



Walsh Bay – Arts and Cultural Precinct Modification 4

Amendments to conditions
State Significant Development Modification Assessment
(SSD 8671 MOD 4)

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Glossary

Abbreviation	Definition
Applicant	Create NSW, on behalf of Infrastructure NSW
Application	SSD 8671 MOD 4
Consent	Development consent
Council	City of Sydney
Department	Department of Planning, Industry and Environment
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
Heritage NSW	Heritage NSW, Department of Premier and Cabinet
LEP	Local Environmental Plan
LGA	Local Government Area
Minister	Minister for Planning and Public Spaces
Planning Secretary	Secretary of the Department of Planning, Industry and Environment
SEPP	State Environmental Planning Policy
SRD SEPP	State Environmental Planning Policy (State and Regional Development) 2011
SSD	State Significant Development
WBACP	Walsh Bay Arts and Cultural Precinct

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1 Introduction

This report provides an assessment of an application seeking approval to modify the State significant development consent (SSD 8671) for the Walsh Bay Arts and Cultural Precinct (WBACP), pursuant to section 4.55(1) of the *Environmental Planning and Assessment Act 1979* (EP&A Act).

The application has been lodged by Create NSW (on behalf of the Applicant, Infrastructure NSW) and it seeks approval to amend Condition E36 to correct and clarify the timing for the provision of an Outdoor Seating Plan.

1.1 Background

The modification application relates to Pier 2/3, Wharf 4/5 and Shore Shed 4/5 (the site) on Hickson Road, Walsh Bay, in the City of Sydney local government area (LGA).

The site comprises two-storey timber shed structures situated on piers that extend approximately 200 m northwards into Sydney Harbour. The site forms part of the broader WBACP that incorporates a series of finger wharves, piers and shore sheds between Sydney Harbour Bridge and Barangaroo Reserve (**Figure 1**).

The Walsh Bay Wharves Precinct is listed as an item of State significance on the State Heritage Register. The precinct was redeveloped between 1997 and 2004 to accommodate predominantly residential, commercial and cultural land uses. **Figure 2** identifies the site's broader context.

1.2 Approval history

On 17 May 2018, the Minister for Planning approved SSD 8671 for the following works at Pier 2/3, Wharf 4/5 and Shore Shed 4/5:

- demolition and early construction works
- internal and external works to Pier 2/3, Wharf 4/5 and 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
- public domain works.

SSD 8671 was assessed and determined concurrently with the internal fit-out and refurbishment works to the Sydney Theatre Company (SSD 7561). The Sydney Theatre Company approval includes:

- general demolition of internal areas and demolition of box offices, access ramp and stairs and partial demolition of roof
- refurbishment of Wharf Theatre 1, Theatre Bar and Wharf Theatre 2
- new box office/ticketing area
- increased capacity of Wharf Theatres 1 and 2
- new administration areas and offices
- new function room
- upgrades to services and infrastructure.



Figure 1 | The site (red outline) within the WBACP (Source: Applicant's EIS)



Figure 2 | The site context (Source: Nearmap)

The development consent for SSD 8671 has been modified on two occasions and one modification application is currently under assessment (see **Table 1**).

Table 1 | Summary of Modifications

Mod No.	Summary of Modifications	Approval Authority	Type	Approval Date
MOD 1	Amendments to Condition B29 and Condition B30 relating to the timing of lodgement of the fire safety strategies.	Director	4.55(1A)	28 March 2019
MOD 2	Extension to construction hours	Director	4.55(1A)	On hold
MOD 3	Internal and external amendments to Pier 2/3, Wharf 4/5 and Shore Shed 4/5.	Director	4.55(1A)	10 September 2020

2 Proposed modification

The Applicant seeks approval to amend Condition E36 Outdoor Seating Plan as follows (requested amendments shown bold underlined and struck-through):

Within seven days after the occupation of all tenancies within the precinct, ~~a~~An Outdoor Seating Plan shall be provided ~~and approved by Create NSW to~~ 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 Applicant advises that the modification is necessary for the following reasons:

- it is a partial overlap of the same information required under Condition D15 (Outdoor Seating Areas), and does not acknowledge the timing differential for occupation of multiple tenancies with outdoor seating, and would prevent the occupation of any tenancy until all others are occupied
- the relevant information regarding the physical layout of outdoor seating areas is contained in the Outdoor Seating Plan submitted under Condition D15.

