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19 June 2018

Ms Carolyn McNally  
Secretary  
NSW Department of Planning and Environment  
320 Pitt Street  
SYDNEY NSW 2000

**Attention:** Andy Nixey (Principal Planner – Key Sites Assessments)  
Lewis Demertzi (Student Planning Officer – Key Sites Assessments)

Dear Carolyn,

## **SECTION 4.55 (1A) MODIFICATION TO SSD 7087 | 75-85 HARRINGTON STREET, THE ROCKS | RESPONSE TO SUBMISSIONS**

This letter has been prepared to address the matters raised by the City of Sydney (the City) in their correspondence of 4 May 2018 regarding SSD 7087 Mod 1 (the application).

### **AMENDMENT TO CONDITION B17**

In response to Council's comments regarding the proposed horizontal kitchen exhaust discharge, the applicant wishes to highlight:

- Any tenancy fitout will be required to install an exhaust treatment system that will separately deal with smoke, grease and cooking odours, as required.
- Such a system removes the air product that can tarnish the façade prior to the discharge point, mitigating the risk of façade spoiling or amenity impacts to residential apartments above.
- Further, the tenant will be obliged to provide a detailed maintenance and service regime plan to ensure that the filtration system operates at its highest efficiency.

For further information, please refer to the letter prepared by VOS Group (Appendix A). We trust this information satisfactorily addresses Council's concern.

**Accordingly, the applicant requests this condition be amended to:**

*"B17 The mechanical exhaust systems for the ground floor tenancies are to be designed to be capable of accommodating exhaust requirements in accordance with relevant Australia Standards, in order to allow for the event that any of the tenancies are approved for future use by food premises or other uses which require mechanical exhaust. ~~Any exhaust system servicing an area where food is being cooked must discharge exhaust air at roof level.~~"*

## AMENDMENT TO CONDITION B37

Through correspondence between the applicant and the NSW Department of Planning and Environment (NSW DPE), it was clarified that despite stamping drawing DA-2025 – Revision R (which shows six adaptable apartments), Condition B37 was deliberately drafted to require 12 adaptable apartments (which equates to 20% of the overall development yield).

The applicant requests this condition be amended to reflect six adaptable apartments for the following reasons:

### **1. The environmental planning instruments that apply to the application do not require a 20% provision of adaptable apartments**

The residential apartment component of the project has been prepared in accordance with *State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development* (SEPP 65) and the Apartment Design Guide (ADG).

Objective 4Q-2 of the ADG states *'a variety of apartments with adaptable designs are provided'*. The design guidance pertaining to this objective includes the following reference *'Adaptable housing should be provided in accordance with the relevant council policy'*.

Although the site is within the City of Sydney Local Government Area (LGA), the provisions of the Sydney Local Environmental Plan 2012 do not apply to development in The Rocks. The planning controls relevant to the subject site are contained within several separate State Environmental Planning Policies (SEPPs), principally the (deemed SEPP) Sydney Cove Redevelopment Authority Scheme (SCRA Scheme).

Clause 11 of State Environmental Planning Policy (State and Regional Development) 2011 also clarifies that the application of Development Control Plans is excluded when assessing SSD projects<sup>1</sup>.

### **2. The proposed provision of adaptable housing is an acceptable access planning outcome and has precedent in other relevant approvals**

Accordingly, the project team (guided by Morris Goding Access Consulting) took cues from relevant precedent State Significant Development (SSD) applications in the City of Sydney to determine what ratio would provide an acceptable access planning outcome that met the intent of ADG Objective 4Q-2. It was concluded that a 10% provision of adaptable housing was appropriate for the development.

The 10% ratio of adaptable housing was maintained throughout all stages of the SSD application and was not queried by NSW DPE at any point during the 17-month assessment process (August 2016 to January 2018).

The technical rationale for this percentage is further explained in the letter provided by MGAC appended to this correspondence. We also note the following approved SSD applications which have provided the same (or lower) provision of adaptable apartments in the Sydney LGA (refer to Table 1):

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<sup>1</sup> Sydney Development Control Plan 2012 (Section 3.12.2) requires 15% of dwellings to be adaptable, which would equate to nine apartments in SSD 7087, not 12 (as conditioned).

Table 1 – Precedent SSD Applications in Sydney LGA

Application	Adaptable Unit Provision
SSD-6011	1.9%
SSD 14_6633	2.6%
SSD 14_6626	1.5%

**3. Attempting to retrofit an additional six adaptable housing apartments into the approved scheme would be impractical**

Converting apartments to adaptable would not be a simple or practical task at this stage of the process (i.e. post-determination). Apartment sales have progressed and so to the design and documentation of the building. The implications in space planning terms would include:

- Bedrooms would need to be removed to accommodate larger bathrooms. This would modify the approved apartment mix.
- Apartment corridor widths would need to be widened, probably leading to undesirable ‘dog leg’ configurations. Existing corridor layouts are already constrained by stair, stair transfer, structure and geometry.
- Australian Standard AS4299 – Adaptable Housing requires accessible car spaces to be allocated at a rate of one space per adaptable apartment. Retrofitting adaptable apartments would require further redesign to the basement car parking area – noting that redesign has already occurred due to the PAC approval requiring the applicant to reduce 10 spaces (down to 53).
- In combination – these factors would likely lead to a fundamental rethink of the apartment and basements floorplans requiring multiple amendments to the approved SSD – beyond simply the adaptable apartment ratio.

Considering the above together with the inconsistencies between the stamped plans and conditions of consent, amendments at this stage would have unreasonably burdensome cost and timing implications for the applicant.

**Accordingly, the applicant requests this condition be amended to:**

*“B37 Prior to issue of the relevant Construction Certificate, the Certifying Authority is to ensure that the building has been designed to accommodate a total of ~~12~~ six adaptable residential units and that the requirements are referenced on the relevant Construction Certificate drawings. In addition, information shall be provided confirming:*

*a) the required number of units are able to be adapted for people with a disability in accordance with the BCA; and*

*b) compliance with Australian Standard AS4299 – Adaptable Housing.”*



## CONCLUSION

The applicant has demonstrated through the original Section 4.55(1A) Modification request and this correspondence that the proposed modifications will result in:

- Substantially the same development for which the consent was granted.
- The delivery of the project in a more efficient and coordinated manner; and
- Minimal and inconsequential environmental impact.

In summary, the proposal can be supported on environmental planning grounds and warrants the support of the Minister. We therefore recommend that approval for modification be granted, subject to the conditions proposed by the applicant.

If you have any questions please don't hesitate to contact me on (02) 8233 7606.

Yours sincerely,

A handwritten signature in blue ink, appearing to read "A. Harvey".

Andrew Harvey  
Director

Enclosed: Appendix A: Letter prepared by VOS Group  
Appendix B: Letter prepared by Morris Goding Accessibility Consulting