



Atlassian Central Modification 1

Amendment to the basement retaining wall design, the definition of construction/building works and administrative amendments to various conditions.

State Significant Development Modification Assessment
(SSD 10405 MOD 1)

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Cover image: Night perspective looking south from Central Station Western Forecourt towards the proposed tower and adapted former Inwards Parcels Shed building (Source: Applicant's RtS)

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Glossary

| Abbreviation | Definition |
|----------------------------|--|
| CC | Construction Certificate |
| Council | City of Sydney Council |
| Department | Department of Planning and Environment |
| EP&A Act | <i>Environmental Planning and Assessment Act 1979</i> |
| EP&A Regulation | <i>Environmental Planning and Assessment Regulation 2021</i> |
| EPI | Environmental Planning Instrument |
| ESD | Ecologically Sustainable Development |
| LEP | Local Environmental Plan |
| Minister | Minister for Planning |
| RtS | Response to Submissions |
| Planning Secretary | Secretary of the Department of Planning and Environment |
| SEPP | State Environmental Planning Policy |
| SSD | State Significant Development |
| TfNSW | Transport for NSW |

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1 Introduction

This report provides the NSW Department of Planning and Environment's (the Department's) assessment of an application to modify the State significant development (**SSD**) consent for a 39-storey office and hotel tower and the adaptive reuse of the Former Inwards Parcel Shed at 8-10 Lee Street, Haymarket in the City of Sydney Local Government Area.

The modification application seeks approval to amend the basement retaining wall design, amend the definition of construction/building works and make administrative amendments to various conditions in Part C and Part E of the consent document.

The application was lodged on 13 July 2022 by Urbis on behalf of Vertical First Pty Ltd (the Applicant) pursuant to section 4.55(1A) of the *Environmental Planning and Assessment Act 1979* (**EP&A Act**).

1.1 Background

The site is located at 8-10 Lee Street, Haymarket on the southern fringe of the Sydney Central Business District (CBD) and forms part of the Central Station State Significant Precinct (Central SSP) in the City of Sydney local government area. The Western Gateway Sub-Precinct refers to the western edge of Central Station. The site is wholly contained within Block A of the Western Gateway Sub-Precinct.

The site is bound by Ambulance Avenue to the north, Lee Street and the Adina Hotel to the west, the Henry Deane Plaza and office buildings to the south and Central Station to the east. The Devonshire Street Pedestrian Tunnel runs beneath the site along its southern boundary (**Figure 1**).

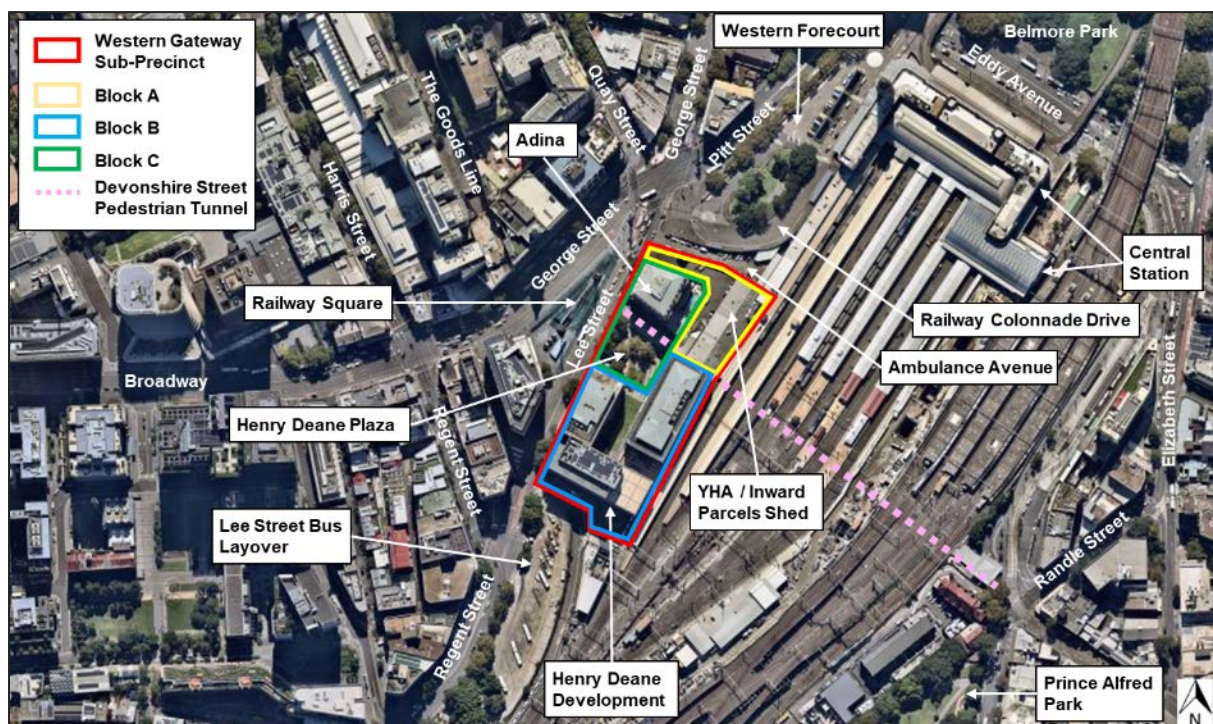


Figure 1 | Regional context map (Base source: NearMap)

The site is occupied by the IP Shed, which is a listed heritage item on multiple registers, and a brick and sandstone retaining wall frames the northern boundary of the site with Ambulance Avenue. Beneath the IP Shed building is the former Small Parcels Bagging Room, which comprises a service area and commercial floorspace fronting Ambulance Avenue. The IP Shed was converted into backpacker accommodation for the Railway Square YHA, providing 250 visitor beds in private and shared rooms.

