

**Re: SSD-8517-Mods 7 - ATP Locomotive Workshop (Bays 1 - 4a)**  
**MOD 7 - expand retail uses into Innovation Plaza**

Thank you for the opportunity to comment on this proposal.

REDWatch opposes this DA as it seeks to permanently alienate public space protected by a positive covenant and easements placed over the site when it was sold to Mirvac by UrbanGrowth. Further REDWatch is of the view that Mirvac has not adequately covered information material to the assessment by the community in its application, hence even if the relevant covenant and easement did not exist, REDWatch submits that the proponent should be required to provide additional information and re-exhibit.

**The proponent has asked for “the permanent use of the western portion of Innovation Plaza as a ‘retail premises’ use”. REDWatch opposes that request for rezoning and modification.**

At the time of the sale of the ATP, REDWatch asked the City of Sydney to undertake a benefit risk analysis. Council commissioned a [HillPDA Consulting Independent report on ATP Sale EOI](#). As a result, UrbanGrowth implemented positive covenants with Mirvac and easements alongside the ATP sale that covered heritage, across railway line linkage and public access.

REDWatch has separately attached the relevant public access positive covenant and easement as supplied to us by UrbanGrowth. These can also be accessed on the REDWatch website at [ATP Sale Positive Covenant - Public Access](#) and the [ATP Sale - Easement for Access, Oval and Tennis courts](#).

Included in the areas covered by the easement is lot 4007/DP1194309, which covers Innovation Plaza. According to the ePlanning Spatial Viewer Innovation Plaza is shown as H: Recreation Zone – Public Recreation.

Under the Transfer Granting Easement over Innovation Plaza in section 2 Public access, the following sections are especially pertinent:

*2.1 The Authority and any Authorised User has a full, free and unimpeded right to enter the Public Access Areas for the purpose of public passive recreation and thoroughfare and to remain upon and pass and repass to, from and across the Public Access Areas at all times.*

*2.4 Subject to clauses 2.4 and 2.5, the Public Access Areas must remain open at all times so that any Authorised User may exercise the rights created by this easement.*

*2.5 The Proprietor may temporarily suspend the access to the Public Access Areas, for the time and to the extent necessary, but only on reasonable grounds including: (a) security; (b) safety; (c) maintenance; or (d) construction, but in doing so the Proprietor must: (e) use its reasonable endeavours to ensure that the Authorised Users continue to have access to the Site Heritage; and (f) establish and maintain alternative temporary accessways on terms approved by the Authority.*

The proposed Mod 7 to Bays 1-4A of the Locomotive Workshop, proposes permanent encroachment on some of Innovation Plaza which would exclude public passive recreation and thoroughfare from that portion of the site, contrary to the positive covenant and the easement.

The easement states that “any Authorised User has a full, free and unimpeded right to enter the Public Access Areas for the purpose of public passive recreation and thoroughfare and to remain upon and pass and repass to, from and across the Public Access Areas at all times”. Clearly this cannot happen in any area where there might be built structures used for commercial activity.

Under the easement the proprietor may only temporarily suspend access to public areas for listed purposes as “the Public Access Areas must remain open at all times so that any Authorised User may exercise the rights created by this easement”. This would seem to prohibit “the permanent use of the western portion of Innovation Plaza for retail premises use” that Mirvac is seeking.

While a member of the public may be able get seating within a seating area associated with a commercial business operating on the plaza they would normally need to make a purchase, or be under pressure to move from the space for paying customers. This would impinge on their free and unimpeded right to use the space.

The heritage report says the modification is to transform the plaza from a “transitional path into a

leisure space for the users". The "transitional path" will need to continue and would sit alongside a pay-as-you-use "leisure space". No proposal is made for work in the public space to make it a more attractive "leisure space".

REDWatch understands and hence submits that, because of the easement, the proponent cannot legally expand its development into space protected by the easement. Further REDWatch submits that DPIE cannot rezone the area covered by the easement as requested by the proponent.

**The proponent has asked for "an extension of the approved outdoor seating areas within Innovation Plaza and Locomotive Street". REDWatch opposes that request for modification. REDWatch further requests the earlier approval be withdrawn.**

To the extent that any approval has already been granted as part of the Locomotive Workshop SSDAs and its Mods for uses in areas zoned for public recreation which conflict with the easement, REDWatch believes these approvals would be invalid and should be declared so in the determination of this Mod. Approvals previously made in contravention of the easement appear to be invalid and they should not be used as a precedent for expansion of retail uses into Innovation Plaza and Locomotive Street.

**The proponent has asked for "the introduction of built structure envelopes and awning structure envelopes within Innovation Plaza". REDWatch opposes that request for modification.**

REDWatch opposes the introduction of built envelopes into public space around the development, as it conflicts with the rights protected under the easement.

REDWatch is further concerned that awning structures will adversely impact appreciation of the heritage built form of the Locomotive Workshop and New Loco from Innovation Plaza and other public spaces. Mirvac's proposal for a 3-metre north south strip alongside the building to allow the eastern wall of the Locomotive Workshop to be visible and appreciated is rejected. Such a vista is too narrow and restricted, and the proposed development will interrupt appreciation from everywhere else.

