

31 October 2022

17156

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

Attn: Rodger Roppolo

## **SECTION 4.55(1A) MODIFICATION APPLICATION - SSD 8903 Stage 1 of Ivanhoe Estate (Midtown), Macquarie Park**

This application has been prepared by Ethos Urban on behalf of Frasers Property Australia, pursuant to section 4.55(1A) of the *Environmental Planning and Assessment Act 1979* (EP&A Act) to modify SSD-8903 relating to Ivanhoe Estate (the site).

This modification seeks a minor increase in the approved height of Building A1 by a total of 565mm, resulting in a maximum building height of 75.365m. This change to height is due to construction detailing issues requiring additional structure and insulation which was not considered in the original approval due to revisions to the National Construction Code (NCC) post approval.

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 Amended Architectural Drawings prepared by Bates Smart (**Attachment A**).

### **1.0 Background to the Consent**

Development consent was granted by the (then) Minister for Planning and Public Spaces on 30 April 2020 for State Significant Development (SSD-8903) for Stage 1 of the Ivanhoe Estate development in Macquarie Park. The development was approved pursuant to the Ivanhoe Estate Masterplan (SSD-8707) approval and comprises:

- Site preparation works, including removal of trees, demolition, bulk earthworks and excavation.
- Construction of new roads, bridge over Shrimptons Creek and new road connection to Lyonpark Road.
- Construction of two residential apartment buildings (Building A1 and Building C1) with basement car parking.
- Landscaping and public domain works.
- Amalgamation and subdivision.

The consent has been previously modified on five (5) occasions, comprising:

- Section 4.55(1A) - MOD 1 - amendments to a number of conditions of consent to clarify specific requirements, timings, and nominated personnel or issues; approved on 10 November 2020.
- Section 4.55(2) - MOD 2 - detailed design changes to Building C1; approved on 7 May 2021.
- Section 4.55(1A) – MOD 3 – for the removal of three (3) trees that were approved for retention and retain two (2) trees that were approved for removal; approved 21 December 2021.

- Section 4.55(1A) – MOD 4 – for the removal of seven (7) trees that were approved for retention due to the structure of a crib wall and the location of structural roots; approved 5 August 2022.
- Section 4.55(1A) – MOD 5 – detailed design changes to Building C1 to align with the pending approval of Building C2 as part of SSDA-5822622 was lodged on XX and is currently under assessment.

## 2.0 Strategic context

The strategic context of the approved development has not materially changed since the Minister for Planning and Public Spaces granted consent to the Stage 1 SSDA on 30 April 2020, and the subsequent five (5) Modification Applications. DPE considered when granting consent to the Stage 1 SSDA that this first stage of physical works to deliver the Ivanhoe Estate Masterplan was appropriate for the site given it was consistent with the relevant strategic plans of the State.

