

ASSESSMENT REPORT

1 Burroway Road, Wentworth Point SSD 6387 MOD 5

1. INTRODUCTION

This report is an assessment of an application seeking to modify the State significant development (SSD) approval (SSD 6387) for a mixed-use development at 1 Burroway Road, Wentworth Point in the Parramatta local government area (LGA).

The application has been lodged by Sutherland & Associates Planning on behalf of WP Ferry Wharf JV (the Applicant) pursuant to section 96(1A) of the *Environmental Planning and Assessment Act 1979* (EP&A Act). It seeks approval to establish hours of operation for the ground floor retail tenancies and to allow outdoor dining.

2. SUBJECT SITE

The subject site is located at the northern end of Wentworth Point approximately 13 kilometres (km) west of the Sydney Central Business District (CBD) and approximately 7 km east of the Parramatta CBD. The site fronts Burroway Road to the south, Hill Road to the west and Foreshore Drive and Parramatta River (including the Wentworth Point ferry wharf) to the north. The site's eastern boundary adjoins a development site at 7 Burroway Road (refer to **Figures 1 and 2**).

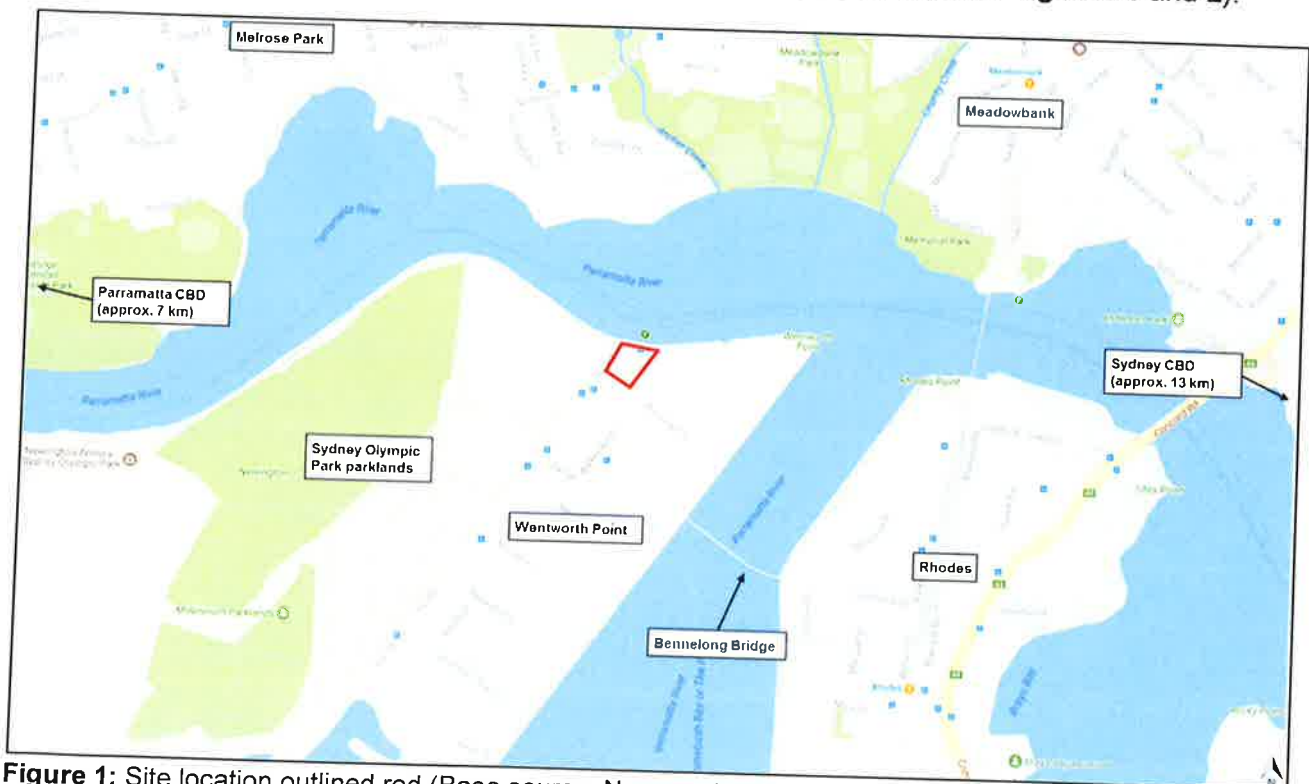


Figure 1: Site location outlined red (Base source: Nearmap)

