

1 August 2017

13177

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

Attention: Ben Lusher (Director, Key Sites Assessments)

Dear Ben,

On behalf of Lendlease (Haymarket) Pty Ltd we hereby submit an application pursuant to section 96(1A) of the *Environmental Planning and Assessment Act 1979* (EP&A Act) to modify Development Consent SSD-6013 relating to the development of the North-West Plot in Darling Square, which is part of the Sydney International Convention, Exhibition and Entertainment Precinct (SICEEP) at Darling Harbour, Sydney.

The modification proposes no changes to the approved building. The amendments that approval is sought for are concentrated within the public domain and include:

- refinement to Steam Mill Lane design, including installation of fixed and moveable furniture;
- installation of catenary public art in Steam Mill Lane; and
- rationalisation of planting in response to existing infrastructure and services constraints.

The proposed amendments are of minimal environmental impact and result in a development that is substantially the same as originally approved. The changes support the delivery of a key mixed-use component of Darling Square that will contribute to the success of a vibrant and diverse community.

This application identifies the consent, describes the proposed modifications and provides an assessment of the relevant matters contained in Section 96(1A) of the EP&A Act. This application is accompanied by:

- Updated relevant Landscape Drawings prepared by Aspect Studios (**Attachment A**); and
- Updated Landscape Statement prepared by Aspect Studios (**Attachment B**).

1.0 Background

1.1 Context

With an area of approximately 20 hectares, the SICEEP Site is bounded by the Light Rail Line to the west, Harbourside Shopping Centre and Cockle Bay to the north, Darling Quarter, the Chinese Garden and Harbour Street to the east, and Hay Street to the south. This modification application specifically relates to the South-West Plot and surrounds (see **Figure 1**) within the Southern Precinct (Darling Square) of SICEEP as detailed in the architectural and landscape plans submitted in support of this modification application.

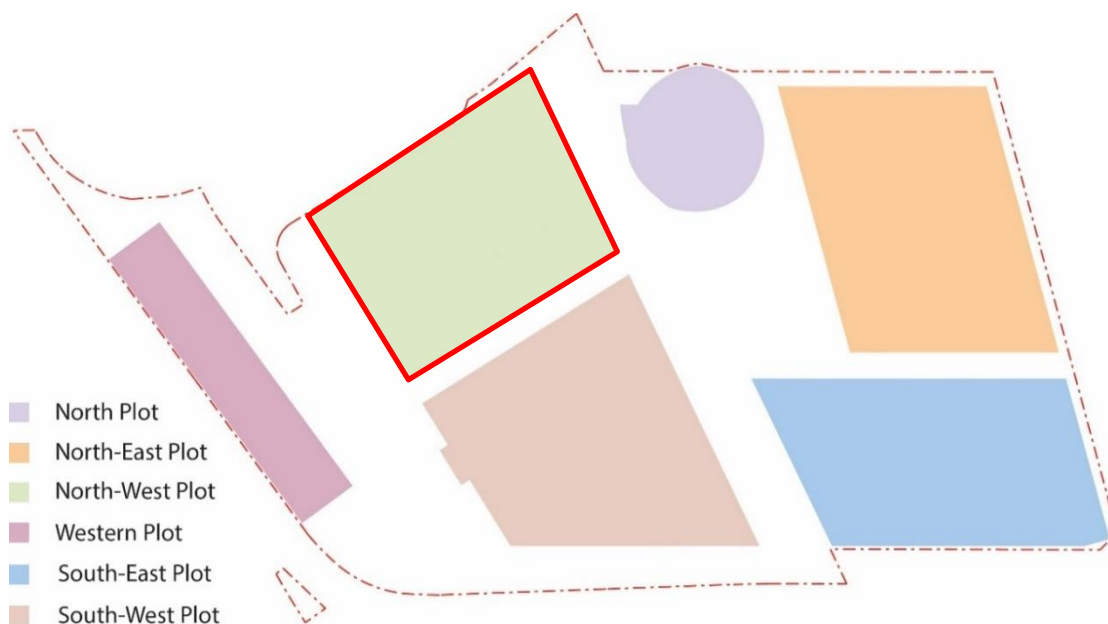


Figure 1 – Concept Proposal Development Plots (site outlined in red)

