

**STATE SIGNIFICANT DEVELOPMENT:**  
**Stage 1A Torrens title subdivision of Barangaroo**  
**and staged stratum subdivision of Barangaroo South**  
**(SSD 6381)**



Secretary's  
Environmental Assessment Report  
Section 89H of the  
*Environmental Planning and Assessment Act 1979*

December 2014

## ABBREVIATIONS

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|                 |   |
|-----------------|---|
| Applicant       | Lend Lease (Millers Point) Pty Ltd  |
| Agency          | NSW Planning and Environment  |
| CIV             | Capital Investment Value  |
| Department      | Department of Planning and Environment                                    |
| SEARs           | Secretary's Environmental Assessment Requirements                         |
| Secretary       | Secretary of Planning and Environment, or delegate.                       |
| EIS             | Environmental Impact Statement  |
| EP&A Act        | <i>Environmental Planning and Assessment Act 1979</i>                     |
| EP&A Regulation | Environmental Planning and Assessment Regulation 2000                     |
| EPI             | Environmental Planning Instrument   |
| LEP             | Local Environmental Plan  |
| MD SEPP         | State Environmental Planning Policy (Major Development) 2005              |
| Minister        | Minister for Planning   |
| Regulation      | Environmental Planning and Assessment Regulation 2000                     |
| RTS             | Response to Submissions   |
| SRD SEPP        | State Environmental Planning Policy (State and Regional Development) 2011 |
| SEPP            | State Environmental Planning Policy                                       |
| SSD             | State significant development   |

**Cover Photograph:** Aerial photograph of Barangaroo with development sites overlaid (Source: Lend Lease(Miller Point) Pty Ltd) and proposed Torrens title Subdivision to create Lots 100 and 101 (Source: GeoStrata)

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## EXECUTIVE SUMMARY

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This report provides an assessment of a State significant development application (SSD 6381) which seeks approval for the subdivision of the entire Barangaroo site. Specifically, the application seeks approval for the following:

- the consolidation of Lots 3, 5 and 6 in DP875614 and subdivision of the consolidated lot into two (2) Torrens Title lots (proposed Lots 100 and 101); and
- the staged stratum subdivision of proposed Lot 100 into nine (9) lots for the approved buildings and infrastructure within the Stage 1A area and a residual lot for the public domain and the remainder of Stage 1A and Stage 1B.

The application does not seek approval for any physical works.

The application was publicly exhibited between 4 September 2014 until 20 October 2014. A total of three submissions were received from agencies which raised no concerns with the proposal. No submissions were received from the public or the City of Sydney Council.

The staged registration of the stratum subdivision will allow for the subdivision of development to occur in an orderly manner. This will also ensure that stratum lots are created, enabling the earliest occupation of each building in Barangaroo South as soon as the respective Occupation Certificate is issued for each building.

Conditions have been recommended to ensure that the applicant complies with the necessary legislative requirements of the *Environmental Planning and Assessment Act 1979* in relation to obtaining a Subdivision Certificate and certification prior to the staged registration of each Plan of Subdivision with Land and Property Information. Specific conditions have also been recommended to address the requirements under the *Conveyancing Act 1919* for the preparation of a Building Management Statement and for suitable easements to be in place over the residual lot to ensure that public access is provided over the ground level plane (public domain).

The Department considers the proposal to be in the public interest and accordingly, it is recommended that the application be approved, subject to the conditions outlined in this report and the Development Consent at **Appendix F**.



## 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.

Barangaroo is currently being redeveloped in accordance with the Barangaroo Concept Plan. Barangaroo has been divided into three distinct redevelopment areas (from north to south), comprising the Headland Park, Barangaroo Central and Barangaroo South (see **Figure 1**).

Barangaroo has a site area of approximately 22 hectares and a 1.4 kilometre harbour foreshore frontage. Barangaroo currently comprises Lots 3, 5 and 6 in DP876514.