Surrounding development includes Railway Square to the north, 8 storey commercial buildings to the south, Adina Apartments (an adaptive reuse of the former Parcels Post Office) to the west of the site, and the railway tracks to the east of the site (**Figure 2**).

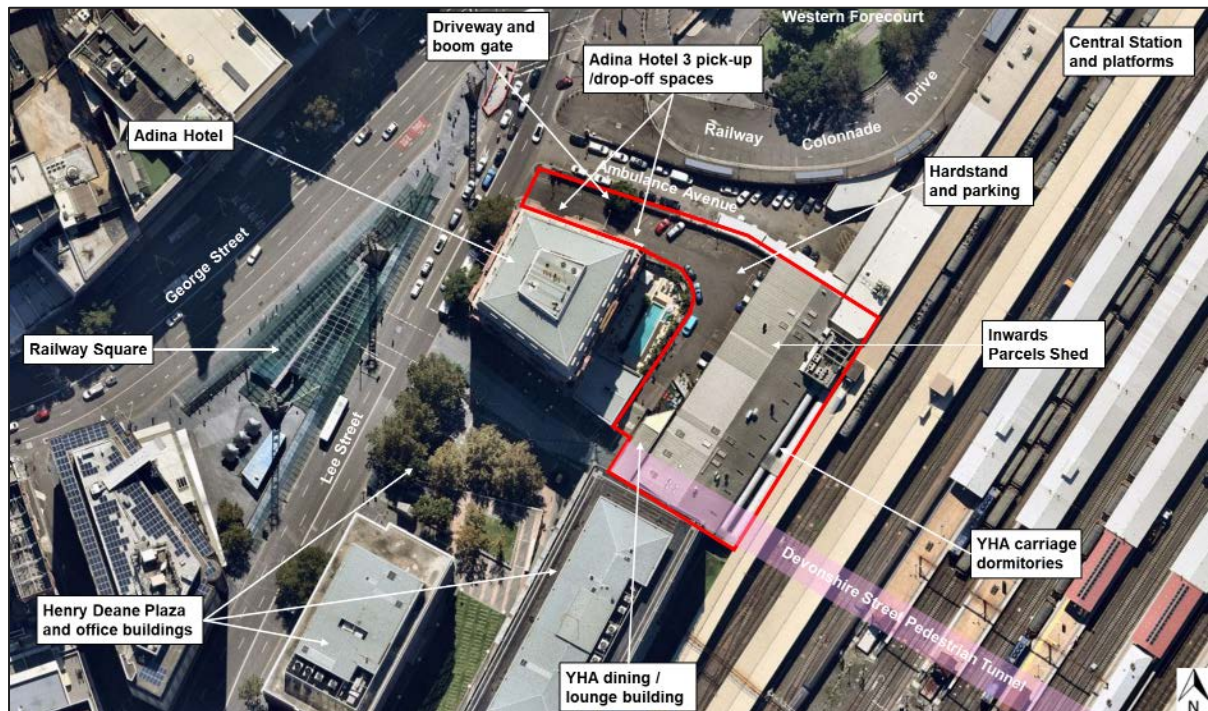


Figure 2 | Local context map (Base source: NearMap)

1.2 Approval history

On 15 October 2021, the Director, Key Sites Assessments, as delegate for the then Minister for Planning and Public Spaces, granted development consent to SSD 10405 for:

- site establishment and infrastructure works
- partial demolition, deconstruction, retention, reconstruction and adaptive reuse of the Inwards Parcels Shed and associated structures
- construction of a 39-storey tower (RL 197.9) for office and tourist and visitor accommodation
- basement parking for service vehicles and bicycles
- a pick-up/drop-off facility
- provision of hard and soft landscaping
- creation of lower and upper ground floor through site links, and
- subdivision and stratum subdivision of the site.

The Department is currently assessing two separate modification applications to the development consent (SSD 10405) as summarised in **Appendix C**.

2 Proposed modification

The modification application seeks approval to make a minor amendment to the north-eastern corner of the basement retaining wall to resolve structural complexities in the tower mega-column structure.

The modification application also seeks approval to amend the definition of construction/building works and make administrative amendments to various conditions in Part C and Part E of the consent document as summarised in **Table 1**.

