



Office of
Environment
& Heritage

DOC19/57134
SSD 7037 MOD 2

Mr Karl Fetterplace
Key Sites Assessments
NSW Department of Planning and Environment
GPO Box 39
SYDNEY NSW 2001

Dear Mr Fetterplace

OEH comments on modification application – mixed-use development 85 Harrington Street and 66-68 & 70-72 Gloucester Street, The Rocks (SSD 7037 MOD 2)

I refer to your email of 22 January 2019 received by the Office of Environment and Heritage (OEH) requesting comments on a modification application for a mixed-use development at 85 Harrington Street and 66-68 & 70-72 Gloucester Street, The Rocks.

OEH has reviewed the MOD 2 proposal and provides the following comments regarding biodiversity.

Biodiversity

OEH understands that the modification application proposes alterations to access and landscaping, including removal of street trees and replacement planting.

As DPE is aware, section 7.17 of the *Biodiversity Conservation Act, 2016* (BC Act) stipulates:

2 (b) a biodiversity development assessment report is required to be submitted and taken into consideration if this Division applies to the original development as proposed to be modified even if a biodiversity development assessment report was submitted in connection with the application for the original development or even if this Division did not apply to the original development (for example, because the modification results in the development exceeding the biodiversity offsets scheme threshold),

(c) however a further biodiversity development assessment report is not required to be submitted if the authority or person determining the application for modification (or determining the environmental assessment requirements for the application) is satisfied that the modification will not increase the impact on biodiversity values,

(3) The regulations may make further provision with respect to any such applications for modification (including exemptions to the application of this section).

OEH notes that the applicant has not addressed the BC Act in its application for the proposed modification. If the application is not subject to section 7.17(3), OEH recommends that the applicant be requested to provide an assessment of biodiversity values (sections 1.4 and 6.1 of the *Biodiversity Conservation Regulation 2017* and 1.5 and 6.3 of the BC Act) and the impact of the proposal on the biodiversity values. The provision of this additional information will assist DPE in determining the appropriate planning pathway for biodiversity assessment required for the modification application.

As stipulated in section 7.17, if the determining authority is not satisfied that the modification will not increase the impact on biodiversity values, then the applicant will need to submit a biodiversity development assessment report.

If you have any queries regarding this matter, please contact Marnie Stewart on 9995 6868 or marnie.stewart@environment.nsw.gov.au

Yours sincerely

S. Harrison 27/02/19

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