**Figure 1:** The Barangaroo Site comprising the Headland Park, Barangaroo Central and Barangaroo South (Source: JBA Urban Planning Consultants)

### 1.2 Previous Approvals

Barangaroo has been the subject of a number of development approvals since the Concept Plan (MP06\_0162) was originally approved in February 2007. The approved Concept Plan establishes the urban design and built form principles for the redevelopment of Barangaroo. This includes the general site layout and the integration of the public domain with the built form.

A summary of relevant applications and associated modifications applications is provided at **Appendix D**.



## 2. PROPOSED DEVELOPMENT

### 2.1 The Proposal

The application seeks approval for the Torrens title subdivision of Barangaroo and the stratum subdivision of parts of Barangaroo South, as detailed below:

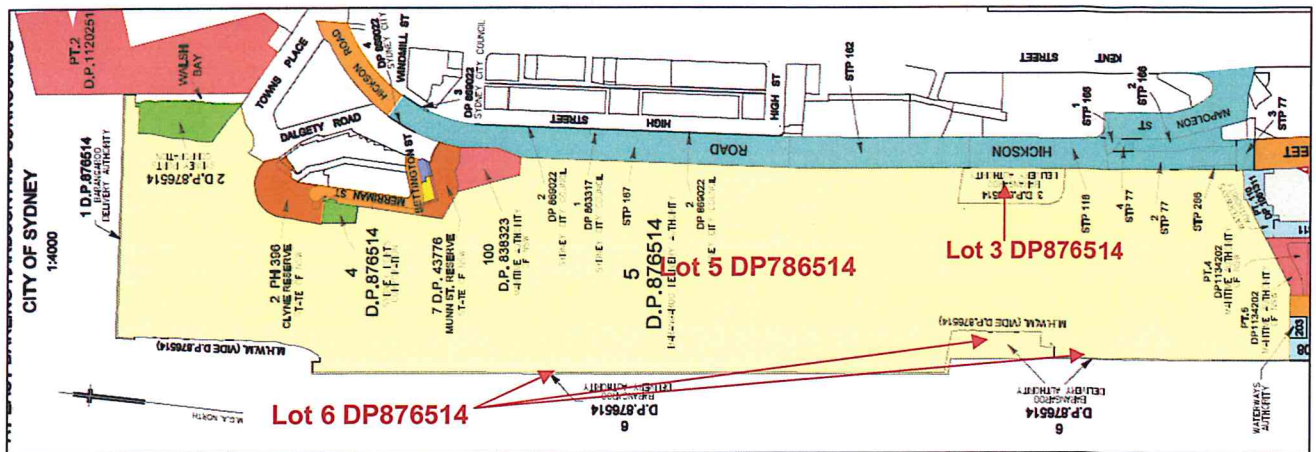
- Consolidation of Lots 3, 4 and 5 DP 876514 and the subdivision of the consolidated lot into two Torrens title lots being:
  - Lot 100 comprising Barangaroo South (Stages 1A and 1B); and
  - Lot 101 comprising Barangaroo Central & the Headland Park.
- Staged stratum subdivision of proposed Lot 100 in four stages to create nine stratum lots for the approved buildings and infrastructure within the Stage 1A area and a residue lot for the public domain and the remainder of Stage 1A and Stage 1B. The registration of the plan of subdivision with Land & Property Information is also proposed to be undertaken in a staged manner. The four stages proposed for the stratum subdivision are identified as follows:
  - Stage 1: Stratum subdivision of Lot 100 into five lots and a single residue lot. The five stratum lots comprise:
    - Lot 201- Commercial Building C4;
    - Lot 202- Central Chilled Water Plant;
    - Lot 203- Recycled Water Plant;
    - Lot 204- Embedded Networks; and
    - Lot 205- Bicycle and amenities.
  - Stage 2: Subdivision of the residue lot to create stratum Lot 206 for Commercial Building C5 and a single residue lot.
  - Stage 3: Subdivision of the residue lot to create two (2) stratum lots and a single residue lot. The two stratum lots comprise:
    - Lot 207- Residential Building R8/R9- residential; and
    - Lot 208- Residential Building R8/R9- retail.
  - Stage 4: Subdivision of the residue lot to create stratum Lot 209 for Commercial Building C3 and a single residue lot.