The approved outdoor seating areas are shown in **Figure 3**.

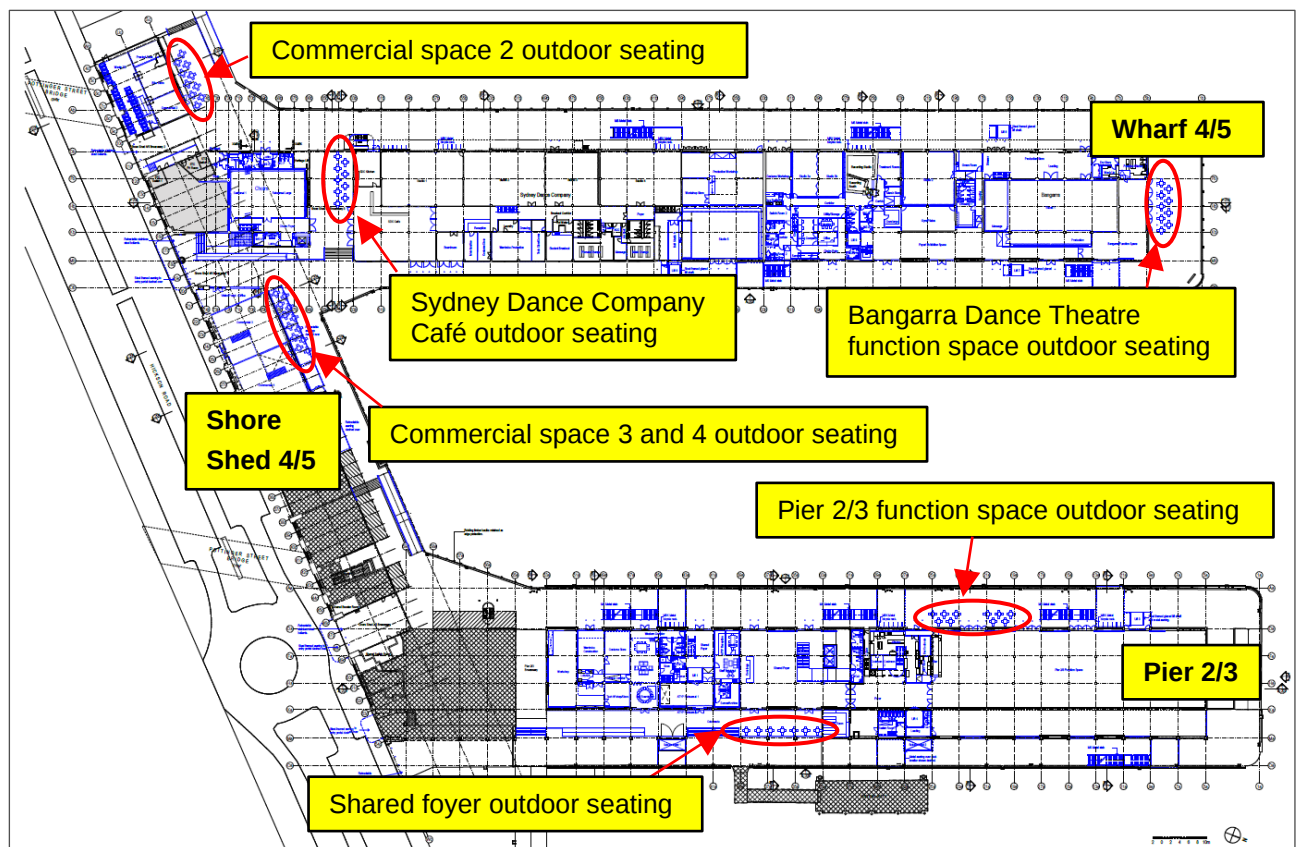


Figure 3 | Approved outdoor seating areas (Source: SSD 8671 EIS)

3 Statutory context

3.1 Scope of modifications

Section 4.55(1) of the EP&A Act allows the consent authority to modify a development consent to correct a minor error, misdescription or miscalculation.

