

# Development Consent – Key Sites

## ***Section 4.38 of the Environmental Planning and Assessment Act 1979***

As delegate of the Minister for Planning and Public Spaces under delegation executed on 10 October 2017, I approve the Development Application referred to in Schedule 1, subject to the conditions specified in Schedule 2.

These conditions are required to:

- prevent, minimise, or offset adverse environmental impacts;
- set standards and performance measures for acceptable environmental performance;
- require regular monitoring and reporting; and
- provide for the ongoing environmental management of the development.

Anthea Sargeant  
**Executive Director**  
**Compliance, Industry and Key Sites Assessments**

Sydney

2019

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### **SCHEDULE 1**

<b>Application Number:</b>	SSD 8997
<b>Applicant:</b>	Lend Lease (Millers Point) Pty Ltd
<b>Consent Authority:</b>	Minister for Planning and Public Spaces
<b>Site:</b>	Part of Barangaroo South, 51A Hickson Road, Barangaroo (Lot 300 and Lot 205 DP 1204948) *Lot 300 not registered, currently described as Lot 214 DP1221076
<b>Development:</b>	Staged stratum subdivision of Lot 300 into 4 (four) lots for the approved buildings within Stage 1A and a residue allotment for the remainder of Barangaroo South.

## DEFINITIONS

<b>Applicant</b>	Lend Lease (Millers Point) Pty Ltd, or any person carrying out any development to which this consent applies
<b>Certifying Authority</b>	A person who is authorised by or under section 6.17 of the EP&A Act to issue Part 6 certificates
<b>Conditions of this consent</b>	Conditions contained in Schedule 2 of this document
<b>Construction</b>	The demolition and removal of buildings or works, the carrying out of works for the purpose of the development, including bulk earthworks, and erection of buildings and other infrastructure permitted by this consent.
<b>Council</b>	City of Sydney
<b>Day</b>	The period from 7 am to 6 pm on Monday to Saturday, and 8 am to 6 pm on Sundays and Public Holidays
<b>Department</b>	NSW Department of Planning, Industry and Environment
<b>Development</b>	The development described in the EIS and Response to Submissions, including the works and activities comprising staged stratum subdivision of Stage 1A Barangaroo South as modified by the conditions of this consent.
<b>EIS</b>	The Environmental Impact Statement titled Stage 1A (Third Stage) Stratum Subdivision Barangaroo South, prepared by Ethos Urban dated 4 April 2019, submitted with the application for consent for the development, including any additional information provided by the Applicant in support of the application
<b>Environment</b>	Includes all aspects of the surroundings of humans, whether affecting any human as an individual or in his or her social groupings
<b>EPA</b>	NSW Environment Protection Authority
<b>EP&amp;A Act</b>	<i>Environmental Planning and Assessment Act 1979</i>
<b>EP&amp;A Regulation</b>	<i>Environmental Planning and Assessment Regulation 2000</i>
<b>EPL</b>	Environment Protection Licence under the POEO Act
<b>Feasible</b>	Means what is possible and practical in the circumstances
<b>Incident</b>	An occurrence or set of circumstances that causes or threatens to cause material harm and which may or may not be or cause a non-compliance Note: "material harm" is defined in this consent
<b>Land</b>	Has the same meaning as the definition of the term in section 1.4 of the EP&A Act
<b>Material harm</b>	Is harm that: <ul style="list-style-type: none"> <li>involves actual or potential harm to the health or safety of human beings or to the environment that is not trivial, or</li> <li>results in actual or potential loss or property damage of an amount, or amounts in aggregate, exceeding \$10,000, (such loss includes the reasonable costs and expenses that would be incurred in taking all reasonable and practicable measures to prevent, mitigate or make good harm to the environment)</li> </ul>
<b>Minister</b>	NSW Minister for Planning and Public Spaces (or delegate)
<b>Non-compliance</b>	An occurrence, set of circumstances or development that is a breach of this consent
<b>PA</b>	Means a planning agreement within the meaning of the term in section 7.4 of the EP&A Act.
<b>Planning Secretary</b>	Planning Secretary under the EP&A Act, or nominee
<b>Reasonable</b>	Means applying judgement in arriving at a decision, taking into account: mitigation benefits, costs of mitigation versus benefits provided, community views, and the nature and extent of potential improvements.
<b>Response to submissions (RtS)</b>	The Applicant's response to issues raised in submissions received in relation to the application for consent for the development under the EP&A Act.
<b>Subject Site</b>	Lot 300 and Lot 205 DP 1204948) *Lot 300 not registered, currently described as Lot 214 DP1221076
<b>TfNSW (RMS)</b>	Transport for NSW (NSW Roads and Maritime Services)

