



***SECTION 96(1A) MODIFICATION APPLICATION
ASSESSMENT REPORT***

***Waterfront Promenade & Interim Public Domain
Works (SSD5374 MOD 1)***



Secretary's
Environmental Assessment Report
Modification of consent under section 96(1A) of the
Environmental Planning and Assessment Act, 1979

August 2015

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Cover Photograph: Extract from Barangaroo Outline Design Plan
(Source: PWP Landscape Architecture)

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1. INTRODUCTION

This report provides an assessment of a section 96(1A) modification application (MOD 1), lodged by Barangaroo Delivery Authority (the applicant), which seeks approval to modify development consent SSD5374 for the construction of the waterfront promenade and interim public domain works at Barangaroo Central, Barangaroo.

MOD 1 seeks to make various design changes to the approved public domain works, including the following:

- to reduce the width of the timber boardwalk from 4 metres to 3 metres;
- to delete the feature sandstone cladding on a section of the new seawall adjacent to the public deck; and
- to amend the landscaping, including to the promenade tree species.

The proposed modifications are described in detail in **Section 2** of this report. The applicant's section 96(1A) modification application is provided at **Appendix A**.

1.1 Site and locality

The approved waterfront promenade and interim public domain are located within Barangaroo Central, as illustrated in **Figure 1** below. The site is bounded by the Northern Cove and the Headland Park to the north, the harbour to the west, commercial buildings along Hickson Road to the east, and the Lend Lease temporary construction staging area at Barangaroo South to the south, as illustrated in **Figure 2**.

