

**State Significant
Development Assessment
(SSD 8997)**



October 2019

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Glossary

Abbreviation	Definition
Applicant	Lend Lease (Millers Point) Pty Ltd
Application	SSD 8997
BDA	Barangaroo Delivery Authority
BMS	Building Management Statement
CBD	Central Business District
CIV	Capital Investment Value
Concept Plan	Approved Barangaroo Concept Plan for the redevelopment of the site (MP 06_0162)
Consent	Development Consent
Council	City of Sydney Council
Department	Department of Planning, Industry and Environment
EIS	Environmental Impact Statement
EESG	Environment, Energy and Science Group of the Department of Planning, Industry and Environment (former NSW Office of Environment and Heritage)
EPA	Environment Protection Authority
EP&A Act	<i>Environmental Planning and Assessment Act 1979</i>
EP&A Regulation	<i>Environmental Planning and Assessment Regulation 2000</i>
EPI	Environmental Planning Instrument
ESD	Ecologically Sustainable Development
GFA	Gross Floor Area
GSC	Greater Sydney Commission
LEP	Local Environmental Plan
LGA	Local Government Area
Minister	Minister for Planning and Public Spaces
RtS	Response to Submissions
SEARs	Secretary's Environmental Assessment Requirements
Secretary	Secretary of the Department of Planning, Industry and Environment
SEPP	State Environmental Planning Policy
Site	Stage 1A, Barangaroo South
SSP SEPP	State Environmental Planning Policy (State Significant Precincts) 2005
SRD SEPP	State Environmental Planning Policy (State and Regional Development) 2011
SSD	State Significant Development
TfNSW (RMS)	Transport for New South Wales (Roads and Maritime Services)



Executive Summary

This report provides an assessment of a State significant development (SSD) application (SSD 8997) lodged by Lend Lease (Millers Point) Pty Ltd (the Applicant) seeking consent for the third phase of the Stage 1A stratum subdivision at Barangaroo South in the City of Sydney local government area (LGA).

The proposed subdivision seeks to create five new stratum lots to facilitate car and bicycle parking spaces, end-of-trip facilities, a storage area, plant room and a new residual lot.

Two previous subdivision applications for Stage 1A (first and second phase) were granted development consent on 16 December 2014 and 26 September 2017.

The application is State significant development because it constitutes the subdivision of land within the Barangaroo site, under clause 3(2) of Schedule 2 of the State Environmental Planning Policy (State and Regional Development) 2011. Therefore, the Minister for Planning and Public Spaces is the consent authority.

Engagement

The Department of Planning, Industry and Environment (the Department) publicly exhibited the application between 9 May 2019 and 5 June 2019. The Department received a submission from City of Sydney Council (Council) and Transport for New South Wales (Roads and Maritime Services) (TfNSW (RMS)). Council did not object to the application and requested further information about easements, covenants, Section 88B Instrument and the Building Management Statement. No submissions were received from members of the public.

Assessment

The Department considered the merits of the application in accordance with the relevant matters under section 4.15 of the EP&A Act. The Department considers the key assessment issues associated with the application to be the subdivision layout and structure, easements and restrictions on title, adequacy of the Building Management Statement (BMS), staged registration of the Plans of Subdivision and consistency with the Sydney metro development.

The Department's assessment concludes the subdivision pattern is compatible and consistent with project approvals and development consents issued for development at Barangaroo South.

Conclusion

The Department is satisfied the proposal is consistent with the strategic objectives for the area, as outlined in the Greater Sydney Regional Plan and the Eastern City District Plan, as it would result in the orderly and efficient development of the Barangaroo South area.

The Department concludes the subject site is suitable for the proposal and is in the public interest. Therefore, the Department recommends the application be approved, subject to conditions.



Contents

Glossary	iii
Executive Summary	iv
1. Introduction	1
1.1 Introduction	1
1.2 Barangaroo	1
1.3 Stage 1A	1
1.4 Approval History	3
1.5 Current construction works and completed projects	4
1.6 Related Projects	4
1.7 Environment Protection Authority Declaration Area	5
2. Project	6
1.8 Description of proposal	6
3. Strategic Context	9
3.1 Greater Sydney Region Plan	9
3.2 Eastern City District Plan	9
4. Statutory Context	10
4.1 State Significant Development	10
4.2 Permissibility	10
4.3 Consent Authority	10
4.4 Compliance with Clause 4.24(2) of the EP&A Act	10
4.5 Secretary's Environmental Assessment Requirements	10
4.6 Mandatory matters for consideration	10
5. Engagement	12
5.1 Department's engagement	12
5.2 Summary of Submissions	12
5.3 Response to Submissions	12
6. Assessment	13
6.1 Key assessment issues	14
6.7 Other issues	16
7. Evaluation	17
8. Recommendation	18

9. Determination.....	19
Appendices.....	20
Appendix A – Relevant Supporting Information	20
Appendix B – Community Views for Draft Notice of Decision.....	21
Appendix C – Additional Information	23
Appendix D – Submissions	24
Appendix E – Statutory Considerations	25
Appendix F – Recommended Instrument of Consent/Approval	31



1. Introduction

4.1 Introduction

This report provides an assessment of a State significant development (SSD) application (SSD 8997) lodged by Lend Lease (Millers Point) Pty Ltd (the Applicant) for the third stage of stratum subdivision at Stage 1A, Barangaroo South (the site). The application seeks to permit five new stratum lots to facilitate car and bicycle parking spaces, end-of-trip facilities, a storage area, a plant room and a new residual lot.

4.2 Barangaroo

Barangaroo is located on the north-western edge of the Sydney Central Business District (CBD) within the City of Sydney local government area (LGA). Barangaroo has a total area of 22 hectares and has been divided into three distinct redevelopment areas (from north to south), comprising of Headland Park (now known as Barangaroo Reserve), Barangaroo Central and Barangaroo South (**Figure 1**). The proposal relates only to Barangaroo South.



Figure 1 | The location of Barangaroo South shown by the yellow shading (Base source: Nearmaps)

4.3 Stage 1A

For development and construction staging purposes, Barangaroo South has been separated into three areas referred to as Stage 1A, Stage 1B and Stage 1C (**Figure 2**). The proposal relates only to Stage 1A of Barangaroo South. The proposal seeks to progress the development as previously subdivided under the Stage 1A (second phase) subdivision (SSD 7478) at land known as Lot 300 and Lot 205 in DP 1204948 (**Figure 3**). Lot 300 has not

been registered and is currently described as Lot 214 in DP 1221076. All buildings constructed within Stage 1A share a common underground basement (**Figure 5**) approved under MP 10_0023.

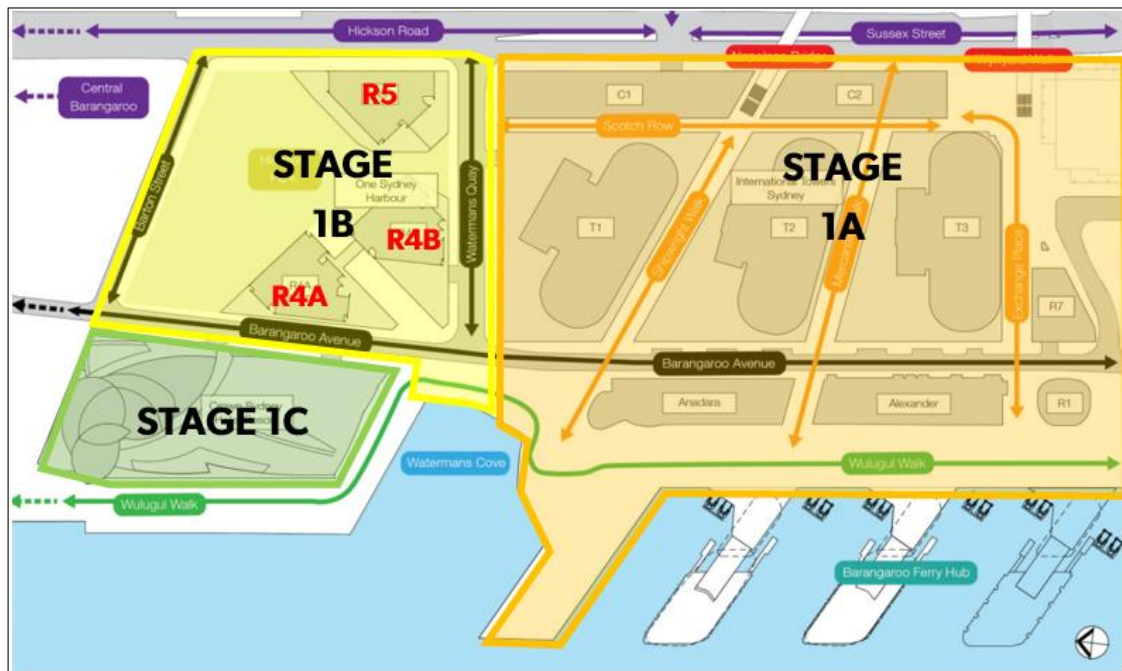


Figure 2 | Stage 1A of Barangaroo South shown by the orange shading (Base source: Applicant)

