



78-96 Arncliffe Street and 31-45 Princess Highway, Wolli Creek Modification 4

Extension to sunset date for temporary retail use
State Significant Development Modification Assessment
(MP09_0169 MOD 4)

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Glossary

Abbreviation	Definition
Council	Bayside City Council
Department	Department of Planning and Environment
EIS	Environmental Impact Statement
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
LEP	<i>Bayside Local Environmental Plan 2021</i>
Minister	Minister for Planning
RMS	Roads and Maritime Services, TfNSW
Planning Secretary	Secretary of the Department of Planning and Environment
SEPP	State Environmental Planning Policy
SRD SEPP	<i>State Environmental Planning Policy (State and Regional Development) 2011</i>
SSD	State Significant Development
TfNSW	Transport for NSW

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1 Introduction

This report provides the NSW Department of Planning and Environment's (the Department's) assessment of an application to modify the development consent for the Stage 1 Project Application for the temporary use of the site for retail purposes and demolition and construction works (MP09_1069 MOD 4).

The modification application, as amended, seeks approval to extend the sunset date for the temporary retail use of the site for a further seven years.

The application was lodged on 23 September 2021 by Ethos Urban, on behalf of Yucorp Developments Wollie Creek Pty Ltd (the Applicant) pursuant to section 4.55(2) of the *Environmental Planning and Assessment Act 1979 (EP&A Act)*.

1.1 Background

The site is located at 78-96 Arncliffe Street and 31-45 Princess Highway, Wollie Creek in the Bayside local government area. The site contains an approved supermarket, liquor store and associated car parking (**Section 1.2**).

Wollie Creek station is 200m to the north which provides services for the Illawarra and airport and south lines (**Figure 1**). The site is also located 400m to the north-east of the Bayside West Precincts, consisting of Banksia and Arncliffe, which were rezoned to provide a greater mix of housing options, transport and open space in the area.

The site and surrounding area was historically an industrial precinct which has transitioned to high density urban living. Surrounding uses include mixed use development and Discovery Point to the north, recreation uses associated with Cahill Park to the east, and mixed use development consisting of apartment buildings and existing car dealerships and sales yards to the west (**Figure 2**).



Figure 1 | Regional Context Map (Source: NearMap)



Figure 2 | Local Context Map (Source: NearMap)

1.2 Approval history

Project Approval

On 7 July 2010, the Deputy Director-General granted Project Approval (MP09_0169) for the temporary use of the site for retail purposes and demolition and construction works for a full line supermarket and a specialty retail store. The development consent has been modified two times, with one application (MOD 2) being withdrawn (see **Appendix C**).

Condition B1 sets a 15-year time limit for the sites temporary retail use as a supermarket and liquor store. The condition was imposed so the Applicant could use the site with a lower scale retail operation to provide a level of financial security, while separate Concept Plan approval was sought for a larger mixed-use development to be realised in the future. The 15-year timeframe was sought by the Applicant to establish a leasing timeframe that would attract a retail tenant to the site.

Revoked Concept Plan

Director General's Requirements were issued on 13 April 2009 for a Part 3A Concept Plan for a mixed-use development (MP08_0235) (**Figure 3**). This Concept Plan would have been progressed following the temporary retail use, however, the application was not lodged and the Concept Plan was revoked with the repeal of Part 3A of EP&A Act.