The site is situated on the opposite side of Parramatta river to Melrose Park and Meadowbank to the north and Rhodes to the east. Sydney Olympic Park parklands are located on the western side of Hill Street. A number of mixed-use development sites are located to the south and east of the site, which form part of the greater redevelopment of Wentworth Point.

A mixed-use development has just been completed on the site including retail tenancies at ground level. The development includes a through-site link lined with retail tenancies connecting Burroway Road and Wentworth Point in the south with Parramatta River and the ferry wharf to the north (refer to **Figure 2**).



Figure 2: Aerial view of the site (outlined red) and its surroundings. The through-site link indicated by yellow dashed line (Base source: Nearmap)

3. APPROVAL HISTORY

On 1 December 2014, the Secretary, as delegate of the Minister for Planning, approved a SSD application (SSD 6387) for the construction of three 8-storey residential buildings above retail/commercial podiums, a 3-level basement and associated public domain (the SSD Approval).

The proposal has been previously modified on four occasions, as summarised in **Table 1**.

Table 1: Summary of modifications to the SSD Approval

MOD no.	Summary of Modifications	Approval Date
MOD 1	Amendment to require a minimum of 10% adaptable apartments.	28 April 2015
MOD 2	Amendments to the mix of apartments, car parking provision, retail storage, reconfigure loading docks and internal and external changes.	23 July 2015
MOD 3	Inclusion of a condition referring to the specific non-residential uses within the development.	7 March 2016
MOD 4	Installation of a canopy over the through-site link and provision of a new café adjacent to Burroway Road	22 December 2016

The SSD Approval does not:

- include a condition limiting the hours of operation of retail tenancies within the development
- allow for retail outdoor dining areas.

In approving the SSD application the Department imposed condition F10 (below), which prevents offensive noise impacts:

Noise Control - General

F10 The use of the premises shall not cause nuisance, or an offensive noise as defined in the Protection of the Environment Operations Act 1997 (PEO Act) to any affected receiver.

4. PROPOSED MODIFICATION

On 19 June 2017, the Applicant lodged an application (SSD 6387 MOD 5) seeking approval to establish hours of operation and allow outdoor dining (as amended by the Response to Submission). The proposal is summarised below:

- provide for the following outdoor dining seating areas:
 - seating for 150 patrons within the pedestrian through-site link
 - seating for 40 patrons outside tenancy 4, fronting Foreshore Drive
 - seating for 30 patrons around tenancy 5, fronting Burroway Road and the entrance to the through-site link
 - seating for 10 patrons outside tenancy 10, on the corner of Burroway Road and Hill Road
- establish the following hours of operation:
 - internal hours of operation for the retail tenancies of 6:00 am to 12 midnight, 7 days a week
 - external hours of operation for the retail outdoor dining areas of:
 - 6:00 am to 10:00 pm, 7 days a week for the areas under the canopy of the through site link
 - 6:00 am to 7:00 pm, 7 days a week for all other outdoor dining areas

The modification is requested as

- the SSD Approval does not currently include hours of operation for retail tenancies and specified hours are required to provide certainty and consistency for future retail tenants and residents within the development
- the proposed internal hours of operation are the same as the approved hours of operation for the supermarket, which were granted by Sydney Olympic Park Authority (SOPA) on 6 December 2016 (DA10-09-2016)
- the inclusion of outdoor dining would improve the activation and appearance of the through-site link.

A photomontage of the through site link is depicted in **Figure 3**. The approved ground floor layout and the proposed areas of outdoor dining are shown in **Figures 4 and 5**.