Table 1 | Summary of the proposed modifications and the Applicant's justification

| Condition | Requirement | Proposed Modification | Applicant's Justification |
|---------------------|--|--|---|
| Definitions | Definition of construction/building work | <p>Exclude hazmat removal and service isolations from the definition of construction/building work.</p> <p>Remove the paragraph that defines impacts to heritage items or threatened species/ecological communities as construction work unless otherwise determined by the Planning Secretary in consultation with Heritage NSW and EESG.</p> | <p>Hazmat removal and services isolation are standard works undertaken as part of site preparation/enabling works and therefore should not require a construction certificate.</p> <p>Demolition and dismantling of the heritage items, would be undertaken in accordance with the approved plans/details and address all relevant requirements of the consent.</p> |
| Condition C3 | Outlines the roles and responsibilities of the heritage consultant | <p>Remove Condition C3(a) requiring the heritage consultant to prepare reports required by the consent.</p> <p>Relocate Condition C3(b) and (c) which relate to site inspections and site diaries to <i>Part F – During Construction</i>.</p> <p>Relocate Condition C3(d) and (e) regarding the preparation of a final report to <i>Part G – Prior to the Issue of an Occupancy Certificate</i>.</p> | Relocating these components would ensure the relevant parts of the condition are suitably located within the consent to enable satisfaction. |
| Condition C5 | Preparation of the Salvage and Reuse of Distinctive Elements Plan | Relocate Condition C5 (a) and (c) which require a comprehensive plan package and confirmation of the heritage fabric to be salvaged to prior to the issue of CC5. | The dismantling of the heritage items would need to occur first to understand how much material is to be salvaged and subsequently reused. |
| Condition C7 | Staged photographic archival recording of heritage items | Relocate Condition C7 (b) requiring staged photographic archival recording to <i>Part G – Prior to the Issue of an Occupation Certificate</i> . | The condition cannot be wholly satisfied until after construction has been completed and a full photographic archival recording, covering all stages as identified in the condition is complete. |

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| Condition D46 | Protection of rail assets and operation – construction | Duplicate Condition D46 in <i>Part C – Prior to Demolition and Dismantling of the Heritage Item</i> and amend wording to prior to the commencement of any demolition. | Duplicating the condition would ensure it is satisfied prior to the demolition/dismantling of heritage items. |
| Condition E9 | Protection of public infrastructure | Relocate to <i>Part C – Prior to Demolition and Dismantling of the Heritage Item</i> . | Relocating the condition would ensure it is satisfied prior to the demolition/dismantling of heritage items. |
| Condition E10 | Pre-construction dilapidation report | Relocate to <i>Part C – Prior to Demolition and Dismantling of the Heritage Item</i> . | Relocating the condition would ensure it is satisfied prior to the demolition/dismantling of heritage items. |
| Condition E13 | Demolition work must comply with Australian Standards | Relocate to <i>Part C – Prior to Demolition and Dismantling of the Heritage Item</i> . | Relocating the condition would ensure it is satisfied prior to the demolition/dismantling of heritage items. |
| Condition E14 | Environmental Management Plans must be prepared having regard to the relevant guidelines | Relocate to <i>Part C – Prior to Demolition and Dismantling of the Heritage Item</i> . | Relocating the condition would ensure it is satisfied prior to the demolition/dismantling of heritage items. |
| Conditions E15-E21 | CEMP and Sub-plans including: <ul style="list-style-type: none"> • Pedestrian and Traffic • Noise and Vibration • Waste • Soil and Water • Flood Emergency Response | Relocate to <i>Part C – Prior to Demolition and Dismantling of the Heritage Item</i> . | Relocating the conditions would ensure they are satisfied prior to the demolition/dismantling of heritage items. |
| Condition E22-E23 | Hazardous Materials Survey | Relocate to <i>Part C – Prior to Demolition and Dismantling of the Heritage Item</i> . | Relocating the conditions would ensure they are satisfied prior to the demolition/dismantling of heritage items. |
| Condition E24 | Installation of erosion and sediment controls | Relocate to <i>Part C – Prior to Demolition and Dismantling of the Heritage Item</i> . | Relocating the condition would ensure it is satisfied prior to the demolition/dismantling of heritage items |
| Condition E29 | Construction worker transportation strategy | Relocate to <i>Part C – Prior to Demolition and Dismantling of the Heritage Item</i> . | Relocating the condition would ensure it is satisfied prior to the demolition/dismantling of heritage items |
| Condition E30-E33 | Construction parking and truck movements | Relocate to <i>Part C – Prior to Demolition and Dismantling of the Heritage Item</i> . | Relocating the conditions would ensure they are satisfied prior to the demolition/dismantling of heritage items. |

| | | | |
|--|---|---|---|
| Condition E37-E39 | Protection of TfNSW assets and consultation with TfNSW during demolition/construction | Duplicate conditions in <i>Part C – Prior to Demolition and Dismantling of the Heritage Item</i> . | Duplicating the conditions would ensure they are satisfied prior to the demolition/dismantling of heritage items. |
| Condition E40 | Placement of fencing along the rail corridor during construction works construction fencing | Relocate to <i>Part C – Prior to Demolition and Dismantling of the Heritage Item</i> . | Relocating the condition would ensure it is satisfied prior to the demolition/dismantling of heritage items. |
| Conditions E43, E45, E47, E48 and E49 | Archaeological testing and reporting requirements to be undertaken at various stages | Relocate conditions to <i>Part D – Prior to the Issue of a Construction Certificate</i> to require archaeological testing to occur prior to the issue of CC2, rather than prior to the commencement of construction | Archaeological testing will be undertaken following demolition/dismantling works and concurrently with excavation, and the reporting cannot be finalised until prior to issue of CC2. |
| Conditions E50 | Rodent Treatment Program | Relocate to <i>Part C – Prior to Demolition and Dismantling of the Heritage Item</i> . | Relocating the condition would ensure it is satisfied prior to the demolition/dismantling of heritage items |
| Condition E52-E57 | Detailed Public Domain Plan and Public Domain Works Bond for the Lee Street Public Domain | Relocate to <i>Part D – Prior to the Issue of a Construction Certificate</i> . | Works related to the public domain will not be undertaken until CC5. The proposed change would also enable bonds and guarantees to be more accurately calculated. |

3 Statutory context

3.1 Scope of modifications

The Department has reviewed the scope of the modification application and considers that the application can be characterised as a modification involving minimal environmental impacts as the proposal:

- would not increase the environmental impacts of the project as approved
- is substantially the same development as originally approved; and
- would not involve any further disturbance outside the already approved disturbance areas for the project.

