



**Planning &  
Environment**

**STATE SIGNIFICANT DEVELOPMENT:  
Section 96(1A) Modification Application**

**AUSTRALIAN TECHNOLOGY PARK, EVELEIGH**

**SSD 7317 MOD 1**



Environmental Assessment Report  
Section 96(1A) of the *Environmental Planning  
and Assessment Act 1979*

June 2017

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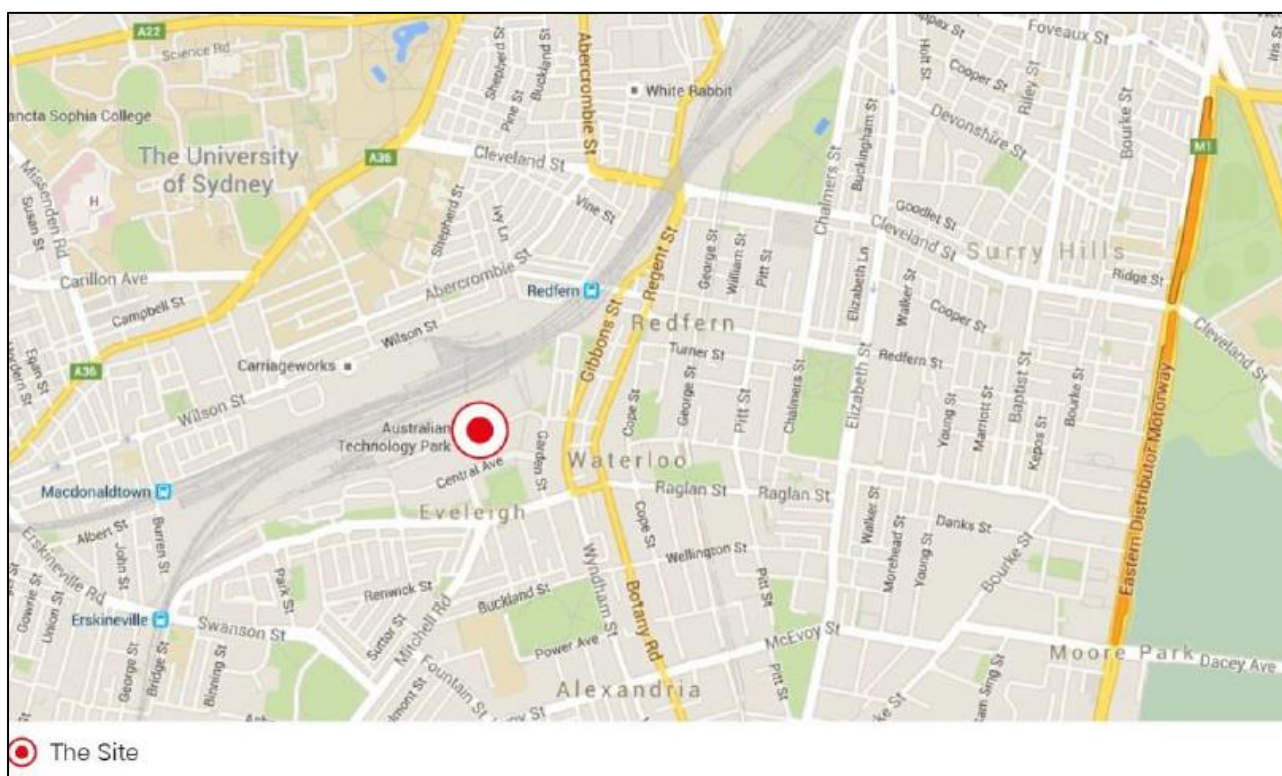
# 1. BACKGROUND

## 1.1 Introduction

This report provides an assessment of a proposed modification to the State significant development (SSD) consent (SSD 7317) for the development of a commercial campus at the Australian Technology Park (ATP). The application has been lodged by Mirvac Projects Pty Ltd (Applicant) pursuant to Section 96(1A) of the *Environmental Planning and Assessment Act 1979* (EP&A Act). It seeks approval to amend the timing of the required landscaping and public domain plan (L&PD plan) and subsequent completion of the works (Condition B53).