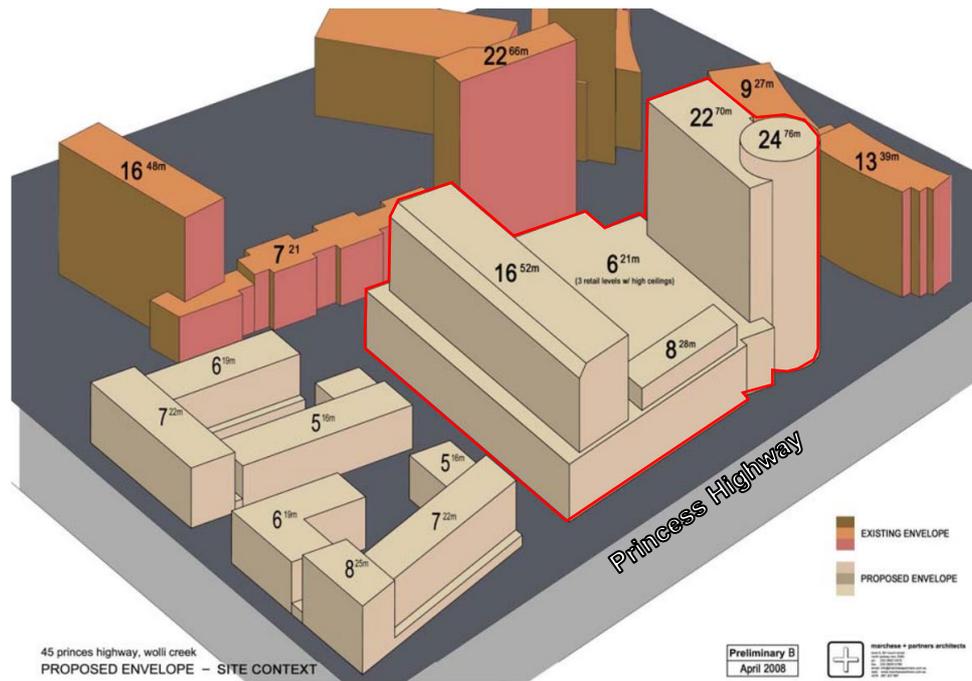


Figure 3 | Extract of the revoked Concept Plan application MP08_0235 (Source: DPE)

Local development consents

Detailed fit out of the supermarket and liquor store and site signage was progressed through separate applications to Council, consisting of:

- DA2012/137 – Internal fit-out of the supermarket (Phase A) and signage
- DA2011/384 – Internal fit-out and use of the liquor store (Phase B)

2 Proposed modification

The Applicant initially proposed to modify condition B1 to extend the current 15-year temporary use period by a further 10 years. Through the assessment, the Applicant amended the application and now seeks an extension of seven years.

No other changes are proposed.

The Applicant is seeking the seven-year extension to allow the existing retail operation to continue whilst providing additional time to progress amendments to the planning controls of the site to enable an alternative mixed-use development on the site.

3 Statutory context

3.1 Scope of modifications

The Department has reviewed the scope of the application and considers it can be characterised as a modification application as the proposal (**Appendix B**):

- would not increase the environmental impacts of the project as approved
- is substantially the same development as originally approved; and
- would not disturb any areas outside the site.

Therefore, the Department is satisfied the proposed modification is within the scope of section 4.55(2) of the EP&A Act and does not constitute a new development application. Accordingly, the Department considers that the application should be assessed and determined under section 4.55(2) of the EP&A Act rather than requiring a new development application to be lodged.

3.2 Consent authority

The Minister for Planning (Minister) is the consent authority under section 4.5(a) of the EP&A Act. However, the Director, Key Sites Assessments may determine the application under delegation as:

- a political disclosure statement has not been made
- less than 15 submissions by way of objection were received
- Council does not object.

3.3 Mandatory matters for consideration

The following are relevant mandatory matters for consideration:

- Section 4.15(1A) of the EP&A Act, including any environmental planning instruments or proposed instruments
- EP&A regulation
- likely impacts of the modification application, including environmental impacts on both the natural and built environments, and social and economic impacts
- suitability of the site
- any submissions
- the public interest
- the reasons for granting approval for the original application.

The Department has considered all of these matters in its assessment of the proposal. The Department has also given consideration to the relevant matters in **Section 5** and **Appendix B**.

3.4 Part 3A transition to State significant development

This project was originally approved under the former section 75J of the EP&A Act and was a transitional Part 3A project under Schedule 2 of the *Environmental Planning and Assessment (Savings, Transitional and Other Provisions) Regulation 2017* (EP&A (ST&OP) Regulation).

