

28 February 2019

16457
CPo/SM

Carolyn McNally
Secretary
Department of Planning and Environment
Level 22, 320 Pitt Street
SYDNEY NSW 2000

Dear Ms McNally,

SECTION 4.55(1A) MODIFICATION APPLICATION TO MP08_0238 (MOD 12) 1 DENISON STREET, NORTH SYDNEY

This application has been prepared by Ethos Urban on behalf of Winten Property Group, pursuant to section 4.55(1A) of the *Environmental Planning and Assessment Act 1979* (EP&A Act) and Clause 3BA, Schedule 2 of the *Environmental Planning and Assessment Regulation (Savings, Transitional and Other Provisions) 2017* (EP&A Regulation) to modify Development Consent MP08_0238 relating to 1 Denison Street, North Sydney (the site).

The modification relates to minor design changes resulting from detailed design development including:

- Minor reconfigurations within the basement to align building services requirements;
- Minor reconfiguration of the Level B1 retail tenancy to align building services requirements;
- Minor refinements to the internal layouts of Levels G-2 to accommodate building services requirements;
- Modification to the ground level external stair access from Denison Street to mezzanine retail; and
- Minor modifications to external access and terrace design to accommodate the design development of the external space at Level 2.

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 Architectural Plans prepared by Bates Smart (**Attachment A**) and Landscape Plans prepared by ASPECT (**Attachment B**).

1.0 Consent Proposed to be Modified

MP08_0238 was granted by the (then) Minister for Planning on 25 February 2010 for demolition of existing buildings and erection of a mixed-use development comprising a retail/commercial building at 77-81 Berry Street and a hotel building 88 Walker Street, pursuant to Part 3A of the EP&A Act. The consent has since been modified nine times, as follows:

- MP08_0238 MOD 1 – Modification to amend the approved building design, including a minor increase to the building envelope, amendments to façade treatments, a reinstatement of the underground service tunnel, internal reconfigurations, a reconfiguration of the public domain area, and amendments conditions of consent;
- MP08_0238 MOD 2 – Technical amendments to the wording of consent conditions to allow for the staged construction of the two separate buildings;
- MP08_0238 MOD 3 – Modification to enable extended hours of construction facilitating internal fitout works;

- MP08_0238 MOD 4 – Technical amendments to the wording of consent conditions to clarify the staging of Construction Certificates, clarify the timing for satisfying relevant conditions, and to enable temporary access works;
- MP08_0238 MOD 5 – Modification to amend the approved design, including deletion of the hotel component (at 88 Walker Street) and the associated service tunnel, reconfiguration of the commercial tower basement, retention of existing stormwater infrastructure; internal layout changes, and realignment of the approved pedestrian bridge at Denison Street;
- MP08_0238 MOD 6 – Modification to extend and redesign the lower ground and basement levels, replace and augment stormwater infrastructure, and associated modifications to various conditions; and
- MP08_0238 MOD 7 – Modification to make a number of architectural form improvements and changes to the internal floor plate requirements in order to accommodate the building's future anchor tenant, as well as responding to changes in the strategic context of the site.
- MP08_0238 MOD 8 – Modification to increase floor to floor heights within lower levels and upper plant room of the commercial building and other minor amendments to building services and approved commercial/retail tenancies.
- MP08_0238 MOD 9 – Design changes to the southern end of the lower podium of the commercial building to create a more regular floorplate and reconfiguration of the building entrance, commercial lobby and public domain to orientate the building to Denison Street at ground level. Update to Landscape Plans to clearly demarcate off-site works.
- MP08_0238 MOD 10 – Design development of the façade expression including fins and frits, louvers and roof profile lighting element. Updates to the detailed landscape design of Berry Square.
- MP08_0238 MOD 11 – Extension of the approved construction hours.

It is noted MOD 1-9 were approved pursuant to (former) Section 75W of the EP&A Act. MOD10-11 have been approved in accordance with s4.55(1A) of the EP&A Act and Clause 3BA, Schedule 2 of the EP&A Regulation (Savings, Transitional and Other Provisions).

