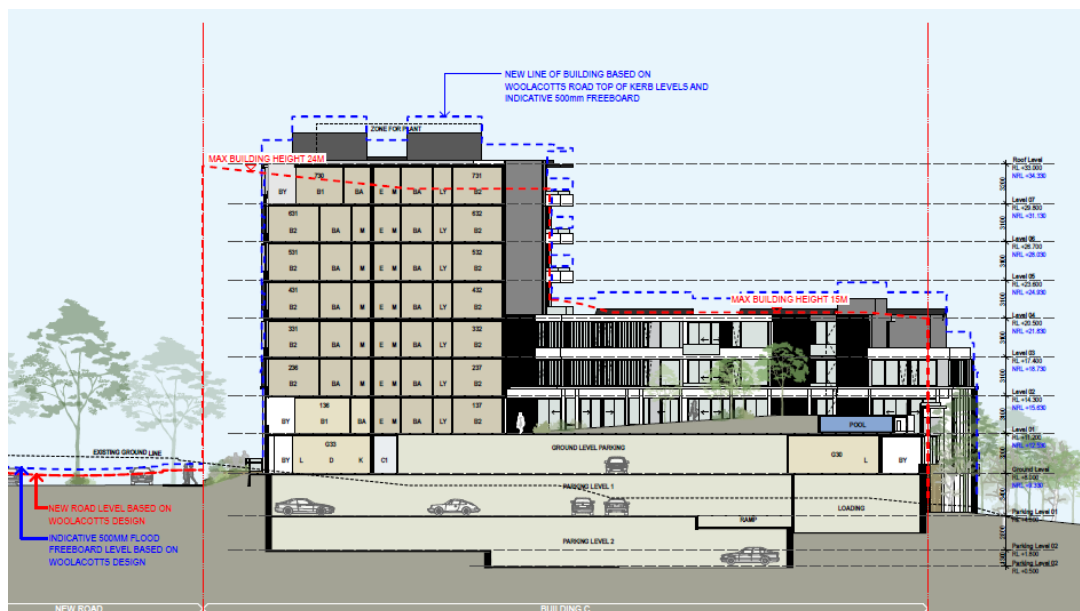
The effect is that the modified ground level of surrounding roadways as depicted on the approved architectural plans is lower than will be constructed. An adjustment of the ground floor level of the development is therefore required to respond to the changed road level.

This is illustrated in **Figure 1** below.

**Figure 1: Extent of proposed height increase**



**Building B**



**Building C**

This application seeks a modification to the approved height of the development as depicted on the architectural drawings (**Annexure 1**) to respond to the revised road design. No changes are proposed to the approved building form. The only change being that the development is to be raised to respond to the new road levels.

The proposed built form remains consistent with the Sydney Olympic Park Masterplan. The maximum building height when measured from modified ground level remains the same as originally proposed. No additional storeys are proposed.

Revised plans which illustrate the proposed modification are included at **Annexure 1**. The modifications to the consent are described below.

### 3.3 Proposed Works

Existing ground levels vary between RL4.6 metres to RL 10.7 metres.

The site will be substantially modified to create a suitable building platform for the development. Existing ground levels will be modified as follows:

- Excavation to a maximum depth of RL2 metres will be undertaken to create the basement levels of the development. This compares to a depth of RL-1.5 metres under the original proposal. In effect, the extent of excavation will be reduced.
- Ground level will be adjusted to respond to the levels surrounding the site. It is relevant that the works being undertaken by SOPA to provide new road infrastructure will result in the levels of surrounding land also being modified. The ground floor level of the development must correspond to the new road levels to address flood planning requirements and to ensure an appropriate interface between the ground floor of the development and the adjoining footpath. The ground floor of the development will be raised marginally above the level originally proposed.

No additional works are proposed by this application.

### 3.4 Amendment to Conditions of Consent

#### 3.4.1 Condition A2

The proposed modification requires an amendment to Condition A2 of the consent for SSD 6246 by replacing a number of drawings to reflect updated information with respect to levels. The modified condition would appear as described in **Annexure 2**.

#### 3.4.2 Other Conditions

No other conditions are proposed to be amended by this application.

## 4 Statutory Planning Framework

### 4.1 Section 96(1A)

#### 4.1.1 Environmental Impact

The potential environmental impacts of the proposed amendments are negligible and can be considered under the provisions of Section 96(1A).

The proposed modifications will not result in any impacts that extend beyond the confines of the site by virtue of changes to the character, physical appearance of the development, its scale or intensity of use of the site.

#### 4.1.2 Extent of Modification

The proposed modification will result in substantially the same development as originally approved under SSD 6246. The proposed modifications will not have any impact on the nature, scale, location or form of the approved buildings.