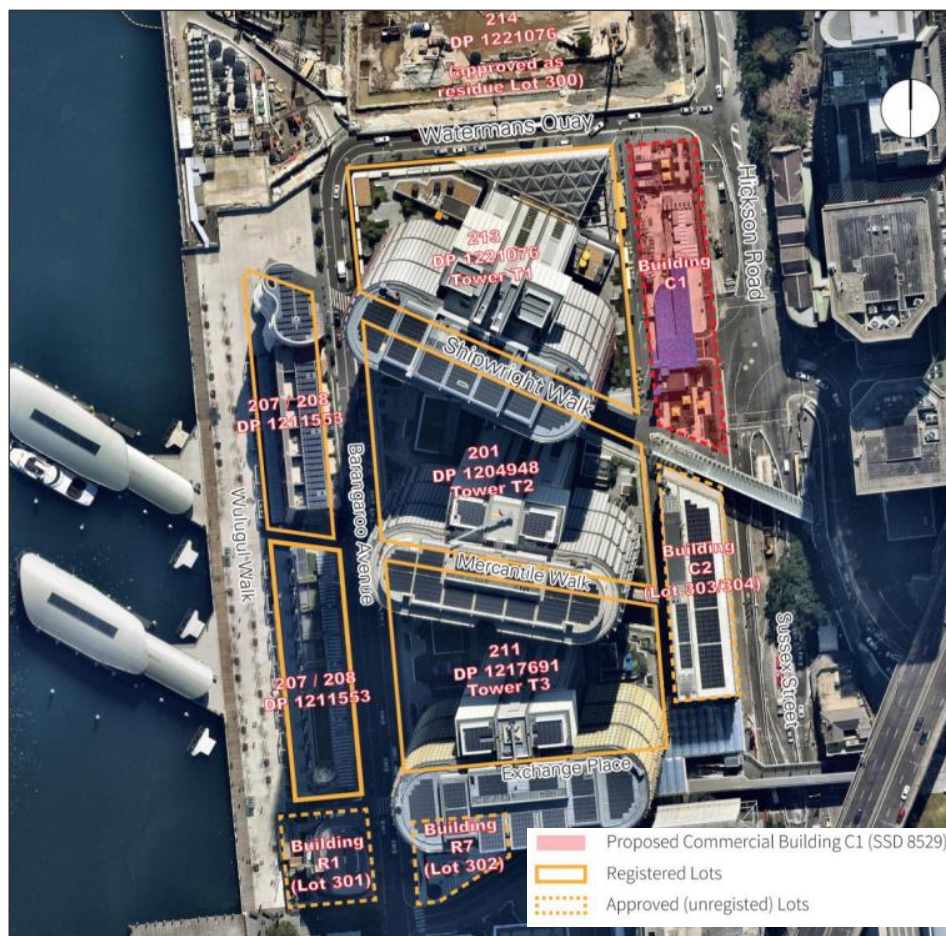


Figure 3 | Stratum lots of Stage 1A (Source: Applicant)

4.4 Approval History

Barangaroo Concept Plan

On 9 February 2007, the then Minister for Planning approved the Barangaroo Concept Plan (Concept Plan) (MP 06_0162) for the renewal of the Barangaroo site for a mix of uses, including residential, retail, commercial and public recreation.

The Concept Plan establishes nine development blocks, gross floor area (GFA), building height and public open space/public domain areas. The Concept Plan also includes Built Form Principles and Urban Design Controls to guide development.

The consistency of the subject application with the Barangaroo Concept Plan is discussed in detail in **Section 4.4** of this report. In summary, eight modifications have been approved since the Concept Plan was originally approved.

SSD 6381 - Stage 1A (First Stage) Stratum Subdivision

On 16 December 2014, the then Executive Director, Industry and Infrastructure Assessments, approved the first stage of the Stage 1A Stratum Subdivision (SSD 6381) to allow the following:

- 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 (Stage 1A and 1B)
 - Lot 101 comprising Barangaroo Central & the Headland Park.
- staged stratum subdivision of Lot 100 in four stages to create nine stratum lots for the approved buildings and infrastructure within the Stage 1A area as well as a residue lot for the public domain and the remainder of Stage 1A and Stage 1B (**Figure 3**).

It was noted that further subdivision of the Stage 1A and 1B residue lot (now known as Lot 214) would be the subject of a subsequent future development application.

SSD 7478 - Stage 1A (Second Phase) Stratum Subdivision

On 26 September 2017, the Executive Director, Key Sites and Industry Assessments, approved the second phase of the Stage 1A Stratum Subdivision (SSD 7478) to allow Lot 214 to be subdivided into six stratum lots as follows:

- Lot 301 – Building R1
- Lot 302 – Building R7
- Lot 303 – Building C2 (retail)
- Lot 304 – Building C2 (residential)
- Lot 305 – future metro allotment (Lot A)
- Lot 306 – future metro allotment (Lot B)
- Lot 300 – residue lot.

The approved subdivision is shown below in **Figure 4**.

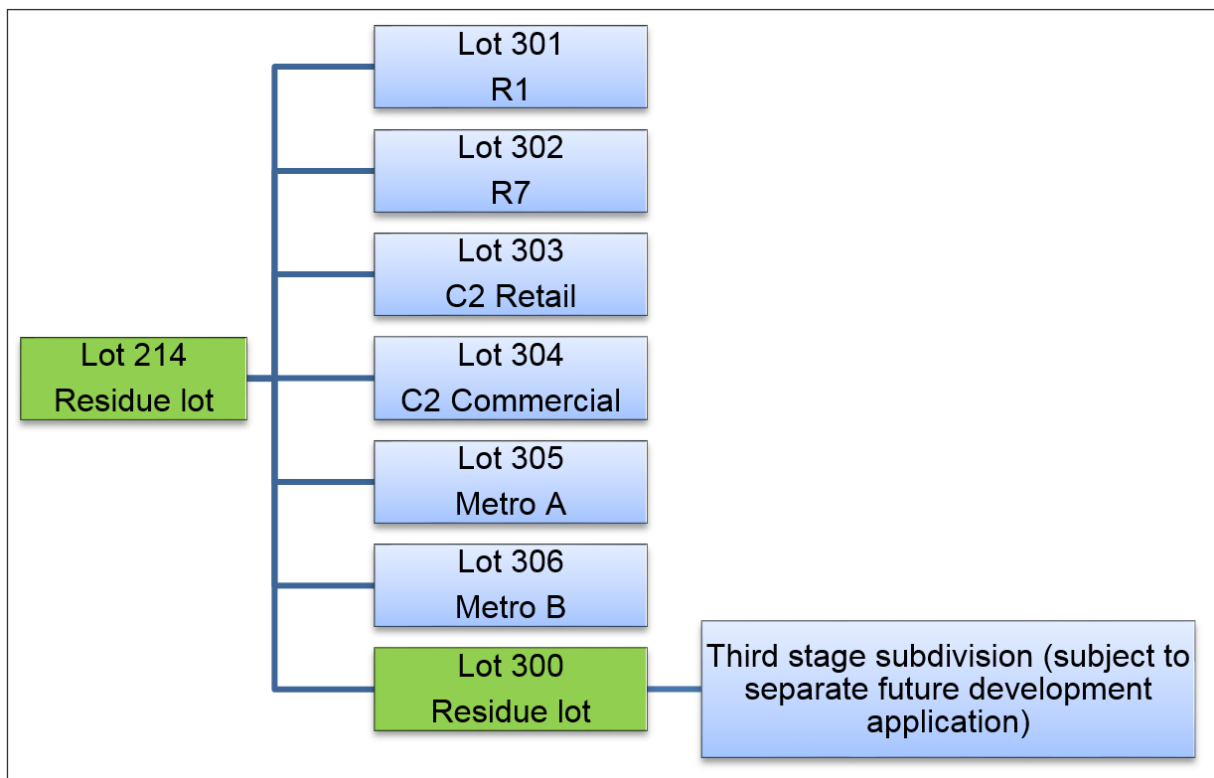


Figure 4 | The Stage 1A (Second Phase) approved subdivision (Source: The Department)