2.0 Proposed Modifications to the Consent

2.1 Modifications to the Development

This application seeks minor modifications relating to design development of the commercial tower. All modifications are detailed on the Architectural Plans submitted at **Attachment A** and include:

- Minor reconfigurations within the basement to align building services requirements;
- Minor reconfiguration of the Level B1 retail tenancy to align building services requirements;
- Minor refinements to the internal layouts of Levels G-2 to accommodate building services requirements;
- Modification to the ground level external stair access from Denison Street to mezzanine retail; and
- Minor modifications to external access and terrace design to accommodate the design development of the external space at Level 2.

The proposed modifications result in a minor increase of 37m² of GFA, to a total of 65,543m². The modifications to the landscape design of the Level 2 terrace are detailed on the Landscape Plans submitted at **Attachment B**.

Separate to the above design modifications proposed, the building tenant through a separate DA to North Sydney Council, is seeking to allow for the flexible use of four car spaces at Level B5 for storage or vehicle parking as per the changing operational needs. To remove any potential inconsistency with the base building consent, the relevant conditions relating to the number and type of car parking are proposed to be updated to reflect this (see **Section 2.1** below for relevant conditions).

2.2 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***.

A2 Development in Accordance with Plans and Documentation

The development will be undertaken in accordance with MP No. 08_0238 and the Environmental Assessment dated May 2009 prepared by JBA Urban Planning, except where amended by the Preferred Project Report dated October 2009 and as amended by:

(a) the S75W Modification Application (MP08_0238 MOD 1) and accompanying Environmental Assessment dated August 2010 and October 2010 and June 2014 and June 2014 prepared by JBA Urban Planning and additional information, plans and reports provided with the Preferred Project Report and S75W;

(b) the S75W Modification Application (MP08_0238 MOD 2) and accompanying Environmental Assessment dated 31 May 2011 prepared by JBA Urban Planning;

(c) the S75W Modification Application (MP08_0238 MOD 3) and accompanying Environmental Assessment dated 9 November 2011 prepared by JBA Urban Planning and Response to Submissions dated 12 January 2012 and 23 February 2012;

(d) the S75W Modification Application (MP08_0238 MOD 4) and accompanying Environmental Assessment dated 12 June 2014 prepared by JBA Urban Planning;

(e) the S75W Modification Application (MP08_0238 MOD 5) and accompanying Environmental Assessment dated 12 June 2014 prepared by JBA Urban Planning and Response to Submissions dated 20 November 2014;

(f) the S75W Modification Application (MP08_0238 MOD 7) and accompanying Environmental Assessment dated 11 November 2016 prepared by JBA Urban Planning and Response to Submissions dated 2 March 2017, 18 April 2017 and 26 April 2017;

(g) the S75W Modification Application (MP08_0238 MOD 8) and accompanying Environmental Assessment dated 27 June 2017 prepared by JBA Urban Planning;

(h) the S75W Modification Application (MP08_0238 MOD 9) and accompany Environmental Assessment dated 21 December 2017 prepared by Ethos Urban, and Response to Submissions dated 9 March 2018 prepared by Ethos Urban;

(i) The Section 4.55(1A) modification application (MP08_0238 MOD 10) and accompanying Environmental Assessment prepared by Ethos Urban dated 29 May 2018 and Response to Submissions dated 17 August 2018; and

(j) The Section 4.55(1A) modification application (MP08_0238 MOD 11) and accompanying Environmental Assessment prepared by Ethos Urban dated 13 July 2018 and Response to Submissions dated 2 October 2018; and

(k) The Section 4.55(1A) modification application (MP08_0238 MOD 12) and accompanying Environmental Assessment prepared by Ethos Urban dated 28 February 2019; and the following drawings

| Drawing No. | Rev. | Name of Plan | Date |
|-------------|----------------------------|---------------------------------------|--|
| DA01.000 | 05 06 | General Arrangement Plan Site Plan | 09.05.18 13.02.19 |
| DA02.0B5 | 05 06 | Basement 05 – Parking | 09.05.18 13.02.19 |
| DA02.0B4 | 05 06 | Basement 04 – Parking | 09.05.18 13.02.19 |
| DA02.0B3 | 05 06 | Basement 03 – Parking | 09.05.18 13.02.19 |
| DA02.0B2 | 05 06 | Basement 02 – Parking | 09.05.18 13.02.19 |
| DA02.0B1 | 05 06 | Basement 01 – Parking | 09.05.18 13.02.19 |
| DA02.0LG | 05 06 | Lower Ground Level | 09.05.18 13.02.19 |
| DA03.000 | 05 06 | General Arrangement Plan Ground Level | 09.05.18 13.02.19 |