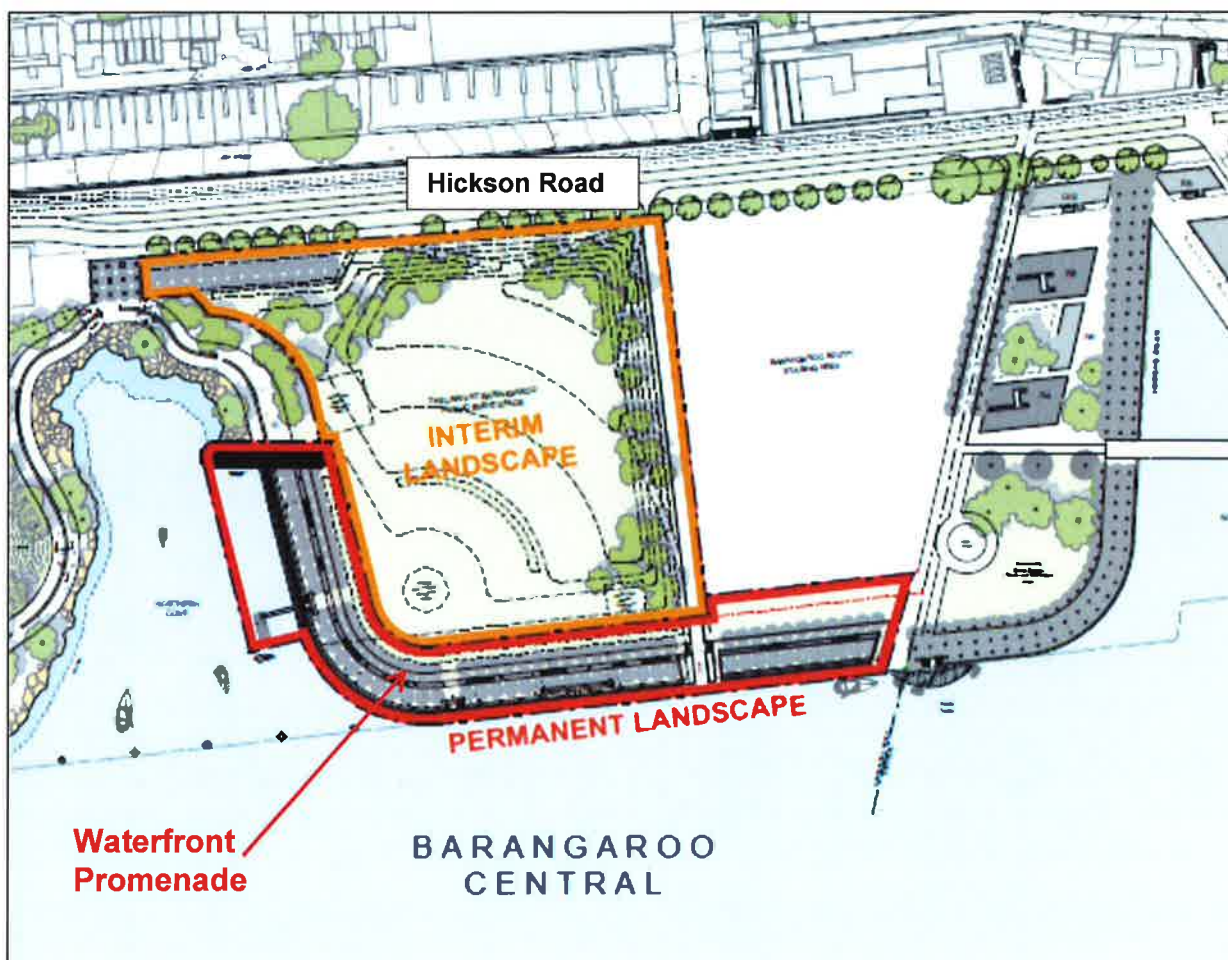


Figure 1: Site location and layout



Figure 2: Aerial Photograph of the site (Source: Nearmaps)

Works on the construction of the waterfront promenade and the interim public domain works are now substantially completed. The Department has been advised that Barangaroo Central will be opened to the public in August 2015.

1.2 Background to Development Consent

MP06_0162- Barangaroo Concept Plan

On 9 February 2007, the then Minister for Planning approved the Barangaroo Concept Plan (MP 06_0162) to guide the renewal of the Barangaroo site for a mix of land uses including residential, retail and commercial and public recreation.

The Concept Plan approved a set of built form principles and urban design controls to guide development within the mixed use zone.

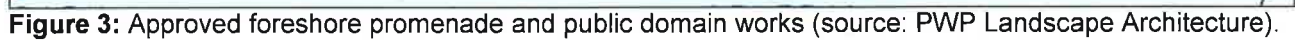
In summary, seven (7) modifications have been approved since the Concept Plan was originally approved. An eighth modification (MOD 8) is currently proposed by Lend Lease. MOD 8 was publicly exhibited between the 18 March and 1 May 2015 and is currently being assessed by the Department.

The detailed planning history of modifications to the Concept Plan for Barangaroo is provided at **Appendix D**.

SSD 5374- Barangaroo Central Waterfront Promenade and Interim Public Domain Works

On 11 September 2013, the then Executive Director Development Assessment Systems and Approvals, granted consent for the construction of a permanent foreshore promenade and temporary public domain works, and staging of up to six major public and special events with a maximum capacity of 15,000 patrons per calendar year at Barangaroo Central.

Figure 3 and **4** below illustrate the approved design for the foreshore promenade.



2. PROPOSED MODIFICATION

2.1 Modification Description

On 18 May 2015, the Applicant lodged an application under section 96(1A) of the *Environmental Planning and Assessment Act 1979* (EP&A Act) to modify SSD5374. The proposed modification, hereafter referred to as MOD 1, seeks approval for the following modifications to the approved development:

- a reduction in the width of the timber boardwalk from 4 metres to 3 metres;
- the deletion of the feature sandstone cladding on the new seawall adjacent to the public deck as a result of a reduction in the finished level of the foreshore boardwalk and the public deck; and
- changes to the landscaping, including to the promenade tree species and planting details.

In addition to the above, the application seeks approval to modify Condition B5 (paving materials) to permit the use of decomposed granite paving material along the promenade despite the material not technically complying with AS/NZS 4586:2004- 'Slip resistance classification of new pedestrian surface materials'.

The proposed modifications to the design of the foreshore promenade are illustrated in **Figure 5** below.

