

16 July 2020

2200144

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

Attn: David Gainsford (Executive Director, Infrastructure Planning Assessments)

SECTION 4.55(1A) MODIFICATION APPLICATION – CONCEPT AND STAGE 1 SSD DA 9249 Sydney Football Stadium Redevelopment – Modification 5

This application has been prepared by Ethos Urban on behalf of the Sydney Cricket and Sports Ground Trust (SCSGT) pursuant to Section 4.55(1A) of the *Environmental Planning and Assessment Act 1979* (EP&A Act) to modify State Significant Development (SSD) Consent 9249 relating to the Concept Proposal and Stage 1 Demolition of the Sydney Football Stadium at 40-44 Driver Avenue, Moore Park.

This modification proposes to include a small portion of additional land within the project boundary for this SSD DA to enable the delivery of new Stadium Fitness Facilities for the SCSGT Members as part of the Sydney Football Stadium (SFS) Redevelopment. A new building envelope is also proposed for the integrated Fitness Facilities, emphasising that no change is proposed to the approved and implemented building envelope for the stadium itself. A concurrent modification to the Stage 2 SSD DA (9835) is proposed that seeks consent for the detailed design, construction, operation of the Stadium Fitness Facilities and any associated environmental impacts. All physical works are encompassed in this concurrent modification.

This application identifies the consent, describes the proposed modifications and provides an assessment of the relevant matters contained in section 4.55(1A) of the EP&A Act. This application is accompanied by Architectural Plans prepared by COX Architecture (**Attachment A**).

1.0 Consent proposed to be modified

SSD Consent 9249 was granted by (then) Minister for Planning on 6 December 2018 for a Concept Proposal for the new stadium and concurrent Stage 1 works involving the demolition of the existing stadium and associated structures. This consent has been modified on four occasions:

- MOD 1 – A Section 4.55(1A) to adjust the site boundary in order to remove land that was required to be retained to support the ongoing operational functions of the adjacent Sydney Cricket Ground (SCG). The modification was approved on 5 June 2019.
- MOD 2 – A Section 4.55(1A) to amend the scope of demolition works to permit the removal and disposal of the existing ground slabs, pavements, footings and piles from the former Sydney Football Stadium. In association with these works it was also proposed to divert some existing stormwater infrastructure located within the site. This modification is currently under assessment. The modification was approved on 5 August 2019.
- MOD 3 – A Section 4.55(1A) to amend Condition C8(d) to enable a public domain design to be developed with the most appropriate plant selection, with 95% of new vegetation provided on the site to be native to Australia with priority given to endemic species. The modification was approved on 28 June 2019.
- MOD 4 – A Section 4.55(1A) to amend Condition 62 to enable the condition to be satisfied in accordance with the principles and framework prescribed by the *Contaminated Land Management Act 1997*. This modification application was approved on 3 April 2020.

2.0 Consultation

Consultation was undertaken with key groups prior to the lodgement of this Modification Application in relation to the proposed changes and the concurrent modification to the Stage 2 SSD DA (9835). This comprised:

- Community Consultative Committee (CCC) – COX Architecture presented the Stadium Fitness Facilities scheme to the CCC on 1 July 2020, and the presentation was issued to all CCC members on 8 July 2020 inviting their feedback. Feedback was received on 12 July 2020 and related to detailed design and assessment issues, and as such has been addressed as part of the concurrent modification to the Stage 2 SSD DA.
- City of Sydney Council – a request for a meeting with Council was issued on 3 July 2020, and representatives of Council confirmed on 6 July 2020 that no meeting would be required.
- Department of Planning, Industry and Environment – preliminary discussions have occurred as part of the scoping process, in addition to a pre-lodgement meeting held on 13 July 2020. The items raised in this meeting were relevant to detailed design and assessment issues and have been addressed as part of the concurrent modification to the Stage 2 SSD DA.
- The SCSGT has been consulting with members over the past 18 months, including conducting extensive member surveys and establishing an advisory group in 2018. Concept schemes were presented to the advisory group throughout development, culminating with the presentation of the now proposed Stadium Fitness Facilities scheme on 6 July 2020. The scheme was also been presented via electronic correspondence to the broader membership base on 7 July 2020, inviting feedback through a dedicated email. The feedback received has been largely positive and relevant to the detailed design of the proposed facilities. The concurrent modification to SSD 9835 consequently addresses the feedback received to date from members.

