

To: Sydney South Planning Panel
From: Hayley Tasdarian, SJB Planning
Date: 6 August 2025

Subject: Additional information lodged via the NSW Planning Portal - PPSSSH-182-DA-1182/2024 - 83, 85 and 99 North Terrace, Bankstown

SJB Planning has been provided with a copy of the additional information lodged via the NSW Planning Portal in relation to the abovementioned development application (DA). Our review of the information is documented below.

1. Response to request for additional information (RFI)

On 1 July 2025, the Applicant applied for an amendment to DA No.1182/2024, under Section 37 of the *Environmental Planning and Assessment Regulation 2021* ("EP&A Regulation"), via the NSW Planning Portal. The application includes an additional information package and is submitted in response to the request for RFI dated 18 February 2025 and subsequent clarification of RFI items dated 10 June 2025, issued by SJB Planning on behalf of Council. A list of the documentation submitted by the Applicant is provided at **Attachment A**.

The proposed amendments identified in the Applicant's RFI response are summarised as follows:

- Reconfiguration of level 5 including removal and relocation of the central residential apartments and expansion of the communal open space area, new communal facilities including a swimming pool, dining room, communal lounge area and gym;
- Minor reconfiguration of the floor layout of the north facing 2 and 3-bedroom apartments residential apartments within Building C;
- Relocation of accessible car parking spaces within the basement levels,
- Provision of sight triangle at the driveway entries on Fetherstone Street; and
- Provision of an additional awning located above Fetherstone Street.

While other amendments are proposed, these are considered nominal and/or consequential to the reconfiguration of level 5 of the development. For example, there has been a slight reduction in the number of residential apartments from 339 to 336 and car parking spaces from 495 to 494.

The proposed tower form, building envelopes and height, floor space ratio, floor to floor heights, apartment mix and deep soil areas remain unchanged.

As requested by the Sydney South Planning Panel, SJB Planning has reviewed the submitted documentation against the provisions set out in Section 37 and 38 of the EP&A Regulation, which are reproduced in **Attachment B**. Our review has found that:

- the application for amendment satisfies the relevant provisions set out in Section 37 of the EP&A Regulation in that the application has been made on the NSW Planning Portal, includes an updated

BASIX Compliance Report, BASIX Certificate and BASIX stamped plans and details the plans that have changed. For this reason, the application can be approved by the consent authority pursuant to Section 38(1) of the EP&A Regulation; and

- the proposed amendments do not materially change the development and are considered minor pursuant to Section 38(2). Therefore, date of lodgement does not change.

In response to the RFI, the Applicant has provided an RFI Response Table (Page 5) that identifies the potential to investigate the provision of vehicular access to the Council owned property adjoining the site to the north (Lot 9 DP 777510, 62 The Mall) via the proposed basement. The Applicant notes that the access would be subject to an agreed approach between the Council and the Applicant. The RFI response is also accompanied by a Feasibility Study (Section 12, Page 65-69) including ground level diagrams which illustrate potential future access to 62 The Mall via the proposed basement.

Based on the documentation provided by the Applicant, the potential basement access is not part of the works for which consent is sought. The Applicant is seeking to pursue the basement access and other works via a Voluntary Planning Agreement (VPA) as outlined below.

In our view and as discussed below, further consideration is required as to whether a VPA is the appropriate mechanism to pursue the vehicle access to 62 The Mall as well as other nominated works.

2. Letter of offer to enter into a VPA

On 10 July 2025 the Applicant lodged a second additional information package via the NSW Planning Portal, containing a cover letter titled 'DA-1182/2024 - Clarification of Additional information', prepared by Ethos Urban, dated 10 July 2025. Attached to the document (in Attachment A) are copies of two letters, prepared by Barings Real Estate Australia, on behalf of the land owner, addressed to Council, including:

- 'Letter of Intent - Indicative Public Benefit Offer' ("Letter of Offer"), dated 2 June 2025; and
- 'Response to Council Letter Relating to Compass Centre Letter of Intent' dated 3 July 2025.

The public benefit works identified in the letter of offer dated 2 June 2025 are summarised as follows:

1. Vehicular access to the property immediately adjoining the site to the north owned by Council (62 The Mall) via basement breakthrough;
2. Pedestrian access to future ground floor retail space at 62 The Mall via the pedestrian thru-site link proposed under the subject DA;
3. Embellishment works within Phil Engisch Reserve;
4. Provision of an easement for public access and amenities to provide direct access between the site and the embellished Phil Engisch Reserve; and
5. Embellishment to footpaths and the public domain along the full extent of the public road interfaces /frontages of the site.

The Letter of Offer identifies that the above works will be completed at no cost to Council.

