

30 November 2021

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

Dear Mr Betts

SECTION 4.55(1A) MODIFICATION APPLICATION **Building R4B, One Sydney Harbour, Barangaroo South Sydney**

This modification application has been prepared by Ethos Urban on behalf of Lendlease (Millers Point) Pty Ltd, pursuant to section 4.55(1A) of the *Environmental Planning and Assessment Act 1979* (EP&A Act) to modify Development Consent SSD 8892218 relating to Building R4B Barangaroo South (the site). The proposed modifications to Development Consent SSD 8892218 seek administrative amendments to align Development Consent SSD 8892218 with the concurrent amendments being sought to SSD 6965.

Building R4B is subject to two development consents that integrate together comprising the base consent (SSD 6965) and a secondary consent resulting from an amending DA process, known as SSD 8892218. SSD 8892218 includes the development of SSD 6965, and its associated conditions, to achieve the overall 68 storey development. To therefore ensure that SSD 6965 properly aligns with SSD 8892218, several administrative modifications to SSD 8892218 are sought to correctly reference and capture separate modifications sought under to SSD 6965. A modification application for amendments to the development approved under SSD 6965 has been submitted and is currently under assessment.

This application identifies the consent and describes the proposed modifications and provides a planning assessment of the relevant matters for consideration contained in section 4.55(1A) of the EP&A Act. For completeness, this application is accompanied by the same architectural drawings and technical reports as the concurrent modification to SSD 6965 as discussed above. These attachments are as follows:

- Architectural Drawings prepared by PTW (**Attachment A**).
- Design Report prepared by Renzo Piano Building Workshop (RPBW) (**Attachment B**).
- Landscape Drawings prepared by McGregor Coxall (**Attachment C**).
- Traffic Assessment Report prepared by Cardno (**Attachment D**).
- Building Code of Australia Statement prepared by Philip Chun (**Attachment E**).
- Access Statement prepared by Morris Goding Access Consultants (**Attachment F**).
- Fire Statement prepared by Warrington Fire (**Attachment G**).
- ESD Statement prepared by Lendlease Integrated Solutions (**Attachment H**).
- R4A Landscape and Public Domain Secretary Approval (**Attachment I**).
- Correspondence with the Civil Aviation Safety Authority (**Attachment J**).
- Wind Engineering Statement prepared by Windtech (**Attachment K**).

It is noted that the attached reports relate to both the modification to SSD 6965 and the modification to SSD 8892218, and therefore refer to all changes captured across both modifications.

1.0 Background

1.1 Design Process

Building R4B is the second tallest of three residential towers in Barangaroo South, sitting between Building R4A and R5. The form of these three residential towers was designed by Renzo Piano Building Workshop (RPBW), which won an architectural design competition for the buildings in 2014. RPBW conceived the three towers as 'crystals' and utilised a unique triangular shape for each tower, paired with highly transparent glass façades and associated detailing of the façade.

RPBW's design responds within the design parameters of the Barangaroo Built Form Masterplan by Robert Stirk and Partners, approved under the Barangaroo Concept Plan (as modified), whilst also capturing the natural and organic crystal formation in the architectural form.

As the design has developed and been modified, the crystalline vision that informed the architecture has remained prominent in the design and continues to guide all modifications to Building R4B.

1.2 Amending DA

Building R4B was initially approved under development consent SSD 6965, granted by the Planning Assessment Commission on the 7 September 2017. Under SS 6965, Building R4B comprised a 60-storey mixed use building, with 297 residential apartments and retail floor space at ground level. This included a total gross floor area (GFA) of 38,896m², 38,602m² of which was for residential floor space and the remaining 294m² was for retail floor space.

Consent was also provided for associated building public domain works, roof of the proposed Strada, fit-out and use of basement and associated building identification signage.

Development Consent SSD 6965 has been subsequently modified on two occasions under section 4.55 of the EP&A Act.

Development Consent SSD 6965 and the development approved under that consent were also amended more recently via amending development consent SSD 8892218 which was determined on 26 March 2021. SSD 8892218 included approval for alterations and additions to the approved Building R4B, including the construction of eight additional storeys and 5,650m² of gross floor area (GFA), amongst other items to result in the overall 68 storey development. SSD 8892218 amends SSD 6965 by way of conditions of consent.

