

28 November 2019

16457
CPo/MR

Jim Betts
Secretary
Department of Planning, Industry and Environment
Level 22, 320 Pitt Street
SYDNEY NSW 2000

Dear Mr Betts,

**SECTION 4.55(1A) MODIFICATION APPLICATION TO MP08_0238 (MOD 14)
1 DENISON STREET, NORTH SYDNEY**

This application has been prepared by Ethos Urban on behalf of Winten Property Group, pursuant to section 4.55(1A) of the *Environmental Planning and Assessment Act 1979* (EP&A Act) and Clause 3BA, Schedule 2 of the *Environmental Planning and Assessment Regulation (Savings, Transitional and Other Provisions) 2017* (EP&A Regulation) to modify Development Consent MP08_0238 relating to 1 Denison Street, North Sydney (the site).

The modification relates to an extension of time to deliver the public artwork prior to issue of the Final Occupation Certificate.

This application identifies the consent, describes the proposed modifications and provides an assessment of the relevant matters contained in section 4.55(1A) of the EP&A Act. This application is accompanied by a letter prepared by Creative Director (**Attachment A**).

1.0 Consent proposed to be modified

MP08_0238 was granted by the (then) Minister for Planning on 25 February 2010 for demolition of existing buildings and erection of a mixed-use development comprising a retail/commercial building at 77-81 Berry Street and a hotel building 88 Walker Street, pursuant to Part 3A of the EP&A Act. The consent has since been modified thirteen times, as follows:

- MP08_0238 MOD 1 – Modification to amend the approved building design, including a minor increase to the building envelope, amendments to façade treatments, a reinstatement of the underground service tunnel, internal reconfigurations, a reconfiguration of the public domain area, and amendments conditions of consent;
- MP08_0238 MOD 2 – Technical amendments to the wording of consent conditions to allow for the staged construction of the two separate buildings;
- MP08_0238 MOD 3 – Modification to enable extended hours of construction facilitating internal fitout works;
- MP08_0238 MOD 4 – Technical amendments to the wording of consent conditions to clarify the staging of Construction Certificates, clarify the timing for satisfying relevant conditions, and to enable temporary access works;
- MP08_0238 MOD 5 – Modification to amend the approved design, including deletion of the hotel component (at 88 Walker Street) and the associated service tunnel, reconfiguration of the commercial tower basement, retention of existing stormwater infrastructure; internal layout changes, and realignment of the approved pedestrian bridge at Denison Street;
- MP08_0238 MOD 6 – Modification to extend and redesign the lower ground and basement levels, replace and augment stormwater infrastructure, and associated modifications to various conditions; and

- MP08_0238 MOD 7 – Modification to make a number of architectural form improvements and changes to the internal floor plate requirements in order to accommodate the building's future anchor tenant, as well as responding to changes in the strategic context of the site.
- MP08_0238 MOD 8 – Modification to increase floor to floor heights within lower levels and upper plant room of the commercial building and other minor amendments to building services and approved commercial/retail tenancies.
- MP08_0238 MOD 9 – Design changes to the southern end of the lower podium of the commercial building to create a more regular floorplate and reconfiguration of the building entrance, commercial lobby and public domain to orientate the building to Denison Street at ground level. Update to Landscape Plans to clearly demarcate off-site works.
- MP08_0238 MOD 10 – Design development of the façade expression including fins and frits, louvers and roof profile lighting element. Updates to the detailed landscape design of Berry Square.
- MP08_0238 MOD 11 – Extension of the approved construction hours.
- MP08_0238 MOD 12 – Minor design changes resulting from detailed design development.
- MP08_0238 MOD 13 – Minor design changes to Berry Square and the façade material for the ground level and level 01 resulting from detailed design development.

It is noted MOD 1-9 were approved pursuant to (former) Section 75W of the EP&A Act. MOD 10-12 have been approved in accordance with s4.55(1A) of the EP&A Act and Clause 3BA, Schedule 2 of the EP&A Regulation (Savings, Transitional and Other Provisions).

