

Our Ref: 15756
Council Ref: SSD 7317

18 December 2018

15756

Carolyn McNally
Secretary
Department of Planning & Environment,
GPO Box 39, Sydney NSW 2001

Attention:

Dear Brendon

SSDA 7317 - MOD 15 - SECTION 4.55(1A) MODIFICATION APPLICATION PUBLIC DOMAIN, AUSTRALIAN TECHNOLOGY PARK, EVELEIGH

This application has been prepared by Ethos Urban on behalf of Mirvac Projects Pty Ltd (Mircvac) pursuant to section 4.55(1A) of the *Environmental Planning and Assessment Act 1979* (EP&A Act) to modify Development Consent SSD 7317 which relates to the development of a commercial campus at the Australian Technology Park, Eveleigh (the site).

The purpose of this modification request is to seek approval to:

- amend the timing related to the implementation of Condition F23; and
- revise the structure of Condition E1.

No physical works are proposed.

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.

1.0 Consent proposed to be modified

Development consent (SSD 7317) was granted by the Planning Assessment Commission on 20 December 2016 for a Commercial campus at the Australian Technology Park, including:

- Site preparation works, site clearance, excavation and remediation;
- Construction of three mixed use buildings with a total gross floor area (GFA) of 108,412m² comprising:
 - Building 1 for commercial/ office, retail and child care uses (GFA of 46,830 m²/ height of nine storeys);
 - Building 2 for commercial/ office and retail uses (GFA of 56,554 m²/ height of seven storeys);
 - Building 3 for retail, gym, child care, community office and commercial uses (GFA of 5,028 m²/ height of four storeys).
- Car and bicycle parking;
- Landscaping, road and public domain works; and
- Building identification signage zones.

1.1 Previous Modification Applications

Since the original approval, there have been several applications seeking to modify the original development. These include:

- Modification 1 – which sought changes Condition B53 (as noted in Section 1.1). This modification was approved on 26 June 2017.
- Modification 2 – which sought changes to signage zones on Building 1, lower ground floor layout reconfiguration of Building 2 and amendments to Conditions B4 and B8. This modification was approved on 22 August 2017;
- Modification 3 – which sought amendments to the design of Building 3 (the community building) which included an increase to the overall GFA of Building 3 by 406 m². This modification was approved on 1 December 2017;
- Modification 4 – which sought approval for the placement of mechanical exhausts, flues, vents and photovoltaics on top of the roof of Building 1 and amendments to the wording of Condition A14. This modification was approved on 20 October 2017;
- Modification 5 – which sought approval for the construction of a concrete base structure beneath Locomotive Street to house a travelator that will connect Bay 4 of the Locomotive Workshop to the lower ground floor of Building 2. This modification application was approved on 29 June 2018.
- Modification 6 – which sought amendments to the internal configuration of the Lower Ground Floor and Upper Ground Floor levels of Building 2, the provision of new doorways into the Upper Ground Floor level retail tenancies and minor amendments to façade materials and signage zones. This modification application was approved on 16 August 2018.
- Modification 7 – which sought minor amendments to Building 1 in relation to the façade materials and the addition of a signage zone, plant, louvres and an awning. This modification application was approved on 17 July 2018.
- Modification 8 – which sought a modification to the approved bicycle parking and storage lockers within Building 1 and Building 2 of the ATP precinct. This modification application was approved on 24 September 2018.
- Modification 9 – which sought approval for minor amendments to Building 1, including the use of the Level 1 terrace as trafficable space for the building's commercial tenants, use of the Level 7 breakout area / terrace as trafficable space for the building's commercial tenants and minor alterations to the approved entrance doors. This modification application was approved on 30 November 2018.
- Modification 10 – which sought approval for minor design amendments to Building 3 in response to future tenant requirements. The modification application was approved on 3 September 2018.
- Modification 11 – which seeks approval for minor word changes to the delivery and timing of various conditions within the Instrument of Approval. This modification application was approved on 15 November 2018.
- Modification 12 – which seeks approval for amendments to the approved Landscape Masterplan, the introduction of a Public Domain external signage strategy and a mechanism for minor changes to the approved detailed landscape and public domain plans. This modification application was approved on 13 December 2018.
- Modification 13 – which sought approval for an extension to the external terrace area at the Lower Ground Floor of Building 1. This modification application was approved on 23 October 2018.
- Modification 14 – which sought approval for minor amendments to the roof profile, materials and signage zones on Building 2. This modification application was approved on 30 October 2018.

