



SM/MR  
16457

2 March 2017

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

Attention: Amy Robertson

Dear Amy,

**RESPONSE TO SUBMISSIONS - MOD 7 MP08\_0238  
1 DENISON STREET, NORTH SYDNEY**

We write on behalf of Winten Property Group (Winten) in regards to the Section 75W modification applications being MOD 7 to Project Approval MP08\_0238 relating to the construction of a new commercial building at 1 Denison Street, North Sydney.

Winten and its specialist consultant team have reviewed and considered all the submissions made in relation to MOD 7 and a response to each of the issues is provided at **Attachment A**. This letter is also accompanied by amended architectural plans prepared by Bates Smart (**Attachment B**).

It is noted that a separate Response to Submissions has been prepared in relation to MOD 6 to MP 08\_0238 addressing the submissions specific to that application.

**1.0 DESIGN AMENDMENTS BASED ON SUBMISSIONS**

In response to the public submissions received and further design development, Winten has progressed the following design amendments specific to Modification 7:

- Minor change to finished surface levels within ground floor and through site link;
- Internal changes to core and building services locations; and
- Relocation of plant/building services from L2 to L10.

The proposed design amendments are detailed on the amended plans, prepared by Bates Smart and submitted at **Attachment B**. Key amendments are discussed in detail below. It is noted that further modifications have been made in relation to the basement which form part of Modification 6.

## 1.1 Through Site Link Surface Levels

The amended plans include a minor revision to the finished surface levels within the through site link. The proposed changes follow detailed stormwater and access advice and will result in an improved pedestrian environment within the site. The proposed changes to the surface levels of the through site link will not result in any changes to the built form of the overall development or the levels of the public domain outside of the site.

## 1.2 Building Services

The amended plans submitted at **Attachment B** include revised locations of various building services. The amended plans include the relocation of the building plant from Level 2 to Level 10 on the amended plans. This relocation of plant will not result in any change to the proposed gross floor area of the development. The proposed plant level will be screened to the north to minimise visual impact on adjoining residents. It is considered that locating plant at Level 10 will result in increased privacy for neighbouring residential properties in comparison to commercial office use of this level. To the east and west, the plant room will be open to ventilation and appropriately screened to minimise any visual impact on the built form of the tower. The relocation of the plant level from Level 2 will provide enhanced activation closer to street level and provide a higher degree of connectivity between floorplates for the future tenant. The orientation of the ventilation will ensure there are no additional acoustic impacts on the residents to the north. The amended plans also include revisions to the lift core locations and orientations. These proposed changes will not impact on the external appearance of the building. An updated photomontage is included at **Attachment B** and reproduced at **Figure 1**.



**Figure 1** – Photomontage  
*Source: Bates Smart*

## 2.0 GROSS FLOOR AREA

The proposed design amendments result in a decrease in the GFA as specified in the MOD 7 Environmental Assessment Report submitted with the Section 75W application. Amended GFA plans are included at **Attachment B**. The proposed modification to MP08\_0238 1 will result in a total GFA of 65,387m<sup>2</sup>.

MP08\_0238, as approved, provides for a total GFA of 53,299m<sup>2</sup>. As part of MOD 7, a small area of the existing commercial development on Level 2 of 77 Berry Street (within Lot 3 in DP1078998, being the commercial stratum) will be demolished resulting in a reduction in GFA of 264m<sup>2</sup>. Therefore, MOD 7 as proposed in this Response to Submissions, will result in a net increase of 11,824m<sup>2</sup> GFA to that approved under MP08\_0238.

We trust the above information is sufficient to allow a prompt assessment of the modification. Should you have any queries about this matter, please do not hesitate to contact me on 9409 4971 or [smiller@jbaurban.com.au](mailto:smiller@jbaurban.com.au).