3.0 Proposed modifications to the consent

3.1 Modifications to the development

Site boundary

The subject site is described in the development consent as “40-44 Driver Avenue, Moore Park (Part Lot 1528 and Part Lot 1530 DP 752011 and Lot 1 DP 205794)”. This is further defined in the approved plans, which illustrate the boundary of the site to which the development consent relates. The purpose of this modification is to include a portion of additional land within this site boundary, comprising part of the SCG’s practice area, part of a tennis court located to the south-west of the stadium, and part of a wall extending south along Driver Avenue. A site location plan is provided at **Figure 1** and detailed plan at **Figure 2** below.

This minor expansion to the project boundary is necessary for the delivery of new Stadium Fitness Facilities for SCSGT Members as part of the Sydney Football Stadium (SFS) Redevelopment. This will reinstate the facilities that operated in conjunction with the former, demolished stadium in a new location on the site. This Stadium Fitness Facilities will extend from the vacant undercroft space below the SFS entry stairs to parts of the site that are already demolished or are vacant of significant structures. The SCG practice wickets to the south will continue to operate.

The revised site boundary is detailed in the amended plans provided at **Attachment A**.



Figure 1 Revised site boundary

Source: COX Architecture

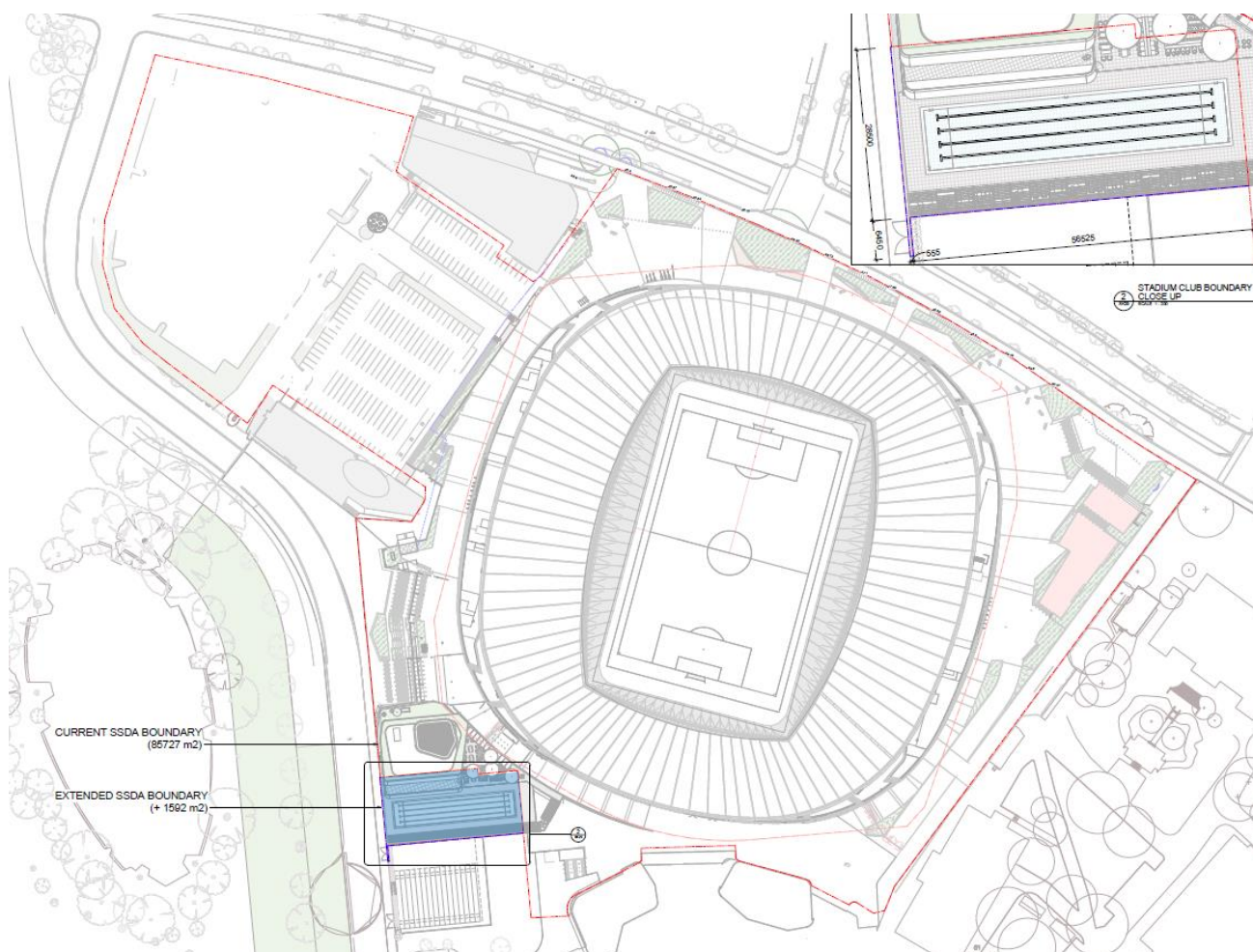


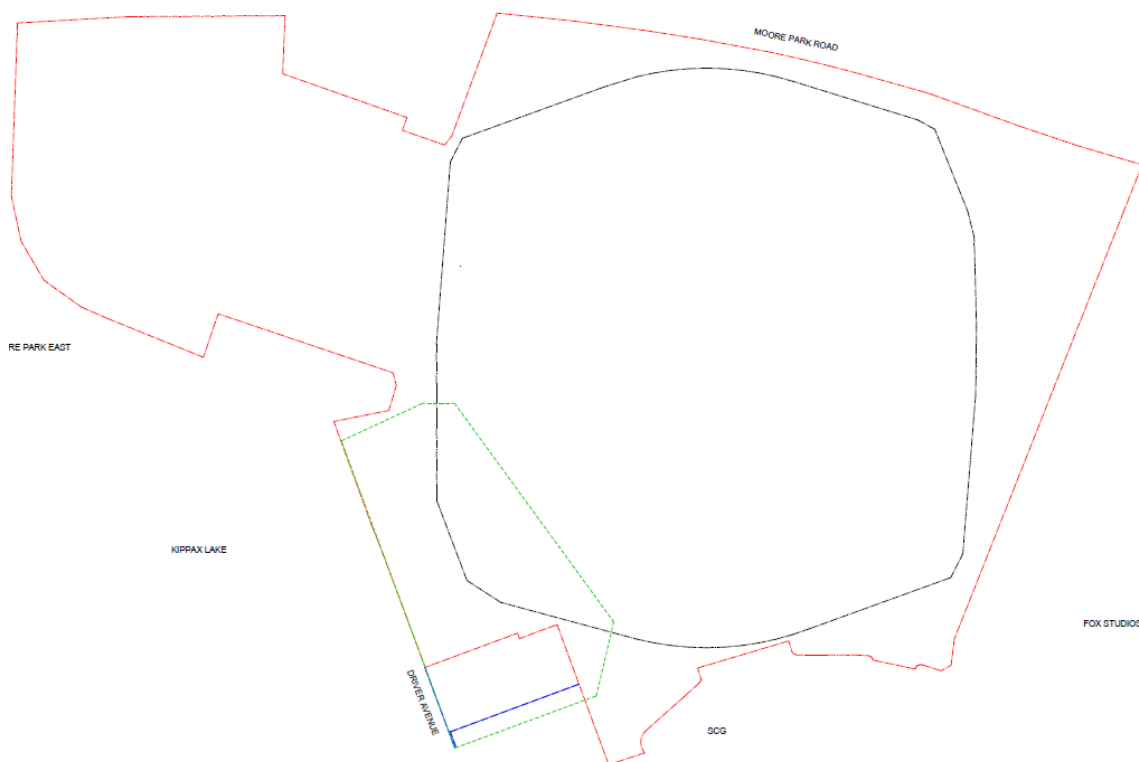
Figure 2 Revised site boundary, with additional land highlighted blue