The 'Response to Council Letter Relating to Compass Centre Letter of Intent' ("Letter of Offer"), prepared by Barings Real Estate Australia, dated 3 July 2025 refers to a letter from Council responding to the Letter of Offer. SJB Planning has been provided with correspondence from Council relating to the VPA.

The 'Response to Council Letter Relating to Compass Centre Letter of Intent' also identifies that the works outlined in the Letter of Offer may be addressed by way of conditions of development consent or via separate agreements with Council. The cover letter 'DA-1182/2024 - Clarification of Additional information', prepared by Ethos Urban, dated 10 July, reiterates this and identifies that the public benefit works identified in the Letter of Offer do not form part of the proposed development sought under DA-1182/2024.

We understand that the consideration and negotiation of the letter of offer and associated public benefit works are being assessed by Council via a separate process to the assessment of DA-1182/2024.

In our view, Council is required to consider whether the proposed works outlined above constitute the provision of material public benefit and the appropriateness of a planning agreement pursuant to Section 7.4 of the *Environmental Planning and Assessment Act 1979* (EP&A Act) to facilitate these works (specifically items 1, 2, 4 and 5 listed above).

Attachment 1:

A list of the documents provided in the additional information package submitted in support of the development application are listed as follows:

1. RFI Response Letter
2. Attachment A - RFI Response Table
3. Attachment B - Updated Architectural drawings
4. Attachment C - Design Report
5. Attachment D - Updated Landscape Plans
6. Attachment E - Updated Landscape Design Report
7. Attachment F - Urban Design Analysis
8. Attachment G - Water Services Statement
9. Attachment H - Civil Engineering Statement
10. Attachment I - Flooding Engineering Statement
11. Attachment J - Tenancy Summary
12. Attachment K - Hotel Plan of Management
13. Attachment L - Childcare Plan of Management
14. Attachment M - Clause 4.6 Variation Request for Building Height
15. Attachment N - Updated Noise and Vibration Impact Assessment
16. Attachment O - Traffic and Transport Statement
17. Attachment P - Wind Statement
18. Attachment Q - Landscape Statement
19. Attachment R - Economic Assessment
20. Attachment S - Services Statement
21. Attachment T - Electric Vehicle Charging and Future Adaptability Statement
22. Attachment U - Updated Plan of Management
23. Attachment V - Structural Statement
24. Attachment W - Remediation Action Plan
25. Attachment X - Memo in relation to Contamination Investigations
26. Attachment Y - Dewatering Management Plan
27. Attachment Z - BASIX Compliance Report
28. Attachment Z - Updated BASIX Certificate
29. Attachment Z - Updated BASIX Stamped Plans

Attachment 2: Section 37 and Section 38 of the EP&A Regulation

Section 37 and Section 38 of the EP&A Regulation are reproduced below.

“Division 2 Amendment, rejection and withdrawal of development applications—the Act, ss 4.12 and 4.64

37 Amendment of development application

- (1) An applicant may, at any time before a development application is determined, apply to the consent authority for an amendment to the development application.*
- (2) The application must be made on the NSW planning portal.*
- (3) If the application relates to State significant development—
 - (a) the application must be in the approved form, and*
 - (b) the applicant must have regard to the State Significant Development Guidelines in preparing the application.**
- (4) If the amendment relates to a BASIX certificate that accompanied the original development application only, the development application may instead be amended by submitting on the NSW planning portal—
 - (a) a new BASIX certificate to replace the current BASIX certificate for the original development application, or*
 - (b) if a new document is required or a document that accompanied the original development application requires amendment—the new or amended document.**
- (5) If the amendment will result in the development differing materially from the description contained in the BASIX certificate that accompanied the original development application, the application must be accompanied by a new BASIX certificate that takes account of the amendment.*
- (6) If the amendment will result in a change to the development, the application must contain details of the change, including the name, number and date of any plans that have changed, to enable the consent authority to compare the development with the development originally proposed.*
- (7) A requirement to use the NSW planning portal under this section does not apply if the development application is subject to proceedings in the Court.*

38 Determination of application for amendment of development application

- (1) The consent authority may, through the NSW planning portal, approve or reject an application for an amendment to a development application submitted under section 37.*
- (2) If the consent authority approves the amendment, the development application is taken to be lodged on the day on which the applicant applied for the amendment if the consent authority—
 - (a) considers the amendment not to be minor, and*
 - (b) notifies the applicant, through the NSW planning portal, that the later day applies.**
- (3) If the consent authority approves an amendment to a development application for integrated development or development requiring concurrence, the consent authority must, as soon as practicable after approving the amendment, give a copy of the amended development application to the approval body or concurrence authority through the NSW planning portal.*
- (4) A requirement to use the NSW planning portal under this section does not apply if the development application is subject to proceedings in the Court.”*