



**TOWER 2, LEVEL 23
DARLING PARK, 201 SUSSEX ST
SYDNEY NSW 2000**

URBIS.COM.AU
Urbis Pty Ltd
ABN 50 105 256 228

20 December 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)

Dear Andy,

SECTION 4.55 (2) MODIFICATION 2 TO SSD 7037 | 75-85 HARRINGTON STREET, THE ROCKS

This application has been prepared by Urbis on behalf of Golden Age and Hannas The Rocks Pty Ltd (the Applicant) and is made to the NSW Department of Planning and Environment (NSW DPE), seeking amendment to SSD 7037 pursuant to Section 4.55(2) of the *Environmental Planning and Assessment Act 1979* (EP&A Act).

The modification arises from the continued design development of the building and incorporates internal replanning and minor external amendments. The applicant has also addressed the conditions contained in Part B2 of the SSD 7037 consent in this Modification application. This Modification also seeks to rationalise consent conditions relating to ESD/BASIX which have effectively been superseded by the updated suite of plans and documents.

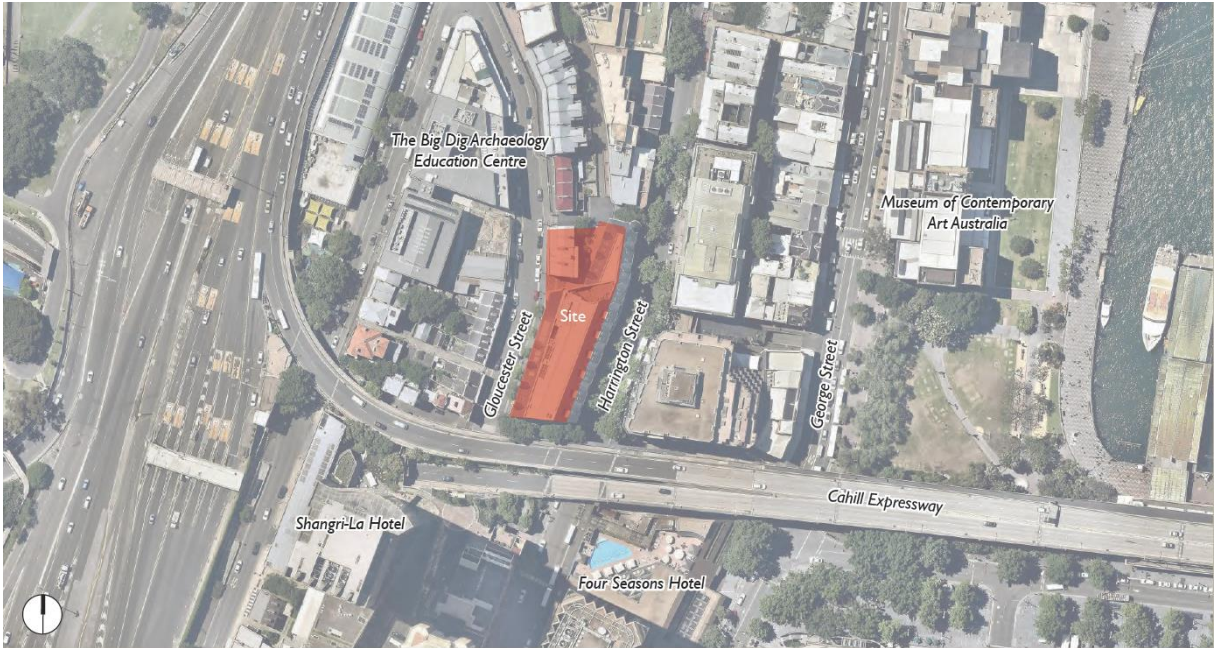
This letter describes the proposed modifications and provides a planning assessment of the relevant matters for consideration contained in Section 4.55 of the EP&A Act and is supported by Architectural and Landscape drawings from FJMT. The package includes an updated Design Verification Statement and BASIX certificate in accordance with clause 115(3) and 115(6) of the *Environmental Planning and Assessment Regulation 2000* and a Heritage Impact Statement prepared by Urbis.