The further subdivision of Stage 1A and Stage 1B (and the remainder of the site) will be subject to separate approval/s, as relevant.

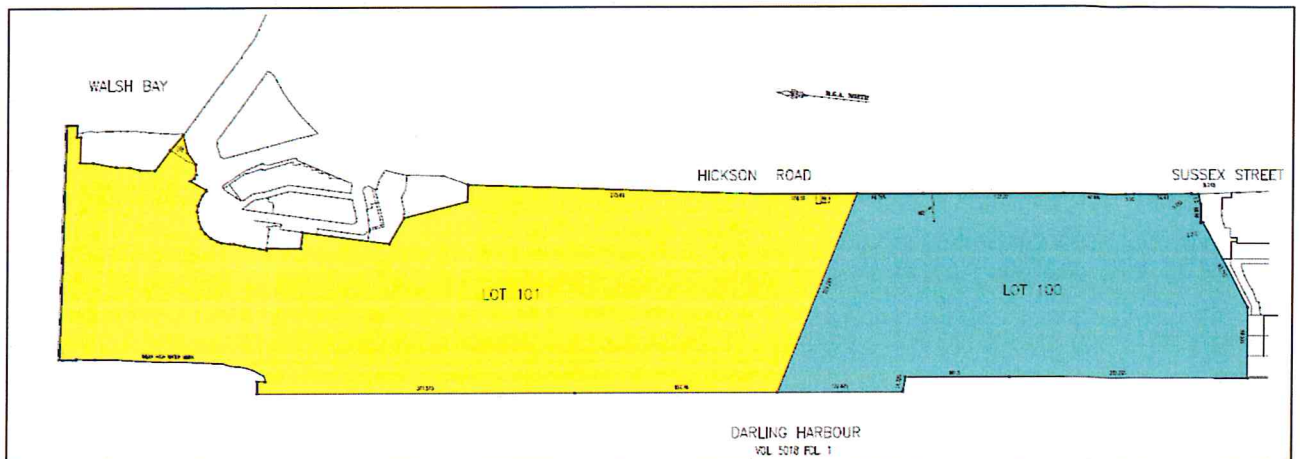
The existing subdivision plan for Barangaroo is illustrated in **Figure 2** below. The proposed Torrens title subdivision is illustrated in **Figure 3** below.

Plans illustrating the proposed stratum subdivision of Lot 100 are provided at **Appendix A**. A flow chart illustrating the proposed subdivision stages is provided at **Figure 4**.

The application does not seek approval to undertake any physical works or to dedicate any land. In this regard, all land that is publicly accessible will be retained in the ownership of the BDA and will be retained in the residual lot at each stratum subdivision stage.



**Figure 2:** Existing Plan of Subdivision- Barangaroo and surrounding areas (Source: Rygate & Company Pty Limited)



**Figure 3:** Proposed Torrens Title subdivision to create Lots 100 and 101 (Source: GeoStrata)

### 3. STATUTORY AND STRATEGIC CONTEXT

#### 3.1 State Significant Development

The proposal is a State significant development pursuant to section 89C of *Environmental Planning and Assessment Act 1979* (EP&A Act) as it is on land identified as being within the Barangaroo Site on the State Significant Development Sites Map of *State Environmental Planning Policy (State and Regional Development) 2011* (SRD SEPP). Clause 3(2) of Schedule 2 (State Significant Development-identified sites) of the SRD SEPP identifies that the subdivision of land within Barangaroo (with the exceptions) constitutes state significant development.