Therefore, the Department is satisfied the proposed modification is within the scope of section 4.55(1A) of the EP&A Act and does not constitute a new development application. Accordingly, the Department considers that the application should be assessed and determined under section 4.55(1A) of the EP&A Act rather than requiring a new development application to be lodged.

3.2 Consent authority

The Minister for Planning is the consent authority for the application under section 4.5(a) of the EP&A Act. However, the Team Leader, Key Sites Assessments may determine the application under delegation as:

- a political disclosure statement has not been made
- no public submissions were received
- Council does not object.

3.3 Mandatory matters for consideration

The following are relevant mandatory matters for consideration:

- section 4.55(1A) of the EP&A Act, including environmental planning instruments or proposed instruments
- EP&A Regulation
- likely impacts of the modification application, including environmental impacts on both the natural and built environments, and social and economic impacts
- suitability of the site
- any submissions
- the public interest
- the reasons for granting approval for the original application.

The Department has considered all of these matters in its assessment of the proposal. The Department has also considered the relevant matters in **Section 5** and **Appendix B** of this report.

4 Engagement

4.1 Department's engagement

The Department made the modification application publicly available on its website and referred it to Heritage NSW (HNSW), Transport for NSW (TfNSW) and City of Sydney Council (Council) for comment. Given the minor nature of the modification application, the Department did not formally exhibit the proposal.

4.2 Agency submissions

The Department received submissions from Council, HNSW and TfNSW. A link to the submissions is provided in **Appendix A** and the key issues are summarised in **Table 1**.

Table 2 | Summary of Agency Advice

| Council / Government Agency | Comments |
|-----------------------------|---|
| Council | <ul style="list-style-type: none">• raises no objections to the proposed design modifications• suggests that Condition C3 regarding the roles and responsibilities of the heritage consultant is advisory in nature and should remain unchanged• notes the Salvage and Reuse of Distinctive Elements Plan needs to be prepared prior to any works being carried out to the heritage item to identify the materials to be salvaged and reused within the development and other developments within the Western Gateway Precinct and does not support deferring the requirement to prepare the Salvage and Reuse of Distinctive Elements Plan to CC5. |
| HNSW | <ul style="list-style-type: none">• notes that the proposed design amendment to the basement levels is minor and was covered by previous archaeological assessments and will be managed under existing documentation• supports the proposed change to the definition of construction/building works, noting it would enable the retained definition and exclusions to be functional• outlines that the proposed amendments to the heritage conditions in Part C and Part E would appropriately respond to the staging of the development and provide clarity on the timing of relevant documentation. |
| TfNSW | <ul style="list-style-type: none">• notes the application was reviewed by TfNSW and raised no objection and did not provide any additional comments. |

4.3 Response to submissions

On 4 August 2022, the Applicant provided a Response to Submissions (RtS).

In response to the matters raised in Council's submission, the Applicant reaffirmed that the proposed changes to Conditions C3 and C5 do not seek to remove requirements but rather resolve the logical sequencing of the conditions so that they can be satisfied.

In relation to Condition C5, the Applicant clarified that demolition/dismantling works are to occur prior to construction (or before CC1) and that the confirmation of what salvaged heritage fabric would be incorporated/reused to the project could only be identified after these demolition/dismantling works had occurred. Further, the Applicant explained that the reconstruction and reuse of heritage items would occur at CC5. The Applicant also noted that HNSW have already endorsed the Salvage and Reuse of Distinctive Elements Plan with the expectation that an updated version would be provided prior to CC5.

The RtS was made available on the Department's website. A link to the RtS is provided in **Appendix A**.

5 Assessment

In assessing the merits of the modification, the Department has considered:

- the modification application and associated documents (**Appendix A**)
- the Environmental Impact Statement and conditions of consent for the original application (as modified)
- all agency advice received on the proposal and the Applicant's response to these
- relevant EPIs, policies, guidelines and the requirements of the EP&A Act.

The Department's assessment is provided in **Table 2**.