1. THE SITE

SSD 7037 relates to land known as 75-85 Harrington Street, The Rocks – legally described as Lot 1 DP 777033 (refer to Figure 1 for site aerial). Place Management NSW (PM NSW), formerly known as Sydney Harbour Foreshore Authority, are the landowners and the applicant is the long-term leaseholder.

The 2,110 sqm site currently accommodates a seven-storey 1980s commercial office building (known as 'Harrington Court') and four attached terraces, known as the 'Baker's Terraces' which are retained on the State Heritage Register. The site and surrounding area form part of The Rocks located to the north of the Sydney Central Business District (CBD) and within the City of Sydney Council (Council) local government area (LGA).

Figure 1 – Site Aerial



Source: SSD 7037 EIS

2. BACKGROUND

2.1. ORIGINAL SSD CONSENT

On 12 January 2018, development consent was granted by the (former) Planning Assessment Commission (PAC). The approved development consisted of:

- Demolition of the existing ‘Harrington Court’ commercial building (85 Harrington Street).
- Construction of two mixed-use buildings over a combined basement, comprising:
 - Building 1: Part seven/part nine storeys fronting Gloucester Street and Harrington Street; and
 - Building 2: Six storeys fronting Harrington Street.
- Providing a total Gross Floor Area (GFA) of 9,308 sqm, comprising:
 - 1,132 sqm of commercial GFA (Building 1).
 - 927 sqm of retail GFA (including 136 sqm in the State Heritage Listed ‘Baker’s Terrace’); and
 - 7,249 sqm of residential GFA comprising 58 units and townhouses.
- Creation of a new pedestrian through-site link between Harrington Street and Gloucester Street, including new public lift access.

- Creation of a new vehicular access into the site via Harrington Street.
- Excavation for a two-level basement car park with 53 car parking spaces and five motorcycle spaces;
- Creation of a new public plaza located between Building 1, Building 2 and the Baker's Terrace.
- Undertaking adaptive re-use works to Baker's Terrace, including internal conversions for various uses, and conservation and maintenance works.

2.2. MODIFICATION 1

On 17 July 2018, NSW DPE granted development consent to modify the following conditions from the original approval:

- A2 (Terms of Consent).
- B7 (Compliance with Acoustic Assessment).
- B8 (Road and Rail Noise and Vibration Criteria for Sensitive Developments).
- B17 (Mechanical Ventilation).
- B37 (Adaptable Housing); and
- F6 (Waste Management).

This modification sought to correct minor errors in the original PAC approved consent, facilitate an orderly construction program and to enable a horizontal exhaust discharge for the ground floor retail.

3. PROPOSED DEVELOPMENT

This Section 4.55(2) Modification application pertains to three discrete facets:

1. Satisfaction of Condition B2 through submission of amended architectural plans to the Secretary (see Section 3.1).
2. Modifications arising from the continued design development of the building, relating to architecture and landscape (see Section 3.2).
3. Updating Conditions E11, E12, E19 and B40-43 relating to ESD/BASIX initiatives (see Section 3.3).

These are described in further detail within the Architectural and Landscape drawings appended to this letter, together with supporting BASIX information.

3.1. SATISFACTION OF CONDITION B2

Refer to Table 1 for a breakdown of how each part of Condition B2 has been satisfied through an amended architectural plan.

