

6 November 2019

2190589

Anthony Witherdin
Director - Key Sites Assessments
Department of Planning, Industry and Environment
320 Pitt Street
Sydney, NSW 2000

Dear Mr McNamara,

SECTION 4.55(1A) MODIFICATION APPLICATION – MODIFICATIONS TO STAGE 1B BASEMENT BARANGAROO SOUTH

This application has been prepared by Ethos Urban on behalf of Lendlease (Millers Point) Pty Ltd pursuant to section 4.55(1A) of the *Environmental Planning and Assessment Act 1979* (EP&A Act) to modify SSD 6960 relating to the Stage 1B Basement at Barangaroo South (the site). The proposed modification relates to adjustments to gross floor area (GFA) and minor layout changes in the Stage 1B Basement. Specifically, the application seeks approval for:

- Increase of non-residential GFA within the basement to a total of 65m².
- Minor adjustment to the basement layout.

This application identifies the consent, describes the proposed modifications and provides an assessment of the relevant matters contained in section 4.55(1A) of the EP&A Act. This application is accompanied by revised Architectural Drawings (**Attachment A**).

1.0 Background

The allocation of GFA within the Stage 1B Basement (SSD 6960) is outlined below. The Stage 1B Basement services the three residential towers of the One Sydney Harbour development above – Building R4A (SSD 6964), Building R4B (SSD 6965) and Building R5 (SSD 6966).

1. The Stage 1B Basement is located within Block 4A under the Concept Plan and was approved with 26m² of non-residential GFA.
2. The original approval for each tower contained an allocation of residential GFA in the basement, to provide for habitable rooms required for the servicing of the towers (e.g. security control room).
3. This provided for a combined total GFA of 132.4m² in the basement across SSD 6960, 6964, 6965 and 6966.
4. Through design development of the basement, a number of shared rooms and facilities have been adjusted and combined in the basement to service all towers. Further, it is likely that all shared facilities will be required from the completion of the first tower, which means it is more practical that all GFA related to basement uses is contained within the Stage 1B Basement approval, rather than separated across each tower that may be completed at different times.
5. Buildings R4A and R4B are currently being modified (for a number of minor changes including a revised apartment mix, façade design development and the extension of the wintergardens typology to all balconies) and two section 4.55 applications have been submitted to DPIE for assessment.
6. The Building R4A and R4B modification applications remove all residential GFA in the basement from SSD 6964 and 6965. All GFA in the Stage 1B Basement now relates to non-residential GFA only (except for Building R5).

7. Building R5 will be subject to a future modification to reallocate residential GFA out of the basement so that all three towers are consistent and to allow certification of the Stage 1B Basement as a whole. Building R5 is within Block 4B for the purpose of GFA calculations under the Concept Plan and therefore does not impact on the calculation of GFA within Block 4A.
8. This section 4.55 modification to the Stage 1B Basement is seeking to increase the approved non-residential GFA in the basement to cover uses such as the dockmaster's room, security control room, utility induction room and the operations manager's room and therefore provide a consolidated approach to the delivery of the development.

2.0 Consent proposed to be modified

Development consent SSD 6960 was granted by the Planning Assessment Commission on 7 March 2017 and approval was granted for:

Construction of the Stage 1B basement including remediation, bulk excavation, interim public domain, interim roadway, services, infrastructure and associated works.

The application has since been modified twice. The first modification to SSD 6960 was approved 5 April 2019, which approved minor changes to the approved basement layout. A second modification was approved on 31 July 2019 and related to amendments to the level of the basement top slab.

3.0 Proposed modifications to the consent

The proposed modifications to the development consent are predominantly administrative and relate to the calculation of GFA, however minor changes are also proposed to the basement layout of the dockmaster's room and plant areas. The proposed modifications are described in more detail below.

3.1 Modifications to the development

Minor physical modifications are proposed within the approved basement to adjust the geometry of the layout. These modifications are highlighted on the plans at **Attachment A** and do not affect the car parking areas.

