

9 February 2015

NSW Department of Planning & Environment
Att: Thomas Mithen
GPO Box 39
SYDNEY NSW 2001

Dear Mr Mithen,

**MODIFICATION OF THE CONSENT FOR STATE SIGNIFICANT DEVELOPMENT SSD
6387 – 1 Burroway Road, Wentworth Point**

This submission has been prepared as supporting documentation for an application made pursuant to Section 96(1A) of the *Environmental Planning and Assessment Act 1979* to modify Development Consent SSD 6387 for the construction of three 8-storey residential buildings above ground floor retail/commercial podiums and a three level basement structure and associated public domain works at 1 Burroway Road, Wentworth Point.

The application seeks consent to modify Condition No. B17 Access for People with Disabilities to remove the requirement for compliance with the provisions of the SOPA Access Guidelines 2011. A letter from Philip Chun Access Consultants accompanies this application.

1.0 SITE DESCRIPTION

The site comprises a portion of Lot 1 in DP 859608 and is known as 1 Burroway Road, Wentworth Point. The site is located on the northern side of Burroway Road at the junction of Hill Road.

The site is currently in the ownership of the Sydney Olympic Park Authority and contains the Sydney Olympic Park Ferry Wharf, an internal loop road which provides access to the ferry terminal, a small car park, as well as a large grassed area adjacent to Burroway Road which occupies the majority of the site and is bordered by a line of trees along each side.

The current site will be subdivided by the Sydney Olympic Park Authority to create the development site, which is approximately the location of the existing large grassed area. The notional site is rectangular in shape and has an area of 10,430 square metres. The south-western boundary of the site adjacent to Burroway Road is approximately 100 metres in length and the site is currently relatively level. The location of the site is shown in **Figure 1**.



Figure 1: Site location (Source: Six Lite, Department of Lands 2014)

2.0 BACKGROUND

On 1 December 2014, the Secretary of the Department of Planning and Environment granted approval for State Significant Development Application 6387 for the construction of three 8-storey residential buildings above ground floor retail/commercial podiums and a three level basement structure and associated public domain works at 1 Burroway Road, Wentworth Point.

3.0 PROPOSED MODIFICATION

The application seeks consent to modify Condition No. B17 Access for People with Disabilities to remove the requirement for compliance with the provisions of the SOPA Access Guidelines 2011 as follows:

- B17. The building must be designed and constructed to provide access and facilities for people with a disability in accordance with the Building Code of Australia ~~and SOPA Access Guidelines 2011 unless where there is an appropriate alternate solution as determined by a suitable qualified access consultant~~. The Certifying Authority must ensure that evidence of compliance with this condition from an appropriately qualified person is provided and that the requirements are referenced on any Construction Certificate drawings.*

The SOPA Access Guidelines requirements add two additional accessibility components (Part 5.3) in addition to the requirements of the Building Code of Australia:

- All units are to be visitable in compliance with AS4299-1995 which means that all units must have an 850mm clear entrance door opening and door circulations complying with AS1428.1, an accessible path to the living area and a toilet (including toilet door) and a toilet having at least 1250mm clear in front of the pan.
- 10% of all units are to be adaptable to AS4299-1995 Class B. Adaptable units are required to be Visitable (as above) and also able to be adapted if required to meet certain access requirements.

The proposal has been designed to provide 10% adaptable apartments, however, the imposition of Visitable requirements to the apartments would require substantial changes to the current approved development and cannot be accommodated in the current apartments designs without significant redesign of the entire development.

The visitable requirements are considered unreasonable as they are not required by the Department of Planning & Environment for residential development outside of the Sydney Olympic Park area and there is nothing unique to residential development inside the Sydney Olympic Park area which justifies the additional burden. Strict application of the visitable requirement would unnecessarily increase the cost of each apartment and would also reduce the number of apartments which can be delivered within the development. These outcomes are contrary to the objectives of A Plan for Growing Sydney to improve housing affordability and to increase housing supply.

It is also noted that this burden has not been applied to other approved residential development within the Sydney Olympic Park. Specifically, Project Approval MP 10_0027 for residential development at 1-7 Australia Avenue, Sydney Olympic Park which was approved on 24 January 2012 contains the following condition in relation to disabled access:

B16. Access and facilities for people with disabilities shall be provided in accordance with Part 03 (Access for people with disabilities) of the BCA. All parking for people with disabilities shall be in accordance with AS2890.6-2009. Prior to the issue of a Construction Certificate for building works, excluding excavation and site preparation works, a certification of compliance with this condition shall be provided to the Certifying Authority from an appropriately qualified person.

It is unequitable and unreasonable to apply a more onerous standard to the subject approved development where this standard has not been applied to other similar developments within the Sydney Olympic Park.

4.0 STATUTORY PLANNING FRAMEWORK

4.1 Section 96(1A)

Section 96(1A) of the *Environmental Planning and Assessment Act 1979* empowers a consent authority to modify a development consent, as follows;

A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:

- (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.*

In accordance with section 96(1A)(a) the proposed modification is considered to result in only a minor environmental impact for the following reasons:

- The proposed amendment to Condition No. 17 does not require any material change the approved design of the development and therefore does not require any further consideration of impacts other than those associated with the approved development.
- The proposed amendment will therefore not result in any impact on the amenity of the adjoining properties or the locality generally beyond that which has already been approved.
- The nature of the amendment is most appropriately described as benign as it does not generate any issues which require any further analysis.

For these reasons the proposed amendment is considered to be of minimal environmental impact and can therefore be considered under section 96(1A) of the *Environmental Planning and Assessment Act 1979* (EP&A Act).

The proposed amendment is minor and does not result in any material change to the approved development such that the amended proposal is considered to be “essentially or materially” the same as the approved development. On this basis the proposal is appropriately categorised as being “substantially the same” as required by Section 96(1A) of the EP&A Act.

In accordance with Section 96(3) of the EP&A Act in determining an application for modification of a consent under this section, the consent authority must take into consideration such of the matters referred to in section 79C(1) as are of relevance to the development the subject of the application.

The provisions of relevant environmental planning instruments and development control plans are relevant matters for consideration under Section 79C(1) and are addressed below.

4.2 Planning Controls

4.2.1 Sydney Olympic Park Masterplan 2030

Section 4.6.9 Accessibility Controls of the Sydney Olympic Park Masterplan 2030 suggests that each development application should meet the requirements of the Sydney Olympic Park Access Guidelines (2008).

The proposal has been designed to meet all accessibility requirements of the Building Code of Australia as well as the critical requirement within the Guidelines for providing 10% adaptable apartments, which is a consistent requirement across all local government areas within Sydney.

However, as discussed above, the visitable requirements within the guideline have not been consistently applied to other recently approved development within Sydney Olympic Park. The visitable requirement adds an unreasonable burden to the development with an increase in the cost of all apartments due to their inevitable increase in size and a corresponding decrease to the quantum of housing which can be delivered within the development which cannot be reasonably justified in this instance.

5.0 CONCLUSION

The application seeks to modify Development Consent SSD 6387 to remove the requirement for compliance with the provisions of the SOPA Access Guidelines 2011.

As detailed in this submission the proposed modification may be made by the consent authority in accordance with Section 96(1A) of the *Environmental Planning and Assessment Act 1979*. The proposal is of a minimal environmental impact, is substantially the same development as originally approved and will not result in any adverse impacts on the amenity of the locality.

If you have any questions regarding the proposed amendment please do not hesitate to contact me on 0410 452 371.

Regards



Aaron Sutherland

Sutherland & Associates Planning Pty Ltd