### 4.2 Section 79C Assessment

#### 4.2.1 Section 79C(1)(a)(i): Environmental Planning Instruments

Clause 19 of Part 23 of *State Environmental Planning Policy (Major Development) 2005* specifies that the height of a building may not exceed the maximum height specified on the relevant Height of Buildings Map. The maximum height limits for the subject site are as follows:

**Table 1: Permissible Building Heights**

| Lot | Maximum Building Height (metres)     |
|-----|--------------------------------------|
| 67A | 30                                   |
| 67B | 15 (Bennelong Parkway frontage) - 24 |

Part 23 of the SEPP defines building height as follows:

***“Building height (or height of building) means the vertical distance, measured in metres, between ground level (existing) at any point to the highest habitable floor (including above ground car parking), excluding plant and lift overruns, communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like.”***

To respond to the detailed design of new road infrastructure surrounding the site, new development must be raised 1.5 metres above the building levels specified in the DA. As a result new buildings will marginally project above the maximum height limits nominated for the site.

As shown in **Table 3** below, under the approved development Buildings A and B complied with the maximum height control. Building C exceeded the height control. The proposed modification will result in all buildings exceeding the applicable height control to varying extents.

**Table 2: Comparison of approved building heights and modified building heights**

| <b>Building</b> | <b>Approved Height (metres)</b> | <b>Modified Height (metres)</b> | <b>Extent of non-compliance</b>                            |
|-----------------|---------------------------------|---------------------------------|--|
| A               | 29.9                            | 31.4                            | 1.4 metres   |
| B               | 23.7                            | 25.2                            | 1.2 metres   |
| C               | 25.5                            | 27                              | 3 metres (1.5 metre exceedance approved under original DA) |

In view of the development context, involving a development that will contribute important local infrastructure (new homes and childcare facilities) to the locality, and being well separated from neighbouring properties, strict compliance with the building height standard is considered to be both unnecessary and unreasonable.

The additional height is a direct result of the need to change the ground floor level of the development. A co-ordinated approach with the new design of future road infrastructure is essential. Without the modification, each of the three proposed buildings would need to be reduced by a storey. This outcome is considered to be unreasonable in the absence of any demonstrable adverse impacts associated with the moderate height increase proposed by this application.

#### **Clause 22 Exception to Development Standard**

Clause 22 of the SEPP permits a variation to development standards where it can be demonstrated that strict compliance with the control is unreasonable or unnecessary in the circumstances of the case. The relevant matters for consideration outlined in Clause 22 are addressed below.

#### ***Compliance with the development standard is unreasonable or unnecessary***

In *Wehbe v Pittwater Council [2007] NSWLEC 827* Preston CJ set out the five ways of establishing that compliance with a development standard is unreasonable or unnecessary in support of justifying a variation:

1. *Establish that compliance with the development standard is unreasonable or unnecessary because **the objectives of the development standard are achieved notwithstanding non-compliance** with the standard.*
2. *Establish that the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary.*
3. *Establish that the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable.*
4. *Establish that the development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable.*
5. *Establish that "the zoning of particular land" was "unreasonable or inappropriate" so that "a development standard appropriate for that zoning was also unreasonable or unnecessary as it applied to that land" and that "compliance with the standard in that case would also be unreasonable or unnecessary".*

In applying the tests of *Wehbe v Pittwater Council [2007] NSWLEC 827*, only one of the above rationales is required to be established. The proposed development is consistent with the underlying objectives of the standard for the B4 Mixed Use zone as outlined below.

There are no specific objectives for the height standard under the SEPP. The objectives of the B4 zone and response to each with regard to the proposal are set out below.

**Table 3: B4 Zone Objectives**

| Objective   | Response   |
|---|--|
| (a) To protect and promote the major events capability of the Sydney Olympic Park site and to ensure that it becomes a premium destination for major events.                                  | The proposed increase in height will not impact on major events.   |
| (b) To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling. | The modification will have a positive impact on the integration of the proposed development with surrounding road and pedestrian infrastructure. Having an appropriate interface between the ground level of the development and the footpath will help to encourage pedestrian activity.  |
| (c) To ensure that the Sydney Olympic Park site becomes an active and vibrant town centre within metropolitan Sydney.   | The proposed development will contribute to the creation of an active and vibrant place. The modification ensures coordination in the design of new public infrastructure and built development thus contributing to the appearance of the area.   |
| (d) To provide for a mixture of compatible land uses.   | The proposed modification will facilitate the delivery of a mixed use development that will contribute to the range of uses in the area.   |
| (e) To encourage diverse employment opportunities.  | The modification will facilitate the delivery of the proposed development which includes new employment in the form of construction jobs, and positions within the childcare facility.   |
| (f) To promote ecologically sustainable development and minimise any adverse effect of land uses on the environment.  | The modification will have a positive ESD impact. The extent of excavation required to create the basement levels for the proposed development will be reduced as a result of the proposed development. The effect will be a reduction in ground disturbance, a reduction in waste and consequently a reduction in vehicle movements required to remove waste excavated materials from the site. |
| (g) To encourage the provision and maintenance of affordable housing.   | While the proposal does not include the provision of affordable housing, the development of 342 new homes will add to the local housing supply which in itself will help to improve affordability in the area. The proposed modification will facilitate the development of the quantum of apartments envisaged under the original DA.   |