2.0 Background to the proposed modification of Condition F23

The following sections outline Mirvac's dealings with the relevant stakeholders and the obligations that the stakeholders have and are imposing upon Mirvac to enable them to construct the improved pedestrian connection between Redfern Station and the site.

2.1 Concept Design Consultation Process to satisfy Condition B58

As the Department are aware, under Condition B58, Mirvac were required to *"prepare design options for improved and safer pedestrian connectivity between Redfern Station and the site (i.e. along part of Cornwallis Street/ Marion Street), in consultation with relevant authorities and stakeholders, including TfNSW, Urban Growth NSW Development Corporation and Council"*.

In March 2017, consultation commenced with all relevant stakeholders including City of Sydney Council (Council), TfNSW, Urban Growth, RMS, CBA and Railcorp in order to finalise a preferred design to satisfy the requirements of Condition B58. The consultation involved the following:

- Preparation of, and agreement by all stakeholders of a design brief to enable Mirvac to progress with concept design options – This process took 3 months.
- Preparation of concept design options, review by stakeholders and achievement of an agreed final design – This process took approximately 9 months and involved 7 design revisions.

The final design the 8th design iteration, which was endorsed by all stakeholders was then submitted to the Department of Planning (the Department) on 8 June 2018 for approval and to satisfy Consent Condition B58. The Department formally discharged Condition B58 on 27 July 2018. In total, the process required to obtain approval of the concept design and have Condition B58 discharged has taken 16 months.

2.2 Detailed Design Documentation and approvals to be able to commence construction

Following the concept design approval, Mirvac has undertaken extensive site investigation and survey works due to the proximity of the affected land to Redfern Station. Notwithstanding this, Mirvac finalised the detailed design documentation in early September 2018.

Because the works associated with these improvements are located on several land parcels that are owned separately by RMS, Council, and TfNSW (RailCorp), the detailed design documentation has required three separate landowner approvals.

An overview of Mirvac's experience to date, in its dealings with each landowner in regard to obtaining the necessary approvals required to commence construction is outlined in the below sections:

Council

- Detailed construction level documentation, in accordance with Council's standard details was submitted under a Works on the Public Way Application on Monday 3rd September 2018. At the time of submission, Mirvac were advised that the maximum approval timeframe for a Works on the Public Way submission was 10 weeks.
- After several design revisions and re-submissions to Council, Mirvac received approval for the Works on the Public Way submission on 12 December 2018. This approval was provided approximately 15 weeks after the first submission to Council. Accordingly, this has significantly delayed the construction program.

TfNSW acting for RailCorp

- In January 2018, Mirvac were advised that TfNSW would be the sole point of contact for the project (rather than Mirvac dealing separately with the individual rail authorities (TfNSW, Sydney Trains, RailCorp)).
- Mirvac were advised by TfNSW that in order to carry out works on RailCorp Land, an Access Deed Agreement between TfNSW and Mirvac would need to be executed in order for construction works to commence on TfNSW land.
- Mirvac and TfNSW and their respective legal teams negotiated and revised the Access Deed Agreement to meet both parties' requirements from April 2018 until present. In November 2018, Mirvac were advised that TfNSW were required to change the Access Deed Agreement to a Licence Agreement for their own internal legal purposes.
- Mirvac are still awaiting the final Licence Agreement from TfNSW which Mirvac understand cannot be finalised until Sydney Trains approve the design documentation. Mirvac have not been privy to the consultation and review process which has occurred internally between TfNSW and Sydney Trains because as outlined above, Mirvac were advised that TfNSW were the sole rail authority that they were to liaise with on this matter.
- Despite continual follow up with TfNSW, it is understood that Sydney Trains have still not provided TfNSW with the required approvals, which will enable the Licence Agreement to be executed between Mirvac and TfNSW. Without the execution of this Agreement, construction works cannot commence. This process has significantly delayed and continues to delay Mirvac's construction program.
- Further to this, in order to remove trees on TfNSW land, Mirvac are also required to submit a Tree Removal on Private Land Application to Council. The application form is required to be signed by the landowner (RailCorp) prior to being submitted to Council. As Mirvac understands it to be a lengthy approval process, Mirvac made a request to TfNSW to have this form signed by RailCorp in July 2018. This form has not yet been signed and Mirvac understand that TfNSW will not have this signed until the above outlined Licence Agreement is executed. Therefore, Mirvac have still not received approval to remove the trees. Not being able to remove the required trees will significantly delay the construction process. It should be noted that the trees requiring removal were approved by all authorities during the Condition B58 consultation process, and are marked for removal on the plan that has been endorsed by the Department under Condition B58.

