



***SECTION 75W
MODIFICATION REQUESTS:***

***Amendment of Condition A7
Commercial Buildings C3, C4 and C5,
Barangaroo South
MP 10_0025 MOD 2 (C4)
MP 10_0227 MOD 1 (C5)
MP 11_0044 MOD 1 (C3)***



© Crown copyright 2013
Published February 2013
NSW Department of Planning & Infrastructure
www.planning.nsw.gov.au

Disclaimer:

While every reasonable effort has been made to ensure that this document is correct at the time of publication, the State of New South Wales, its agents and employees, disclaim any and all liability to any person in respect of anything or the consequences of anything done or omitted to be done in reliance upon the whole or any part of this document.

EXECUTIVE SUMMARY

This report is an assessment of three modification applications lodged by Lend Lease (Millers Point) Pty Limited under section 75W of the *Environmental Planning and Assessment Act 1979*, (EP&A Act) seeking to modify the same condition (Condition A7) imposed on the three project approvals for commercial buildings C3 (MP11_0044), C4 (MP10_0025) and C5 (MP10_0227) at Barangaroo South.

The modification requests (MP11_0044 MOD 1, MP 10_0025 MOD 2 & MP10_0227 MOD 1) seek approval to amend the wording of Condition A7 so that the timing of the issue of a site audit statement is deferred until the completion of remediation works on site. Currently, the condition is worded so that a site audit statement has to be issued prior to the commencement of works above ground level, which Lend Lease state will delay construction on site as remediation works will not be finished before construction of the commercial buildings rise above ground level.

The department publicly notified the modifications on its website from 15 November until 29 November 2012, and forwarded copies of the applications to the City of Sydney Council (Council) and the Environment Protection Authority (EPA). Neither council or the EPA objected to the modification requests. No public submissions were received.

The department has assessed the modification applications, and notes that the key issue relating to the assessment of the modifications is the appropriateness of validating remediation works progressively by the site auditor, and whether deferring the issue of a site audit statement until the issue of an Occupation Certificate for the buildings is acceptable.

The department considers that the changes do not remove Lend Lease's responsibilities to remediate the site, and the site auditor and the EPA support the proposed process of validating remediation works progressively, and support the issue of a Section A Site Audit Statement at the completion of the works.

Consequently, the department recommends that the modification requests be approved, subject to the re-worded Condition A7 as outlined in the Instruments of Modification.

1. BACKGROUND

1.1 The Site

Barangaroo is located on the north-western edge of the Sydney CBD. The site is bounded by the Sydney Harbour foreshore to the north and west, Hickson Road and Millers Point to the east, and Kings Street Wharf/Cockle Bay/Darling Harbour to the south. Commercial buildings C3, C4 and C5 are located within blocks 2 and 3 of the Barangaroo Concept Plan. A Location Plan is provided at **Figure 1**.