Yours faithfully,



Samantha Miller  
Senior Planner



Michael Rowe  
Director

## 1 Denison Street, North Sydney (MOD 7)

### Response to Submissions

Issue	Comment
<b>North Sydney Council</b>	
<b>Council Resolution</b>	
Council acknowledges that Modifications 6 and 7 seek to deliver an improved design that better responds to the changed context of the site, specifically the new Victoria Cross Metro Station and Council's recent strategic planning, whilst at the same time providing an improved outcome for the residents of the Beau Monde building.	Noted.
Council note that detailed plans for the significant streetscape and traffic modifications are not presented in their final form, and that the application includes proposed conditions requiring: <ul style="list-style-type: none"> <li>a. Streetscape improvements to Denison Street, Spring Street, Little Spring Street, and the new laneway (between Little Spring Street and Denison Street), in accordance with the approved plans, to be designed to the satisfaction of Council's Director of Engineering and Property Services; and</li> <li>b. Traffic modifications to Denison Street, Spring Street, Little Spring Street and the new laneway, in accordance with the approved plans, to be designed to the satisfaction of Council's Director of Engineering and Property Services. The proposed modifications shall be submitted to, and approved in writing by the North Sydney Traffic Committee.</li> </ul>	The public domain details and modification to traffic flows will be submitted to Council's Director of Engineering and Property Services and approved by the North Sydney Traffic Committee prior to the issue of the relevant Construction Certificate.
<b>Comment on the Proposed Modified Conditions of Consent</b>	
<i>Condition B4 – Monetary Contributions for the Commercial Building</i> Comment: New amounts inserted in condition based on 2016-2017 rates and 66,706 proposed GFA minus 6261 existing GFA contribution calculated on 60,445m <sup>2</sup> increase. It is important to indicate in the condition what the contribution is based on so that the amount can be adjusted at the time of payment in accordance with the quarterly consumer price index (All Groups Index of Sydney).	Noted. GFA and contributions will be updated accordingly to reflect the approved development as modified.
<i>Condition B6 – Railway Infrastructure</i> Comment: New amounts inserted in condition based on September quarter 2016 rate @ 8123.92 per m2 and 66,706 proposed GFA minus 6261 existing GFA contribution calculated on 60445m <sup>2</sup> increase. It is important to indicate in the condition what the contribution is based on so that the amount can be adjusted at the time of payment in accordance with the quarterly consumer price index (All Groups Index of Sydney).	Noted.
<i>Condition B7 – Off-Site Works</i> Comment: Modifications appear reasonable. Council notes that detailed plans for the significant streetscape and traffic modifications are not presented in their final form, and that the application includes proposed conditions requiring Streetscape improvements to Denison Street, Spring Street, Little Spring Street, and the new laneway (between Little Spring Street and Denison Street), in accordance with the approved plans, to be designed to the satisfaction of Council's Director of Engineering and Property Services; AND Traffic modifications to Denison Street, Spring Street, Little Spring Street and the new laneway, in accordance with the approved plans, to be designed to the satisfaction of Council's Director of Engineering and Property Services. The proposed modifications shall be submitted to, and approved in writing by the North Sydney Traffic Committee.	The public domain details and modification to traffic flows will be submitted to Council's Director of Engineering and Property Services and approved by the North Sydney Traffic Committee prior to the issue of the relevant Construction Certificate.
<i>Condition B13 – Details of Materials Colours and Finishes; Condition B29A – Stormwater Infrastructure; and Condition B38 – Wind Impact</i>	Noted.