## SCHEDULE 2

### PART A ADMINISTRATIVE CONDITIONS

#### OBLIGATION TO MINIMISE HARM TO THE ENVIRONMENT

- A1. In addition to meeting the specific performance measures and criteria in this consent, all reasonable and feasible measures must be implemented to prevent, and if prevention is not reasonable and feasible, minimise, any material harm to the environment that may result from the construction and operation of the development, and any rehabilitation required under this consent.

#### TERMS OF CONSENT

- A2. The development may only be carried out:
- (a) in compliance with the conditions of this consent;
  - (b) in accordance with all written directions of the Planning Secretary;
  - (c) in accordance with the EIS and Response to Submissions;
  - (d) in accordance with the management and mitigation measures.

Subdivision Drawings prepared by GeoStrata		
Name of Plan	Sheet No.	Date
Plan of Proposed Subdivision Basement Level 2 South	Sheet 1 of 10	15-5-2019
Plan of Proposed Subdivision Basement Level 2 North	Sheet 2 of 10	15-5-2019
Plan of Proposed Subdivision Basement Level 1 South	Sheet 3 of 10	15-5-2019
Plan of Proposed Subdivision Basement Level 1 North	Sheet 4 of 10	15-5-2019
Plan of Proposed Subdivision Ground Level South	Sheet 5 of 10	15-1-2019
Plan of Proposed Subdivision Ground Level North	Sheet 6 of 10	15-5-2019
Plan of Proposed Subdivision Level 1 South	Sheet 7 of 10	15-5-2019
Plan of Proposed Subdivision Level 1 North	Sheet 8 of 10	15-5-2019
Plan of Proposed Subdivision Level 2 & Above South	Sheet 9 of 10	15-5-2019
Plan of Proposed Subdivision Level 2 & Above North	Sheet 10 of 10	15-5-2019

- A3. Consistent with the requirements in this consent, the Planning Secretary may make written directions to the Applicant in relation to:
- (a) the content of any strategy, study, system, plan, program, review, audit, notification, report or correspondence submitted under or otherwise made in relation to this consent, including those that are required to be, and have been, approved by the Planning Secretary; and
  - (b) the implementation of any actions or measures contained in any such document referred to in condition A3(a).
- A4. The conditions of this consent and directions of the Planning Secretary prevail to the extent of any inconsistency, ambiguity or conflict between them and a document listed in condition A2(c). In the event of an inconsistency, ambiguity or conflict between any of the documents listed in condition A2(c), the most recent document prevails to the extent of the inconsistency, ambiguity or conflict.

#### APPLICABILITY OF GUIDELINES

- A5. References in the conditions of this consent to any guideline, protocol, Australian Standard or policy are to such guidelines, protocols, Standards or policies in the form they are in as at the date of this consent.
- A6. However, consistent with the conditions of this consent and without altering any limits or criteria in this consent, the Planning Secretary may, when issuing directions under this consent in respect of ongoing monitoring and management obligations, require compliance with an updated or revised version of such a guideline, protocol, Standard or policy, or a replacement of them.

#### INCIDENT NOTIFICATION, REPORTING AND RESPONSE

- A7. The Department must be notified in writing to [compliance@planning.nsw.gov.au](mailto:compliance@planning.nsw.gov.au) immediately after the Applicant becomes aware of an incident. The notification must identify the development (including the development

application number and the name of the development if it has one), and set out the location and nature of the incident.

- A8. Subsequent notification must be given and reports submitted in accordance with the requirements set out in the attached.

#### **NON-COMPLIANCE NOTIFICATION**

- A9. The Department must be notified in writing to [compliance@planning.nsw.gov.au](mailto:compliance@planning.nsw.gov.au) within seven days after the Applicant becomes aware of any non-compliance. The PCA must also notify the Department in writing to [compliance@planning.nsw.gov.au](mailto:compliance@planning.nsw.gov.au) within seven days after they identify any non-compliance.
- A10. The notification must identify the development and the application number for it, set out the condition of consent that the development is non-compliant with, the way in which it does not comply and the reasons for the non-compliance (if known) and what actions have been, or will be, undertaken to address the non-compliance.
- A11. A non-compliance which has been notified as an incident does not need to also be notified as a non-compliance.

