



Planning & Environment

STATE SIGNIFICANT DEVELOPMENT: Section 96 (1A)

(SSD 6387 MOD 1)

Ferry Wharf Mixed Use Development

1 Burroway Road, Wentworth Point



Secretary's
Environmental Assessment Report
Section 96(1A) of the
Environmental Planning and Assessment Act 1979

April 2015

Cover Photograph: View from foreshore drive between buildings B and C looking south (source: Cover Sheet of EIS for SSD 6387 13.05.14).

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1. BACKGROUND

The purpose of this report is to assess a modification request to the development approval SSD 6387 for the construction of a mixed use development at 1 Burroway Road, Wentworth Point, Sydney Olympic Park (SOP), pursuant to Section 96 (1A) of the *Environmental Planning and Assessment Act 1979* (the EP&A Act). The modification seeks approval to amend Condition B17 *Access for People with Disabilities* to remove a requirement for compliance with the Sydney Olympic Park Authority (SOPA) Access Guidelines 2011.

1.1 The Site

The site is located at 1 Burroway Road, Wentworth Point within the Auburn Local Government Area (LGA). The site is located on reclaimed, former industrial land at the northern end of Wentworth Point, bound by the Parramatta River to the north and east and parklands to the south and west. The site forms part of the area identified by Sydney Olympic Park Master Plan 2030 which includes specific planning controls.

The site is owned by the SOPA and accommodates the Sydney Olympic Park Ferry Terminal.



Figure 1: Subject site on Parramatta River in context of Wentworth Point Urban Activation Precincts and Homebush Bay West town centre (source: Applicant's EIS to SSD 6387).

1.2 Previous Approvals

On 1 December 2014, the Secretary of the Department of Planning and Environment approved a State Significant Development Application (SSD 6387) for construction of three 8 storey residential buildings above ground floor retail/commercial podiums and a three level basement structure and associated public domain works.

2. PROPOSED MODIFICATION

The proposal seeks to modify Condition B17 to remove the requirement for access and facilities for people with a disability in accordance with the provisions of the SOPA Access Guidelines 2011. In particular, the SOPA Access Guidelines require 100% of apartments to be visitable and 10% of apartments to be adaptable.

As proposed, Condition B17 would be amended to read as follows:

Access for People with Disabilities

B17 The building must be designed and constructed to provide access and facilities for people with a disability in accordance with the Building Code of Australia and ~~SOPA Access Guidelines 2011 unless where there is an appropriate alternate solution as determined by a suitable qualified access consultant.~~ The Certifying Authority must ensure that evidence of compliance with this condition from an appropriately qualified person is provided and that the requirements are referenced on any Construction Certificate drawings.

3. STATUTORY CONTEXT

3.1 Modification of Approval

Section 96(1A) of the EP&A Act provides that a consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority, and subject to and in accordance with the regulations, modify a consent that is deemed to be substantially the same development.

Section 96(1A) of the EP&A Act identifies a number of matters which need to be considered in respect of modification applications, which are identified in **Table 1** below.

Table 1: Matters to be considered under Section 96(1A) of the EP&A Act

<i>Consideration</i>	<i>Comment</i>
<i>The proposed modification is of minimal environmental impact</i>	<ul style="list-style-type: none"> The proposed modification relates to an accessibility requirement which will only affect minor internal changes to the development as approved and is therefore of minimal environmental impact.
<i>The development to which the consent as modified relates is substantially the same as the development originally approved</i>	<ul style="list-style-type: none"> The proposal would involve only minor internal changes to the development and is therefore substantially the same as originally approved.
<i>Whether notification has occurred and any submissions have been considered</i>	<ul style="list-style-type: none"> The modification application was publicly available on the Department's website. Sydney Olympic Authority and Auburn City Council do not object to the modification.
<i>Consideration of relevant matters referred to in Section 79C(1) of the EP&A Act</i>	<ul style="list-style-type: none"> The relevant considerations under Section 79C (1) are the impacts on the built environment and the social impacts of the proposed modification. The development will continue to provide adequate access for people with a disability as outlined in Section 5.

3.2 Environmental Planning Instruments (EPIs)

The following EPIs were considered in the environmental assessment of the original development application:

- *State Environmental Planning Policy (State and Regional Development) 2011;*
- *State Environmental Planning Policy (Infrastructure) 2007;*
- *Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005;*
- *State Environmental Planning Policy No 65 - Design Quality of Residential Flat Development*
- *State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004; and*
- *State Environmental Planning Policy No 55 - Remediation of Land.*

The Department concludes the proposed modifications will continue to comply with the previously considered relevant EPIs.

3.3 Delegated Authority

In accordance with the Minister for Planning's delegation of 16 February 2015, the A/Director, Key Site Assessments may determine the application as:

- the relevant local Council (Auburn City Council) has not made an objection;
- a political donation disclosure statement has not been made; and
- there are no public objection submissions to the proposed modification.

4. CONSULTATION AND SUBMISSIONS

4.1 Notification

The application was notified in accordance with the *Environmental Planning & Assessment Regulation 2000*. The modification request was made available on the Department's website and referred to Auburn City Council and SOPA for comments. Due to the minor nature of the proposal, the modification request was not exhibited by any other means.

