



LD/SM/MR  
17101  
12 May 2017

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

Dear Ms McNally,

**SECTION 96(1A) MODIFICATION APPLICATION - SSD 6513  
BUILDING R1, BARANGAROO SOUTH**

On behalf of Lendlease (Millers Point) 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 State Significant Development Application ('SSDA') SSD 6513 relating to Building R1, Barangaroo South ('the site').

The modification intends to make amendments to the conditions of development consent in order to correct a number of administrative anomalies. The modification also seeks to provide retractable awnings for solar protection throughout the licensed area.

This application identifies the consent, describes the proposed modifications and provides a planning assessment of the relevant matters for consideration contained in Section 96(1A) and Section 79(C) of the EP&A Act. It should be read in conjunction with the Statement of Environmental Effects (SEE) prepared by JBA dated 14 August 2015. The application is additionally accompanied by:

- Solar Protection Awning Location Plans prepared by H&E Architects (**Attachment A**);
- Solar Protection Awning Details prepared by H&E Architects (**Attachment B**); and
- Acoustic Statement prepared by Wilkinson Murray (**Attachment C**).

**1.0 CONSENT PROPOSED TO BE MODIFIED**

State Significant Development Application SSD 6513 was lodged with the Department of Planning and Environment ('the Department') in October 2014. Prior to the determination of SSD 6513, the Proponent submitted an amended application in August 2015. This amended application specifically provided for the fitout and use of Building R1 as a pub, in accordance with the definitions under the *Standard Instrument Local Environmental Plan*.

Development consent was granted on 25 August 2016 for the following:

- Site preparation works;
- Construction and fit-out of a three-storey food and drink premises (pub) building (known as Building R1) with a maximum GFA of 804m<sup>2</sup>;
- Allocation and use of 15 car parking spaces within the basement car park for the future use(s) of building R1;
- Use of 1 bicycle parking space within the adjacent public domain for the future use(s) of building R1;
- Landscaping works; and
- Installation of utility services.

Complying Development Certificate (CDC) 17/124029-1 was issued 20 March 2017 in relation to Building R1 and granted consent for the installation of polycarbonate works at roof level to provide weather protection and the installation of a structural steel platform at mezzanine level.

## 2.0 PROPOSED MODIFICATIONS TO CONSENT

### 2.1 Modifications to the Development

This modification proposes to amend the approved design of Building R1 by introducing 14 retractable awnings for solar protection along the western frontage of Level 1 and 2 (detailed on the Architectural Plans at **Attachment A**). The detailed elements of the awnings are shown for information purposes at **Attachment B**.

The proposed retractable awnings are to be utilised during afternoons only. When deployed, the retractable awnings will not block views to and from the waterfront public domain.

The proposed retractable awnings are also to be mechanically operated. Equipped with anemometers, the awnings will be withdrawn during periods of high wind to ensure that the safety of equipment, patrons, and visitors within the surrounding area is maintained.

### 2.2 Modifications to the Conditions

This modification proposes additional amendments to the conditions of development consent, which are identified below. Words proposed to be deleted are shown in ~~**bold strike through**~~ and words to be inserted are shown in **bold**.

#### A2 DEVELOPMENT IN ACCORDANCE WITH PLANS AND DOCUMENTATION

*The development will be undertaken in accordance the following documents and plans:*

Environmental Impact Statement entitled 'Building R1 (SSD 6513-2014), Barangaroo South' and accompanying appendices, prepared by JBA Urban Planning Consultants Pty Ltd and dated October 2014 and <b>'Section 96(1A) Modification Application – SSD 6513' and associated attachments prepared by JBA Urban Planning Consultants and dated 12 May 2014.</b>			
Amended Application and Response to Submissions report entitled 'Amended Application and Response to Submissions, Building R1, Barangaroo South (SSD 6513)' and accompanying appendices, prepared by JBA Urban Planning Consultants Pty Ltd and dated 14 August 2015			
Amended Application RTS consisting of emailed Response to Submissions dated 3 December 2016 and Building R1 Barangaroo South Updated Operational Acoustic Report dated 6 June 2016			
Remedial Action Plans entitled Overarching Remedial Action Plan for the Barangaroo Project Site, Sydney, prepared by Environmental Resources Management Australia and dated June 2010, and Amended Remedial Action Plan Barangaroo ORWS Area, prepared by AECOM Australia Pty Ltd and dated July 2011			
Architectural Plans prepared by Collins and Turner			
Drawing No.	Revision	Name of Plan	Date
BR1-ASK-12-04-05	E	Site Locality Plan	17/07/2015
BR1-ASK-12-00-00	AA	Ground Level Plan	23/07/2015
BR1-ASK-12-01-00	U	Level 1 Plan	17/07/2015
BR1-ASK-12-02-00	U	Level 2 Plan	17/07/2015
BR1-ASK-12-03-00	K	Roof Canopy Plan	27/07/2015
BR1-ASK-12-04-00	J	Plant Room Roof Plan	25/03/2015
BR1-ASK-13-00-00	B	Ground Level Fitout Plan	27/07/2015
BR1-ASK-13-01-00	A	Level 1 Fitout Plan	29/06/2015
BR1-ASK-13-02-00	A	Level 2 Fitout Plan	29/06/2015
BR1-ASK-12-00-11	U	Section (East-West)	23/07/2017
BR1-ASK-12-00-12	M	Section (North-South)	17/07/2015
BR1-ASK-12-00-21	P	Elevation East	23/07/2015
BR1-ASK-12-00-22	M	Elevation North	23/07/2015
BR1-ASK-12-00-23	M	Elevation South	23/07/2015

