



Mr Jim Betts
Secretary
NSW Department of Planning, Industry and Environment
4 Parramatta Square, 12 Darcy Street
Parramatta NSW 2150

Attn: David Gibson (Team Leader, Social Infrastructure Assessments)

18 June 2020

Re: Section 4.55(1A) Modification Application to SSD 8636 – University of Sydney – Engineering Technology Precinct (ETP) Stage 1 – Landscape, Finished Floor Levels and Flood Risk Management

Dear David,

This application has been prepared by SJB Planning on behalf of Laing O'Rourke Australia (LOR) / the University of Sydney and is made to the NSW Department of Planning, Industry and Environment (NSW DPIE), seeking amendment to SSD 8636 pursuant to Section 4.55(1A) of the *Environmental Planning and Assessment Act 1979* (EP&A Act 1979).

The University of Sydney (the "University") is prescribed to be the Crown under clause 226 of the *Environmental Planning & Assessment Act Regulation 2000* ("EP&A Regulations") for the purposes of Division 4 of Part 4 of the *Environmental Planning and Assessment Act 1979* ("EP&A Act") which relates to Crown developments. As such, development applications or modifications made by the University are Crown development applications.

The application seeks the following amendments:

- Modification of Condition B4(a) to require a minimum 200L or larger available pot size for canopy trees in place of 400L
- Deletion of Condition B31 requiring all accesses and entry points to be protected from 1% AEP flood levels plus 0.5m
- Deletion of Condition B33 requiring compliance with section 6 – flood compatible material of the Council's Interim floodplain Management Policy dated May 2014 for any materials used for the habitable /non-habitable floor level below the flood planning levels for each respective flood level
- Modification of Condition B34 to reference Conditions B32 and B33 in place of "parts (a) to (c)"
- Deletion of Condition B35 requiring all electrical features including power points and other mechanical equipment to be protected from the relevant 1% AEP flood level and that this be shown on detailed plans prior to the commencement of construction.
- Deletion of Condition B36 requiring all building structures to have their structural integrity certified for immersion and impact from hydraulic forces of floodwaters and debris confirmed up to the relevant Probable Maximum Flood level and this certification to be submitted to the certifying authority prior to commencement of the construction certificate

- Deletion of Condition B37 requiring structural integrity of proposed wall around Basin D to be designed to withstand the impact of hydraulic forces of floodwaters and debris up to the 1% AEP flood event
- Deletion of Condition B38 requiring a fence to be design and constructed around Basin D to restrict access

Subject to continuing liaison with suppliers in an attempt to procure 400L canopy trees, this has not been possible for a number of species as suppliers have indicated a current nil supply of trees at this size.

Design development and evidence of no increased flood affectation provide in updated flood modelling has resulted in the removal of the proposed wall around Basin D, as such, any requirements relating to this wall as per Condition 37 and associated fence as per Condition 38 are no longer required.

Furthermore, subsequent flood modelling has indicated the requirement is not necessary, and it will have a detrimental impact on the landscape design which has a design excellence requirement. The University and their peer reviewer GRC Hydro who have consulted with City of Sydney (CoS) and reached an informal agreement that the flood level planning requirements of the Council's Interim Floodplain Management Policy can be relaxed.

Accordingly, this letter describes the proposed modifications and provides a planning assessment of the relevant matters for consideration contained in Section 4.55 of the *EP&A Act 1979* and is supported by:

- Letter of support prepared by GRC Hydro dated 15 May 2020
- Flood investigation letter prepared by Meinhardt Bonacci dated 22 May 2020
- Amended landscape plans and tree schedule prepared by T.C.L dated 26 May 2020
- Correspondence from Mark Kennedy of Glascott Landscape & Civil dated 2 June 2020 to Luke Hoy of Laing O'Rourke

1.0 The Site and Surrounding Context

SSD 8636 relates to the Electrical Engineering Building (EEB) located on the eastern side of the Darlington Campus within the Engineering Precinct at the University of Sydney. The development site is legally described as Lot 1 in DP 790620.

The University of Sydney is located approximately 3 kilometres south-west of the Sydney central business district (CBD). The University campuses in Camperdown and Darlington cover a combined area of approximately 49 hectares and are divided by City Road. The University has been developed progressively since its inception in the early 1850's, with the wider campus now containing over 230 buildings of varying architectural styles that house the University's 16 educational faculties. The campus is characterised by various low-scale and multi-storey education and ancillary buildings and expansive open space areas.