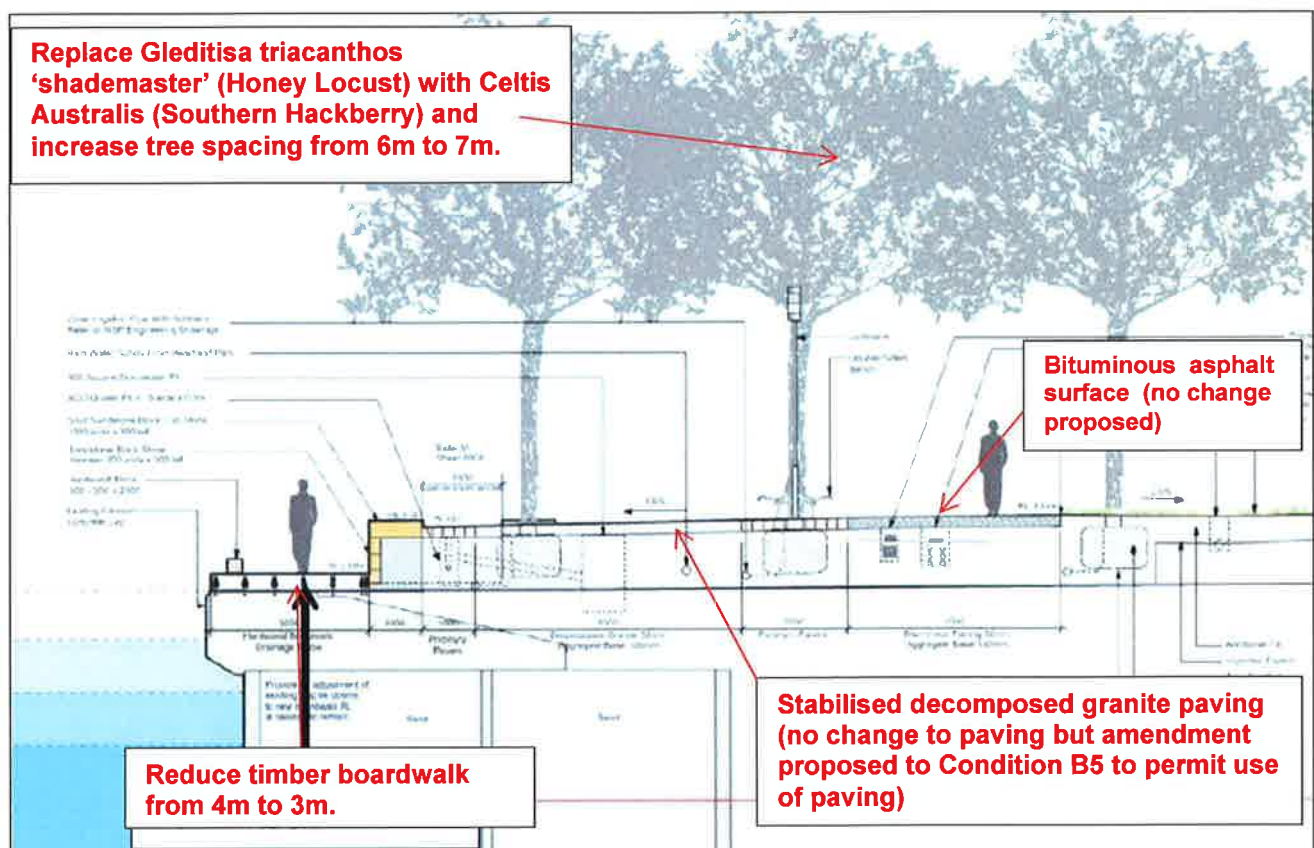


Figure 5: Section through foreshore promenade detailing the proposed modification (MOD 1)

3. STATUTORY CONTEXT

3.1 Modification of Approval

Section 96(1A) of the EP&A Act requires the consent authority to be satisfied that the following matters are addressed in respect of all applications which seek modifications to approvals:

1. That the proposed modification is of minimal environmental impact.

The proposal is substantially the same development for which consent was originally granted as the project (as modified) will essentially remain development for the purposes of the construction of the foreshore promenade and public domain. In addition, the use of the site will remain for the public and for special events, consistent with the original consent.

2. That 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 proposal is substantially the same development for which consent was originally granted as the site area, the project scope and the principal elements of the approved development remain the same. In this regard, the minor changes proposed to foreshore promenade and the public domain will not change the nature of the approved development and the proposed modification will not result in any new environmental or amenity impacts which would materially change the approved development.

3. It has notified the application in accordance with the regulations.

Matters in relation to the notification of the application are addressed in **Section 4** of this report.

4. It has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.

The submissions received are considered in **Section 4** and **Section 5** of this report.

5. It has considered the matters referred to in section 79C (1) of the EP&A Act as are of relevance to the development the subject of the application.

The Department has considered all relevant matters for consideration under section 79C(1) of the EP&A Act in its assessment of the proposal as detailed in this report.

3.2 Environmental Planning Instruments

Under section 79C of the EP&A Act, the consent authority is required to take into account the relevant provisions of any State Environmental Planning Policy or Environmental Planning Instrument (EPI) that applies to the carrying out of the proposal. The following EPIs apply to the carrying out of the proposal and have been taken into consideration in the assessment of the modification application:

- *State Environmental Planning Policy (State and Regional Development) 2011;*
- *State Environmental Planning Policy (Major Development) 2005 (MD SEPP);*
- *State Environmental Planning Policy No.55 – Remediation of Land;*
- *State Environmental Planning Policy (Infrastructure) 2007;*
- *State Environmental Planning Policy (Temporary Structures) 2007; and*
- *Sydney Regional Environmental Plan (Sydney Harbour Catchment 2005).*

An assessment of compliance with the EPIs was considered in the determination of the original application (SSD 5374). The Department has considered the modification application against the objectives and aims of these instruments, and is satisfied that the modified proposal continues to be generally consistent with the provisions of these State policies. Where relevant, an assessment against the relevant provisions of the EPI's is provided in **Section 5** below.

