



***Timing of  
fire safety  
strategies  
and  
connection  
of  
services,  
Walsh Bay***

State Significant  
Development Modification  
Assessment  
(SSD 7561 MOD 1)

November 2018

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## Glossary

Abbreviation	Definition
AHD	Australian Height Datum
BCA	Building Code of Australia
CIV	Capital Investment Value
Consent	Development Consent
Council	City of Sydney Council
Department	Department of Planning and Environment
EIS	Environmental Impact Statement
EPA	Environment Protection Authority
EP&A Act	<i>Environmental Planning and Assessment Act 1979</i>
EP&A Regulation	<i>Environmental Planning and Assessment Regulation 2000</i>
EPBC Act	<i>Environment Protection and Biodiversity Conservation Act 1999</i>
EPI	Environmental Planning Instrument
ESD	Ecologically Sustainable Development
FRNSW	Fire and Rescue NSW
LEP	Local Environmental Plan
LGA	Local Government Area
Minister	Minister for Planning
OEH	Office of Environment and Heritage
RMS	Roads and Maritime Services
RtS	Response to Submissions
SEARs	Secretary's Environmental Assessment Requirements
Secretary	Secretary of the Department of Planning and Environment
SEPP	State Environmental Planning Policy
SRD SEPP	<i>State Environmental Planning Policy (State and Regional Development) 2011</i>
SSD	State Significant Development
SSI	State Significant Infrastructure
WBACP	Walsh Bay Arts and Cultural Precinct



# Contents

<b>Glossary .....</b>	<b>iii</b>
<b>1. Introduction .....</b>	<b>1</b>
1.1 Background .....	1
1.2 Approval History .....	2
<b>2. Proposed Modification .....</b>	<b>3</b>
<b>3. Strategic Context .....</b>	<b>4</b>
3.1 Greater Sydney Region Plan .....	4
3.2 Eastern City District Plan .....	4
<b>4. Statutory Context .....</b>	<b>5</b>
4.1 Scope of Modifications .....	5
4.2 Environmental Planning Instruments .....	5
4.3 Consent Authority .....	6
4.4 Objects under the Act .....	6
<b>5. Engagement .....</b>	<b>7</b>
5.1 Department's Engagement .....	7
5.2 Summary of Submissions .....	7
5.3 Response to Submissions .....	7
<b>6. Assessment .....</b>	<b>8</b>
6.1 Section 4.15(1) Matters for consideration .....	8
6.2 Fire Safety (Conditions B4, B5, B6, B7, B8) .....	9
6.3 Connection to services (Condition B29) .....	9
<b>7. Evaluation .....</b>	<b>10</b>
<b>8. Recommendation .....</b>	<b>11</b>
<b>9. Determination .....</b>	<b>12</b>
<b>Appendices .....</b>	<b>13</b>
Appendix A – Documentation .....	13
Appendix B – Modification Instrument .....	14
Appendix C – Consolidated Consent .....	15



# 1. Introduction

This report is an assessment of an application to modify the State significant development (SSD) approval (SSD 7561) for the demolition, internal fitout and refurbishment works of Wharf 4/5 and part of Shore Sheds 4/5 (the site) at Hickson Road, Walsh Bay.

The modification application has been lodged by Sydney Theatre Company (the Applicant) pursuant to section 4.55(1A) of the *Environmental Planning and Assessment Act 1979* (EP&A Act). The modification application seeks approval to amend a series of conditions that relate to fire safety strategies (Condition B4 to B8) and the connection of services (Condition B29) to enable documentation to be provided at a time that aligns with similar conditions of the concurrent approval (SSD 8671) for the Walsh Bay Arts and Cultural Precinct (WBACP).

## 1.1 Background

The modification application relates solely to the Sydney Theatre Company premises located at Wharf 4/5 and part of Shore Sheds 4/5 of Walsh Bay, in the City of Sydney local government area (LGA). The site comprises a two-storey timber shed structure situated on a pier that extends 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 the Barangaroo Headland Park (**Figure 1**).



**Figure 1** | The site (red outline) within the WBACP (Source: EIS)

The Walsh Bay Wharves Precinct is listed as an item of State significance on the State Heritage Register and were constructed in the early 20<sup>th</sup> century. 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.