Figure 3: Photomontage of the approved through site link and central glass canopy

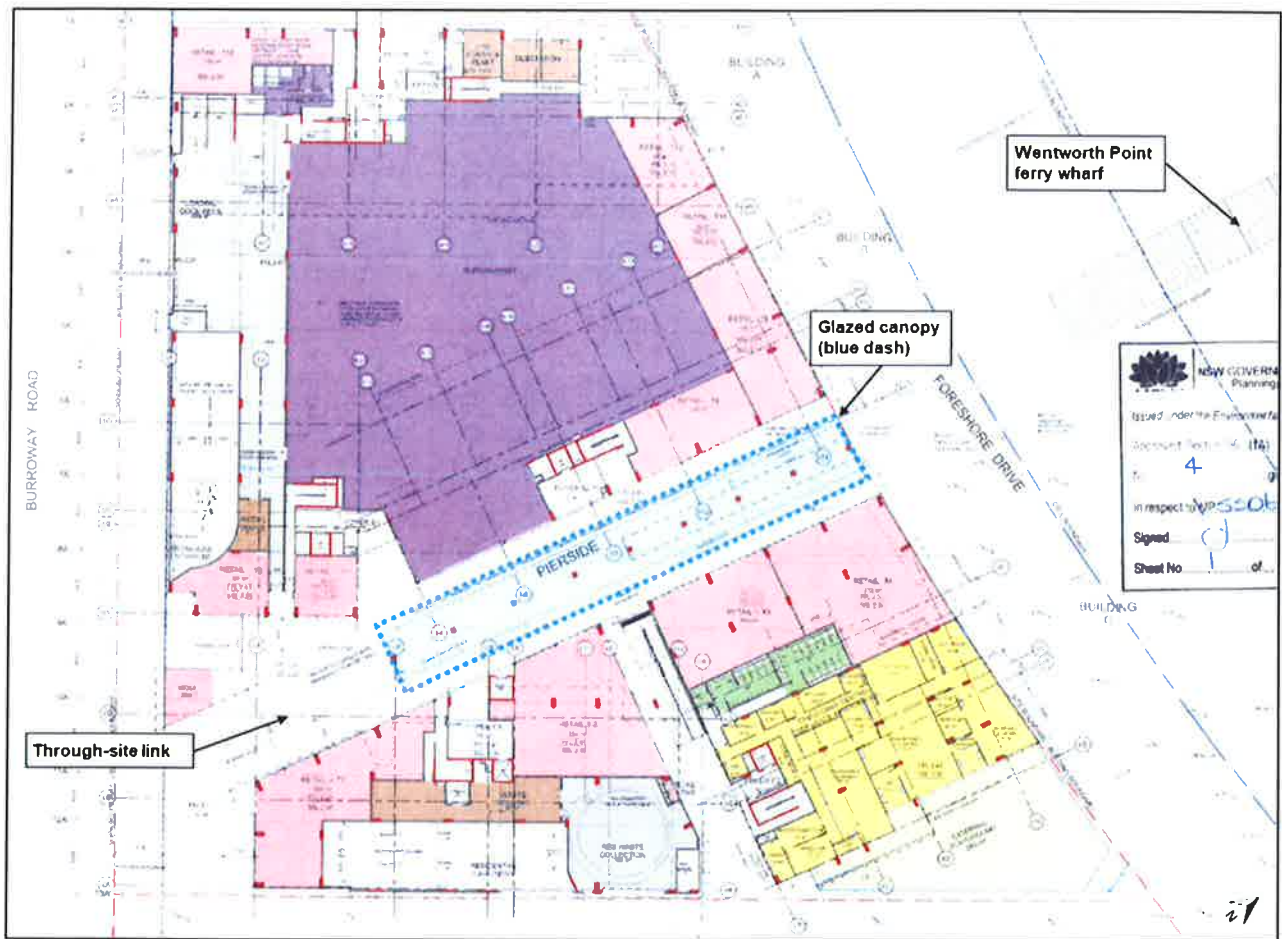


Figure 4: The approved ground floor layout, including retail tenancies (pink), supermarket (purple), childcare centre (yellow) and loading docks (grey) (Base source: SSD 6387 MOD4)



Figure 5: Proposed location of the retail outdoor dining areas (highlighted blue) (Source: Applicant's RtS)