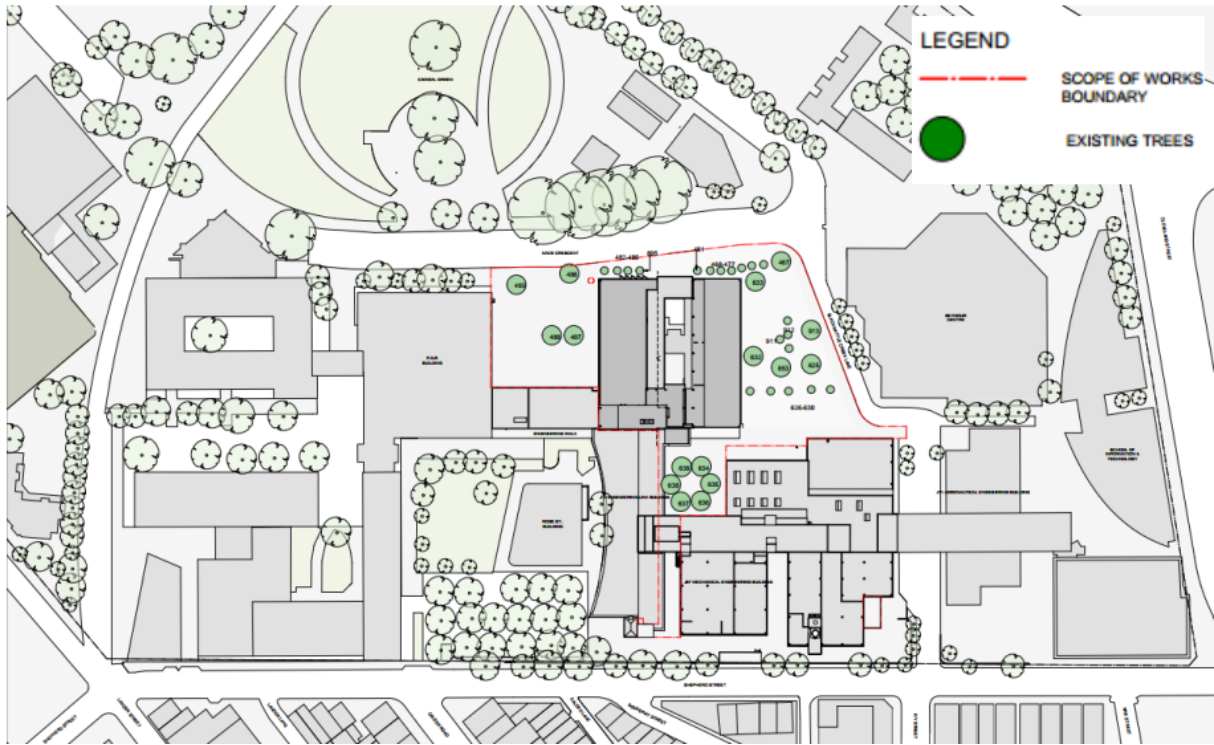


Figure 1: Location Plan (Source: SSD Application)

2.0 Background and Development History

Stage 1 DA (SSD 6123)

On 16 February 2015, the then Minister for Planning approved an SSD application (SSD 6123) for the University's Campus Improvement Program (CIP) concept proposal. The CIP concept proposal approved new educational establishment building envelopes of varying height and scale within six (6) identified precincts. Any new built form within these precincts requires detailed development applications to be lodged with and assessed by the relevant consent authority. The subject application is within Precinct C (Engineering Precinct) of the approved CIP precinct plan (refer to Figure 2).

The CIP approval has been modified on one (1) occasion. On 9 June 2015, the then Director, Infrastructure, as delegate of the Minister for Planning, approved a modification which clarified that approved additional GFA is contained within the approved precinct building envelopes and that the consent does not preclude other minor development within CIP precincts outside of the building envelopes.

