

Notice of decision

Section 2.22 and clause 20 of Schedule 1 of the *Environmental Planning and Assessment Act 1979*

Application type	State significant development and State significant development modification
Application number and project name	SSD-49295711 and SSD-7874-MOD-3 Harbourside Redevelopment Modification and Stage 2
Applicant	Mirvac Retail Sub SPV Pty Ltd
Consent Authority	Minister for Planning and Public Spaces

Decision

The Deputy Secretary, Development Assessment, under delegation from the Minister for Planning and Public Spaces has, under section 4.38 of the *Environmental Planning and Assessment Act 1979 (the Act)* granted consent to the development application subject to conditions.

A copy of the development consent and conditions is available [here](#).

A copy of the Department of Planning and Environment's Assessment Report is available [here](#).

Date of decision

4 December 2023

Reasons for decision

The following matters were taken into consideration in making this decision:

- the relevant matters listed in section 4.15 of the Act and the additional matters listed in the statutory context section of the Department's Assessment Report;
- the prescribed matters under the *Environmental Planning and Assessment Regulation 2021*;
- the objects of the Act;
- all information submitted to the Department during the assessment of the development application;
- the findings and recommendations in the Department's Assessment Report; and
- the views of the community about the project (see **Attachment 1**).

The findings and recommendations set out in the Department's Assessment Report were accepted and adopted as the reasons for making this decision

The key reasons for granting consent to the development application are as follows:

- the project would provide a range of benefits for the region and the State as a whole, including the provision of new residential, office and retail accommodation, publicly accessible open space, through site links and improved public domain, 916 construction jobs, 2,130 operational jobs and \$764,515,692 capital investment;
- the project is permissible with development consent, and is consistent with NSW Government policies including the Greater Sydney Region Plan and the Eastern City District Plan as it supports the ongoing revitalisation of Darling Harbour and foster a lively and engaging city;
- the impacts on the community and the environment can be appropriately minimised, managed or offset to an acceptable level, in accordance with applicable NSW Government policies and standards.
- The consent authority has imposed conditions relating to built form, amenity, noise, landscaping, traffic and transport, flooding, ESD and construction impacts;
- the issues raised by the community during consultation and in submissions have been considered and adequately addressed through changes to the project and the conditions of consent. Engagement on the project is considered to be in line with *Undertaking Engagement Guidelines for State Significant Projects (DPIE, July 2021)*, including the community participation objectives outlined in these guidelines; and
- weighing all relevant considerations, the project is in the public interest.

Attachment 1 – Consideration of Community Views

The Environmental Impact Statement (EIS) for the proposal was publicly exhibited from 21 February 2023 until 20 March 2023. A total of 60 submissions were received from the public including 40 objections, two comments and two in support.

In response to the submissions, the Applicant submitted additional information, which was made publicly available. The Department received no additional submissions from the public.

The key issues raised in public submissions and considered in the Department's Assessment Report and by the decision maker include landscaping, built form, operational noise, traffic and public benefit. Other issues are addressed in detail in the Department's Assessment Report.