## 1.2 Subject site

The subject site is located in the City of Sydney local government area, in the suburb of Eveleigh (**Figure 1**). It is located approximately 2.5 kilometres (km) to the south-west of the Sydney central business district (CBD), approximately 5 km to the north of Sydney Airport, within 200 metres (m) of Redfern railway station and 400 m from Redfern town centre.



**Figure 1:** Australian Technology Park location (Source: Applicant's EIS for SSD 7317)

The ATP has an area of 13.5 hectares (ha) and is bound by (**Figure 2**):

- the main western railway line and railway shed to the north;
- Henderson Road to the south;
- Alexandria Child Care Centre, Alexander Street and Rowley Lane to the west; and
- Garden Street and Cornwallis Street to the east.

The public domain within the ATP comprises three internal roads (Central Avenue, Davy Road and Locomotive Avenue) and various publicly accessible open spaces, such as the playing courts, Vice Chancellor's Oval, Innovation Plaza, Central Plaza (also called Village Square) and Mitchell Way (also called the Entry Garden).





**Figure 2:** The ATP site shown in a solid red outline (Base map source: Nearmap)

### 1.3 Approval history

On 20 December 2016, the Planning Assessment Commission (Commission) granted development consent for a commercial campus at the ATP (SSD 7317), which included:

- site preparation works, site clearance, excavation and remediation;
- construction of three mixed use buildings with a total gross floor area (GFA) of 107,427 m<sup>2</sup>;
- car and bicycle parking;
- landscaping, road and public domain works; and
- building identification signage zones.

Construction of Building 1 has commenced, and the Building 2 site has been cleared ready for construction. No works have commenced on Building 3.

Condition A16 allows for the development to be constructed in stages and provides a framework for the Principal Certifying Authority (PCA) to issue Construction Certificates (CCs) for 19 different components of the development. This includes five CCs for each of the three buildings and four CCs for the public domain. The public domain is divided into two areas and the approval allows a two stage construction (Stage 1 Civil works and Stage 2 Landscaping) in each area:

- **Public domain area 1:** Entry Garden, Innovation Plaza, Central Avenue north of Building 1 and recreation zone south of Building 1; and
- **Public domain area 2:** Locomotive Street, Mitchell Way, Village Square, Vice Chancellor's Oval (Eveleigh Green), remainder of Central Avenue and Davy Road.

Condition B4 requires the preparation, exhibition, execution and registration on title of a Voluntary Planning Agreement (VPA) between the Applicant and the City of Sydney Council (Council) in accordance with a public benefit offer by the Applicant. This gives Council the option of accepting the dedication of the public domain in the event that the anchor tenant (Commonwealth Bank of Australia) vacates the precinct. The terms of the offer notes that:

- the public domain works are to be designed and constructed generally in accordance with Council's public domain design guidelines; and
- at the time of dedication, the quality and maintenance will be as good a condition or better than Council managed public domain and infrastructure surrounding the precinct and will be generally in accordance with Council's public domain design standards.

Condition B53 outlines the following requirements (amongst others) for landscaping and public domain relevant to this proposal:

- a L&PD plan to be prepared in consultation with Council and the Heritage Council and endorsed by the Secretary prior to the issue of the first CC for above ground building works; and
- all public domain works to be completed prior to issue of any Occupation Certificate.

