

75-85 Harrington Street, The Rocks
Section 4.55(1A) Modification Application
SSD 7037 MOD 1

1. INTRODUCTION

This report is an assessment of an application to modify the State significant development (SSD) approval (SSD 7037) for a mixed-use development at 75-85 Harrington Street, The Rocks.

The application has been lodged by Golden Age and Hannas The Rocks Pty Ltd (the Applicant) pursuant to section 4.55(1A) of the *Environmental Planning and Assessment Act 1979* (EP&A Act). The application seeks approval modify a range of conditions relating to plan references, adaptable housing, mechanical ventilation, acoustics, road and rail noise and waste management.

2. SUBJECT SITE

The site is known as 75-85 Harrington Street ('Harrington Court') and is located at The Rocks, within the City of Sydney local government area (LGA). Situated directly to the north of the Cahill Expressway (**Figure 1**), the site is legally described as Lot 1 DP 777033. The site is currently owned by Place Management NSW (formerly the Sydney Harbour Foreshore Authority).



Figure 1: Site location shown in red (Source: EIS)

The site is bound by Harrington Street to the east, Gloucester Street to the west, the Cahill Expressway to the south and the historic Cumberland Place and Steps to the north. An east-west

pedestrian link, partially beneath the existing Harrington Court building, runs through the site between Harrington Street and Gloucester Street (see **Figure 2**).

The site has a total area of 2,110 m² and is generally rectangular in shape. The site slopes significantly from Gloucester Street to Harrington Street by approximately 10.2 m between the north-eastern corner and the north-western corner and 9.7 m between the south-western corner and south-eastern corner of the site.

Harrington Court currently comprises a five-storey commercial building constructed in the 1980s. The Baker's Terrace includes four attached terrace buildings that are listed on the State Heritage Register.