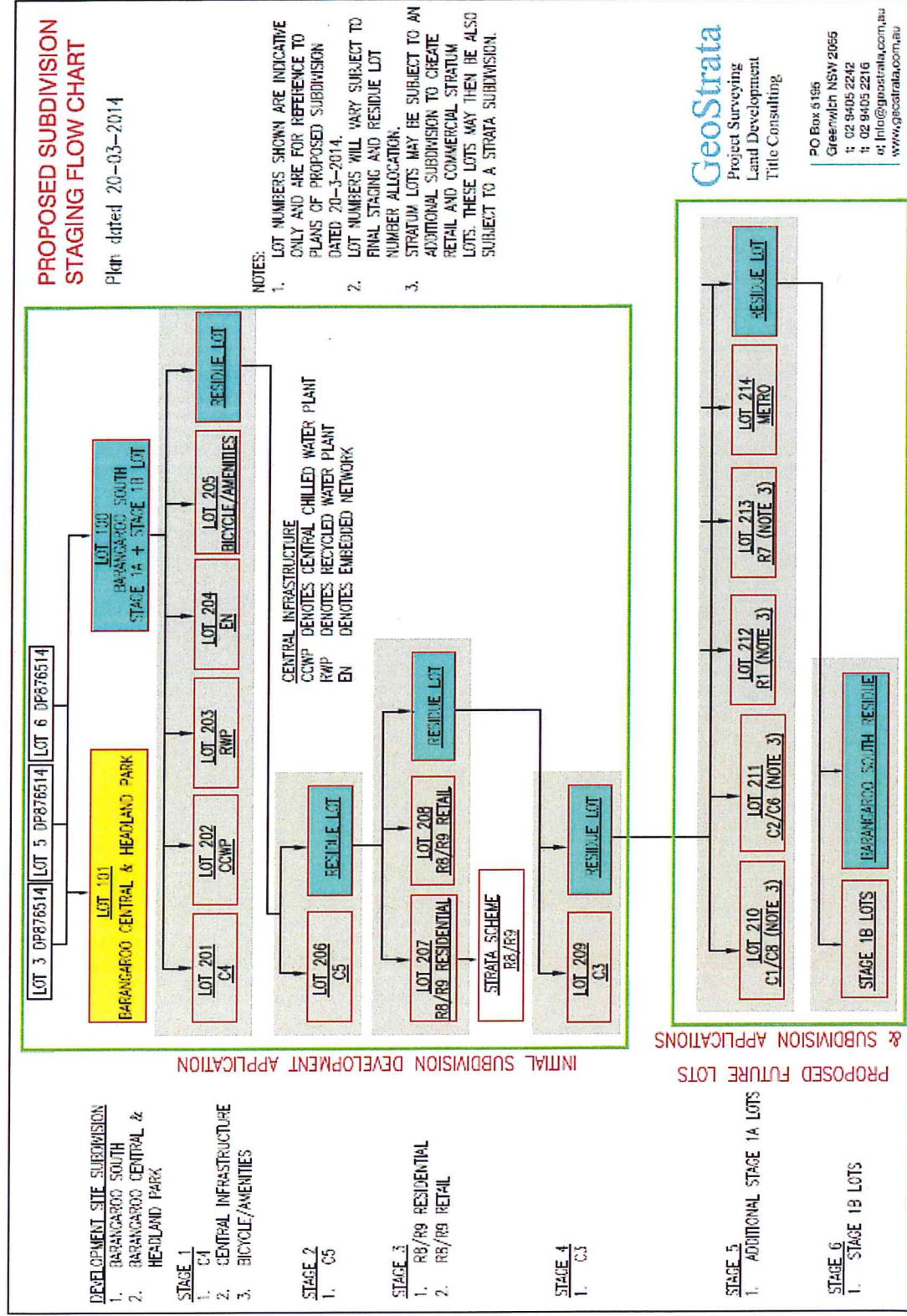


Figure 4: Proposed Stratum Subdivision Staging Flow Chart

As the proposal comprises both Torrens title subdivision and stratum subdivision, with reference to clause 3(2) of Schedule 2 (State Significant Development- identified sites) of the SRD SEPP, by exclusion, the application is considered to be State significant development.

It is also noted that clause 10 of the SRD SEPP allows a subdivision certificate to be issued by an accredited certifier for a subdivision that is State significant development.

### **3.2 Environmental Assessment Requirements**

In accordance with section 78A(8A) of the EP&A Act, the Secretary notified the applicant of the environmental assessment requirements for the State significant development application (SSD 6381). The Department is satisfied that the applicant's Environmental Impact Statement and supplementary information provided by the applicant has adequately addressed compliance with the SEARs to enable a comprehensive assessment of the application for determination purposes.