Table 3 | Assessment of issues

| Issue | Findings | Recommendations |
|---|---|--|
| Definition of construction/building work | <ul style="list-style-type: none"> • The proposal seeks to amend the definition of construction/building work to: <ul style="list-style-type: none"> ○ exclude hazmat removal and service isolations as they are a standard scope of works undertaken as part of site preparation/enabling works ○ exclude the demolition/dismantling of heritage items, noting that Part C of the consent outlines the requirements that must be met prior to demolition/dismantling works and that a construction certificate cannot be obtained for demolition. • HNSW supports the proposed changes to the definition of demolition to support the implementation of the consent. • Council also raised no concerns with the proposed change. • The Department has considered the Applicant's justification, and the advice provided by HNSW and Council and supports the proposed amended definition as: <ul style="list-style-type: none"> ○ the demolition/dismantling of heritage fabric within the Inwards Parcel Shed and Ambulance Avenue Wall was assessed in detail as part of the original SSD application and Part C of the consent requires extensive documentation prior to commencement of demolition/dismantling ○ the proposal will not cause any additional heritage or biodiversity impacts than previously assessed ○ the consent includes conditions requiring a hazardous materials survey prior to commencement of works and compliance with all relevant legislation, codes, standards and guidelines in relation to hazmat removal ○ service isolations are routinely required as preparation/enabling works. | Amend the definition of construction/building work to exclude hazmat removal and service isolations and remove the paragraph that defines impacts to heritage items or threatened species/ecological communities as construction work. |
| Basement retaining wall design change | <ul style="list-style-type: none"> • The proposal seeks approval for a minor modification to the north-eastern corner of the basement levels to accommodate the alignment of the basement structure. The Applicant has explained this minor design | Amend Condition A2 to refer to the modified basement plans. |

change would resolve structural complexities of the tower mega-column structure while remaining within the site boundary.

- The Applicant provided archaeological advice which outlines that the proposed modification of the basement wall would not have any effect on the management of archaeological resources.
- HNSW advised the proposed design amendment would not alter the previous archaeological assessment.
- The Department considers that the proposed design amendment to the basement levels is minor and would be appropriately managed through existing documentation including the historical Archaeological Assessment and Research Design (HAARD), Aboriginal Cultural Heritage Assessment Report (ACHAR) and Heritage Management Plan (HMP). Therefore, the proposed amendment is acceptable.

Role of the heritage consultant

- The proposal seeks to modify Condition C3 relating to the roles and responsibilities of the heritage consultant so that the relevant parts of the condition are suitably re-located within the consent to enable satisfaction.
- Council recommended that Condition C3 remained unchanged, noting its intent to advise of the role of the heritage consultant throughout all phases of construction.
- The Department agrees with Council's position that Condition C3 is an administrative condition which outlines the role of the heritage consultant throughout the heritage works. The Department also considers that separating out the sub-parts of the condition may introduce additional complexity within the consent and hinder its implementation.
- The Department therefore recommends that Condition C3 is retained, with additional wording to clarify that the condition outlines the role/functions of the heritage consultant throughout the demolition/dismantling works.

Amend Condition C3 to include reference to provide clarify that requirements are to be met during demolition/dismantling works.

Salvage and Reuse of Distinctive Elements Plan

- The proposal seeks to amend Condition C5 which requires the approval of Salvage and Reuse of Distinctive Elements Plan (SRDEP) prior to demolition/dismantling works. It seeks to defer the requirement for comprehensive plan package and confirmation on how salvaged heritage fabric will be used from prior to demolition/dismantling to prior to issue of CC5.
- The Applicant has outlined that the dismantling of the heritage items would need to occur before detailed plans can be finalised. Further the confirmation of what salvaged heritage fabric would be incorporated/reused by the project could only be identified after these dismantling works had occurred.
- Council does not support deferring the requirement to prepare the SRDEP to CC5, stating that the SRDEP needs to be prepared prior to any works being carried out to the heritage item to identify the materials to be

Amend Condition C5 to remove parts (a) and (c).

Insert new Condition D62 which requires an updated Salvage and Reuse of Distinctive Elements Plan prior to the issue of CC4.

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| | <p>salvaged and reused within the development and other developments within the Western Gateway Precinct.</p> <ul style="list-style-type: none"> • HNSW supports the deferral of the comprehensive plan package and confirmation of how salvaged heritage fabric will be reused at a later stage. • The Department has carefully considered this aspect of the proposal, the advice provided by HNSW and the concerns raised by Council. • The Department appreciates Council's concerns however is satisfied that Condition C5(b) requires sufficient information to ensure that the significance of heritage fabric and the identification of fabric to be salvaged is undertaken prior to the commencement of demolition/dismantling works. • It also appreciates that it is not possible to fulfil Condition C5(a) and (c) which require details plans and confirmation of the reuse of salvaged fabric as this cannot be confirmed and documented until the after the dismantling occurs and the condition of the fabric is fully understood. • The Department therefore agrees with HNSW advice that these details can be provided at a later stage. The Department recommends that these details are confirmed prior to issue of CC4 to enable the reuse of salvaged material to be considered as part of the Heritage Interpretation Plan required at this stage (Condition B32). • The Department recommends a new condition (D62) accordingly. | |
| Photographic Archival Recording | <ul style="list-style-type: none"> • The proposal seeks to amend Condition C7 to delete the requirement for staged photographic archival recording (Condition C7(b)) and relocate this requirement to <i>Part G – Prior to the issue of an Occupation Certificate</i>. • The Applicant has outlined that the condition cannot be wholly satisfied until after construction has been completed and a full photographic archival recording, covering all stages as required by the condition is complete. • The Department notes that Condition C7(b) requires staged archival recording during demolition/dismantling works and was not intended to be satisfied prior to the commencement of demolition/dismantling works. • The Department however, does not support this requirement being deferred until prior to issue of an Occupation Certificate. • The Department instead recommends a new Condition C8 is added to clarify that staged and final archiving is completed in accordance with the procedure set out in Condition C7 and submitted to HNSW and Council for information. | <p>Amend Condition C7 to remove part (b).</p> <p>Insert new Condition C8 to clarify the requirements for staged and final archival recording.</p> |
| Protection of Public Infrastructure | <ul style="list-style-type: none"> • The proposal seeks to relocate Condition E9 from <i>Part E – Prior to Construction Work Commencing</i> to <i>Part C – Prior to the Demolition and Dismantling of the Heritage Item</i> to ensure public infrastructure is protected during demolition/dismantling of heritage items. • The Department notes that Condition E9 must be satisfied prior to the commencement of any demolition, earthworks or construction. | <p>Delete Condition E9.</p> <p>Insert new Condition C9.</p> |

