



MODIFICATION REQUEST:

***77-81 Berry Street & 88 Walker Street,
North Sydney***

***MP08_0238 MOD 5 – Modification to approved
Commercial and Hotel Development***



Secretary's
Environmental Assessment Report
Section 75W of the
Environmental Planning and Assessment Act 1979

March 2015

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1. BACKGROUND

The purpose of this report is to assess an application seeking to modify the Project Approval MP08_0238 for construction of a commercial tower and hotel tower at 77-81 Berry Street and 88 Walker Street, North Sydney under Section 75W of the *Environmental Planning and Assessment Act 1979* (EP&A Act). The proposal seeks to delete the hotel component (88 Walker Street) and the associated service tunnel from the development, and other associated changes to the commercial building and basement within the Project Approval. The proposed modifications are sought as a result of 88 Walker Street being sold and the new landowner's intentions to proceed with an alternative development proposal.

1.1 The Site

The subject site comprises two separate sites identified as the southern portion of 77-81 Berry Street (stratum lots 2, 3 & 4 in DP 1078998) and 88 Walker Street, North Sydney (Lot 1 in DP 832416), and located in the North Sydney CBD on the lower north shore of Sydney (refer to **Figures 1 and 2**).

The two sites are located between Berry Street to the north, Spring Street to the south, Denison Street to the west and Walker Street to the east. The site adjoins the Beau Monde residential development to the north.



Figure 1: Regional Context (Source: Google Maps, 2012)