#### **REVISION OF STRATEGIES, PLANS AND PROGRAMS**

- A12. Within three months of:
- (a) the submission of an incident report under condition A8;
  - (b) the approval of any modification of the conditions of this consent; or
  - (c) the issue of a direction of the Planning Secretary under condition A2 which requires a review,
- A13. the strategies, plans and programs required under this consent must be reviewed, and the Department must be notified in writing that a review is being carried out.
- A14. If necessary to either improve the environmental performance of the development, cater for a modification or comply with a direction, the strategies, plans and programs required under this consent must be revised, to the satisfaction of the Planning Secretary. Where revisions are required, the revised document must be submitted to the Planning Secretary for approval within six weeks of the review.

**Note:** *This is to ensure strategies, plans and programs are updated on a regular basis and to incorporate any recommended measures to improve the environmental performance of the development.*

#### **STAGED STRATUM SUBDIVISION**

- A15. The Project may be subdivided in stages, generally as follows:
- a) Phase 3: Stratum subdivision of residue lot - Lot 300 and Lot 205 into five lots. The five stratum lots comprise:
- i. Lot 401 – Parking and end-of-trip facilities
  - ii. Lot 402 – Basement Level 1 and ground level of Building C1
  - iii. Lot 403 – Basement car parking spaces, storage area and plant room
  - iv. Lot 404 – Building C1 lobby.

**Note:** *Future stages of subdivision to create additional lots are to be subject to a separate approval, as relevant.*

#### **DEVELOPMENT EXPENSES**

- A16. It is the responsibility of the Applicant to meet all expenses incurred in undertaking the development, including expenses incurred in complying with conditions imposed under this consent.

#### **LIMITATION OF CONSENT**

- A17. This consent does not authorise the carrying out of any construction work.

## **PART B PRIOR TO ISSUE OF SUBDIVISION CERTIFICATE/S**

### **REQUIREMENTS OF EP&A ACT 1979 – APPLICATION FOR A PART 6 CERTIFICATE**

- B1. In undertaking the subdivision approved under the consent, the Applicant must comply with the requirements of Part 6 the *Environmental Planning and Assessment Act 1979* in relation to the issue of a Subdivision Certificate.

For the purposes of this approval, the issue of a Subdivision Certificate/s is restricted to the subdivision defined by Condition A1.

### **SUBDIVISION CERTIFICATE**

- B2. Before granting any Subdivision Certificate for a stratum subdivision, the Certifying Authority must be satisfied that the applicant has complied with all conditions of this consent that are required to be complied with before a subdivision certificate may be issued in relation to the plan of subdivision.

### **STATEMENT OF COMPLIANCE – COMPLETION IN ACCORDANCE WITH A PROJECT APPROVAL/DEVELOPMENT CONSENT**

- B3. Prior to the issue of a Subdivision Certificate for a stratum subdivision, a Statement of Compliance shall be provided to the Certifying Authority demonstrating that the proposed subdivision is consistent with relevant conditions of any relevant planning approval/development consent (to the extent that they are relevant and required for that stage) issued in respect to the building (or part of the building) proposed to be subdivided. This includes, but is not limited to, any conditions relating to the allocation of the following to the respective lot/s:
- (a) The number of bicycle spaces;
  - (b) The number of car parking spaces;
  - (c) The number of motor bike spaces;
  - (d) The number of loading spaces;
  - (e) The number of storage spaces and
  - (f) Any services or infrastructure.

The above car parking and motorcycle spaces are to be shown as part of the relevant stratum lot.

The bicycle spaces, loading spaces, services and infrastructure can be on separate lots only if they are part of a shared basement and managed under the Building Management Statement required by Condition B12.

### **EASEMENT PLAN/S**

- B4. Prior to, or upon, the issue of the first Subdivision Certificate for the subdivision of Lot 214, the proponent is to provide the Certifying Authority with an easement plan/s for authority services and infrastructure in accordance with Condition B6 and Condition B7. Alternatively, the Certifying Authority must be satisfied that appropriate agreements or bonds are in place to provide for future easements.

If it is proposed to create easements, rights of way, restrictions or covenants, an 88B Instrument must be provided.

