

23 November 2020

Jim Betts
Secretary
Department of Planning, Industry and Environment
4 Parramatta Square
12 Darcy Street
PARRAMATTA NSW 2150

Attention: Karl Fetterplace

Dear Karl,

Section 4.55(1) Modification Application- SSD8671

This application is made pursuant to section 4.55(1) of the *Environmental Planning and Assessment Act 1979* (the Act) to modify development consent SSD8671. GTK Consulting has prepared this application on behalf of Create NSW. The application seeks to modify the consent to correct a misdescription in the timing of the application of submission of plans for outdoor seating.

The Consent

Consent was granted for the Walsh Bay Arts and Cultural Precinct (SSD8671) on 17 May 2018, for:

- Demolition and early construction works;
- Internal and external works to Pier 2/3;
- Internal and external works to Wharf 4/5;
- Internal and external works to Shore Shed 4/5;
- Use of Pier 2/3, Wharf 4/5 and Shore Shed 4/5 for arts and cultural uses and ancillary uses, functions and events;
- Use of Pier 2/3, Wharf 4/5 and Shore Shed 4/5 and wharf aprons for Biennale and Sydney Writer's Festival events; and
- Public domain works.

The consent has been modified twice under section 4.55(1A) of the Act.

The Modification

It is proposed to modify Condition E36 of the consent to recognise that occupancy of tenancies may not occur concurrently. The requirements in relation to the physical layout of outdoor seating is adequately covered within Condition D15. Amendment of condition E36 is therefore required to correct misdescriptions in terms of timing and its operation with condition D15.

The following outlines the proposed modification to condition E36. Words proposed to be deleted are shown in ~~**bold strikethrough**~~ and words proposed to be inserted are shown in ***bold italics***:

E36- Outdoor Seating Plan

Within 7 days after the occupation of all tenancies within the precinct, an outdoor seating plan shall be provided ~~by Create NSW to and approved by~~ the Secretary for all outdoor seating areas ~~prior to occupation or commencement of the use~~. The plan must outline the outdoor area dimensions, seating numbers, tenancies, street furniture and uses.

The Act

This modification is made pursuant to section 4.55(1) of the Act and is therefore not required to address the tests of substantially the same development of minimal environmental impact that apply to section 4.55(1A) and 4.55(2) modifications. The proposed modification does not raise any planning matters that require further assessment.

It is clear that the current wording of condition E36 is a misdescription as it requires the same information as condition D15, however fails to acknowledge the timing differential for occupation of multiple tenancies. In effect, the current wording of condition E36 would prevent the occupation of any tenancy until all tenancies are occupied.

Conclusion

In accordance with section 4.55(1) of the Act, the Department of Planning, Industry and Environment (Department) may modify the consent to correct the misdescription in condition E36. Such a correction will allow the progressive occupation of tenancies, whilst providing the Department with certainty in regard to the physical outcome of outdoor seating through condition D15.

I trust this information is sufficient to enable the Department to assess the modification request. Should you wish to discuss any aspects of this request, please contact me on 0421 595 766.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Tom Kennedy', written over a light blue horizontal line.

Tom Kennedy
Director