3.2 Modifications to conditions

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

A1 Development Description

Except as amended by this consent, development consent is granted for the following:

- (a) Remediation, bulk excavation and construction of the Stage 1B basement including provision of basement sabs over four (4) levels to support future car parking;
- (b) Construction, fit out and use of common facilities within the basement such as plant rooms, loading docks, waste rooms and storage;
- (c) Construction of structural cores for the future Stage 1B residential buildings and above ground basement elements such as access ramps, risers, fire stairs and lifts;
- (d) Use of 26m² 65m² of gross floor area (GFA) within level B0 B1 of the basement for basement uses and additional GFA for end of trip facilities on level B0***
- (e) Provision of interim public domain, associated landscaping and temporary construction of part of Barangaroo Avenue; and
- (f) Provision of services and infrastructure within and adjacent to the basement and permanent stormwater infrastructure between Hickson Road and Darling Harbour.

A2 Development in Accordance with Plans and Documentation

The development will be undertaken in accordance with the following documents and plans:

Drawing No.	Revision	Name of Plan	Date
BB2_PA2_A100	C D	Basement Plan Level B0	3/08/2018 29.08.19
BB2_PA2_A101	D E	Basement Plan Level B1	5/02/19 29.08.19
BB2_PA2_A102	C D	Basement Plan Level B2	3/08/2018 29.08.19
BB2_PA2_A103	C D	Basement Plan Level B3	3/08/2018 29.08.19
BB2_PA2_A1014	C D	Basement Plan Level B4	3/08/2018 29.08.19

B28 Areas for Bicycle Parking and End of Trip Facilities

Prior to the issue of the relevant Construction Certificate, documentation including plans shall be submitted to the satisfaction of the Certifying Authority identifying the location of areas for bicycle parking, and the location ~~and total gross floor area~~ for end of trip facilities (storage, change rooms and showers) within level B0 **and B1** of the basement.

The bicycle areas shall be provided ~~in the upper levels~~ **on Levels B1 and B0** of the basement, grouped together in convenient, accessible areas close to main entries. The areas shall be sized to accommodate the provision of bicycle parking and end of trip facilities (storage, change rooms and showers) in accordance with the rates identified in the Barangaroo Concept Plan MP 06_0162 (as modified).

E3 GFA CERTIFICATION

A Registered Surveyor is to certify that the Gross Floor Area (GFA) of the development approved by this consent does not exceed ~~26m²~~ **65m²** for basement uses on level B1 **and B0**, ~~and an additional allocation of GFA for end of trip facilities on level B0 as required by Condition B28~~. Details shall be provided to the Certifying Authority demonstrating compliance with this condition prior to the issue of the relevant Occupation Certificate.

4.0 Substantially the same development

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 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:

1. There is no change to the approved physical parameters of the basement and the modification does not require any additional excavation or remediation.
2. The proposed modifications do not result in any change to the findings of the technical environmental reports prepared for SSD 6960 in relation to air quality, geotechnical conditions, acid sulphate soils, remediation, human health and archaeology.
3. The proposed modifications remain compliant with the maximum GFA permitted under the Barangaroo Concept Plan.

5.0 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 and the reasons given by the consent authority for the grant of the original consent.

The original application considered a range of potential environmental impacts, the following of which are unchanged as a result of the proposed modification:

1. Land use;
2. Open space and public access;
3. Air quality and odour;
4. Earthworks;
5. Sediment, erosion and dust;
6. Waste management;
7. Noise and vibration;
8. Contamination;
9. Hazard and risk;
10. Health impacts;
11. Heritage;
12. Visual impacts;
13. Environmental construction and site management;
14. Staging;
15. Sea level rise;
16. Infrastructure provision;
17. Ecologically sustainable development;
18. Geotechnical;
19. Tree removal; and
20. Consultation.

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.

5.1 Barangaroo Concept Plan

The development, as proposed to be modified, remains consistent with the applicable provisions of the Barangaroo Concept Plan, in particular Condition B2 which sets the maximum GFA. An assessment of the proposed GFA is outlined at **Table 1**.

Table 1 GFA assessment

Concept Plan (MOD 8) – Block 4A GFA maximum	Stage 1B Basement (as proposed to be modified)	Building R4A (as proposed to be modified)	Building R4B (as proposed to be modified)	Total	Assessment
Other Uses (Non-Residential) 813m ²	65	438	309	812	✓

Concept Plan (MOD 8) – Block 4A GFA maximum	Stage 1B Basement (as proposed to be modified)	Building R4A (as proposed to be modified)	Building R4B (as proposed to be modified)	Total	Assessment
Residential 86,166m ²	0	47,564	38,602	86,166	✓
Total 86,979m ²	65	48,002	38,911	86,978	✓

End of Trip (EOT) floor space is excluded from the overall GFA calculation as it does not meet the definition of 'gross floor area' under the *Standard Instrument (Local Environmental Plans) Order 2006* (Standard Instrument). This is the applicable definition of GFA under the State Significant Precincts SEPP, which states that:

“A word or expression used in this Part has the same meaning as it has in the standard instrument prescribed by the Standard Instrument (Local Environmental Plans) Order 2006 (as in force immediately before the commencement of the Standard Instrument (Local Environmental Plans) Amendment Order 2011) unless it is otherwise defined in this Part.” (Clause 2 of Part 12 – Schedule 3).