4.5 Current construction works and completed projects

A number of key approvals have been issued for development at Barangaroo South, Headland Park and Barangaroo Central (**Figure 3**), including:

- residential Buildings R4A and R4B (approved, not yet under construction)
- stage 1B basement car park (under construction)
- stage 1B permanent public domain works (under construction)
- blocks 4 and 5 and Hickson Road remediation works (under construction)
- Crown Sydney Hotel Resort (under construction)
- Barangaroo ferry hub (complete)
- commercial Buildings C1, C2, C3, C4 and C5 (complete)
- residential buildings R8 and R9 (complete)
- stage 1A basement car park (complete)
- stage 1A permanent public domain works (complete)
- retail Buildings R1 and R7 (complete)
- Barangaroo Reserve (former Headland Park – complete)
- Barangaroo Central foreshore promenade (complete).

4.6 Related Projects

MP 10_0023 - Stage 1A Basement Car Park

On 2 November 2010, the then Minister for Planning approved the excavation, remediation and construction of a basement car park (known at the Stage 1A car park) in Barangaroo South. The application has since been modified eight times. The basement area approved is shown below in **Figure 5**.



Figure 5 | The extent of the Stage 1A basement (Source: The Department)

SSD 8529 – Building C1

On 6 June 2018, the Executive Director, Key Sites and Industry Assessments, approved SSD 8529 for the construction and use of a 7-storey retail/commercial. The consent also included approval for public domain works, integration and minor alterations to the existing Stage 1A Basement, rooftop planting, signage zones and a heritage interpretation zone.

MP 11_0044 International Towers Sydney, Tower 1 (Building C3)

On 24 April 2012, the then Director-General approved the construction of commercial building C3. The approved development comprised a 49-storey commercial and retail building. The approval has been modified three times.

4.7 Environment Protection Authority Declaration Area

The site incorporates a part of a remediation site as declared by the Environment Protection Authority (EPA) under the *Contaminated Land Management Act 1997*, (EPA Declaration Area 21122). The Declaration Area is to be remediated in three stages.

Stage 1 involves the remediation of Block 4 and the adjacent public domain areas (SSD 5897) and was approved by the Department on 10 November 2014. These works apply to the majority of the site and have been completed. Accordingly, the proposal does not include remediation works.

Stage 2 involves the remediation of Block 5 (SSD 6533) to the north and was approved on 18 December 2015. These works have been completed.

Stage 3 relates to the remediation of part of Hickson Road (SSD 6617) and was approved on 25 August 2016. These works are ongoing and expected to be completed in late 2019.

The EPA has indicated that the Declaration (no. 21122) will not be lifted until the entire area has been successfully remediated.



2. Project

4.1 Description of proposal

On 4 April 2019, the Applicant lodged a proposal to seek approval for the third stage of stratum subdivision at Stage 1A, Barangaroo South. The proposal seeks to stratum subdivide the residual lot (Lot 300) and Lot 205 of DP 1204948 to create the stratum lots outlined below in **Table 1**.

Table 1 | Summary of the proposed stratum lots

Proposed Stratum Lot	Derived from	Purpose	Location
Lot 401	Residue Lot 300	Parking and shared end of trip facilities	All levels
Lot 402	Lot 205 DP 1204948	Adjusting boundary of bicycle and amenities lot in response to Building C1	Basement Level 1 and ground level
Lot 403	Residual Lot 300	Allocate 12 basement car spaces, storage area and basement plant room	Basement Level 2, Basement Level 1
Lot 404	Lot 205 DP 1204948	Building C1 lobby in response to adjusted bicycle and amenities lot	Ground level
Lot 400	N/A	New residual lot	All levels

The Applicant notes no physical works are proposed to be carried out as part of the proposal. The stratum subdivision would be carried out in a staged manner in accordance with the ongoing development of Barangaroo South. The proposed subdivision is illustrated in **Figure 6** to **Figure 10**.

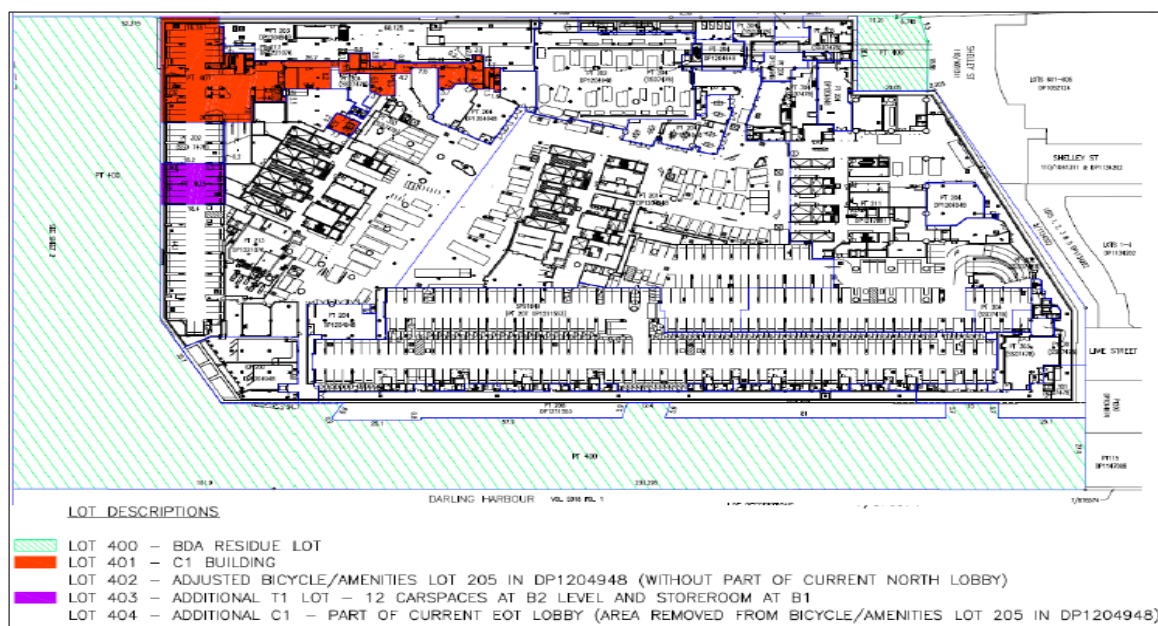


Figure 6 | Basement Level 2 (south) showing proposed Lot 401 (red shading), proposed lot 403 (purple shading) and proposed Lot 400 (green hatching) (Source: Applicant)