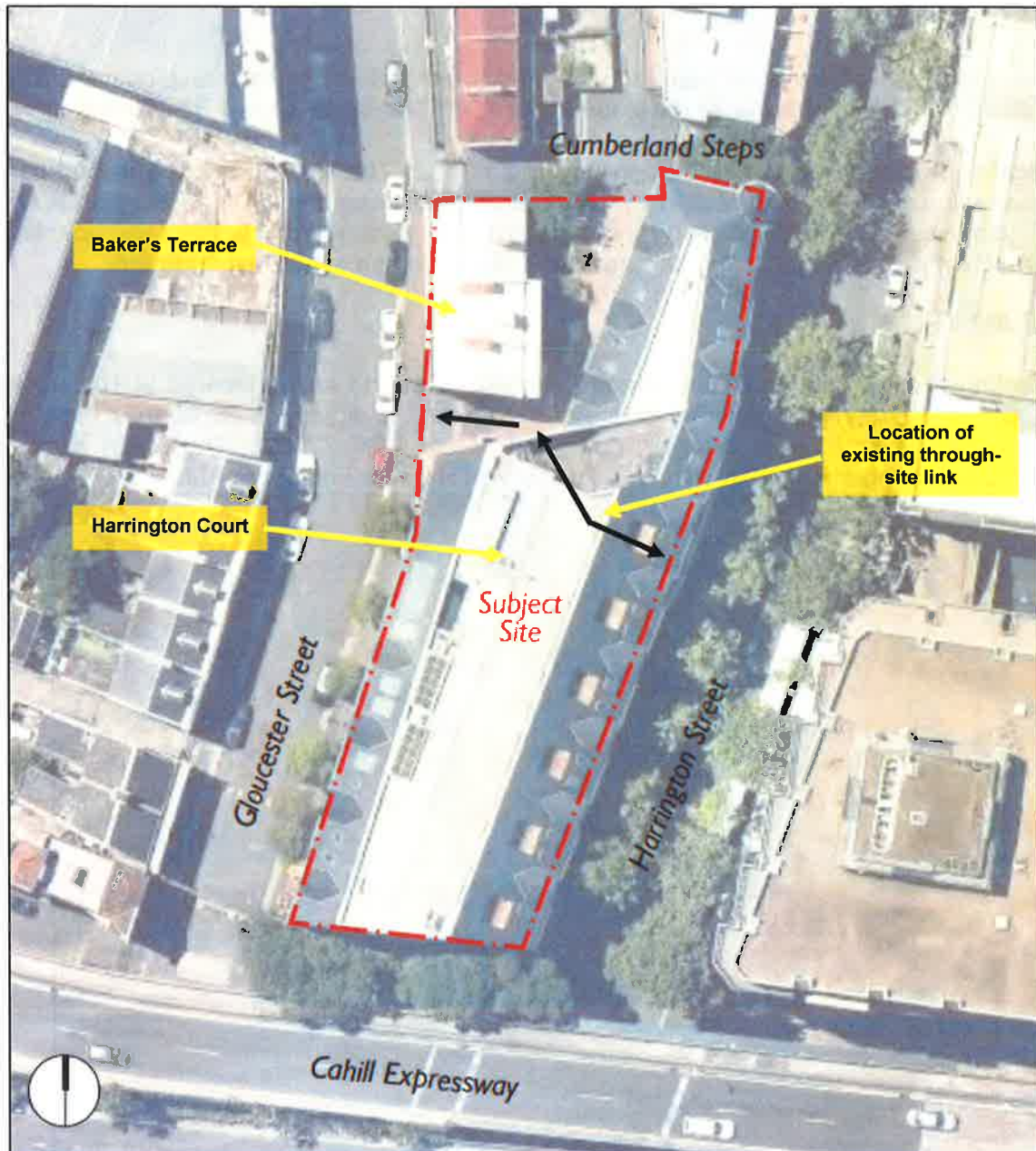
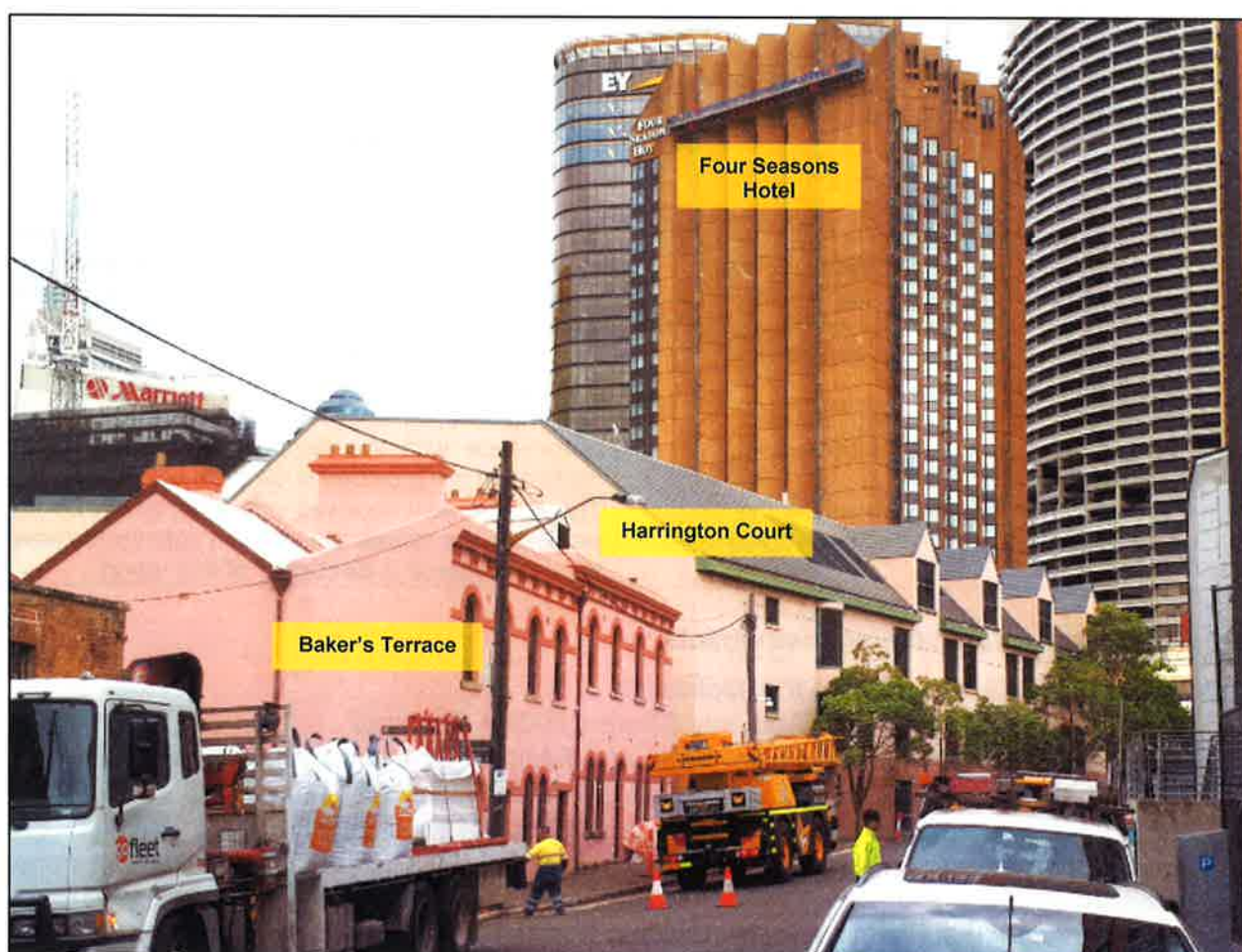