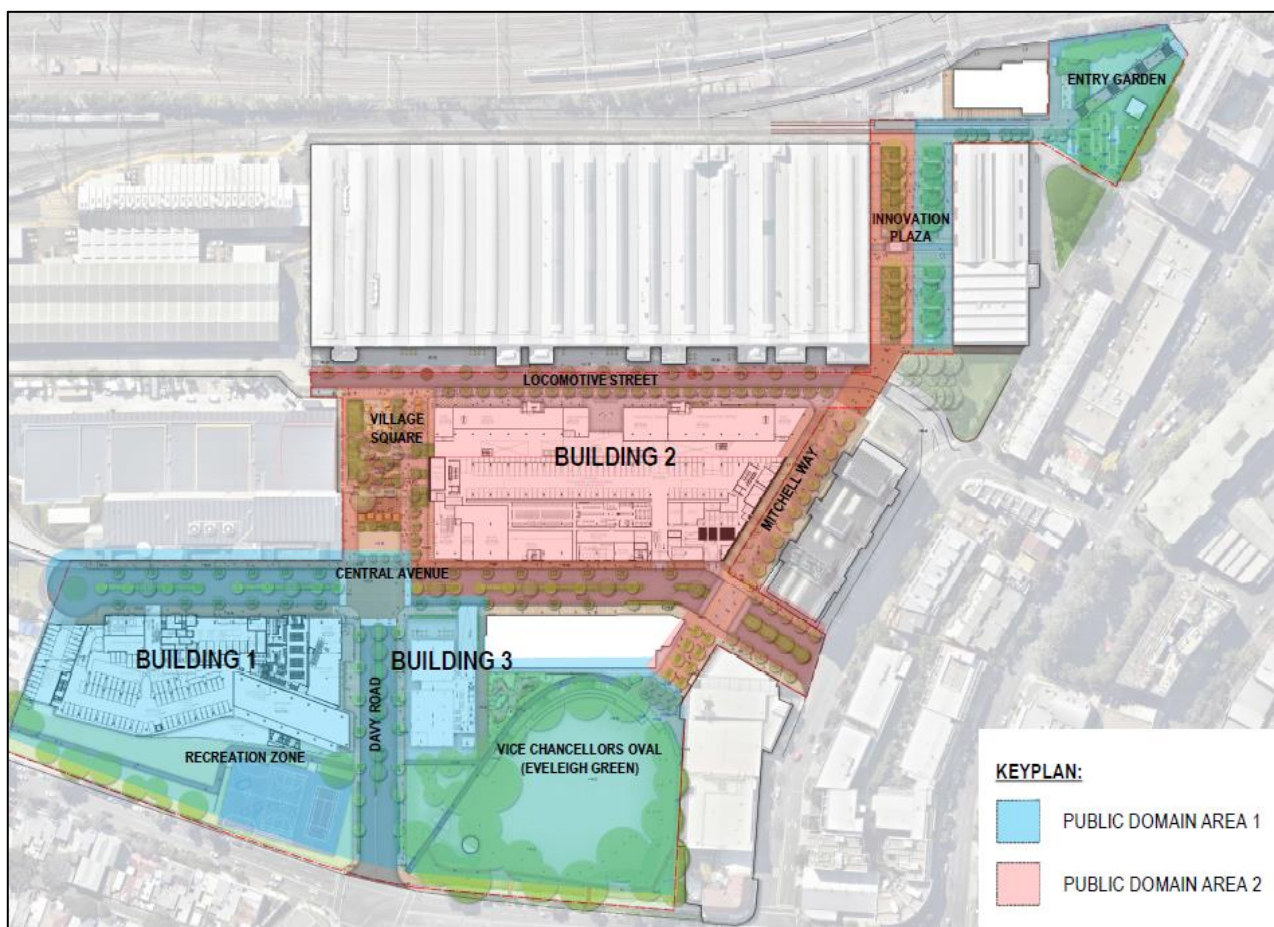
## 1.4 Other modification applications

On 28 April 2017, the Applicant lodged a modification (SSD 7317 Mod 2) seeking approval for internal and external amendments to Building 2; amendments to the approved signage zone for Building 1; changes to the required timing of the VPA with Council (Condition B4) and changes to the requirements for vehicle and bicycle parking. The Applicant is currently responding to submissions.

## 2. PROPOSED MODIFICATION

The application (SSD 7317 MOD 1) seeks approval to:

- defer the requirement for approval of a L&PD plan (currently required prior to the first CC for above ground works) to prior to the CC for the Public Domain Area 1 – Stage 2 Landscaping (above finished level); and
- carry out the public domain works in a staged approach (**Figure 3**).



**Figure 3:** Proposed public domain staging plan (Source: supplied by the Applicant)



The Applicant accordingly proposes to amend Condition B53 as follows:

**B53 Landscaping and Public Domain**

*Prior to the issue of the first Construction Certificate for above ground works, an Arborist report shall be prepared, in conjunction with Council, by an appropriately qualified Arborist including an assessment of the age, health, condition and significance of individual trees and recommendations for retention, relocation or removal. The report shall provide details of measures to ensure the health of relocated trees and protection measures for all trees to be retained/ relocated during construction.*