Issue	Comment
Comment: No objections as matter for Department to ensure materials and finishes and wind impact acceptable. The stormwater Infrastructure is Sydney Water so condition B29A is appropriate.	
<i>Condition B55 – Green Star/NABHERS</i> Comment: No objection	Noted.
<i>Condition B56 – Public Domain and Landscaping</i> Comment: This is required as we need to establish the finished levels from the public domain, footpaths etc. at the site boundaries where there are entry points to the building including fire exits, retail and foyer and vehicle access. At least prior to the CC for the ground floor slab, driveway and stair entries.	Noted. Public domain and landscaping details will be submitted to Council prior to the issue of the relevant CC.
<i>Condition E25 – Section 94 Contributions for the Commercial Building</i> Comment: New amounts inserted in condition based on 2016-2017 rates and 66,706 proposed GFA minus 6261 existing GFA contribution calculated on 60445m2 increase. It is important to indicate in the condition what the contribution is based on so that the amount can be adjusted at the time of payment in accordance with the quarterly consumer price index (All Groups Index of Sydney).	The total GFA is discussed in the covering letter attached and Section 94 contributions will be updated accordingly.
<b>Transport for New South Wales</b>	
<b>Proposed Road Network Changes</b>	
It is requested that the applicant be conditioned to: <ul style="list-style-type: none"> <li>Consult with TfNSW and Roads and Maritime Services prior to the finalisation of the plans for the proposed road network changes; and</li> <li>Obtain approval from Roads and Maritime Services for the proposed shared zone arrangement along Denison Street.</li> </ul>	Noted.
<b>Sydney Metro City and Southwest</b>	
TfNSW requests the following: <ul style="list-style-type: none"> <li>If the proposed development is to be constructed prior to Victoria Cross Station construction, the applicant needs to demonstrate the following after completion of building construction: <ul style="list-style-type: none"> <li>There are no adverse impacts on the Victoria Cross Station service building including construction and permanent structures; and</li> <li>The integrity of the constructed building will not be adversely be impacted by the construction of Victoria Cross Station, including bulk excavation induced deformation and in-situ stress relief.</li> </ul> </li> <li>If the Victoria Cross Station is to be constructed prior to the proposed development, the applicant to demonstrate the basement bulk excavation induced deformation and in-situ stress relief will not have adverse impacts on the station (shaft) structures.</li> </ul>	Noted. The proponent has no objection to such a condition.
It is requested that the applicant be conditioned to the following: (a) The design, construction and maintenance of the development so as to satisfy the requirements in (b) to (j) below; (b) Allowances for the future construction of railway tunnels and Victoria Cross station in the vicinity of the approved development; (c) Allowances in the design, construction and maintenance of the development for the future operation of railway tunnels and Victoria Cross station in the vicinity of the approved development, especially in relation to noise, vibration, stray electrical currents, electromagnetic fields and fire safety;	Noted. The proponent has no objection to such a condition.

Issue	Comment
<p>(d) Consultation with TfNSW;</p> <p>(e) Provision to TfNSW of drawings, reports and other information related to the design, construction and maintenance of the approved development;</p> <p>(f) Such other matters which TfNSW considers are appropriate to give effect to (a) to (e) above;</p> <p>(g) Such other matters as the owners and TfNSW may agree;</p> <p>(h) The design and construction of the basement levels, foundations and ground anchors for the approved development are to be completed to the satisfaction of TfNSW. For the Sydney Metro City and Southwest the developer shall develop their foundation design to ensure that all loads be transferred and have no adverse impacts on the Sydney Metro City and Southwest tunnel structures;</p> <p>(i) The developer must undertake detailed numerical analysis considering geotechnical conditions (rock strength, potential defects and field stresses etc.; foundation layout and loads transferred from the buildings) and are required to demonstrate:</p> <p>(i) The proposed development, after completion of building construction, will not have adverse impacts on the Sydney Metro City and Southwest tunnels including construction and tunnel structures; and</p> <p>(ii) That the integrity of the constructed building will not be adversely impacted by the construction of Victoria Cross Station, Sydney Metro City and Southwest tunnels including bulk excavation deformation and in-situ stress relief due to excavation.</p> <p>(j) Demonstrate that the deformation induced by the bulk excavation of basements will not have adverse impacts on Sydney Metro City and Southwest tunnels and station structures.</p>	
<b>Public Domain and Interface with Sydney Metro</b>	
<p>TfNSW advises that the design addresses the context of the delivery of Sydney Metro and plans should facilitate strategies in Council's Sydney Metro Planning Study (May 2016). TfNSW requests that the following principles be considered in the design:</p> <ul style="list-style-type: none"> <li>Minimisation of road width and maximise pedestrian footpath space;</li> <li>Remove parking from the proposed lane;</li> <li>Prioritise pedestrian movements;</li> <li>Consideration of single paving treatment; and</li> <li>Support for retail along the proposed laneway frontage.</li> </ul>	<p>Noted. These matters will be considered as part of the final public domain design and road network changes.</p>
<b>DEXUS Property Group</b>	
<p>It has been queried whether a modification of such significant proportions is assessable under Section 75W. The modifications include:</p> <ul style="list-style-type: none"> <li>A 28% increase in height (additional 9 storeys on the original part 26/part 32 storey building is proposed, resulting in a 41 storey building);</li> <li>A 26% increase in GFA, from 53,236m<sup>2</sup> to 66,706m<sup>2</sup> (net growth of 13,470m<sup>2</sup>); and</li> <li>Deletion of a public car park.</li> </ul>	<p>Section 75W is not subject to a 'substantially the same development test' and there is significant precedent of other modifications that demonstrate that the consent authority does have the power to approve such a modification.</p>
<b>Ausgrid</b>	
<b>Impact on Existing Electrical Plant and Equipment</b>	
<p>Ausgrid has an existing substation (S6042) located on the premises of the proposed development at 77-81 Berry Street, North Sydney. This substation is supplying electricity to the premises and is inter-connected with S3352 located at 100 Walker Street, North Sydney. Ausgrid have been advised that the Department of Planning and</p>	<p>Noted.</p>

