

Our Ref: 2200412  
Council Ref: SSD 7317

21 July 2022

2200412

Mick Casell  
Secretary  
Department of Planning & Environment  
GPO Box 39  
SYDNEY NSW 2001

Attention: Amy Watson

Dear Amy

## **SECTION 4.55(1A) MODIFICATION APPLICATION SSD 7317 – SOUTH EVELEIGH**

This application has been prepared by Ethos Urban on behalf of Mirvac Projects Pty Ltd, 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 the commercial campus at South Eveleigh.

The purpose of this modification request is to seek approval for amendments to the public domain development and Condition A16 by the removal of the western side of Innovation Plaza from the public domain works approved under SSD 7317.

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:

- Approved SSD 8517 Public Domain Landscaping Plans (**Attachment A**)
- Revised Public Domain Staging Plan (**Attachment B**)
- Legal Advice in regard to Ku-ring-gai Council v Buyozo Pty Ltd [2021] NSWCA 177 (**Attachment C**).

## 1.0 Background

### 1.1 SSD 7317

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 108,537m<sup>2</sup> comprising:
  - Building 1 for commercial/office, retail and childcare uses (GFA of 46,830m<sup>2</sup> and a height of nine storeys);
  - Building 2 for commercial/office and retail uses (GFA of 56,679m<sup>2</sup> and a height of seven storeys); and
  - Building 3 for retail, gym, childcare, community office and commercial uses (GFA of 5,028m<sup>2</sup> and a height of four storeys).
- car and bicycle parking;
- landscaping, road and public domain works; and
- building identification signage zones.

To date, 19 modifications to SSD 7317 have been approved since December 2016, which are summarised below in **Table 1**.

**Table 1 Modifications to SSD 7317**

Modification	Approved	Description
Modification 1	26/06/2017	Modification to defer approval of landscaping and public domain plans and stage the delivery of the public domain works.
Modification 2	22/08/2017	Modifications to the voluntary planning agreement, car parking, building identification signage zone on Building 1, and internal and external alterations to Building 2.
Modification 3	01/12/2017	Modifications to Building 3, including changes to the layout and design, increase in GFA, introduction of a rooftop community garden and signage zones.
Modification 4	20/10/2017	Modification to increase the height of rooftop plant on Building 1 and amend Condition A14 (Airspace Protection).
Modification 5	29/06/2018	Modification to introduce a concrete structure below Locomotive Street to accommodate a future travelator connecting Building 2 to the Locomotive Workshop.
Modification 6	16/08/2018	Modification to Building 2, including reallocation of car parking spaces, subdivision of retail tenancies and changes to facade materials and signage zones.
Modification 7	17/07/2018	Modification to Building 2, including internal layout changes and amendments to facade materials and signage zones.
Modification 8	24/09/2018	Modification to increase the number of lockers within Buildings 1 and 2 and reallocate bicycle parking spaces from these buildings to the public domain.
Modification 9	30/11/2018	Modification to Building 1 to allow the use of external terrace space on Level 1 (west) and Level 7 (south) by employees.
Modification 10	03/09/2018	Modification to Building 3, including internal and external changes and amendments to the rooftop community garden plan of management.
Modification 11	15/11/2018	Modification to the timing for the delivery of required works or plans, such as the loading dock management plan, heritage interpretation plans, landscaping and public domain and waste disposal.
Modification 12	13/12/2018	Modification to amend the approved landscape masterplan, provide public domain signage and an external signage strategy.
Modification 13	23/10/2018	Modification to increase the external play area of the child care centre in Building 1.

Modification	Approved	Description
Modification 14	30/10/2018	Modifications to Building 2, including the approved roof materials and the location of the lower northern signage zone.
Modification 15	28/03/2019	Modification to the timing for the implementation of works to improve pedestrian connectivity between the site and Redfern Station (Condition F23).
Modification 16	18/06/2019	Modification to the lower ground and ground floor of Building 2 including increase of mail room and waste room and conversion of other rooms.
Modification 17	27/11/2019	Modification to Building 2 to amend the design and layout of the retail tenancies along Locomotive Street, create signage zones along the northern elevation, and install retail amenities and a feature awning.
Modification 18	31/07/2020	Modification to create additional signage zones along the Central Avenue and Mitchell Way frontages of Building 2 and within the public domain along Central Avenue.
Modification 19	03/12/2020	Modification to the external signage strategy and provide 5 new Precinct Marker signs

### 1.1.1 Modification 1

Modification 1 is of note, as this application sought minor administrative changes to the timing for fulfilling Condition B53 to ensure that the construction programme for the development proceeded in a timely and efficient manner. It also sought to allow the landscaping and public domain works to be completed in two stages due to Buildings 1 and 2 being constructed in accordance with two distinctly different approval and construction timelines.

Accordingly, Condition A16 which set out the construction stages, was also amended in line with a Public Domain Staging Plan to split Innovation Plaza into two parts (eastern and western) with the eastern part being classified within Public Domain Area 1 and the western part being classified in Public Domain Area 2.

## 1.2 Locomotive Workshops SSD 8517

Development Consent to SSD 8517 and SSD 8449 was granted by the Independent Planning Commission (IPC) on 22 February 2019 for the adaptive reuse of the existing Locomotive Workshop at South Eveleigh.

SSD 8517 relates to the adaptive reuse of the Locomotive Workshop Bays 1-4a, including:

- a maximum of 11,607m<sup>2</sup> GFA for uses including retail premises, function centre, educational establishment, information and education facility, artisan food and drink industry, general industrial (retention of the Blacksmith) and recreation facility (indoor);
- a loading dock and travelator;
- associated heritage conservation works; and
- public domain works, external illumination and signage.