### **3.3 Delegated Authority**

The Executive Director, Infrastructure and Industry Assessments can determine the application under delegation as:

- the relevant local council has not made an objection; and
- a political disclosure statement has not been made; and
- there were less than 25 public submissions in the nature of objections.

### **3.4 Environmental Planning Instruments**

The following environmental planning instruments (EPIs) apply to the site:

- *State Environmental Planning Policy (State and Regional Development) 2011*;
- *State Environmental Planning Policy (Major Development) 2005 (MD SEPP)*;
- *State Environmental Planning Policy No 55 – Remediation of Land*; and
- *Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005*.

An assessment of compliance with the EPIs is provided at **Appendix B**. In summary, the Department is satisfied that the application generally complies with the relevant provisions of the EPIs.

### **3.5 Objects of the EP&A Act**

Decisions made under the EP&A Act must have regard to the objects of the EP&A Act, as set out in section 5 of the Act. SSD 6381 is considered to be consistent with the objects of the Act, as the application will promote the orderly and economic use of the site. Accordingly, the application is considered to be consistent with the objectives of section 5 of the Act.

### **3.6 Ecologically Sustainable Development**

The EP&A Act adopts the definition of Ecologically Sustainable Development (ESD) found in the *Protection of the Environment Administration Act 1991* (POEA Act). Section 6(2) of the POEA Act states that ESD requires the effective integration of economic and environmental considerations in decision-making processes.



The Department has considered the project in relation to the ESD principles. Whilst these principles have little relevance to the subdivision application, the Department notes, in general, that the redevelopment of Barangaroo has been designed to incorporate Australian best practice sustainability initiatives during construction and operation.

In addition, the Department considers that the precautionary and inter-generational equity principles have been applied in the decision making process via a thorough and rigorous assessment of the environmental impacts of all development which has been approved at Barangaroo.

### 3.7 Environmental Planning and Assessment Regulation 2000

Subject to any other references to compliance with the Regulation cited in this report, the requirements for notification in Part 6, Division 6 and fees (Part 15, Division 1AA) have been complied with.

### 3.8 Strategic Context

The Department considers that the proposal, as part of the broader redevelopment of Barangaroo in accordance with the approved Barangaroo Concept Plan, is consistent with the following State/regional/local strategies:

- the objectives of *NSW 2021*, including the creation of a new liveable centre within the Sydney CBD, and the creation of additional construction jobs and additional commercial, retail and residential floor space;
- the planning objectives of the draft *Metropolitan Plan for Sydney to 2031*, which promotes new development to accommodate an additional 102,000 new jobs within central Sydney; and
- the *draft Sydney Subregional Strategy* which identifies Barangaroo as a landmark urban renewal project and identifies that its redevelopment is vital to accommodate job and dwelling growth within the subregion.

## 4. EXHIBITION, CONSULTATION AND SUBMISSIONS

### 4.1 Exhibition

In accordance with section 89F of the EP&A Act, the SSD application and accompanying information was made publicly available in accordance with the Regulations for at least 30 days following the date of first publication (see **Table 1**).

**Table 1:** Exhibition Details

| Exhibition/Notification | Format  | Dates                               |
|-------------------------|---|-------------------------------------|
| Publicly Exhibited      | DPI Bridge Street office and the City of Sydney Council's One Stop Shop and on the Department's website | 3 September 2014                    |
| Newspaper Notice        | Sydney Morning Herald and Daily Telegraph   | 3 September 2014                    |
| Written Notices         | Surrounding landowners, Key Agencies and Council  | 4 September 2014 to 20 October 2014 |

## 4.2 Public Authority Consultation and Submissions

The Department received three submissions during the exhibition of the application from Sydney Water, Ausgrid and TfNSW. No submissions raised objection to the proposal. A summary of the issues raised in submissions is provided below.

The Department notes that no public submissions were received.