| Drawing No. | Rev. | Name of Plan | Date |
|---|---------------------|--|---------------------------------|
| DA03.0MZ | 05 06 | General Arrangement Plan Mezzanine | 09.05.18 13.02.19 |
| DA 03.001 | 05 06 | General Arrangement Plan Level 01 – Commercial | 09.05.18 13.02.19 |
| DA 03.002 | 05 06 | General Arrangement Plan Level 02 – Commercial & Terrace | 09.05.18 13.02.19 |
| DA 03.003 | 05 | General Arrangement Plan Level 03 – Commercial | 09.05.18 |
| DA03.004 | 05 | General Arrangement Plan Level 04 – Typical Low Rise | 09.05.18 |
| DA03.009 | 05 | General Arrangement Plan Level 09 – Transfer Floor | 09.05.18 |
| DA03.010 | 05 | General Arrangement Plan Level 10 – Plant | 09.05.18 |
| DA03.011 | 05 | General Arrangement Plan Level 11 – Typical Mid Rise | 09.05.18 |
| DA03.022 | 05 | General Arrangement Plan Level 22 – Transfer | 09.05.18 |
| DA03.024 | 05 | General Arrangement Plan Level 24 – Typical High Rise | 09.05.18 |
| DA03.035 | 05 | General Arrangement Plan Level 35 – High Rise Upper | 09.05.18 |
| DA03.036 | 05 | General Arrangement Plan Level 36 – Plant & Overrun | 09.05.18 |
| DA03.037 | 05 | General Arrangement Plan Level 37 – Upper Plant | 09.05.18 |
| DA03.038 | 05 | General Arrangement Plan Roof Level | 09.05.18 |
| DA07.101 | 05 06 | Building Elevations North Elevation | 09.05.18 13.02.19 |
| DA07.102 | 05 06 | Building Elevations East Elevation | 09.05.18 13.02.19 |
| DA07.103 | 05 06 | Building Elevations South Elevation | 09.05.18 13.02.19 |
| DA07.104 | 05 06 | Building Elevations West Elevation | 09.05.18 13.02.19 |
| DA07.202 | 05 06 | Building Elevations Detailed Street Elevation – Little Spring Street | 24.05.18 13.02.19 |
| DA07.203 | 05 06 | Building Elevations Detailed Street Elevation – Spring Street | 09.05.18 13.02.19 |
| DA07.204 | 05 06 | Building Elevations Detailed Street Elevation – Denison Street | 25.05.18 13.02.19 |
| DA07.205 | 05 | Building Elevations External Lighting | 09.05.18 |
| DA08.101 | 05 06 | Building Sections A-A | 09.05.18 13.02.19 |
| DA08.102 | 05 06 | Building Sections BB | 09.05.18 13.02.19 |
| DA10.001 | 05 | Diagrams Photomontage 1/2 | 09.05.18 |
| DA10.002 | 05 | Diagrams Photomontage 2/2 | 09.05.18 |
| Landscape Plans & Offsite Works and Public Domain Plan | | | |
| 16041-L-DA1 | G | Off-Site Works & Public Domain Plan | 02.08.18 |
| 16041_L_DA2 | G | Landscape Plan- Ground Level | 02.08.18 |
| 16041_L_DA3 | G I | Landscape Plan- L02 Terrace | 02.08.18 26.02.19 |

B4 Monetary Contributions for the Commercial Building

The Proponent shall pay the following monetary contributions in accordance with the North Sydney Section 94 Contributions Plan:

(1) Amount of Contribution

| Contribution Category | Amount |
|----------------------------|---------------------------|
| Public Domain Improvements | \$2,412,420.96 tbc |
| Traffic Improvements | \$326,816.72 tbc |
| Total | \$5,739,234.68 tbc |

(2) Adjustments

The final contribution payable may be required to be adjusted to reflect the GFA approved as part of the approval.