2.0 Proposed modifications to the consent

2.1 Modifications to the development

The proposed modification to the development consent comprises of an extension of time to allow for the public art to be delivered prior the issue of the Final Occupation Certificate. In accordance with condition E9, the Public Art Plan was approved by North Sydney Council on the 17 July 2019. Nike Savvas, one of Australia's preeminent visual artists has been selected for the commission. The public art artwork concept is titled Epic Expander and consists of a large-scale suspended artwork consisting of over 9000 custom made glass orbs. With the installation proposed to be within the public through site link between Denison and Spring Street. The extension of time is required to allow for structural engineering investigations, procurement processes and ongoing liaising with Council which cannot be practically be resolved prior to the issue of the first Occupation Certificate.

2.2 Modifications to conditions

The proposed modifications described above necessitate amendments to the consent conditions which are identified below. Words proposed to be deleted are shown in ~~bold strike through~~ and words to be inserted are shown in ***bold italics***.

E9 Public Art

The applicant shall submit an Arts Plan for the proposed development to Council's Arts and Culture Officer for approval. The applicant shall consult with Council's Arts and Culture Officer in the design and execution stages of the Art Plan. The Artwork shall be installed in accordance with the approved Art Plan prior to completion and issue of ~~any interim~~ ***the Final*** Occupation Certificate. ~~for the approved buildings (but excluding the initial works).~~

3.0 Substantially the same development

Clause 3BA, Schedule 2 of the EP&A Regulation (Savings, Transitional and Other Provisions) states that in the application of section 4.55 (1A) of the Act to the following development, the consent authority need only be satisfied that the development to which the consent as modified relates is substantially the same development as the development authorised by the consent as last modified under section 75W. In respect of MP08_0238 the last modification under Section 75W was MOD 9.

The development, as proposed to be modified, is substantially the same development as that approved in MOD 14 of MP08_0238, in that it:

- The development, as proposed to be modified continues to relate to a commercial building now known as 1 Denison Street;
- The proposed modifications do not alter the built form of the approved development;
- The proposed modifications are considered a minor design development and do not alter the impacts of the development; and
- The modification will still result in the delivery of a high quality public art outcome.

4.0 Environmental assessment

Section 4.55(1A) of the EP&A Act states that a consent authority may modify a development consent if “*it is satisfied that the proposed modification is of minimal environmental impact*”. The following assessment considers the relevant matters under section 4.15(1) and demonstrates that the development, as proposed to be modified, will be of minimal environmental impact.

4.1 Compliance with Environmental Planning Instruments

The consistency of MP08_0238 with the relevant legislation, environmental planning instruments, policies and guidelines was considered as part of the original EAR. The proposed modification does not change the original assessment against the relevant plans, policies, and guidelines.

The proposal is limited to the extension of time to deliver the public artwork prior to the issue of the Final Occupation Certificate. In accordance with condition E9 the Public Art Plan was approved by North Sydney Council on the 17 July 2019. The artwork has been commissioned and is well progressed with the complexities of the artwork requiring additional time to be resolved. As required by condition E9, the design and execution stages of the artwork in accordance with the Art Plan are being undertaken in consultation with Council. The extension of time is to allow for further structural engineering investigations, procurement processes and ongoing consultation with Council. The extension of time will allow for the complexities of the artwork to be resolved to ensure the delivery of a high quality public art outcome upon completion of the development.

5.0 Conclusion

The proposed modifications relate to an extension of time for the delivery of the public artwork and relevant updates to condition E9. In accordance with section 4.55(1A) of the EP&A Act, the consent authority may modify the consent as:

- The proposed modification is of minimal environmental impact; and
- The development, as proposed to be modified, is substantially the same development as development for which the consent (MP08_0238, MOD 13) was granted.

We trust that this information is sufficient to enable a prompt assessment of the proposed modification request.

Yours sincerely,



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