**Figure 2** | The site context (Source: EIS)

## 1.2 Approval History

On 17 May 2018, the Minister for Planning approved SSD 7561 for demolition, internal fitout and refurbishment works of Wharf 4/5 and part of Shore Sheds 4/5 at Hickson Road, Walsh Bay. The approved works included:

- 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 Theatre 1 and 2
- new administration areas and offices
- new function room
- upgrades to services and infrastructure.

SSD 7561 was subject to concurrent assessment with the WBACP development consent (SSD 8671). SSD 8671 permits early construction works, internal and external works to Pier 2/3, Wharf 4/5 (ground floor and mezzanine) and the Shore Sheds 4/5. In SSD 7561, Wharf 4/5 relied, in part, on works proposed as part of the WBACP application to achieve compliance with the Building Code of Australia.



## **2. Proposed Modification**

On 27 September 2018, the Applicant lodged a modification application (SSD 7516 MOD 1) seeking approval, under section 4.55(1A) of the EP&A Act, to ensure that the fire safety documentation and connection of services documentation could occur at the same time as required by SSD 8671. The Applicant noted the modification request was necessary as construction was being undertaken concurrently.

SSD 7561 requires the fire safety documentation (required by Conditions B4,B5,B6,B7 and B8) be provided prior to the issue of the relevant Construction Certificate. The WBACP consent, however, requires fire safety documentation to be provided prior to commencement of relevant works (excluding demolition works). As a result, the timing of submission, review and approval of fire safety documentation differs between the two applications.

This modification request seeks to amend SSD 7561 to require the fire safety documentation to be required prior to the commence of relevant works (excluding demolition works). This will enable the Applicant to commence some elements of the demolition to undertake studies that will inform aspects of the fire safety strategies.

Similarly, the application also seeks to amend Condition B29, relating to requirements of public authorities, to be required prior to the commencement of relevant works as per Condition B53 of SSD 8671.



## 3. Strategic Context

### 3.1 Greater Sydney Region Plan

The 'Greater Sydney Regional Plan – A Metropolis of Three Cities' sets out the NSW Government's 40-year vision and establishes a 20-year plan to manage growth and change for Greater Sydney and includes 10 directions. The Plan's key directions are to provide:

- a city supported by infrastructure – infrastructure supporting new developments
- a collaborative city – working together to grow a Greater Sydney
- a city for people – celebrating diversity and putting people at the heart of planning
- housing the city – giving people housing choices
- a city of great places – designing places for people
- a well-connected city – developing a more accessible and walkable city
- jobs and skills for the city – creating conditions for a stronger economy
- a city in its landscape – valuing green spaces and landscape
- an efficient city – using resources wisely
- a resilient city – adapting to a changing world.

The city of Sydney LGA is located within the Eastern City. The proposed development supports the directions and objectives of the Plan, in particular by:

- celebrating the arts and supporting creative industries and innovation
- creating great places that bring people together
- ensuring environmental heritage is identified, conserved and enhanced.

### 3.2 Eastern City District Plan

The Greater Sydney Commission's (GSC) role is to coordinate and align planning to shape the future of Metropolitan Sydney. The GSC has prepared District Plans to inform local council and planning and influence the decisions of State agencies. The aim of the District Plans is to connect local planning with the longer-term metropolitan planning for Greater Sydney.

The Eastern City District Plan covers the City of Sydney LGA. The modification application is consistent with the Eastern City District Plan by helping to create and renew great places that respect the District's heritage.





## 4. Statutory Context

### 4.1 Scope of Modifications

A consent authority may modify a consent if it is satisfied the proposed modification application meets the requirements of section 4.55(1A) of the *Environmental Planning and Assessment Act 1979* (EP&A Act). An assessment of the proposed modification application against the requirements of section 4.55(1A) of the EP&A Act is provided in **Table 1**.

**Table 1** | Consideration of section 4.55(1A) of the EP&A Act

Section 4.55(1A)	Assessment
That the proposed modification is of minimal environmental impact	The proposal is administrative in nature and would not result in any additional environmental impacts beyond those assessed in SSD 7561.
That the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all).	The modification application only relates to the timing of documentation required by the consent and does not change the nature or scope of development approved under SSD 7561. On this basis, the modification application would result in development that is substantially the same as the originally approved development.
The application has been notified in accordance with the regulations.	<b>Section 5</b> of this report demonstrates that the modification application followed the consultation requirements as outlined in the <i>Environmental Planning and Assessment Regulation 2000</i> (EP&A Regulation)
Any submission made concerning the proposed modification has been considered.	The Department received one submission relating to the modification application and it has been considered in <b>Section 5</b> of this report.