Source: COX Architecture + Ethos Urban edits

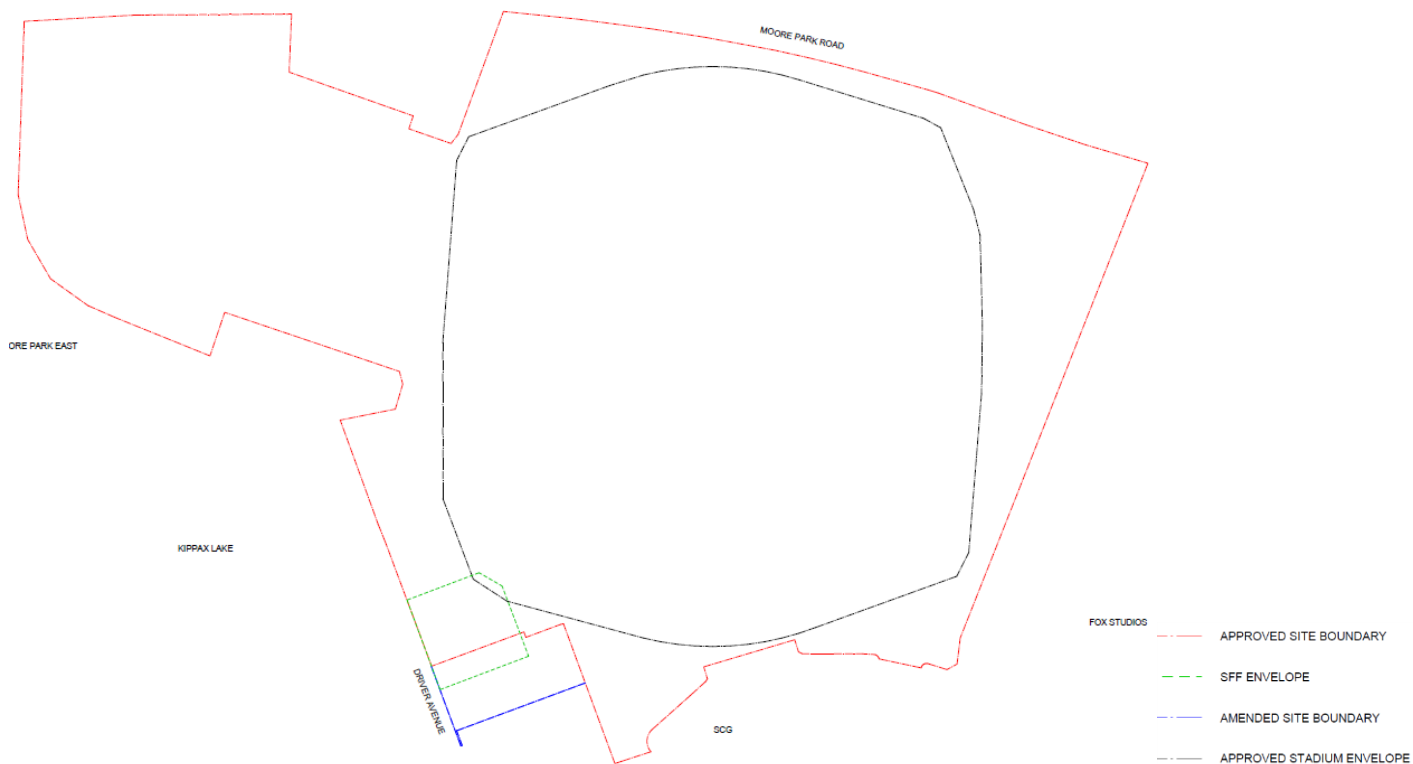
Building envelope

Whilst no change is proposed to the approved and enacted building envelope for the stadium, including compliance with Conditions C5 and C6 of the consent, the Modification Application proposes to introduce a new secondary building envelope for which the Stadium Fitness Facilities will be constructed as part of the Stage 2 SSD DA (9835). A concurrent modification to the Stage 2 SSD DA addresses the detailed design, construction, operation of the Stadium Fitness Facilities and any associated environmental impacts. All physical works are encompassed in this separate concurrent modification.

The new, secondary building envelope defines the maximum parameters within which the future Stadium Fitness Facilities design will be contained. The footprint and sectional representations of this maximum building envelope in the context of the approved stadium envelope are reproduced in **Figure 3** to **Figure 5**, and detailed further at **Attachment A**.



Undercroft/Ground Floor Footprint



Upper Level Footprint

Figure 3 Footprint of the proposed Stadium Fitness Facilities envelope (outlined green)