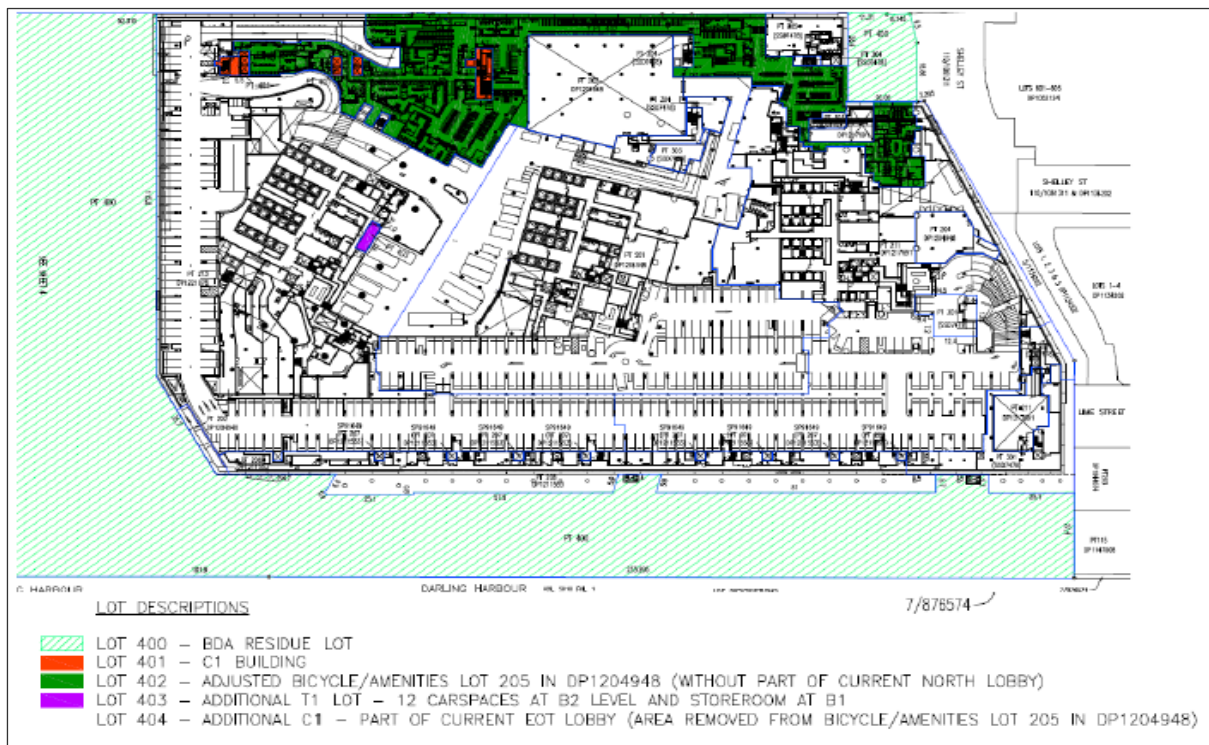


Figure 7 | Basement Level 1 (south) showing proposed Lot 401 (red shading), proposed Lot 402 (green shading), proposed Lot 403 (purple shading) and proposed Lot 400 (green hatching) (Source: Applicant)

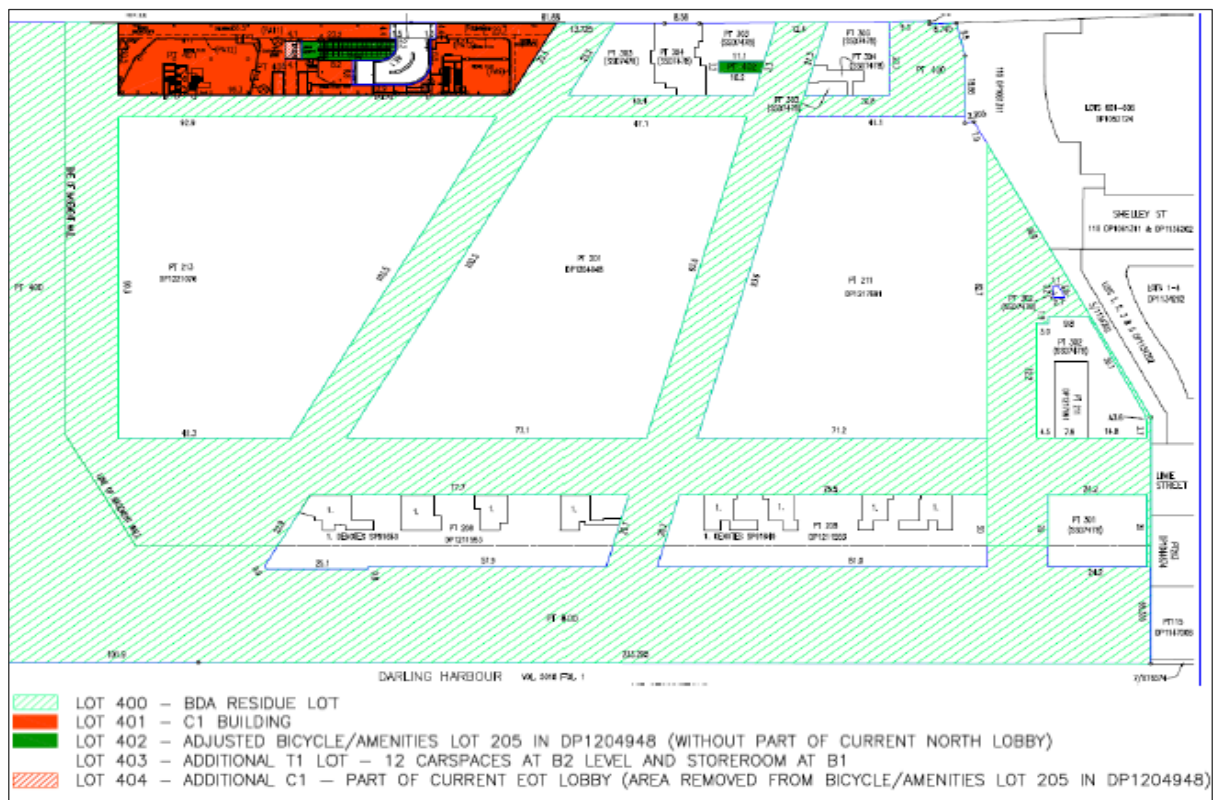
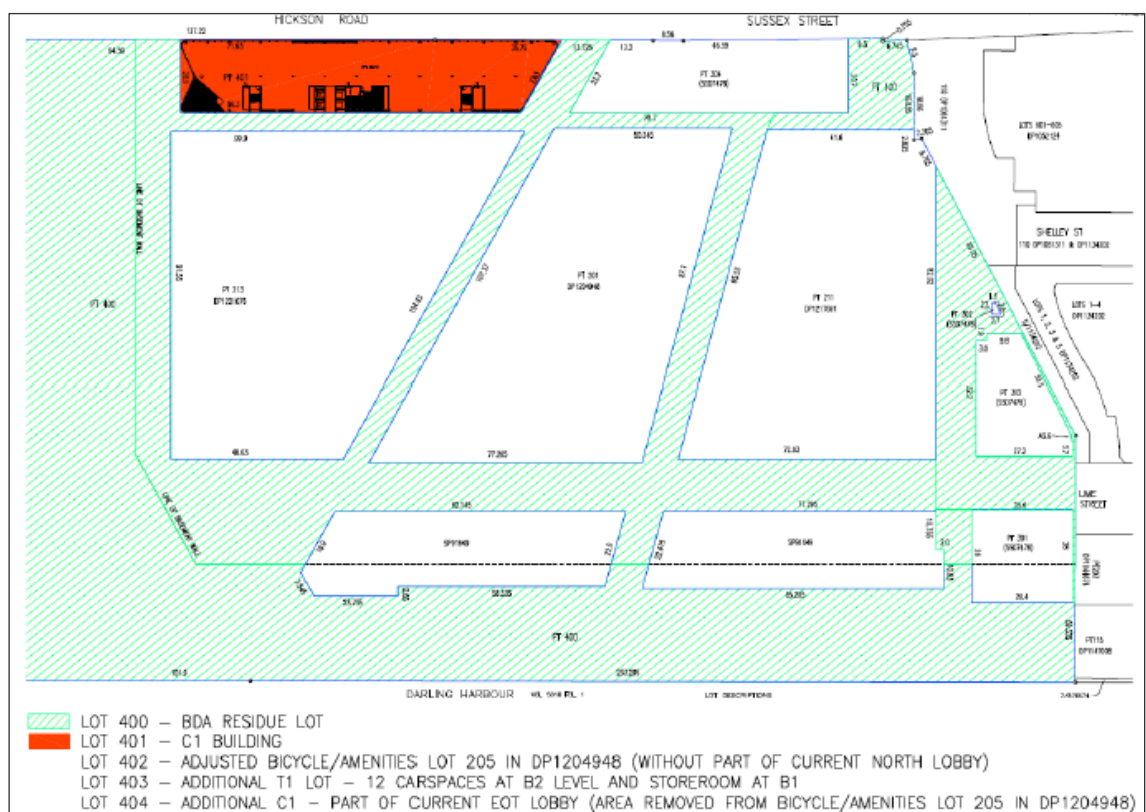
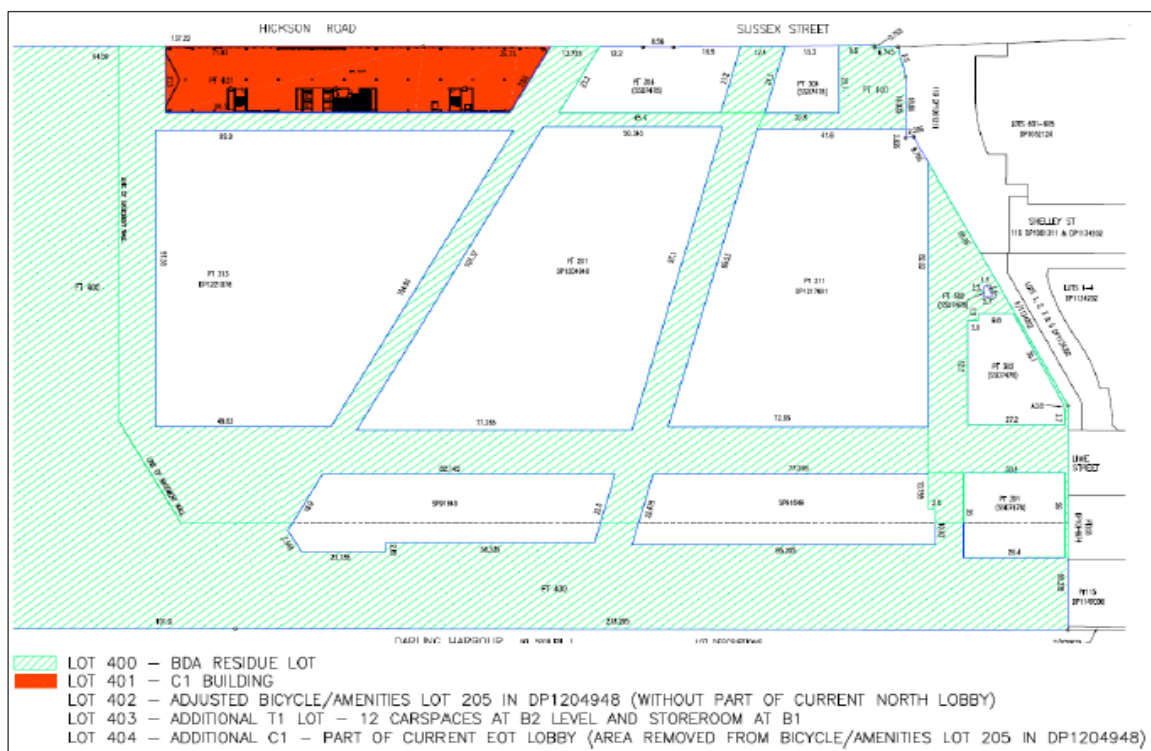


