

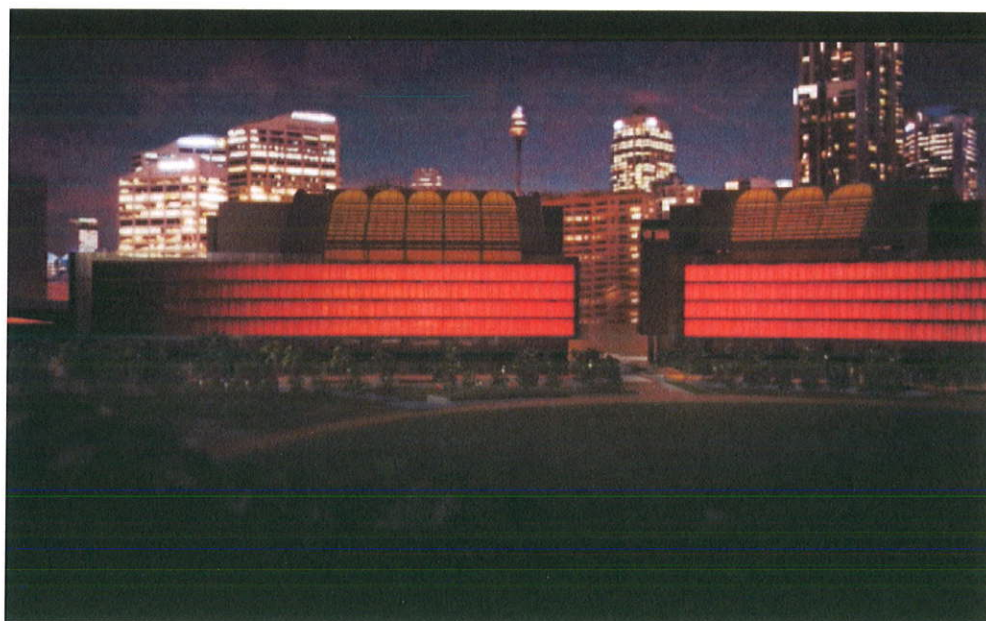


**SECTION 75W MODIFICATION
APPLICATION
PUBLIC LIGHTING DISPLAY**

MP 08_0057 (MOD 5)

Modification of Minister's Approval under section 75W
of the *Environmental Planning and Assessment Act*
1979

July 2011



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1. INTRODUCTION

This is an assessment report on an application seeking approval to modify the project application (MP 08_0057) for the redevelopment of Darling Walk.

The application seeks to modify the approval to alter the external lighting on the western façade of the building to create a public artwork display.

The Darling Walk site is situated west of Harbour Street, south of the Western Distributor fly-over, north of the Chinese Garden and east of Tumbalong Park (**Figure 1**). The site is located within the Darling Harbour precinct and is located within the City of Sydney Local Government Area (LGA). The site comprises an area of approximately 32,900m².



Figure 1 – Location of the Darling Walk site

On 9 July 2008, the then Minister for Planning approved a Concept Plan (MP 06_0054) for the redevelopment of Darling Walk at Darling Harbour. The approval provided the following parameters for redevelopment of Darling Walk:

- land uses between 64,000m² and 68,000m² gross floor area (GFA) of commercial floor space including up to 5,000m² GFA of retail floor space (retail and associated uses) and up to 1,000m² GFA for cultural, recreational and entertainment uses;
- building footprint, height, bulk and scale;
- a maximum of 200 car parking spaces to service the commercial building and a 600 space public car park facility; and
- public domain improvements.

On 2 January 2009, the then Minister for Planning approved a major project application (MP 08_0057) for the redevelopment of Darling Walk at Darling Harbour, including bulk excavation, basement structure and construction of two nine-storey buildings comprising:

- 67,827m² GFA including:
 - 64,235m² GFA of commercial floor space;
 - 2,592m² GFA of retail floor space; and
 - 1,000 m² GFA for a children's theatre.
- 200 car parking spaces to serve the commercial buildings;
- a 600 space public car parking facility;
- access and egress arrangements;
- associated bulk excavation; and
- demolition works.

On 3 April 2009, the Director-General, as delegate of the then Minister for Planning, approved modifications to the approved project including changes to the timing of various aspects of the project for compliance purposes, changes to the instrument of approval to correctly identify the proponent and an extension of the permitted hours of construction.