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| | <ul style="list-style-type: none"> The relocation of this condition from Part E to Part C is therefore administrative and will ensure the protection of public infrastructure from the commencement of any works, including demolition and dismantling, through to completion of the project. | |
| Pre-Construction Dilapidation Report | <ul style="list-style-type: none"> The proposal seeks to relocate Condition E10 from <i>Part E – Prior to construction commencing to Part C – Prior to the Demolition and Dismantling of the Heritage Item</i> to ensure pre-construction dilapidation reporting requirements are completed prior to demolition/dismantling. The Department notes that Condition E10 must be satisfied prior to the commencement of any demolition, earthworks or construction. The relocation of this condition from Part E to Part C is therefore administrative and will ensure that a pre-construction dilapidation report is prepared prior to demolition/dismantling. The Department also recommends that E11 and E12, also related to the pre-construction dilapidation report, are moved in conjunction with Condition E10 as the suite of conditions are intended to be read collectively. | <p>Delete Condition E10, E11 and E12.</p> <p>Insert new Conditions C10, C11 and C12.</p> |
| Demolition | <ul style="list-style-type: none"> The proposal seeks to relocate Condition E13 from <i>Part E -Prior to Construction Commencing to Part C – Prior to the Demolition and Dismantling of the Heritage Item</i> to ensure demolition work complies with the Australian Standard. The Department considers this change is administrative and supports the proposed relocation from Part E to Part C. | <p>Delete Condition E13.</p> <p>Insert new Condition C13.</p> |
| Environmental Management Plans | <ul style="list-style-type: none"> The proposal seeks to relocate Conditions E14-E21 from <i>Part E -Prior to Construction Commencing to Part C – Prior to the Demolition and Dismantling of the Heritage Item</i> to ensure the Construction Environmental Management plan and relevant subplans are prepared prior to the commencement of demolition/dismantling. The Department notes that Conditions E14-E21 must be satisfied prior to the commencement of any demolition, earthworks or construction. The relocation of these conditions from Part E to Part C is therefore administrative and will ensure that the required management plans are prepared prior to demolition/dismantling. | <p>Delete Conditions E14-E21.</p> <p>Insert new Conditions C14-C21.</p> |
| Hazardous Materials Survey | <ul style="list-style-type: none"> The proposal seeks to relocate Conditions E22 and E23 from <i>Part E -Prior to Construction Commencing to Part C – Prior to the Demolition and Dismantling of the Heritage Item</i> ensure the hazardous materials survey is conducted prior to demolition/dismantling. The Department notes that Conditions E22 must be satisfied prior to the commencement of any demolition, earthworks or construction. The relocation of these conditions from Part E to Part C is therefore administrative and will ensure that a hazardous materials survey is undertaken prior to demolition/dismantling and that all requirements are complied with. | <p>Delete Conditions E22 and E23.</p> <p>Insert new Conditions C22 and C23.</p> |

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| Sediment and Erosion Controls | <ul style="list-style-type: none"> The proposal seeks to relocate Condition E24 from <i>Part E -Prior to Construction Commencing to Part C – Prior to the Demolition and Dismantling of the Heritage Item</i> to ensure sediment and erosion controls are implemented prior to demolition/dismantling. The Department notes that Condition E24 must be satisfied prior to the commencement of any demolition, earthworks or construction. The relocation of this condition from Part E to Part C is therefore administrative and will ensure that erosion and sediment controls are implemented prior to demolition/dismantling. The Department also recommends additional wording to ensure the controls remain in place for the duration of construction works. | <p>Delete Condition E24.</p> <p>Insert new Condition C24 with additional wording to ensure controls remain in place for the duration of works.</p> |
| Construction Parking, Truck Movements and Worker Transportation | <ul style="list-style-type: none"> The proposal seeks to relocate Conditions E29-E33 from <i>Part E -Prior to Construction Commencing to Part C – Prior to the Demolition and Dismantling of the Heritage Item</i> to ensure construction worker transport and construction parking and truck movements have been considered before demolition/dismantling commences. TfNSW did not raise any concerns with this approach in their submission on the project. The Department notes that Condition E29 and E30 must be satisfied prior to the commencement of any demolition, earthworks or construction and that Condition E32 must be satisfied prior to commencement of any waste removal. Conditions E31 and E33 are administrative and read in conjunction with Conditions E29, E30 and E32. The relocation of these conditions from Part E to Part C is therefore administrative and will ensure that they are complied with prior to demolition/dismantling. | <p>Delete Conditions E29-E33.</p> <p>Insert new Conditions C25-C32.</p> |
| TfNSW requirements | <ul style="list-style-type: none"> The proposal seeks to duplicate Conditions D46, E37, E38 and E39, relating to TfNSW safety and other requirements, in <i>Part C – Prior to the Demolition and Dismantling of the Heritage Item</i>. TfNSW reviewed the proposal and did not raise any concerns. The Department supports the addition of these safety requirements within Part C to ensure that all TfNSW requirements are met both prior to demolition/dismantling and prior to construction work. | <p>Insert new Conditions C30 - 33</p> |
| Construction fencing along rail corridor | <ul style="list-style-type: none"> The proposal seeks to relocate Condition E40 from <i>Part E -Prior to Construction Commencing to Part C – Prior to the Demolition and Dismantling of the Heritage Item</i> to ensure fencing is in place along the rail corridor prior to demolition. The Department notes that Condition E40 must be satisfied prior to the commencement of any works. The relocation of this condition from Part E to Part C is therefore administrative and will ensure that fencing is in place prior to demolition/dismantling. The Department recommends additional wording to the condition to ensure the fencing remains in place for the duration of demolition and construction works. | <p>Delete Condition E40.</p> <p>Insert new Condition C33 and include the requirement for fencing to remain in place for the duration of works.</p> |

