



10051
9 November 2012

Mr Sam Haddad
Director-General
Department of Planning & Infrastructure
GPO Box 39
SYDNEY NSW 2000

Attention: Chris Wilson

Dear Chris

**MODIFICATION TO MAJOR PROJECTS MP10_0025 (COMMERCIAL BUILDING C4),
MP10_0027 (COMMERCIAL BUILDING C5) AND MP11_0044 (COMMERCIAL BUILDING C3)
– CONDITION OF APPROVAL A7 SITE AUDIT STATEMENTS**

We refer to the abovementioned Project Applications for Barangaroo and to the letters from Lend Lease to the Department of Planning & Infrastructure (DP&I) dated 28 August 2012 and 29 October 2012, and also to your letter dated 20 September 2012.

As you are aware, Lend Lease wishes to facilitate the issue by an independent EPA accredited Site Auditor of Site Audit Statements and validation reports for each of the relevant stages of construction for Commercial Buildings C3, C4 and C5 at Barangaroo South.

Lend Lease has identified to the DP&I a concern with respect to the ability to comply with the timing requirements of Condition of Approval A7 as relevant to each of Commercial Buildings C3, C4 and C5 relating to the issue of Site Audit Statements.

The purpose of this letter is to request an Administrative Modification to the terms of approval of MP10_0025 (Commercial Building C4), MP10_0027 (Commercial Building C5) and MP11_0044 (Commercial Building C3) to vary the wording of Condition A7 relating to each application to allow for the progressive validation of remediation works. The application is submitted under Section 75W of the Environmental Planning & Assessment Act (EP&A Act) pursuant to Clause 3(1) of Schedule 6A of the EP&A Act that provides for the continued application of the provisions of the now repealed Part 3A.

The proposed modification to each Approved Project is of an administrative nature and will allow for commencement of building construction activities that are on the critical path of the project without compromising the project environmental objectives or the intent of the conditions.

1.0 BACKGROUND

Condition A7 of Project Approvals MP11_0044 (Commercial Building C3) and MP10_0227 (Commercial Building C5) require an accredited site auditor to prepare a Site Audit Statement verifying that the land is suitable for the proposed uses *"within 6 months of completion of the remediation works on site, and prior to the commencement of constructions/site works at and above ground level"*. Similarly, Condition A7 of approval MP10_0025 (Commercial Building C4) requires the preparation of a Site Audit Statement verifying that the land is suitable for the proposed use *"within 6 months of the completion of remediation works on site and prior to the*

commencement of constructions/site works at and above ground level (with the exception of core and associated structural works)".

A Site Audit Report and Section B Site Audit Statement (SAS) regarding the Amended Remedial Action Plan, Barangaroo - ORWS Area (AECOM Australia Pty Limited dated 14 July 2011) has been issued by a site auditor accredited under the Contaminated Land Management Act 1997 (CLM Act). The accredited Site Auditor for the project is Mr Graeme Nyland of Environ Australia Pty Ltd. The RAP was subsequently approved by the EPA in correspondence dated 15 July 2011 and the Minister for Planning in correspondence dated 17 August 2011.

The Section B SAS certified the following:

"...the site CAN BE MADE SUITABLE for the following uses: a) Residential with minimal opportunity for soil access including units; b) park, recreational open space, play field; c) commercial/industrial, if the site is remediated in accordance with the following remedial action plan/management plan 'Amended Remedial Action Plan, Barangaroo – ORW area' dated 17 July 2011 by AECOM Australia Pty Ltd."

The RAP was prepared and approved as part of the Barangaroo South basement project (MP10_0023). The basement will service Commercial Buildings C3, C4 and C5, and the buildings are within the footprint of the basement.

The relevant Conditions A7(2) relating to each Approved Project include a requirement for a Section A Site Audit Statement to be completed "prior to the commencement of construction/site works at and above ground level".

2.0 REASON FOR PROPOSED MODIFICATIONS

2.1 Building Construction Program

The remediation works under the RAP involve a range of remedial methods. In addition to removal of contaminated material, remediation works as defined in the RAP and HHERA also include the construction of basement walls, plenum and slab as the physical separation of potential contamination remaining in surrounding soils and groundwater from the basement car park and rooms.

Remediation works at the site are undertaken progressively and simultaneously to construction activities. Building construction, excluding piling, will commence once excavation works at the building footprint have been completed and all building piles have been installed. Under the construction program, the basement will not be completed to the ground level until late in 2014, whereas construction of the commercial towers above ground level will commence in early 2013. Some of the remedial works contemplated in the RAP (such as completion of some of the basement physical barriers) will not therefore be completed before the commercial buildings start to rise above ground level.

