

20 May 2021

16009

Jim Betts  
Planning Secretary  
Department of Planning, Industry and Environment  
4 Parramatta Square  
12 Darcy Street, Parramatta NSW 2150

Attention: Amy Watson

Dear Amy,

## **SECTION 4.55(1A) MODIFICATION APPLICATION - STATE SIGNIFICANT DEVELOPMENT 7484: SANDSTONE PRECINCT MODIFICATION 13, 23-33 & 35-59 BRIDGE STREET, SYDNEY**

This modification application is submitted to the Department of Planning, Industry and Environment (DPIE) pursuant to Section 4.55(1A) of the Environmental Planning and Assessment Act 1979 (EP&A Act) to modify State Significant Development 7484 (SSD 7484) relating to the adaptive reuse of the Sandstone Precinct (Education and Lands Buildings) for tourist and visitor accommodation.

The proposed modification seeks to amend consent conditions B26, F12 and G4 relating to environmental performance and the imposed NABERS requirements. Following previous modifications to the approved hotel, including a reduction in the number of hotel rooms and consolidation of all rooms to the Education Building, the development is no longer capable of meeting a 4 Star NABERS Hotel Energy Rating and the requirement for a NABERS Energy Commitment Agreement. Notably this change does not reflect a reduction in the energy efficiency of the development design, but rather the limitations of the process for calculating NABERS Energy allowance for hotels which is directly linked to the number of hotel rooms.

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 an Environmental Performance Strategy Memorandum prepared by Stantec, being the project's sustainability engineers (**Attachment A**).

### **1.0 Consent proposed to be modified**

The Stage 2 detailed development application (SSD 7484), the subject of this modification application, was approved on 24 April 2018 by DPE (now DPIE) and granted consent for the adaptive reuse of the Sandstone Precinct for tourist and visitor accommodation, including:

- demolition of existing improvements and alterations to the Lands and Education Buildings (as shown in the approved plans only);
- maximum gross floor area (GFA) of 31,633m<sup>2</sup>, with:
  - 10,918m<sup>2</sup> in the Lands Building
  - 20,715m<sup>2</sup> in the Education Building
- maximum of 253 hotel rooms, with:
  - 61 in the Lands Building
  - 192 in the Education Building
- fit out of ancillary guest and visitor facilities;
- improvements and construction of a roof extension to the Lands Building, with a maximum height of RL 38.00;

- construction of a roof extension to the Education Building, with a maximum height of RL 60.03.

The SSD 7484 has been modified 12 times to date, including MOD 4 which involved removal of hotel rooms from within the Lands Building.

## 2.0 Proposed modifications to the consent

The proposed modification seeks to amend consent conditions B26, F12 and G4 relating to environmental performance and the imposed NABERS requirements.

The Stage 2 detailed DA (SSD 7484) approved the refurbishment of the Lands Building and Education Building for use as a hotel, for approximately 253-keys. While not subjected to any formal rating, a 4 Star Green Star equivalency design was proposed to form part of the development's ESD strategy. The approval imposed the requirement for a NABERS Energy Commitment Agreement of a minimum of 4 Star NABERS Hotel Energy Rating (being the minimum rating under this tool), as detailed in consent conditions B26, F12 and G4. The development was subsequently modified, including the removal of hotel rooms within the Lands Building, in lieu of ancillary and support facilities/amenities, and a reduction of hotel rooms within the Education Building to a 192 key scheme.

Modelling undertaken by Stantec indicates that the original development was close to achieving a 4 Star NABERS Energy outcome. However, following modification, the estimated NABERS Energy outcome dropped to 2.5 Stars. This change does not reflect a reduction in energy efficiency in the buildings design, but rather the limitations of the process for calculating NABERS Energy allowance for hotels (refer to **Section 4.4** and **Attachment A** for further detail). Notably, the NABERS rating tool penalised the modified development, imposing a more stringent NABERS benchmark performance requirement. This issue has been acknowledged by NABERS.

As a result, the development is no longer capable of meeting the 4 Star NABERS Energy benchmark performance established under Condition B26. Further, while GreenPower can be purchased to meet this NABERS energy objective, it is not permitted as part of the NABERS Commitment Agreement peer review process. Therefore, the development is no longer capable of satisfying Condition F12 and G4. Inability to satisfy the above conditions impacts the issue of an Occupation Certificate (OC).

To obtain an OC, whilst maintaining an equivalent or improved environmental performance than what was originally approved, conditions B26, F12 and G4 require modification. The proposed modifications are detailed below.

Modifications of these conditions has been flagged with the City of Sydney as part of ongoing discussions throughout the project's delivery.