5. STATUTORY CONSIDERATION

5.1 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 that seek modification approvals:

Table 2 Section 96(1A) matters for consideration

Section 96(1A) matters for consideration	Comment
That the proposed modification is of minimal environmental impact	Section 7 of this report provides an assessment of the impacts associated with the proposal. The Department is satisfied that the proposed modifications will have minimal environmental impacts.
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 proposed modification seeks approval for minor changes and does not result in any additional adverse impacts on the surrounding area. On this basis, the proposal would result in development that is substantially the same as the originally approved development.
The application has been notified in accordance with the regulations	The modification application has been notified in accordance with the regulations. Details of the notification are provided in Section 6 of this report.
Any submission made concerning the proposed modification has been considered.	The Department received two submissions on the proposal from Parramatta City Council and Sydney Olympic Park Authority. The issues raised in submissions have been considered in Section 7 of this report.

5.2 Environmental Planning Instruments

The following EPIs are relevant to the application:

- State Environmental Planning Policy (State and Regional Development) 2011
- State Environmental Planning Policy (Infrastructure) 2007
- Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005
- State Environmental Planning Policy No 65 - Design Quality of Residential Flat Development
- State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004
- State Environmental Planning Policy No 55 - Remediation of Land.

The Department undertook a comprehensive assessment of the redevelopment against the above-mentioned EPIs in its original assessment. The Department has considered the above EPIs and is satisfied that the modification does not affect the proposal's consistency with the EPIs.

5.3 Approval Authority

The Minister for Planning is the approval authority for the application. However, the Director, Modification Assessments may determine the application under delegation as:

- the relevant local council has not made an objection
- a political disclosure statement has not been made
- there are no public submissions in the nature of objections.

6. CONSULTATION

6.1 Consultation

The application was notified in accordance with the *Environmental Planning & Assessment Regulation 2000*. The modification request was made publicly available on the Department's website and referred to Parramatta City Council (Council) and Sydney Olympic Park Authority for comment.

SOPA did not object to the proposed modification and recommended conditions regarding the operation of the outdoor dining area and the need for the relevant SOPA Approval Certificate.

Council did not object to the proposed modification and provided the following comments:

- the standard indoor hours of operation should be between 7:00 am and 7:00 pm seven days a week and extended hours of operation (6:00 am until midnight) should be on a 12-month trial basis to allow for appropriate monitoring of impacts
- the outdoor dining hours of operation should be restricted to between 7:00 am and 10:00 pm, seven days a week
- loading and unloading should only occur between 6:00 am and 10:00 pm daily.

There were no **public** submissions received on the proposal.

6.2 Response to Submissions (RtS)

Following the notification of the modification application the Department placed copies of all submissions received on its website and requested the Applicant provide a response to the issues raised in the submissions.

On 4 August 2017, the Applicant provided a RtS, which was updated on 5 October 2017 and provided additional information on 31 October and 21 November 2017 (**Appendix A**). The RtS responded to Council's recommended restrictions on the hours of operation and SOPA's recommended operational conditions. The RtS also included the following amendments:

- inclusion of outdoor dining areas outside tenancies 4, 5 and 10
- provision of maximum seating limits for the outdoor dining areas
- reduction of the hours of operation for outdoor dining areas from midnight to 10:00 pm
- provision of operational management controls.

Additional information was also provided to confirm the acoustic impacts of the proposed outdoor dining on the surrounding residential apartments.

The Department made the RtS publicly available on its website and referred the RtS to relevant government authorities.

SOPA considered the RtS and reworded its recommendation operational conditions to reflect the revisions.

Council considered the RtS and reiterated its original submission.

7. ASSESSMENT

The key issue for consideration relates to potential noise impacts associated with the proposed hours of operation on nearby sensitive residential receivers, being the residential apartments immediately above the retail tenancies.

Key sources of potential noise impacts relate to

- Noise from outdoor dining
- Noise from extended internal hours of operation
- Noise from deliveries associated with the retail uses.

These are considered as follows.