### **ACCESS EASEMENT – GROUND LEVEL**

- B5. Prior to, or upon, the registration of the first stratum plan, appropriate ground level access easement/s are to be created to provide access to each building from the public domain for respective building owner/s, tenant/s and visitors, as relevant to the stratum lot/s, to the satisfaction of the certifying authority. Each easement is to address construction staging, including any restrictions to access as a result of the construction activities including erecting hoardings.
- B6. Suitable easements for access or rights-of-way benefiting the public are to be created over the public domain areas of the residual lot at each stage in the stratum subdivision, to ensure public access to the site. The rights of public access are to be triggered by the issue of any occupation certificate for public domain works (temporary or permanent) within Barangaroo South.

### **COMPLIANCE CERTIFICATE**

- B7. Prior to issue of any Subdivision Certificate, a Section 73 Compliance Certificate under the *Sydney Water Act 1994* must be obtained from Sydney Water and shall be provided to the Certifying Authority demonstrating that the development has satisfied the detailed requirements of Sydney Water in respect to water and wastewater.

- B8. Prior to the issue of each Subdivision Certificate (as relevant), a Compliance Certificate is to be issued certifying that a registered surveyor has confirmed that the parcel boundary of the stratum plan corresponds with floors, external walls and ceilings of the relevant building/structures as constructed or alternatively, has the benefit of an appropriate easement or is the subject of appropriate provisions in the Building Management Statement, required by Condition B12, to enable the registration of the plan.

#### **UPDATED BUILDING MANAGEMENT STATEMENT**

- B9. Prior to the first Subdivision Certificate for the stratum subdivision of the development, an updated Building Management Statement must be prepared in the approved form prescribed by Schedule 8A of the *Conveyancing Act 1919*. The Building Management Statement is to apply to the development as a 'united building'. The Building Management Statement must be submitted to the satisfaction of the Certifying Authority and is to include details in relation to the following matters:
- (a) the use, operation and arrangements for the supply of services, maintenance and upgrading of infrastructure of each stratum lot within the subdivision;
  - (a) the ongoing maintenance, upgrading, redevelopment and structural adequacy of each stratum lot within the subdivision; and
  - (b) any other matters which the Certifying Authority considers relevant and pertinent to the issue of the Subdivision Certificate.
- B10. Prior to the issue of any subsequent Subdivision Certificate for the stratum subdivision of the development, a modified Building Management Statement for the development as an 'united building' OR a new Building Management Statement must be prepared in the approved form prescribed by Schedule 8A of the *Conveyancing Act 1919*. The Building Management Statement must be submitted to the satisfaction of the Certifying Authority and is to include relevant details in relation to those matters listed at **Condition B11** above.

#### **AUSGRID ELECTRICAL INFRASTRUCTURE**

- B11. The applicant shall liaise with Ausgrid in order to finalise any easements, leases and /or rights of way in favour of Ausgrid.

**END OF SECTION**

## INCIDENT NOTIFICATION AND REPORTING REQUIREMENTS

### WRITTEN INCIDENT NOTIFICATION REQUIREMENTS

1. A written incident notification addressing the requirements set out below must be emailed to the Department at the following address: [compliance@planning.nsw.gov.au](mailto:compliance@planning.nsw.gov.au) within seven days after the Applicant becomes aware of an incident. Notification is required to be given under this condition even if the Applicant fails to give the notification required under condition A9 or, having given such notification, subsequently forms the view that an incident has not occurred.
2. Written notification of an incident must:
  - a. identify the development and application number;
  - b. provide details of the incident (date, time, location, a brief description of what occurred and why it is classified as an incident);
  - c. identify how the incident was detected;
  - d. identify when the applicant became aware of the incident;
  - e. identify any actual or potential non-compliance with conditions of consent;
  - f. describe what immediate steps were taken in relation to the incident;
  - g. identify further action(s) that will be taken in relation to the incident; and
  - h. identify a project contact for further communication regarding the incident.
3. Within 30 days of the date on which the incident occurred or as otherwise agreed to by the Planning Secretary, the Applicant must provide the Planning Secretary and any relevant public authorities (as determined by the Planning Secretary) with a detailed report on the incident addressing all requirements below, and such further reports as may be requested.
4. The Incident Report must include:
  - a. a summary of the incident;
  - b. outcomes of an incident investigation, including identification of the cause of the incident;
  - c. details of the corrective and preventative actions that have been, or will be, implemented to address the incident and prevent recurrence; and
  - d. details of any communication with other stakeholders regarding the incident.