*Landscape and Public Domain Plan*

- a) *A detailed landscape and public domain plan, drawn to scale, by a qualified landscape architect or landscape designer, must be prepared in consultation with Council and the Heritage Council and approved by the Secretary prior to the issue of the **first** Construction Certificate for **above ground building works the Public Domain Area 1 - stage 2 landscaping (above finished level)**. The plan must reference the industrial character of the precinct, and be generally in accordance with Council's 'Public Domain Manual', and include .....condition continued...*
- ~~d) *All landscaping and public domain works in the approved plan are to be completed prior to any Occupation Certificate being issued (unless an appropriate bond is secured to cover the cost of the outstanding landscaping).*~~
- d) *Landscaping and public domain works in the approved plan are to be completed on a staged basis prior to the issue of the Occupation Certificate for each building (unless an appropriate bond is secured to cover the cost of the outstanding landscaping for the relevant public domain area). Staging is as follows:*
  - (i) *Public Domain Area 1 will be completed prior to the issue of the Occupation Certificate for Building 1.*
  - (iii) *Public Domain Area 2 will be completed prior to the issue of the Occupation Certificate for Building 2.*

### 3. STATUTORY CONTEXT

#### 3.1 Modification of approval

Section 96(1A) of the EP&A Act requires the consent authority to be satisfied the following matters are addressed in respect of the subject application (**Table 1**):

**Table 1:** S96 (1A) considerations

<b>Section 96(1A) matters for consideration</b>	<b>Comment</b>
S96(1A)(a) that the proposed modification is of minimal environmental impact.	<b>Section 5</b> of this report provides an assessment of the impacts associated with the proposal. As the proposal is limited to the timing of a L&PD plan and the subsequent works, the Department is satisfied the proposed modifications will have minimal environmental impact.
S96(1A)(b) that the development to which the consent as modified 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).	As the proposal only relates to the timing of a L&PD plan and the subsequent works, the Department is satisfied it would result in development is substantially the same as the originally approved development.
S96(1a)(c) The application has been notified in accordance with the regulations.	The modification application has been notified in accordance with the Regulation. Details of the notification are provided in <b>Section 4</b> of this report.
S96(1a)(d) Any submission made concerning the proposed modification has been considered.	The Department has received three submissions on the proposal. The comments provided in the

	submissions have been considered in <b>Section 4</b> and <b>Section 5</b> of this report.
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### 3.2 Environmental planning instruments (EPIs)

The following EPIs were relevant to the original SSD application:

- *State Environmental Planning Policy (State and Regional Development) 2011;*
- *State Environmental Planning Policy (State Significant Precincts) 2005;*
- *State Environmental Planning Policy (Infrastructure) 2007;*
- *State Environmental Planning Policy (Urban Renewal) 2010;*
- *State Environmental Planning Policy No. 1 – Development Standards;*
- *State Environmental Planning Policy No. 55 – Remediation of Land; and*
- *State Environmental Planning Policy No. 64 – Advertising and Signage.*

The Department comprehensively assessed the original SSD application against the above EPIs. As the proposal is limited to the timing of a L&PD plan and the subsequent works, the Department is satisfied it remains consistent with the above EPIs.

### 3.3 Delegation

On 14 September 2011, the Minister delegated functions to determine modification applications to the Commission in cases where an objection has been received by the relevant local Council, where the proponent has provided a political donation disclosure statement, or where there are more than 25 public submissions objecting to the proposal.

A political donation has not been disclosed in relation to this application, and no submissions have been received from the public. However, Council objects to the proposal. The proposal is therefore referred to the Commission for determination.

## 4. CONSULTATION AND SUBMISSIONS

### 4.1 Notification

The Department made the proposal publicly available on its website. The Department also notified relevant State and local government authorities in writing. Due to the minor nature of the modifications, the proposal was not publicly exhibited.

### 4.2 Submissions

The Department received three submissions from public authorities in response to the notification of the application. No submissions from the general public were received. These are summarised in **Table 2** below:

**Table 2:** Summary of submissions

<b>City of Sydney Council (Council)</b>
Council strongly objects to the proposal on the basis that it is inappropriate to amend the development consent while negotiations on a VPA relating to the public domain are underway between Council and the Applicant.
<b>Heritage Council of NSW</b>
The Heritage Council of NSW do not object to the proposal, but requests the Applicant be reminded: <ul style="list-style-type: none"> <li>• that it must be consulted in the preparation of the L&amp;PD plan (as per Condition B53a); and</li> <li>• that the spatial qualities and industrial character of the existing site, including interpretation of tracks and turntables as an integral part of former use, be implemented within the landscape and public domain plans.</li> </ul>
<b>UrbanGrowth NSW</b>
UrbanGrowth NSW do not object to the proposal, and did not provide any further comments.

