

## **SECTION 4.55(1A) MODIFICATION REPORT**

**S4.55(1A) APPLICATION TO MODIFY  
DEVELOPMENT CONSENT SSD-66826207 (as modified)**



**405 Pacific Highway, 5 Falcon Street and 8 Alexander Street**

**January 2026**

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## 1. Summary

This Modification Report has been prepared by Deicorp Projects (Crows Nest) Pty Ltd (Deicorp) to accompany an application under the provisions of Section 4.55(1A) of the Environmental Planning & Assessment Act 1979 (EP&A Act) to modify state significant development application (SSDA) SSDA-66826207 (as amended) at 405 Pacific Highway, 5 Falcon Street and 8 Alexander Street, Crows Nest (the site).

The application seeks approval for an amendment to Condition D3 – Hours of Construction to permit extended construction hours between 7am – 5pm on Saturdays and to allow for internal fit out and finishing works between 8am and 5pm on Sundays.

Bulk earthworks at the site have now been completed, and the project has progressed to detailed excavation and structural works. The retail and hotel components of the development are anticipated to become operational in August 2027, with the residential component scheduled for occupation in November 2027. Importantly, the residential component comprising 212 apartments (including 48 affordable housing apartments) will be delivered within the relevant Housing Accord period, contributing to the timely provision of new housing supply including both affordable and market housing.

The construction program is subject to a highly constrained timeframe and has experienced delays due to several external and operational factors. These include the constrained surrounding road network, which has resulted in delays to construction vehicle access, periods of inclement weather experienced over the past year, and ongoing challenges in securing and retaining construction personnel.

In particular, the currently approved construction hours on Saturdays (8:00 am to 1:00 pm) are proving impractical, as construction personnel are generally unwilling to attend site for such a limited working period. This has resulted in a loss of productive working time and reduced the construction program efficiency.

Accordingly, the approval of extended construction hours is critical to mitigate further delays and to ensure the development can be delivered within the committed timeframe, including the delivery of housing within the Housing Accord period.

This Statement has been prepared pursuant to section 4.55(1A) of the EP&A Act. The Statement details the proposed development's compliance against applicable environmental planning instruments and development control plans including the North Sydney Local Environmental Plan 2013 and the North Sydney Development Control Plan 2013.

This Statement should be read in conjunction with the accompanying supporting documentation which includes:

- An updated Construction Noise & Vibration Management Plan (CNVMP) prepared by Acoustic Logic
- Addendum to Construction Environmental Management Plan prepared by Barker Ryan Stewart

Having regard to the applicable legislative framework, the proposed amendments to the approved development are such that the development retains the same fundamental characteristics and is therefore substantially the same development. The amended development remains consistent with the aims and objectives of the relevant environmental planning instruments and development control plan whilst remaining compatible with the character of the locality.

## 2. Site and Locality

The site is legally described as Lot 1 DP 1305703 and is known as 405 Pacific Highway, 5 Falcon Street and 8 Alexander Street, Crows Nest. The site is triangular in shape with a frontage of 69m to Falcon Street, 80.66m to Alexander Street and 108.15m to Pacific Highway. The site has an area of 3,200.6sqm. The site formerly contained a mixture of commercial buildings ranging from one to four storeys in height.

The site is currently under construction. Bulk earthworks at the site have now been completed, and the project has progressed to detailed excavation and structural works.

The site is outlined in 'red' in the aerial image in Figure 1 below.



*Figure 1: Aerial view of site, site outlined in red*

### 3. Approval Background

#### 3.1. SSD-66826207

On 23 December 2024, the Independent Planning Commission (IPC) granted development consent for:

- Demolition of the existing structures, early works, site remediation and construction of a 22-storey mixed-use development with infill affordable housing comprising:
  - Three storey podium (with mezzanine) with retail and commercial use;
  - 19-storey residential tower above podium comprising 188 apartments (including 48 affordable housing apartments);
  - Communal open space at podium level;
  - Seven levels of basement car parking with 220 car spaces;
  - Two-way vehicular access from Alexander Street; and
  - Associated landscaping works, consolidation of existing lots and stratum subdivision.

#### 3.2. SSD-66826207 MOD 1

On 22 October 2025, Modification 1 was approved for the removal of one basement level and the reconfiguration of basement level layouts, amended construction respite periods and condition amendments relating to the Sydney Metro corridor.