Development Consent SSD 8892218 specifically approved the following development, and incorporates the approved development of SSD 6965:

Alterations and additions to Building R4B (SSD 6965) to provide for the construction, fit out and use of a 68-storey mixed-use building, including:

- *a total GFA of 44,561 m² comprising 44,252 m² residential GFA (322 apartments) and 309m² retail GFA;*
- *public domain works;*
- *fit-out and use of the Stage 1B basement car park for Building R4B, including 331 allocated parking spaces;*
- *demolition of interim basement elements; and*
- *a signage zone to accommodate future building identification signage.*

Due to the relationship between SSD 8892218 and SSD 6965, any changes specific to the Development Consent SSD 6965 must be in turn captured in Development Consent SSD 8892218 via a concurrent modification.

2.0 Consent proposed to be modified

This application seeks to amend Development Consent SSD 8892218 to capture administrative changes to the conditions of consent required to ensure alignment with the concurrent modifications to SSD 6965. This constitutes the first modification to SSD 8892218.

3.0 Proposed modifications to the consent

This modification application seeks consent for administrative alterations to the Development Consent.

The proposed modifications to which these administrative alterations are proposed under a concurrent modification to Development Consent SSD 6965. Due to the relationship between SSD 6965 to SSD 8892218, a number of administrative changes are required to ensure the conditions of consent under Development Consent SSD 8892218 align with the modifications being sought to the development approved under SSD 6965.

The modifications sought to SSD 6965 include the following:

- Transfer of the approved Strada (inclusive of ground plane and associated structure) which connects Building R4A and Building R4B from the Building R4A Development Consent (SSD 6964) to the Building R4B Development Consent (SSD 6965 as amended by 8892218), including associated adjustment to the development application boundary.
- Deletion of conditions relating to the need for obstacle lighting under Part E and F of the Building R4B Development Consent SSD 6965.
- Revision of car park entrance design.
- Alteration to the secondary exit arrangement for the ground level lobby.
- Internal reconfiguration of services, storerooms and access arrangements.
- Minor layout changes to the pool and ancillary communal facilities.
- Revision to signage zones.

Architectural Plans prepared by PTW (**Attachment A**) detail the proposed changes to Building R4B, and a further description of the changes is provided in the Design Report prepared by RPBW (refer to **Attachment B**). These documents are provided for information purposes.

These administrative changes are discussed at **Section 3.1**.

3.1 Modification to conditions

As outlined above, the proposed modifications to the development approved under Development Consent SSD 6965 necessitate amendments to the consent conditions in SSD 8892218 which are identified below. Words proposed to be deleted are shown in ~~***bold italics strike through***~~ and words to be inserted are shown in ***bold italics***.

A5. This consent is subject to compliance with the conditions of consent contained within SSD 6965 (as amended) as indicated in the following table. The conditions indicated as not requiring compliance are replaced by new conditions at **Part B** to **E** of this consent.

Conditions contained within SSD 6965		Compliance required under SSD 8892218		Replacing condition under SSD 8892218
		Yes	No	
Part A Administrative Conditions				
A6	Limits on Consent	✓		-

Conditions contained within SSD 6965		Compliance required under SSD 8892218		Replacing condition under SSD 8892218
		Yes	No	
A6 A7	Design Integrity	✓		-
A7 A8	Prescribed Conditions	✓		-
A8 A9	Long Service Levy	✓		-
A9 A10	Legal Notice	✓		-
Part E Prior to Occupation or Commencement of Use				
E7	Obstacle Lights	✓		-
E29	<i>Strada Access Management Plan</i>	✓		-
Part F Post Occupation – During Operation				
F3	Obstacle Lighting	✓		-
F4		✓		-
F19	<i>Strada Opening Hours</i>	✓		-
F20	<i>Strada Management Plan</i>	✓		

Reason: To capture the proposed modification to conditions of consent under Development Consent SSD 6965.