RMS

- RMS approved Mirvac's construction documentation on 15th November 2018. Mirvac is therefore able to commence construction works on RMS land when the remaining authority approvals are received.

2.3 Post Construction finalisation process

- Within the approval letter issued by Council to Mirvac on 12 December 2018, Council has specified 11 construction hold points. Mirvac is required to certify each of these hold points with a civil certifier, in addition to providing Council with 24 hours notice for inspection of each hold point. Due to the availability of Council staff, it is predicted that there may be further delays in checking off each required hold point, which is likely to delay construction works further.
- In addition, the final hold point issued by Council outlines that a Certificate of Completion cannot be issued until all defects identified by Council are rectified. The Certificate of Completion is required by Mirvac's Private Certifier in order to close out SSDA 7317 Condition F23. Therefore, if the Certificate of Completion from Council cannot be provided until all defects are rectified, there are concerns that this may further delay construction finalisation and the discharge Condition F23.

3.0 Proposed modifications to the consent

3.1 Modifications to the development

This modification application does not propose any physical works to the approved development.

3.2 Modifications to conditions

This modification seeks minor word changes to Condition F23 and a revision to the structure of condition E1 within the Instrument of Approval for SSD 7317. Words proposed to be deleted are shown in ~~bold strike through~~ and words to be inserted are shown in ***bold italics***. Justifications for the proposed amendments are also included in the relevant sub-sections.

3.2.1 Proposed modification to Condition F23

In light of Mirvac's experience to date with respective authorities and anticipated further delays that will be incurred (as set out in Section 2), all of which are outside of Mirvac's control, approval is sought to amend the timing of implementation of the improved pedestrian connectivity as set out in Condition F23.

Improved Connectivity to Redfern Station

F23 ~~Prior to the issue of the first Occupation Certificate~~, the Applicant shall provide to the PCA evidence that the measures to improve pedestrian connectivity between the site and Redfern Station (i.e. along part of Cornwallis Street/ Marian Street), as identified through Condition B58, have been implemented ***within 9 months of the issue of the first Occupation Certificate for Building 1.***

Justification

The extensive time delays incurred to date on this project and the further delays anticipated in obtaining the necessary authority approvals in order to commence construction and obtain a Certificate of Completion as outlined in Section 2, have necessitated the required changes to Condition F23.

Given the works required to be implemented under Condition F23 are unlikely to be completed before the Occupation Certificate of Building 1 is to be issued, Mirvac seek the proposed amendment to Condition F23.

Mirvac remain highly committed to delivering a public benefit in the form of an improved pedestrian connection between Redfern Station and the site. All applications for the necessary approvals have been made (with the exception of the Tree Removal on Private Land Application due to TfNSW delays in providing the required signature) and Mirvac are continually pushing the relevant authorities for the required approvals. Despite this, the timing delay's that are affecting commencement of construction and those that are likely to be incurred by Council's hold points, are completely outside of Mirvac's control.