Table 1 – References to Satisfaction of Condition B2

Condition	Drawing Reference
<p>Prior to the issue of any Construction Certificate, the following amended architectural plans / elevations and documentation shall be prepared for review and approved by the Secretary:</p> <p>(a) a plenum, as shown indicatively on drawing DA-4200, shall be provided on levels 2, 3, 4 and 5 at the northern end of the communal corridor of Building 1;</p>	<p>Drawing DA-9900</p>
<p>(b) a revised Level 1 Floor Plan (drawing number DA-2002) detailing the retention of all other fabric (basement walls) that has been assigned a significance grading of 'High' and 'Exceptional' in the basement of the Bakers Terraces as indicated in the Conservation Management Plan, Bakers Terrace, 66-68 & 70-72 Gloucester Street, The Rocks, prepared by Urbis, dated January 2016; and</p>	<p>Drawing DA-9901</p>
<p>(c) revised basement level floorplans illustrating a maximum of 53 car parking spaces consistent with the requirements of Condition B29. The plans must include details of alternative uses for the area of the deleted car parking spaces.</p>	<p>Drawings DA-2011 and DA-2012</p> <p>Note: due to the change in the apartment mix (i.e. two oversized 1-bed apartments being converted to 2-bed); the Mod proposes 54 car spaces, calculated in accordance with SDCP 2012 rates. This is further discussed in Section 4.2.5 below.</p>

3.2. PROPOSED MODIFICATIONS TO THE DEVELOPMENT – BUILT FORM

The modification has been prepared to address various matters that have arisen (and impacted the scheme) due to ongoing design development; and consultation with the landowner, PM NSW.

- The modification generally relates to external changes to 'Block 1' and 'Block 2'. The changes are within the existing built form/scale and do not alter the architectural language of the building.
- Amendments are proposed to the State-listed Baker's Terrace, which are largely internal; and the rear (public) courtyard that forms part of Cambridge Street Lane.
- Landscape modifications have resulted from further design development and understanding of the complex levels on site. The revised scheme/levels are driven principally to provide a more integrated equitable access to the basement, courtyard and laneway areas.

These are summarised at a high level below in Sections 3.2.1, 3.2.2 and 3.2.3. Detailed schedules which describe and explain (in terms of reasoning and impact) each amendment have been provided by FJMT and are included at Appendix C (Architecture) and Appendix F (Landscape).

The additional impacts arising from these changes (beyond the approved scheme) are discussed in Section 4.1.

3.2.1. Main Building Modifications (Block 1 and Block 2)

- Additional louvred opening to the western side of the roof to provide ventilation for plant.
- Minor alterations to terrace facade break up on Harrington Street to provide greater design amenity to living rooms.
- Minor alterations to Harrington Street facades, and outer north facades.
- Amendment to the Block 2 unit mix. Two oversized 1-bedroom apartments have been changed to 2-bedroom apartments.

3.2.2. Baker's Terrace Modifications

Basement Level

- Internal modifications to retain all internal walls that are likely structural and represent the original layout that are currently enclosed behind a 1990s brick skin internal wall.
- Clarification on the original basement RLs.

Ground Floor

- Internal stair to southern terraces relocated to front portion of the terrace.
- Relocation of dining room and bathrooms.

First Floor

- Relocation of the stair within the northern-most terrace.

- Changes to the floor level to the norther pair of terraces so that the FFL of Level 1 is 29.650 to the two front bedrooms via a new floor frame on top of the existing structure.

3.2.3. Landscape Modifications

- The major aesthetic change is the sculptural form that encases the access ramp and provides seating, planting and interpretation areas.
- Revised paving has sought to further interpret the approximate alignment of Cambridge Place, formerly Cumberland Place.
- Nine existing street trees along the Harrington Street frontage are proposed for removal. They will be replaced with five new Plane trees.

3.3. PROPOSED MODIFICATIONS TO THE CONSENT – ESD AND BASIX

The original SSDA consent contained various conditions relating to ESD and BASIX; and referred to an ESD report prepared by Cundall in February 2016. The ESD Report (February 2016) has since been superseded by the updated BASIX targets/certificates. The conditions proposed for amendment are E11, E12, E19 and B40-B43:

E11 Environmental Performance

*E11 Prior to the issue of the any Occupation Certificate, the applicant shall implement the commitments outlined in BASIX Certificate No. ~~686596M_02~~ **689521M_03 and 686596M_03**.*

Explanation: updating reference to most recent BASIX certificates that applies to the development.