#### 3.3. SSD-66826207 MOD 2

On 12 December 2025, Modification 2 was approved for:

- Removal of commercial, reduce retail and include hotel uses;
- Provision of a 100 bed hotel, hotel fit-out and operation;
- Increase in building height and amendment of external design and materials;
- Increase of 24 apartments (to 212) and associated amendments to apartment and internal building layouts;
- Increase of 10 car parking spaces (to 231), revised bicycle parking facilities and amendments and reconfiguration of basement levels;
- Amendment of service vehicle operation hours provision of hotel and hotel bar operation hours;
- Amendment of communal open space provision, layout and street trees;
- Amendment of the location and layout of plant and equipment, including revised rooftop layout and design;

- Installation of a static, illuminated advertising sign; and
- Revised stratum subdivision and site address.

## 4. Proposed Modifications

### 4.1. Description of Amendments

The application seeks approval for an amendment to Condition D3 Hours of Construction to permit extended construction hours.

- Saturday – between 7am and 5pm – all construction activities including building work are permitted.
- Sundays – between 8am and 5pm – internal fit-out and finishing works are permitted only where such activities do not generate offensive noise and are limited to the following tasks:
  - Installation of ceilings
  - Painting
  - Rendering
  - Partition walls
  - Wall sheeting
  - Carpet laying
  - Joinery
  - Installation of internal services
  - Light fitting
  - Services installation

Note, there will be no deliveries to the site on Sundays.

### 4.2. Justification for Amendments

The reasons supporting the extension of construction hours are as follows:

- The retail and hotel components of the development are anticipated to become operational in August 2027, with the residential component scheduled for occupation in November 2027. Importantly, the residential component comprising 212 apartments (including 48 affordable housing apartments) will be delivered within the relevant Housing Accord period, contributing to the timely provision of new housing supply including both affordable and market housing.

The construction program is subject to a highly constrained timeframe and has experienced delays due to several external and operational factors. These include the constrained surrounding road network, which has resulted in delays to construction vehicle access, periods of inclement weather experienced over the past year, and ongoing challenges in securing and retaining construction personnel.

In particular, the currently approved construction hours on Saturdays (8:00 am to 1:00 pm) are proving impractical, as construction personnel are generally unwilling to attend site for such a limited working period. This has resulted in a loss of productive working time and reduced the construction program efficiency.

Accordingly, the approval of extended construction hours is critical to mitigate further delays and to ensure the development can be delivered within the committed timeframe, including the delivery of housing within the Housing Accord period.

- There is established precedent within the North Sydney local government area (LGA) for the approval of extended construction hours by both the Department and North Sydney Council. The following consents have been modified to permit extended construction hours:
  - SSD Consent SSD-10294 (as amended) at Victoria Cross Over Station Development.
  - State Significant Infrastructure Consent SSI-7400 at Victoria Road and Crows Nest Stations
  - Development Consent 92/21 (as amended) at 12-14 Waters Road, Neutral Bay
  - Development Consent 19/21 (as amended) at 110-122 Walker Street, North Sydney
  - Development Consent 368/18 (as amended) at 86-88 Walker Street, North Sydney
  - Development Consent 70/18 (as amended) at 118 Mount Street, North Sydney
  - Development Consent 486/15 (as amended) at 168 Walker Street, North Sydney
  - Development Consent 443/14 (as amended) at 100 Miller Street, North Sydney
  - Development Consent 350/12 (as amended) at 50 Miller Street, North Sydney

### 4.3. Amended Conditions

Table 1 identifies the proposed amendment to Condition D3.

*Table 1: Proposed amendments to Condition D3 – Hours of Construction*

PROPOSED MODIFICATIONS	
Condition No.	Proposed Amendment
D3	Construction, including the delivery of materials or machinery to and from the site, may only be carried out between the following hours: (a) between 7am and 6pm, Mondays to Fridays inclusive;

~~(b) between 8am and 1pm, Saturdays; and~~

(b) between 7am and 5pm, Saturdays; and

~~(c) no work may be carried out on Sundays or public holidays~~

(c) between 8am and 5pm, Sundays only the following internal fit-out and finishing works are permitted where such activities do not generate offensive noise and are limited to the following tasks:

- Installation of ceilings
- Painting
- Rendering
- Partition walls
- Wall sheeting
- Carpet laying
- Joinery
- Installation of internal services
- Light fitting
- Services installation.

No deliveries to the site are permitted on Sundays.

## 5. Section 4.55 Assessment

### 5.1. Overview

Section 4.55(1A)(a) of the Environmental Planning and Assessment Act 1979 requires the consent authority to be *“satisfied that the proposed modification is of minimal environmental impact”*.

The proposed modification relates to an amendment to construction hours to permit extended hours. The modification does not result in any changes to the built form and does not change the nature and substance of the approved development.

The proposed modification results in the same environmental impacts, compared to those previously assessed and considered acceptable by the Department by granting development consent to SSD-66826207. The development (as modified) will remain substantially the same as the development that was originally approved.