1.2 Consent proposed to be modified

Development Consent SSD-6013 (SSDA 4) was granted on 7 May 2014 by the delegate of the Minister for Planning for the following components of development:

- site preparation works including demolition of existing structures, tree removal, minor excavation, and site remediation as required;
- staged construction of a 12 storey building to be used for commercial premises, and above ground car parking;
- various public domain improvements including provision (part) new east-west pedestrian laneway (known as Dickson's Lane) linking Darling Drive to the Boulevard, upgrading of existing footpaths, provision of street trees, and provision of bicycle parking facilities; and
- building identification signage and wall advertising sign.

There have been three modifications to the subject development consent. The first modification (MOD 1) was approved on 20 July 2015. This modification included the following amendments:

- increase in GFA from 38,565m² to 41,435m² (2,870m² increase);
- change in building height from 12 storeys to 13 storeys (2.35m increase);
- revised building and façade design; and
- revised internal car park design, commercial floor space design and layout, including reconfiguration and amendments to the provision of vehicle, bicycle and motorcycle parking spaces.

The second modification application (MOD 2) was approved on 26 November 2015. This modification included the following amendments:

- reduction of the size of the rooftop plant area and increase of GFA (2,575m² increase);
- revised building and façade design and provision of a roof terrace;
- revised internal car park and commercial floor space design and layout;
- reconfiguration and amendment of vehicle, bicycle and motorcycle parking spaces;
- provision of photovoltaic panels at roof level; and
- alteration and addition of signage zones.

The third modification (MOD 3) was approved on 23 December 2016. This modification included the following amendments:

- external amendments at ground level;
- new signage zones;
- replacement of IQ hub with retail use;
- façade design amendments;
- roof level amendments including new plant and balustrades; and
- provision of landscaping on the Level 12 outdoor terrace.

1.3 Interface with SSD-6011

The Darling Square Precinct has been designated into separate plots to assist in the development approvals process. The boundary between the South West Plot and the North West Plot lies within the centre of Steam Mill Lane. Therefore, the proposed modifications to Steam Mill Lane affect two adjacent development consents. This distinction is shown in **Figure 2** below. A concurrent modification application (MOD 3) to the South West Plot is to be submitted to the Department of Planning and Environment, with the proposed changes to Steam Mill Lane intended to be considered holistically across the two applications.

1.4 Consultation

Lendlease (the proponent) has undertaken consultation with the landowner for the site, Place Management NSW, as well as INSW as part of the progression of the design development to inform this modification application.

2.0 Proposed Modifications to Consent

2.1 Modifications to the Development

The changes detailed below reflect the natural evolution that occurs within the development process and particularly in the case of significant public domain elements of the North-West Plot. The key changes to the approved development are outlined below and further in the updated landscape drawings (**Attachment A**) and statement (**Attachment B**) prepared by Aspect Studios.

Installation of fixed and moveable furniture proposed in Steam Mill Lane

A combination of fixed and moveable furniture is proposed to the edges of the terraces. The fixed components will comprise of low seating with stone and timber elements. The moveable elements will support retailers to trade out from their tenancies along the northern edge. The proposed fixed furniture layout within the North West Plot is shown in **Figure 2** and **Figure 3**.

Installation of catenary public art in Steam Mill Lane

An integrated light-based artwork with several individual pieces is proposed to be installed within Steam Mill Lane as catenary lighting. Each piece will have the appearance of abstract signage during the day, and neon lights at night. The artwork is to be sensitive to the character of three distinct zones that differ in terms of scale, shape, size, character and intended viewing position. The majority of artwork installations are proposed within the South West Plot, with only portions of some of the works entering land comprising the North West Plot. The location of the artwork zones and indicative positioning of each of the artworks within the two plots is shown in **Figure 2**.