Issue	Comment
<p>Environment can only make a plan after a formal connection application to Ausgrid has been submitted.</p> <p>Ausgrid also understand that the proposal incorporates 88 Walker Street, North Sydney. Ausgrid has an existing substation (S5865) at this location. On 3 February 2015, Ausgrid submitted comments relating to S5865 in response to DA-430/14. Ausgrid noted in this submission that during the course of building demolition and new building construction, the developer must not relocate or interfere with the operation of S5865. The existing space clearances around S5865 additionally must be maintained, including the space above the substation. Ausgrid further noted that they own a significant number of major underground cables in Walker Street, Spring Street and Little Spring Street. The surface levels over existing underground cables in these streets were not be altered without permission from. If existing levels (footway or roadway) were proposed to be lowered, Ausgrid must be contacted to determine whether or not relocation or lowering of existing underground cables would be required.</p> <p>The new development will alter the maximum demand of electricity and the connection to the new building. The developer should submit a formal Connection Application detailing the new electricity connection requirements. The submission should be made as early as possible to avoid supply issues to the building. The supply arrangements to the development will be confirmed upon receipt of the Connection Application.</p>	<p>It should be noted that 88 Walker Street was excluded from the project as part of Modification 5 and is no longer relevant.</p> <p>Noted.</p>
<b>Public Submissions</b>	
<b>Planning Process</b>	
<p>There is concern that Local and State Governments are not respecting previous development approvals, and that developers may more frequently seek to override established building controls.</p>	<p>The application seeks to modify the existing project approval and is consistent with the planning framework for such applications.</p>
<p>There is sentiment that the proposal reflects a "triple dipping" by the developer, and that the historic consent already breached the good faith undertaking with residents of the Beau Monde building.</p>	<p>The proposed modification responds to the change in the strategic context of the site from the original approval in 2008. This includes the approval of 100 Mount Street, provision of the Victoria Cross metro station as well as increased heights proposed for the North Sydney CBD in the North Sydney Centre Capacity and Land Use Study.</p>
<p>There is a perception that this proposal should be reviewed and assessed as a new application, not a modification, as the application substantially exceeds the maximum GFA approved under the original Part 3A determination.</p>	<p>The application is consistent with the legislative requirements of Section 75W.</p>
<p>It is believed that the Department of Planning and Environment should require a reduction in the height of the building, given a building with a smaller form, floor area and impact on the residential tower can be achieved.</p>	<p>The appropriateness of built form and height are addressed in Section 5.2 of the EIS.</p>
<p>While a maximum building height of 238m is nominated for the site in Council's Capacity and Land Use Study (exhibited 15 December 2016), the exhibition period for the Study has only recently concluded and Council has not yet had the opportunity to consider submissions. The reliance of the proposed modification application on the contents of the Study has therefore been considered presumptuous and unjustified.</p>	<p>Section 5.2 of the EIS sets out the merit assessment of the proposed building height, including a detailed assessment of the impacts of such a height. It is noted that the proposal does not actually seek to achieve the maximum height in Council's study.</p>
<b>Disregard for Previous Agreements</b>	
<p>Upon purchase of the site, the developer (Winten) entered into a Deed to Vary Strata Management Statement Agreement with the Owners Corporation of the Beau Monde building (dated 23 August 2016). This agreement specifically prevents any change in height or set back.</p> <p>Clause 16.2 (b) of this agreement sets out that:  <i>"[Winten] will construct the Development:  Generally in accordance with the building envelope approved as part of the current Development Approval so as to maintain the set back..."</i></p>	<p>This is not a matter for consideration when determining an application under Section 75W.</p>