### 4.3 Response to Submissions

On 29 May 2017, the Applicant provided a response to submissions (RtS) and additional clarification requested by the Department. The RtS provides the following:

- plans identifying the two public domain areas (**Figure 3**) and pedestrian / vehicle access arrangements during construction;
- clarification that delivery of the public domain in one stage would restrict public access through the site, require pedestrians and vehicles to navigate closer to construction activities and prolong the construction period;
- clarification this proposal seeks to allow the ongoing and orderly construction of the buildings by allowing the orderly issue of construction certificates; and
- clarification the proposal does not interfere or obstruct ongoing negotiations between the Applicant and Council, and does not reduce or diminish the Applicant's obligation to enter into a VPA with Council.

## 5. CONSIDERATION OF PROPOSED MODIFICATION

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The proposal seeks to amend the timing of the required L&PD plan (in Condition B53a) and the subsequent completion of the public domain works (in Condition B53d).

Council strongly objects to the proposal on the basis that it is inappropriate to amend the development consent in relation to the public benefit offer and future VPA while negotiations are underway between the Applicant and Council.

The Department has assessed the merits of the proposed changes to the delivery of the L&PD plan and the completion of works, below.

### Landscaping and Public Domain Plan (Condition B53a)

The proposal seeks to defer the requirement for the L&PD plan to be approved by the Secretary from 'prior to the issue of the first CC for above ground building works' to 'prior to a CC for the Public Domain Area 1 – Stage 2 Landscaping (above finished level)'.

The Applicant is seeking to defer the requirement for approval of the L&PD plan to allow construction of above ground building works for Building 1 to commence as programmed. Meanwhile, it is consulting with Council on both the L&PD plan (required by Condition B53a) and the VPA (required by Condition B4). The Applicant contends that deferring the submission and approval of the L&PD plan will not impact upon any of the landscaped or public domain areas.

Council has advised it cannot agree with the amendments to the condition that seek to defer delivery of the L&PD plan until the VPA is fully negotiated. Council notes the content of the L&PD plan, including the extent to which the public domain is in accordance with Council's public domain manual, needs to be negotiated through the VPA.

The Department notes the terms of the offer to enter into a VPA specifically relate to the design and construction quality and future dedication of the public domain, but not the requirements for the L&PD plan itself (including delivery timescales and approval role). While noting Council's concerns that the content of the L&PD plan needs to be negotiated through the VPA, the proposal seeks to defer its approval to a later construction stage and will not affect the content of the L&PD plan. The Department therefore does not accept that deferring the timeframe for approval of the L&PD plan will affect negotiations on the VPA, noting the scope of the condition.

The Department notes the L&PD plan requirements set out in Condition B53a and the terms of the VPA (in Mirvac's letter of offer dated 8 August 2016) both require that public domain works are generally in accordance with Council's Public Domain Manual. However, these two mechanisms duplicate and differ in terms of approval role and delivery milestone, as follows:



- Condition B53a requires the L&PD plan to be endorsed by the Secretary, following consultation with Council and the Heritage Council, prior to the first CC for above ground building works; and
- the VPA between Council and the Applicant (as secured through Condition B4) must be agreed, executed and registered on title prior to the issue of the first CC for façade works (the Department has no role in this process).

As both Condition B53a and the terms of the VPA seek to achieve the same outcome, the Department is concerned that Condition B53a results in the duplication of differing delivery milestones and approval roles, which will lead to unnecessary administrative complexity.

While the Applicant has requested the L&PD plan be deferred until a later CC for public domain works, the Department notes the interdependency on Council's endorsement of the public domain works as part of the VPA process. The Department therefore considers it appropriate that the L&PD plan be endorsed at the same time as the VPA execution and prior to any public domain works occurring.