Ausgrid: advise that they have no objection to the application subject to standard conditions requiring the following:

- the applicant continuing to liaise with Ausgrid to finalise any easements, leases and rights-of-way in favour of Ausgrid for electrical infrastructure in Barangaroo South; and
- the applicant liaising with Ausgrid to grant sufficient rights, in favour of Ausgrid, for the protection of future electrical supply infrastructure in Barangaroo Central and the Headland Park.

The conditions recommended by Ausgrid have been incorporated in the Development Consent.

Sydney Water: advise that they are currently liaising with the applicant regarding the wastewater and water requirements to service the future development of the site. The detailed servicing requirements will be provided at the Section 73 Application stage.

A condition has been recommended to ensure that a Section 73 Compliance Certificate under the *Sydney Water Act 1994* is obtained from Sydney Water. This condition has been appropriately incorporated into the Development Consent.

TfNSW: advise that they have no comment to make in relation to the application.

## 4.3 Response to Submissions

Given the minor nature of the submissions received, the applicant was advised that a Response to Submissions was not required. The Department notes that the applicant was provided with a copy of the agency submissions and that no objection has been raised to the conditions recommended by Ausgrid and Sydney Water (refer **section 4.2** above).

Notwithstanding the agency submissions, the Department requested further information from the applicant to address the staging of future stratum subdivisions and to clarify the content and structure of Building Management Statement/s (BMS) for the development. In response to this information request, the following has been confirmed:

- One Building Management Statement (BMS) will be prepared under Schedule 8A of the *Conveyancing Act 1919* and will apply to the whole of Barangaroo South as a united building or whole entity. The BMS will be prepared at the time of the first stratum subdivision and will be modified with each subsequent stratum subdivision, as required.



The Department notes that upon registration of the first Strata Management Statement for residential buildings R8/R9 (not part of this application), the BMS will cease to have effect. Notwithstanding this, the Strata Management Statement will deal with the same prescribed matters and will relevantly apply to the whole of Barangaroo South.

- Statutory easements for support, shelter, access and services for the development as a whole entity will be addressed in the BMS and will not necessarily be created under section 88B of the *Conveyancing Act 1919*.

The facilities in the basement of the building (i.e. services, recycled water plant, central chilled water plant, bicycles/amenities), including rights to access/use of these facilities by each stratum lot, will be addressed as 'shared facilities' in the BMS. These facilities will be co-owned by the lot owners of C3, C4 and C5. The applicant proposes to include a 'shared facilities table' and associated plans that will be appended to the BMS to address this matter.

- No land dedications are proposed in the current application. In this regard, the residual lot created at each stratum subdivision stage (which includes the public domain) will be retained in the ownership of the Barangaroo Delivery Authority (BDA).
- Easements for access and a section 88B Instrument will be prepared for the ground level of Barangaroo South, including to provide access to the podium level of each building (i.e. the easement will burden the residual lot which includes the public domain and will benefit each stratum lot). These easements will include provisions that entitle the owner and the developer to restrict access to areas, including to erect hoardings in parts of the site necessary for construction activities.
- The applicant has requested that the stratum subdivision of each building should not be linked to the issue of an Occupation Certificate for the following reasons:
  - There is no underlying regulatory driver for the linkage; and
  - Lend Lease's Project Development Agreement with BDA expressly provides for the land to the subdivided prior to practical completion of the relevant building. In this regard, Lend Lease as advised that linking title to the completion of the all DA conditions would fundamentally affect this position.

The above matters are given further consideration in **Section 5.0** of this report, as relevant.

## 5. ASSESSMENT

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### 5.1 Section 79C Evaluation

**Table 2** identifies the matters for consideration under section 79C that apply to State significant development. The EIS has been prepared by the applicant to consider these matters and those matters detailed in the SEARs.