## 2.1 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**.

### 2.1.1 Proposed modification – Condition B26

#### *Environmental Performance*

~~B26. Prior to the issue of the first Construction Certificate, the Applicant is to provide a NABERS Energy Commitment Agreement, prepared by a suitably qualified consultant, demonstrating that the development is capable of achieving a minimum 4 Star NABERS hotel rating to the satisfaction of the PCA.~~

#### Justification:

This condition has already been satisfied, with the Applicant preparing at the time a Commitment Agreement and issuing to the PCA prior to the first CC for the Education Building. Since this condition has been fulfilled and subsequent to the design change facilitated through MOD 4, achieving this 4 Star NABERS Energy Commitment Agreement is no longer possible. As this condition no longer has any work to do and in light of the modifications to conditions F12 and G4 below it is proposed to be deleted.

### 2.1.2 Proposed modification – Condition F12

#### *Environmental Performance*

**F12. Prior to the issue of the final Occupation Certificate, the Applicant is to provide to the PCA and Secretary documentation, prepared by a suitably qualified consultant, confirming that the development has been completed and assessed in accordance with the NABERS Energy ~~Commitment Agreement and achieves a minimum 4 Star NABERS rating for hotels (Condition B26)~~ protocols against a minimum 4 Star NABERS target rating for hotels and delivers the water mitigation measures in Condition B25.**

**The Applicant is to provide an energy performance assessment, unless the assessment determines actual performance meets or exceeds the minimum 4 Star NABERS target rating for hotel requirements, to establish the carbon intensity mitigation requirements that will be met through either of:**

- a. Entering into a Power Purchase Agreement (PPA) for external renewable electricity generation for the 'gap between actual building performance and 4 Star NABERS benchmark performance' for a period of 5 years; or**
- b. Retire Large-Scale Generation Certificates (LGC) for the 'gap between actual building performance and 4 Star NABERS benchmark performance' for a period of 5 years.**

#### Justification:

The purchase of GreenPower to meet the 4 Star NABERS Energy outcome is not permitted in the Independent Design Review (IDR) process as part of the NABERS Commitment Agreement. Without an IDR report, the development is unable to complete its NABERS Commitment Agreement, as required by condition F12. This condition is proposed to be modified to allow the development to be assessed against a minimum 4 Star NABERS target rating for hotels and if this target is not met, implement a PPA or retire LGCs for the 'gap between actual building performance and 4 Star NABERS benchmark performance'. The inclusion of GreenPower will enable the development to achieve its environmental performance requirements. From an environmental performance perspective, a PPA or LGCs have similar outcomes (refer to **Attachment A** for further detail).

### 2.1.3 Proposed modification – Condition G4

#### *Environmental Performance*

*G4. Within 12 to 18 months following the issue of the final Occupation Certificate, the Applicant is to provide to the PCA and Secretary documentation, prepared by a suitably qualified consultant, confirming that the development operates in accordance with ~~the NABERS Energy Commitment Agreement and achieves a minimum 4 Star NABERS rating for hotels (Condition B26)~~ a minimum 4 Star NABERS rating for hotels, and delivers the water mitigation measures in Condition B25.*

***The Applicant is to provide an energy performance assessment, unless the assessment determines actual performance meets or exceeds the minimum 4 Star NABERS target rating for hotel requirements, to establish the carbon intensity mitigation requirements that will be met through either of:***

- a. Entering into a Power Purchase Agreement (PPA) for external renewable electricity generation for the ‘gap between actual building performance and 4 Star NABERS benchmark performance’ for a period of 5 years; or***
- b. Retire Large-Scale Generation Certificates (LGC) for the ‘gap between actual building performance and 4 Star NABERS benchmark performance’ for a period of 5 years.***

#### Justification:

As outlined above, the purchase of GreenPower to meet the 4 Star NABERS Energy outcome is not permitted in the Independent Design Review (IDR) process as part of the NABERS Commitment Agreement. Without an IDR report, the development is unable to complete its NABERS Commitment Agreement, as required by condition G4, therefore limiting the issue of an OC. This condition is proposed to be modified to allow the modified development to be assessed against a minimum 4 Star NABERS target rating for hotels and if this target is not met, implement a PPA or retire LGCs for the ‘gap between actual building performance and 4 Star NABERS benchmark performance’, and to achieve OC. From an environmental performance perspective, a PPA or LGCs have similar outcomes (refer to **Attachment A** for further detail).

## 3.0 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 in our opinion considered to meet the substantially the same development tests under Section 4.55(1A) of the EP&A Act as:

- the proposed modifications are administrative in nature, relating to the amendment of consent conditions only, and will not result in physical modifications to the proposed development or alter the key components of the approved development description;
- the essence of the approved development remains unaffected, the development (as modified) remains true to the adaptive reuse of the state significant heritage buildings for tourist and visitor accommodation purposes;
- the proposed modifications do not alter the environmental performance of the approved development design; and
- the proposed modifications will not give rise to any adverse environmental impacts, with the impacts remaining consistent with the approved development.