Source: COX Architecture

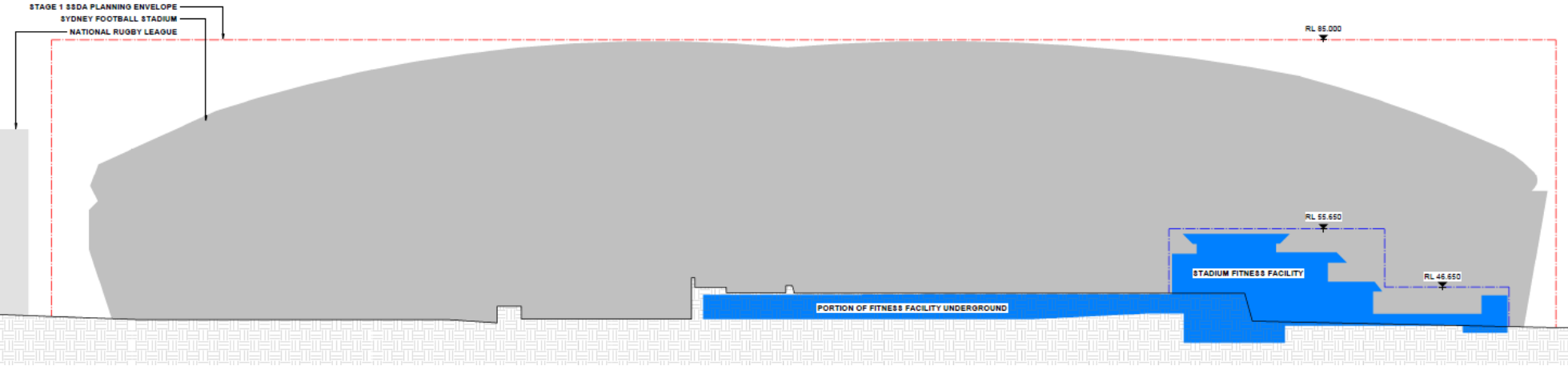


Figure 4 North/south section of the proposed building envelope, and indicative design of Stadium Fitness Facilities within the envelope (coloured blue)
Source: COX Architecture

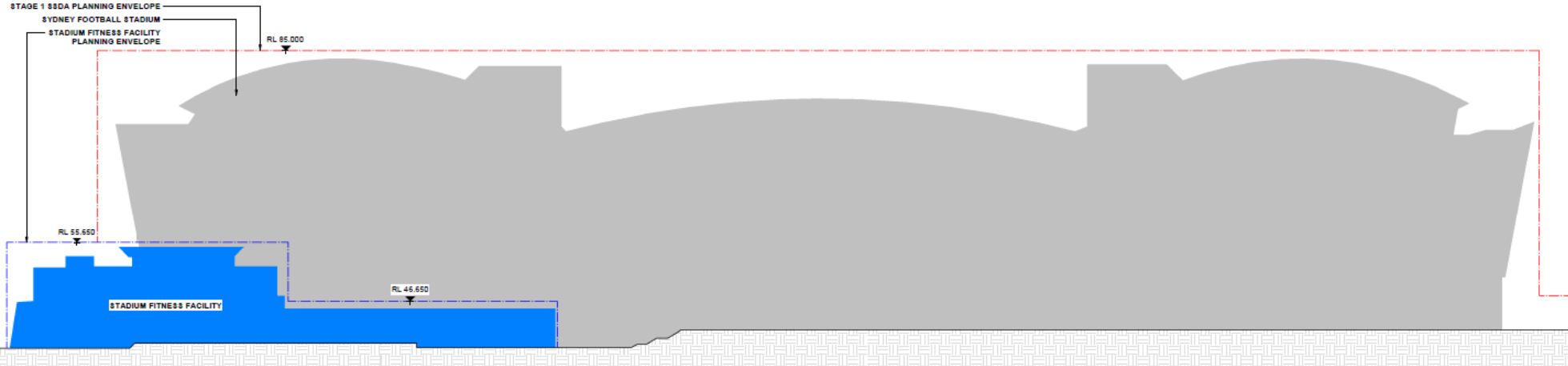


Figure 5 East/west section of the proposed building envelope, and indicative design of Stadium Fitness Facilities within the envelope (coloured blue)
Source: COX Architecture

3.2 Modification to conditions

The proposed modification described above necessitates amending the consent conditions identified below. Words proposed to be deleted are shown in ~~**bold strike through**~~ and words to be inserted are shown in ***bold italics***.

The Urban Design documents listed in Schedule 1 have been enacted for the approved stadium and as such will not be replaced by this Modification Application. Rather, the Stadium Fitness Facilities will be subject to the proposed plans to be included in Schedule 2, Part A, Condition A2(e) of the consent as detailed below. A new condition of consent A2(f) is also proposed to be included that confirms that in the event of an inconsistency, these latest plans prepared by COX Architecture will prevail. The detailed design of the stadium itself has already been approved in compliance with the existing plans contained in Condition A2 and its construction is well progressed, and as such this new condition does not impact such compliance but rather will ensure the future Stadium Fitness Facilities design is appropriately integrated with these existing plans.

