

## Use of Innovation Plaza for Outdoor Seating SSD Modification

### Submission by the Rail, Tram and Bus Union Retired Members Association

The RTBU RMA opposes the requested modification for seating and tables for 220 pub patrons in part of the western side of Innovation Plaza. The Association argues the modification proposal does not meet the requirements of 4.15 and 4.55(1A) of the EPA Act.

### Comments on the Applicants Modification Statement

#### 2.2 Site Identification

No reference is made to the history, role and function of Innovation Plaza and the role it plays within the South Eveleigh Precinct. It is the major pedestrian thoroughfare, a green oasis for the many thousands of precinct workers and the local community, and hitherto an exclusive Public Recreation Zone.

The Department of Planning in policy documents has described public spaces as the “*heart of everyday life*”. The Greater Cities Commission has observed that the Covid 19 epidemic has seen a dramatic increase in activities in public spaces.

The application attempts to minimise the impact by referring to the seating areas as occupying only a small area of the Plaza or 16% of the total area of the Plaza. This figure fails to take into account the cumulative impact of SSD 8517 on the plaza including the impact of the Loading Bay. It completely ignores the fact that many activities and groups, particularly families will be deterred from using the plaza because of the presence of up to 220 pub patrons. The impact of the seating for 220 pub patrons will dominate the Plaza in many ways.

The application at p7/8 attempts to summarise the outcomes of the application. The Association argues the modification does not refer to permanent use (it is subject to a five year trial) nor does it refer to the western portion of the Plaza but a limited area of the western side, specifically designated. Modification 7 approved of only one built structure envelope and the awning structures were not approved as they were withdrawn following public comment.

#### Proposed Consent Conditions

As indicated in consent condition A19A, seating areas, the requirement was for “*the **Exact**(our emphasis) location ,size, number of patrons/seats must be the subject of a separate application*”.

The applicant includes Condition A2. The proposed modification is to “*add drawing 00-04 which shows the indicative furniture layout.*” The Association argues this should not be allowed as it does not meet consent condition A19A (b) which requires “*the exact location, size ,number of patrons/seats etc*” The same issue applies to proposed A19 B. the Association notes there are many examples in SSD modifications where the lack of exactitude has led to different outcomes.

The Association has a number of queries concerning the proposed conditions.

- Will A 19 (B)(f) requiring the seating be reduced to 120 from 10pm to midnight result in the seats and tables being removed at 10pm for inside storage?
- Will the seating /tables be surrounded by barriers to delineate the patron areas from the public spaces?

If not already covered by existing consent conditions the Association recommends a condition of consent that enables the whole of Innovation Plaza to be utilised for a range of events. The Association notes The Departments Assessment Report for SSD 8517 at p54 under the heading *Temporary events: “the applicant seeks approval for use of Bays 1-4a and Innovation Plaza for temporary community events such as cooking classes, soft arts workshops and larger events such as blacksmithing conventions, social meetings or markets....the Department supports the use of Bays 1-4a and Innovation Plaza for temporary community events.”*

### **Substantially the same development**

The EPAA requires that a modification application involves minimal environmental impact.

The Association argues that the modification will have a major environmental impact on the local community because of the overriding of the public recreation zone conferred by the Redfern -Waterloo Authority and the easements and covenants put in place by Urban Growth as part of the sale process. Redfern has less public space per capita as recommended by the WHO and when compared to other suburbs within the LGA and the wider Sydney community.

The experiences of Covid 19 have reinforced the importance of public spaces. The approval of the outdoor seating proposal will in effectively gut Innovation Plaza as a public space designated for Public Recreation. The Association argues this modification application does not have a minimal environmental impact as required by the EPAA.

The EPAA sets out S4.55(1A) requirements to be followed by a consent authority. S4.55 1A (b) concerns a threshold issue of assessing whether the consent authority *“is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified”*.

The Association argues that the proposed development is not substantially the same development, and the application should be rejected because of:

- The original SSD application was for a seating area of 300 square metres which in broad terms allows for some 100 seated patrons. This is some 50% of the area of the seating /patrons the current modifications seek approval for.
- The retail premises that are now located in Bay 1 differ markedly from what the applicant sought in the original SSD 8517 application. That application sought

artisan/bespoke retail food outlets (think speciality cheese and butcher shops) and it was framed and presented as a hybrid heritage interpretation/bespoke retail development application in which heritage interpretation would take the lead role. The applicants supporting documentation for the SSD application referred to the interpretation in Bays 1 and 2 North as a hybrid interpretation /artisan retail zone.

The current application at p13 in outlining the original approval for SSD 8517 refers to *artisan food and drink industry*. The seating area granted by the consent authority was for these type of retail premises, not a single food and drink outlet which caters for 750 patrons.