E12 Environmental Performance (and associated Conditions B40-B43)

*E12 All non-residential environmental commitments referred to in ~~Conditions B40 to B43~~ **ESD Report, prepared by Cundall, dated November 2018** for the development must be fulfilled prior to the issue of any Occupation Certificate.*

~~B40 All toilets installed within the non-residential components of the development must be of water efficient dual flush capacity with at least 4 star rating under the Water Efficiency and Labelling Scheme (WELS). The details must be submitted to the Certifying Authority prior to the issue of the relevant Construction Certificate being issued for above ground works.~~

~~B41 All taps and shower heads installed within the non-residential components of the development must be water efficient with at least a 3 star rating under the Water Efficiency and Labelling Scheme (WELS), where available. The details must be submitted to the Certifying Authority prior to issue of the relevant Construction Certificate for services and finishes works.~~

~~B42 New urinal suites, urinals and urinal flushing control mechanisms installed within the non-residential components of the development must demonstrate that products have been selected with at least a 4 star rating under the Water Efficiency and Labelling Scheme (WELS).~~

~~B43 Systems must include 'smart controls' to reduce unnecessary flushing. Continuous flushing systems are not approved. Details are to be submitted to the Certifying Authority prior to the issue of the relevant Construction Certificate.~~

Explanation: by updating Condition E12 to refer to the ESD Report (November 2018), which includes the objectives stated in Conditions B40-B43, these conditions become redundant and are not needed in the instrument of approval.

E19 Environmental Sustainable Development

~~E19 — Prior to the issue of an Occupation Certificate, evidence shall be submitted to the PCA demonstrating compliance with the recommendations and principles highlighted within the ESD Report, prepared by Cundall, dated February 2016 and submitted with the EIS.~~

Explanation: by amending Condition E11 and Condition E12 above; Condition E19 becomes redundant as the Applicant is already obliged to submit evidence the commitments outlined in the BASIX Certificates and ESD Report have been fulfilled prior to OC.

4. PLANNING ASSESSMENT

4.1. SUBSTANTIALLY THE SAME DEVELOPMENT

Section 4.55(2)(a) 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 NSW Land and Environment Court has established several precedents as to what may be considered as being ‘*substantially the same development*’, and what should be factored into the consideration of this threshold test.

Principles drawn from the judgments include that:

- The term ‘substantially’ means ‘essentially or materially having the same essence’.
- When a consent authority makes a determination as to whether a development is substantially the same it is a question of fact and degree and is not a question of law.
- The term to ‘modify’ means to ‘alter without radical transformation’.
- In comparing the approved development and the development as proposed to be modified it is necessary to undertake a qualitative and quantitative assessment of the developments in their proper context, and
- To undertake a numeric or quantitative assessment of the modification only in the absence of a qualitative assessment would be flawed.

These considerations apply to the modification of a development through design modifications as well as amendments to conditions that impact the nature of the proposal.

The consideration of the substantially the same development test should not only include the physical characteristics of the approved and modified schemes, but also the nature and magnitude of the impacts of the developments. In these respects, the modified scheme should be ‘*essentially or materially*’ the same as that originally approved.



An assessment of the qualitative and quantitative elements of the development approved and as proposed to be modified are provided below:

4.1.1. Qualitative Comparison

The proposal is substantially the same development, in a qualitative sense, as that originally approved because it:

- Does not propose any change of land use.
- Does not diminish the architectural or landscape quality (or language) of the FJMT-designed building.
- Does not propose any changes which would have a detrimental impact on Heritage values.
- Does not result in any perceivable visual impact(s) from the public domain.

4.1.2. Quantitative Comparison

The proposal is substantially the same development, in a quantitative sense, as that originally approved because it:

- Does not propose any change to the approved SCRA Scheme amendment.
- Does not propose any change to the maximum height and number of storeys.
- Does not propose any change to GFA.
- Does not modify compliance with the ADG in terms of solar access or ventilation.

4.1.3. Conclusion

The modifications will not result in any significant additional social and environmental impacts as previously assessed for the approved development. A detailed assessment of the potential impacts of the proposed modifications is provided at Section 4.2 below.

Based on a qualitative and quantitative assessment of the proposed modifications, the development as proposed to be modified can be considered substantially the same development as that approved under SSD 7037 and will assist in the delivery of the building in a more efficient and coordinated manner.