<i>Issue</i>	<i>Consideration</i>
<p><i>Landscaping:</i></p> <ul style="list-style-type: none"> • <i>mounding</i> • <i>planting beyond building envelope</i> • <i>separation of public domain works</i> 	<p><i>Assessment</i></p> <ul style="list-style-type: none"> • The application includes a VVIA which concludes the proposed soil mounding on the northern podium and soft planting on the central podium would not result in any adverse view loss impacts. • The Applicant stated the separation of the built form and public domain works into two applications is acceptable and the relevant planning issues can be addressed as part of each application. The Applicant lodged the SSDA3 application in July 2023 so that it could be considered alongside with the current built form application. • After careful consideration the Department concluded allowing the provision of soil mounding above the northern podium deck height is acceptable, subject to appropriate limitations. In particular, the Department noted the mounding would not result in any adverse view loss impacts and the detailed landscape design of the Waterfront Garden would form part of the separate SSDA3 application. • The Department concluded the separation of built form and public domain works into two separate applications is acceptable and approval of this application would not confer approval to the SSDA3 public domain works. In addition, where a planning consideration overlaps both the current and separate SSDA3 applications the Department has given it due regard in its assessment. <p><i>Conditions</i></p> <ul style="list-style-type: none"> • Soil mounding height be limited to 800mm (RL 13.3) above deck height • Provide further details on the proposed landscaping design, layout and maintenance
<p><i>Built form:</i></p> <ul style="list-style-type: none"> • <i>height and scale</i> • <i>private view loss</i> 	<p><i>Assessment</i></p> <ul style="list-style-type: none"> • The application includes a VVIA which concludes the height and scale of the development is appropriate within its setting and has acceptable visual and view impacts. • The Department acknowledges the tower would be highly visible from close and distance views around the site. However, the Department concluded the built form is appropriate for the site, as: <ul style="list-style-type: none"> ○ it complies with the maximum height, GFA and building envelope requirements of the Concept Approval and aligns with the PPPS ○ it is the result of design competition and has been endorsed by the DIP ○ it would not have adverse heritage or amenity impacts ○ view loss impacts are consistent with the Concept Approval. • The Department is satisfied the podium and tower built form would not result in view impacts beyond what has already been considered acceptable via the Concept Approval, as the: <ul style="list-style-type: none"> ○ built form is contained wholly within the Concept Approval building envelope ○ building mass does not fill 100% of the building envelope consistent with the requirements of the Concept Approval.

	<p><i>Conditions</i></p> <ul style="list-style-type: none"> • Submission of the final schedule of materials. • Refinement of the design of the podium in consultation with the DIP. • Resolution of the DIP's outstanding detailed design matters.
<p><i>Operational noise impact</i></p>	<p><i>Assessment</i></p> <ul style="list-style-type: none"> • The application includes a OAA that indicates: <ul style="list-style-type: none"> ◦ noise would be largely directed east, away from sensitive receivers and predicted maximum noise from retail use (patron, music and mechanical plant) at nearby residential receivers would be below the PNTLs ◦ instillation of upgraded glazing would address noise impacts to proposed apartments within the tower ◦ road and mechanical plant noise can be managed and mitigated. • The Applicant provided further information throughout the assessment of the application including updating documents to clarify predicted likely impacts. • After careful consideration of the site and proposed development, the Department considers the operational noise generated by the development would not have an unreasonable impact on surrounding noise sensitive receivers and can be sufficiently managed and / or mitigated, noting: <ul style="list-style-type: none"> ◦ operational noise impacts to nearby residential properties would be below the PNTLs and road and mechanical plant noise can be managed / mitigated ◦ the fit-out, operation and management of retail tenancies will form part of future DA(s) and the public domain operation and any mitigation measures form part of SSDA3. • After careful consideration of the site and proposed development, the Department considers the operational noise generated by the development would not have an unreasonable impact on surrounding noise sensitive receivers and can be sufficiently managed and / or mitigated, noting: <p><i>Conditions</i></p> <ul style="list-style-type: none"> • ensure operation noise does not exceed relevant operational noise levels. • prepare and implement a Level 5 communal open space Operational Management Plan.
<p><i>Traffic impact</i></p>	<p><i>Assessment</i></p> <ul style="list-style-type: none"> • The application includes a TIA that concludes that the development would not result in significant traffic generation or affect the operation of the surrounding road network or intersections. • The TIA undertook an RSA that recommends minor improvements to surrounding road and cycle infrastructure and signage to improve road safety. The TIA also recommends the preparation and implementation of a GTP. • Due to the low level of traffic generation, the Department concluded the development would not result in significant traffic impacts. <p><i>Conditions</i></p> <ul style="list-style-type: none"> • Implementation of the RSA recommendations. • Preparation and implementation of a GTP.
<p><i>Public benefits</i></p>	<p><i>Assessment</i></p> <ul style="list-style-type: none"> • The overall development includes significant physical public benefits, including public and communal open spaces, through site links improved public domain and approximately 916 construction and 2,130 on-going operational jobs. • In addition, to the above, the Applicant has entered into a SPA, which requires the Applicant pay a \$5.2 million affordable housing contribution and a \$7 million art and future activation contribution. • The Department is satisfied the proposal provides for sufficient

public benefits in accordance with the Concept Approval and appropriate contributions towards affordable housing, art and activation in accordance with the SPA.

Conditions

- Undertake the development in accordance with the SPA.