Following amendments to the EP&A Act and the commencement of the EP&A (ST&OP) Regulation, the power to modify Part 3A project approvals under former section 75W is no longer available for modifications submitted after 1 March 2018. To modify a transitional Part 3A project approval, the Minister can declare the development to be SSD by order under clause 6 of Schedule 2 of the EP&A (ST&OP) Regulation. If a declaration is made the project approval becomes a development consent which can be modified under Part 4 of the EP&A Act if it meets the relevant criteria.

On 9 June 2021, the Director, Key Sites Assessments (as delegate of the Minister), made an order under clause 6 of Schedule 2 to the EP&A (ST&OP) Regulation declaring the development the subject of project approval to be SSD. The order was published in the NSW Government Gazette on 18 June 2021 and took effect from that date.

The effect of this order is that the project approval is taken to be a development consent under Part 4 of the EP&A Act for the carrying out of the development from its scope as it existed from its transition from Part 3A to SSD.

3.5 Bayside Local Environmental Plan

The site occupies a prominent location and benefits from a range of controls under the *Bayside Local Environmental Plan 2021* (LEP) that would facilitate a larger mixed-use development. The relevant controls are summarised in **Table 1**.

Table 1 | Zoning and key development standards applying to the site under the Bayside LEP

Aspect	Site characteristic
Land use zone	B4 Mixed Use
Height limit	46m
Floor space ratio	Base FSR control of 3:1 Bonus FSR of 5:1 but only where the GFA of all non-commercial premises buildings does not exceed a FSR of 3:1.

4 Engagement

4.1 Department's engagement

The Department exhibited the proposal from 1 October to 14 October 2021 (14 days) on the Department's website. The Department also engaged with Council and Transport for New South Wales (TfNSW) and notified surrounding landowners and individuals who previously made a submission on the original Project Application.

4.2 Agency submissions

The Department received advice from TfNSW. TfNSW advised it does not object to the application and provide no additional comments given the scope of the application only seeks to extend the sunset date of the temporary retail use.

Council advised it would not be making a submission on the modification application.

A link to the submission from TfNSW is at **Appendix A**.

4.3 Public submissions

The Department received three public submissions in response to the public exhibition comprising:

- one submission in support of the application to extend the lapse date
- one submission providing comments
- one submission objecting to the application.

Issues raised in the submissions of objection/comment are summarised in **Table 1**.

Table 2 | Summary of issues raised in public submissions

Issue/comment	Comments
Amenity impacts from existing operation	<ul style="list-style-type: none">• Amenity impacts at nearby apartments consisting of noise impacts from the operation trucks within the sites loading dock and odour impacts from garbage storage.
Future development	<ul style="list-style-type: none">• Concerns that increased density from future development of the site for residential purposes will impact on amenity and sustainability.

4.4 Response to submissions

On 21 December 2021, the Applicant provided a Response to Submissions (RTS) to address the issues raised on the submissions received. The RTS amended the application to propose a shorter extension of seven years. The RTS was made publicly available on the Department's website.

Council acknowledge the benefits of a shorter extension timeframe in progressing the final development outcome of the site. TfNSW advised it had no further comment on the amended application.

5 Assessment

In assessing the modification application, the Department has considered:

- the modification application and its supporting documents
- the Environmental Assessment and conditions for the original project approval
- all submissions received on the application and the Applicant's response to them
- relevant environmental planning instruments, policies and guidelines
- the requirements of the EP&A Act

The Department has assessed the potential impacts associated with the proposal below.

5.1 Extension to temporary retail use

Condition B1 of the development consent specifies that the temporary retail use lapses on 7 July 2025. 3.5 years remain on the consent.

The proposal seeks to extend the lapse date by an additional seven years to cease on 7 July 2032. This would result in the consent changing from a 15-year temporary use to a 22-year temporary use.