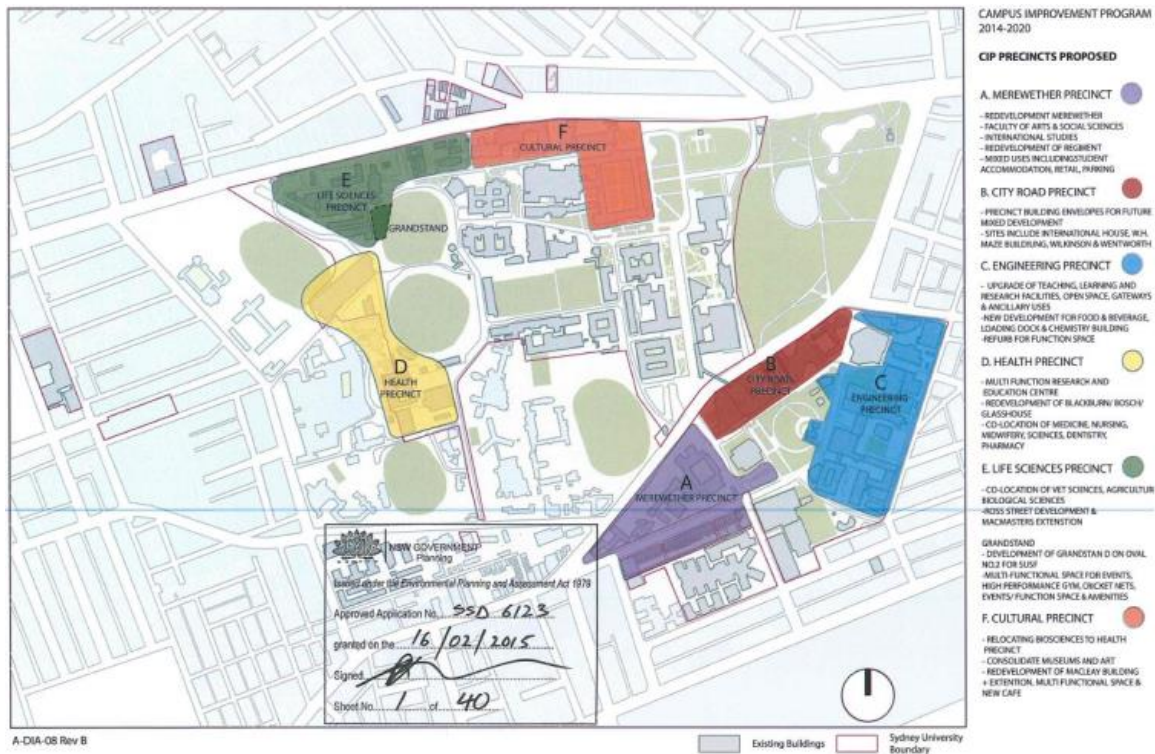


Figure 2: Approved CIP Precinct Diagram from SSD 13_6123

Secretary's Environmental Assessment Requirements (SEARs)

Consistent with the requirements of SSD 13_6123, and the provisions of SEPP State and Regional Development (SRD) 2011, a concept plan was submitted to the former Department of Planning and Environment (The Department) requesting SEARs.

The SEARs were issued 8 August 2017, with revised SEARs issued 29 September 2017. The revised SEARs included the requirement for an Environmental Impact Statement (EIS) to address the provisions of the State Environmental Planning Policy (Educational Establishments and Child Care Facilities) (Education SEPP) which came into force after the initial issue of SEARs.

Stage 1 DA of Engineering and Technology Precinct (ETP) (SSD 8636)

On 14 February 2019, the Executive Director of Priority Projects, as a delegate of the Minister for Planning, granted approval for the redevelopment of the Engineering Precinct Stage 1, including:

- Site excavation and earthworks;
- Upgrade of retained Southern tower;
- Construction of new eight (8) to nine (9) level northern wing and integration with retained southern tower;
- Integration with adjacent Link Building, including new loading dock and storage area;
- External gas storage areas;
- Landscaping works including:
 - Replacement of existing car park with the new southern plaza open space area;
 - Embellishment and upgrading of existing open space areas adjoining the building;
 - Tree removal and replacement planting; and
- Utilities and infrastructure connection works.

The following conditions below are those that this MOD seeks to amend:

SSD 8636 – Condition B4

Design Modification - Landscape

- B4. *Prior to the commencement of the relevant landscape works, the Applicant must revise the landscape4 plan to:*
- (a) *Ensure all new trees are advanced canopy trees with a minimum pot size at least 400L at installation;*
 - (b) *Incorporate irrigation to all areas of landscaping and turf to ensure healthy plant growth is sustained in expended dry periods; and*
 - (c) *Ensure that all pavements, edges, walls, stairs, ramps, handrails and tactile ground surface indicators comply with Safety in Design and all relevant DDA codes and AS1428.*

SSD 8636 – Condition B31

Planning Finished Floor Levels

- B31 *All accesses and entry points to the habitable building is to be protected from the relevant 1% AEP flood level plus 0.5m. Flood Barriers will not be supported as a protection method.*

SSD 8636 – Condition B33

Planning Finished Floor Levels

- B33 *Any materials used for the habitable/non-habitable floor level below the flood planning levels for each respective flood level shall be comply with the flood compatible materials under section 6 – flood compatible materials of the Council’s Interim floodplain Management Policy dated May 2014.*