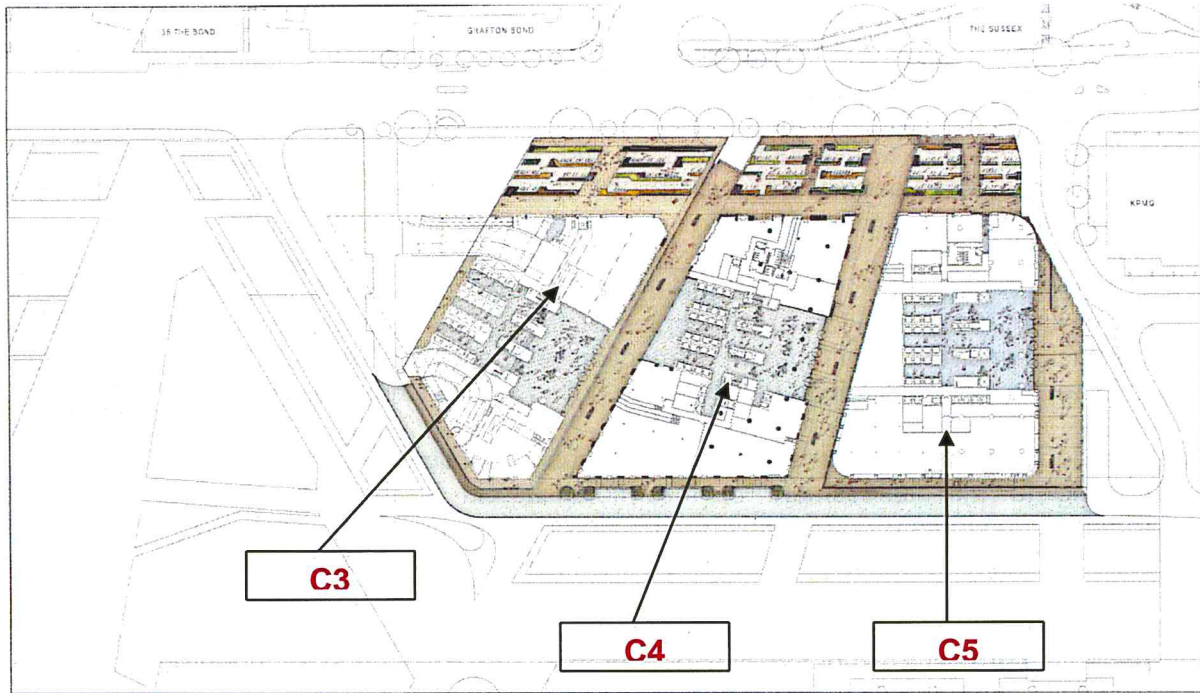


Figure 1: Barangaroo South Location Plan

1.2 Approval History

Approved Concept Plan

The then Minister for Planning approved the Barangaroo Concept Plan (MP 06_0162) on 9 February 2007. The Concept Plan approved a set of built form principles to guide development within the mixed use zone.

The Concept Plan has been modified four times since approval.

The most current version of the Concept Plan (MOD 4) was approved by the then Minister for Planning on 16 December 2010. In this regard, MOD 4 permits:

- a mixed use development involving a maximum of 563,965 m² gross floor area (GFA), comprised of:
 - (a) a maximum of 128,763 m² and a minimum of 84,595 m² residential GFA;
 - (b) a maximum of 50,000 m² GFA for tourist uses;
 - (c) a maximum of 39,000 m² GFA for retail uses;
 - (d) a maximum of 4,500 m² GFA for active uses in the Public Recreation zone (3,000 m² of which will be in Barangaroo South); and
 - (d) a minimum of 12,000 m² GFA for community uses (10,000 m² of which will be in Barangaroo South).
- approximately 11 hectares of new public open space/public domain, with a range of formal and informal open spaces serving separate recreational functions, and including a 2.2 km public foreshore promenade
- built form design principles, maximum building heights and GFA for each development block within the mixed use zone
- public domain landscape concept, including parks, streets and pedestrian connections; and

- works to the existing seawalls and creation of a partial new shoreline to the harbour.

The approved configuration of the development blocks within Barangaroo South is depicted in **Figure 2**.