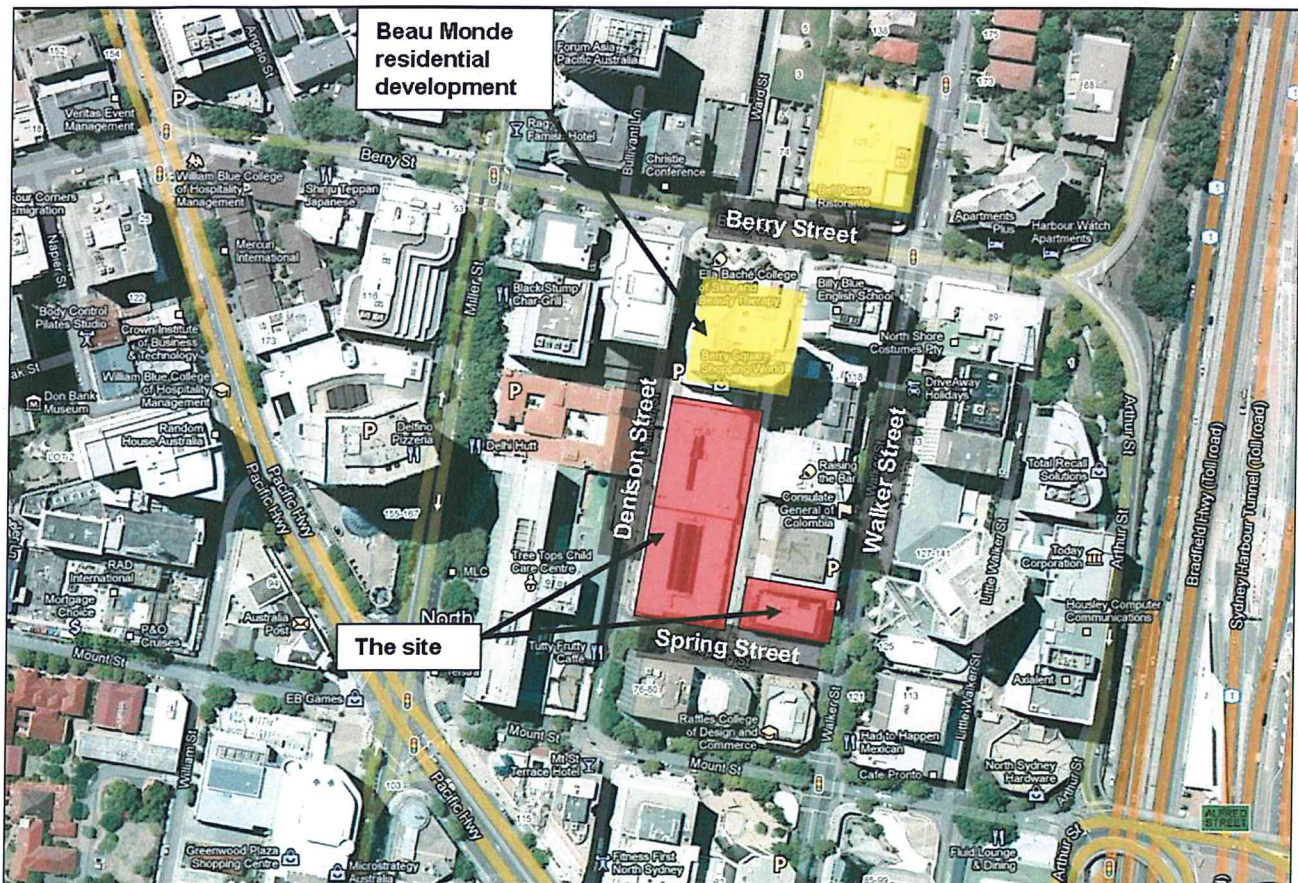


Figure 2: Aerial view demonstrating the subject site in red and neighbouring residential buildings highlighted in yellow (Base Image Source: Google Maps, 2012)

1.2 Previous Approvals

On 25 February 2010, the Minister for Planning approved the Major Project (MP08_0238) for:

- demolition of the existing buildings on both sites including the pedestrian bridge linking 77-81 Berry Street with Tower Square;
- excavation for 4 levels of basement at 77-81 Berry Street and 2 levels of basement at 88 Walker Street;
- construction of a part 28 / part 37 storey commercial and retail building on the southern portion of 77-81 Berry Street together with 4 levels of basement car parking with vehicular access via Little Spring Street and loading / unloading facilities including drop-off / pick-up for hotel (buses) and provision of 42 public car parking spaces and 10 motorcycle spaces;
- construction of a 33 storey x 200 room hotel at 88 Walker Street, including a connecting service tunnel below Little Spring Street to provide access to the Basement Level 2 of the commercial building, together with back-of-house facilities, ground floor hotel lobby with through site link between Walker Street and Little Spring Street (open business hours), Level 2 conference, Level 3 reception and bar and Level 4 restaurant;
- reconstruction of the Tower Square pedestrian bridge; and
- off - site works including public domain and landscaping: construction of a new pedestrian plaza in Denison Street and public forecourt to Spring Street; construction of a new through-site road between Denison Street and Little Spring Street; together with various public domain improvements in Denison, Spring and Little Spring Streets, including road re-alignments / partial public road closures, tree planting, paving, street furniture and lighting, and public art.

1.3 Previous Modifications

The approval has been modified on several occasions by the Department as follows:

- MOD 1 was approved on 11 March 2011 to amend the building design including a minor increase to the building envelope, amended external façade treatment, reinstatement of the underground service tunnel, amended internal layout and public domain.
- MOD 2 was approved on 18 January 2012 to allow staged construction, amend conditions relating to Section 94 Contributions and delete off-site car parking works at Mount Street.
- MOD 3 was approved on 10 April 2012 to allow extension of construction hours for internal fitouts.
- MOD 4 was approved on 29 October 2014 to amend conditions to clarify staging of construction certificates and allow initial works to facilitate construction.

The initial works approved under MOD 4 have commenced (discussed further in **Section 5.6**).

2. PROPOSED MODIFICATION

The proposal seeks approval for the following:

- excise 88 Walker Street from the development site including deletion of the hotel component (88 Walker Street) and the associated service tunnel connecting the hotel and basement;
- reconfigured basement to accommodate deletion of the hotel component including:
 - deletion of associated infrastructure for the hotel from the basement;
 - reduced car parking from 227 to 162 spaces;
 - reconfiguration and relocation of services and plant;
 - relocation of bicycle facilities;
- deletion of approved stormwater infrastructure and retention of existing stormwater infrastructure;
- internal layout changes to the commercial building resulting in a decrease in 2,537m² of gross floor area within the approved building envelope; and
- realignment of approved new pedestrian bridge at Denison Street.

The proposal seeks the abovementioned modifications as 88 Walker Street has been sold and the new landowner intends to proceed with an alternative development proposal for the site.

An assessment of the proposed modifications is provided in **Section 5** of this report.