In summary, the objectives of the B4 zone can be met. It is also relevant that the proposed development does not conflict with the intent of the planning principles for Building Form and Height in the SOP Masterplan which seek to maintain existing views, to safeguard the parklands and to maintain the visual character of the area. The proposed development will continue to achieve this outcome.

***The objectives of the particular standard and the objectives for development within the zone***

Refer above.

***Whether contravention of the development standard raises any matter of significance for State or regional environmental plan***

None applicable.

***The public benefit of maintaining the development standard***

There is no public benefit in maintaining strict compliance with the development standard in this case.

Overall, it is considered that the proposed variation is entirely appropriate and can be clearly justified having regard to the matters listed in SEPP Major Projects Clause 22.

The proposed amendments do not impact on the compliance of the approved development with any other relevant provisions of State and local planning controls including compliance with the *Sydney Olympic Park Master Plan 2030*.

**4.2.2 Section 79C(1)(a)(ii): Draft Environmental Planning Instruments**

There are no draft environmental planning instruments that apply to the subject site.

**4.2.3 Section 79C(1)(a)(iii): Development Control Plans**

Not applicable.

**4.2.4 Section 79C(1)(a)(iiia): Planning Agreements**

Not applicable.

**4.2.5 Section 79C(1)(a)(iv): Regulations**

The Section 96 Application has been made in accordance with the requirements contained in Clause 50(1A) of the *Environmental Planning and Assessment Regulation 2000*.

**4.2.6 Section 79C(1)(b): Likely Impacts**

The proposed modifications will not result in additional environmental impacts over and above those anticipated in the original DA. The proposed modifications do not alter the character, scale or intensity of use of the approved development. No additional amenity impacts over and above those considered in the original application, such as traffic or noise, will result as a consequence of the proposed development.

The proposed modification is justified on the following environmental planning grounds:

- No additional floorspace is proposed. The proposal will continue to comply with the floor space ratio control for the site.
- The proposed modification to building height does not result in additional bulk or scale to the approved development.
- The modification will not result in an increase in the intensity of use of the site.
- The increase in building height will not result in adverse shadow impacts on surrounding properties. This is demonstrated in the shadow analysis plans at **Annexure 1**.
- The height increase has been discussed with SOPA, and their in-principle support has been obtained (refer to Annexure 2).
- The proposed building height remains consistent with that envisaged under the SOPA Masterplan. The proposal continues to comply with the maximum number of storeys envisaged under Masterplan.
- Despite the moderate increase now proposed, the development will achieve a harmonious height and scale relationship with existing and approved developments.
- The site is well separated from other residential properties. The increase in height now proposed will not result in overlooking, overshadowing or privacy issues.

In summary, the resulting increase in the height of the development as a result of the change to the ground floor level of the site will not result in additional adverse impacts.

#### **4.2.7 Section 79C(1)(c): Suitability of the Site**

There are no environmental constraints on the site that would impede the proposal or render it unsuitable for the site.

#### **4.2.8 Section 79C(1)(d): Submissions**

Should notification be required for the proposal, Council will consider submissions at the close of the notification period.

#### **4.2.9 Section 79C(1)(e): The Public Interest**

For the reasons set out in this Statement, it is considered that the public interest would be best served by approval of the Section 96 under consideration, particularly, given the absence of any demonstrable adverse impacts resulting from the proposal.

## **5 Conclusion**

The subject Section 96 Application seeks an increase in the technical building height of the approved development. The actual height of the building remains unchanged, with the change relating to a reduction in the extent of excavation being proposed.

The proposal satisfies the relevant heads of consideration under Section 79(C) of the EP&A Act.

It is considered that the proposal provides an appropriate response to the planned development of the site and will assist in the orderly and economic development of the land.

The development is substantially the same as when originally approved for the purposes of Section 96 of the EP&A Act and will have a positive impact on the public domain by ensuring a co-ordinated approach to the delivery of new public infrastructure (roads) and new buildings.

It is therefore submitted that consent should be granted to the Section 96 application to amend the development consent in the manner requested.

## **Annexure 1: Modified Plans**

## **Annexure 2: Modification to Condition A2**

## **Annexure 3: SOPA Consent**