## 3.0 Description of modifications

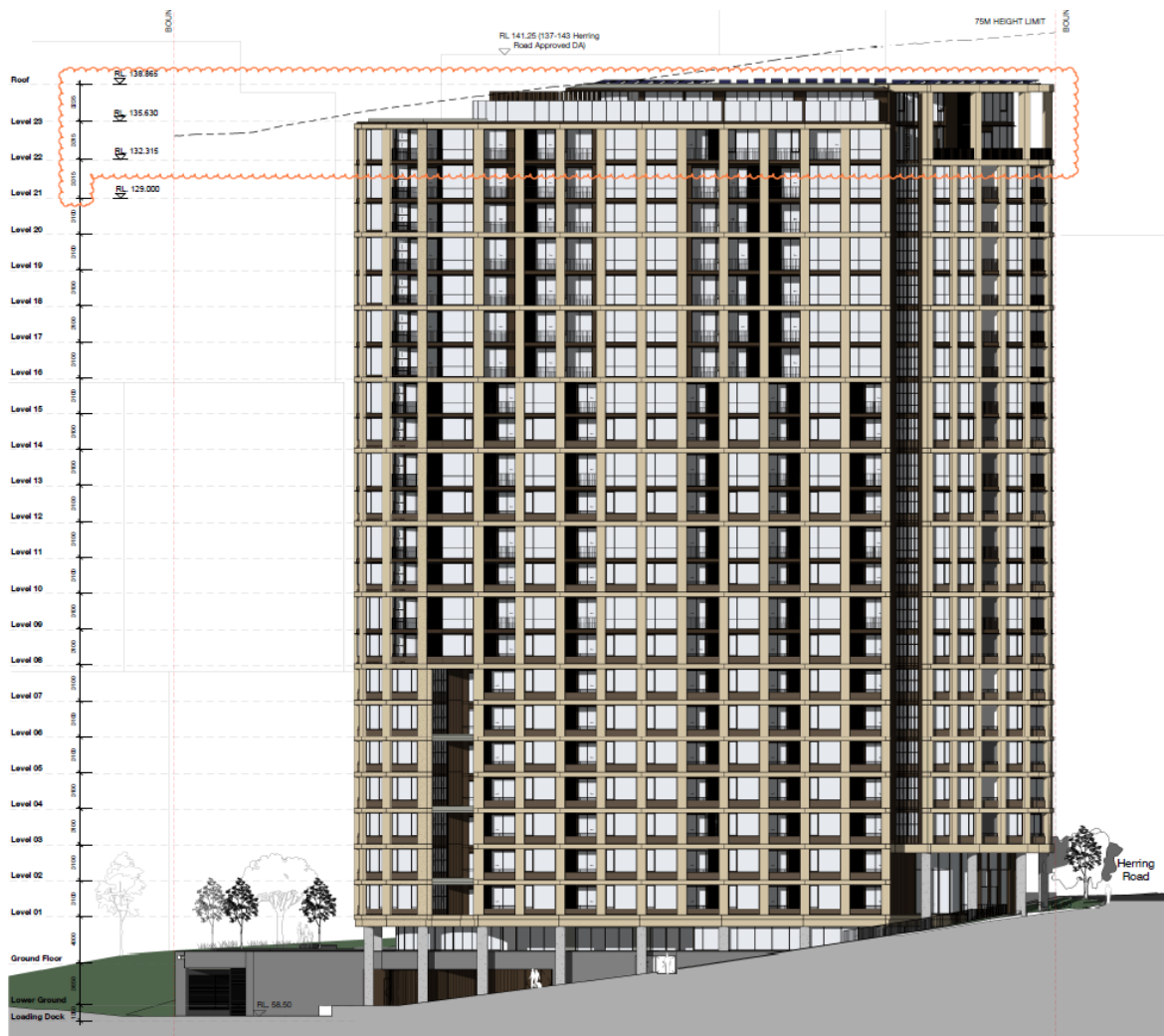
### 3.1 Modification to the development

Stage 1 of the Ivanhoe Estate redevelopment approved a maximum building height of 74.8m. This proposed modification involves a minor amendment to the height of Building A1, increasing the height by 565mm from a maximum of 74.8m to 75.365m as illustrated at **Figure 1-4**. The increase in height is driven by construction detailing issues arising from revisions to the NCC. Subsequently, an increase of 565mm to the building height is required to comply with the NCC, specifically pertaining to the stepped massing of the building with external areas above internal areas requiring additional structure and insulation which was not accounted for in the original approval.



**Figure 1** Approved height (east elevation)

Source: Bates Smart



**Figure 2** Proposed height (east elevation)

Source: Bates Smart



**Figure 3** Approved height (section plan)

Source: Bates Smart



Figure 4 Proposed height (section plan)

Source: Bates Smart

### 3.2 Modification to the conditions of consent

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***.

#### TERMS OF CONSENT

A2. The development may only be carried out:

...