**Table 2: Section 79C(1) Matters for Consideration**

| <b>Section 79C(1)<br/>Evaluation</b>  | <b>Consideration</b>  |
|---|---|
| (a)(i) any environmental planning instrument  | Satisfactorily complies. The Department's consideration of the relevant EPI's is provided within <b>Section 3.4</b> and <b>Appendix B</b> of this report.   |
| (a)(ii) any proposed instrument   | Not applicable.   |
| (a)(iii) any development control plan (not applicable to SSD)   | Under clause 11 of the SRD SEPP, development control plans do not apply to SSD. Notwithstanding this, consideration has been given to the relevant provisions of the Sydney Harbour Foreshores & Waterways DCP at <b>Appendix B</b> .<br>The proposal is consistent with the relevant provisions of this DCP. |
| (a)(iiia) any planning agreement  | Not applicable.   |
| (a)(iv) the regulations   | The development application meets the relevant requirements of the Regulation, including the procedures relating to development applications (Part 6 of the Regulations), public participation procedures for SSDs, and Schedule 2 of the Regulation relating to environmental impact statements.             |
| (a)(v) any coastal zone management plan   | Not applicable.   |
| (b) the likely impacts of that development  | Satisfactorily complies. See <b>Section 5.0</b> of this report  |
| (c) the suitability of the site for the development   | The proposal for Torrens title subdivision of Barangaroo and stratum subdivision of Barangaroo South aligns with the approved development at Barangaroo. The proposal is consistent with the Barangaroo Concept Plan and has been assessed as being suitable for the site.                                    |
| (d) any submissions   | Consideration has been given to submissions received during the exhibition period. See <b>Section 4.0</b> of this report.   |
| (e) the public interest.  | The application is considered to be in the public interest as it will facilitate the staged occupation of the Barangaroo South.   |
| Biodiversity values exempt if:<br>(a) On biodiversity certified land?<br>(b) Biobanking Statement exists? | Not applicable<br><br>Not applicable  |

## 5.2 Key and Other Issues

The Department considers that the key environmental assessment issues associated the proposal to be:

- subdivision layout and structure;
- easements and restrictions on title;
- adequacy of the Building Management Statement; and
- staged registration of the Plans of Subdivision.



### 5.3 Subdivision layout and structure

The Department has considered the proposed land subdivision layout having regard the extent of the Barangaroo site and the development which has been approved in Barangaroo South (i.e. basement carpark and buildings C3, C4, C5 and R8/9), as relevant to this subdivision application.

The Department is satisfied that the application appropriately reflects the re-development area and the buildings referenced in the application. On this basis, the Department is satisfied that the subdivision pattern is compatible with and generally consistent with the extent of the Barangaroo development site, the Barangaroo Concept Plan and project approvals/development consents issued for the each building in Barangaroo South.

### 5.4 Easements and restrictions on title

As detailed in Section 4.3 of this report, the application proposes that easements will be created for the following:

- Access at public domain level (Lot 200-residual lot); and
- Public utility services (refer to comments of Augrid and Sydney Water at section 4.2 of this report).

All access and servicing arrangements in relation to facilities in the basement of the building will be addressed through the Building Management Statement, with the exception of ground level access, which will be addressed by easements. Subject to suitable easements for public access being created over the public domain (Lot 200), the Department raises no objection to this aspect of the application.

Conditions have been recommended to reinforce the requirement for the above easements to be created for public access and utility services.

### 5.5 Adequacy of the Building Management Statement

Schedule 8A of the *Conveyancing Act 1919* sets out the prescribed matters which must be included in a Building Management Statement (BMS). Specifically, Schedule 8A requires that the BMS be prepared in terms of the Approved Form 12 and that the BMS not be inconsistent with any condition imposed on a development consent relating to the building or the site to which the BMS relates.

In addition to the above, clause 16, Part 12 of Schedule 3 of the MD SEPP contains provisions which are particularly relevant to the content of the BMS. In particular, clause 16(4) requires that prior to the issuing consent for a stratum subdivision, the consent authority must consider whether the related BMS adequately addresses the ongoing maintenance, upgrading, redevelopment and structural adequacy of the part of the building within each proposed stratum lot.

At the request of the Department, the applicant has provided further information to clarify the structure and content of the BMS (**Appendix F**). Given the complexity of the BMS and its application to all of Barangaroo South, the Department acknowledges that the BMS is in draft form and that the final version of the BMS may vary (and will be amended over time). Notwithstanding this, for the purposes of addressing the requirements of the MD SEPP, the Department is satisfied that the drafting of the BMS and the applicant's disclosures in respect to the form and content



of the BMS will adequately address the ongoing maintenance, upgrading, redevelopment and structural adequacy of development within Barangaroo South, as relevant to each stratum lot.