Figure 8 | Ground Level (south) showing proposed Lot 401 (red shading), proposed Lot 402 (green shading), proposed Lot 404 (red hatching) and proposed Lot 400 (green hatching) (Source: Applicant)





3. Strategic Context

3.1 Greater Sydney Region Plan

The 'Greater Sydney Regional Plan – A Metropolis of Three Cities' sets out the NSW Government's 40-year vision and establishes a 20-year plan to manage growth and change for Greater Sydney and includes 10 directions. The Plan's key directions are to provide:

- a city supported by infrastructure – infrastructure supporting new developments
- a collaborative city – working together to grow a Greater Sydney
- a city for people – celebrating diversity and putting people at the heart of planning
- housing the city – giving people housing choices
- a city of great places – designing places for people
- a well-connected city – developing a more accessible and walkable city
- jobs and skills for the city – creating conditions for a stronger economy
- a city in its landscape – valuing green spaces and landscape
- an efficient city – using resources wisely
- a resilient city – adapting to a changing world.

The City of Sydney LGA is located within the Eastern City. The proposed development supports the directions and objectives of the Plan, in particular by facilitating the safe, efficient and orderly development of the Barangaroo South area.

3.2 Eastern City District Plan

The Greater Sydney Commission's (GSC) role is to coordinate and align planning to shape the future of Metropolitan Sydney. The GSC has prepared District Plans to inform local council and planning and influence the decisions of State agencies. The aim of the District Plans is to connect local planning with the longer-term metropolitan planning for Greater Sydney.

The proposal is consistent with the Eastern City District Plan by helping to grow a stronger and more competitive CBD (Planning Priority E7) through the orderly and efficient development of Barangaroo South.



4. Statutory Context

4.1 State Significant Development

The proposed development is State Significant Development (SSD) in accordance with clause 4.36 of the EP&A Act as it comprises subdivision of land at Barangaroo under clause 3(2) of Schedule 2 of the State Environmental Planning Policy (State and Regional Development) 2011.

4.2 Permissibility

Land within the Barangaroo site may be subdivided with consent under clause 16(1), part 12 of Schedule 3 of State Environmental Planning Policy (State Significant Precincts) 2005.

4.3 Consent Authority

In accordance with the Minister's delegation of 11 October 2017, the Executive Director, Compliance, Industry and Key Sites, may determine the SSD application as:

- the relevant Council has not made an objection
- there are less than 25 public submissions in the nature of an objection
- a political disclosure statement has not been made.

4.4 Compliance with Clause 4.24(2) of the EP&A Act

Clause 4.24(2) of the EP&A Act specifies that while any concept development application for a site remains in force, the determination of any further development application cannot be inconsistent with the consent for the concept proposals. The Department has considered the proposed development and is of the opinion the proposal is consistent with the Barangaroo Concept Plan as it:

- reflects the approved block configuration in the Concept Plan and is permissible with consent
- would not alter maximum gross floor area (GFA) or height controls specified in the Concept Plan (as modified)
- complies with all relevant Built Form Principles and Urban Design Controls of the Concept Plan
- would not adversely impact on the delivery of a high quality Hickson Park and surrounding public domain.

4.5 Secretary's Environmental Assessment Requirements

On 15 January 2018, the Department notified the Applicant of the Secretary's Environmental Assessment Requirements (SEARs) for SSD 8997. The Department is satisfied the EIS had adequately addressed compliance with the SEARs to enable the assessment and determination of the application.

4.6 Mandatory matters for consideration

Section 4.15 of the EP&A Act outlines the matters that a consent authority must take into consideration when determining development applications. These are summarised as:

- the provisions of environmental planning instruments (including draft instruments), development control plans, planning agreements, and the *Environmental Planning and Assessment Regulation 2000* (EP&A Regulation)
- the environmental, social and economic impacts of the development
- the suitability of the site
- any submissions, and

- the public interest, including the objects in the EP&A Act and the encouragement of ecologically sustainable development (ESD).

The Department has considered all of these matters in its assessment of the project, as well as the Applicant's consideration of environmental planning instruments in its EIS, as summarised in **Section 6** of this report. The Department has also given consideration to the relevant provisions of the EP&A Act, including environmental planning instruments in **Appendix E**.

5. Engagement

5.1 Department's engagement

In accordance with Schedule 1 of the EP&A Act, the Department publicly exhibited the application from 9 May 2019 until 5 June 2019 (28 days). The application was exhibited on the Department's website, at Service NSW and the City of Sydney Council offices.

The Department placed a public exhibition notice in the Sydney Morning Herald and the Daily Telegraph on 8 May 2019 and provided written notification to adjacent landholders and the following Government agencies:

All notification and public participation statutory obligations have been satisfied. The Department has considered the submissions during the assessment of the application (**Section 6** and **Appendix D**) and by recommended conditions in the consent at **Appendix F**.

5.2 Summary of Submissions

The Department received a submission from Council and a submission from TfNSW (RMS). A link to the submissions can be found at **Appendix D**.

Council's submission requested additional information in relation to details of covenants, easements, notations, right of way or the like proposed ensure access to service providers required to maintain assets. Council also requested a draft Section 88b instrument and a Building Management Statement (BMS) be provided.

TfNSW (RMS) raised no objection to the proposed subdivision and noted it is unlikely to have a significant impact upon the classified road network.

No public submissions were received.