Architectural Drawings prepared by Bates Smart (Building A1)			
Drawing No.	Revision	Name of Plan	Date
DA01.A1.001	<del>E</del> <b><i>F</i></b>	Site Plan	<del>31/01/20</del> <b><i>13/10/22</i></b>
DA03.A1.022	<del>F</del> <b><i>H</i></b>	Level 22	<del>31/01/20</del> <b><i>13/10/22</i></b>
DA03.A1.023	<del>F</del> <b><i>H</i></b>	Level 23	<del>31/01/20</del> <b><i>13/10/22</i></b>
DA03.A1.024	<del>D</del> <b><i>F</i></b>	Roof Level	<del>31/01/20</del> <b><i>13/10/22</i></b>
DA07.A1.001	<del>D</del> <b><i>F</i></b>	North Elevation	<del>31/01/20</del> <b><i>13/10/22</i></b>
DA07.A1.002	<del>D</del> <b><i>F</i></b>	East Elevation	<del>31/01/20</del> <b><i>13/10/22</i></b>
DA07.A1.003	<del>B</del> <b><i>C</i></b>	South Elevation	<del>31/01/20</del> <b><i>13/10/22</i></b>
DA07.A1.004	<del>B</del> <b><i>C</i></b>	West Elevation	<del>31/01/20</del> <b><i>13/10/22</i></b>
DA08.A1.001	<del>D</del> <b><i>E</i></b>	Section AA	<del>31/01/20</del> <b><i>13/10/22</i></b>
DA08.A1.002	<del>E</del> <b><i>F</i></b>	Section BB	<del>31/01/20</del> <b><i>13/10/22</i></b>

**Reason:** The Architectural Drawings are proposed to be amended to reflect the design modifications that are included in the proposed modification.

## MAXIMUM HEIGHT

*B27. The maximum height of Building A1 must not exceed RL ~~138.3~~ 138.865 m AHD. The measurement of maximum height excludes plant and lift overruns, communication devices, antennae, satellite dishes, parapets (to a maximum height of RL ~~138.3~~ 139.095), masts, flagpoles, chimneys, flues and the like. Details confirming compliance must be submitted to the Certifier prior to the issue of any Crown Building Works Certificate.*

**Reason:** The maximum height of Building A1 is proposed to be amended to resolve construction detailing issues pertaining to compliance with the revised NCC. The additional 23mm sought within the bracketed section of the condition relates to the parapet element only. This was not identified within the original plan set. Given that the parapet height is required to be slightly above the height of the roof, a slight allowance for the parapet above the height of the roof is required.

## GFA AND HEIGHT CERTIFICATE

*D1. A Registered Surveyor is to certify that the GFA of Building A1 does not exceed 21,580 m<sup>2</sup> and the height of the building does not exceed RL ~~138.3~~ 138.865 m AHD. Details shall be provided to the Certifier demonstrating compliance with this condition prior to the occupation or use of Building A1.*

**Reason:** The maximum height of Building A1 is proposed to be amended to resolve construction detailing issues pertaining to compliance with the revised NCC.

## 4.0 Statutory Context

### 4.1 Section 4.55 of the EP&A Act

#### 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 substantially the same development as that originally approved in that:

- The proposed modification relates to a minor increase in the height associated with construction detailing issues.
- The proposed modifications do not alter key components of the approved development, being a residential tower.
- The proposed modifications continue to achieve a high level of design excellence.
- The proposed modifications will not result in any change to how the bulk and scale of the building is perceived from nearby open space areas, public or private.
- The minor increase in height will not result in any additional unreasonable overshadowing impact.
- The public benefits delivered by the development remain unchanged.
- The environmental impacts of the modified development remain substantially the same as the approved development.
- The proposed minor modifications do not give rise to any new matters and are of minimal environmental impact.

Based on the above, our view is that the development as modified remains substantially the same as the development as originally approved. The potential environmental impacts considered individually and cumulatively, are considered minor and will have no significant impacts beyond those considered during the assessment of the Stage 1 approval.

#### Environmental impacts

Section 4.55(1A) of the EP&A Act also 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 planning assessment of the proposed modified development remains generally unchanged with respect to these matters, with further assessment provided at **Section 5.0** below.

## 4.2 Section 4.22 of the EP&A Act

Under Section 4.24 of the EP&A Act, while a Concept Proposal remains in force, any further detailed application cannot be inconsistent with the consent for the Concept Proposal.

The modified development remains consistent with the Ivanhoe Estate Masterplan. The proposed modifications are minor and will not result in any adverse or significant new environmental impacts, as the proposed modification will increase the building height by a minor 565mm and will meet the standards of the updated NCC.

No consultation has been completed for this application outside of that undertaken as part of the preparation and refinement of the Stage 1 SSDA. The scale of the proposed changes, and associated environmental impacts, are shown to be minor and as such are not considered to warrant further consultation.