Issue	Comment
<p><i>So as not to materially increase the height..."</i></p> <p>It has been noted that the proposed building modifications contravene this agreement.</p>	
<b>Privacy</b>	
It is acknowledged that, compared to the approved development, greater building separation is provided at some lower levels. This results in reduced opportunities for direct overlooking and therefore a greater level of privacy preserved for residents of the Beau Monde building.	Noted.
There is concern that at upper levels, a reduced building separation is proposed (up to 9m less separation). This thereby exacerbates the privacy infringement inflicted by the development.	The proposed modification results in a greater separation for a greater number of apartments which is considered a significant benefit of the project. Where the separation is reduced, it still complies and exceeds the minimum separation requirement of 24m under the Apartment Design Guide.
There is concern that the proposed building height increase will have significant impacts on the use of private open space within the adjacent Beau Monde building, as the additional storeys shall have direct views into residents' balconies and apartments.	As demonstrated in Section 5.4 of the EIS, a significant separation distance is provided at the upper levels along with privacy measures built into the façade to ensure that the additional height of the proposed modification does not compromise privacy.
It is believed that construction of a building so close to the existing residential tower an unconscionable decision, given the degradation of privacy for existing residents. It has been suggested that buildings should be separated by a minimum of 40m from the residential tower.	The proposed modification results in a greater building separation on average and builds privacy measures into the façade (see Section 5.4.2 of the EIS) and therefore will improve privacy for neighbouring residential properties.
<b>Building Height</b>	
The 32.5m height increase (bringing the building to RL210.65) has been noted to contravene the NSLEP2013, which provides for a maximum building height of RL155-170 at the site.	The heights in LEP 2013 were set after the Project Approval to reflect the approved heights. Section 5.2 of the EIS presents the merit argument for the proposed height increase which is below the maximum height put forward in Council's Capacity Study.
There is concern that the proposed height increase has negative impacts on the amenity of adjoining sites, the public domain and broader local character, and is also setting a dangerous precedent for future redevelopment in the surrounding area.	Section 5.2 and Section 5.3 of the EIS demonstrate that the proposed modification will result in a significantly improved public domain outcome for the North Sydney CBD, taking into consideration the context of the site in relation to surrounding development including the Victoria Cross metro station. The shadow analysis demonstrates that the additional height as no unacceptable overshadowing impacts.
The proposal is perceived to be inconsistent with the objectives of Clause 4.3 of the NSLEP2013, given surrounding buildings, including the Beau Monde building, will lose views, solar access and privacy as a result of the additional building height.	The proposed modification enhances solar access to neighbouring residential properties and improves view sharing in comparison to the approved development – refer to Section 5.4 of the EIS.
It has been suggested that the proposed building height could be reduced by 5 storeys if the full width of the site was utilised to retain the increased GFA.	The proposed tapering form maximises solar access and building separation to the greatest number of apartments whilst reducing view loss.
It is separately believed that the building height could be reduced further if Council allowed the lower floors to overhang Denison Street, which would afford an overall reduction in height by 9 storeys.	The proposed development is limited to the site area and does not overhang or protrude over public spaces.
Contrary to Clause 6.3 of the NSLEP2013, the proposed development is perceived to be of an inappropriate scale based on its negative amenity impacts for neighbouring development.	As demonstrated at Section 5.4 of the EIS, the proposed modification results in an improved outcome for both the site and the amenity of adjoining properties.
It has been recommended that the proposed building height be reduced to that previously approved in order to ameliorate the adverse impacts of the development, whilst still permitting the significant densification of the subject site and the efficient use of land.	Built form is assessed at Section 5.2 of the EIS.
<b>Building Design</b>	
Tapering is perceived to be a welcome modification to the approved design.	Noted.
The height, scale and bulk of the proposed development is considered to be inconsistent with the character of the area.	Given the changing context of the North Sydney CBD and the strategic planning direction of the North Sydney Centre Capacity and Land Use Study, the project is consistent with the desired future character of