On 2 December 2010, the A/Director, Government Land and Social Projects, as delegate of the then Minister for Planning, approved modifications to the approved project to reconfigure the GFA allocations on the ground floor to allow for greater flexibility for retail and commercial uses by allowing more space to be used for retail purposes. There was no increase in the approved total GFA of the development.

On 16 December 2010, the A/Director, Government Lands and Social Projects, as delegate for the then Minister for Planning, approved modifications to the approved project to allow for the erection of temporary signage on the northern and eastern facades of the northern building and western façade of the southern building.

On 3 June 2011, the Deputy Director-General, Development Assessment & Systems Performance, as delegate of the then Minister for Planning, approved modifications to the approved project to allow for a stratum subdivision of the site into seven (7) separate stratum lots.

A copy of the consolidated approval is attached to this report.

2. PROPOSED MODIFICATION

On 29 April 2011, JBA Urban Planning Consultants Pty Ltd, on behalf of Lend Lease Development Pty Ltd, submitted a modification application under section 75W of the EP&A Act to include additional external lighting for the purpose of a public art display.

The proposed lighting consists of LED strips located on the interior of the building's western façade (**Figure 2**) between the exterior glass and the internal timber blinds. The LED strips will be positioned at floor level facing upward and will not be visible from outside the building (**Figure 3**). The light strip will use a red, green, blue and white lighting and will have a differential of 25lm/watt to 100lm/watt depending on the colour of the display.