3.3 Permissibility

Zoning

The site is zoned 'B4 Mixed Use' and 'RE1 Public Recreation' under Part 12 Schedule 3 of MD SEPP. The use of the site as temporary and permanent public domain is permissible within the zones subject to development consent. As MOD 1 does not seek to modify the approved uses it does not give rise to any permissibility issues.

Unlawful works

The City of Sydney Council in its submission on the modification application identified that works which form part of the current modification application have been unlawfully constructed. The Department notes that the completed status of the works has been confirmed, as identified in the aerial photograph at **Figure 6** below.

In response to concerns raised by the Department in relation to the status of construction, the applicant has confirmed that the works have been completed and have been constructed in accordance with the amended design detail illustrated in MOD 1.

Notwithstanding that the works have been completed, the Department acknowledges that legal precedent has been established (i.e. *Windy Dropdown Pty v Warringah Council* [2000] NSWLEC 240) to permit the use of section 96 of the Act to validly modify a development consent retrospectively in order to regularise unlawful works already carried out. The Department is mindful of the applicability of this established legal precedent in this instance and therefore, that the modification application can be lawfully determined.



Figure 6: Aerial photograph of site (source: Nearmaps, 28 August 2015)

3.4 Delegation

Under the instrument of delegation dated 16 February 2015, the Minister for Planning's function to determine applications under section 96(1A) of the EP&A Act has been delegated to the Director, Key Site Assessments where:

- the relevant local Council has not made an objection; and
- a political disclosure form has not been made; and
- there are no public submissions in the nature of objections.

As Council did not object, a political donation has not been made, and no public submissions were received, the Acting Director may determine the modification request under delegated authority.

4. CONSULTATION

The application was notified in accordance with the *Environmental Planning & Assessment Regulation 2000*. The modification request was referred to the City of Sydney (Council) and the Roads & Maritime Service (RMS) for comment.

As a result of this notification, one submission was received from the Council, as summarised below. The RMS advised that it had no comments to make on the proposal.

No public submissions were received.

Council

The key issues raised in the submission from Council are:

- the works which are the subject of the modification application have already been constructed. Notwithstanding this, the applicant should be required to defend the changes.
- The approved width of the boardwalk for Stage 1A of Barangaroo South is 4 metres and the width of the boardwalk for Stage 1B of Barangaroo South (including the Casino foreshore) is unknown. Further clarification is therefore requested to justify the reduction in the width of the boardwalk to 3 metres. Unless genuine justification can be provide, the reduction in width should not be supported.
- The reduced width will be problematic for a number of users. Although, the boardwalk is billed as a secondary path, it will nevertheless be highly attractive. The reduced width will also contribute to the walkway appearing out of scale with the sheer length of the waterfront.
- The reduced width of 3 metres does not reflect the true width available to users. The width will be further reduced to approximately 2.4 metres once obstacles like the proposed hardwood blocks are included. In the event that 3 metres is supported by the Department, the true width available to users should be 3 metres for the volume of users expected.

The applicant has submitted a Response to Submissions (refer to **Appendix D**) addressing the issues raised by Council. Where relevant, the issues raised by Council and the applicant's response are considered in Section 5 of this report.

5. CONSIDERATION OF PROPOSED MODIFICATION

The Department considers the key issues for the proposed modification are:

- Foreshore promenade design (**Section 5.1**);
- Landscaping (**Section 5.2**); and
- Other matters (**Section 5.3**)

5.1 Foreshore promenade design

Foreshore promenade

The approved design for the foreshore promenade includes a 4 metre wide timber boardwalk around the perimeter of Barangaroo Central, which forms a secondary pedestrian link. The primary pedestrian link through Barangaroo Central comprises a tree lined promenade which runs parallel to the timber boardwalk (refer **Figure 3** above).

The approved design for the timber boardwalk is consistent with that approved (and now constructed) as part of the Stage 1A public domain works at Barangaroo South (SSD 6303) and is also consistent with the Barangaroo Concept Plan (MP06_0162) which, amongst other things, seeks to provide for the following:

- a coherent movement strategy that promotes safe and easy access within the Barangaroo site and connections to other precincts;
- activates the water's edges;
- encourage pedestrian access along the foreshore; and
- strengthens and supports the cultural life of the city as detailed in The City of Sydney's Sustainable Sydney - 2030 Vision by contributing to the Sydney Harbourside cultural walking trail.