In order to ensure that the final form of the BMS is consistent with the provisions of the MD SEPP and the statutory requirements of Schedule 8A of the *Conveyancing Act 1919*, a condition of consent has been recommended to require the BMS to be submitted to the satisfaction of Certifying Authority at the subdivision certificate stage for each stratum subdivision. This condition also requires that the BMS adequately addresses the following matters which are relevant to the approved development within Barangaroo South:

- The use, operation and arrangements for the supply of services, maintenance and upgrading for the recycled water plant within proposed Lot 203 and associated plant, equipment and pipes;
- The use, operation and arrangement for the supply of services, maintenance and upgrading for the district cooling plant and the sea water pump rooms, control rooms and other infrastructure associated with the harbour heat rejection system within proposed Lot 202 and associated plant, equipment and pipes;
- The ongoing maintenance, upgrading, redevelopment and structural adequacy of each stratum lot within the subdivision; and
- Any other matters which the Certifying Authority considers relevant and pertinent to the issue of the Subdivision Certificate.

Subject to compliance with this condition, the Department is satisfied that the form and content of the BMS will satisfy the relevant statutory requirements, noting that the BMS will ultimately be registered on title by Land and Property Information. This will mean that the BMS will be binding on each person who owns each lot and any other party with a registered interest in each lot.

## 5.6 Staged registration of Plans of Subdivision

The application seeks approval for the staged registration of the stratum plans of subdivision. The Department notes that prior to the issue any subdivision certificate for stratum subdivision, proposed Lots 100 and 101 are required to be registered with Land and Property Information. An appropriate condition has been recommended to address this matter.

The current stratum staging proposed, as illustrated in **Figure 4**, reflects the developers intention to complete Commercial Building C4 and associated infrastructure and amenities necessary to service the building, including the district cooling plant (Lot 202) and the recycled water plant (Lot 203) at Stage 1. The subsequent stratum stages detailed in the application (Stages 2-4) also acknowledge that Buildings C5, R8/R9 and C3 will be progressively completed and the relevant titles created.

The Department notes that whilst the issue of a Subdivision Certificate will not be linked to the issue of an Occupation Certificate for the respective building, all relevant pre-conditions to the issue of an Occupation Certificate contained in the respective



project approval/ development consent, will still need to be complied with prior to the occupation of each building.

As stated in Section 3.1 above, clause 10 of the SRD SEPP permits subdivision certificates to be issued by an Accredited Certifier for a subdivision that is a State significant development. The recommended conditions of consent have been tailored to reflect this provision.

Having regard to the above, the Department raises no objection to this aspect of the application, noting that this approach will enable the staged registration of the plans of subdivision with Land and Property Information in an orderly manner.

## 6. CONCLUSION AND RECOMMENDATION

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### 6.1 Conclusion

The Department has assessed the merits of the State significant development application proposing the Torrens title subdivision of the Barangaroo Site and the stratum subdivision of Barangaroo South and is satisfied that it will not give rise to any adverse environmental impacts.

All statutory requirements relating to the State significant development application have been met, and the Department considers the application warrants support and should be approved, subject to the recommended conditions.

### 6.2 Recommendation

It is recommended that the Executive Director, Industry and Infrastructure Assessments, as delegate of the Minister for Planning:


- a) **Consider** the recommendations of this report for the Torrens title subdivision of the Barangaroo site and the stratum subdivision of Barangaroo South; and
- b) **Approve** the State significant development application, SSD 6381, under section 89E of the EP&A Act, having considered matters in accordance with (a) above and **sign** the attached development consent at **Tag A**.

Endorsed by:

  
Cameron Sargent  
**Acting Manager**  
**Key Sites**

Prepared by: Sara Roach  
Contract Planner

Approved by:

  
16.12.14

Chris Wilson  
**Executive Director**  
**Infrastructure and Industry Assessments**