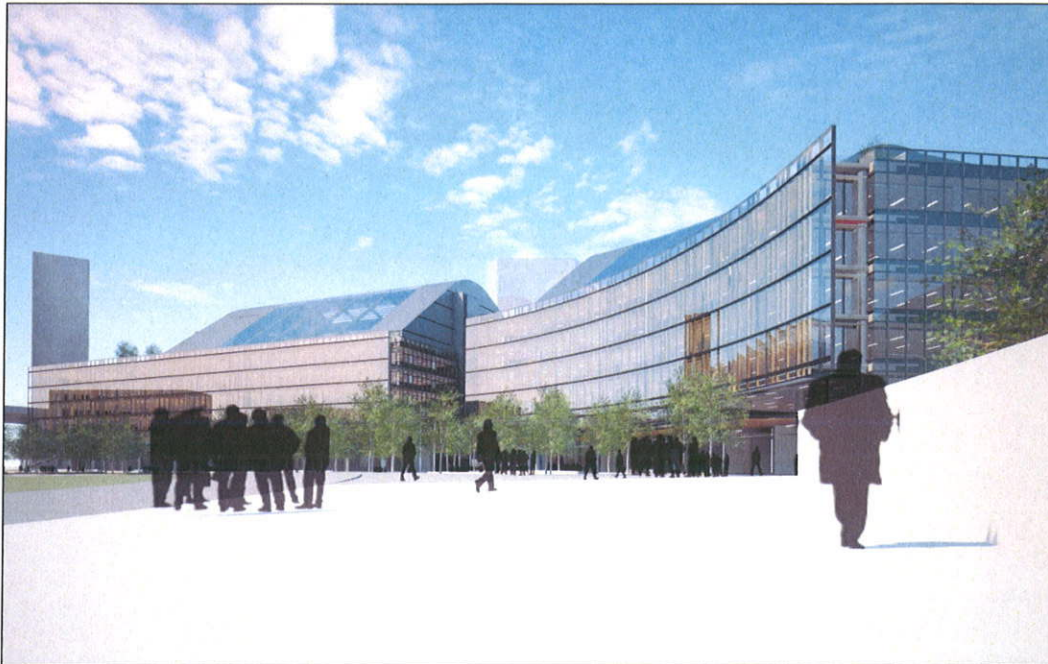


Figure 2: Western Façade - Location of the Proposed Lighting Display

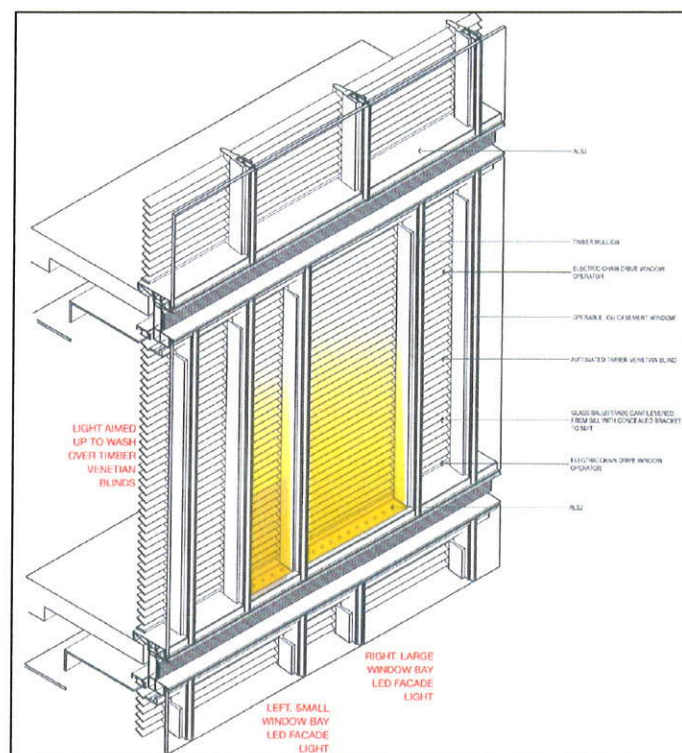


Figure 3: Position of LED Strips within existing windows.

The light display is a form of public art work and will vary during the week. Full colour dynamic and interactive programmes will occur between Friday and Sunday nights. It is also intended that one day a week will have no illumination.

Public interaction is a key element of the display. Images can be controlled by the public, via two touch screen monitors that will be located in the Darling Quarter. Displays to the façade will also be projected by way of a website, mobile phone applications and the use of cameras and infra red projectors. The extent and nature of the interactive elements will be determined by the management committee. The **cover image** together with **Figures 4** and **6** illustrate the scale and appearance of the proposed lighting displays.

The management of the public lighting display will be via a committee comprising of representatives from the Sydney Harbour Foreshore Authority, the building owner, the major commercial tenant and an independent curator. The artistic displays will be prepared by Ramus Illumination under the guidance of the management committee.



Figure 4: Public interaction (Proposed lighting and touch screen monitor)



Figure 5: Current western façade

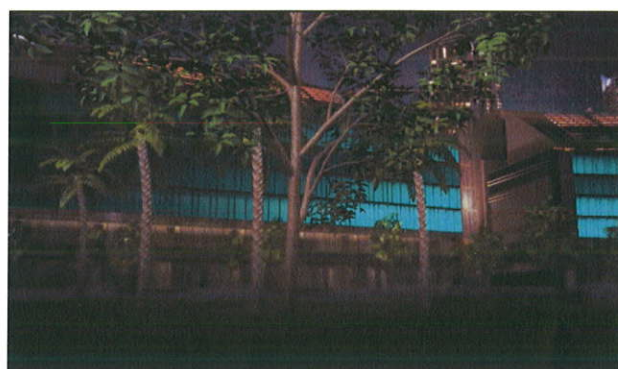


Figure 6: Proposed façade

3. STATUTORY CONTEXT

3.1 MODIFICATION OF A MINISTER'S APPROVAL

Section 75W(2) of the *Environmental Planning and Assessment Act 1979* (EP&A Act) provides that a proponent may request the Minister to modify the approval of a project. The Minister's approval is not required if the project, as modified, will be consistent with the original approval. However, in this instance, the proposal seeks to modify the approval to include façade lighting and conditions imposed on the Project Application. Therefore, approval to modify the application is required.

3.2 ENVIRONMENTAL ASSESSMENT REQUIREMENTS (DGRs)

Section 75W(3) of the EP&A Act provides the Director General with scope to issue environmental assessment requirements (DGRs) that must be addressed with respect to the proposed modification. The Department considers it unnecessary to re-issue the DGRs as it considers the proposed modifications will not have any additional impact on the environmental issues considered in the original proposal.

3.3 CONSULTATION AND EXHIBITION

Under Section 75W of the EP&A Act, the Department is not required to notify or exhibit the application. The proposal involves a minor modification which does not result in any significant

adverse impacts on adjoining property owners, therefore the application was not publicly exhibited. Notwithstanding, the modification was placed on the Department's website and referred to City of Sydney Council (Council) for comment.

City of Sydney Council

Council provided a submission regarding the modification. The submission raised no objection to the light display subject to the inclusion of appropriate conditions to control the type of signage and the hours of operation.