4.2 Auburn City Council

Auburn City Council does not object to the proposed modification.

4.3 Sydney Olympic Park Authority (SOPA)

SOPA does not object to the proposed modification.

4.4 Public Submissions

No public submissions were received in relation to the modification request.

5. CONSIDERATION OF PROPOSED MODIFICATION

The key issue in the Department's assessment is visitability to apartments, which is a requirement of the SOPA Access Guidelines 2011 and Condition B17 of the approval.

Condition B17 requires that the development must be designed and constructed to provide access and facilities for people with a disability in accordance with both:

- the Building Code of Australia; and
- the SOPA Access Guidelines 2011

unless there is an appropriate alternate solution determined by a suitably qualified access consultant.

The BCA requires that the design of the approved development is capable of providing people with a disability the ability to access and use common areas / facilities of the mixed use and residential parts of the development, extending to the entrance door of each apartment.

SOPA Access Guidelines aim to provide independent, equitable and inclusive access for people with disabilities. The guidelines primarily relate to facilities and venues within SOP, however also provide two specific requirements for all multi unit residential development in SOP:

- all apartments (100%) are to be designed so as to be visitable by people with a disability at the time of initial construction. This includes providing continuous accessible paths and circulation spaces to all living areas including toilets to meet AS1428.1 - Design for access and mobility standard; and
- a minimum of 10% of all residential apartments designed to enable ease of adaptability by residents in the future in accordance with AS4299 – 1995 – Adaptable Housing. This includes accessible paths and circulation spaces to living areas, bedrooms, bathrooms and laundries.

The proposal is capable of complying with the BCA and providing a minimum of 10% of apartments as adaptable apartments. However the applicant contends that the visitable access requirements of the SOPA Access Guidelines are unreasonable and cannot be accommodated without significant redesign of the entire development. Further, this level of accessibility is not required by the Department or Auburn Council for developments outside the Sydney Olympic Park (SOP) area. In particular, the requirement for all apartments to be designed as visitable by people with a disability is not required by access policies for other areas, or in SEPP 65.

The Department supports the principles of equitable access for residents and visitors to access apartments, parking and communal use areas. In this regard, unimpeded access should be provided to all car park and building entries, internal corridors, lifts and internal and external communal open spaces in accordance with the BCA. However, the requirement for 100% of apartments to be visitable is above and beyond accessibility standards in the BCA and local planning controls, including the Auburn Development Control Plan 2010 which applies to neighbouring land outside of the SOP boundaries.

The Department also notes that:

- the requirement for 100% of apartments to be visitable is unique to SOP;
- the requirement for visitable apartments has not been consistently applied to residential developments within SOP;
- the Auburn DCP 2010, which applies to land outside of SOP immediately to the east and west of the site, does not provide any requirements for visitable apartments;
- 10% of apartments which are designed as adaptable apartments will also be visitable in their post adaptation state;
- unimpeded access is provided to all building entries through all common areas and to the front door of apartments, at which time visitors could be assisted by residents into and around the apartment, if required; and
- Auburn Council and SOPA have raised no objections to the proposed modification.

On this basis, the Department supports the amendment to Condition B17 to remove the requirement for compliance with the SOPA Access Guidelines. The Department is satisfied that acceptable level of access for people with a disability is achieved through compliance with the BCA and provision of a minimum of 10% of apartments as adaptable apartments. The Department recommends that a new Condition B17A is added to ensure that a minimum of 10% of apartments are designed as adaptable apartments in accordance with AS 4299 – 1995 – Adaptable Housing.

6. CONCLUSION

The modification application has been assessed in accordance with the matters for consideration under Section 96(1A) and 79C of the EP&A Act, and all relevant environmental planning instruments, and is considered acceptable.

The Department has assessed the merits of the Section 96 (1A) modification application, taking into consideration requirements of the BCA, SOPA's Access Guidelines 2011 and the Auburn DCP 2010.

The Department is satisfied that the development will provide an acceptable level of accessibility for people with a disability through compliance with the BCA in relation to access to the building / car park entries and all common areas and the requirement for 10% of apartments to be adaptable.

The requirement for visitable apartments is considered unreasonable and unjustified in the circumstance, and would not be applicable to developments of this scale and nature outside of SOP.

The Department considers that the proposed modification does not result in additional environmental impacts compared to the existing approval, will not alter the nature of the approved mixed use development or the suitability of the site for the development.

The Department therefore supports the proposed amendment.

7. RECOMMENDATION

It is recommended that the A/Director, Key Site Assessments:

- a). **consider** the findings and recommendations of this report;
- b). **approve** the modification subject to the conditions under Section 96(1A) of the *Environmental Planning and Assessment Act 1979*; and
- c). **sign** the attached Instrument Modification of Development Consent (**Appendix B**).


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APPENDIX A MODIFICATION REQUEST

See the Department's website at:

http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=6387

APPENDIX B MODIFYING INSTRUMENT OF APPROVAL