**The proponent has asked for "amendment to Conditions A2" relating to the approved plans consequent to the modifications requested. REDWatch opposes that request for modification.**

REDWatch has argued that the built form modifications should be rejected and hence there should be no need to lodge amended plans.

**The proponent has asked for "amendment to Conditions F12" to extend the operating hours from midnight to 1 am. REDWatch opposes that request for modification.**

This part of the Modification is independent of the expansion of the development into surrounding public space, but if it were to go ahead, it would also apply to the outdoor commercial sites, if they were allowed, as well as those within the Locomotive workshop.

REDWatch does not believe that the case has been made for the extension for operating hours. Current approvals for tenancies are until 12 midnight and the existing hours of operation are consistent with this. The extension of Hours of Operation for the centre would soon spill over into applications from some of the other tenants using this Mod 7 approval as precedent.

Given historical sound problems from this site under the ATP management, REDWatch is of the view that 12 midnight is as late as trading should go on this site. This is especially the case given residential units in Cornwallis and Marian Streets who are in close proximity to Innovation Plaza, if the expansion into open space was to be allowed.

**REDWatch has concerns about inadequate information in the Mod 7 Statement of Environmental Effects and the lack of consultation prior to submission. Further information and re-exhibition is requested if this proposal was to be seriously considered.**

REDWatch has major concerns about the lack of information provided in the documents to support the proposal on exhibition. These include:

- 1) There was no disclosure of the positive covenant and the easement or an assessment of the implications of them on the proposal.
- 2) The public domain plans only show a circulation plan from within the site and cycle movements through the site.
- 3) There is no assessment of public pedestrian traffic through the site nor any assessment of how that movement would be impacted by the proposal.
- 4) The proposal argues the need for activation while ignoring people who currently move through and use the space. The proposal does not present any measures to improve the space that will remain public or explore how this space will be impacted by the commercialisation. This seems to be an argument for retail expansion rather than any activation of an already active space.

- 5) In the traffic and parking graphic, the proposal omits to show the main Bay 1 & 2 North loading dock, while only showing loading bays in Locomotive Street. The proposal does not assess the impact on pedestrian movements of the combination of truck access through Innovation Plaza with increased funnelling of pedestrian movements caused by the proposed expansion into Innovation Plaza.
- 6) The proposal does not include any improvements to the public domain to make it more conducive to use and activation. The only inclusions are those which can be used for a commercial lease.
- 7) Neither the proposal nor the Heritage Report mentions the Heritage Loco and Crane that sit within Innovation Plaza. Those heritage items sit within the zone that pedestrians will need to take at the centre and south of Innovation Plaza to avoid the proposed commercial developments. The Heritage Report should deal with this conflict and discuss what is proposed to mitigate this conflict. If Mirvac needs to move the heritage items to where will they be moved?
- 8) The Statement of Environmental Effects says (page 5) that there has been extensive consultation with various agencies. The South Eveleigh Community Liaison Group, which still meets, was established under earlier South Eveleigh SSDAs as the mechanism for Mirvac to meet with regularly to consult surrounding residents and groups. The timeline presented on page 3 shows an early presentation to this group about a place making strategy, but nothing in the last year. The minutes of the meeting of 25<sup>th</sup> November 2019 show no mention of commercial / retail expansion into Innovation Plaza. The South Eveleigh Community Liaison Group was advised by email about this proposal as DPIE placed this proposal on exhibition.

## Conclusion

REDWatch has argued that the positive covenants and the easements that protect public access and use of the Public Recreation Zone have not been taken into account in this proposal. REDWatch has further argued that the proposal is in conflict with the public access easement and hence cannot proceed.

REDWatch has also argued that any approvals previously provided for the Locomotive Workshop DAs to spread into the Public Recreation Zone, which is protected by the easement, are invalid. Further, REDWatch has argued that, as overriding the easement is outside the power of DPIE, DPIE should withdraw previous approvals that allowed encroachment on space protected by the public access easement.

REDWatch has also argued against the extension of trading hours from midnight until 1 am.

If this proposal is not knocked out by the easement then REDWatch has argued there are a number of inadequacies in the Statement of Environmental Effects for Mod 7 and that a further exhibition should be required prior to consideration by DPIE.

In REDWatch's view, it is not sufficient for a proponent to omit key environmental impact elements in its documentation and to only deal with them in a Response to Submissions. Dealing with inadequacies in the Response to Submissions is insufficient, as it does not allow the community to fully assess the information in their submissions. Without full disclosure of the information by the proponent in the first place the community doesn't have the ability to challenge the proponent's proposal.

Finally, REDWatch is concerned about the timing an exhibition of an application to commercialise public space. It was placed on exhibition in the week before Christmas and then was only on exhibition until late January. REDWatch has only been alerted to this DA close to submission deadline and many on annual holidays, who REDWatch has spoken to, were not aware of this proposal due to being away. An increase in the exhibition time over Christmas and January should be considered by DPIE.

Disclosure: REDWatch has not donated more than \$1000 to any political party.

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*REDWatch is a residents and friends group covering Redfern Eveleigh Darlington and Waterloo (the same area originally covered by the Redfern Waterloo Authority). REDWatch monitors government activities in the area and seeks to ensure community involvement in all decisions made about the area. More details can be found at [www.redwatch.org.au](http://www.redwatch.org.au).*