A6. The development may only be carried out:

(e) in accordance with the following approved SSD 8892218 drawings in the table below (except as may be amended by the conditions of consent):

Architectural Drawings prepared by Renzo Piano Building Workshop and PTW Architects			
Drawing No.	Rev	Name of Drawing	Date
BR4B_ASD_PA2_4001	4-2	Elevation North-East (Park)	31 Aug 2020 18 June 2021
BR4B_ASD_PA2_4003	4-2	Elevation South-East (Lift Lobby)	31 Aug 2020 18 June 2021
BR4B_ASD_PA2_4004	4-2	Elevation South (Watermans Quay)	31 Aug 2020 18 June 2021
BR4B_ASD_PA2_4007-5	4-21	North-East Enlarged Elevation (Park)	31 Aug 2020 18 June 2021
Landscape Drawings prepared by McGregor Coxall			
Drawing No.	Rev	Name of Plan	Date
<i>RPB43-GE-R4B001-GA</i>	<i>W</i>	<i>R4B-DA General Arrangement</i>	30/06/2021
<i>RPB430-GE-R4B002_GRND</i>	<i>R</i>	<i>R4B-DA Ground Floor</i>	30/06/2021
<i>RPB430-GE-R4B001-L02</i>	<i>A</i>	<i>R4B-DA Ground Floor and Podium</i>	30/06/2021

Reason: To ensure the conditions of consent reference the revised architectural drawings which include the proposed modifications sought to Development Consent SSD 6965.

APPENDIX 1 – DRAWINGS

Architectural Drawings prepared by Renzo Piano Building Workshop			
Drawing No.	Rev	Name of Drawing	Date
BR4B_ASD_PA2_0000	1-21	Title Sheet and Drawing List	31 Aug 2020 30 June 2021
BR4B_ASD_PA1_0001	20-21	Context Plan	19/06/2020 30 June 2021
BR4B_ASD_PA1_0002	19-21	Site Plan	03/05/2019 30 June 2021
BR4B_ASD_PA1_0004	19-21	Site Plan Setting Out	03/05/2019 30 June 2021
BR4B_ASD_PA1_2000	20-21	Plan Ground Floor Level 00	19/06/2020 30 June 2021
BR4B_ASD_PA1_2001	20-21	Plan Podium Level P1	19/06/2020 30 June 2021
BR4B_ASD_PA1_2002	20-21	Plan Podium Level P2	19/06/2020 30 June 2021
BR4B_ASD_PA1_3020	19-20	Plan Plant Level 20	03/05/2019 30 June 2021
BR4B_ASD_PA2_4001	1-2	Elevation North – East (Park)	31 Aug 2020 18 June 2021
BR4B_ASD_PA2_4003	1-2	Elevation South – East (Lift Lobby)	31 Aug 2020 18 June 2021
BR4B_ASD_PA2_4004	1-2	Elevation South (Watermans Quay)	31 Aug 2020 18 June 2021
BR4B_ASD_PA1_4005	1-21	North – East Enlarged Elevation (Park)	31 Aug 2020 18 June 2021
BR4B_ASD_PA1_4201	20-21	Building Signage Zone South – East Enlarged Elevation	19/06/2020 18 June 2021
BR4B_ASD_PA1_6011	20-21	R4B Bridge	19/06/2020 18 June 2021
Landscape Drawings prepared by McGregor Coxall			
Drawing No.	Rev	Name of Plan	Date
RPB43-GE-R4B001-GA	W	R4B-DA General Arrangement	30/06/2021
RPB430-GE-R4B002_GRND	R	R4B-DA Ground Floor	30/06/2021
RPB430-GE-R4B001-L02	A	R4B-DA Ground Floor and Podium	30/06/2021

Reason: To ensure the conditions of consent reference the revised architectural drawings which include the proposed modifications sought to Development Consent SSD 6965.

4.0 Substantially the same development

Section 4.55(1)(A) 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 consent was originally granted and before that consent as originally granted was modified (if at all)”.

In this circumstance, the substantially the same test is applied to the amending DA SSD 8892218, which approved the design of Building R4B, with the inclusion of the works proposed under the amending DA scope. Therefore, SSD 8892218 approved the construction, fit out and use of a 68-storey mixed-use building, including:

- A total GFA of 44,561m² comprising 44,252m² residential GFA (322 apartments) and 309m² retail GFA.
- Public domain works.
- Fit-out and use of the Stage 1B basement car park for Building R4B, including 331 allocated parking spaces.
- Demolition of interim basement elements.
- A signage zone to accommodate future building identification signage.