SSD 8636 – Condition B34

Planning Finished Floor Levels

- B34. *A design certification report is to b prepared by a suitably qualified practicing engineer (NPER), certifying that all accesses and entry points to the building and structures comply with the above requirements under parts (a) to (c). The report shall be submitted to and approved by the Certifying Authority and submitted to the Planning Secretary for information prior to commencement of the relevant works.*

SSD 8636 – Condition B35

Flood Risk Management

- B35. *All electrical features including power points and other mechanical equipment is to be protected from the relevant 1% AEP flood level. This shall be shown on the detailed plans prior to the commencement of construction.*

SSD 8636 – Condition B36

Flood Risk Management

- B36. *All building structures relating to this development are to have their structural integrity certified for immersion and impact from hydraulic forces of floodwaters and debris confirmed up to the*

relevant Probable Maximum Flood level. A copy of the certification is to be submitted to the Certifying Authority prior to the commencement of construction.

SSD 8636 – Condition B37

Flood Risk Management

B37. The structural integrity of the proposed wall around Basin D shall be designed to withstand the impacts of hydraulic forces of floodwaters and debris up to the 1% AEP flood event. A copy of the certification is to be submitted to the Certifying Authority prior to the commencement of construction.

SSD 8636 – Condition B38

Flood Risk Management

B38. A fence shall be designed and constructed around Basin D to restrict access. The fence shall have a gate for access for maintenance purposes only. This requirement shall be reflected on the construction plans and shall be submitted to and approved by the Certifying Authority prior to the commencement of the relevant works.

3.0 Previous and Ongoing Consultation

As required by the SEARs, community engagement was undertaken with relevant public authorities, Council, and the community ahead of lodgement for SSD 8636. This involved consultation with key stakeholders and referral agencies relevant to the project to clearly communicate the development proposal, establish if there are any issues and actions required to be addressed prior to the application lodgement.

The consultation included a community invitation to attend an information session and overview of the CIP and proposed works to the Engineering and Technology Precinct (ETP). The engagement with authorities during this time consisted of meetings and correspondence.

The Department publicly exhibited the SSD 8636 proposal, which included consultation with Council and other public authorities and consideration of their responses.

In accordance with Schedule 1 of the *EP&A Act 1979*, the Department publicly exhibited application SSD 8636 from 19 April until 18 May 2018 (30 days), which included exhibition on the Department's website, at Service NSW Centres and at the City of Sydney Council's office. The Department also placed a public exhibition notice in the Sydney Morning Herald and The Daily Telegraph on 18 April 2018, and in the Inner West Courier on 17 April 2018. Adjoining landholders and relevant State and local government authorities were also notified in writing.

In assessing and determining application SSD 8636, Department representatives visited the site as well as considered comments received and raised in public authority and public submissions. The Department received a total of 18 submissions, comprising nine (9) submissions from public authorities and nine (9) submissions from the general public (including six (6) objections).

In the event any required consultation is carried out, per Section 4.55(1A)(c) and (d), consultation with surrounding landowners will be undertaken in accordance with the formal notification process undertaken by DPIE as part of their assessment.

4.0 Proposed Modifications to the Development

4.1 Details of Request

The proposed modifications to conditions B4, B31, B33, B34, B36, B37 and B38 are an outcome of procurement issues, design development and additional flood modelling advice. The application makes the following detailed amendment requests:

Condition B4

Modification of Condition B4 is sought. In keeping with the intent of Condition B4 to ensure that all new trees are advanced canopy trees, it is proposed to amend Condition B1 to allow for a minimum pot size of 200L, or larger if available at installation. This will ensure that planting can be facilitated in line with the current construction works program.

Condition B31

Deletion of Condition B31 is sought. The requirement for all accesses and entry points to be protected from the relevant 1% AEP flood level plus 0.5m is considered not necessary given the Electrical Engineering Building is being renovated rather than demolished, and there is no change of use proposed.

Condition B33

Deletion of Condition B33 is sought. The requirement for compliance with section 6 flood compatible materials of the City of Sydney Council's Interim Floodplain Management Policy dated May 2014 is no longer considered necessary given the Electrical Engineering Building is being renovated rather than demolished, and there is no change of use proposed.

Condition B34

Modification of Condition B34 is sought to reference Conditions B32 and B33 in place of "parts (a) to (c)". Review of Condition B34 suggests that its content has been transferred from an assessment referral response and not updated to reflect the structure of the consent dated 14 February 2019.

SSD 8636 – Condition B35

Deletion of Condition B35 is sought. The requirement for electrical features and other mechanical equipment to be protected from the relevant 1% AEP flood level and be shown on detailed plans prior to the commencement of construction is considered not necessary given the Electrical Engineering Building is being renovated rather than demolished, and there is no change of use proposed.