Comment: The Department agrees that given the nature of the proposed lighting and its ability to display images that will be visible to a large area, control over the content and time of the display is required. To mitigate any adverse impacts resulting from the lighting display, conditions concerning hours of operation and restrictions to prevent commercial or corporate imagery are recommended.

The Roads and Traffic Authority (RTA)

The RTA provided a submission regarding the modification. The submission raised no objections to the proposed lighting display.

4. CONSIDERATION OF PROPOSED MODIFICATIONS

The Department considers the key issues for the proposed modification to be visual impact upon the surrounding locality in terms of light spillage, and the suitability of the content/nature of the projected images.

The proposed lighting display is positioned on the western façade of the building and utilises low resolution LED lighting. The lighting will not be visible from the eastern (city) side and will be largely screened from residential properties to the west and north by existing vegetation within Tumbalong Park (opposite), the convention centre and a nearby hotel.

These residential properties are approximately 380 metres away to the north west. The Department considers that the lighting display will have little additional impact upon these properties given:

- the physical separation between the site and the nearest residential properties;
- the existing lighting of Darling Harbour and surrounds;
- the scale and brightness city skyline behind the building; and
- the proposed LED lighting is low resolution and directed up the window thereby minimising light spillage (refer to **Figure 3**).

Although the Department considers the impact of the proposed lighting to be minimal, suitable hours of operation must be included to ensure that the lighting display does not negatively alter the unique character of the Darling Harbour Precinct.

The Proponent has proposed the following condition for the operation hours of the lighting display:

The hours of operation of the public lighting artwork are limited from dusk to 11 pm Sunday to Thursday and dusk to 12 midnight Friday to Saturday.

In addition to the above, the public lighting artwork may operate to 1.00 am on special event days, public holidays, during public school holiday periods and during the Vivid lighting festival (or similar lighting festival event). Special event days are limited to 20 days within any calendar year.

Council and the RTA have reviewed hours of operation proposed and raised no objection. The Department considers the hours proposed to be reasonable as they will not result in adverse impacts upon the amenity of residents, will ensure that the existing character of the area is preserved and will not distract motorists on the surrounding road network.

Given the size and location of the proposed lighting, the Department also considers it inappropriate to use the display for commercial advertising. To ensure the display is not used

for commercial advertising, the condition outlined below will be included within the amended instrument.

The display of commercial or corporate imagery or advertising is not permitted.

5. CONCLUSION

The Department has assessed the application on its merits and the proposed modification is considered to be acceptable. Further, the proposed lighting display will create visual interest within the locality to the benefit of the wider community without having an adverse impact upon road users or residents in the wider locality.

The Department considers that the modification request is acceptable and appropriate given the proposal does not include any significant physical changes to the approved project and will not result in any adverse impacts other than those assessed in the original application. As such, the modification is supported.

6. DELEGATION

Under the Instrument of Delegation dated 25 January 2010, the then Minister for Planning delegated his functions under section 75W of the EP&A Act to the Deputy Director-General, Development Assessment and Systems Performance, where there are fewer than 25 public submissions in the nature of objections in respect of the modification request.

The Minister for Planning and Infrastructure has confirmed this delegation subject also to the local council not objecting to the proposal. As there were no public submissions and Council do not object to the proposal, the modification application can be determined under delegation.

The Proponent has submitted a Political Donations Disclosure Statement that states no political donations have been made.

7. RECOMMENDATION

It is recommended that subject to appropriate modified conditions, the Deputy Director-General, Development Assessment and Systems Performance as delegate for the Minister for Planning & Infrastructure:

- (a) **Consider** the findings and recommendations of this report;
- (b) **Approve** the modification, under section 75W of the *Environmental Planning and Assessment Act 1979*; and
- (c) **Sign** the attached Instrument of Modification Approval.

Prepared by:



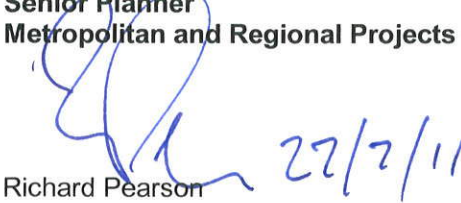
Scott Schimanski
Senior Planner
Metropolitan and Regional Projects South

Endorsed by:



Michael Woodland
Director
Metropolitan and Regional Projects South

27/7/2011



Richard Pearson
Deputy Director-General
Development Assessment & Systems
Performance

27/7/11