3. STATUTORY CONTEXT

3.1 Continuing Operation of Part 3A to Modify Approvals

Part 3A of the *Environmental Planning and Assessment Act 1979* (EP&A Act), as in force immediately before its repeal on 1 October 2011, and as modified by Schedule 6A of the EP&A Act, continues to apply to Section 75W modification applications for Part 3A projects.

The application has been lodged pursuant to Section 75W of the EP&A Act. Consequently, this report has been prepared in accordance with the requirements of Part 3A and the associated Regulation, and the Minister (or delegate) may approve or disapprove of the carrying out of the project under Section 75W of the EP&A Act.

3.2 Modification of the Minister's Approval

The Minister's approval for a modification is not required if the project as modified will be consistent with the existing approval. However, in this instance, the proposal seeks to modify conditions imposed on the Project Approval and therefore, an application to modify the approval is required.

3.3 Environmental Assessment Requirements

In this instance, it was not necessary to notify the Proponent of environmental assessment requirements pursuant to Section 75W (3) of the EP&A Act as sufficient information was provided to assess the modification application.

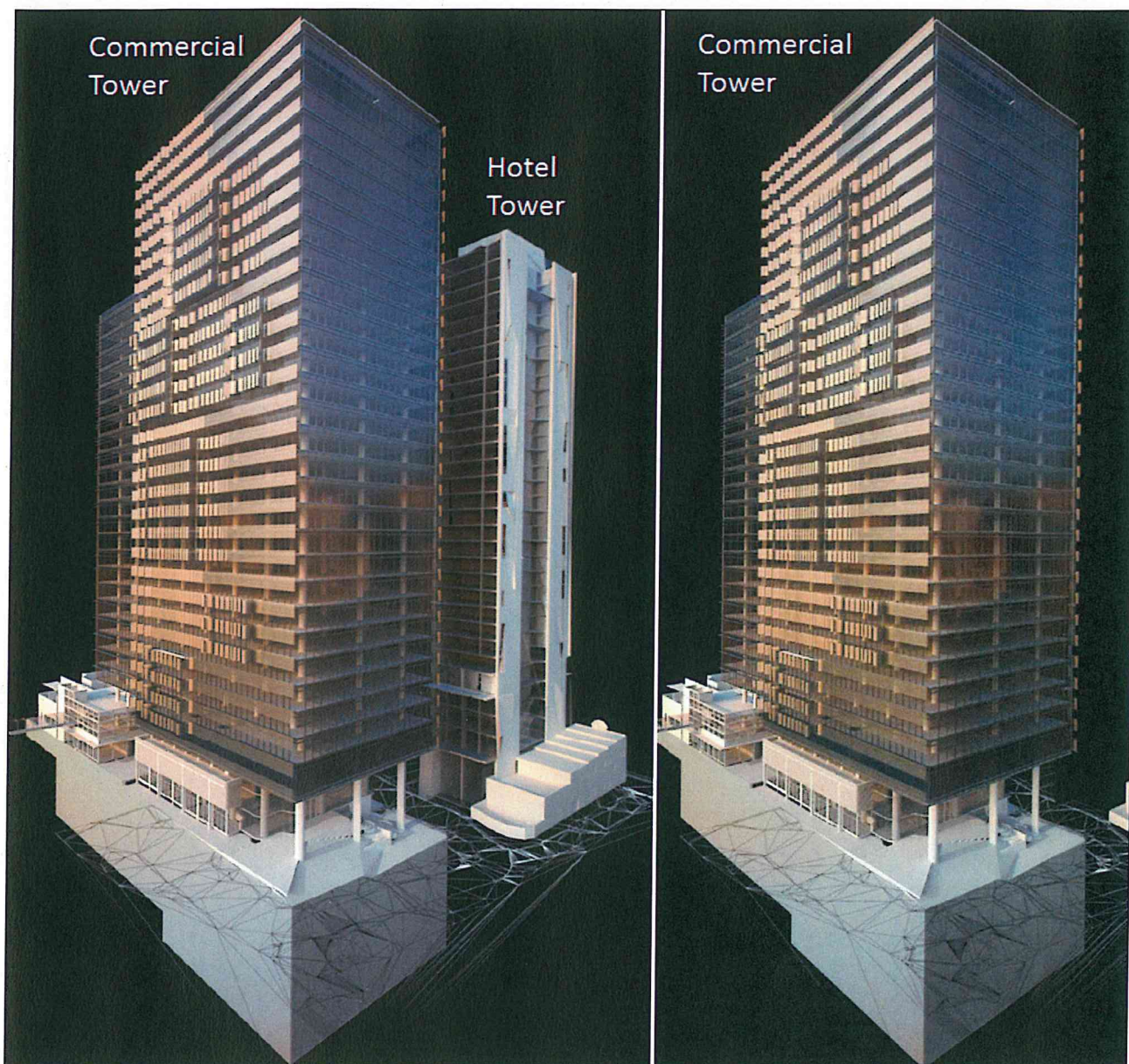


Figure 3: Approved commercial and hotel towers (left) and proposed removal of hotel tower (right)

3.4 Delegated Authority

In accordance with the Minister's delegation of 16 February 2015, the Executive Director of Infrastructure and Industry Assessments can determine the application as:

- the relevant local Council has not made an objection;
- a political donations disclosure statement has not been made; and
- there are less than 10 public submissions in the nature of objections to the proposal.

4. CONSULTATION AND SUBMISSIONS

In accordance with Section 75X (2) (f) of the EP&A Act, the Department is required to make the modification request publicly available. The modification request was made available on the Department's website and referred to North Sydney Council and Transport for New South Wales (TfNSW) for comment.

North Sydney Council did not object to the proposed modification but requested that the Department review all conditions for payment of Section 94 contributions to take into account current Section 94 levies as applicable at the time of the determination.

TfNSW did not object to the proposed modification and provide no further comment.

Two public submissions were received from residents and representatives of the Beau Monde building to the north (77 Berry Street) noting the approval is due to lapse on 25 February 2015. This is discussed further in **Section 5.6**.

5. ASSESSMENT

The Department considers the key issues to be:

- excising 88 Walker Street from the development site;
- internal modifications;
- pedestrian bridge;
- basement and parking;