SSD 8517 also sought and gained approval for public domain works within the western side of Innovation Plaza. The most recently updated public domain concept plans are included for reference in **Attachment A** and have been approved by the Department of Planning and Environment (DPE) under the MOD 7 application to SSD 8517.

## 2.0 Proposed modifications to the consent and justification

Both SSD 7317 and SSD 8517 have approved public domain landscape concepts for the western side of Innovation Plaza. The plans approved under SSD 8517 are the most recent and the landscape works are to be constructed in line with those plans and in accordance with the construction staging set out in the development consent for SSD 8517.

### 2.1 Proposed modifications to the development

The proposed modification to SSD 7317 seeks to amend the development by removing the works proposed within the western side of Innovation Plaza for the development consent. Accordingly, the public domain staging plan has been updated and is included at **Attachment B**.

The reason why this amendment to the development is proposed is in order to remove any confusion between the public domain works approved under SSD 7317 and those approved under SSD 8517. Accordingly, if the DPE approves this modification application, then only the public domain works outlined in the SSD 8517 will have approval.

### 2.2 Proposed modifications to conditions of consent

Due to the proposed changes to the development as described above, the wording of condition A16 is also required to be amended to remove the reference to the western side of Innovation Plaza from Public Domain Area 2.

The proposed amendments to condition A16 are shown below. Words proposed to be deleted are shown in **~~bold strike-through~~** and words to be inserted are shown in ***bold italics***.

#### A16 – Staging

The development may be constructed in stages, as outlined within the EIS referred to in Condition A2. A Construction Certificate may be obtained for each of the following stages:

- Building 1** Stage 1: All ground works, including sub-structure, lower ground slab, all in ground services, lift and stair cores to level 1:  
Stage 2: Structure works  
Stage 3: Building services and finishes  
Stage 4: Façade works  
Stage 5: External works
- Building 2** Stage 1: All ground works, including sub-structure, lower ground slab, all in ground services, lift and stair cores to level 1:  
Stage 2: Structure works  
Stage 3: Building services and finishes  
Stage 4: Façade works  
Stage 5: External works
- Building 3** Stage 1: All ground works, including sub-structure, lower ground slab, all in ground services, lift and stair cores to level 1;  
Stage 2: Structure works;  
Stage 3: Building services and finishes;  
Stage 4: Façade works  
Stage 5: External works

**Public domain area 1:** Entry Garden, ~~Part~~ ***Eastern side of*** Innovation Plaza, Central Avenue north of Building 1, Davy Road south of Village Square, Vice Chancellor's oval (Eveleigh Green) and recreation zone south of Building 1

Stage 1: Civil works (below finished level)

Stage 2: Landscaping (above finished level)

Public domain area 2: Locomotive Street, ~~Balance of Innovation Plaza~~, Mitchell Way, Village Square and remainder of Central Avenue

Stage 1: Civil works (below finished level)

Stage 2: Landscaping (above finished level)

### 3.0 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 it:

- The proposed modification the development seeks to remove the approved public domain works within the western side of Innovation Plaza only and does not seek to amend any other aspect of the development;
- The proposed amendments seeks minor amendments to one condition of consent (A16);
- The proposed amendments do alter the terms of the works in kind agreement between Mirvac and Infrastructure NSW in regard to the bank guarantee and completion of the public domain works;
- The proposed modification has minimal environmental impact and the environmental impacts regarding the landscaping design for Innovation Plaza have already been addressed and approved in SSD 8713; and
- The proposed modification does not give rise to any new matters for consideration.

### 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”*. 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 and the reasons given by the consent authority for the grant of the original consent.

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;
- Ecological 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. Furthermore, given the most up to date landscape design for the western side of Innovation Plaza has been approved under SSD 8517, the proposed amendments to the public domain staging plan and condition A16 of SSD 7317 will not give rise to any additional or new impacts.

#### 4.1 Consistency with *Ku-ring-gai Council v Buyozo Pty Ltd [2021] NSWCA 177*

In consideration of the recent case *Ku-ring-gai Council v Buyozo Pty Ltd [2021] NSWCA 177 (Buyozo)*, Mirvac has obtained legal advice from Addisons to ascertain whether the proposed modification application can lawfully be approved. The legal advice is included at **Attachment C**. It confirms the following:

*“The proposed modification application to SSD 7317 clearly proposed an amendment or change to the development the subject of the development consent. That is, it will be removing as aspect of the approved development being the western side of Innovation Plaza public domain works. This is not akin to the decision in Buyozo where only a condition of consent relating to contributions was the basis of the amendment.*

*We note that the modification does propose a change to condition A16, but that is as a consequence of the main purpose of the modification, which is to change the development to reduce the extent of the public domain works....*

*Accordingly, as required by Buyozo, the development to be carried out on the land is proposed to be changed in some way and therefore the consent authority has the power under section 4.55(1A) to approve it.”*

## 5.0 Conclusion

The proposed modification seeks approval to amend the development through the removal of the works proposed within the western side of Innovation Plaza under SSD 7317, amendments to the public domain staging plan and amendments to Condition A16.

Both SSD 7317 and SSD 8517 have approved public domain landscape concepts for the western side of Innovation Plaza and the plans approved under SSD 8517 are the most recent and the landscape works are to be constructed in line with those plans.

The purpose of this modification application, therefore, is to remove this 'overlap' and any potential confusion between the two consents.

Accordingly, in accordance with section 4.55(1A) of the EP&A Act, the DPE may modify the consent as:

- the proposed modification is of minimal environmental impact; and
- substantially the same development as development for which the consent was granted.

In addition, as confirmed in the legal advice provided by Addisons (**Attachment C**), as required by the recent case *Buyozo*, the proposed development can lawfully be modified as it is proposed to be changed in some way.

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

Yours sincerely,



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