As per *Vacik Pty Ltd v Penrith City Council* (2008) ‘substantially’ in the context of a modification application means “essentially or materially or having the same essence”. Furthermore, as per *Moto Projects (No 2) Pty Ltd v North Sydney Council* (1999), ‘modify’ means “to alter without radical transformation”. Therefore, when undertaking a comparison of the approved and proposed development, the modified development must be “essentially or materially” the same as the modified development. In conjunction with this, as per *Dravin Pty Ltd v Blacktown City Council* (2017), a comparison for the purposes of a modification application must include a quantitative comparison of the physical features or components of the development, as well as a qualitative assessment of the approved development and development as proposed to be modified within their respective contexts.

Considering the above principles, the development, as proposed to be modified, is substantially the same development as that originally approved in SSD 8892218 in that:

- The proposed modifications are minor and relate to refinements in response to design development, further enhancing amenity and improving access arrangements. No significant physical or materiality changes are proposed, meaning the modified development is of the same essence as the approved development. The proposed modifications do not represent a radical transformation of the approved development.
- A qualitative assessment indicates that the proposed modification is substantially the same in that:
 - The changes seek to enhance accessibility and functionality of the development.
 - The refined façade design has been driven by further design refinement undertaken by Renzo Piano Building Workshop and enhances the approved design intent.
 - The proposed modifications do not alter the key components of the approved development, being a mixed-use building comprised of residential and retail uses, with associated public domain areas.
 - The current Building R4B development consent includes the roof of the Strada and therefore the proposed transfer of the Strada ground plane and associated elements is aligned within the parameters of the approved development which contemplated the Strada.
 - The proposed modifications continue to achieve a high standard of design excellence.
 - The changes to the façade and the internal layouts are minor and will not result in additional environmental impacts.
- The approved development is not proposed to be altered in any quantitative sense regarding the key metrics of the approval, including gross floor area, dwellings numbers or mix or parking.

5.0 Planning 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 development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all)”*.

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.

A thorough assessment of the proposed modifications to the development approved under Development Consent SSD 6965 is provided in the separate modification application. This assessment demonstrates that the development, as proposed to be modified, will be of minimal environmental impact. As only administrative changes are proposed to Development Consent SSD 8892218 there are no impacts when considering the relevant matters under Section 4.15(1), and therefore there is no need for further assessment.

5.1 Reasons for granting consent

The key reasons for granting consent to the SSD development are as follows:

- the project would provide a range of benefits for the region and the State as a whole, as it is consistent with the Barangaroo Concept Plan which provides for the regeneration of the former dilapidated waterfront site, extensive new areas of public open space, key worker housing, public art, community uses, employment opportunities and flooding draining infrastructure.
- the project will provide additional residential density with excellent access to public transport, including a planned high frequency Metro and is conveniently located to shops, services and the CBD.
- the project is permissible with development consent and is consistent with NSW Government policies including the Region Plan and Eastern City District Plan, as it will aid in the delivery of the housing target of 157,500 homes in the Eastern City between 2016 and 2036 and provides for construction and operational jobs.
- the impacts on the community and the environment, including traffic and car parking, construction and heritage can be appropriately minimised, managed or offset to an acceptable level, in accordance with applicable NSW Government policies and standards.
- the issues raised by the community during consultation and in submissions have been considered and adequately addressed. The project would not result in view loss, overshadowing, wind or privacy impacts beyond what has already been determined to be acceptable as part of the approval of the original Building R4B development (SSD 6965).
- weighing all relevant considerations, the project is in the public interest.

The proposed development as modified does not alter the approved development's consistency with the above reasons for granting consent.

6.0 Conclusion

This proposed modification application seeks consent for administrative changes to Development Consent SSD 8892218. The modification application is made in the context of a concurrent amendment sought to Development Consent SSD 6965, and will ensure consistency and alignment across these two development consents that are integrated together for the delivery of Building R4B.

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

- The consent, as proposed to be modified, is substantially the same development as that originally approved.
- The proposed modifications are minor and will not have any substantial environmental impacts.
- The modifications comply with the Barangaroo Concept Plan and relevant State Environmental Planning Policies.
- The modifications result in greater residential amenity and more balanced, refined design in the building.

In light of the above, we recommend that the proposed modification is supported. We trust that this information is sufficient to enable a prompt assessment of the proposed modifications.

Yours sincerely,



Ella Coleman
Urbanist



Brendan Hoskins
Associate Director