Further detail of the proposed artworks can be seen in **Attachment B**. It should be noted, however, that further modifications to the design of the artwork are likely as the concept is further developed for implementation by the artist. For this reason, the proponent requests a condition of consent to allow the final design and location of the artwork to be approved by the Secretary of the Department of Planning and Environment. A draft condition to this effect is presented for consideration in **Section 2.2**.

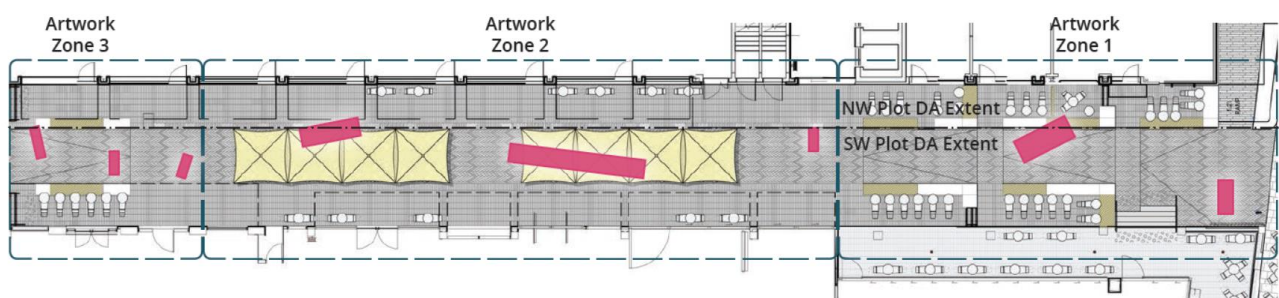


Figure 2 – Proposed furniture and artwork at the interface of SSD-6011, Steam Mill Lane

Source: Aspect Studios



Figure 3 – Proposed fixed seating

Source: Aspect Studios

Rationalisation of tree planting at the north eastern edge of the site

The existing development consent approved the planting of 10 new *Livistona australis* palms to be located at the northern edge of the site, between the approved building and the Pier Street overpass (refer to **Figure 4**). However, further detailed site investigations have revealed that the ground within this area of the site is dense with services and there is insufficient root ball space for the trees to survive to maturity. Accordingly, it is proposed that the ground surface will instead be paved for pedestrian circulation and will be consistent with the surrounding area.

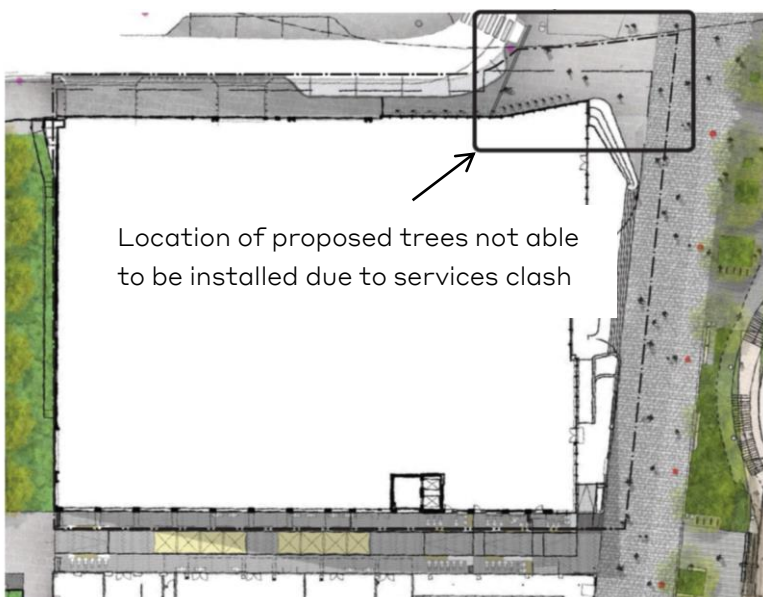


Figure 4 – Location of proposed trees not able to be installed

Source: Aspect Studios

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 italics**~~ and words to be inserted are shown in **bold italics**.