4.2. ENVIRONMENTAL IMPACT ASSESSMENT

Section 4.55 (3) requires the consent authority to “take into consideration such of the matters referred to in section 4.15 (1) as are of relevance to the development the subject of the application”. The EIS (July 2016) and Response to Submissions (August 2017) submitted as part of SSD 7037 addressed:

- The provisions of all relevant environmental planning instruments.
- The likely impacts of the development – environmental, social and economic.
- The suitability of the site for the development; and
- The public interest.

The assessment of the modified proposal against Section 4.55(3) remains unchanged with respect to the above considerations given the reasons outlined in Section 4.1, except for the following matters which require further assessment:

4.2.1. Crime Prevention Through Environmental Design (CPTED)

The amended landscape proposal does not give rise to any additional CPTED impacts. With regard to the Cambridge Place courtyard and new connecting stair that traverses the site from east/west, the following matters have been considered:

- Cambridge Place has an active interface with several retail tenancies. The retail spaces include windows and glazing which enables clear site lines onto the courtyard.
- The Baker’s Terrace Balconies and the commercial tenancy in Block 1 also provide passive surveillance to the ground floor public spaces.
- Appropriate levels of lighting and illumination will be provided throughout the site to ensure visibility between indoor and outdoor areas.
- The following elements are not included in the design: blank walls, hidden recesses and/or entrapment areas.

4.2.2. Heritage

The heritage assessment primarily relates to the following listing relevant to the site:

- The buildings comprising the Baker’s Terrace are separately listed on the State Heritage Register as 66-68 Gloucester Street (item 1530) and 70-72 Gloucester Street (item 1531).
- In addition, they are separately listed as two buildings on the Sydney Harbour Foreshore Authority S170 Register as 66-68 Gloucester Street (item 4500100) and 70-72 Gloucester Street (item 4500101).
- The site as a whole is also within The Rocks Conservation Area, also listed on the Sydney Harbour Foreshore Authority S170 Register (item 4500458); and is in the vicinity of a number of heritage-listed items.

In assessing the impacts of the proposed amendments, Urbis has made the following conclusions:

Baker's Terrace

- The changes are internal and do not remove or alter fabric of any heritage significance.
- Changes to the floor level to the norther pair of terraces will involve the inclusion of a single step in the hallway and a new raised floor level to provide outlook from the bedroom windows. This new step and floor structure will be completely reversible in the future. Therefore, its assessed that this element has no negative heritage impact.

Landscape

- The proposed sculptural form in the Cambridge Place Courtyard has been designed in conjunction with artisans to provide a contemporary, site-specific response.
- The sculptural form(s) utilise this regeneration opportunity, in a highly public and unique space, to interpret the heritage context.
- The revised paving further defines the design to interpret the approximate location of the former Cumberland Place alignment.

Block 1 Roof

- The proposed changes to the roof do not alter the building's overall form, scale or presentation.

Gloucester Street Terraces

- The amendment does not change the overall form, scale or presentation of the contemporary terrace form.
- Nor does it alter the resolved proportion and scaling of these architectural elements and their presentation and cohesion to the heritage streetscape.

Facades

- The changes do not alter the design intent or architectural language of the building.

Urbis Heritage concludes:

"...the proposed works are considered minor generally and where more substantial around the courtyard are supported on heritage grounds as a well resolved contemporary response embracing the heritage character and are recommended for approval."

4.2.3. Street Tree Replanting

FJMT has taken cues from PM NSW's 'Tree Masterplan – The Rocks and Circular Quay' (November 2010) in devising the landscape scheme.

The site specific sub-precinct plan identifies the London Plane trees fronting the site as overcrowded and the canopy/growth constrained by the urban setting. The plan recommends that canopy spacing should be improved in this location.

This landscape scheme proposed to remove the nine trees replace them with five new trees. This approach is consistent with the objectives of the Tree Masterplan for this site "to reduce numbers of Plane trees to improve canopy and growth" and "to reduce overcrowding".