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| Archaeological Testing | <ul style="list-style-type: none"> The proposal seeks to relocate Conditions E43, E45, E47, E48 and E49 from <i>Part E -Prior to Construction Commencing to Part D – Prior to the Issue of a Construction Certificate</i> as the archaeological testing will be undertaken alongside excavation and final reports cannot be completed until after excavation is completed. The Applicant proposes these conditions are satisfied prior to issue of CC2. The Department notes that Condition E43 requires a Heritage Management Plan prior to commencement of construction, Condition E45 requires a report be provided following the archaeological testing program and Condition E47 requires a further report based on the results of testing, where significant salvage is required. The Department supports the relocation of these conditions from Part E to Part D to provide a certainty that these reports must be approved prior to CC1 (Condition E43 (now D69)) and CC2 (Conditions E45 and E47 (now D70 and D71)). The Department recommends that Conditions E48-E49 which outline the requirement for notification of State significant archaeology under the Heritage Act of, a public open day and a final archaeological excavation report within 12 months of the excavation program are relocated to Part F of the consent, noting that they will occur during works and do not need to be met prior to works commencing. | <p>Delete Conditions E43, E45, E46, E47, E48 and E49.</p> <p>Insert new Conditions D69 – D71 and F60-F62</p> |
| Rodent Treatment Programme | <ul style="list-style-type: none"> The proposal seeks to relocate Condition E50 from <i>Part E -Prior to Construction Commencing to Part C – Prior to the Demolition and Dismantling of the Heritage Item</i> to ensure the rodent treatment programme is in place prior to the demolition/dismantling of heritage items. The Department notes that Condition E50 must be satisfied prior to the commencement of any demolition, earthworks or construction. The relocation of this condition from Part E to Part C is therefore administrative and will ensure that a rodent treatment programme is prepared prior to demolition/dismantling. | <p>Delete Condition E50.</p> <p>Insert new Condition C24.</p> |
| Public Domain Works | <ul style="list-style-type: none"> The proposal seeks to relocate E52-E57 from <i>Part E -Prior to Construction Commencing to Part D – Prior to the Issue of a Construction Certificate</i> to require the Lee Street Public Domain Plan and Public Domain Works Bond and Defects Liability to be prepared prior to the issue of CC5. The Applicant notes that all works related to the public domain will be undertaken as part of CC5. The Department notes that Condition E52 must be satisfied prior to the commencement of any public domain works and that Conditions E53-E57 outline the bonds/guarantee/liabilities in relation to the public domain works. The Department supports the relocation of these conditions from Part E to Part D to provide a certainty that the public domain plan and bonds/guarantee/liability requirements are satisfied prior to CC5 which includes the public domain. | <p>Delete Conditions E52-57.</p> <p>Insert new Conditions D63-D68</p> |

6 Evaluation

The Department has reviewed the proposed modification and supporting information in accordance with the relevant requirements of the EP&A Act. The Department's assessment concludes that the proposal is acceptable as:

- the change to the definition of construction/building work is unlikely to have additional impacts as the conditions under Part C of the consent would ensure that the appropriate studies and reporting requirements have been fulfilled prior to the demolition and dismantling of heritage items
- the basement retaining wall design change is minor, would resolve structural complexities and would not affect the management of any archaeological resources
- administrative changes to conditions within the consent would not change their intent or result in any additional impacts, beyond the approved development
- the proposal is not expected to result in any adverse environmental impacts
- the modified development remains consistent with the relevant statutory provisions
- it is substantially the same development as SSD 10405
- on balance the proposed modifications are in the public interest.

7 Recommendation

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

- **considers** the findings and recommendations of this report
- **determines** that the application SSD 10405 MOD 1 falls within the scope of section 4.55(1A) of the EP&A Act
- **accepts and adopts** all of the findings and recommendations in this report as the reasons for making the decision to approve the modification
- **agrees** with the key reasons for approval listed in the draft notice of decision
- **modifies** the consent SSD 10405
- **signs** the attached approval of the modification (**Appendix D**).