(3) Timing and Method of Payment

The contribution shall be paid in the form of cash or bank cheque, made out to North Sydney Council. For accounting purposes, the contribution may require separate payment for each of the categories above and you are advised to check with Council. Evidence of the payment to Council shall be submitted to the Certifying Authority prior to the issue of an Construction Certificate (but excluding initial works).

(4) Indexing

Contributions will be adjusted at the time of payment in accordance with the quarterly consumer price index (All Groups Index of Sydney).

(5) Works-in-kind

In accordance with Section 2.5 of the North Sydney Contributions Plan, the Proponent may apply to Council, in writing, with an offer that a monetary Section 94 contribution be met by way of material public benefit (for an item not included on the works schedule of the North Sydney S94 Contributions Plan) and may include the dedication of land to Council, or as works-in-kind (for an item not included on the works schedule of the North Sydney S94 Contributions Plan).

B6 Railway Infrastructure

The Proponent shall enter into a Voluntary Planning Agreement (VPA) in accordance with the offer made on 21 December 2009 with the Minister for Planning to provide a Railway Infrastructure Contribution totalling **\$7,520,667.30 tbc** to be paid to the Transport Administration Corporation. Evidence of the Agreement shall be provided to the Certifying Authority prior to the issue of the relevant Occupation Certificate for the Commercial Tower, except in respect of the initial works

The final contribution payable may be required to reflect the GFA approved as part of this approval. In this case, a report by an appropriately qualified Surveyor shall be submitted to and approved by the Secretary demonstrating the total amount of constructed GFA.

Contributions will be adjusted at the time of payment in accordance with the quarterly consumer price index (All Groups Index of Sydney).

E25 Contributions for the Commercial Building

The Proponent shall pay the following monetary contributions in accordance with the North Sydney Section 94 Contributions Plan:

(1) Amount of Contribution

| Contribution Category | Amount |
|--------------------------------------|-------------------------|
| Administration | \$132,382.85 tbc |
| Child Care Facility | \$560,496.44 tbc |
| Community Centres | \$332,744.02 tbc |
| Library Acquisition | \$65,822.80 tbc |
| Library Premises and Equipment | \$200,063.55 tbc |
| Multi-Purpose Indoor Sports Facility | \$75,731.60 tbc |
| Olympic Pool | \$246,688.03 tbc |

| | |
|-------------------------------|---------------------------|
| Open Space Acquisition | \$241,261.78 tbc |
| Open Space Increased Capacity | \$478,217.95 tbc |
| Total | \$2,212,409.03 tbc |

(2) Adjustments

The final contribution payable may be required to be adjusted to reflect the GFA approved as part of the approval.

(3) Timing and Method of Payment

The contribution shall be paid in the form of cash or bank cheque, made out to North Sydney Council. For accounting purposes, the contribution may require separate payment for each of the categories above and you are advised to check with Council. Evidence of the payment to Council shall be submitted to the Certifying Authority prior to the issue of an Occupation Certificate (but excluding initial works).

(4) Indexing

Contributions will be adjusted at the time of payment in accordance with the quarterly consumer price index (All Groups Index of Sydney).

(5) Works-in-kind

In accordance with Section 2.5 of the North Sydney Contributions Plan, the Proponent may apply to Council, in writing, with an offer that a monetary Section 94 contribution be met by way of material public benefit (for an item not included on the works schedule of the North Sydney S94 Contributions Plan) and may include the dedication of land to Council, or as works-in-kind (for an item not included on the works schedule of the North Sydney S94 Contributions Plan).

G12 Allocation of Spaces

Two hundred and eight (208) car parking spaces, 17 loading bays and thirty eight (38) motorcycle spaces shall be provided and maintained at all times on the subject site. The spaces shall be allocated in the following proportions:

| | | |
|--------------------|--------------------|---------------------------------|
| 166 162 | car | Commercial/retail tenant |
| 4 | car/storage | Commercial/retail tenant |
| 18 | motorcycle | Commercial/retail tenant |
| 17 | loading | Commercial/retail tenant |
| 42 | car | Public |
| 21 | motorcycle | Public |

Such spaces are to be identified on-site by line-marking and numbering up the completion of works and prior to the issue of Occupation Certificate. Carparking provided shall only be used in conjunction with the uses contained within the development.