MOD 1 proposes to amend the design of the timber boardwalk by reducing its approved width from 4 metres to 3 metres. Given the design for the boardwalk retains the approved hardwood block edge to the water, this would mean that the effective width or usable surface of the boardwalk would be reduced from 3.4 metres to approximately 2.4 metres, as illustrated in **Figure 7** below.

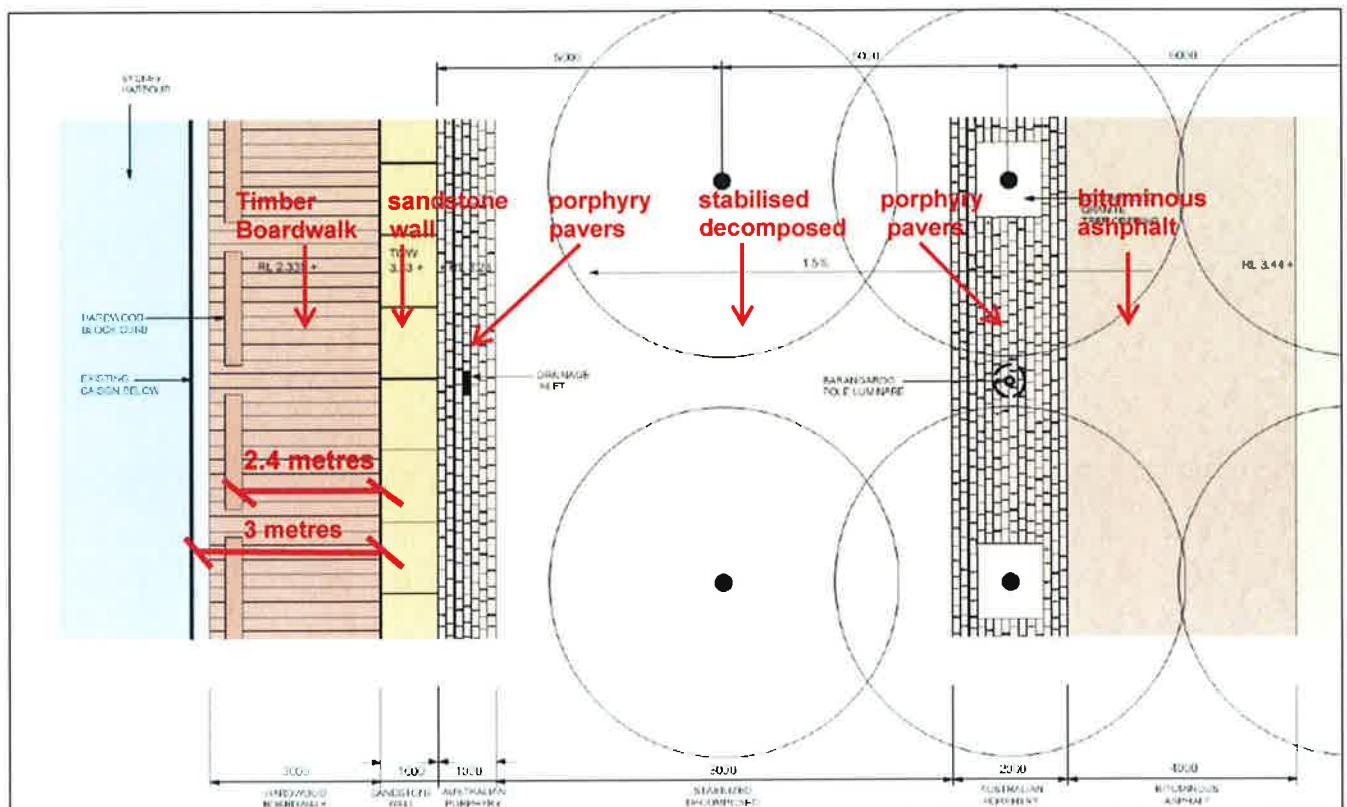


Figure 7: Proposed design detail for the foreshore promenade (source: PWP Landscape Architecture)

As detailed in the Section 4.0 of this report, both the Department and Council have identified that the timber boardwalk as detailed in MOD 1 has been constructed. Notwithstanding this, it is relevant that detailed consideration be given to the reduced width of the boardwalk and furthermore, whether this amended design achieves the design intent of the Barangaroo Concept Plan. In response to these