Accordingly, the Standard Instrument definition applies, as follows:

“gross floor area means the sum of the floor area of each floor of a building measured from the internal face of external walls, or from the internal face of walls separating the building from any other building, measured at a height of 1.4 metres above the floor, and includes:

- (a) the area of a mezzanine, and
- (b) habitable rooms in a basement or an attic, and
- (c) any shop, auditorium, cinema, and the like, in a basement or attic,

but excludes:

- (d) any area for common vertical circulation, such as lifts and stairs, and
- (e) any basement:
 - (i) storage, and
 - (ii) vehicular access, loading areas, garbage and services, and
- (f) plant rooms, lift towers and other areas used exclusively for mechanical services or ducting, and
- (g) car parking to meet any requirements of the consent authority (including access to that car parking), and
- (h) any space used for the loading or unloading of goods (including access to it), and
- (i) terraces and balconies with outer walls less than 1.4 metres high, and
- (j) voids above a floor at the level of a storey or storey above.”

(emphasis added)

Whilst 'habitable room' is not defined in the Standard Instrument or State Significant Precincts SEPP, other policies and case law assist in interpreting what is a 'habitable room'.

The Apartment Design Guide (ADG) outlines that:

“A habitable room is:

a room used for normal domestic activities, and includes a bedroom, living room, lounge room, music room, television room, kitchen, dining room, sewing room, study, playroom, family room and sunroom; but excludes a bathroom, laundry, water closet, pantry, walk-in wardrobe, corridor, hallway, lobby, photographic darkroom, clothes-drying room, and other spaces of a specialised nature occupied neither frequently nor for extended periods, as defined by the BCA.

A non-habitable room is:

a space of a specialised nature not occupied frequently or for extended periods, including a bathroom, laundry, water closet, pantry, walk-in wardrobe, corridor, hallway, lobby, photographic darkroom or clothes-drying room, as defined by the Building Codes of Australia (BCA)."

(emphasis added)

The BCA provides the following definition of a 'habitable room':

"a room used for normal domestic activities, and –

- (a) *excludes a bathroom, laundry, water closet, pantry, walk-in wardrobe, corridor, hallway, lobby, photographic, darkroom, clothes-drying room, and other spaces of a specialised nature occupied neither frequently nor for extended periods.*"

(emphasis added)

The BCA is part of the *National Construction Code* (NCC), which is referenced and given effect in NSW through the EP&A Act.

The definition of 'habitable room' in the ADG was recently applied in *Ozone Cronulla Pty Ltd v Sutherland Shire Council* [2019] NSWLEC 1133 (Ozone), where Commissioner Chilcott relied on the definition of 'habitable room' set out in the ADG to make a judgment on building separation.

Accordingly, the EOT facilities, which comprise bathrooms, showers, lockers and other bicycle storage, constitute non-habitable rooms and storage and do not meet the applicable definition of GFA. Therefore, they are excluded from the calculation of GFA.

5.2 Reasons for granting consent

The Planning Assessment Commission determination reports sets out the following reasons for approval of SSD 6960:

- Suitable monitoring, management and mitigation measures can be implemented to ensure an acceptable level of environmental performance.
- The basement will accommodate future development of the proposed residential buildings.
- The basement will not compromise the delivery of Hickson Park.

The proposed modification remains consistent with these reasons.

6.0 Conclusion

The proposed modifications relate to adjustments to GFA and minor layout changes in the Stage 1B Basement. The changes are compliant with the maximum GFA permitted under the Barangaroo Concept Plan (MOD 8) and do not result in any substantial changes to the Stage 1B Basement as approved.

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

- the proposed modification are of minimal environmental impact; and
- the development, as proposed to be modified, 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.

Yours sincerely,



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