- contributions; and
- physical commencement of works.

5.1 Excising 88 Walker Street from the development site;

The approved development comprises a part 28 / part 37 storey commercial and retail tower at 77-81 Berry Street (larger western site) and a 33 storey hotel tower at 88 Walker Street (smaller eastern site).

The proposal seeks to excise 88 Walker Street from the development site resulting in deletion of the approved hotel from the development. As the approved design of the commercial tower and hotel building were designed as two individual buildings on separate sites (**Figure 3**), the proposal will maintain the same built form for the commercial tower as approved. No external changes are proposed to the commercial tower and façade.

The Department notes that 88 Walker Street is 607m² in area and has a frontage to Walker Street and Little Spring Street. The Proponent has advised that the site has been sold and is intended to proceed with an alternative development proposal. The new landowner will be required to obtain separate development consent for any future development of the site in accordance with the North Sydney Local Environmental Plan 2013 (NSLEP 2013) which allows a height of 170 metres. No FSR controls apply for sites within the North Sydney city centre.

The Department is satisfied that 88 Walker Street is of a sufficient size and has appropriate access to enable it to be developed separately in accordance with the NSLEP 2013 controls. On this basis, the Department supports the deletion of 88 Walker Street and hotel component from the development.

5.2 Internal modifications

As a result of deleting the hotel from the approval, the proposal includes a number of internal modifications to the commercial building including:

- relocation of the café space and new security room at the Spring Street ground floor lobby;

- revised layout at the Denison Street ground floor lobby including removal of 2 retail tenancies, a new spiral stair case entry to level 1 and revised lift layout;
- revised food court and retail layout at level 1 to accommodate retention of an existing substation;
- removal of approved roof garden terrace at level 2 to provide plant and landscaping at this level; and
- reconfigured plant room layout at the roof plant levels.

The proposed internal layout modifications result in a decrease in 2,537m² of gross floor area within the approved building envelope. The replacement of the level 2 roof garden terrace with plant and landscaping is proposed as a result of diverting services at the commercial building in response to removal of the hotel building.

Existing conditions of consent will adequately manage and mitigate any potential amenity impacts associated with the relocation of the plant. Further, the changes are generally minor in nature and do not significantly alter from the approved layout. The Department supports the proposed changes.