## 5.0 Assessment of impacts

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 Environmental Impact Statement submitted with the original SSD 8903 application addressed a range of environmental impacts. Given the nature of the proposed modifications, the planning assessment of the proposed modifications therefore remains unchanged with respect to those matters.

## 5.1 Compliance with environmental planning instruments

An assessment of the proposed modified development’s compliance with relevant environmental planning instruments is contained within **Table 1** below.

**Table 1** Summary of consistency with relevant strategies, EPIs, policies and guidelines.

Instrument	Comments
Ryde Local Environmental Plan 2014	Clause 2.2 – Land Use Zone The proposed modification does not include any alterations to the approved land uses and therefore remains permissible with consent.
	Clause 4.3 – Height of Buildings The proposed modification includes a minor change to the building height, increasing the development by 565mm. This change results in the development exceeding the maximum building height of 75m by 365mm. Although the proposed modification results in the exceedance of the development standard, the variance is negligible and Building A1 remains substantially the same. A clause 4.6 exception request is not applicable to a modification application as established within <i>North Sydney Council v Michael Standley &amp; Associates Pty Ltd</i> [1998] NSWSC 163 and others including <i>SDHA Pty Ltd v Waverley Council</i> [2015] NSWLEC 65. Section 4.1 above demonstrates that despite the minor increase in height, the development remains substantially the same as the original approval.
	Clause 4.4 – Floor Space Ratio The proposed modification does not include any alteration to the overall FSR of Building A1.

As a State Significant Development, the Ryde Development Control Plan 2014 (Ryde DCP) does not apply to Stage 1 of the Ivanhoe Estate Masterplan. The Ivanhoe Estate Masterplan and associated Urban Design Guidelines set the new vision for the site and have the same effect and purpose of a site-specific DCP. Together, they establish the parameters for future development in the form of building envelopes and apply detailed objectives and design principles to shape the design development of buildings.

This approach is in accordance with Section 4.22 of the EP&A Act that confirms that a Staged DA may be made setting out concept proposals (i.e.: the Masterplan) for the development of a site to which separate and future detailed proposals (i.e., the Stage 1 DA) are pursuant. A concept proposal may also be undertaken in lieu of the preparation of a site-specific DCP in accordance with Section 4.23 of the EP&A Act.

Further, it is noted that SSD applications are treated differently to regular 'local' and 'regional' developments, with a range of other legislation not applying (Section 4.41 and 4.46 of the EP&A Act) and other legislation needing to be applied consistently with the terms of any SSD consent (Section 4.42 of the EP&A Act). Accordingly, in this instance development control plans are specifically excluded from being applicable to SSD applications per Clause 2.10 of the State Environmental Planning Policy (Planning Systems) 2021.

## 5.2 Consistency with the concept DA

Under Section 4.24 of the EP&A Act there is a requirement for the development to be consistent with the consent for the Concept Proposal. This modification application has been made with reference to the Ivanhoe Estate Masterplan and is consistent with, and pursuant to, the Masterplan (as amended). An assessment against the key features of the Masterplan has been provided in **Table 2** below.