Figure 2: The site boundary outlined in red (Source: EIS)

Photographs of the existing buildings are provided at **Figures 3 and 4**.



**Figure 3: Harrington Court viewed from Harrington Street looking north
(Source: Department's photograph)**



**Figure 4: The Baker's Terrace and Harrington Court viewed from Gloucester Street looking south
(Source: Department's photograph)**

3. APPROVAL HISTORY

On 12 January 2018, the Independent Planning Commission approved the SSD application (SSD 7037) for demolition and construction of part seven and part nine-storey mixed-use building, a six-storey mixed use building with basement car parking and the adaptive re-use of The Baker's Terrace.

The development consent has not been modified prior to this application.

4. PROPOSED MODIFICATION

On 10 April 2018, the Applicant lodged a modification application (SSD 7037 MOD 1) seeking approval, under section 4.55(1A) of the EP&A Act, to amend a reference to an approved plan (Condition A2), stage the issue of Construction Certificates in respect of the acoustic assessment and road and rail noise (Conditions B7 and B8), modify the mechanical exhaust system (Condition B17), reduce the number of adaptable housing units from 12 to six (Condition B37), and delete a waste management plan reference (Condition F6).

5. STATUTORY CONSIDERATION

5.1 Modification of approval

Section 4.55(1A) of the EP&A Act requires the consent authority to be satisfied that the following matters in **Table 1** are addressed in respect of all applications that seek modification approvals.

Table 1: Section 4.55(1A) Modification involving minimal environmental impact

Section 4.55(1A)	Department's consideration
(a) that the proposed modification is of minimal environmental impact, and	Section 7 of this report provides an assessment of the impacts associated with the proposal. The Department is satisfied that the proposed modifications will have minimal environmental impact.
(b) 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), and	The proposed modification seeks approval for minor changes and does not result in any additional adverse impacts on the surrounding area. On this basis, the proposal would result in development that is substantially the same as the originally approved development.
(c) the application has been notified in accordance with the regulations, and	The modification application has been notified in accordance with the regulations. Details of the notification are provided in Section 6 of this report.
(d) any submission made concerning the proposed modification has been considered.	The Department received one submission on the proposal. The issues raised in the submission have been considered in Section 7 of this report.