Outdoor Dining

The modification seeks to establish outdoor dining for the retail tenancies as follows:

- 6:00 am to 10:00 pm, for the areas under the canopy of the through site link
- 6:00 am to 7:00 pm, for all other outdoor dining areas

Later hours are proposed under the approved glass canopy roof on the basis that the canopy would reduce noise emissions to the adjoining residences.

SOPA recommended the outdoor dining areas be subject to operational management conditions, while Council recommended the hours be restricted to 7:00 am to 10:00 pm (instead of the proposed commencement time of 6:00 am).

In support of the application, the Applicant provided an acoustic assessment, which predicted the noise impacts at the balconies of the nearest residences and provided additional information regarding the likely internal noise levels. The assessment confirmed that the predicted noise levels at the balconies are likely to exceed established intrusive noise criteria, based on the worst predicted external noise levels. However, due to transmission loss of the installed acoustic treatments provided to all apartments, the worst case predicted internal noise levels would be 40dB(A) L_{eq} .

The Department compared the predicted impacts with the project noise goals for residential internal noise as set out in the acoustic assessment for the original application. The Department notes the worst-case scenario is predicted to comply with the noise goal for internal habitable areas other than bedrooms (being 40dB(A) L_{eq}). However, the proposal would not comply with the noise goal for bedrooms (being 35dB(A) L_{eq}).

The Department notes the noise goals for bedrooms apply to the period between 10.00 pm to 7.00 am, and given all outdoor dining is proposed to close by 10.00 pm, it is only between 6.00 am and 7.00 am that adverse acoustic impacts would potentially occur to bedrooms as a result of the proposed outdoor dining. Operations at this time are likely to relate primarily to coffee and breakfast sales to commuters on the way to the ferry. The Department notes the predicted noise levels set out in the acoustic assessment are based on a worst-case scenario (full occupancy of the outdoor dining areas at any time of operation) which is unlikely to be realised before 7.00 am. Further, the noise assessments have been undertaken prior to development or occupation of the site, and therefore it has not been possible to establish background noise levels as part of the assessments. The Department considers that in the context of background noise from vehicles and pedestrians accessing the supermarket or the ferry wharf prior to 7.00 am, noise from limited outdoor dining operations would be negligible at this time.

Notwithstanding, the Department recommends a 12 month trial period for the 6.00 am to 7.00 am period. This will enable the performance of operators to be monitored, as well as further acoustic testing and background noise to be established before a further application is made to continue the extended hours.

The Department notes that existing condition F10 provides some protection for sensitive receivers, ensuring the use of the development would not result in offensive noise. However, to further protect sensitive receivers, the Department also recommends additional conditions, including:

- implementation of the Acoustic Assessment's recommended noise mitigation measures, including controls on closing times, patron numbers, and management
- the outdoor dining area be confined to the designated areas (**Figure 5**).

The Department also considers SOPA's recommended conditions (relating to the operation of the outdoor dining area, risk insurance, SOPA Approval Certificate and physical obstructions) are necessary to ensure an appropriate standard of residential amenity, pedestrian safety and ease of movement is maintained and recommends these conditions accordingly.

Subject to these recommended conditions, the Department considers the potential noise and amenity impacts associated with the outdoor dining seating area and hours of operation (including an extension of early morning operations on a trial basis) can be appropriately managed and mitigated. The Department therefore supports the provision of an outdoor dining seating area as it would positively contribute to the vitality and activation of the public domain without unacceptable amenity impacts.

Internal hours of operation

The modification seeks to establish internal hours of operation for the retail tenancies between 6:00 am until 12 midnight, 7 days a week.

In support of the application, an Acoustic Assessment was submitted which concludes the noise impacts from the proposed internal hours of operation can be appropriately managed subject to the implementation of the following mitigation measures:

- hours of operation in accordance with the modification application
- benches within kitchens to be isolated from structural walls and columns (no rigid connection)
- any tiled flooring within kitchens or back of house and bar areas is to be acoustically treated with 5mm thick Acoustic Supplies Vibramat
- background music is to be limited to a level of 65dB(A) within the restaurants and any loudspeakers to be vibration isolated from the building structure
- windows and doors to be closed between 10:00 pm and midnight
- management to ensure patrons depart in a prompt and orderly manner at closing times
- place prominent notices to remind patrons to leave quietly
- retain all garbage within the premises to be removed the following day after 7:00 am.

