

15 April 2021

Mr Jim Betts  
Secretary  
Department of Planning, Industry and Environment  
4 Parramatta Square  
Parramatta NSW 2124

Dear Mr Betts,

## **SECTION 4.55 (1A) MODIFICATION - SSD-9393**

### **1. INTRODUCTION**

This Section 4.55(1A) modification application is lodged on behalf of WL Developer Pty Ltd (**the applicant**) to amend the approved concept State Significant Development Application (**SSDA**) for the Waterloo Metro Quarter (**WMQ**) Over Station Development (**OSD**) (**SSD 9393**).

Specifically, this modification application seeks to amend Condition A12 of SSD 9393. The wording of the condition currently requires a legally binding agreement to be prepared to the satisfaction of the Planning Secretary which secures the social housing, affordable housing, public open space and community facilities. Specifically, with regard to the **community facilities**, the condition currently requires approval of the final area, design and future operating model of community facilities to be delivered on the WMQ site prior to the determination of the **first Future Development Application** for the site.

Given that this final area and design will be determined within the SSDA for the Central Precinct (SSD-10439), it is not possible to satisfy this condition ahead of the determination of the first detailed DA. As such, this modification seeks to maintain satisfaction of the *provision* of the 2,000sqm of Community Facilities ahead of the determination of the first detailed DA, but to defer satisfaction of the final design, area and future operating model until a later stage of the development.

The applicant maintains their commitment to the delivery of community facilities on the site, with the proposed delivery of a centre-based childcare facility with a minimum gross floor area (**GFA**) of 2,000sqm in Building 2 (located within the Central Precinct) sought under SSD-10439. This detailed SSDA is currently under assessment by the Department of Planning, Industry, and Environment.

The applicant further commits to the provision of a legally binding agreement to the satisfaction of the Planning Secretary which secures the provision of a minimum 5% of approved residential GFA to be dedicated or transferred to a Registered Community Housing provider as affordable housing, 70 social housing dwellings to be dedicated or transferred as agreed by NSW Land and Housing Corporation, a minimum 2,200sqm of publicly accessible open space across the WMQ site and provision of 2,000 GFA of community facilities **prior** to the determination of the first Future Development Application.

This Section 4.55(1A) modification application simply seeks to modify Condition A12 to enable the determination of development applications on the WMQ site prior to the ultimate resolution of the final design, area and future operating model of the proposed community facilities located within Building 2. This application seeks to align the requirement to satisfy Condition A12 as it relates to the final 'design, area, and future operating model' of the community facilities, prior to the issue of an occupation certificate for Building 2 (Central Precinct).

It is reiterated that the applicant commits to providing a legally binding agreement that secures the provision of the community facilities prior to the determination of the **first Future Development Application** for the site. It is merely the final resolution of the detail of the design, area and operating model that is sought to be deferred.

This report provides a description of the site, surrounding context, description of the proposed modifications and an environmental assessment of the proposed modification.

## 2. THE SITE AND SURROUNDS

The site is located within the City of Sydney Local Government Area (LGA). The site is situated approximately 3.3 kilometres south of Sydney CBD and approximately 8 kilometres northeast of Sydney International Airport within the suburb of Waterloo.

The WMQ site comprises land to the west of Cope Street, east of Botany Road, south of Raglan Street and north of Wellington Street (refer to Figure 1). The heritage listed Waterloo Congregational Church located at 103–105 Botany Road is within this street block but does not form a part of the Waterloo Metro Quarter site boundaries.