Condition B36

Deletion of Condition B36 is sought. The requirement for all structures relating to the development to have their structural integrity certified for immersion and impact from hydraulic forces of floodwaters and debris confirm up to the relevant Probable Maximum Flood level is not considered necessary given the Electrical Engineering Building is being renovated rather than demolished, and there is no change of use proposed. Furthermore, recent flood modelling indicates that the development does not result in an increase in flood affectation of the Electrical Engineering Building as flood levels are lowered in the developed scenario.

Condition 37

Deletion of Condition 37 is sought requiring structural integrity of proposed wall around Basin D to be designed to withstand the impact of hydraulic forces of floodwaters and debris up to the 1% AEP flood event. This is supported by additional flood modelling based on a post development scenario with the removal of the Basin D, which indicates that the development does not result in an increase in flood affectation for the existing Electrical Engineering Building and no adverse impact on downstream properties.

Condition 38

Deletion of Condition B38 is sought requiring a fence to be designed and constructed around Basin D to restrict access. Subject to removal of Basin D, supported by additional flood modelling, the proposed wall has not been included in the final design and construction. The required fence is therefore considered to no longer be required.

4.2 Amendment to conditions

This application seeks to vary the approved design requirements pertaining to floor levels and landscaping as identified in Conditions B4, B31, B34, B37 and B38 of SSD 8636 as marked below. Strikethrough text is used to denote a proposed deletion and **red** text to denote proposed inclusion.

Design Modification - Landscape

B4. Prior to the commencement of the relevant landscape works, the Applicant must revise the landscape4 plan to:

- (a) Ensure all new trees are advanced canopy trees with a minimum pot size at least ~~400~~**200L**, or larger if available at installation;*
- (b) Incorporate irrigation to all areas of landscaping and turf to ensure healthy plant growth is sustained in expended dry periods; and*
- (c) Ensure that all pavements, edges, walls, stairs, ramps, handrails and tactile ground surface indicators comply with Safety in Design and all relevant DDA codes and AS1428.*

Planning Finished Floor Levels

~~B31—All accesses and entry points to the habitable building is to be protected from the relevant 1% AEP flood level plus 0.5m. Flood Barriers will not be supported as a protection method.~~

~~B33. Any material used for the habitable/non-habitable floor level below the flood planning levels for each respective flood level shall comply with the flood compatible materials under section 6— flood compatible materials of the Council's Interim floodplain Management Policy dated May 2014.~~

*B34. A design certification report is to be prepared by a suitably qualified practicing engineer (NPER), certifying that all accesses and entry points to the building and structures comply with the above requirements under **Conditions B32 parts (a) to (e)**. The report shall be submitted to and approved by the Certifying Authority and submitted to the Planning Secretary for information prior to commencement of the relevant works.*

Flood Risk Management

~~B35. All electrical features including power points and other mechanical equipment is to be protected from the relevant 1% AEP flood level. This shall be shown on the detailed plans prior to the commencement of construction.~~

~~B36. All building structures relating to this development are to have their structural integrity certified for immersion and impact from hydraulic forces of floodwaters and debris confirmed up to the relevant Probable Maximum Flood Level. A copy of the certification is to be submitted to the Certifying Authority prior to the commencement of construction.~~

~~B37. The structural integrity of the proposed wall around Basin D shall be designed to withstand the impacts of hydraulic forces of floodwaters and debris up to the 1% AEP flood event. A copy of the certification is to be submitted to the Certifying Authority prior to the commencement of construction.~~

~~B38. A fence shall be designed and constructed around Basin D to restrict access. The fence shall have a gate for access for maintenance purposes only. This requirement shall be reflected on the construction plans and shall be submitted to and approved by the Certifying Authority prior to the commencement of the relevant works.~~

4.3 Justification for Modification

Design Modifications – Landscape (Condition B4)

In response to advice provided by Karen Sweeney - City of Sydney's Urban Forest Manager, confirmation in availability of tree stock with a number of nurseries including Tree Impact and Andreasen's has been undertaken (refer to correspondence prepared by Mark Kennedy of Glascott Landscape & Civil provided at Attachment 4).

As detailed in Table 1, a number of tree species, shown in red, are not available at 400L sizes within the timeframe required for the project due to the growing season being largely over. This equates to 28 of a total of 42 trees required.

SPECIES	SIZE	QTY	RESPONSE
Archontophoenix cunninghamiana	400L	8	Supply 200L largest in the market – ready Late 2020 or 75lt ready now 2.5m tall
Backhousia citriodora	400L	11	Supply 200L ready now
Cupaniopsis anacardioides	400L	7	Ready now
Elaeocarpus reticulatus	400L	5	Ready now
Jacaranda mimosifolia	400L	9	Supply 200L ready now
Syzygium leuhmannii	400L	2	Ready now

Table 1: Tree size availability

The proposed modification to litre size is able to demonstrate it is in keeping with the intent of Condition B4 and the City's requirements. In doing so, the reduced requirement of minimum pot size will ensure that planting can be facilitated in line with the current construction works program.