5.3 Pedestrian Bridge

The approval also includes a new pedestrian bridge over Denison Street connecting 155-167 Miller Street with the commercial tower at Level 1. The pedestrian bridge is proposed to be realigned to accommodate the revised internal layout of the commercial tower. The realignment of the pedestrian bridge is minor and will continue to provide an appropriate connection between the two sites. The realignment will have negligible impacts on the streetscape of Denison Street (**Figure 4**).

5.4 Basement and Parking

The project approval comprises a 5 level basement at 77-81 Berry Street and a connecting service tunnel to a 2 level basement at 88 Walker Street.

The proposal seeks the following changes to the basement:

- deletion of the service tunnel connecting the commercial and hotel buildings;
- deletion of the two level basement at 88 Walker Street;
- deletion of associated infrastructure for the hotel from the basement;
- deletion of the level 5 basement (plant level);
- reduced parking provision;
- reconfiguration and relocation of services and plant; and
- relocation of bicycle parking facilities and associated amenities.

The approved development provides a total of 227 car parking spaces for the commercial building and hotel building including 42 public car parking spaces. The proposal seeks to provide 162 spaces as a result of both deletion of the hotel and a reduced rate for the commercial building. The approved 42 public car parking spaces are proposed to be maintained. A summary of approved and proposed parking and applicable parking controls is provided in **Table 2**.

Table 2: Summary of approved and proposed car parking against the North Sydney Development Control Plan 2002 maximum car parking requirements applicable at time of approval

	Approved	Proposed	NSDCP 2002 (Max)
Car Parking			
Commercial Building	153	120	134
Hotel Building	32	0	0
Public Car Parking	42	42	42
Total	227	162	176

As shown in **Table 2**, the proposal complies with the maximum parking requirements of North Sydney Development Control Plan 2002.