The Association argues it is not possible to see the current modification application as substantially the same in terms of number of seats/patrons, the square meterage they occupy, and the single retail outlet as compared to multiple artisan retail stores as being substantially the same as the original SSD application.

The Association argues the original seating numbers of 100 occupying 300 square metres should be trialled for a five-year period to enable an assessment of the demand for outdoor dining and any issues encountered. Such a measure would have a significantly reduced impact on Innovation Plaza as a Public Recreation Zone.

The development which the modification seeks to alter is substantially different to the purposes for which the original consent was granted in SSD 8517 and should be rejected as not meeting the requirements of the EPAA.

### **Amenity and Innovation Plaza**

The applicant argues the proposed modification will contribute to the amenity of Innovation Plaza. No consideration is given in the supporting documentation of the current role of the Plaza as a green oasis for the up to 10,000 workers who now occupy the South Eveleigh Precinct.

In section 5.3 the applicant refers to other impacts of the proposed development which they outline as noise emissions from patrons, patronage behaviour and heritage impacts.

The Association argues these impacts should be broadened to include impacts on current users. Within the context of the overall site and the extent and scale of the redevelopment quiet spaces for rest and lunch breaks in the South Eveleigh Precinct are at a premium. For the thousands who use the plaza for these purposes a couple of hundred pub patrons will dominate the ambience of the whole plaza and will markedly affect the amenity for the majority.

The Association argues the substantial increase in the seating capacity represented by the application does not in terms of s4.5 (c) of the EPAA adequately address the suitability of the site for development and should be rejected.

## **Ensuring commercialising public space provides a financial return for the community**

When the ATP site was privatised in 2015 and sold to Mirvac local community organisations were confident the land zoning in place (RWA Public Recreation Zone) complemented by public access agreements and covenants would protect local icons such as Innovation plaza from redevelopment.

These agreements have been negotiated with representatives of the government and relevant departmental representatives. The decision of the IPC to overrule these planning instruments was a body blow to the local community.

The IPC 2019 determination was made based on hybrid interpretation /bespoke retail documentation with seating for approximately 100 persons.

The community has been presented with a modification application which will increase the revenue and profits for the applicant. It represents a major change to the Plazas public space.

It appears this economic advantage will skirt regulations which require the applicant to pay for the privilege of privatising public land for commercial benefit. Ordinarily, as the Association understands, outdoor seating requirements in former public spaces require a per seat payment to the relevant authority. The Sydney City Council has, for example, suspended these payments until December 2023 as part of a package to assist business to recover from the economic impacts of Covid 19.

The Association argues an equivalent amount of payment, as for example set out in CCS requirements which could be used as a benchmark for these purposes, for the pub outdoor seating should be paid by the pub owner for the privilege of commercialising a public recreation zone for private commercial gain. The Association recommends these arrangements commence from the date of their restitution by the CCS.

### **Mod 7 Condition A24.**

*A component of this condition for the use of the Public Recreation Zone was (c) for a trial period of five years from the date of issue of the first occupation certificate for the Bay 1 tenancy.*

The current application supports the continuance of the provision as a condition of consent.

The Association supports the general principle of a trial but argues the trial period should be accompanied by more specific details as to what are the terms of reference for the trial, who will monitor the trial, ensuring community members/organisations could input their views and that the process is transparent.

As to whether the trial results in the outdoor seating being established on a permanent basis, the decision should be made by the IPC.

The Association requests that as part of new conditions of consent a provision be inserted that if the tenancy in Bay 1 and 2 ceases then the outdoor seating permissions should cease, and the new tenant be required to submit a new modification if outdoor seating is sought.

## Public Interest

The Association argues that the application is not in the public interest because

- To ignore and override the EPAA which clearly states the application relates to substantially the same development as the original development would undermine public confidence in the application of the EPAA.
- No evidence has been produced that the proposed modification will enhance Innovation Plaza as a social destination. This should form part of the terms of reference for the proposed trial period. No consideration has been given to the impact of the proposal on the thousands of workers working in the Precinct.
- The proposal substitutes a public space for a private commercial space. It will cater for a very limited audience to the detriment of the public space the importance of which has been put into sharp focus by the Covid epidemic. This is particularly the case in suburbs such as Redfern which already has a dire shortage of public space. The importance of public space has been recognised by the current state government in its October 2021 *Public Spaces Charter*.
- No evidence has been presented that the modification will draw people to the South Eveleigh Precinct as a destination. Many factors will make the precinct a tourist destination but severe doubt exists as to whether one of them will be yet another pub in Redfern.
- No evidence has been presented that the proposal will create extra jobs. An important consideration here is if new jobs are created will they be insecure forms of employment with poor wages and conditions?

The Association argues that the application is not in the public interest and should be rejected.

**20 January 2023**

This submission has been prepared by [REDACTED], for and on behalf of the Rail, Tram and Bus Union, Retired Members Association

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