5.3 Response to Submissions

The Department placed copies of both submissions received on its website and requested the Applicant provide a response to the issues raised by Council. On 8 August 2019, the Applicant lodged its Response to Submissions (RtS) report for the proposal to address issues raised in submissions.

The RtS included additional documents to address issues raised by Council including an amended plan of subdivision, a Building Management Statement (BMS) and a draft Section 88b instrument. The RtS was made publicly available on the Department's website and referred to Council who made an additional submission.

Council's submission requested conditions be imposed to restrict use of car parking spaces and/or storage spaces, to manage parking in common areas of the basement and to ensure easements for basement access are created.

On 11 September 2019, the Applicant provided a response to Council's submission and noted each issue raised can be addressed without creating a new condition as recommended by Council. The Applicant considers the issues raised by Council to be valid, however to create transparency between previous SSD subdivision approvals (SSD 6381 and SSD 7478) in Barangaroo South, the BMS and existing conditions imposed will effectively address Council's concerns.



6. Assessment

6.1 Key assessment issues

The Department has considered the proposed development, the issues raised in submissions and the Applicant's RtS in its assessment of the application. The Department considers the key issues associated with the proposed development are:

- Subdivision layout and structure
- Easements and restrictions on title
- Adequacy of the Building Management Statement
- Staged registration of the Plans of Subdivision.

Each of these issues are addressed in the following sections of this report.

6.2 Subdivision layout and structure

The Department has considered the proposed land subdivision layout having regard to the extent of the Barangaroo site and the development which has been approved in Barangaroo South (i.e. basement carpark and buildings R1, R4B, R7, C2, C3, C4, C5 and R8/9), as relevant to this subdivision application.

The Department considers the application appropriately reflects the redevelopment area and the buildings referenced in the application. On the basis, the Department considers the subdivision pattern is compatible and consistent with the extent of the Barangaroo development site, the Barangaroo Concept Plan (Concept Plan) and project approvals/development consents issued for each building in Barangaroo South.

6.3 Easements and restrictions on title

All access and servicing arrangements in relation to facilities in the basement of the building will be addressed through the Building Management Statement (BMS), with the exception of ground level access, which will be addressed by easements. The application proposed that easements will be created for the following:

- pedestrian access, public access, vehicular access, services and future services
- support and shelter, light and air and maintenance
- drainage/stormwater
- Emergency egress
- Overhanging awnings
- supply of chilled and recycled water services
- supply of embedded network connection services
- positive covenant.

Council's submission notes the Applicant had not identified the proposed easements or covenants on the Plans of Subdivision as required in SEARS issued 15 January 2018. Council requested a draft Section 88b instrument be provided by the Applicant. Accordingly, the Applicant submitted a draft Section 88b instrument and updated Plans of Subdivision with proposed easements and/or covenants in their RtS.

Council responded to the RtS and noted there does not appear to be any easements that give access to the various new lots within the basement. Council recommended easements for basement access are created and any rights

of access be covered by conditions. Council requested a condition be imposed to recognise easements for access throughout the basement and to and from adjoining lands and roads.

In response, the Applicant notes the registered BMS provides for access throughout the basement as well as to and from roads.

The Department notes that Shared Facility 5.2.1 Basement Vehicle and Access and Shared Facility 5.7 Accessways and Exits in the BMS detail the basement access as requested by Council. The Department therefore accepts the condition recommended by Council is not required as the BMS and management and operational systems are already in place.

6.4 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 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, the SSP SEPP requires that prior to the issuing of 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.

In order to ensure the BMS is consistent with the provisions of the SSP SEPP and the statutory requirement of Schedule 8A of the *Conveyancing Act 1919*, the Department has recommended a condition of consent requiring the BMS to be updated to the satisfaction of the Certifying Authority at the subdivision certificate stage for each stratum subdivision. This condition also requires the updated BMS adequately address the following matters which are relevant to the approved developments in Barangaroo South:

- the use, operation and arrangements for the supply of services, maintenance and upgrading of infrastructure of each stratum lot within the subdivision
- the ongoing maintenance, upgrading, redevelopment and structural adequacy of each stratum lot within the subdivision
- any other matters which the Certifying Authority considers relevant and pertinent to the issue of the Subdivision Certificate.

Council's submission notes the Applicant did not provide a BMS as required by the SEARs. The Applicant responded in the RtS by providing the registered BMS associated with DP 1204948. The Department considers the registered and updated BMS will adequately address the ongoing maintenance, upgrading, redevelopment and structural adequacy of development within Barangaroo South, as relevant to each stratum lot.

6.5 Staged registration of the Plans of Subdivision

The application seeks approval for the staged registration of the stratum plans of subdivision. The staged subdivision consent will allow for the sequential creation/registration of the Stage 1A lots to occur as required to integrate with the construction and occupation program for Barangaroo South without the need for separate ongoing subdivision applications.

The Department notes the issue of a Subdivision Certificate for development will not be linked to the issue of an Occupation Certificate. As such, all relevant pre-conditions for 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 development.

Clause 10 of the SRD SEPP permits subdivision certificates to be issued by an Accredited Certifier for a subdivision that is SSD. The Department notes the recommended conditions of consent have been tailored to reflect this provision.

Having regard to the above, the Department supports this aspect of the application, noting this approach will enable the staged registration of the Plans of Subdivision with Land and Property Information in an orderly manner.

6.6 Other Issues

Other relevant issues for consideration are addressed in **Table 2**.

Table 2 | Summary of other issues raised

Issue	Findings	Recommended Condition
Restriction on use of car parking spaces and storage spaces	- Council recommended a condition be imposed requiring a documentary restriction on use of land to be created over the lots in the subdivision plan. - Council noted this would ensure on-site car parking spaces (excluding service and visitor car spaces) and storage spaces within lots are not used by other occupants and tenants of the building. - The Applicant noted other approved Barangaroo South subdivision conditions (B4 of SSD 6381 and B3 of SSD 7478) address the distribution and use of car parking. - Condition B3 of SSD 7478, Statement of Compliance must be provided prior to an issue of a Subdivision Certificate for a stratum subdivision. - The requirement of a Statement of Compliance would ensure the proposed subdivision is consistent with relevant conditions including allocation of bicycle spaces, car parking spaces, motor bike spaces, loading spaces and any services or infrastructure to the respective lot/s. - The Applicant notes a condition like Condition B3 of SSD 7478 can be expanded to include storage spaces to the respective lot/s. - The Applicant considers a condition like B3 of SSD 7478 will provide consistency across the Barangaroo South subdivision development consents whilst still addressing Council's recommendation. - The Department considers the need for a restriction on the use of car spaces and storage spaces as outlined by Council to be valid. - The Department has reviewed the Applicant's response and notes a condition requiring a Statement of Compliance to include car parking spaces and storage spaces is adequate.	The Department considers Condition B3 will manage the use of car parking spaces and storage spaces in the basement.
Parking on common property areas	- Council recommended a condition be imposed to manage the parking on common property areas in the basement and lower levels to prevent parking of storage vehicles or boats in common spaces. - Clause 61.3 of the Building Management Statement (BMS) states car park ramps or accessways cannot be used for parking of vehicles.	No additional conditions or amendments are necessary.

- The Department considers the registered and updated BMS would effectively manage parking on common property areas in the basement and lower levels.
- The Applicant notes permanent bollards are used to prevent parking of vehicles in common spaces.
- Security officers are also present 24-hours-a-day, 7 days a week in the basement and lower levels to ensure efficient operation of common areas.
- The Department considers the registered and updated BMS and operational practices are in place in the basement and lower levels which can effectively manage the parking in common areas.
- The Department considers a condition is not necessary as the management and operations in place adequately address Council's concerns.



7. Evaluation

The Department has reviewed the EIS, RtS and assessed the merits of the proposed development, in consideration with the submissions received from Council and TfNSW (RMS).

The Department's assessment concludes the subdivision pattern is compatible and consistent with project approvals/development consents issued for development at Barangaroo South. It is considered easements and restrictions on title would be appropriate and the registered and updated BMS would adequately address the ongoing maintenance, upgrading, redevelopment and structural adequacy of buildings/development within each proposed stratum lot. Further, the application will enable the staged registration of subdivision plans in an orderly manner.