Council recommended internal hours of operation be restricted to 7:00 am to 10:00 pm seven days a week with extended hours of operation between 6:00 am to 7:00 am and 10:00 pm to midnight allowed only on a 12 month trial basis.

The Applicant agreed to Council's suggested extended night time hours of operation being on a trial basis but suggested that no trial period should apply to operation between 6:00 am and 7:00 am as the supermarket has approval for operation from 6:00 am.

However, the Department notes that unlike the supermarket, which is located in the centre of the building footprint with limited external facing facades, the retail tenancies all face on to the public domain and therefore have a greater potential for early morning noise disturbance to the apartments located immediately above.

Given the more restrictive noise criteria applicable to the 6.00 am to 7.00 am period as discussed above, the Department agrees with Council that standard internal operating hours should be restricted to 7.00 am to 10.00 pm, and that an extension beyond the above noted standard hours of operation should be subject to a 12-month trial period to allow for appropriate monitoring of potential impacts on residential amenity. The Department therefore recommends a condition

allowing the Applicant to undertake a 12-month trial period for the extended internal hours of operation from 6:00 am to 7:00 am and 10:00 pm to midnight.

The Department's assessment therefore concludes, subject to the recommended conditions including mitigation measures outlined in the Applicant's acoustic assessment, the potential noise impacts associated with the internal hours of operation (including an extension on a trial basis) can be appropriately managed and mitigated.

Loading and Unloading

Council raised concern the modification does not include hours of operation for loading and unloading for the retail tenancies and recommends loading and unloading be restricted to 6:00 am to 10:00 pm seven days a week.

The Department notes the loading dock has been designed to service the supermarket only and therefore goods for the remaining twelve retail tenancies would need to be trolleyed/carried from the loading dock or surrounding streets to their destination, with potential for noise impacts to adjoining residences. As such the Department considers early morning loading and unloading activities should be further restricted to protect sleep disturbance prior to 7.00 am as discussed above.

The Department also notes the Acoustic Assessment submitted with the application recommends all garbage should be retained within the retail premises and removed the following day after 7.00 am to reduce noise impacts for residents. Similarly, the Department considers deliveries to the retail premises should not occur before 7.00 am due to the potential for sleep disturbance at this time.

In light of the above, the Department considers loading and unloading for retail tenancies other than the supermarket should be restricted to 7.00 am to 10.00 pm and recommends condition F6 be amended accordingly.

8. CONCLUSION

The Department has assessed the modification application and supporting information in accordance with the relevant requirements of the EP&A Act. The Department's assessment concludes the proposed modification is appropriate on the basis that:

- the outdoor dining seating area would not result in adverse noise impacts, subject to conditions
- the establishment of internal and external hours of operation for retail tenancies is appropriate and would set clear, and enforceable, parameters for the operation of these spaces
- the extension beyond the standard hours of operation would be trialled on a 12-month trial basis to allow for the monitoring of potential impacts
- the hours of operation of loading and unloading activities would be restricted
- operational conditions have been recommended for the outdoor dining area and extended internal operating hours to ensure there are no adverse impacts.

Consequently, it is recommended that the modification be approved subject to the recommended conditions.

9. RECOMMENDATION

It is recommended that the Director, Modification Assessments, as delegate for the Minister for Planning:

- **consider** the findings and recommendations of this report
- **determine** that the application falls within the scope of section 96(1A) of the EP&A Act
- **approve** the Burroway Road modification application (SSD 6387 MOD 5), subject to conditions
- **sign** the attached notice of modification (**Attachment A**).

Recommended by:



Natasha Harras
Team Leader
Modification Assessments

DECISION

Approved by:



Anthony Witherdin
Director
Modification Assessments

as delegate of the Minister for Planning.

APPENDIX A: NOTICE OF MODIFICATION

A copy of the notice of modification can be found on the Department's website at:

http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=8571