Planning Finished Floor Levels (Condition B31, B33 & B34)

In its letter prepared by GRC hydro dated 15 May 2020 (refer to Attachment 1), it is noted that strict accordance with Condition 31, would require a floor level of 20.54 mAHD, whereas the current entrance level is 19.65 mAHD.

Advice provided by GRC has been that the Electrical Engineering Building is a pre-existing building that is being refurbished only, as long as there is no change of use, there would typically be no requirement to require a change to an existing floor level (as per Condition 31).

Subsequent to a meeting held on 11 September 2019 between GRC, Sydney University and CoS, correspondence was received by GRC Hydro from CoS staff (refer to Attachment 1) stating the following:

I refer to your letter (your Reference: Job Number: 180054, Dated 26 November 2019) regarding flood planning level for a University of Sydney – Engineering Precinct – Re-development of Electrical Engineering Building (J03) and further confirmation of 11 September 2019 meeting minute.

As you confirmed in the meeting that the existing 7-storey portion of J03 was being renovated rather than demolished or structural modifications and no change is usages of the premises, the minimum flood planning level requirement as per the City's Interim Floodplain Management Policy can be relaxed subject to:

- *assess the potential adverse impact of flooding to life and properties.*

- *incorporates appropriate measures to manage risk to life and properties from flooding.*

Based on the above correspondence provided by the CoS, it can be considered that the CoS have confirmed in writing that the existing floor level can be maintained, subject however to satisfying the conditions shown as the two bullet points in their correspondence.

In addressing these conditions, GRC Hydro have made the following statements in their correspondence at Attachment 1:

In regard to these two conditions GRC Hydro believe that these points can be readily addressed moving forward. In regard to the first point there is no change of use and no change to flood behaviour (impact report will be required to substantiate this) and as such there is no impact in regard to either of these issues. In regard to the second point ensuring that building occupants can safely evacuate and ensuring that no exacerbation to property risk occurs will satisfy the criterion.

This is further supported by additional flood modelling undertaken by GRC Hydro as detailed in the Flood Investigation letter provided by Meinhardt Bonacci at Attachment 2.

The requirements established under Condition B33 are therefore considered to no longer apply given Council's concession to its Interim Floodplain Management Policy.

Review of Condition B34 suggests that its content has been transferred from an assessment referral response and not updated to reflect the structure of the consent dated 14 February 2019.

Flood Risk Management (Condition 36, 37 & 38)

Similarly to conditions relating finished floor levels, the requirement established under Condition B36 for structures to have their structural integrity certified for immersion and impact from hydraulic forces of floodwaters and debris confirmed up to the PMF is no longer considered to apply given Council's concession to its Interim Floodplain Management Policy (refer to Attachment 1) and further flood modelling undertaken by GRC Hydro (refer to Attachment 2), which indicates that the development does not result in an increase in flood affectation to the existing building as flood levels are lowered in a developed scenario than in existing conditions adjacent the building during 1% AEP flood event.

As details in Attachment 2, additional flood modelling undertaken by GRC Hydro, based on the scenario of removing Basin D from the design and adopting surface levels of the existing car park in this location, has demonstrated that there will be no adverse change in flood behaviour in a post-development scenario.

The removal of Basin D has therefore resulted in the removal of the proposed wall around Basin D, as such, any requirements relating to this wall as per Condition 37 and associated fence as per Condition 38 are considered to be no longer required.

This subsequent flood modelling has indicated the requirements of Conditions B37 and B38 are not necessary, and it will have a detrimental impact on the landscape design which has a design excellence requirement. The University has engaged GRC Hydro who have consulted with Cos to reach an agreement that the freeboard requirement can now be removed.

5.0 Planning Assessment

5.1 Minimal Environmental Impact

Section 4.55 (1A)(a) requires the consent authority to be "satisfied that the proposed modification is of minimal environmental impact". Further, Section 4.55(3) requires the consent authority to "take into consideration such of the matters referred to in section 4.15(1) as are of relevance to the development the subject of the application".

The EIS (April 2018) and Response to Submissions (September 2019) and Supplementary Response to Submissions (December 2018) submitted as part of SSD 8636 addressed:

- The provisions of all relevant environmental planning instruments.
- The likely impacts of the development – environmental, social and economic.
- The suitability of the site for the development; and
- The public interest.