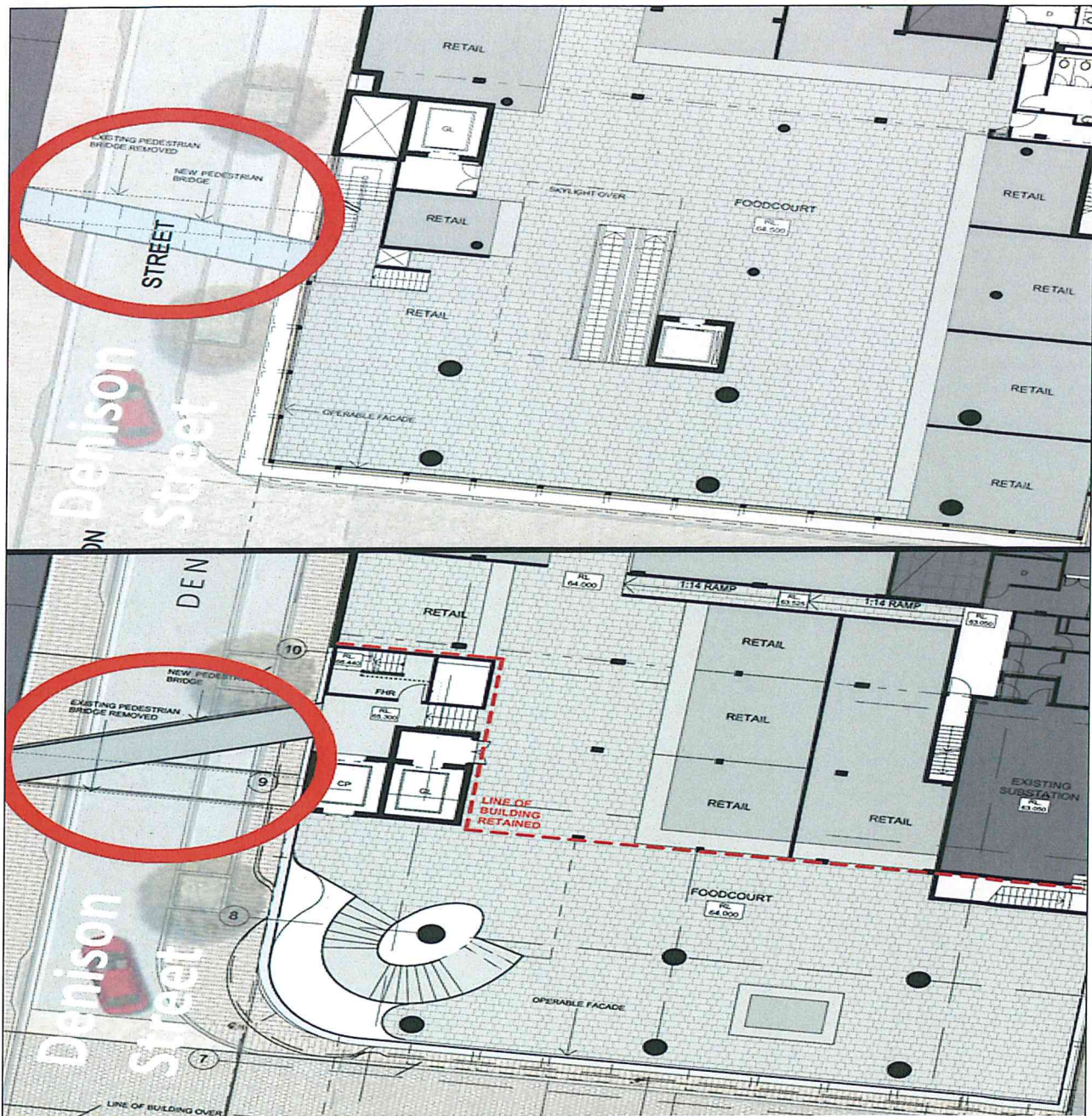


Figure 4: Extracted of approved (above) and proposed (below) pedestrian bridge alignment over Denison Street

Council has not raised concern with regards to parking provision and notes that the proposed public car parking remains unchanged.

The proposed parking provision is consistent with car parking rates of the existing approval and the maximum car parking rates under North Sydney Development Control Plan 2002, applicable at the time of assessment. In consideration of the above, the Department is satisfied that proposed car parking is acceptable as it will contribute to reduced private vehicle dependent trips in an area well serviced by public transport and will result in a reduction in traffic generation when compared to the approved development.

The Department has reviewed the revised car parking layout and concludes that it is generally acceptable with the exception of four accessible spaces which are not conveniently located near lift entries. In this regard, the Department recommends a condition that amended plans be submitted relocating the accessible spaces closer to lift entries.

The proposal also seeks to reduce motorcycle parking from 43 to 41 spaces comprising 14 commercial motorcycle spaces and 27 public motorcycle spaces. The Department notes the proposed 14 commercial motorcycle spaces is consistent with the maximum under North Sydney Development Control Plan 2002. The proposed 27 public motorcycle spaces results in an increase of 17 spaces from the currently approved 10 spaces.

The Department acknowledges motorcycle parking provision exceeds that approved but notes the increase is minor and will not result in any substantial additional traffic impacts. Further the additional spaces are for public use. In this regard, the Department concludes the proposed motorcycle parking is acceptable.

The relocation of the bicycle parking facilities and associated amenities from the first floor basement to the ground floor will improve general access and use of the bicycle parking facilities. Separate entry at the ground floor will also improve safety, reducing the need to share access with cars accessing the basement.

The remaining changes are as a result of isolating the development from the previously required hotel infrastructure and access. The associated changes to basement design and envelope are minor and necessary to facilitate the function of the commercial building and reconfiguration of plant and services.

5.5 Contributions

The approval requires payment of Section 94 Contributions in accordance with the rate of contributions set out in *North Sydney Section 94 Contributions Plan* which is calculated based on gross floor area. The payment of Section 94 Contributions is broken into two staged payments being:

- prior to issue of a construction certificate for each building; and
- prior to issue of an occupation certificate for each building.

In addition, the approval requires the Proponent to enter into a Voluntary Planning Agreement (VPA) with the Transport Administration Infrastructure Corporation for payment of Railway Infrastructure Contributions in accordance with the agreed amount of \$5,701,843.56 calculated based on the net increase in gross floor area of the approved buildings at a contribution rate of \$107.24 per metre square.

As the proposal seeks to remove the hotel building from the approval, revised Section 94 Contributions and Railway Infrastructure Contributions are payable for the development to reflect the GFA of the modified development. The revised net GFA for the development is a total of 46,975m². In this regard **Table 4** provides a break down and comparison of developer contributions applicable.

