

## ASSESSMENT REPORT

### Building R1, Barangaroo South SSD 6513 MOD 1

#### 1. BACKGROUND

##### 1.1 Introduction

This report provides an assessment of a Section 96(1A) modification application lodged by Lend Lease (Millers Point) Pty Ltd (the Applicant) seeking to modify a State significant development application (SSD 6513) for construction and use of Building R1 at Barangaroo South within the City of Sydney local government area. The application seeks approval to provide retractable awnings for solar protection throughout the licensed area and minor amendments to several conditions relating to acoustics and mechanical ventilation.

##### 1.2 The site

The proposed development is located within Barangaroo, in the north-western edge of the Sydney CBD. Building R1 is the southernmost building of Barangaroo South. The layout of Barangaroo is provided at Figure 1 below.



**Figure 1:** Photomontage showing Barangaroo layout (Source: Applicant's MP 06\_0162 MOD 8)

### 1.3 Site context

The site is bound by the Sydney Harbour foreshore to the north and west, Hickson Road and Millers Point to the east, and Kings Street Wharf, Cockle Bay and Darling Harbour to the south. Barangaroo is divided into three parts: Headland Park; Barangaroo Central; and Barangaroo South (see **Figure 2**). The land that this development application applies to is located in Barangaroo South.

On 9 February 2007, the then Minister for Planning approved the Barangaroo Concept Plan (MP 06\_0162). The Concept Plan approved a set of built form principles to guide development within the mixed-use zone.



**Figure 2:** The site is indicated in red (Source: Applicant's MP 06\_0162 MOD 8)

### 1.4 Approval History

On 25 August 2016, a State Significant Development Application (SSD 6513) was approved by the Executive Director, Key Sites and Industry Assessments, as delegate for the Minister for Planning, for the construction and use of Building R1 at Barangaroo South.

The application sought consent for:

- site preparation works, including a concrete slab and additional piling
- construction of a three-storey food and drink premises (pub) with 804 m<sup>2</sup> of gross floor area (GFA)
- use of 15 car parking spaces and plant, infrastructure services in the Stage 1A basement;
- use of 1 bicycle parking space within the adjacent public domain for the future use(s) of Building R1
- landscaping works
- installation of utility services.

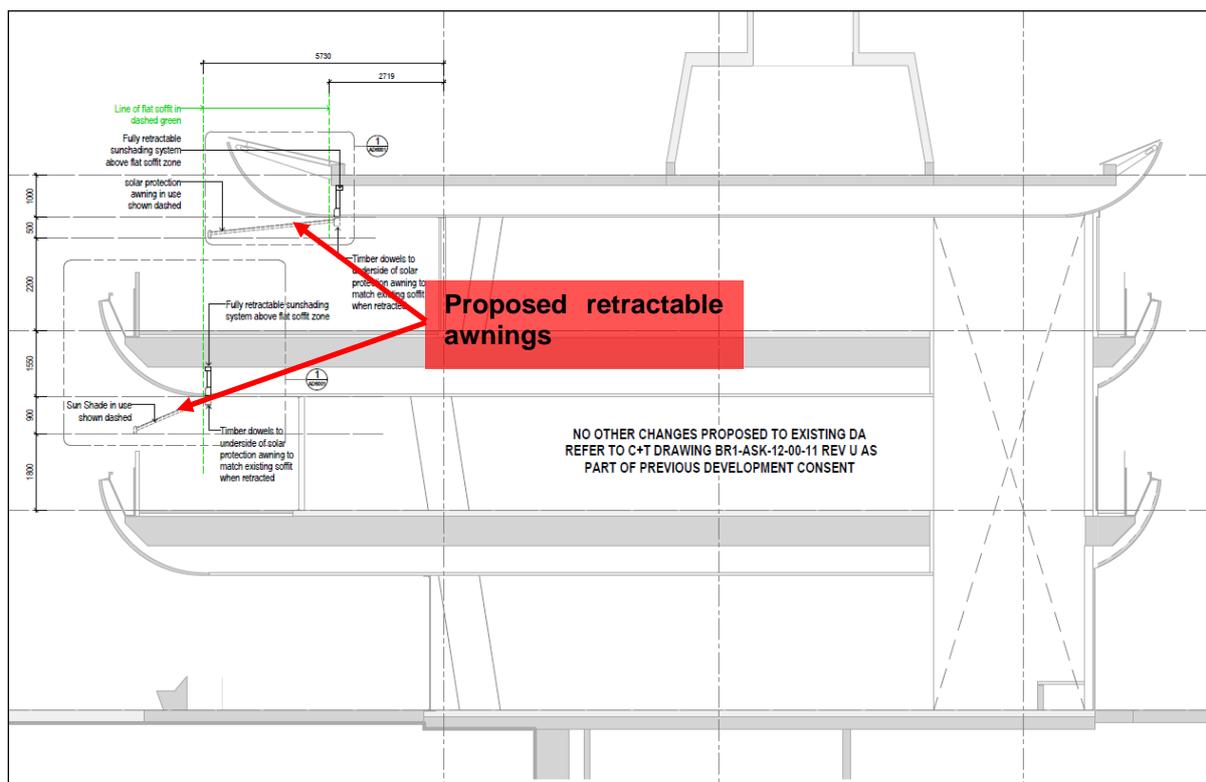
The Department's consent included the following conditions:

- B5 and F15 which relate to management of mechanical ventilation and odour and
- F8 and F9, which prescribes noise limits for the building and how these can be achieved.

On 7 July 2017, SSD 6513 (MOD 2) was approved by the Director, Key Sites Assessments which provided minor design amendments at the ground and rooftop plant levels of the building.

## 2. PROPOSED MODIFICATION

The proposed modification (MOD 1) seeks approval under section 96(1A) of the *Environmental Planning and Assessment Act 1979* (EP&A Act 1979) for installation of retractable awnings along the western frontage of Levels 1 and 2 (see **Figure 3**).



**Figure 3:** Proposed shade awnings when fully extended (Source: Applicant's EIS).

The modification also includes changes to conditions to provide:

- inclusion of a reference to the EPA's *Approved Methods for the Modelling and Assessment of Air Pollutants in NSW* in Conditions B5 and F15 and
- flexibility in achieving compliance with the approved acoustic report and to correctly reference associated conditions in Conditions F8 and F9.

On 15 June 2017, the Applicant lodged its Response to Submissions (RTS) report that amended the proposal, in response to Council's concerns, to withdraw the modification to Condition F21 – Neighbourhood Amenity.

### 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 that seek modification approvals:

**Table 1 – Consideration of matters under section 96(1A)**

<b>Section 96(1A) matters for consideration</b>	<b>Comment</b>
S96(1A)(a) that the proposed modification is of minimal environmental impact.	<b>Section 5</b> of this report provides an assessment of the impacts associated with the proposal. As the proposal involves minor design changes to the building and administrative changes to conditions, the Department is satisfied the proposed modifications will have minimal environmental impact.
S96(1A)(b) that the development to which the consent as modified 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).	As the proposal relates to minor design changes and administrative changes to conditions, the Department is satisfied it would result in development is substantially the same as that originally approved.
S96(1a)(c) The application has been notified in accordance with the regulations.	The modification application was notified to the City of Sydney Council in accordance with the Regulation. Details of the notification are provided in <b>Section 4</b> of this report.
S96(1a)(d) Any submission made concerning the proposed modification has been considered.	The Department received one submission on the proposal.

#### 3.2 Environmental Planning Instruments

The following EPIs were relevant to the original SSD application:

- State Environmental Planning Policy (State and Regional Development) 2011
- State Environmental Planning Policy (State Significant Precincts) 2005
- State Environmental Planning Policy (Infrastructure) 2007
- State Environmental Planning Policy (Sydney Harbour Catchment 2005)
- State Environmental Planning Policy No. 55 – Remediation of Land.

An assessment of compliance with the EPIs was considered in the original application. The Department has considered the modification application against the objectives and aims of these instruments, and is satisfied that the modified proposal remains consistent with the provisions of these EPIs.

#### 3.3 Compliance with Clause 3B of Schedule 6A of the EP&A Act

Clause 3B9(2)(d) of Schedule 6A of the EP&A Act 1979 specifies a consent authority must not grant consent under Part 4 unless it is satisfied that a development is consistent with the terms of the approval of a Concept Plan.

The Department has considered the proposed modification and is of the opinion it is consistent with the Concept Plan as it:

- complies with all relevant built form principles and Barangaroo South Urban Design Controls in respect of Control 5 – Accessibility of Public Realm as the awnings will not impede physical accessibility or visual permeability; and Control 8 – Active Street fronts as the awnings are designed to improve amenity for patrons; and

- does not alter the approved maximum GFA or building height specified in the Concept Plan.

### 3.4 Delegated Authority

On 16 February 2015, the Minister delegated functions to determine modification requests to the Director, Key Sites Assessments in cases where:

- the relevant local council has not made an objection; and
- a political disclosure statement has not been made; and
- there are no public submissions in the nature of an objection.

The City of Sydney Council has not objected to the proposal; a political donation has not been disclosed; and no submissions have been received from the public. The proposal can therefore be determined by the Director, Key Sites Assessments, under delegation.

## 4. CONSULTATION AND SUBMISSIONS

### 4.1 Notification

The modification application and accompanying information was made publicly available and notified in accordance with the Environmental Planning and Assessment Regulation 2000.