Advanced tree stock will be installed with improved subsoil quality and tree root conditions in accordance with the Masterplan. Due to improved conditions, the growth of the advanced trees will be accelerated (in comparison to the existing, constrained trees). The existing, uneven footpath paving also suggests poor subsoil conditions. Improved subsoil root-growth conditions will ensure the new pavement has a longer lifecycle.

Overall, the replanting proposal is considered to have a positive impact on the scheme as it provides healthier tree specimens, improves site lines and aligns street tree planting with PM NSW's Masterplan.

4.2.4. Amendment to Apartment Mix

Two previously oversized 1-bedroom apartments have been amended to 2-bedroom apartments in Block 2. Their size/configuration comfortably accommodates a 2-bedroom layout. This does not change the scheme's overall compliance with State Environmental Planning Policy No 65 (SEPP 65) in terms of solar access or ventilation percentages. One apartment has a shortfall of 1sqm of private open space. On balance, when considering the amenity offered by the overall quantum of communal/public open space within the development, this minor shortfall for one unit is considered acceptable.

In accordance with Clause 115(3) of the *Environmental Planning and Assessment Regulation 2000* an updated Design Verification Statement has been provided by FJMT which confirms the key principles of the approved design would remain adhered to and the modifications would be consistent with the design quality principles and objectives of the Apartment Design Guide (ADG). This can be found at Appendix B.

4.2.5. Parking

- As part of the design development, two oversized 1-bedroom apartments were converted to 2-bedroom apartments.
- The PAC-approved parking numbers (53 spaces), were based on Sydney DCP 2012 rates (despite the SLEP and SDCP not applying to SSD 7037).
- Given the apartment mix has changed – the applicant has revisited the calculation (based on SDCP rates).
- Table 2 below summarises the updated calculations. Accordingly, the applicant is seeking consent for 54 car parking spaces as part of this modification.
- The addition of one car space is not expected to give rise to unreasonable traffic impacts on local roads; and is provided in response to the likely increase in resident population arising from the amendment in apartment mix.

Table 2 – Car Parking Rate Calculation

Type	Number	SLEP 2012 Rate	SLEP 2012 Max
Residential			
1 bed	48 16	0.3	5.4 4.8
2 bed	47 19	0.7	11.9 13.3
3 bed	9	1	9
Town Home (2 or 3-bed)	7	1	7
Penthouse (3 or 3+ bed)	7	1	7
Visitors	58	No requirement	0
<i>Subtotal</i>			40.3 41.1
Non-residential			
Retail	938 sqm	Subject to formula	6
Commercial (office)	1,130 sqm	Subject to formula	7
<i>Subtotal</i>			13
TOTAL			53.3 54.1



4.3. NOTIFICATION AND SUBMISSIONS

Per Section 4.55(2)(c) and (d), any submissions received by NSW DPE during the public exhibition period will need to be considered in the assessment of the application.

5. CONCLUSION

This Section 4.55(2) modification application to SSD 7037 seeks minor amendments to the SSD 7037 instrument of approval to:

- Satisfy the requirements of Condition B2 of the original SSD 7037 consent; and
- Modify the approved SSD to include revised plans accounting for the design development of the building and landscape solution.

Having regard to the above, the NSW DPE may modify SSD 7037 pursuant to Section 4.55(2) of the EP&A Act because:

- The proposal represents substantially the same development for which the consent was granted.
- The environmental impacts arising from the modifications are acceptable with regard to Section 4.15(1) of the EP&A Act.

If you have any questions, please don't hesitate to contact the undersigned at egreen@urbis.com.au.

Yours faithfully,

Edward Green

Edward Green
Senior Consultant

- Enclosed:
- Appendix A: Architectural Plans prepared by FJMT
 - Appendix B: Design Verification Statement prepared by FJMT
 - Appendix C: Architecture Table of Amendments prepared by FJMT
 - Appendix D: ESD Report (inc. BASIX Certificates) prepared by Cundall
 - Appendix E: Landscape Design Report / Plans prepared by FJMT
 - Appendix F: Landscape Architecture Table of Amendments prepared by FJMT
 - Appendix G: Heritage Impact Statement prepared by Urbis