3.2.2 Proposed Modification to Condition E1

Remediation and Site Validation

- E1 ~~Within 6 months of the completion of the remediation works to the site, and prior to the issue of any Occupation Certificate, the Applicant shall submit a detailed Site Audit Summary report and Site Audit Statement and Validation Report to the EPA, the Secretary, the Certifying Authority, and the Council. The validation and audit process may occur progressively to the satisfaction of the site auditor.~~**

Buildings 1,2 & 3

Within 6 months of the completion of the remediation works to the land associated with Building 1,2 and 3 and prior to the issue of any Occupation Certificate, the Applicant shall submit a detailed Site Audit Summary report and Site Audit Statement and Validation Report to the EPA, the Secretary, the Certifying Authority, and the Council. The validation and audit process may occur progressively to the satisfaction of the site auditor.

Public Domain Areas 1 & 2

Within 6 months of the completion of the remediation works to the public domain, the Applicant shall submit a detailed Site Audit Summary report and Site Audit Statement and Validation Report to the EPA, the Secretary, the Certifying Authority, and the Council. The validation and audit process may occur progressively to the satisfaction of the site auditor.

Justification

Under Condition B53D(i), design enhancements (approved under Condition B53AA) within Public Domain Area 1 are able to be completed prior to the issue of the first Occupation Certificate for Building 2.

However, Condition E1, as currently worded, continues to require the remediation and site validation of the whole of Public Domain Area 1 (including any changes made under Condition B53AA) to be completed prior to the Occupation Certificate for Building 1. Accordingly, there is a disparity between the two conditions and their timing.

Given the Building 1 Occupation Certificate is targeted for early April 2019 and areas such as the Wellness Precinct will still be under construction at this time, the proposed revised wording for Condition E1 seeks to ensure that the relevant Building Site Audit Statement (and other requirements of condition E1) can be completed in-line with each Building's relevant Occupation Certificate. The revised wording also provides the same flexibility that is afforded by Condition B53D(i) to deliver the planned Public Domain enhancements.

4.0 Substantially the same development

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 development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all)”*.

The development, as proposed to be modified, is substantially the same development as that originally approved in that:

- The proposed amendments do not seek to modify the approved uses or maximum building envelopes;
- The proposed amendments do not seek to modify the development and only seek amendments to two conditions of consent;
- The environmental impacts of the modified development remain substantially the same as the approved development; and
- The proposed modifications do not give rise to any new matters/ areas of non-compliance and minimal environmental impact.

5.0 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”*. Under section 4.55 (3) the consent Authority must also take into consideration the relevant matters to the application referred to in section 4.15 (1) of the EP&A Act. The EIS submitted with the original State Significant Development Application addressed the following environmental impacts:

- Consistency with relevant legislation, Strategic and Statutory Plans;
- Built form and design quality;
- Public Domain and urban design;
- Transport, traffic and access;
- Aboriginal and European heritage;
- Accessibility;
- Noise and vibration;
- Civil infrastructure and utilities;
- Railway infrastructure;
- Operational waste management;
- Geotechnical implications;
- Contamination;
- Wind impacts;
- Reflectivity;
- BCA and Fire Safety;
- Social and economic impact;
- Crime prevention and public safety;
- Environmental and construction management;

- Ecologically sustainable development;
- Development contributions;
- Site suitability; and
- Public interest

The planning assessment of the proposed modified development generally remains unchanged with respect to the above matters.

6.0 Conclusion

This modification seeks a minor change to the timing related to the implementation of the improved pedestrian connection between Redfern Station and the site. Due to significant time delays to the construction programme which have and continue to be caused by reasons beyond Mirvac's control, the works required under Condition F23 are unlikely to be completed before the Occupation Certificate of Building 1 is required to be issued.

In order to prevent a delay to the issue of the Occupation Certificate of Building 1, but also provide a definitive and realistic timescale for when the upgrade works will be completed, it is requested that the Department recommend approval of the proposed amendments to Condition F23.

Furthermore, the proposed revised wording for Condition E1 will provide the same flexibility that is afforded by Condition B53D(i) to deliver the planned Public Domain enhancements, whilst ensuring that the relevant Building Site Audit Statement can be completed in-line with each Building's relevant Occupation Certificate.

In accordance with section 4.55(1A) of the EP&A Act, the Department may modify the consent as:

- the proposed modification is of minimal environmental impact; and
- substantially the same development as that which the consent 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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