The Applicant contends that the Secretary is best placed to approve the L&PD plan as Council is not the consent authority for the site. Noting Council must be satisfied with the design and construction quality of the public domain as part of the VPA, the Department considers it is appropriate for the L&PD plan (in Condition B53a) to also be endorsed by Council. The Department does not consider it appropriate for it to be involved in any decision on the design of the public domain as this is already dealt with through the VPA.

The Department therefore recommends that Condition B53a be amended to align with the approval role and delivery milestone of L&PD plan with the VPA, namely that Council be required to endorse the L&PD plan prior to the issue of a CC for Building 1 – Stage 4: Façade works.

#### Landscaping and public domain works (Condition B53d)

The proposal seeks to undertake the landscaping and public domain works in the following stages:

- Public Domain Area 1 to be completed prior to the issue of the Occupation Certificate (OC) for Building 1; and
- Public Domain Area 2 to be completed prior to the OC for Building 2 (**Figure 3**).

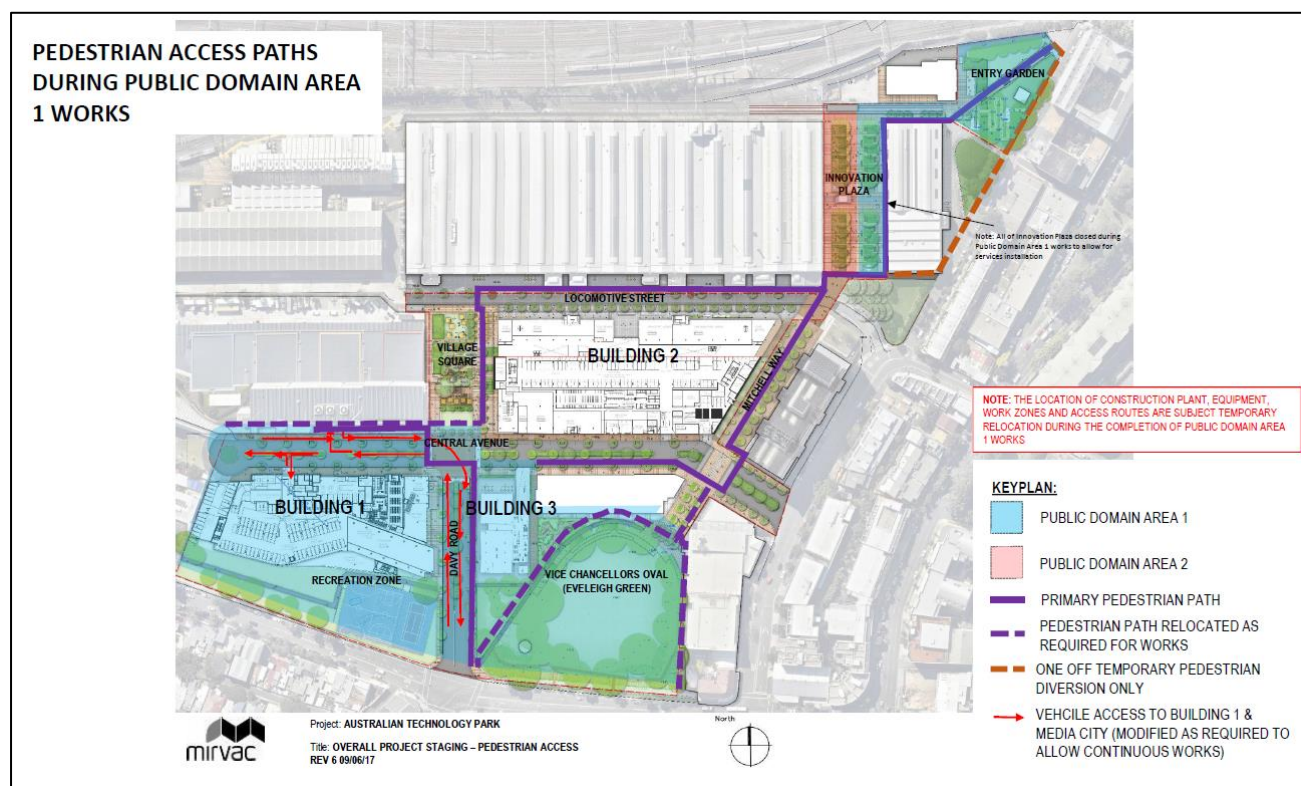
The Applicant justifies the staging by noting it would reduce the restriction of public access through the ATP site during construction works. Public access would be available through the ATP during both stages (**Figure 4**), rather than largely unavailable across the whole site if the works were not staged. **Figure 4** shows that pedestrian access through the precinct will be provided by a primary pedestrian path (during both Stage 1 and Stage 2 works) and connected to a pedestrian path that can be relocated to enable the public domain works in the relevant area to be completed. The Applicant has advised the likely timeframe between occupation of Buildings 1 and 2 is approximately 14 months.