**Table 2** Consistency with the Concept Plan (Ivanhoe Estate Masterplan)

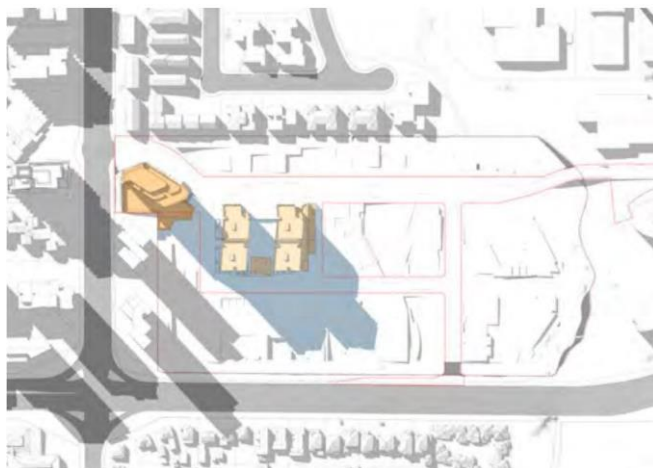
Component	Discussion
<b>Land Use</b>	The proposed modification does not include any alterations to the approved land uses.
<b>Gross Floor Area and Floor Space Ratio</b>	The proposed modification does not include any alterations to the approved GFA and FSR.
<b>Built Form</b>	Building A1 will continue to be consistent with the Ivanhoe Estate Design Guidelines. Further discussion regarding the proposed amendments to the built form of the development is provided in Section 3.
<b>Building Heights</b>	The proposed modification seeks a minor increase the height of the development by 565mm. This change in height produces negligible environmental impacts and does not substantially change the development.
<b>Access Arrangements</b>	No change is proposed to the access arrangements.
<b>Public Domain</b>	No change is proposed to the landscaping arrangements.
<b>ESD</b>	The proposed modification does not alter the development's achievement of sustainability targets.
<b>Development Staging</b>	The delivery of Building A1 is consistent with the indicative staging plan contained in the Masterplan, ensuring that social housing is provided concurrently with market housing.

## 5.3 Built form and urban design

### 5.3.1 Building height

The proposed modified development includes a minor increase to the building height by 565mm. It is noted that this change has a negligible impact on the building and does not alter the height substantially. In turn, the development will continue to exhibit a building envelope which responds to the principles of scale, proportion and composition, offering a positive contribution to the desired future character of the area.

Further, the increase in building height does not impact upon the amenity of the development, remaining consistent with the approved Stage 1. There is also a negligible overshadowing impact resulting from the proposed modification as illustrated at **Figures 5–8**. The minor additional overshadowing resulting from the development also does not result in any additional overshadowing on adjoining properties outside of the Ivanhoe Estate site.



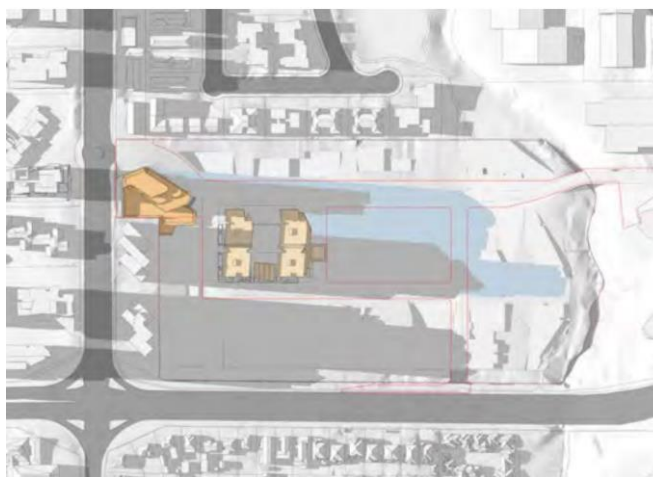
**Figure 5** Approved (winter solstice 12pm)

Source: Bates Smart



**Figure 6** Proposed (winter solstice 12pm)

Source: Bates Smart



**Figure 7** Approved (winter solstice 3pm)

Source: Bates Smart



**Figure 8** Proposed (winter solstice 3pm)

Source: Bates Smart



## **5.4 National Construction Code**

The proposed modification will ensure that Building A1 complies with the requirements listed imposed by the NCC. Specifically, since Building A1 was approved, the NCC has been revised to require increased structure depths in buildings. Consequently, the height of the development will need to be increased by 565mm to enable the inclusion of additional structure and insulation which was not considered in the original approval. Therefore, this modification is required to comply with the new conditions of the NCC and solve construction detailing issues.

### **Reasons given for granting consent**

The proposed modification does not alter the development insofar as the matters identified by the Minister as the reasons for granting the original development consent.

## 6.0 Justification

This Modification Application seeks approval for a minor increase to the building height of Building A1 as a result of construction detailing issues. The project as a whole and as modified is considered to be appropriate and supportable with regard to social, economic, and environmental impacts.

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

- The proposed modification is of minimal environmental impact.
- The proposed development remains consistent with the Ivanhoe Masterplan and Concept Approval.
- Is 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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