3.0 Substantially the Same Development

Clause 3BA, Schedule 2 of the EP&A Regulation (Savings, Transitional and Other Provisions) states that in the application of section 4.55 (1A) or (2) or 4.56 (1) of the Act to the following development, the consent authority need only be satisfied that the development to which the consent as modified relates is substantially the same development as the development authorised by the consent as last modified under section 75W. In respect of MP08_0238 the last modification under Section 75W was MOD 9.

The development, as proposed to be modified, is substantially the same development as that approved in MOD 9 of MP08_0238, in that it:

- The development, as proposed to be modified continues to relate to a commercial building now known as 1 Denison Street;
- The proposed modifications do not alter the built form of the approved development; and
- The proposed modifications are considered a minor design development and do not alter the impacts of the 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*”. 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 Compliance with Environmental Planning Instruments

The consistency of MP08_0238 with the relevant legislation, environmental planning instruments, policies and guidelines was considered as part of the original EAR. The proposed modification does not greatly change the original assessment against the relevant plans, policies, and guidelines, however the following is noted:

- Notwithstanding the proposed modifications, the development will continue to increase the provision of commercial floor space in the North Sydney CBD responds to the strategic objectives and directions in *A Metropolis of Three Cities*, Eastern District Plan and the *North Sydney Local Environment Plan 2013* (North Sydney LEP).
- The proposed modification remains generally consistent the Project Approval. It relates to the same activity as the approved development, being for a mix of commercial purposes that remain permissible with consent within the B3 Commercial Core zone under the North Sydney LEP. Notwithstanding the proposed modifications, the development directly responds to the objectives of this land use zone, being to encourage a wide range of suitable retail, business, office, entertainment, and community land uses in connection with public transport that encourages further employment opportunities.

4.2 Public Domain

The proposed minor amendments to the Level B1 retail tenancy fronting Spring Street, and the alteration to access to the mezzanine retail from Denison Street do not give rise to any impacts on the public domain. No amendments to the approved public domain and off site works are proposed as part of this application.

4.3 Visual Impact

Although minor external changes are proposed, these are limited to Level 2 and below and do not alter the façade expression of the approved commercial tower. No built form changes are proposed that will alter the impact on public or private views.

4.4 Impact on Adjoining Landowners

The proposed modifications to the Level 2 terrace are limited to detailed landscape design changes only. The operation and use of this space remains unchanged to that of the approved development and therefore does not give rise to any impacts on adjoining residential or commercial land owners.

4.5 Provision of Car Parking

This application does not seek to reduce the overall quantity of car spaces provided on the site. The proposed modifications will facilitate the flexible use of four car spaces, to be used either as storage or for regular car parking according to the changing needs of the commercial tenant. The detailed use/fitout of these spaces does not form part of the base building consent and will be subject to separate consent advanced by the tenant. Notwithstanding this, the reduction of four car spaces (if and when these spaces are used as storage) is inconsequential to the operation of the commercial building and will not generate any additional demand for on-street parking. The four car spaces to be utilised for storage are at the end of a blind aisle and therefore the flexible use of these spaces does not change car park access or traffic flows.

5.0 Conclusion

The proposed modifications relate to minor design amendments resulting from the detailed design of the commercial building and relevant updates to conditions of consent. In accordance with section 4.55(1A) of the EP&A Act, Council may modify the consent as:

- The proposed modification is of minimal environmental impact; and
- The development, as proposed to be modified, is substantially the same development as development for which the consent (MP08_0238, MOD 9) was granted.

We trust that this information is sufficient to enable a prompt assessment of the proposed modification request.

Yours sincerely,



Candice Pon
Senior Urbanist
02 9956 6962
cpon@ethosurban.com



Samantha Miller
Principal
02 9409 4971
smiller@ethosurban.com