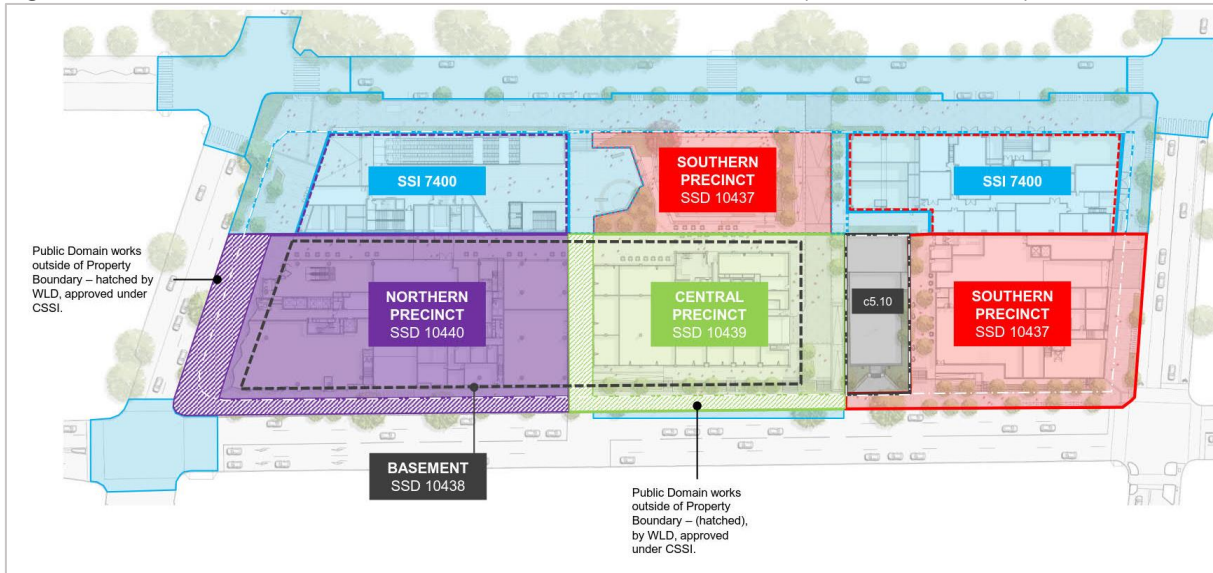
The WMQ site is a rectangular shaped allotment and has an overall site area of approximately 1.287 hectares. The boundaries of the precincts within the Waterloo Metro Quarter site are illustrated at Figure 2. The area surrounding the site consists of a mix of commercial, residential and light industrial uses, civic uses and open space.

Figure 1 Aerial View of the Site



Source: NearMap

Figure 2 Waterloo Metro Quarter Station Site Precinct Identification (SSDA Boundaries)



Source: WL Developer Pty Ltd

## 2.1. LEGAL DESCRIPTION

The WMQ site comprises the following allotments and legal description at the date of this report. Following consolidation by Sydney Metro the land will be set out in deposited plan DP1257150.

- 1368 Raglan Street (Lot 4 DP 215751);
- 59 Botany Road (Lot 5 DP 215751);
- 65 Botany Road (Lot 1 DP 814205);
- 67 Botany Road (Lot 1 DP 228641);
- 124-128 Cope Street (Lot 2 DP 228641);
- 69-83 Botany Road (Lot 1, DP 1084919);
- 130-134 Cope Street (Lot 12 DP 399757);
- 136-144 Cope Street (Lots A-E DP 108312);
- 85 Botany Road (Lot 1 DP 27454);
- 87 Botany Road (Lot 2 DP 27454);
- 89-91 Botany Road (Lot 1 DP 996765);
- 93-101 Botany Road (Lot 1 DP 433969 and Lot 1 DP 738891);
- 119 Botany Road (Lot 1 DP 205942 and Lot 1 DP 436831);
- 156-160 Cope Street (Lot 31 DP 805384);
- 107-117A Botany Road (Lot 32 DP 805384 and Lot A DP 408116); and
- 170-174 Cope Street (Lot 2 DP 205942)

## 2.2. EXISTING DEVELOPMENT

The site previously included three to five-storeys of commercial, light industrial and shop top housing buildings. All previous structures except for an office building at the corner of Botany Road and Wellington Street have been demolished to facilitate construction of the new Sydney Metro Waterloo Station.

As such the existing site is predominately vacant and being used as a construction site. Construction of the Sydney metro is currently underway on site in accordance with the CSSI approval (CSSI 7400). Photographs of the existing site context are provided below (see Figure 3).

Figure 3 Photographs of existing site condition at Waterloo Metro Quarter site (dated 21 July 2020)



Picture 1 South western corner of site, located at the corner Wellington Street and Botany Road

Source: Urbis



Picture 2 Botany Road street frontage, looking north east

Source: Urbis



Picture 3 Cope Street frontage, looking north

Source: Urbis



Picture 4 North western corner of site, looking north east illustrating station construction vehicular entrance

Source: Urbis

### **3. BACKGROUND**

#### **3.1. APPROVAL - SSD 9393**

Development consent was granted on 10 December 2019 for the concept SSDA (SSD 9393) for an OSD including:

- Maximum building envelopes for podium, mid-rise, and tower buildings.
- A maximum gross floor area of 68,750sqm, excluding station floor space.
- Conceptual land use for non-residential and residential floor space.
- Minimum 12,000sqm of non-residential gross floor area including a minimum of 2,000sqm of community facilities.
- Minimum 5% residential gross floor area as affordable housing dwellings.
- 70 social housing dwellings.
- Basement car parking, motorcycle parking, bicycle parking and service vehicle spaces. This detailed SSDA seeks development consent for the over station development located within the Southern Precinct of the site, consistent with the parameters of SSD 9393.