SCHEDULE 2 – PART A Condition A2 (e):

<i>Drawings prepared by COX Architecture</i>			
Dwg No.	Rev	Name of Plan	Date
SK-29	A	<i>Sydney Football Stadium Project Boundary Plan – Stadium Fitness Facilities</i>	<i>8 April 2020</i>
SK-30	A	<i>Sydney Football Stadium Section C1 & D1 – Stadium Fitness Facilities</i>	<i>1 July 2020</i>
SK-31	A	<i>Building Envelope and Footprint – Undercroft/Ground</i>	<i>1 July 2020</i>
SK-32	A	<i>Building Envelope and Footprint – Upper Levels</i>	<i>1 July 2020</i>

(f) in the event of an inconsistency, the plans prepared by COX Architecture listed in (e) and described in the Section 4.55(1a) Modification Application dated 16 July 2020 will prevail.

4.0 Substantially the same development

Section 4.55(2)(a) of the EP&A Act states that a consent authority may modify a development consent if “*it is satisfied that 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 (if at all)*”.

In the judgement *Scrap Realty Pty Ltd v Botany Bay City Council* [2008] NSWLEC 333 (*Scrap Realty*), the Chief Justice of the NSW Land and Environment Court confirmed that a development consent issued under Part 4 can be modified to include additional land beyond that originally included in the consent, provided that the development overall continued to satisfy the ‘substantially the same’ test that applied to modification under Part 4. In the same case, Preston CJ noted that “*an expansion of the area on which development is carried out by adding land not the subject of the original consent is not inherently outside the concept of modification of the development under (s 4.55).*”

Section 4.55 establishes the power to “modify” a consent. As per *Sydney City Council v Ilenace Pty Ltd* [1984] 3 NSWLR 414, the concept of modification involves “alteration without radical transformation”. This approach was followed by Mason P in the NSW Court of Appeal in *Transport Action Group Against Motorways Inc v Roads and Traffic Authority* (1999) 104 LGERA 133 in the context of a modification to an activity approval under Part 5 of the EP&A Act.

In *Transport Action Group*, Sheller JA offered an alternative definition of “modify” in the following terms:

I think it is correct to say that what there was meant by "modify" was a change which might add to or subtract from the proposed activity, the substance of which continued, and which was less than its wholesale rejection and replacement.

As such, Section 4.55 provides the power to modify the consent to add additional land, as per *Scrap Realty* and other case law that clarifies the meaning of "modify" in the context of Section 4.55. The question is, therefore, whether the development is "substantially the same development".

In *Moto Projects (No 2) Pty Ltd v North Sydney Council* [1999] NSWLEC 280 (*Moto Projects*) the Court considered a modification application to delete an ingress ramp to a mixed-use development in North Sydney. As highlighted in the Council Assessment Report, Bignold J held at [56] that:

The comparative task does not merely involve a comparison of the physical features or components of the development as currently approved and modified where that comparative exercise is undertaken in some type of sterile vacuum. Rather, the comparison involves an appreciation, qualitative, as well as quantitative, of the developments being compared in their proper contexts (including the circumstances in which the development consent was granted).