The Department made the proposal publicly available on its website. The Department notified the relevant local government authority in writing.

### 4.2 Public Authority Submissions

The Department initially received a submission from City of Sydney Council which raised no issue with the rewording of Conditions F8 and F9. However, it did not support the proposed modifications to Conditions B5 and F15 on the basis that no information had been provided by the Applicant supporting the '*Approved Methods for the Modelling and Assessment of Air Pollutants in NSW*' as an appropriate method for assessing these potential impacts.

A further submission from the Council was received which raised no objection to the proposal, subject to the rewording of Conditions B5 and F15. This is considered further in **Section 5**. The EPA advised the Department it would not make a submission.

### 4.3 Public Submissions

No submissions from the public were received.

## 5. ASSESSMENT

### External changes

The Applicant seeks approval for the installation of 14 mechanically retractable awnings for sun protection from the afternoon sun on the western façade of Levels 1 and 2.

The Department notes the awnings may be visible from the public domain (**Figures 3 and 4**). However, they have been designed to ensure they read as an integral part of the design of the approved building and they would improve the amenity for patrons by providing weather protection. The Department is therefore supportive of the installation of the awnings.



**Figure 3:** Approved Building R7 as viewed from the south (Source: Applicant's plans)



**Figure 4:** Photomontage detailing shade structures as viewed from the south (Source: Applicant's plans)

Compliance with Acoustic Report

The Applicant seeks to modify Conditions F8 and F9 which relate to compliance with the Acoustic Report prepared by the Acoustic Group.

Condition F8 requires compliance with all performance parameters, requirements, engineering assumptions and recommendations contained the Acoustic Report. The proposed modification would give the Applicant flexibility in the methods available to achieve compliance

with noise limits prescribed in the consent. The changes do not seek to alter the noise compliance standards applicable to the building's operation.

The Applicant also seeks to reword Condition F9 which requires compliance with the Acoustic Report to correctly reference Conditions F8 and F6. The existing condition currently references Condition E15 which is not relevant to the Acoustic Report.

Given Condition F8 specifies noise limits for the development and the proposed modification does not seek to alter these limits, the Department accepts the modification would enable flexibility to achieve compliance by enabling different treatment methods to be used to achieve the required noise levels.

The Department therefore supports the proposed modifications to Conditions F8 and F9.

#### Ventilation and Odour

The Applicant seeks to modify Conditions B5 and F15, which relate to management of ventilation and odour, to include a reference to *Approved Methods for the Modelling and Assessment of Air Pollutants in NSW* and *Assessment and Management of Odour from Stationary Sources in NSW* (Guideline). This reference would provide guidance and clarity for the Department and Council in the event ventilation and emission impacts from the development arise.

Council do not object to proposed changes to Conditions B5 and F15 although do not support the word 'unreasonably' being included in Condition B5 in respect of odour, smoke or fumes adversely affecting customers or nearby residents. Council advises the Guideline does not use ambiguous language when referring to adverse impacts and it is inappropriate to use 'unreasonably' in this condition.

The Department supports the proposed reference to the Guideline as it provides a clear scope in which ventilation and emission impacts can be assessed. However, the Department agrees with Council that inserting the word 'unreasonably' would give rise to uncertainty and will result in subjectivity in the management potential odour impacts.

The Department therefore supports the modifications to Conditions B5 and F15 subject to the removal of the word 'unreasonably'.

## **6. CONCLUSION**

The modification application has been assessed in accordance with the matters for consideration under Part 4 of the EP&A Act and all relevant environmental planning instruments, and is considered to comply with all relevant standards and requirements.

Council did not object to the proposal, provided Conditions B5 and F15 included a reference to the Guideline and the word 'unreasonably' is deleted from Condition B5. These amendments are included in the recommended conditions.

The Department's assessment concludes the proposed modification is acceptable, is in the public interest and is substantially the same development. The Department recommends the application be approved, subject to conditions.

## 7. RECOMMENDATION

It is recommended that the Director, Key Sites Assessments:

- (a) **consider** the findings and recommendations of this report;
- (b) **determine** that the proposed modification falls within the scope of section 96(1A) of the EP&A Act;
- (c) **approve** the modification under section 96(1A) of the EP&A Act; and
- (d) **sign** the attached Instrument of Modification.

Prepared by: Rebecka Groth  
Senior Planner  
Key Sites Assessment

Endorsed by:



28/7/17

Cameron Sargent  
Team Leader  
**Key Sites Assessments**

Approved by:



28.7.17.

Ben Lusher  
**Director**  
**Key Sites Assessments**

## **APPENDIX A – RECOMMENDED MODIFICATION CONDITIONS**