#### **3.2. SUBSEQUENT DETAILED SSD APPLICATIONS**

Following the approval of the concept SSDA (SSD 9393), four detailed SSD applications were lodged concurrently with the Department of Planning, Industry and Environment (**DPIE**). The detailed SSD applications seek development consent for the detailed design and construction of the basement and each building within the WMQ OSD.

Specifically, SSD-10439 was lodged on 27 October 2020, seeking consent for the design, construction, and operation of a mixed-use residential building within the Central Precinct of the WMQ site, including a three-storey podium containing non-residential uses including 2,000sqm GFA of community facilities in the form of a centre-based childcare facility. The residential tower above the podium comprises 24 affordable housing units and 126 market residential apartments. This application is currently under assessment.

It is reiterated that consent is sought for the general area, design and operation of the centre-based childcares within SSD-10439.

### **4. PROPOSED MODIFICATION**

This modification application seeks to amend Condition A12 of SSD 9393. The wording of the condition currently requires a legally binding agreement to be prepared to the satisfaction of the Planning Secretary which outlines the final area, design and future operating model of community facilities to be delivered on the WMQ site, prior to the determination of the first Future Development Application for the site.

This Section 4.55(1A) modification application however seeks to modify Condition A12 to enable the determination of development applications on the WMQ site prior to the final resolution of the design, area and future operating model of the proposed community facilities located within Building 2 (Central Precinct). This application seeks to align the requirement to satisfy Condition A12 as it relates to the final 'design, area, and future operating model' of the community facilities, prior to the issue of an occupation certificate for Building 2 (Central Precinct).

## 5. MODIFICATION TO CONDITIONS

The following section summarises the proposed modifications. **Bold text** is used to denote proposed inclusion.

### 5.1. CONDITION A12

*A12. Prior to the determination of the first Future Development Application, the Applicant or its successors must enter into a Planning Agreement and/or other legally binding agreement to the satisfaction of the Planning Secretary securing the provision of the following public benefits of the Concept:*

- (a) A minimum 5% of approved residential gross floor area dedicated or transferred to a Registered Community Housing Provider as affordable housing*
- (b) 70 social housing dwellings dedicated or transferred as agreed by NSW Land and Housing Corporation*
- (c) Publicly accessible open space provision of minimum 2,200sqm across the Metro Quarter site including its final area, design and ongoing management, noting partial provision of this publicly accessible open space may also be delivered under the CSSI Approval*
- (d) Community facilities gross floor area of a minimum 2,000sqm ~~including its final area, design and future operating model. Community facilities are as defined in the Sydney Local Environmental Plan 2012.~~*

***In addition to the public benefits required under condition A12(a)-(d), prior to the issue of an Occupation Certificate for the Central Precinct of the Waterloo Metro Quarter (Building E on the building envelope plans under this approved by this consent) the Applicant or its successor must enter into a Planning Agreement and/or other legally binding agreement to the satisfaction of the Planning Secretary which documents the following:***

- (e) The final area, design, and future operating model of community facilities on the site comprising gross floor area of a minimum 2,000sqm. Community facilities are as defined in the Sydney Local Environmental Plan 2012.***

## **6. SECTION 4.55 (1A) ASSESSMENT**

The application has been assessed in accordance with the relevant requirements of Section 4.55(1A) of the *Environmental Planning and Assessment Act 1979 (EP&A Act)* as set out below. DPIE may modify a development consent under the provisions of Section 4.55(1A) of the Act if satisfied that the amendment is of 'minimal environmental impact' and the development remains 'substantially the same' as originally approved.