SCHEDULE 2

Development Description

CONDITION A3 - *The applicant shall carry out the project generally in accordance with the:*

- a) *State Significant Development Application SSD 6013;*
- b) *Environmental impact Statement prepared by JBA Urban Planning Consultants Pty Ltd, dated May 2013;*
- c) *Response to Submissions report prepared by JBA Urban Planning Consultants Pty Ltd, dated February 2014;*
- d) *The Section 96(2) modification to Development Consent SSD 6013 dated March 2015;*
- e) *The Section 96(1A) modification to SSD 6013 dated October 2015;*
- f) *The Section 96(1A) Modification Application, SICEEP, Darling Square, North-West Plot, prepared by JBA, dated 12 October 2015;*
- g) ***Section 96(1A) modification to Development Consent SSD 6013 dated 29 July 2017***
- h) *The conditions of this consent; and*
- i) *The following drawings, except for:*
 - (i) *any modifications which are Exempt or Complying Development;*
 - (ii) *otherwise provided by the conditions of this consent.*

Architectural (or Design) Drawings prepared by Lend Lease Design and Woods Bagot

Drawing No.	Revision	Name of Plan	Date
SNW DA3000S	02	Site Plan – Demolition	24.01.2014
DA1000	A	Detailed Excavation	10.03.2015
DA2001	G	General Arrangement Plan - Ground Floor	27/09/16
DA2002	F	General Arrangement Plan - Car Park Level 1	27/09/16
DA2003	F	General Arrangement Plan - Car Park Level 2	27/09/16
DA2004	E	General Arrangement Plan - Car Park Level 3	27/09/16
DA2005	E	General Arrangement Plan - Car Park Level 4	27/09/16
DA2007	E	General Arrangement Plan - Level 5	27/09/16
DA2008	E	General Arrangement Plan - Level 6	27/09/16
DA2009	F	General Arrangement Plan - Level 7	27/09/16
DA2010	F	General Arrangement Plan - Level 8	27/09/16

Architectural (or Design) Drawings prepared by Lend Lease Design and Woods Bagot			
DA2011	F	General Arrangement Plan - Level 9	27/09/16
DA2012	D	General Arrangement Plan - Level 10	27/09/16
DA2013	G	General Arrangement Plan - Level 11 and Plant	27/09/16
DA2014	G	General Arrangement Plan - Level 12 Plant	27/09/16
DA2015	F	General Arrangement Plan - Roof Plan	27/09/16
DA3001	G	General Arrangement Elevations and Sections - Section AA	27/09/16
DA3002	F	General Arrangement Elevations and Sections - Section BB	27/09/16
DA3003	F	General Arrangement Elevations and Sections - Section CC	27/09/16
DA3004	F	General Arrangement Elevations and Sections - Section DD	27/09/16
DA3005	G	General Arrangement Elevations and Sections - Section EE	27/09/16
DA3101	K	General Arrangement Elevations and Sections – Elevation -North	27/09/16
DA3102	G	General Arrangement Elevations and Sections – Elevation -East	27/09/16
DA3103	G	General Arrangement Elevations and Sections – Elevation -South	27/09/16
DA3104	H	General Arrangement Elevations and Sections – Elevation -West	27/09/16

Landscape Drawings prepared by Hassell Limited and ASPECT Studios			
Drawing No.	Revision	Name of Plan	Date
14076-SSDA4-S96-001	D E	Drawing List	October 2016 May 2017
14076-SSDA4-S96-201	D E	General Arrangement Plan	October 2016 May 2017
14076-SSDA4-S96-210	D	Paving Plan	October 2016