## 4.0 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 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.

### 4.1 Statutory and strategic context

The Environmental Impact Statement submitted with the original State Significant Development application addressed the proposed development’s level of compliance against the relevant strategic plans, policies, guidelines and statutory planning instruments, including:

- *Environmental Planning and Assessment Act 1979*;
- *Environmental Planning and Assessment Regulation 2009*;
- State Environmental Planning Policy (State and Regional Development) 2011;
- State Environmental Planning Policy (Infrastructure) 2007;
- State Environmental Planning Policy 55 (Remediation of Land);
- Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005;
- A Plan for Growing Sydney;
- Sydney 2030 (City of Sydney);
- Development Near Rail Corridors and Busy Roads: Interim Guideline;
- Guide to Traffic Generating Developments;
- NSW Planning Guidelines for Walking and Cycling;
- NSW Long Term Master Plan;
- Sydney Local Environmental Plan 2012; and
- Sydney Development Control Plan 2012.

The proposed modifications do not affect the development’s level of compliance with the majority of the relevant planning instruments and strategic documents.

### 4.2 Reasons given for granting consent

During the assessment of the Stage 2 SSD 7484, the DPE (now DPIE) considered a number of key issues including:

- design quality;
- traffic, parking and servicing;
- the Voluntary Planning Agreement;
- construction impacts;
- archaeology; and
- heritage.

The DPE was satisfied that these issues could be appropriately dealt with and considered that the impacts of these key items could be managed and mitigated accordingly. Furthermore, the adaptive re-use of the Sandstone Precinct buildings was considered to activate and add further vitality to the northern end of the CBD, with the project considered to sensitively respond to the heritage significance of the broader precinct. The DPE concluded the proposal was in the public interest and recommended the application for approval.

### 4.3 Consistency with Stage 1 consent

The Stage 1 approval granted consent under the Stage 1 SSD 6751 establishes the vision and planning framework to assess the detailed design of the future development on the site. In accordance with Section 4.24(1A) of the EP&A Act, while this Stage 1 DA remains in force development on the site cannot be inconsistent with the approved Concept Proposal/Stage 1 DA.

The original Stage 2 SSD 7484 was assessed in terms of consistency with the Stage 1 consent and found to be entirely consistent. The proposed development as proposed to be modified remains consistent with the Terms of Approval as set out in the SSD 6751 consent for the Stage 1 SSD. The modifications as part of this S4.55 application do not change the overall development's consistency with the approved Stage 1 SSD and do not trigger a need to amend the Stage 1 consent.

### 4.4 Environmental performance

An Environmental Performance Strategy has been prepared by Stantec (**Attachment A**).

Performance modelling indicates that the modified development is capable of achieving a 2.5 Star NABERS rating, below the 4 Star target. Importantly, this does not reflect a reduction in energy efficiency in the design of the development (plant and building fabric), rather the limitations of the process for calculating NABERS Energy allowance for hotels. The NABERS rating tool has penalised the modified development. Specifically, the drop in hotel rooms (keys) across the Education Building combined with the energy consumption of all spaces within the Lands Building being considered as part of the hotel calculations (despite having no hotel rooms (keys)), has resulted in a more stringent NABERS benchmark performance requirement (refer to **Attachment A** for further detail). Further, many of the ESD initiatives incorporated into the development are not recognised by the NABERS scheme.

In addition, the heritage status of the existing buildings place further constraints on the ability of achieving a specific NABERS Hotel Energy Rating. For example, existing internal layouts, large internal volumes and preservation of the appearance of external windows, limit flexibility in adopting positive environmental design solutions.

Notwithstanding, the proposed development incorporates multiple ESD initiatives to achieve energy efficiency. These include but are not limited to:

- thermally efficient façade system selection to exceed the NCC requirements;
- preservation of the existing sandstone building structure to retain excellent thermal mass for improved passive thermal performance of the building; and
- re-use of existing buildings allows the development to make use of the low window to wall ratio, high thermal mass and the buildings' inherent building energy performance. Performance glazing and secondary glazing layers will further improve building efficiency.

Despite the numeric reduction in the NABERS Hotel Energy Rating of the development, Stantec conclude that the development is capable of achieving equivalent or improved environmental performance than what was originally approved.

## 5.0 Conclusion

The proposed modification seeks to amend consent conditions B26, F12 and G4 relating to environmental performance and the imposed NABERS requirements. The proposed modifications address the reliance on a specific NABERS Hotel Energy Rating and the requirement for a NABERS Energy Commitment Agreement and provide alternate pathways to allow the development to achieve an equivalent or improved environmental performance than what was originally approved.

The modified development remains consistent with the approved Stage 1 SSD consent and relevant statutory and strategic plans and policies that apply to the site.

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

- the proposed modification is of minimal environmental impact; and
- 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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