### **6.1. MINIMAL ENVIRONMENTAL IMPACT**

- The proposal does not seek to change the proposed design, land use, quantum or any other functional aspect of the approved concept SSD DA and the related development applications currently lodged with the Department of Planning, Industry, and Environment.
- The proposed modification application rather seeks to make a small change to the timing of the satisfaction of legal documents. It is sensible that the applicant may not yet know the final design, area, and operating model of the community facilities prior to the determination of the development application which includes such detail for the subject tenancy.
- This amendment to the timing for documents to be prepared and satisfied ensures that public benefits are still secured prior to the determination of the first application relevant to the site.
- All commitments under SSD 9393 for public benefits are maintained notwithstanding this proposed modification.

### **6.2. SUBSTANTIALLY THE SAME DEVELOPMENT**

The proposed development, as modified, will be substantially the same development as was originally approved under SSD 9393 for the following reasons:

- The proposal does not seek to amend the gross floor area, maximum building height, or approved building envelope.
- All commitments under SSD 9393 for public benefits are maintained notwithstanding this proposed modification.
- The proposal involves the modification of one condition only, which relates to the timing of when a document must be prepared and satisfied.

As detailed above, the consent authority can be satisfied that the modified proposal is substantially the same development for which consent was originally granted. The modification of development consent SSD 9393 can therefore lawfully be approved pursuant to Section 4.55(1A) of the EP&A Act.

## **7. SECTION 4.15 ASSESSMENT**

The matters referred to in Section 4.15 of the EP&A Act also need to be considered in the assessment of the proposed modification. Each of the matters relevant to the proposal is assessed below.

### **7.1. ANY ENVIRONMENTAL PLANNING INSTRUMENT**

The proposed modification has been assessed in accordance with the relevant planning controls. The application has been submitted in accordance with the requirements of Section 4.15(1A) of the EP&A Act.

### 7.1.1. State Environmental Planning Policy

The proposed modification does not impact the ability of the development to adhere to the relevant provisions of any State Environmental Planning Policy, including:

- *State Environmental Planning Policy (Infrastructure) 2007*
- *State Environmental Planning Policy (State and Regional Development) 2011*
- *State Environmental Planning Policy No 65 - Design Quality of Residential Apartment Development*
- *State Environmental Planning Policy No. 64 – Advertising and Signage*
- *State Environmental Planning Policy No.55 – Remediation of Land*

### 7.1.2. Sydney Local Environmental Plan 2012

The site is subject to the provisions of SLEP 2012. The proposal has considered the following relevant LEP considerations:

#### ▪ **Zoning and Permissibility**

The site is zoned B4 Mixed Use. The modification does not seek to amend the land uses approved under SSD 9393 which includes a mix of residential, commercial and community uses. The proposed centre-based childcare facility is defined within the terms of a community facility under the SLEP 2012, and it is permissible with consent on the land.

#### ▪ **Clause 4.3 – Height of Buildings**

This modification does not propose any changes to the approved building heights.

#### ▪ **Clause 4.4 - Floor Space Ratio**

This modification does not propose any changes to the approved floor space ratio.

#### ▪ **Clause 5.10 – Heritage Conservation**

The site is located within close proximity to a number of local heritage items listed under the SLEP 2012. The modification does not propose any external changes or amendments to the approved building envelope.

#### ▪ **Clause 6.21 – Design Excellence**

As discussed above, no changes are proposed to the approved building envelope or external design.

#### ▪ **Clause 6.45 Waterloo Metro Quarter**

Clause 6.45 states that the consent authority must not consent to development on land at the WMQ unless it is satisfied that the development is consistent with the following objectives:

- 12,000 sqm of GFA below podium for land uses other than residential accommodation or passenger transport facilities.
- 2,000 sqm of GFA for the purpose of community facilities.
- 2,200 sqm of land for publicly accessible open space.

The proposed development maintains this commitment, and the approval under the concept SSD DA ensures the delivery of 2,000sqm of GFA for the purposes of community facilities within Building E (as referenced on the SSD 9393 plans) or Building 2 (as referenced on the amending concept DA SSD-10441 plans). As such a consent authority may be satisfied in determining a SSDA for the Northern Precinct, Southern Precinct, or basement and/or application for ancillary matters under clause 6.45

prior to the execution of a legally binding agreement for the specific design, area, and future operating model of the proposed community facilities.

We note that the provision of and future operating model of the community facilities must meet the relevant definition for community facilities under the SLEP 2012 as stated below:

**community facility** means a building or place –

- (a) owned or controlled by a public authority or non-profit community organisation, and
- (b) used for the physical, social, cultural or intellectual development or welfare of the community, but does not include an educational establishment, hospital, retail premises, place of public worship or residential accommodation.