Council considers it is inappropriate to amend any conditions relating to the public domain as the timing for the dedication of the public domain needs to be negotiated through the VPA. Council also notes concerns the Applicant is proposing to significantly delay the dedication of the public domain, and that the design/standard of public domain needs to ensure it meets Council's standards at the time of dedication.

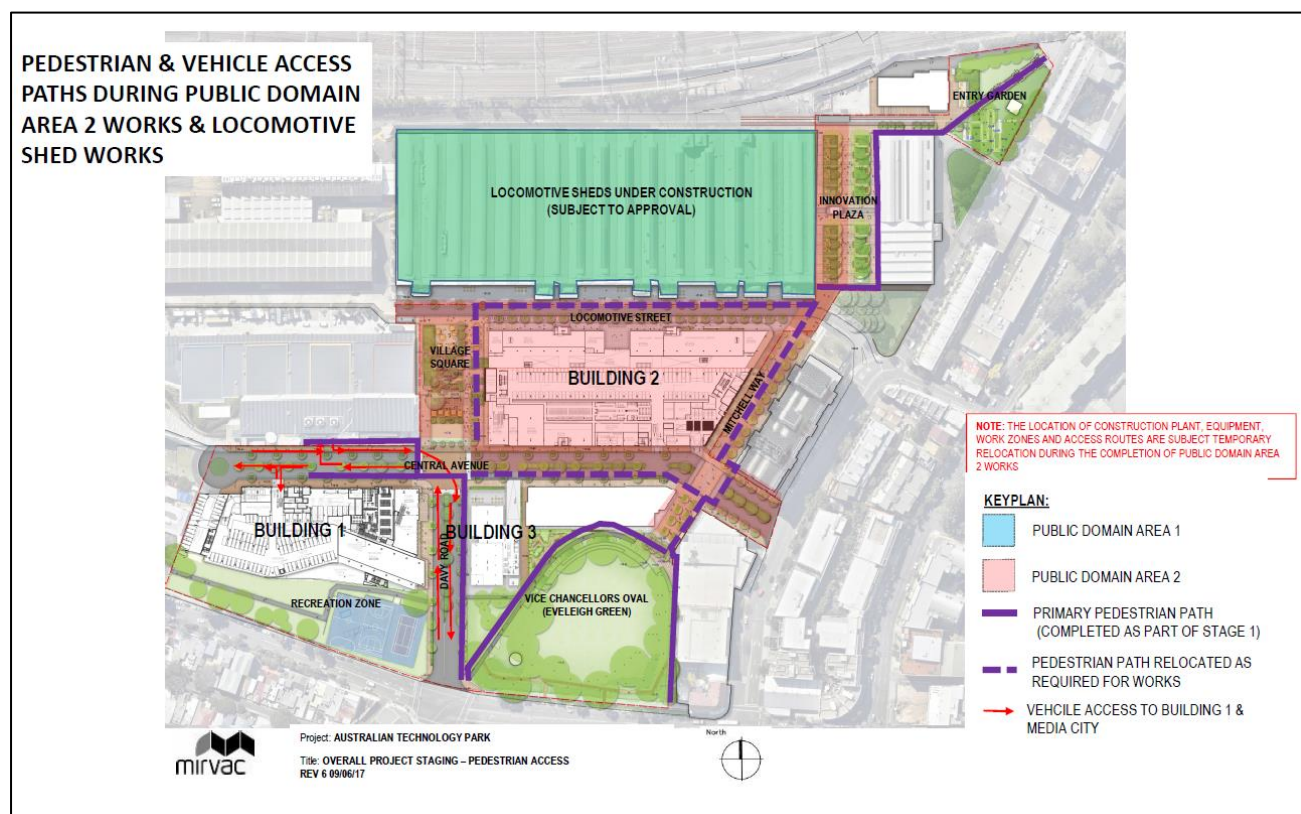
The Department notes Council's concerns, however the VPA terms do not address timeframes for the delivery of the works, as this is a matter for the terms of the consent. The Department does not agree with Council that the proposal to stage the completion of the works, which will be completed prior to the occupation of the relevant building, will compromise Council's ability to negotiate the terms of the VPA in relation to the specification and future dedication of the public domain areas.