As the construction of some of the remediation works defined in the approved RAP would not be completed by the time building structures commence rising above ground level, to enable compliance with the timing requirement of Conditions of Approval A7(2), the construction of the commercial towers would need to be placed on hold, pending completion of the basement in late 2014.

2.2 Timing of Issue of Site Audit Statements

In addition to the above, it is not possible for the Site Auditor to issue progressive or staged Site Audit Statements certifying that the land is suitable for the intended use when remedial works are pending.

The purposes of a Section A SAS as required under Conditions A7 is to certify that a site is suitable for an intended land use. A Section A SAS can be issued after completion of the remedial measures included in the RAP. It cannot however pre-empt the implementation of future remediation measures. Under the DECC (2006) "Guidelines for the NSW Site Auditor Scheme (2nd edition) made under the CLM Act, Site Auditors must ensure that their finding that a site is suitable for a particular use does not assume or depend on the completion of unfinished remediation work to make the land suitable for that use.

The Section A SAS(s) required under Condition of Approval A7 are intended to verify that the land is suitable for its intended primarily commercial (with some open space) use. The intended use cannot legally occur until an Occupation Certificate has been issued. Therefore it is unreasonable (and there is no need) to require the Section A SAS(s) well before the intended use can legally occur.

The Site Auditor (Mr Graeme Nyland from Environ) has however advised that Interim Advice Letters can be issued for specific remediation works and are an appropriate means of progressive verification of remediation works at Barangaroo South. Under Section 3.6.2 of the DEC Guidelines 2006 Site Auditors can issue written interim advice on the work plans or reports in the lead-up to issuing the final SAS at the end of the entire audit.

Allowing the commencement of construction activities of critical path works in areas prior to a Section A SAS but with a Section B SAS (and written interim letters prepared as required by the Site Auditor in accordance with DEC (2006) guidelines) in place provides flexibility in construction project programs. The approach does not contradict the DEC (2006) "Guidelines for the NSW Site Auditor Scheme" and is consistent with the intent of Conditions of Approval A7 which is to ensure that the land is remediated to a standard consistent with the intended land use and that that statutory Section A SAS(s) have been prepared and submitted to the Director General and other stakeholders for the remediated site once the site has been remediated. Ultimately no building occupation will occur (and can occur) at remediated areas until Section A SAS(s) have been prepared and submitted to the Director General and other stakeholders in accordance with the approval.

A letter of opinion and support for this approach from the Site Auditor is enclosed. The Site Auditor is of the view that remediation at Barangaroo South should be verified progressively, and not left until all of the remedial elements are in place. The Site Auditor considers that this can be effectively done by auditing of staged validation reports and issuing of interim advice letters as the remediation progresses.

In accordance with EPA guidelines, the interim advice letters would contain all details that would be incorporated into the ultimate Site Audit Report. The Section A SAS can be issued at the completion of all remediation elements, and before building occupation.

3.0 PROPOSED MODIFICATIONS

On behalf of Lend Lease (Millers Point) Pty Limited, we write to request that the wording of Condition A7 in relation to each of Commercial Building C3, Commercial Building C4 and Commercial Building C5 Project Approvals be modified under Section 75W of the EP&A Act as described below.

Text proposed to be deleted is shown in strike through, and text proposed to be inserted is shown in **bold red**:

Condition of Approval A7 for Commercial Building C4 (MP10_0025):

A7 Remediation Action Plan and Human Health Ecological Risk Assessment

- (1) *All remediation works are to be undertaken in accordance with the approved Remedial Action Plan (RAP) and Human Health Ecological Risk Assessments (HHERA):*
 - *'Human Health and Ecological Risk Assessment, Declaration Site (Development Works) Remediation Works Area – Barangaroo', prepared by AECOM Australia Pty Limited, dated 9 June 2011.*
 - *'Human Health and Ecological Risk Assessment, Declaration Site (Development Works) Remediation Works Area – Barangaroo', prepared by AECOM Australia Limited, dated 9 June 2011.*
 - *'Human Health and Ecological Risk Assessment Addendum, Other Remediation Works (South) Barangaroo', prepared by AECOM Australia Pty Limited, dated 4 July 2011.*
 - *'Amended Remedial Action Plan, Barangaroo – ORWS Area', prepared by AECOM Australia Pty Limited, dated 7 July 2011.*
- (2) **The Proponent shall progressively validate the remediation works to the satisfaction of the Site Auditor.** *Within 6 months of the completion of the remediation works **within the Project site** ~~on-site, and prior to the issue of an Occupation Certificate commencement of construction/site works at and above ground level (with the exception of core and associated structural works),~~ the Proponent shall submit a detailed Site Audit Summary Report and Site Audit Statement and Validation Report to the EPA (OEH), the Director General, the Certifying Authority, and the Council.*