The Department is satisfied the proposed modification is within the scope of section 4.55(1) of the EP&A Act.

3.2 Consent authority

The Minister for Planning and Public Spaces is the consent authority for the application. However, the Director, Key Sites Assessments, may determine the application as:

- a political disclosure statement has not been made
- there are 10 or less submissions in the nature of an objection.

4 Engagement

4.1 Department's engagement

Section 4.55(1) modifications are not required to be notified under the EP&A Regulation. However, the modification application was made publicly available on the Department's website on 24 November 2020. No submissions were received.

5 Assessment

In assessing the merits of the modification, the Department has considered:

- the modification application and associated documents (**Appendix A**)
- the Environmental Assessment and conditions of approval for the original application (as modified)
- relevant environmental planning instruments, policies and guidelines
- the requirements of the EP&A Act and Regulation.

The Applicant seeks to amend Condition E36 to correct a misdescription that requires provision of outdoor seating area information for all tenancies, in order for the use of *any* tenancy to commence.

While the Department accepts the wording of Condition E36 prevents the occupation of individual tenancies until all tenancies with outdoor seating areas are known, the changes as proposed by the Applicant which maintain the requirement for an Outdoor Seating Plan (OSP) to be prepared are not considered necessary as:

- Condition D15 also requires an OSP containing similar information to Condition E36 (such as seating dimensions, numbers and type)
- the OSP has already been approved by Heritage NSW and the Department pursuant to Condition D15
- some tenancies do not have outdoor seating areas and their fitouts are subject to separate development applications
- hours of operation and noise impacts are already regulated by existing conditions and only the specific uses (whether they be for bars, cafes or restaurants) of the outdoor seating areas should be provided to the Department for information only.

The Department therefore recommends Condition E36 is modified as follows (shown bold underlined and struck-through):

~~An Outdoor Seating Plan shall be provided 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.~~

Within 7 days of the occupation of each outdoor seating area, Create NSW shall provide the Department with the following:

- a) the specific use of the relevant tenancy**
- b) numbers of outdoor seating patrons**
- c) a copy of the relevant development consent granted by City of Sydney Council for the fitout of the tenancy**
- d) a plan demonstrating the outdoor seating complies with the OSP approved under condition D15.**

The Department concludes subject to the above recommended condition being imposed, the modification application is acceptable.

6 Evaluation

The Department has reviewed the modification application and assessed the merits of the proposal in accordance with the relevant requirements of the EP&A Act.

The Department is satisfied the proposed amendment would ensure the relevant details are provided to the Department regarding the use of tenancies with outdoor seating. The amendment would also permit the occupation of individual tenancies, rather than waiting until all outdoor seating areas details are known.

Consequently, the Department considers the modification is in the public interest and should be approved, subject to the recommended modified condition of consent.

7 Recommendation

It is recommended that the Director, Key Sites Assessments, as delegate of the Minister for Planning and Public Spaces:

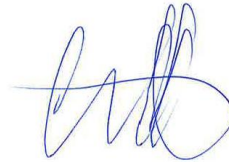
- **considers** the findings and recommendations of this report
- **determines** that the application SSD 8671 MOD 4 falls within the scope of section 4.55(1) of the EP&A Act
- **accepts and adopts** all of the findings and recommendations in this report as the reasons for making the decision to approve the modification
- **modifies** the consent SSD 8671 MOD 4
- **signs** the attached approval of the modification (**Appendix B**).

Recommended by:



Karl Fetterplace
Senior Planning Officer
Key Sites Assessments

Recommended by:



Cameron Sargent
Team Leader
Key Sites Assessments

8 Determination

The recommendation is **adopted** / ~~not adopted~~ by:

 23/12/2020

Anthony Witherdin

Director

Key Sites Assessments

(as delegate of the Minister for Planning and Public Spaces)

Appendices

Appendix A – List of referenced documents

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

1. Modification Application

<https://www.planningportal.nsw.gov.au/major-projects/project/40676>

Appendix B – Notice of modification

The Notice of Modification can be found at the Department's website as follows.

<https://www.planningportal.nsw.gov.au/major-projects/project/40676>