Table 4: Comparison between approved and proposed developer contributions

Contribution Category	Approved Rate/100m ²	Approved Amount Payable (includes Commercial and Hotel Building)	Updated 2014/2015 Indexed Rate/100m ²	Revised Amount Payable (Commercial Building only)
Prior to construction certificate				
Public Domain Improvements	\$7,872.51	\$4,185,734.84	\$8,697.68	\$4,085,735.18
Traffic Improvements	\$475.33	\$252,728.21	\$525.15	\$246,689.21
Subtotal	\$8,347.84	\$4,438,463.05	\$9,222.83	\$4,332,424.39
Prior to occupation certificate				
Administration	\$192.54	\$102,371.59	\$212.72	\$99,925.22
Child Care Facility	\$815.21	\$433,439.00	\$900.65	\$423,080.34
Community Centres	\$469.41	\$249,580.60	\$518.61	\$243,617.05

Library Acquisition	\$95.72	\$50,893.37	\$105.76	\$49,680.76
Library Premises and Equipment	\$291.00	\$154,721.79	\$321.51	\$151,029.32
Multi Purpose Indoor Sports Facility	\$110.13	\$58,555.02	\$121.68	\$57,159.18
Olympic Pool	\$358.84	\$190,791.64	\$396.45	\$186,232.39
Open Space Acquisition	\$350.95	\$186,596.61	\$387.73	\$182,136.17
Open Space Increased Capacity	\$695.65	\$369,870.15	\$768.56	\$361,031.06
Subtotal	\$3,379.45	\$1,796,819.77	\$3,733.67	\$1,753,891.48
Total	\$11,127.29	\$6,235,282.82	\$12,956.50	\$6,086,315.88

The revised Railway Infrastructure Contribution payable is \$5,037,599.00 based on a contribution rate of \$107.24 per metre square.

The Department therefore recommends that relevant conditions are amended to reflect the reduced contributions.

5.6 Physical Commencement of Works

Two public submissions were received during the Department's assessment of the application from residents and representatives of the Beau Monde building (77 Berry Street) located to the north of the site noting the approval is due to lapse on 25 February 2015. The Department notes that the provisions of the approval maintains that the approval is to lapse on 25 February 2015 unless the project is physically commenced.

The Principal Certifying Authority, Phillip Chun Code Consulting, advised that on 13 January 2015 a construction certificate was issued for the development and physical commencement of works approved as part of MOD 4 have begun. Departmental staff have inspected the site and have observed the works in progress.

The Department is satisfied that physical commencement of works on site have taken place prior to the approval lapse date on 25 February 2015. The consent has therefore been activated and has not lapsed.

6. CONCLUSION AND RECOMMENDATION

The Department has assessed the application on its merits and concludes the proposed modification to remove 88 Walker Street from the development will not have any adverse impacts on the approved commercial development. The revised basement layout and parking provision is consistent with the original approval. The internal layout changes are minor in nature and are necessary to accommodate additional services and plant from removal of the hotel development. The Department is also satisfied that 88 Walker Street is capable of being developed independently in accordance with the requirements of the NSLEP 2013. The approval has been activated by physical commencement of works.

The Department concludes the proposed modification is reasonable and recommends that the conditions of approval be amended as outlined in the attached instrument of modification.

It is recommended that the Executive Director of Infrastructure and Industry Assessments:

- (a) **consider** the findings and recommendations of this report;
- (b) **approve** the modification request under delegated authority, under Section 75W of the Environmental Planning and Assessment Act 1979; and
- (c) **sign** the attached Instrument of Modification for MP08_0238 MOD 5.

Prepared by:
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Metropolitan Projects

Endorsed by



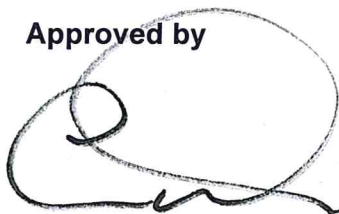
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16.3.15

APPENDIX A MODIFICATION REQUEST

See the Department's website at

http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=6568

APPENDIX B SUBMISSIONS

See the Department's website at

http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=6568

APPENDIX C RECOMMENDED MODIFYING INSTRUMENT