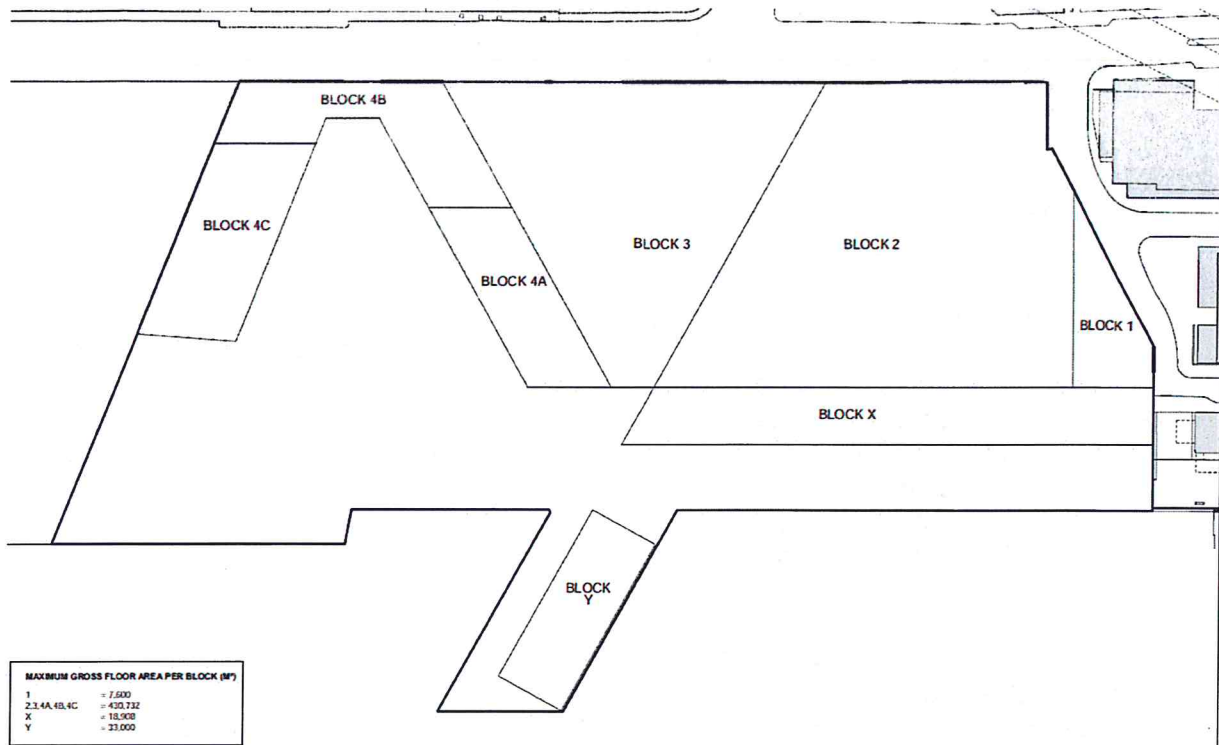


Figure 2: Approved Block Configuration

State Significant Site Listing

On 12 October 2007, State Environmental Planning Policy (Major Projects) 2005 (Amendment No. 18) was gazetted. Amendment 18 modified the then Major Projects SEPP, now known as the Major Development SEPP (MD SEPP), by listing Barangaroo as a State Significant Site (SSS), and providing development and design excellence controls in Schedule 3.

A subsequent amendment to Schedule 3, part 12 of the MD SEPP was gazetted on 16 December 2010. The purpose of the amendment was to rectify inconsistencies between the SEPP and the Barangaroo Concept Plan that arose as a result of modifications to the Concept Plan.

Commercial Building C3 (MP 11 0044)

On 24 April 2012, the Director-General, under delegation dated 18 April 2012, approved the construction of commercial building C3. The approved development comprises:

- piling and associated earthworks and remediation
- construction and use of a new commercial building (C3) with a maximum GFA of 115,448 m² comprised of:
 - 7,021m² of retail floor space;
 - 105,488m² of commercial floor space; and
 - 1,145m² office lobby.

Commercial Building C4 (MP 10 0025)

On 3 March 2011, the then Minister for Planning approved the construction of commercial building C4. The approved development comprises:

- piling and associated earthworks and remediation
- construction and use of a new commercial building (C4) with a maximum GFA of 98,514 m² comprised of:
 - 7,010 m² of retail floor space;

- 88,582 m² of commercial floor space;
- 916 m² office lobby; and
- 2,006 m² for use as a child care centre.

On 24 February 2012, the Director-General, under delegation dated 23 February 2012, approved a modification (MOD 1) to MP 10_0025. The project, as modified comprises:

- piling and associated earthworks and remediation
- construction and use of a new commercial building (C4) with a maximum GFA of 99,656m² comprised of:
 - 2,691 m² of retail floor space;
 - 95,571 m² of commercial floor space; and
 - 1,394 m² office lobby.

Commercial Building C5 (MP 10 00227)

On 24 April 2012, the Director-General, under delegation dated 18 April 2012, approved the construction of commercial building C3. The approved development comprises:

- piling and associated earthworks and remediation
- construction and use of a new commercial building (C5) with a maximum GFA of 90,539m² comprised of:
 - 5,315m² of retail floor space;
 - 83,760m² of commercial floor space; and
 - 1,370m² office lobby.

2. PROPOSED MODIFICATIONS

2.1 Modification Descriptions

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 "within 6 months of completion of the remediation works on site, and prior to the commencement of construction/works at and above ground level"*.

Similarly, Condition A7 of project approval MP10_0044 (commercial building C4) also requires an accredited site auditor to prepare a site audit statement verifying that the land is suitable for the proposed uses *within "within 6 months of completion of the remediation works on site, and prior to the commencement of construction/works at and above ground level"* – but exempts *"core and associated structural works"*.

Condition A7 is requested to be re-worded (shown bold italics) with deletions struck-through as follows:

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 Australia 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 clauses 17 and 18 of SEPP 55 - *Remediation of Land*, being notification to the Council, shall be complied with.

2.2 Justification for Modification

Lend Lease state that remediation works under the approved RAP involve a range of remediation methods. These include the removal of contaminated material as well as the construction of the basement walls (for the underlying car park below the three commercial buildings), plenum and slab.

Under the construction program, the basement will not be constructed until late 2014, whereas construction of the commercial buildings (C3, C4 & C5) above ground level will commence in early 2013. Hence, some of the remediation works (e.g. basement barriers etc) will not be completed before the commercial buildings rise above ground level. Lend Lease advise that the current wording of Condition A7 prevents works above ground level which will put the construction of the commercial buildings on hold until the basement is completed in late 2014.

3. STATUTORY CONTEXT

3.1 Modification of the Minister's Approval

The applications have been made under section 75W of the Act and in accordance with clause 3 of Schedule 6A of the EP&A Act, section 75W of the Act as in force immediately before its repeal on 1 October 2011, and as modified by Schedule 6A, continues to apply to transitional Part 3A projects.

The department is of the view that the proposed modifications can be considered under section 75W of the EP&A Act given that they merely seek to amend the timing of the issue of site audit statements.

3.2 Environmental Assessment Requirements

Section 75(3) of the Act provides the Director-General with scope to issue Environmental Assessment Requirements (DGRs) that must be complied with before the matter will be considered by the Minister. DGRs were not issued for the proposed modifications as the applications do not give rise to the assessment of issues not covered by the DGRs issued for the original project applications.