The site audit must be prepared in accordance with the Contaminated Land Management Act 1997 and completed by a site auditor accredited by the Environmental Protection Authority to issue site audit statements. The site audit must verify that the land is suitable for the proposed uses.
- (3) *The site auditor must also verify that any excavated material for use or disposal offsite, including but not limited to the Headland Park at Barangaroo, is managed appropriately and in compliance with the relevant legislation and any relevant approved material management plans.*
- (4) *On completion of remediation works, the relevant requirements of clauses 17 and 18 of SEPP 55 – Remediation of Land, bind notification to Council, shall be complied with.*

Conditions of Approval A7 relating to Commercial Buildings C3 (MP10_0227) and C5 (MP11_0044):

A7 Remediation Action Plan (RAP) and Human Health Ecological Risk Assessment (HHERA)

- (1) *All remediation works are to be undertaken in accordance with the following Remedial Action Plan (RAP) and Human Health Ecological Risk Assessments (HHERA):*
 - (a) *'Human Health and Ecological Risk Assessment, Declaration Site (Development Works) Remediation Works Area – Barangaroo', prepared by AECOM Australia Pty Limited dated 9 June 2011*
 - (b) *'Human Health and Ecological Risk Assessment Addendum, Other Remediation Works (South) Barangaroo', prepared by AECOM Australian Pty Limited, dated 4 July 2011.*
 - (c) *'Amended Remedial Action Plan, Barangaroo – ORWS Area', prepared by AECOM Australia Pty Limited, dated 7 July 2011, and as approved by the Minister for Planning and Infrastructure on 17 August 2011*
- (2) **The Proponent shall progressively validate the remediation works to the satisfaction of the Site Auditor.** *Within 6 months of the completion of the remediation works **within the Project site** ~~on site~~, and prior to the **issue of an Occupation Certificate** ~~commencement of construction/site works at and above ground level~~, the proponent shall submit a detailed Site Audit Summary report and Site Audit Statement and Validation Report to the EPA (OEH), the Director General, the Certifying Authority, and the Council.*
- (3) *The site audit must be prepared in accordance with the Contaminated Land Management Act 1997 and completed by a site auditor accredited by the EPA to issue site audit statements. The site audit must verify that the land is suitable for the proposed uses.*
- (4) *The site auditor must also verify that any excavated material for use or disposal offsite, including but not limited to the Headland Park at Barangaroo, is managed appropriately and in compliance with the relevant legislation and any relevant approved materials management plans.*
- (5) *On completion of remediation works, the relevant requirements of clause 17 and 19 of SEPP 55 – Remediation of Land, being notification to the Council, shall be complied with."*

4.0 CONCLUSION

The Approved Projects as proposed to be amended by these modifications will be the same as that set out in the Environmental Assessment Report as amended by the Preferred Project Report accompanying each application, and is as was assessed and considered in the Director General's Environmental Assessment Reports relating to each application.

The proposed modifications will:

- Allow the continuation of building construction activities that are on the critical path of the project without compromising project environmental objectives and the intent of the conditions.
- Ensure that the Section A SAS(s) have been completed and submitted in accordance with the approval at the completion of remediation and prior to any operation and permanent occupation at the remediated site.
- Provide flexibility in the remediation / project program process, consistent with Guidelines prepared under the CLM Act.

The proposed modifications are consistent with the requirements of State Environmental Planning Policy No.55 – Remediation of Land.

It is also noted that the proposed modifications are consistent with draft standard conditions of approval released by the Department for comment (refer to <http://www.planning.nsw.gov.au/LinkClick.aspx?fileticket=bjSykFeeV0%3d&tabid=575&language=en-AU>). For Urban development projects, the Department is proposing that *"The site audit report and site audit statement must verify that the land is suitable for the proposed uses and be provided to the PCA prior to the issue of the occupation certificate..."* (Draft Condition C2).

No change to the outcome required by the relevant Conditions A7 is proposed, and no further matters arise with respect to the environmental assessment of the approved projects. The changes are minor modifications and considered acceptable with no environmental impacts beyond those considered in the original application.

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 9956 6962 or lbull@jbaplanning.com.au.

Yours faithfully



Lesley Bull
Director

Encl. Correspondence from Site Auditor