The Department concludes the impacts of the proposed development are acceptable and can be appropriately mitigated through the implementation of the recommended conditions of consent.

Consequently, the Department considers the development is in the public interest and should be approved, subject to conditions (**Appendix F**).



8. Recommendation

It is recommended that the Executive Director, Compliance, Industry and Key Sites, as delegate of the Minister for Planning and Public Spaces:

- **considers** the findings and recommendations of this report;
- **accepts and adopts** all of the findings and recommendations in this report as the reasons for making the decision to grant approval to the application;
- **agrees** with the key reasons for approval listed in the notice of decision;
- **grants consent** for the application in respect of the third phase stratum subdivision of land at Barangaroo South (SSD 8997), subject to the conditions in the attached development consent; and
- **signs** the attached development consent and recommended conditions of consent (see attachment).

Recommended by:

Cameron Sargent

Team Leader

Key Sites Assessments

Recommended by:

David McNamara

Director

Key Sites Assessments



9. *Determination*

The recommendation is: **Adopted / Not adopted** by:

Anthea Sargeant

Executive Director

Compliance, Industry and Key Sites



Appendices

Appendix A – Relevant Supporting Information

The following supporting documents and supporting information to this assessment report can be found on the Department's website as follows.

1. Environmental Impact Statement

<https://www.planningportal.nsw.gov.au/major-projects/project/11036>

2. Submissions

<https://www.planningportal.nsw.gov.au/major-projects/project/11036>

3. Response to Submissions

<https://www.planningportal.nsw.gov.au/major-projects/project/11036>

4. Submission on Response to Submissions

<https://www.planningportal.nsw.gov.au/major-projects/project/11036>

Appendix B – Council Views for Draft Notice of Decision

Issue	Consideration
Compliance with SEARs	<i>Assessment</i> - Information not provided in 3. Plan of Subdivision - No details of any covenants, easements, notations, rights of way or the like proposed - Information does not include a draft Section 88b instrument and a Building Management Statement (BMS) - The Department notes details of easements and covenants are identified in the revised Plan of Proposed Subdivision Ground Level South - Sheet 5. - The Department notes a draft Section 88b instrument and a Building Management Statement (BMS) was provided by the Applicant in the RtS. - Documentary reciprocal easements for services, drainage, support and shelter, and emergency egress, affecting the whole of each lot if so desired, must be created over the lots in the subdivision. - The Department considers the information provided meets the requirements in the SEARs issued 15 January 2018. <i>Recommended Conditions/Response</i> Conditions include: - Subdivisions plans cited in consent. - Updated BMS is to be prepared.
Restriction on use of car spaces and storage spaces	<i>Assessment</i> - Documentary restriction on use of land created over the lots in the subdivision plan - Risk of car parking spaces and storage spaces used by unauthorized occupants or tenants of building - The Applicant noted other approved Barangaroo South subdivision conditions (B4 of SSD 6381 and B3 SSD 7478) address the distribution and use of car parking. - Condition B3 of SSD 7478 - Statement of Compliance must be provided prior to an issue of a Subdivision Certificate for a stratum subdivision. - The requirement of a Statement of Compliance would ensure the proposed subdivision is consistent with relevant conditions including allocation of bicycle spaces, car parking spaces, motor bike spaces, loading spaces and any services or infrastructure to the respective lot/s. - The Applicant notes a condition alike Condition B3 of SSD 7478 can be expanded to include storage spaces to the respective lot/s. - The Department considers the need for a restriction on use of car spaces and storage spaces to be valid. <i>Recommended Conditions/Response</i> Conditions include: - The Department has reviewed the Applicants response and notes a condition requiring a Statement of Compliance to include car parking spaces and storage spaces is adequate. - A condition for a Statement of Compliance is to be provided for car parking spaces and storage spaces.

Parking on common property areas

- Condition imposed to manage the parking on common property areas in the basement and lower levels
- Council concerned with parking of storage vehicles or boats in common spaces

Assessment

- Clause 61.3 of the Building Management Statement (BMS) states car park ramps or accessways cannot be used for parking of vehicles.
- The Department considers the BMS effectively manages parking on common property areas in the basement and lower levels.
- The Applicant notes permanent bollards are used to prevent parking of vehicles or boats in common spaces.
- Security officers are also present 24 hours a day, 7 days a week in the basement and lower levels to ensure for efficient operation.
- The Department considers the registered BMS and operational practices in place in the basement and lower levels effectively manages the common areas.
- The Department considers a condition is not necessary as the management and operations in place adequately address Council's concerns.

Recommended Conditions/Response

Conditions include:

- Updated BMS is to be prepared.

Basement access

- Appropriate easements for access (vehicular and pedestrian) shall be created within the basement areas of building to provide for access within those lots and to and from the adjoining lands and roads.

Assessment

- In the BMS, Shared Facility 5.2.1 Basement Vehicle and Access and Shared Facility 5.7 Accessways and Exits detail access throughout the basement as well as to and from adjoining roads.
- The Applicant considers the condition recommended by Council is not required as the BMS and management and operational systems are in place to manage basement accessibility.
- The Department considers a condition does not need to be imposed as the BMS adequately addresses the easements for access in the basement and to and from adjoining lands and roads.

Recommended Conditions/Response

Conditions include:

- Updated BMS is to be prepared.

Appendix C – Additional Information

The following documents for SSD 8997 can be found on the Department's website:

- Registered Building Management Statement (BMS)
- Draft Section 88b instrument
- Plans of Proposed Subdivision

<https://www.planningportal.nsw.gov.au/major-projects/project/11036>

Appendix D – Submissions

The submissions for SSD 8997 can be found on the Department's website at:

<https://www.planningportal.nsw.gov.au/major-projects/project/11036>

Appendix E – Statutory Considerations

In line with the requirements of section 4.15 of the EP&A Act, the Department's assessment of the project has provided a detailed consideration to a number of statutory requirements. These include:

- the objects found in section 1.3 of the EP&A Act
- the matters listed under section 4.15(1) of the EP&A Act, including applicable environmental planning instruments and regulations.

The Department has considered all of these matters in its assessment of the project and has provided a summary of this assessment in **Tables 1** and **2** below.

Table 1 | Consideration of objects of the EP&A Act

Objects of the EP&A Act	Summary
(a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources	The proposal does not involve any physical works and would have no impact on the State's natural and other resources. The proposal will enhance the social and economic welfare of the community as the development at Barangaroo South will benefit the NSW economy.
(b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment	The principles of ecologically sustainable development are considered following Table 2 .
(c) to promote the orderly and economic use and development of land	The proposal promotes the orderly and economic use of land by ensuring the site reflects the layout and uses of approved developments at Barangaroo South.
(d) to promote the delivery and maintenance of affordable housing	The proposal does not involve any physical works. As such, there is no opportunity to provide affordable housing.
(e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats	The proposed development would not have an adverse impact on native animals and plants, including threatened species.
(f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage)	The proposal does not involve any physical works and would not impact built and cultural heritage.
(g) to promote good design and amenity of the built environment	The proposal does not involve any physical works. As such, there is no opportunity to promote good design and amenity.
(h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants	The proposal does not involve any physical works and would not need to consider construction and maintenance of buildings.
(i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State	The proposal is SSD in accordance with the SRD SEPP. The Department consulted with Council and relevant Government agencies on the proposal, as outlined in Section 5 of this report.
(j) to provide increased opportunity for community participation in environmental planning and assessment.	Section 5 of this report sets out details of the Department's engagement on the proposal.