The Applicant acknowledges that the consent for the supermarket and liquor store is a temporary approval and reaffirmed that it intends to pursue a mixed-use development of the site, however it contends that an extension to the consent is required to:

1. allow sufficient lead times for Woolworths to find an alternative location, should the use lapse
2. allow a potential Planning Proposal seeking amendments to the Bayside LEP planning controls for the site and/or a Development Application to be progressed with Council to respond to the vision of the Wolli Creek area.

The Applicant contends a 6 - 9.5 year extension would be required to allow these objectives to be met. This timeframe consists of master planning, planning pathway process, construction and market timing (**Figure 4**).



Figure 4 | Applicant's breakdown of requested sunset date extension (Source: RTS)

The Applicant also submitted an economic statement in support of the extension to the temporary use. The assessment contends an extension to the temporary retail use is necessary to provide a sufficient range of goods and services beyond basic convenience shopping of smaller supermarkets.

The Department has considered the Applicant's justification proposal and notes the success of the existing supermarket and amenity it provides for locals and workers through access to a wide range of goods and services who would otherwise need to travel further for their needs.

However, the Department notes that the 15-year temporary retail use was only approved to utilise the site and attract a retail tenant until the previously proposed Concept Plan application was progressed. Although this Concept Plan application was never lodged and was revoked, the existing planning controls (**Table 1**) envisage and allow a significantly larger mixed use development precinct on this site, and the continual use of the site for the supermarket and liquor store would prevent the orderly development and use of the site.

The Department therefore does not support the proposed 7-year extension. However, it is considered that a shorter extension of a maximum of five years (in addition to the 3.5 years remaining on the consent) would:

- assist in realising several planning priorities in the Eastern District Plan, including:
 - increasing housing supply within 30-minutes of public transport
 - increased walkable access to local centers through Council’s planned road hierarchy
 - additional jobs as part of a future mixed-use development.
- ensure the site contributes to short and medium term goals in Council’s Local Strategic Planning Statement to investigate future housing opportunities in the Bayside LGA
- provide sufficient time to accommodate the Applicant’s master planning process, timing to obtain other relevant development consents and construction stages to redevelop the site.

On this basis, the Department recommends Condition B1 is amended to permit the temporary retail use of the site for an additional five years from the date of the original project approval for a new total of 20 years.

5.2 Other issues

The Department’s consideration of other issues is provided in **Table 3**.

Table 3 | Assessment of other issues

Issue	Findings	Recommendation
Traffic and transport	<ul style="list-style-type: none"> • The Application includes a traffic statement which concludes vehicle and pedestrian access to the site will not change and existing entry and exit points service the site well. • TfNSW noted the application seeks to extend the temporary retail use of the site and provided no further comment. • The Department is satisfied the application would not result in any adverse traffic or access impacts beyond the existing approval as no changes to the existing 	No additional conditions necessary.

operation or customer and service vehicle access to the site are proposed.

Future development impacts	<ul style="list-style-type: none">• A public submission raised concerns regarding potential future development on the site, which could impact the livability of the area through increased density.• The Department notes this application proposes no additional works.• The site is zoned B4 Mixed Use and future re-development of the site would be subject to a separate development application to the relevant consent authority, which would be assessed on its merits.	No additional conditions necessary.
Amenity impacts	<ul style="list-style-type: none">• A public submission raised concern about noise and odour impacts from loading dock operations.• The Department notes the application only seeks to extend the lapse date of the consent and no changes to on-site operations are proposed.• The Department notes existing conditions of consent (Condition B29 and B33) outlined the requirements for operational waste areas in accordance with Council and the noise requirements for the loading dock roller doors. Further the hours of operation and noise control requirements of Conditions F3 and F4 and the Applicant's statement of commitments adequately manage site operations.• These conditions will continue to apply to the operation of the development.	No additional conditions necessary.

6 Evaluation

The Department has reviewed the proposed modification and supporting information in accordance with the relevant requirements of the EP&A Act. The Department's assessment concludes the proposal is acceptable, subject to a shorter extension of five-years as:

- it complies with the relevant statutory provisions remains consistent with relevant EPIs and the strategic planning context
- it remains consistent with the relevant matters under section 4.15(1) of the EP&A Act and the reasons for granting approval to the original project approval
- the development remains substantially the same development as it existed at the time of the transition of MP09_0169 to SSD and does not result in any adverse environmental impacts
- the recommended five-year extension can provide sufficient flexibility for the future use or development of the site.