The assessment of the proposed modified against Section 4.55(3) remains unchanged with respect to the above considerations given the reasons outlined in Section 4.2 of this modification application, except for the additional matters which are assessed below:

5.1.1 Landscaping and proposed species

Evidence is provided as part of the amended landscape package, provided at Attachment 3, of attempts made to procure 400L trees. This is in line with requests from the City of Sydney in their correspondence, refer also to Attachment 3.

Proposed amendment to include 200L trees in the absence of 400L trees will not remove commitments made in relation to both quantum of trees and tree species as part of the approved landscape plan.

5.1.2 Planning Finished Floor Levels

GRC in their correspondence provided at Attachment 1, have indicated a discrepancy between the outcome of the proposed refurbishment of the EEB and that required by the consent issued 14 February 2019 in terms of appropriate floor levels. GRC note that the consent (notably Condition B31 and B32) require that the floor level of building the EEB achieve an entrance level protected to the level of the existing 1% AEP flood level plus 0.5m freeboard. This would require a floor level of 20.54mAHD, where's the existing entrance level (proposed to be refurbished only) is 19.65mAHD.

GRCs advice is that a pre-existing building that is being refurbished only, and there being no change in use, should not require a change to the existing floor level.

This advice has been discussed with the City of Sydney with regards to compliance with their Interim Floodplain Management Policy. The outcome of this meeting has resulted in consensus by the City that given the EEB was being renovated rather than demolished or structural modifications and no change is proposed to the usage of the premises, the minimum flood planning level requirements as per their interim policy can be relaxed (refer to Attachment 1). This is subject to the following requirements being undertaken:

- Assessment of the potential impact of flooding to life and properties; and
- Incorporation of appropriate measures to manage risk to life and properties from flooding.

In response to these prescribed requirements, GRC Hydro have indicated these have been addressed given that the proposal presents no impact due to:

- There being no change of use proposed,
- There being no change in flood behaviour (refer to Attachment 2 and discussion below under 5.1.3 Flood Risk Management),
- Building occupants being able to safely evacuate the EEB, and
- There being no exacerbation to property risk.

5.1.3 Flood Risk Management

This modification proposal seeks the removal of flood storage previously proposed to the south of the existing EEB referred to as "Basin D". In support of this modification, additional flood modelling has been

undertaken by GRC Hydro. The impacts of these modifications and results of flood modelling are detailed in the flood investigation report prepared by Meinhardt Bonacci, provided at Attachment 2.

As detailed in Attachment 2, the flood modelling results indicate that the development does not result in an increase to flood affectation of the EEB as flood levels are lowered in the developed scenario than in existing conditions adjacent to the building during 1% AEP flood event. This flood modelling has been built based on the scenario of removing the flood mitigation storage basin and adopting existing surface levels where the existing car park is.

The flood afflux mapping shown as Figure two (2) in Attachment 2 has been produced to demonstrate that there will be no adverse impacts on downstream properties, further demonstrating compliance with the City of Sydney's Interim Floodplain management Policy which stipulates that existing development is not to be adversely affected through increased damage or hazard as a result of any new development.

Meinhardt Bonacci in their assessment of the flood modelling also note that the flood modelling indicates that there is no adverse impact on downstream properties due to the development and that given there is no change in the use of the existing building, there is no additional risk to life or property.

5.2 Substantially the Same Development

Section 4.55(1A) of the *Environmental Planning and Assessment Act (EP&A Act) 1979* states:

"(1A) Modifications involving minimal environmental impact

A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:

*(a) it is satisfied that the proposed modification is of minimal environmental impact, and
(b) it is satisfied that the development to which the consent as modified relates 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), and
(c) it has notified the application in accordance with:*

- (i) the regulations, if the regulations so require, or*
- (ii) a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and*

(d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.

Subsections (1), (2) and (5) do not apply to such a modification."

In relation to subclause (a), the proposed will not give rise to any adverse environmental impacts in terms increased flood risk, risk to life, inappropriate planting and proposed species.

Section 4.55(1A)(b) requires the consent authority to be "satisfied that the development to which the consent as modified relates 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)".

The NSW Land and Environment Court has established several precedents as to what may be considered as being 'substantially the same development', and what should be factored into the consideration of this threshold test.

Principles drawn from the judgments include that:

- The term 'substantially' means 'essentially or materially having the same essence'.
- When a consent authority makes a determination as to whether a development is substantially the same it is a question of fact and degree and is not a question of law.
- The term to 'modify' means to 'alter without radical transformation'.
- In comparing the approved development and the development as proposed to be modified it is necessary to undertake a qualitative and quantitative assessment of the developments in their proper context, and
- To undertake a numeric or quantitative assessment of the modification only in the absence of a qualitative assessment would be flawed.