Architectural (or Design) Drawings prepared by Lend Lease Design and Woods Bagot			
14076-SSDA4-S96-211	D E	Planting Plan	October 2016 May 2017
14076-SSDA4-S96-212	D E	Urban Elements Plan	October 2016 May 2017
L301	D	Sectional Elevations	27.01.14
14076-SSDA4-S96-010	B	General Arrangement – Steam Mill Lane	May 2017
14076-SSDA4-S96-011	E	Cross Sections – Steam Mill Lane	May 2017
14076 NW DA-002	A	Landscape Plan (Intensive Zone)	09.11.2016
14076 NW DA-003	A	Landscape Plan (Intensive Zone)	09.11.2016
14076 NW DA-004	A	Planting Plan	09.11.2016

Final approval of artworks

As detailed in **Section 2.1**, the proponent requests that a condition of consent allows for the final design and location of the public artwork in Steam Mill Lane be approved by the Secretary of the Department of Planning and Environment. A draft condition for consideration is below:

Public Artwork Approval

Prior to the installation of public artwork in Steam Mill Lane, final details of the location, type, and fixings of the artwork is to be provided to the Secretary for approval.

3.0 Substantially the Same Development

The power to amend a development consent is found in section 96 of the EP&A Act. Section 96 is an independent facilitative power that is separate to the granting of a development consent. The statutory requirements to be satisfied for the grant of consent to modify a development consent are set out in Section 96. These depend on whether or not the modification is made under subsection (1), (1A) or (2).

This modification application to development consent SSD 6013 is accordingly made under Section 96(1A) of the EP&A Act, as the modification is of minimal environmental impact environmental.

Pursuant to Section 96(1A) of the EP&A Act, the Minister or his delegate may modify development consent if (our emphasis added):

- (a) it is satisfied that the proposed modification is of **minimal environmental impact**, and

- (b) *it is satisfied that the development to which the consent as modified relates is **substantially the same development** as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all), and*
- (c) *it has notified the application in accordance with:*
 - (i) *the regulations, if the regulations so require, or*
 - (ii) *a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and*
- (d) *it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.*

(our emphasis added)

The development, as it is proposed to be modified, is substantially the same development as that originally approved in that:

- no modifications are proposed to the approved building, with all modifications proposed within the public domain;
- the nature of the changes are purely design development driven and aim to support the functionality and amenity of the public domain and an enhanced amenity outcome for residents and visitors; and
- the proposal will continue to contribute to the creation of a new lively and vibrant mixed use precinct.

It is clear given the nature of the proposed modifications that all key elements of the approved development remain resulting in a development which is substantially the same as originally approved. Accordingly, for the reasons set out above the consent authority may be satisfied that the modified proposal represents substantially the same development for which consent was originally granted.

4.0 Environmental Assessment

Section 96(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*”. Under Section 96(4) the Consent Authority must also take into consideration the relevant matters to the application referred to in Section 79C(1) of the EP&A Act.

The following assessment considers the relevant matters under Section 79C(1) and demonstrates that the development, as proposed to be modified, will be of minimal environmental impact.

4.1 Compliance with relevant Planning Instruments and Policies

The Environmental Impact Statement (EIS) submitted with the original State Significant Development Application (SSDA) addressed the proposed development's level of compliance against a number of relevant environmental planning instruments.

Table 2 provides a summary overview of the proposed modified development's continued compliance with the relevant planning instruments.