The Department notes the Applicant's project staging plan (**Figure 3**) shows the majority of the public domain will be completed prior to the issue of the OC for Building 1. This includes the Entry Garden, eastern half of Innovation Plaza, Central Avenue north of Building 1, Davy Street south of Village

Square, area south of Building 1 and Vice Chancellor's Oval (Eveleigh Green). Only the public domain area immediately surrounding Building 2 (namely Village Square, Locomotive Avenue north of Building 2, Central Avenue south of Building 2 and Mitchell Way) and the remainder of the Innovation Plaza will be delivered at the later stage.



**Figure 4:** Comparison of access routes during Stage 1 works (above) and Stage 2 works (below)



The Department supports the staging of the public domain areas as proposed, noting that the proposed milestones will provide a sufficient form of surety for the completion of the works whilst acknowledging that landscaping treatments are typically amongst the last aspects of a construction project to be completed, as construction activity can damage landscaping and public domain works.

The Department also notes from **Figure 4** that safe and convenient access will be provided to pedestrians through the ATP and vehicle access will be provided to other buildings within the ATP throughout the delivery of the public domain works.

The Department notes that Condition A16 will need to be amended to reflect the Applicant's project staging plan, which will deliver Davy Road (south of Village Square), the Vice Chancellor's Oval (Eveleigh Green) and western half of Innovation Plaza in Public Domain Area 1 and not Public Domain Area 2 as currently expressed in the condition.

On this basis, the Department supports the proposed staging of the delivery of the public domain, and notes this does not form any impediment to Council and the Applicant negotiating on the timing of dedication of the public domain in the VPA.

## 6. CONCLUSION

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The modification application has been assessed in accordance with the matters for consideration under section 96(1A) of the EP&A Act and the Department is satisfied the proposal complies with all statutory and strategic provisions, subject to the recommended amendments to the conditions.

The Department's assessment concludes the proposed modification is acceptable on the basis that it would:

- more appropriately align requirements for a L&PD plan and the subsequent completion of the works with relevant construction stages;
- not change the scope of the Condition B53 or any of its consultation requirements, with recommended changes to Condition B53 so that the approval role and delivery milestone for the L&PD plan aligns with those of the VPA in order to avoid unnecessary administrative complexity;
- not affect negotiations between the Applicant and Council on the VPA; and
- minimises risk of construction impacts to landscaping and public domain works, and maintains safe and convenient pedestrian and vehicle access during the construction.

Consequently, it is recommended the modification is approvable subject to the recommended conditions.

## 7. RECOMMENDATION

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It is recommended that the Planning Assessment Commission as delegate of the Minister for Planning:

- **considers** the findings and recommendations of this report, noting the Department considers that the modification is approvable, subject to conditions;
- **determines** that the Applicant's request is a modification under Section 96(1A) of the EP&A Act; and
- if the Commission determines to modify the approval, **signs** the attached notice of modification (**Appendix A**).



Ben Lusher  
**Director**  
**Key Sites Assessments**

Prepared by: Brendon Roberts  
Senior Planning Officer  
Key Sites Assessments



Anthea Sargeant 14/6/17  
**Executive Director**  
**Key Sites and Industry Assessments**



## **APPENDIX A      RELEVANT SUPPORTING INFORMATION**

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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. Modification requests

[http://majorprojects.planning.nsw.gov.au/index.pl?action=view\\_job&job\\_id=8394](http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=8394)

2. Submissions

[http://majorprojects.planning.nsw.gov.au/index.pl?action=view\\_job&job\\_id=8394](http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=8394)

3. Response to Submissions

[http://majorprojects.planning.nsw.gov.au/index.pl?action=view\\_job&job\\_id=8394](http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=8394)

## **APPENDIX B    RECOMMENDED INSTRUMENT OF MODIFICATION**