5.2 Environmental Planning Instruments

The following EPIs are relevant to the application:

- Sydney Cove Redevelopment Authority Scheme (SCRA Scheme)
- State Environmental Planning Policy (State and Regional Development) 2011 (SRD 2011)
- State Environmental Planning Policy (Infrastructure) 2007 (ISEPP)
- State Environmental Planning Policy 55 – Remediation of Land (SEPP 55)
- State Environmental Planning Policy 65 (Design Quality of Residential Apartment Development) (SEPP 65)
- State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 (BASIX)
- Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005 (SREP 2005)
- Draft State Environmental Planning Policy (Environment).

The Department undertook a comprehensive assessment of the redevelopment against the above-mentioned EPIs in its original assessment. The Department has reviewed the proposal modification and considers the application complies with the relevant provisions of the EPIs.

5.3 Consent authority

The Director, Key Sites Assessments may determine the application under delegation as:

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

6. CONSULTATION

6.1 Consultation

The section 4.55(1A) modification application was notified in accordance with the *Environmental Planning & Assessment Regulation 2000*. The modification request was made publicly available on the Department's website and referred to City of Sydney (Council). Letters were also sent to adjoining owners/occupiers. The application was also made publicly available on the Department's website.

City of Sydney Council did not object to the proposal but made the following comments:

Environmental impact to adjoining residential properties

Council acknowledge that although the horizontal exhaust system is compliant with Australian Standards, the odour and particle discharge from the food premises could adversely impact the residential properties on Level 2. Council require architectural and operational plans to support the proposed change to Condition B17.

Number of adaptable apartments provided

Council referred to the Sydney Development Control Plan 2012 (SDCP 2012) rate of 15% as being appropriate, noting the proposal to reduce the number of adaptable units to six reflects a rate of 10% thus delivering a shortfall of three adaptable units.

No public submissions were received on the proposal.

6.2 Response to Submissions

Following the notification of the modification application, the Department placed copies of all submissions received on its website and requested the Applicant provide a response to Council's concerns regarding Condition B17 and B37.

On 15 June 2018, the Applicant provided a Response to Submissions (RtS) (**Appendix A**). The RtS contained further technical justification in support of the proposed changes.

The Department made the RtS publicly available on its website.

7. ASSESSMENT

The Department considers the key issues associated with the proposed modification to be the number of adaptable housing units and the mechanical ventilation arrangements.

All other issues are considered in **Table 2** below.

7.1 Number of Adaptable Housing Units

The modification seeks to reduce the required number of adaptable units within the development from 12 of 58 units to six by modifying Condition B37. This represents a reduction in the rate of

adaptable housing from 20% to 10 %.

The Applicant has justified the proposed changes by stating:

- the Apartment Design Guide (ADG) does not stipulate a rate of adaptable apartments
- other SSD applications in the City of Sydney LGA have been approved with significantly lower rates of adaptable units
- amending the design scheme would be impractical.

Council has advised that 15% of the apartments should be adaptable apartments, which reflects the rate within SDCP 2012.

Upon review, the Department notes the ADG provides a 20% benchmark in relation to the proportion of apartments that incorporate the Living Housing Guideline's silver level universal design features (universal design), noting this is different to adaptable housing. The Applicant has confirmed that the proposal meets the benchmark in the ADG as 20% of total apartments have incorporated universal design.

The Department therefore recommends a condition be imposed that more appropriately requires 20% of apartments incorporate the Living Housing Guideline's silver level universal design features.

The Department acknowledges Council's view that 15% of the apartments should be adaptable, and that this is reflective of the design guidance provided in the ADG (as it refers to relevant council policy). However, the Department is satisfied that an adaptable apartment rate of 10% is acceptable as the proposal (1) otherwise achieves the 20% universal design benchmark in the ADG and (2) the approved apartments provide layouts that are flexible and incorporate a range of lifestyle needs by:

- all units exceeding the ADG design criteria in relation to size and layout
- incorporating alternative design solutions (provided in the ADG) such as high levels of solar access and convenient access to high quality and well-designed communal and public areas.