Consequently, the Department concludes the proposal is in the public interest and should be approved, subject to conditions (**Appendix D**).

7 Recommendation

It is recommended the Director, Key Sites Assessments, as delegate of the Minister:

- **considers** the findings and recommendations of this report
- **determines** that the application MP09_0169 MOD 4 falls within the scope of section 4.55(2) of the EP&A Act
- **accepts and adopts** all of the findings and recommendations in this report as the reasons for making the decision to approve the modification
- **agrees** with the key reasons for approval listed in the draft notice of decision
- **modify** the consent MP09_0169
- **signs** the attached approval of the modification (**Appendix D**).

Prepared by:



Thomas Piovesan
Senior Planner
Key Sites Assessments

Recommended by:



Amy Watson
Team Leader
Key Sites Assessments

8 Determination

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



4 March 2022

Anthony Witherdin

Director

Key Sites Assessments

as delegate of the Minister for Planning

Appendices

Appendix A – List of referenced documents

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

- Modification Report
- Submissions
- Response to Submissions

<https://www.planningportal.nsw.gov.au/major-projects/project/42771>

Appendix B – Statutory Considerations

To satisfy the requirements of the EP&A Act, the Department's assessment of the proposed modification has given detailed assessment to a number of statutory requirements. These include:

- The matters under section 4.55(2) of the EP&A Act
- The matters listed under Section 4.15(1) of the EP&A Act, including applicable EPIs and regulations

The Department has considered these matters in its assessment of the proposal in Tables 2 and 3.

Table 4 | Consideration of 4.55(1A) of the EP&A Act

Section 4.55(2)	Assessment
a) the proposed modification is of minimal environmental impact	The development as proposed to be modified would have minimal environmental impact and would continue to operate as approved.
b) the development to which the consent as modified relates is substantially the same development for which consent was originally granted and before that consent as originally granted was modified.	The development as proposed to be modified would be substantially the same development as the development existed following its transition to SSD.
c) the application has been notified in accordance with the regulations.	The modification application has been notified in accordance with the EP&A Regulations. Details of the notification are provided in Section 4.1 of this report.
d) any submission made concerning the proposed modification has been considered.	Details of the submissions received during the notification period are provided at Section 4 of this report.

Table 5 | Consideration of the matters listed under Section 4.15(1) of the EP&A Act

Matter	Comment
<p>a) the provisions of—</p> <p>(i) any environmental planning instrument, and</p>	<p>The site is zoned B4 Mixed Use under the Bayside LEP 2021. Commercial premises, including retail premises, are permissible with development consent in the zone. The modification would not affect existing uses on-site.</p>
<p>(ii) any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Planning Secretary has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and</p>	<p>Not applicable.</p>
<p>(iii) any development control plan, and</p>	<p>Under clause 11 of the SRD SEPP, Development Control Plans do not apply to SSD.</p>
<p>(iiia) any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4, and</p>	<p>Not applicable.</p>
<p>(iv) the regulations</p>	<p>The modification application satisfactorily meets the requirements of the <i>Environmental Planning and Assessment Regulation 2000</i>, including the procedures relating to applications (Part 6), notification (Part 6, Division 6), and fees (Part 15, Division 1AA) (refer to Section 4).</p>
<p>(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.</p>	<p>The Department considers the likely impacts of the proposed modification are acceptable and have been appropriately addressed via conditions of consent (refer Section 5 of this report).</p>
<p>(c) the suitability of the site for the development</p>	<p>The site and its use remains suitable for the development but only temporarily, based on the scope of MP09_0169 and the approved retail use.</p>
<p>(d) any submissions</p>	<p>The Department has considered the submissions received (refer to Section 4 and 5 of this report).</p>
<p>(e) the public interest</p>	<p>The Department considers the proposed modification is in the public interest.</p>

Reasons given by the consent authority for the grant of the consent that is sought to be modified.