### 4.2 Environmental Planning Instruments

The following Environmental Planning Instruments (EPIs) apply to the site:

- State Environmental Planning Policy (State and Regional Development) 2011 (SRD SEPP)
- State Environmental Planning Policy (Major Development) 2005
- State Environmental Planning Policy (Infrastructure) 2007
- State Environmental Planning Policy No. 55 – Remediation of Land (SEPP 55)
- Draft State Environmental Planning Policy for the Remediation of Land
- Sydney Regional Environmental Plan No.19 - Walsh Bay (Walsh Bay REP)
- Draft Environment State Environmental Planning Policy - Environment
- State Environmental Planning Policy (Coastal Management) 2018

- Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005.

The Department undertook a comprehensive assessment of the proposal against relevant EPIs in its original assessment. Due to the minor nature of the modification application, the Department is satisfied the modification application has adequately addressed the relevant provisions and remains consistent with the EPIs.

### **4.3 Consent Authority**

The Minister for Planning is the consent authority for the application under section 4.5(a) of the EP&A Act.

#### **Minister's delegate as consent authority**

Under the Minister's delegation dated 11 October 2017, the Director, Key Sites Assessments, may determine the application as:

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

### **4.4 Objects under the Act**

The Minister or delegate must consider the objects of the EP&A act when making decisions under the Act. The Department is satisfied the proposed modification is consistent with the objects of the EP&A Act.



## 5. Engagement

### 5.1 Department's Engagement

Clause 117(3B) of the EP&A Regulation specifies that the notification requirements of the EP&A Regulation do not apply to State significant development. Accordingly, the application was not exhibited. However, it was made publicly available on the Department's website on 5 October 2018 and was referred to City of Sydney Council and Fire and Rescue NSW (FRNSW) for comment.

### 5.2 Summary of Submissions

No submissions were received from members of the public.

The Department received one submission on the proposal from FRNSW. The submission supported the proposed amendments to Condition B6, B7 and B29 but did not support the remaining conditions. FRNSW recommended rewording Condition B4, B5 and B8 so that FRNSW would be appropriately engaged to ensure the booster system and locations, smoke hazard management system and the smoke detection isolation system were designed and installed to their satisfaction prior to the issue of the relevant Construction Certificate.

### 5.3 Response to Submissions

The Department placed the FRNSW submission on its website and requested the Applicant provide a response to the matters contained in the submission.

On 22 October 2018, the Applicant provided a copy of correspondence with FRNSW confirming the proposed wording of the conditions had been agreed upon. The Applicant noted the intent of the modification application was to enable elements of the demolition work to occur prior to FRNSW approval. Further, the Applicant noted this was necessary as the demolition work would enable several the investigations required for the fire management strategies.

Correspondence from FRNSW on 22 October 2018 confirmed the following wording of Condition B4, Condition B5 and Condition B8 was considered satisfactory. The agreed revisions to these conditions are included below. Bold and underlined text represents the proposed additions to the conditions.

- B4: Prior to the issue of the relevant Construction Certificate **(excluding demolition works)**, the Applicant shall ensure details of the fire booster location/s are submitted to and approved by FRNSW.
- B5: Prior to the issue of the relevant Construction Certificate **(excluding demolition works)**, the Applicant shall ensure details of the smoke hazard management system are submitted to and approved by FRNSW.
- B8: Prior to the issue of the relevant Construction Certificate **(excluding demolition works)**, the applicant shall ensure that any isolation of the smoke detection system in the performance space/s during theatrical performances is approved by FRNSW.



## 6. Assessment

### 6.1 Section 4.15(1) Matters for consideration

Under section 4.55(3) of the EP&A Act, the consent authority must consider the matters referred to in section 4.15(1) of relevance to the development. **Table 2** identifies the matters for consideration under section 4.15 of the EP&A Act that apply to the proposed modification. The table represents a summary for which additional information and consideration is provided for in other sections of this report, as referenced in the table.