Table 2 | Consideration of section 4.15 of the EP&A Act

Section 4.15 Evaluation	Summary
(a)(i) any environmental planning instrument	The proposed development complies with the relevant legislation, as addressed in Section 4 of this report and the consideration of other relevant EPLs provided below.
(a)(ii) any proposed instrument	This is considered in the section following this table.
(a)(iii) any development control plan	Under clause 11 of the SRD SEPP, development control plans (DCPs) do not apply to SSD. Notwithstanding, consideration has been given to the Sydney Harbour Foreshores and Waterways Area Development Control Plan 2005.
(a)(iia) any planning agreement	Not applicable.
(a)(iv) the regulations <i>Refer Division 8 of the EP&A Regulation</i>	The application satisfactorily meets the relevant requirements of the Regulation, including the procedures relating to applications (Part 6), fees (Part 15), public participation procedures for SSD and Schedule 2 of the EP&A Regulation relating to EISs.
(a)(v) any coastal zone management plan	Not applicable.
(b) the likely impacts of that development including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,	The Department has assessed the likely impacts of the development and considers they are acceptable and/or have been appropriately managed by recommended conditions (refer to Section 6 and Appendix F).
(c) the suitability of the site for the development	The site is suitable for the development as discussed in Sections 4 and 6 of this report.
(d) any submissions	Consideration has been given to the submissions received during and after the EIS and RtS exhibition period. See Sections 5 and 6 of this report.
(e) the public interest	The Department considers the proposal to be in the public interest as it would facilitate the staged occupation of Barangaroo South.
Biodiversity values exempt if: (a) On biodiversity certified land (b) Biobanking Statement exists	Not applicable.

Ecologically Sustainable Development

The Act adopts the definition of ESD found in the *Protection of the Environment Administration Act 1991*. Section 1.3(b) of that Act states that ESD requires the effective integration of economic, environmental and social considerations in decision-making processes and that ESD can be achieved through the implementation of:

- (a) the precautionary principle
- (b) inter-generational equity
- (c) conservation of biological diversity and ecological integrity
- (d) improved valuation, pricing and incentive mechanisms.

The Department has considered the proposed development in relation to the ESD principles. Whilst these principles have little relevance to the subdivision application given no physical works are proposed, the Department notes, in general, the redevelopment of Barangaroo has been designed to incorporate Australian best practice sustainability initiatives during construction and operation.

In addition, the Department considers the precautionary principles 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.

ENVIRONMENTAL PLANNING INSTRUMENTS

EPIs considered as part of the assessment of the modification are:

- State Environmental Planning Policy (State and Regional Development) 2011 (SRD SEPP)
- State Environmental Planning Policy (State Significant Precincts) 2005 (SSP SEPP)
- State Environmental Planning Policy (Infrastructure) 2007 (ISEPP)
- Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005 (SREP)
- Sydney Harbour Foreshores and Waterways Development Control Plan 2005 (Sydney Harbour Waterways DCP).

COMPLIANCE WITH CONTROLS

State Environmental Planning Policy (State and Regional Development) 2011 (SRD SEPP)

The SRD SEPP aims to identify development that is of State significance due to its size, economic value or potential impact. The proposal is an SSD pursuant to section 89C of *Environmental Planning and Assessment Act 1979* (EP&A Act) because it constitutes subdivision of land within the Barangaroo site, under clause 3 (2) of schedule 2 of the SRD SEPP. Therefore, the Minister for Planning and Public Spaces is the consent authority for the development.

State Environmental Planning Policy (State Significant Precincts) 2005 (SSP SEPP)

The SSP SEPP aims to facilitate the development of important urban, coastal and regional sites of economic, environmental or social significance to the State for the benefit of the State.

The Barangaroo site is listed as a State Significant Precinct under Part 12 of Schedule 3 of the SSP SEPP. Land within the Barangaroo site may be subdivided with consent under clause 16(1), Part 12 of Schedule 3 of the SSP SEPP.

The proposal does not include any physical works and as such other key controls in the SSP SEPP relating to height, gross floor area, the need for buildings to exhibit design excellence and be subject to design competitions are not relevant to the proposed subdivision.

The proposed development would facilitate the orderly development of the Barangaroo site in accordance with the approved Concept Plan at significant benefit to the state.

Given the above, the Department's assessment concludes the proposal is consistent with the SSP SEPP.

State Environmental Planning Policy (Infrastructure) 2007 (ISEPP)

The ISEPP aims to facilitate the effective delivery of infrastructure across the State by improving regulatory certainty and efficiency, identifying matters to be considered in the assessment of development adjacent to particular types of infrastructure development, and providing for consultation with relevant public authorities about certain development during the assessment process.

The application was referred to Roads and Maritime Services (RMS) and the Department received correspondence confirming they had no objections to the proposed subdivision.

The Department considers the proposal to be consistent with the ISEPP.

Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005 (SREP)

Table 3 | Consideration of the SREP

Criteria		Department's assessment	Compliance
Part 3 Foreshores and Waterways Area			
Clause 17 Zoning W1 Maritime Waters	Land is divided into a number of zones as shown on the zoning map.	Although the W1 Maritime Waters zone is adjacent to the site, no works will be carried out in the zone.	Yes
Clause 20 Matters for consideration	The matters referred to in Division 3 must be considered by the consent authority.	The Department has considered the relevant matters in table 2	Yes
Clause 21 Biodiversity, ecology & environmental protection	The consent authority must take into consideration the matters listed in the clause in relation to biodiversity, ecology and environmental protection.	The proposal does not include any physical works and would have no impact on biodiversity, ecology or the natural environment.	Yes
Clause 22 Public access to, and use of, foreshores and waterways	The consent authority must take into consideration the matters listed in this clause in relation to public access to, and use of, the foreshores and waterways.	The proposal does not include any physical works and would not impact on public access to the foreshores and waterways.	Yes
Clause 23 Maintenance of a working harbour	The consent authority must take into consideration the matters listed in relation to the maintenance of a working harbour.	The proposal does not include any physical works and would not impact on the maintenance of a working harbour.	Yes

Clause 24 Interrelationship of waterway and foreshore uses	The consent authority must take into consideration the matters listed in relation to the interrelationship of waterway and foreshore uses.	The proposal does not include any physical works and would not impact on waterway and foreshore uses.	Yes
Clause 25 Foreshore and waterways scenic quality	The consent authority must take into consideration the matters listed in relation to the maintenance, protection and enhancement of the scenic quality of foreshores and waterways.	The proposal does not include any physical works and would therefore maintain the scenic quality of the foreshores and waterways.	Yes
Clause 26 Maintenance, protection and enhancement of views	The consent authority must take into consideration the matters listed in relation to the maintenance, protection and enhancement of views.	The proposal does not include any physical works and therefore would not impact on views.	Yes
Clause 29 Foreshores & Waterways Development Advisory Committee	A consent authority must not grant consent to a DA unless it has referred and considered the views of the Advisory Committee.	The proposed development is of a type that does not require referral to the Advisory Committee.	Yes
Part 4 Strategic Foreshore Sites			
Clause 40 Strategic Foreshore Areas	Division 1 – Requirements for Masterplans. The Division applies to development that is carried out on a strategic foreshore site.	Barangaroo is identified as a strategic foreshore site on Sheet 1 (City Foreshore Area).	Yes

Clause 41 Strategic Foreshores Areas	Sub-clause 4 generally states a Master Plan does not have to be development for a strategic foreshore site unless the Minister so directs.	The Minister has not directed that a Master Plan be prepared for the Barangaroo site. Notwithstanding this, the proposal would be consistent with the approved Barangaroo Concept Plan (as modified).	Yes
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Part 5 Heritage Provisions

List the matter to be taken into consideration by the consent authority before granting consent under Part 4 of the EP&A Act.	There are no heritage items on the Barangaroo site listed in Schedule 4 of the SEPP. As such, Part 5 does not apply.	Yes
The part applies to land and items identified on the Heritage Map.		

Sydney Harbour Foreshores and Waterways Development Control Plan 2005 (Sydney Harbour Waterways DCP)

The site of the building is within the defined Foreshores and Waterways Area of the DCP and is therefore subject to the controls in the DCP. The DCP includes aims and performance criteria in relation to ecological assessment, landscape assessment and design guidelines for development within the area.

The location of the proposed stratum subdivision is not affected by any ecological or specific landscape character area (Part 2 and Part 3) and no physical works are proposed. As such, the design guideline provisions of the DCP are not relevant to the subject application.

State Environmental Planning Policy No.55 – Remediation of Land

The Department is satisfied the site is suitable for subdivision and that the site has/would be remediated as per previous development consents and relevant Remedial Action Plans.

Local Environmental Plans

No Local Environmental Plans apply to the site.

Appendix F – Recommended Instrument of Consent/Approval

The recommended conditions of consent for SSD 8997 can be found on the Department's website at:

<https://www.planningportal.nsw.gov.au/major-projects/project/11036>