4. CONSULTATION AND SUBMISSIONS

4.1 Exhibition

Under section 75X(2)(f) of the EP&A Act, the Director-General is required to make the modification requests publicly available. The department made the applications publicly available by uploading the applications on its website on 15 November 2012. In addition, the department notified City of Sydney Council and the EPA in writing.

The department received one submission each from council and the EPA. No public submissions were received.

4.2 Public Authority Submissions

A summary of submissions received from government agencies is provided below:

City of Sydney Council (Council)

Council supported the proposed wording changes subject to the word "an" being replaced by "any". The wording of the condition suggested by council is as follows:

Condition A7

(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 any 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.

The council has also requested an additional sub-condition as follows:

"Interim advice letters from a NSW EPA accredited site auditor must be submitted to the Department, City of Sydney Council and the EPA on completion of each staged sign-off in line with the letter from Environ referred AS121111 and dated 7 November 2012".

Comment: Supported, subject to "relevant remediation works" being inserted.

Environment Protection Authority (EPA)

Raised no issue with the proposed changes.

Comment: Noted.

5. ASSESSMENT

5.1 Contamination and Remediation

On 17 August 2011, the Minister for Planning and Infrastructure approved the *Amended Remedial Action Plan, Barangaroo – ORWS Area (AECOM Australia Pty Ltd dated 14 July 2011)* (the approved "RAP"). The approved RAP was prepared and approved as part of the Barangaroo South basement car park (MP10_0023), above which commercial buildings C3, C4 and C5 will be erected. The RAP is also relied on for remediation works associated with the buildings (i.e. one RAP deals with all remediation works on this part of the site).

As some of the remediation works will not be completed before the commercial buildings rise above ground level, the proposed modifications will allow the progressive validation of the remediation works to the satisfaction of the site auditor. The site auditor has confirmed this approach is appropriate as the progressive verification of remediation works will be documented in interim advice letters. Such letters will contain all details that will be

incorporated into the Section A Site Audit Statement, which will be issued at the completion of all remediation works and before the occupation of the buildings.

The EPA has reviewed the proposed changes and has confirmed that the amendments maintain the appropriate checks to ensure the buildings will only be occupied after the site auditor is satisfied with the suitability of the site for its approved use. The department has carefully considered the site auditor's comments as well as the EPA's and council's submission. The proposed changes are only related to the timing of the issue of a site audit statement and do not diminish or remove Lend Lease's responsibility to clean up the site to ensure it is suitable for its intended purpose.

The proposed changes are therefore considered satisfactory, subject to council's recommendations which require a site audit statement issued before "any" Occupation Certificate is issued for the buildings, and interim advice letters to be provided by the site auditor to the department, council and EPA. This will ensure that remediation works are signed-off progressively and will ensure the buildings can only be occupied after the issue of a site audit statement.

6. DELEGATION

On 14 September 2011 (effective 1 October 2011), the Minister delegated his powers and functions under section 75W of the EP&A Act to the Director, Metropolitan & Regional Projects North in cases where the relevant local council has not made an objection, a political disclosure statement has not been made, and there are less than 10 public submissions in the nature of objections.

In this instance, council did not object to the application, a political disclosure statement has not been made, and no public submissions were received by the department. Accordingly, the Director can determine the application under delegation.

7. CONCLUSION

The department has assessed the modification applications and has considered the submissions received from the EPA and council. The key issues relating to the assessment of the modifications relate to the timing of the issue of the site audit statement, and the proposed changes do not remove the requirement to remediate the site or obtain a site audit statement from the site auditor.

The modified projects will remain consistent with the approved projects' remediation works, and the department is satisfied that there are appropriate safeguards in place to ensure that the remediation works will be undertaken to the satisfaction of the site auditor.

8. RECOMMENDATIONS

It is recommended that the Director:

- a) **Consider** the findings and recommendations of this report;
- b) **Approve** the modifications to MP10_0025 (MOD 2), MP10_0227 (MOD 1) and MP 11_0044 (MOD 1), subject to conditions, under section 75W of the *Environmental Planning and Assessment Act, 1979*; and
- c) **Sign** the attached Instruments of Modification (Tag A, B, C).

 18/2/13
Team Leader
Metropolitan & Regional Projects North

 18/2/13
Director
Metropolitan & Regional Projects North

APPENDIX 1 MODIFICATION REQUESTS

See the department's website at: www.majorprojects.planning.

APPENDIX 2 SUBMISSIONS

See the department's website at: www.majorprojects.planning.

APPENDIX 3 RELEVANT REPORTS AND DOCUMENTS

See the department's website at: www.majorprojects.planning.

APPENDIX 4 RECOMMENDED MODIFYING INSTRUMENTS