Issue	Comment
	the area.
There is concern that the proposed development compromises the amenity of existing development, including the Beau Monde building and its significant residential component, which diminishes the attractiveness and sustainability of North Sydney. A mono-use character with low levels of amenity is instead promoted.	The proposed land uses are permissible with consent in the B3 Commercial Core land use zone. The proposed modifications seek to decrease the impact on amenity to surrounding residential properties.
<b>Traffic Generation</b>	
It is noted that the total number of parking spaces provided on the site only increases from 162 spaces to 176 spaces. In order to ensure this car parking provision will satisfy all demand generated by the development with no reliance on street parking required, a more detailed assessment is considered to be necessary.	This has been considered in the Traffic and Parking Assessment at Appendix D of the EIS and summarised at Section 5.5. Refer to Modification 6.
Whilst the benefits of car share are acknowledged, the provision of car share spaces is not considered to eliminate the demand for public parking in North Sydney.	Refer to Modification 6. The amended plans seek to include 32 public car spaces within the development.
More detailed consideration of the ability of the laneways and surrounding streets to accommodate the traffic generation of the proposed development, as well as all existing development, is considered to be necessary. This particularly owing to proposed changes to the operation of laneways which are anticipated to significantly impact upon traffic flows.	The proposed traffic measures will be submitted to both RMS and Council for approval.
It is noted that difficulty already exists in the ability for Beau Monde residents to access their own building due to current congestion levels throughout the local road network.	Noted.
<b>Establishing Precedent</b>	
There is concern that the proposed contravention of planning controls (and the excessive height, bulk and scale) will set a dangerous precedent for the redevelopment of other sites, which may similarly disregard relevant environmental planning instruments and policies and cause similarly adverse development outcomes.	Noted.
<b>Mixed Uses</b>	
It is believed that protection of the Beau Monde building from the damaging effects of new development is paramount, given this residential building provides a local resident population which contributes to a diverse day and night-time economy (thus supporting surrounding commercial sites).	Residential land uses in the North Sydney core is inconsistent with State and local planning policy. Unreasonably constraining the proposed development, which is directly aligned with State and local planning policies to protect an inconsistent land use would be contrary to the strategic vision for North Sydney and the objects of the EP&A Act more broadly.
<b>View Loss</b>	
There is concern that whilst the proposed development, as modified, will rectify some view loss as compared to the approved scheme, the development will cause a devastating view loss in any case.	The proposed modification reduces the view loss impacts compared to the approved development, which has already been assessed and determined as having appropriate view loss impacts.
Not shown in the View Analysis, it is further anticipated that views to the south, south-east and southwest from apartments at levels 27-36 of the Beau Monde building will be similarly compromised (owing to the elimination of sky views and subsequent loss of views, sense of overlooking and sense of enclosure). Views will also be obfuscated by the development at 100 Mount Street.	As above.
It is noted that opportunity for further tapering of the building form exists, which would produce a slimmer tower with minimised view loss impacts.	The proposed built form balances view sharing principles whilst providing a usable and efficient commercial floor plate.
<b>Solar Access</b>	
Though referred to in the Planning Report, it has been noted that no Shadow Diagrams are available to view. Accordingly an informed consideration of the implications of the development on solar access is unattainable. It has therefore been requested that Shadow Diagrams be prepared and made available for public comment prior to the continued assessment of the application.	Solar access diagrams are provided in the Architectural Design Report at Appendix B of the EIS.

Issue	Comment
There is nevertheless a perception that the increased height will overshadow the new plaza on Mount Street.	As above.
<b>Sense of Enclosure</b>	
There is concern that the significantly expanded development of the site, including additional bulk and height which are clearly perceptible from the Beau Monde building, will adversely impact on the sense of enclosure experienced by adjoining properties. This impact is particularly consequential for residents of the Beau Monde building given the contravention of residential amenity to be inflicted.	The proposed modification results in a greater building separation for a greater number of apartments adjoining the site. The purpose of the tapering form is that it will actually improve sky views which reduce the impact of enclosure and improve amenity.