**Table 2** | Consideration of section 4.15(1) of the EP&A Act

Section 4.15(1) Matters for consideration	Department's assessment
(a)(i) any environmental planning instrument	The modified proposal complies with the relevant legislation as addressed in <b>Section 4.2</b> of this report.
(a)(ii) any proposed instrument	The modified proposal complies with the relevant legislation as addressed in <b>Section 4.2</b> of this report.
(a)(iii) any development control plan	Under clause 11 of the SRD SEPP, Development Control Plans (DCPs) do not apply to SSD.
(a)(iia) any planning agreement	Not applicable.
(a)(iv) the regulations	The application satisfactorily meets the relevant requirements of the <i>Environmental Planning and Assessment Regulation 2000</i> , including the procedures relating to applications (Part 6), the requirements for notification (Part 6, Division 6) and fees (Part 15, Division 1AA) (refer to <b>Section 5</b> of this report).
(b) the likely impacts of that development including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,	The Department considers that due to the administrative nature of the modification request, no adverse environmental impacts would arise from the proposal. (refer to <b>Section 6</b> of this report).
(c) the suitability of the site for the development	The site is suitable for the development as addressed in <b>Sections 4</b> and <b>6</b> of this report.
(d) any submissions	The Department has considered the submission received during the exhibition period (refer to <b>Section 5</b> of this report).
(e) the public interest	The Department considers the modified proposal to be in the public interest as it would facilitate the orderly and efficient development of a State heritage listed item.

In its assessment, the Department has considered the Applicant's modification application, the issues raised in the submission and the revised wording of the proposed conditions in the RtS. The Department considers the key issue associated with the proposal to be fire safety.

## **6.2 Fire Safety (Conditions B4, B5, B6, B7, B8)**

The Applicant has proposed to amend Condition B4, B5, B6, B7 and B8 to enable demolition works to occur prior to the issue of a Construction Certificate. Following comments from FRNSW, the proposed revised wording of Conditions B4, B5 and B8 has been amended to ensure FRNSW will be appropriately engaged to approve fire safety documentation (**Section 5.3**). The modification proposal seeks to change the timing of this documentation and had not sought to change the nature or extent of this documentation. The administrative amendments would not result in any change to the fire safety of the building. The Department considers the amendments to Condition B4, B5, B6, B7 and B8 to be within the public interest as they will facilitate the orderly and efficient development of the site. The Department therefore concludes the proposed amendments are acceptable.

## **6.3 Connection to services (Condition B29)**

The Applicant has also sought to amend Condition B29, relating to the connection of services, to align with the timing of the equivalent condition in SSD 8671 (**Section 2**). The proposed revised wording of Condition B29 would require the connection of services prior to the commencement of the relevant works rather than prior to the issue of the Construction Certificate. The proposed amendment seeks to only change the timing and not the nature or scope of the condition. The Department considers the administrative change would not result in any adverse environmental impacts is within the public interest as it would enable the timely and efficient development of the site. The Department therefore concludes the proposed amendment to Condition B29 is acceptable.





## **7. Evaluation**

The Department has reviewed the proposed modification and assessed the merits of the application.

The Department is satisfied the modification request will facilitate the development of the site and would not result in any adverse environmental impacts. Consequently, the Department considers the development is in the public interest and should be approved.



## 8. Recommendation

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

- **considers** the findings and recommendations of this report;
- **determines** that the application SSD 7561 MOD 1 falls within the scope of section 4.55(1A) of the EPA Act;
- **accepts and adopts** all of the findings and recommendations in this report as the reasons for making the decision to grant approval to the application;
- **modify** the consent SSD 7561; and
- **signs** the attached approval of the modification (Appendix B).

Recommended by:

Tim Green  
**Planning Officer**  
**Key Sites Assessments**

Recommended by:

Andy Nixey  
**Acting Team Leader**  
**Key Sites Assessments**



## 9. Determination

The recommendation is **adopted** by:

David McNamara

**Director**

**Key Sites Assessments**



# Appendices

## Appendix A – Documentation

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

1. Environmental Impact Statement  
[http://www.majorprojects.planning.nsw.gov.au/index.pl?action=view\\_job&job\\_id=9646](http://www.majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=9646)
2. Submissions  
[http://www.majorprojects.planning.nsw.gov.au/index.pl?action=view\\_job&job\\_id=9646](http://www.majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=9646)
3. Applicant's Response to Submissions  
[http://www.majorprojects.planning.nsw.gov.au/index.pl?action=view\\_job&job\\_id=9646](http://www.majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=9646)

## **Appendix B – Modification Instrument**



## **Appendix C – Consolidated Consent**

The Consolidated Consent can be found on the Department of Planning and Environment's website as follows.

[http://www.majorprojects.planning.nsw.gov.au/index.pl?action=view\\_job&job\\_id=9646](http://www.majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=9646)