BR1-ASK-12-00-24	L	Elevation West	17/07/2015
BR1-ASK-12-00-50	F	Materials Schedule	25/03/2015
<b>Basement Car Park Plans prepared by Lend Lease Design</b>			
<b>Drawing No.</b>	<b>Revision</b>	<b>Name of Plan</b>	<b>Date</b>
BR1_ASK_PA1_0001	01	Basement Level 1	01/09/2014
BR1_ASK_PA1_0002	01	Basement Level 2	01/09/2014
BR1_ASK_PA1_0003	01	Basement Level 3	01/09/2014
BR1_ASK_PA1_0101	01	Cross Section 1-1	01/09/2014
BR1_ASK_PA1_0102	01	Longitudinal Section 2-2	01/09/2014
<b>Solar Protection Awning Location Plans prepared by H&amp;E Architects</b>			
<b>Drawing No.</b>	<b>Revision</b>	<b>Name of Plan</b>	<b>Date</b>
AD1020	02	Level 1 Solar Protection Awning Locations	20/04/2017
AD1030	02	Level 2 Solar Protection Awning Locations	20/04/2017
AD3100	02	Cross Section Solar Protection Awning Locations	20/04/2017

**Justification:**

The modification reflects the proposed addition of retractable awnings along the western frontage of Level 1 and Level 2 at the approved Building R1.

**B5 MECHANICAL VENTILATION**

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3. All solid fuel or charcoal cooking appliance exhaust systems are to be provided with an enhanced filtration system so as to prevent **any** cooking odour, smoke or fumes **unreasonably** adversely affecting customers or any adjacent or nearby residents, businesses or the general public, **as outlined in the “Approved Methods for the Modelling and Assessment of Air Pollutants in NSW”**.

**Justification:**

The minor modification to the above condition wording provides clarity and certainty as to how the condition must be satisfied.

**F8 COMPLIANCE WITH THE ACOUSTIC REPORT PRIOR TO CONSTRUCTION AND OR OCCUPATION CERTIFICATES**

1. All performance parameters, requirements, engineering assumptions and recommendations contained in the acoustic report ‘Proposed Restaurant and Bar, Building R1, Barangaroo Precinct’ ref 46.5164.R9C:MSC, prepared by The Acoustic Group and dated 12 May 2016, must be implemented into the design and/or operational management of the premises prior to the commencement of the use of the premises, unless otherwise agreed by the Secretary. Assumptions and recommendations include:

...

- b. The underside of the external balconies have acoustic absorption above **the horizontal plane of slotted timbers, excluding those areas above which are translucent panels. The extension of the acoustic absorption into the outer curved section of the slotted timbers (with respect to a cross-section elevation) shall be subject to the practicalities of installing such absorption having regard to the egress of rain. Such absorption shall be suitable for the outdoor space and have a Noise Reduction Coefficient (NRC) not less than 0.85 incorporated into the design.**

**Justification:**

The proposed modification will facilitate an alternative acoustic solution that continues to achieve the relevant noise standards of the Master Plan Noise Assessment.

#### F9 COMPLIANCE WITH THE ACOUSTIC REPORT

- (1) *Within 30 days of the commencement of operations a suitably qualified acoustic consultant is to undertake compliance testing on a Friday and a Saturday night from 10pm to midnight that confirms that the development complies with the requirements set out in the acoustic report identified in Condition ~~E15(4)~~ F8.*
- (2) *Should substantiated complaints be made to the Department and/or Council regarding noise, a suitably qualified acoustic consultant is to undertake further compliance testing to the satisfaction of the Secretary to confirm that the development complies with the requirements set out in the acoustic report identified in Condition ~~E15(4)~~ F8 (1) and F6. Should this demonstrate non-compliance, the acoustic consultant must recommend further mitigation measures to enable compliance (including a specific time frame to implement measures) to the satisfaction of the Secretary.*

Justification:

The proposed modification corrects a minor administrative error.

#### F15 EMISSIONS

- (1) *The use of the premises must not give rise to the emission of gases, vapours, dusts or other impurities which are a nuisance, injurious or prejudicial to health, **as outlined in the “Approved Methods for the Modelling and Assessment of Air Pollutants in NSW”.***

Justification:

The minor modification to the above condition wording provides clarity and certainty as to how the condition must be satisfied.

#### F21 NEIGHBOURHOOD AMENITY

...