Recommended by:



Annika Hather
Planning Officer
Key Sites Assessments

Recommended by:



David Glasgow
Principal Planning Officer
Key Sites Assessment

8 Determination

The recommendation is **Adopted** / ~~Not adopted~~ by:

AWatson

17/8/2022

Amy Watson

Team Leader

Key Sites Assessments

as delegate of the Minister for Planning

Appendices

Appendices should follow this general layout but may be modified for specific reporting needs where necessary:

Appendix A – List of referenced documents

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

- Modification Report, prepared by Urbis and dated 2 June 2022
- Submissions
- Response to Request for Additional Information, prepared by Urbis and dated 1 August 2022

<https://www.planningportal.nsw.gov.au/major-projects/projects/atlassian-mod-1-minor-design-change-and-changes-condition-staging>

Appendix B – Statutory Considerations

Use if relevant for any additional information not captured in another appendix list

To satisfy the requirements of the EP&A Act, the Department's assessment of the proposed modification has given detailed assessment to a number of statutory requirements. These include:

- The matters under section 4.55(1A) of the EP&A Act
- The matters listed under Section 4.15(1) of the EP&A Act, including applicable EPIs and regulations.

The Department has considered these matters in its assessment of the proposal in **Table 3** and **Table 4**.

Table 4 | Consideration of section 4.55 of the EP&A Act

| Section 4.55(1A) | Assessment |
|---|--|
| (a) the proposed modification is of minimal environmental impact | <p>Section 5 of this report provides a detailed assessment of the impacts associated with the modified development.</p> <p>The Department is satisfied that the proposed modification is of minimal environmental impact.</p> |
| (b) 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 | <p>The development, as proposed to be modified, is substantially the same development as that originally approved.</p> <p>The proposed modification seeks to amend the basement retaining wall design, amend the definition of construction/building works and make administrative</p> |

amendments to various conditions. The development remains materially the same development.

| | |
|--|---|
| (c) the application has been notified in accordance with the regulations | The application is not required to be notified in accordance with the <i>Environmental Planning and Assessment Regulation 2000</i> (EP&A Regulation). |
| (d) any submission made concerning the proposed modification has been considered | The Department referred the application to Council, HNSW and TfNSW. The issues raised in submissions have been considered in Section 5 of this report. |

Table 5 | Consideration of the matters listed under Section 4.15 of the EP&A Act

| Section 4.15 Matters for consideration | The Department's assessment |
|---|--|
| (1)(a)(i) any environmental planning instrument | The modified development is consistent with the relevant EPIs, as addressed below in this report. |
| (1)(a)(ii) any proposed instrument | The modified development is consistent with the relevant proposed EPIs, as addressed below in this report. |
| (1)(a)(iii) any development control plan | Under clause 2.10 of the Planning Systems SEPP, Development Control Plans (DCPs) do not apply to SSD. |
| (1)(a)(iiia) any planning agreement | The modified development does not involve a planning agreement. |
| (1)(a)(iv) the regulations | The application satisfactorily meets the relevant requirements of the EP&A Regulation 2000, including the procedures relating to applications (Part 6), the requirements for notification (Part 6, Division 6) and fees (Part 15, Division 1AA). |
| (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, | Section 5 of this report provides a detailed assessment of the impacts associated with the modified development. The modified development is not expected to result in unacceptable environmental impacts. |
| (c) the suitability of the site for the development | The site is considered suitable for the development (Section 5). |
| (d) any submissions | The Department has considered the submissions received (refer to Section 4 and 5 of this report). |
| (e) the public interest | The Department considers the proposed modification to be in the public interest. |
| Reasons given by the consent authority for the grant of the consent that is sought to be modified | The Department has considered the reasons given by the consent authority for the grant of the consent in its assessment in Section 5 . |

Environmental Planning Instruments

To satisfy the requirements of section 4.15(1)(a)(i) of the EP&A Act, the following EPIs were considered as part of the assessment of the modification application:

- State Environmental Planning Policy (Planning Systems) 2021

- State Environmental Planning Policy (Biodiversity and Conservation) 2021
- Draft State Environmental Planning Policy (Resilience and Hazards) 2021
- State Environmental Planning Policy (Transport and Infrastructure 2021)
- Sydney Local Environmental Plan 2012
- Draft Remediation of Land State Environmental Planning Policy
- Draft Environment State Environmental Planning Policy

The Department undertook a comprehensive assessment of the application against the relevant EPIS in its original assessment. The Department has considered the above EPIs and is satisfied the modifications do not result in any inconsistency with these EPIs.

Objects of 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.

Appendix C – Previous modifications to the consent

The Atlassian Office and Hotel Development (SSD 10405) is also subject to two additional modifications that are currently under assessment. The modifications to SSD 10405 are summarised in **Table 5**.

Table 6 | Summary of modifications to SSD 10405

| Mod No. | Summary of Modifications | Approval Authority | Type | Status |
|--------------|--|--------------------|----------|------------------|
| MOD 2 | Modification to amend the respite periods, construction staging, the timing of construction certificates and make minor design changes | Department | 4.55(1A) | On exhibition |
| MOD 3 | Modification to restack the tower structure, modify the façade, change the habitat design and increase the GFA. | Department | 4.55(1A) | Under assessment |

Appendix D – Notice of Modification

The Notice of Modification can be found at the Department's website:

<https://www.planningportal.nsw.gov.au/major-projects/projects/atlassian-mod-1-minor-design-change-and-changes-condition-staging>