On this basis, the modification is considered to result in no more than minimal environmental impact and is suitable for assessment under Section 4.55(1A) of the EP&A Act.

### 5.2. Substantially the same development (s.4.55(1A)(b))

Section 4.55(1A)(b) of the Environmental Planning and Assessment Act 1979 requires the consent authority to be *“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 proposed modification is of *“minimal environmental impact”*, with the development as proposed to be modified being *“substantially the same development”* for the following reasons:

- The modification application does not propose any physical changes to the approved development.
- No change is proposed to the approved land use, height, floor space, bulk or scale.
- The modification is limited to construction hours which is temporary in nature.
- The environmental impacts of the modified development are substantially the same as the approved development.

### 5.3. Section 4.15(1) Considerations

Section 4.55(3) of the Act requires that in determining an application for the modification of a development consent the consent authority must take into consideration:

- (a) Such for the matters referred to in section 4.15(1) of the Act as are of relevance to the development the subject of the modification application, and
- (b) The reasons given by the consent authority for the grant of the consent that is sought to be modified.

## 5.4. Matters for consideration in section 4.15(1) of the Act

### 5.4.1. Environmental Planning Instruments

The North Sydney Local Environmental Plan 2013 (NSLEP 2013) is the primary environmental planning instrument that is applicable to the site. The site is zoned MU1 Mixed Use. The proposed construction hours do not alter the approved development's consistency with this instrument given that no built form changes are proposed. Further, there are no LEP clauses which relate to noise levels or construction hours.

Notwithstanding this, the proposed development remains consistent with the objectives of the zone as it:

- Contributes to the diversity of business and retail uses that generate employment opportunities.
- Encourages business and retail land uses on the ground floor.
- Creates an interesting and vibrant mixed use centre with safe, high quality urban environments with residential amenity.

### 5.4.2. Any proposed instrument

There are no proposed instruments applying to the site/area that are of relevance.

### 5.4.3. Development control plan

The North Sydney Development Control Plan (NSDCP 2013) does not apply to SSDs.

### 5.4.4. Any planning agreement

There is no planning agreements applying to the site.

### 5.4.5. The Regulations

With respect to Part 5 of Environmental Planning and Assessment Regulation (2021) (the Regulation) it is noted:

- This modification application is made by the owner of the land (s98(1)(a)) of the Regulation).
- The application is in the approved form and contains all information and documents required by s99(1) and s99(2) of the Regulation.
- The content of this application contains the information required by s100 of the Regulation.
- While the approved development form is a mixed-use proposal, the nature of the proposed modifications does not relate to the residential elements hence the requirements under s102 of the Regulation are not relevant.

### 5.4.6. Likely impacts of the development

The proposed modifications will result in negligible environmental impacts. The following assessment considers the likely impacts of the development.

#### Construction Noise Impacts

The modification application is accompanied by a Construction Noise and Vibration Management Plan prepared by Acoustic Logic which considers the potential impacts from the proposed extended construction hours. A summary of the key findings is provided below:

- In relation to the nearest sensitive receivers, the surrounding area is predominantly surrounded by commercial receivers as shown in the figure below (shown in red). The nearest residential receivers are located on Alexander Street (R1) and Pacific Highway (R2) as shown in the figure below (shown in green).



Figure 1 – Site & Surrounds including Surrounding Receivers

Figure 2: Site & Surrounds including Surrounding Receivers

- In relation to construction noise impacts, predicted noise levels have been estimated for the nearest noise sensitive receivers. The analysis of the results is set out below:
  - The activities with the greatest potential noise impacts on surrounding receivers have been identified as hydraulic/pneumatic hammering, use of concrete rock saws and jackhammer, and concrete pumping and concrete vibrators, especially when working near the site boundary. However, it is noted that works conducted with these plant items will predominantly occur during a relatively short period (i.e., excavation phase only).

Furthermore, it is noted that Condition D6 of the consent stipulates that high

noise generated activities such as rock hammering and sheet piling are to occur only between 8am to 12pm on Saturdays and therefore these activities will not occur during the proposed extension of construction hours. As such, there will be minimal noise impacts associated with the proposed extended hours of construction work.

- During the proposed extension of construction hours on Sundays, construction noise levels at residents will be below the Noise Management Level given all proposed works are internal.
- Noise levels from the use of powered hand tools are likely to decrease as construction progresses to higher levels and once the external façade of the building is installed. Reductions of up to -20dB can be expected when this occurs.
- In relation to vibration sources, the following have been identified as potentially producing significant ground vibration:
  - Hydraulic hammering (with excavator)
  - Pneumatic jackhammering
  - Concrete rock saw cutting
  - Bored piling rig
  - Vibratory roller

Vibration from these activities is expected to be significantly below amenity or damage risk management levels at all receivers.