It is intended that control will be granted to a non-profit community organisation for the relevant community facilities tenancy within Building 2 and that this control will be secured via a property arrangement in line with the requirements of the SLEP 2012.

While ensuring the tenancy is controlled by a non-profit is considered appropriate to ensure the tenancy meets the needs of the community, it is noted that the overarching management of the tenancy will be coordinated with stratum and other building management commitments/conditions to ensure that it maintains a consistent design and detailed arrangements as the remainder of the WMQ. This will ensure that there is a consistent user experience and degree of maintenance and activation across the whole WMQ precinct.

▪ **Clause 6.46 - Waterloo Metro Quarter - State public infrastructure**

As per the consent authority's assessment report for the concept DA (SSD 9393), it has been confirmed that the Secretary is satisfied that an arrangement has been made for the contribution to the provision of designated State public infrastructure through the WMQ Integrated Station Development project.

▪ **Clause 7.20 Development requiring or authorising preparation of a development control plan (DCP)**

A staged development application has been approved for the site (SSD 9393), therefore clause 7.20 has been satisfied.

▪ **Clause 7.3 Car parking not to exceed maximum set out in this Division**

No changes are proposed to the car parking rates approved under SSD 9393.

▪ **Clause 7.15 Flood Planning**

The proposed modification does not impact on the sites flood management.

▪ **Clause 7.16 Airspace Operations**

The proposed modification does cause the proposed buildings to exceed the existing airspace height approval to the maximum height of 116.9m AHD.

▪ **Clause 7.27 Active Street Frontages**

No changes are proposed to the uses located at the ground floor of the building.

### **7.1.3. Any Draft Environmental Planning Instrument**

There are no relevant draft planning instruments applicable to the proposal.

#### **7.1.4. Any Development Control Plan**

In accordance with Clause 11 of the State and Regional Development SEPP, the provisions of Sydney Development Control Plan 2012 (SDCP 2012) do not apply to this development.

### **7.2. LIKELY IMPACTS**

As outlined in this letter, the environmental impacts associated with the modification are considered negligible.

### **7.3. SUITABILITY OF THE SITE**

The modification does not propose significant amendments or a change of use to the approved development that would make it unsuitable for the site. The development as modified will remain suitable for the site for the reasons stated in the original approval of SSD 9393.

### **7.4. PUBLIC INTEREST**

The proposed modification is in the public interest for the following reasons:

- The proposed modification does not seek to modify the nature, quantum or delivery timeline of the public benefits. It simply seeks to defer the detailed design and final operating model details of the facility.
- The applicant maintains their commitment to the delivery of community facilities on the site, with the proposed delivery of a centre-based childcare facility with a minimum GFA of 2,000sqm in Building 2 sought under SSD-10439. This detailed SSDA is currently under assessment by the Department of Planning, Industry, and Environment.
- The applicant further commits to the provision of a legally binding agreement to the satisfaction of the Planning Secretary which secures the provision of public benefits outlined in SSD 9393 **prior** to the determination of the first Future Development Application. This ensures the significant amount of public benefit is secured prior to the determination of any OSD on the site.
- This application seeks to align the requirement to satisfy Condition A12 as it relates to the detailed design, area, and future operating model of the community facilities only, prior to the occupation of Building 2.
- The proposed use is permissible with consent and consistent with the objectives of the zone.
- The proposed development has had regard to relevant applicable statutory planning policies and complies with the objectives of the development controls for the site.
- The proposal will not have any unacceptable impacts on adjoining or surrounding properties or the public domain in terms of traffic, noise and environmental impacts.

## **8. CONCLUSION**

The modified proposal has been assessed against the relevant planning provisions under Section 4.55 (1A) of the *Environmental Planning and Assessment Act 1979*. There are no changes to the use, provision of public open space, delivery of community benefits, maximum gross floor area, or scale of built form compared to the approved development.

The modification will result in a development that is substantially the same as the approved development, with no additional environmental impacts compared to the approved, therefore the proposal is recommended for approval.



We trust this information is sufficient to enable assessment and approval of the proposed modification request. Should you have any queries about this matter, please do not hesitate to contact the undersigned.

Yours sincerely,

A handwritten signature in black ink, appearing to read "A. Ryan". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

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