The Department has considered the reasons given by the consent authority for the grant of the original consent in its assessment in **Table 6** below.

The Department considers the development as proposed to be modified remains consistent with the reasons for grading development consent to the original Project Approval as detailed in **Table 6**.

Table 6 | Reasons for granting development consent to MP09_0169

Reason	Consideration
Period of temporary use	The Department recognised the temporary retail use of the site was an underdevelopment of the site as part of its original assessment and considers an additional extension of a maximum five years is appropriate. The Department considers this extension will allow sufficient time for the Applicant to progress an alternative development scheme for the site, or pursue permanent retail use with the existing supermarket if desired, subject to future assessment by the relevant consent authority.
The public interest/benefit	The extension to the temporary retail use is still considered to be in the public interest as it will maintain: <ul style="list-style-type: none">• the current improvements of the site from its previous light industrial use• the supply of a wide range of goods and services for local residents and workers in the Bayside area near public transport• retail competition in a growing area of Sydney• operational employment opportunities for staff• improved public domain and landscaping.

Environmental Planning instruments

To satisfy the requirements of section 4.15(1)(a)(i) of the EP&A Act, the following EPI's were considered as part of the assessment of the modification application:

- *State Environmental Planning Policy (State and Regional Development) 2011*
- *State Environmental Planning Policy (State Significant Precincts) 2005* (formerly the Major Development SEPP)
- *Bayside Local Environmental Plan 2021*
- *State Environmental Planning Policy No 64 – Advertising and Signage*
- *State Environmental Planning Policy (Infrastructure) 2007*
- *State Environmental Planning Policy No. 55 – Remediation of Land*

- *Draft State Environmental Planning Policy – Remediation of Land*

The Department undertook a comprehensive assessment of the application against the relevant EPIs in its original assessment as they existed at the time of the Project Approval. The Department has considered the above EPIs and is satisfied the modifications do not result in any inconsistency with these EPIs.

Appendix C – Previous modifications to the consent

Prior to its transition to SSD, MP09_0169 had been modified three times. These modifications are summarised in **Table 7**.

Table 7 | Summary of MP09_0169 Modifications

Mod No.	Summary of Modifications	Approval Authority	Type	Approval Date
MOD 1	Retail floorspace increase, extension of loading dock hours, amending car parking, relocate plant and equipment, design changes and allow staged development contribution payments.	Director (Metro)	75W	22/2/2011
MOD 2	Remove the requirement to dedicate land and to incorporate design changes in response to a Road Safety Audit	N/A	75W	N/A - Withdrawn
MOD 3	Amend built form and layout of the specialty retail use (Dan Murphy's)	Director	75W	14/3/2013

Appendix D – Notice of Modification

- MP09_0169 MOD 4:

<https://www.planningportal.nsw.gov.au/major-projects/project/42771>

Appendix E – Consideration of Public Submissions

A summary of the Department's consideration of the issues raised in submissions is at **Table 8**.

Table 8 | Department's consideration of key issues raised in public submissions

Issue	Consideration
Amenity impacts from existing operation	<p>A submission raised concern regarding noise from service vehicles and odour impacts from the use of the sites loading dock.</p> <p>Existing Conditions B29 and B33 required operational waste and loading dock design to meet Council requirements and have regard to the noise emissions at the detailed design stage.</p>

Existing Conditions F3 and F4 adequately manage the hours of operation and the noise control of plant and machinery material respectively.

The Statement of Commitments also manage hours deliveries are made to the site. Further detailed operational matters are addressed by consents issued by Council.

Impacts from future development

This application seeks to extend the operational period of the development consent for the temporary retail use and does not propose any changes to built form.

Notwithstanding, the current development does not realise the potential for the site, noting the Bayside LEP permits a maximum height of 46 m and FSR or up to 5:1. On this basis, any future development application would be assessed on its merits by the relevant consent authority.