- (2) *The management/licensee must ensure that the behaviour or patrons entering and leaving the premises does not detrimentally affect the amenity of the **neighbourhood immediate vicinity of the premises.***

Justification:

The minor modification to the above condition wording provides clarity and certainty as to how the condition must be satisfied.

### 3.0 SUBSTANTIALLY THE SAME DEVELOPMENT

Section 96(1A) of the EP&A Act states that a consent authority may modify a development consent if “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)”. The development, as proposed to be modified, is substantially the same development as that originally proposed in that:

- The approved gross floor area and maximum height of the building will not be altered;
- The approved use remains unchanged;
- The patron capacity, licensing and dining plan of the restaurant and pub are retained as approved;
- The retractable awnings will be ancillary to the retail uses of the building and will not alter the built form of the approved development; and
- The modifications do not give rise to any new or different potential environmental impacts compared to the approved development in terms of the relevant matters under Section 79(C) of the EP&A Act.

## 4.0 PLANNING ASSESSMENT

Section 96(1A) of the EP&A Act states that a consent authority may modify development consent if *'it is satisfied that the proposed modification is of minimal environmental impact'*. The following assessment demonstrates that the development, as proposed to be modified, will be of minimal environmental impact.

### 4.1 State Environmental Planning Policy (State Significant Precincts) 2005

The proposed modifications do not alter the approved use or built form of Building R1. The development remains permissible with consent under the applicable *B4 Mixed Use* zoning.

As the retractable awnings would provide a more desirable environment for future patrons of this food and drink premises, the application is furthermore consistent with the objectives of the subject *B4 Mixed Use* zoning given the modifications support a strengthened retail operation within a largely commercial (office) precinct.

### 4.2 Barangaroo Concept Plan (Modification 8)

Clause 3B(2)(d) of Schedule 6A under the EP&A Act prohibits the consent authority from granting consent for development unless it is satisfied that the development is generally consistent with the terms of the approval of the Barangaroo Concept Plan.

Given that the proposed modifications under this application do not seek to alter the land use or massing of Building R1, the development remains consistent with the Barangaroo Concept Plan.

### 4.3 Barangaroo South Built Form and Urban Design Controls

The proposed retractable awnings are the only component of this modification application which will be visible from the surrounding public domain at ground level. An assessment of this particular modification is assessed against the 'Barangaroo South Built Form and Urban Design Controls', as approved under Modification 8 to the Barangaroo Concept Plan (MP06\_0162), in **Table 1** below.

**Table 1** – Assessment against the Barangaroo South Urban Design Controls

Control	Comment
<b>Control 5: Ground Floor Permeability &amp; Accessibility of Public Realm</b> <u>Objective:</u> <ul style="list-style-type: none"> <li>To provide permeability and accessibility through Barangaroo South.</li> </ul> <u>Standard:</u> <ul style="list-style-type: none"> <li>Public access around the Block is to be maintained on all edges.</li> <li>To provide one north to south and four east to west primary connections</li> </ul>	<p>The proposed retractable awnings will not impede physical accessibility or visual permeability around Building R1, or other neighbouring buildings. The considered design and placement of the awnings will ensure that the area maintains a positive relationship with the surrounding public domain.</p>
<b>Control 8 Active Streetfronts</b> <u>Objectives:</u> <ul style="list-style-type: none"> <li>Ensure an activated domain at street level with access to shops, lobbies, etc.</li> <li>Ensure that Ground Floor retail uses activate the waterfront.</li> <li>At least 70% of the ground floor frontages to the pedestrian waterfront shall comprise retail or entertainment uses, open to the public to activate the adjoining foreshore pedestrian promenade</li> </ul>	<p>The retractable awnings have been specifically designed to improve the amenity for patrons of the future pub at Building R1. In providing a more desirable environment for customers, the retractable awnings will contribute to a more vibrant public domain along the waterfront promenade and surrounds.</p>

### 4.4 Acoustic Impacts

The City of Sydney has endorsed noise limits for the Barangaroo precinct in accordance with the Master Plan Noise Assessment (Wilkinson Murray Report 10232-BN-1 Version G, February 2016). The Acoustic Statement prepared by Wilkinson Murray (**Attachment C**) confirms that the proposed modification to

*Condition F8* will result in a negligible change to the acoustic outcome for Building R1. The proposed modification will continue to ensure that the operation of Building R1 will continue to meet the technical requirements of the adopted noise management regime.

## 5.0 CONCLUSION

The proposed modifications relate to the correction of anomalies within the conditions of development consent, and provides for retractable awnings for solar protection throughout the approved licensed area.

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

- The proposed modification is of a minimal environmental impact; and
- The proposed modification is substantially the same as the development for which the consent was granted.

We trust that this information is sufficient to enable a prompt assessment of the proposed modification. Should you have any queries in relation to the above, please do not hesitate to contact me on 9409 4971 or [smiller@jbaurban.com.au](mailto:smiller@jbaurban.com.au).

Yours faithfully,



Samantha Miller  
*Senior Planner*