These considerations apply to the modification of a development through design modifications as well as amendments to conditions that impact the nature of the proposal.

The consideration of the substantially the same development test should not only include the physical characteristics of the approved and modified schemes, but also the nature and magnitude of the impacts of the developments. In these respects, the modified scheme should be 'essentially or materially' the same as that originally approved.

An assessment of the qualitative and quantitative elements of the development approved and as proposed to be modified are provided below:

5.2.1 Qualitative Assessment

The proposal is substantially the same development, in a qualitative sense, as that originally approved given:

- The proposed modifications are minor in nature and seek only to modify the requirement for:
 - a minimum 200L pot size for canopy trees instead of 400L (Condition B4)
 - removal of the requirement for habitable accesses and entry points to be protected from 1% AEP flood level plus 0.5m given works relate to the refurbishment of an existing building (Condition B31)
 - removal of compliance with the City's Interim floodplain Management Policy for materials used for habitable/non-habitable floor level below the flood planning levels for each respective flood level, given works relate to the refurbishment of an existing building and there being no proposed change of use (Condition B33)
 - modification to design certification report requirements to align with consent dated 14 February 2019 and requested amendments to conditions forming part of this modification (Condition B34)
 - removal of electrical features and other mechanical equipment to be protected from the relevant 1% AEP flood level and shown on detailed plans prior to the commencement of construction given works relate to the refurbishment of an existing building and there being no proposed change of use (Condition B35)
 - removal of structural integrity certification requirements given works relate to the refurbishment of an existing building, there being no proposed change of use and revised flood modelling indicating that the development does not result in increased flood affectation to the EEB as flood levels are lowered in the developed scenario compared to the existing conditions (Condition B36)
 - removal of the proposed wall and fence around Basin D given revised flood modelling demonstrating no adverse change in flood behaviour in post-development scenario with the removal of the flood storage previously proposed to the south of the EEB referred to as "Basin D" (Condition B37 and 38)
- There is no change to the architectural design of the proposal
- The modifications do not change the purpose or use for which the development was approved

- The development as modified will remain an educational establishment

5.2.2 Quantitative Assessment

The proposal is substantially the same development, in a quantitative sense, as that originally approved due to the following:

- The proposed building envelope, height and FSR remains the same as that approved;
- Does not propose any change to the approved parking numbers;
- Does not proposed any change to the quantum of landscaped area approved;
- Does not propose to reduce the total number of trees approved across; and
- Does not modify determined compliance with the Sydney LEP 2012, or the CIP (SSD 8636).

5.2.3 Conclusion

The modifications will not result in any significant additional social and environmental impacts as previously assessed for the approved development.

5.3 Notifications of Submissions

As the proposed works are minor and submitted under Section 4.55(1A) of the Act, it is anticipated the application will not require public exhibition. In the event any exhibition is carried out, per Section 4.55(2)(c) and (d), any submissions received will need to be considered by the DPIE in the assessment of the application.

6 Conclusion

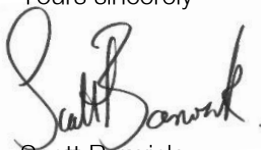
The proposal has been considered against the provisions of Section 4.55(1A) and Section 4.15 of the *EP&A Act 1979*. It is concluded that the development as proposed to be modified is substantially the same as the approved development and the modifications proposed to the consent should be approved for the following reasons:

- The proposed modifications are considered to be in the public interest because:
 - They will ensure the building works are completed within an appropriate timeframe, minimising additional building work and ensuring minimal impact to future teaching semesters.
 - In turn, this will enable social and economic benefit and broader public benefit.
- The proposal is of minimal environment impact. It has been demonstrated that the proposal can achieve compliance with the relevant environmental criteria/standards.
- Represents substantially the same development for which the consent was granted.

On this basis, the Section 4.55 (1A) application is considered worthy of support by the Department of Planning.

Should you wish to discuss any of the above matters, please do not hesitate to contact me on (02) 9380 9911 or by email at sbarwick@sjb.com.au.

Yours sincerely



Scott Barwick
Director

- Encl. Attachment 1: Letter of support prepared by GRC Hydro dated 15 May 2020
Attachment 2: Flood investigation letter prepared by Meinhardt Bonacci dated 22 May 2020
Attachment 3: Amended landscape plans and tree schedule prepared by T.C.L dated 26 May 2020
Attachment 4: Correspondence from Mark Kennedy of Glascott Landscape & Civil dated 2 June 2020 to Luke Hoy of Laing O'Rourke