- A range of mitigation measures can be implemented during construction works to minimise construction noise and vibration emissions which include selection of machinery plant, erection of acoustic barriers, silencing devices and establishment of site practices.
- The CNVMP details proposed reporting and response procedures which will be implemented in the event that complaints are received from neighbours in relation to noise and vibration.

In summary, noise exceedances of the Interim Construction Noise Guideline (ICNG) noise management levels at receivers surrounding the site will be marginal during the proposed extended Saturday construction hours. With the implementation of the mitigation measures identified in the Management Plan, construction noise impacts will be effectively controlled and managed in accordance with the ICNG.

In relation to vibration, residential receivers around the site are unlikely to be exposed to vibration levels exceeding the relevant vibration management levels for amenity, and not likely to exceed the damage risk vibration limits. Accordingly, as required by the ICNG, mitigation of these impacts are recommended in the ICNG.

## **Construction Environmental Management Impacts**

Condition C1 of the consent requires prior to the commencement of any work, the submission of a Construction Environmental Management Plan (CEMP) to be submitted to the certifier. A CEMP was prepared by Barker Ryan Stewart and submitted to the certifier (Ref. CC200015, Revision 2, dated 11/03/2024) to satisfy this condition.

The modification application is accompanied by an addendum to the submitted CEMP to reflect the extended construction hours. The addendum confirms the following:

1. Working hours by project program in Section 3.2 Table 3.1 are amended to include Sundays between 8am – 5pm for the internal fit out and finishing works only.
2. Limited working hours referred to in Section 7 ‘Operating Hours, Noise and Vibration Controls’ are amended to be inclusive of Sundays between 8am – 5pm for internal fit out and finishing works only. This provides a working hour limitation that addresses potential noise impacts on neighbouring residents and businesses during the fitout and finishing stage of the development.

## **Construction Traffic Impacts**

Allowing trucks to access the site between 7am and 5pm on Saturdays and allowing internal fit-out and finishing works on Sundays between 8am and 5pm would help to distribute vehicle movements more evenly throughout the day, reducing congestion during peak periods. Under the current condition of consent, all truck deliveries and movements are concentrated within standard construction hours on Saturdays, leading to higher traffic volumes. By enabling truck access to the site on Saturdays from 7am to 5pm, deliveries can be increasingly staged, easing pressure on the site’s access point along Alexander Street, surrounding roads and minimising disruptions to the community.

The proposed extended construction hours will not generate any greater impacts on the transport network in comparison to that contemplated under the approved Construction Traffic and Pedestrian Management Plan for the project. The extension of hours will allow for deliveries to be distributed across the weekend and will reduce impacts during the daytime period.

## **Construction Impacts**

Condition C1 of the consent relates to a Construction Environmental Management Plan and includes a requirement for a complaint handling procedure. Condition C3 of the consent relates to a Construction Noise and Vibration Management Sub-Plan and similarly requires a complaints management system that is to be implemented for the duration of the development.

Established complaints handling procedures are already in place and will continue to operate should any issues arise from the extended construction hours. Any concerns will be promptly addressed to ensure transparency and responsiveness. Deicorp is committed to working collaboratively with local residents to minimise disruptions, maintain positive community relationships, and ensure the project progresses smoothly.

#### 5.4.7. Suitability of the site and the public interest

The site remains suitable for the proposed development for the reasons outlined in the original SSDA. The modified development remains in the public interest and will not introduce any substantive change to the approved development.

#### 5.4.8. Reasons given for granting consent

The reasons given for granting consent remain relevant notwithstanding the proposed modifications. The proposed modifications will not compromise the high standard of design excellence that the approved building will exhibit or result in significant adverse environmental or amenity impacts.

## 6. Conclusion

This application seeks approval for an amendment to Condition D3 – Hours of Construction to permit extended construction hours of 7am – 5pm on Saturdays and to allow for internal fit out and finishing works between 8am and 5pm on Sundays.

As detailed in this report, the proposed modification warrants approval by the Department for the following reasons:

- The proposal is considered substantially the same development as the development for which consent was originally granted.
- The proposal remains consistent with the aims and objectives of the relevant environmental planning instruments and development control plan and will not result in any adverse impacts on the amenity of the locality.
- The proposal will have no adverse environmental impacts on the site or the properties in the vicinity of the site, given that there is no change to the overall final building form, scale, design, materials and function, as originally approved.
- The proposal will be in the public interest based on these benefits and the lack of adverse impacts.