Table 1 – Compliance with relevant environmental planning instruments

Instrument	Comments
SEPP (State & Regional Development)	The modified development continues to meet the threshold for State Significant Development.
SEPP (Infrastructure)	The provisions of the Infrastructure SEPP apply more during the consideration and assessment of the original SSDA in terms of requirements and referrals for development applications (i.e. not modification applications). Further referral of this modification application to relevant agencies and approval bodies is not considered necessary, given the minor nature of the changes.
SEPP (BASIX)	The proposed modifications are not considered to impact on the project's BASIX compliance and other sustainability aspirations, primarily as there are no proposed changes to the approved building.
SEPP 55 (Remediation of Land)	The site remains suitable for the proposed development subject to the implementation of Remedial Works as originally approved. The proposed modifications do not alter the site's suitability.
SEPP 65 (Design Quality of Residential Apartment Development)	The modified development continues to meet the objectives of the SEPP and the relevant assessment criteria. No modifications to any residential apartments are proposed.
Draft Competition SEPP	The proposed modified development continues to be consistent with the aims of the Draft SEPP (Competition) in that it will promote economic growth and competition within NSW.
SREP Sydney Harbour Catchment	The proposed modified development does not affect the level of compliance with the key relevant matter for consideration.
Darling Harbour Development Plan No. 1	The proposed modified development continues to support the objectives of the DHDP (delivering a mixed-use component to support a precinct containing world class convention, exhibition

Instrument	Comments
	and entertainment facilities) and retains the same permissible land uses as originally approved.
SEPP 64 Advertising and Signage	The modified development continues to meet the objectives of the SEPP and the relevant assessment criteria. No changes to approved signage are proposed under this modification.

4.2 S.79C(1)(b) Impact on the Environment

The EIS submitted with the original SSDA addressed the likely impacts of the development. The proposed modified development does not give rise to any material alteration to the assessment of the potential impacts considered as part of the original SSDA. In light of the nature of the modifications to the approved development the conclusions of the original assessment remain valid and no further assessment or mitigation measures are required. The following matters, however, warrant further assessment and consideration.

Public Domain

The installation of seating and public art through Steam Mill Lane is expected to promote the amenity and activation of the laneway throughout the day and night. The furniture being located along the edges of the terraces also prevents the risk of tripping between the terraces and the central movement area.

The shapes, colours and complexity of the art pieces are intended to encourage audience engagement and compliment the surrounding restaurant and café signage in the laneway. The design of the artworks has intended to create a colourful display at night, whilst concealing the majority of cables and light fittings during the day.

Careful consideration has been given to the brightness and spill of the lighting. While the sculptures may be brightly lit, the light fittings will be hidden by metal plates so that direct light will not create adverse glare for residents and visitors. The metal panels will cover the sculptures from all sides, including from below and on top, so they can be viewed from all vantage points including the apartments.

Vegetation Impact

The removal of proposed palm trees from the public domain plans is due to the intense layout of existing and upgraded services at the proposed location, along with the relationship to the building and Pier Street overpass. The redevelopment of SICEEP has added significant planting (more than 140 trees in Darling Square alone), including the adjacent boulevard area east of the subject modification application. The overall impact of the tree removal due to constrained site conditions will not have a significant impact on the when considered in relation to the overall positive landscaping and public domain outcomes provided by this project.

5.0 Conclusion

This Section 96(1A) modification application seeks to facilitate amendments in order to respond to design development and ensure that the highest level of amenity is achieved for residents and visitors to the precinct, specifically to the North-West Plot. The proposed modifications will not alter the environmental impacts assessed and approved as part of the existing development consent and will offer and enhanced building design and enhanced public domain.

In accordance with section 96(1A) of the EP&A Act, the Minister or his delegate may modify the consent as:

- the consent, as proposed to be modified, is substantially the same development as that originally approved;
- the modifications result in an overall improvement to the building's urban design response; and
- the development's compliance with the Stage 1 Concept Proposal and key statutory plans and controls remains generally the same as the approved development.

We trust that this information is sufficient to enable assessment and approval of the proposed modification request. Should you have any queries about this matter, please do not hesitate to contact me on (02) 9956 6962 or CPatfield@jbaurban.com.au.

Yours faithfully,



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