7.2 Mechanical Ventilation

The Applicant seeks to alter the requirement for all future mechanical ventilation systems to discharge exhaust air exclusively at roof level so that a horizontal kitchen exhaust system can be installed.

In response to concerns raised by Council, the Applicant's RtS advises any future tenancy fitout would be required to install an exhaust filtering treatment system that will separately deal with smoke, grease and cooking odours. A combination of filter systems would be applied including standard grease filters (prefiltering grease particles), ozone generation (grease and odour), electrostatic filters (smoke) and carbon filters (odour).

The Department notes the combination of filters associated with the horizontal kitchen exhaust system would mitigate the risk of amenity impacts to the residential apartments above (smoke and odour) and would remove air products that can tarnish the façade prior to the discharge point. The Department also notes the tenant will be obliged to provide a detailed maintenance and service regime plan to ensure the system operates at its highest efficiency.

The Department is therefore satisfied the horizontal kitchen exhaust system would have the appropriate filters to ensure residential amenity is not compromised, the façade would not be tarnished, and that maintenance of the system would ensure it operates efficiently.

The Department concludes the proposed amendment to Condition B17 is acceptable.

7.3 Other issues

Table 2: Assessment of other issues

Issue	Department's consideration	Recommendation
Condition A2 Terms of Consent	The Applicant seeks approval to amend Condition A2 (Schedule of Drawings) so that the GFA Drawing (DA-2800) references the 9 November 2017 instead of the 1 November 2017. The Department has checked the Drawing and is satisfied the date change is minor and administrative in nature.	Amend Condition as required
Condition B7 – Compliance with Acoustic Assessment	The Applicant seeks to modify Condition B7 by staging the Construction Certificates. The first stage will include demolition, excavation and site preparation works. The second stage will involve design for construction. The Applicant is seeking that the Acoustic Assessment report be provided prior to the issue of the second Construction Certificate. Council did not raise any issue to the proposed amendment. The Department has reviewed the proposed staging and concludes that this only affects the timing of the lodgement of the report and will not result in any adverse environmental impacts. Therefore, the Department considers the modification to be acceptable.	Amend Condition as required
Condition B8 – Road and Rail and Vibration criteria for Sensitive Developments	The Applicant seeks to modify Condition B8 by requiring the evidence that the building's design and construction complies with road traffic noise levels to be provided prior to the issue of Construction Certificate 2. Council did not raise any issue to the proposed amendment. The Department has reviewed the proposed staging and concludes that this will not result in any adverse environmental impacts. Therefore, the Department considers the modification to be acceptable.	Amend Condition as required

8. CONCLUSION

The Department has assessed the modification application and supporting information in accordance with the relevant requirements of the EP&A Act. The Department's assessment concludes that the proposed modification is appropriate as the proposed changes would not result in adverse environmental impacts and Council has not objected to the proposal.

Consequently, the Department concludes the proposed modification should be approved, subject to conditions.

9. RECOMMENDATION

It is recommended that the Director, Key Sites Assessments, as delegate of the Minister for Planning:

- **consider** the findings and recommendations of this report;
- **determine** that the application SSD 7037 MOD 1 falls within the scope of section 4.55(1A) of the EP&A Act;
- **modify the consent** (SSD 7037); and
- **sign** the attached modification of development consent (**Attachment A**).

Prepared by:
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Planning Officer

Recommended by:



Cameron Sargent
Team Leader
Key Sites Assessments

DECISION

Approved

 17.7.18.

Ben Lusher
Director
Key Sites Assessments

as delegate of the Minister for Planning

APPENDIX A: MODIFICATION OF DEVELOPMENT CONSENT

A copy of the modification of development consent can be found on the Department's website at:

http://www.majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=9261

APPENDIX B: SUPPORTING INFORMATION

The following supporting documents and supporting information to this assessment report can be found on the Department's website as follows:

1. Modification request

http://www.majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=9261

2. Submissions

http://www.majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=9261

3. Response to Submissions

http://www.majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=9261