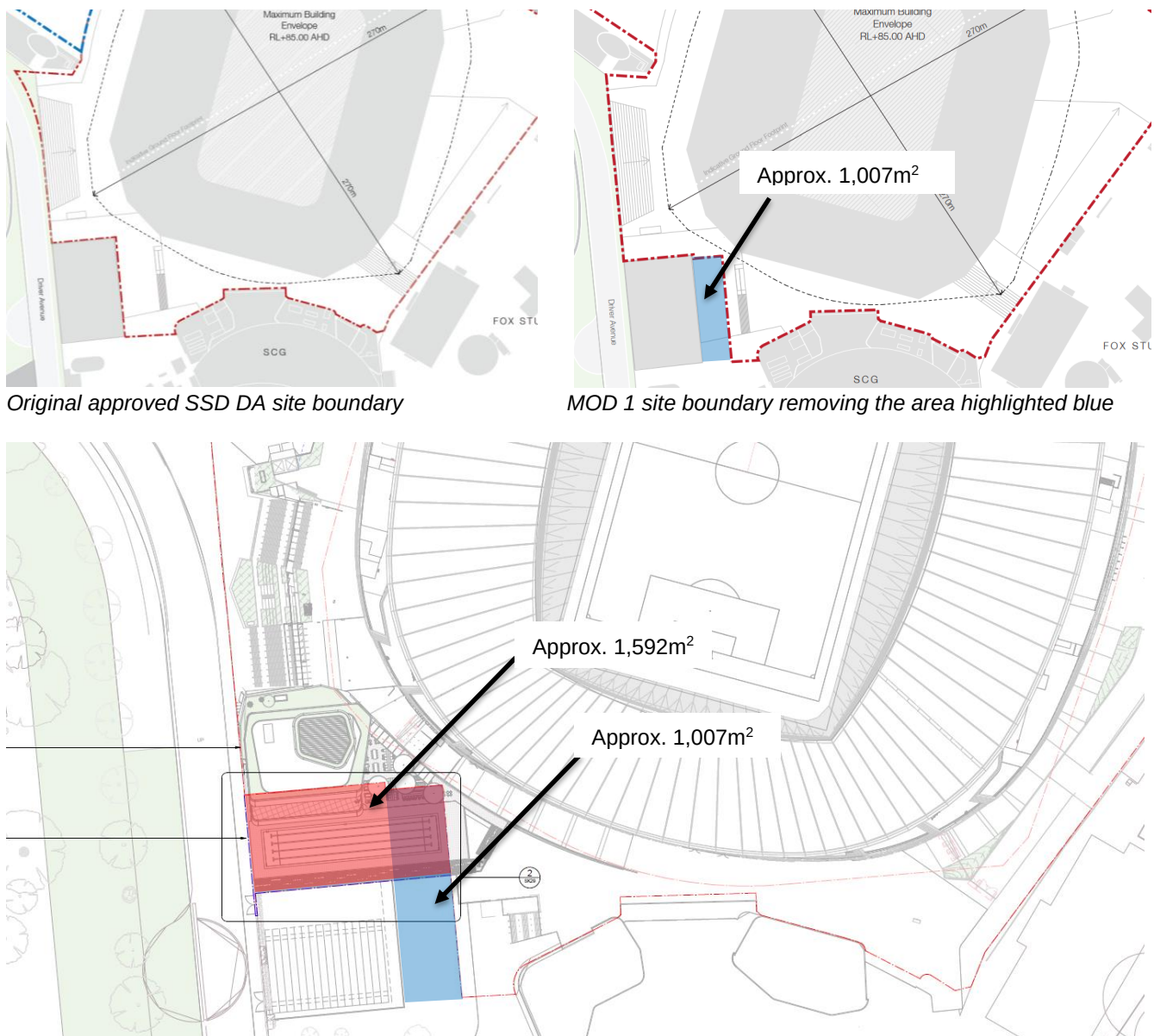
The decision in *Moto Projects* makes clear that the comparative task in assessing whether a development is 'substantially the same' cannot be viewed as merely a quantitative assessment of development statistics, but must also include a contextual assessment of the qualitative nature of the approved and modified developments.

In relation to the quantitative and qualitative elements of the proposed modification:

- The modification does not seek to introduce any new address or lot and DP, as the additional proposed land remains part of Lot 1530 DP 752011. It does not resume land essential for the ongoing operation of the SCG, and ensures the continued use of the SCG practice wickets as part of the broader SCG precinct.
- The proposed additional land equates to approximately 0.6% more site area than what was originally approved, emphasising that a portion of the land subject to this Modification Application was previously the subject of the original Development Consent and was removed as part of MOD 1. It is now proposed to be reinstated (see **Figure 6** below).
- The proposal continues to ensure an appropriate interface is provided between the existing SCG and the proposed future Sydney Football Stadium. It continues to provide suitable areas for pedestrian circulation around and between the existing SCG and future SFS as demonstrated by the concurrent Section 4.55 modification to SSD 9835.
- The proposed land and subsequent future ancillary development continues to relate to the Concept Proposal for a new stadium and concurrent Stage 1 Works involving the demolition of the existing stadium and associated structures which were completed on 28 February 2020.
- No physical works are proposed as part of this Modification Application, and as such it does not alter the scope of approved Stage 1 Works relating to demolition, with all construction and operational measures and impacts associated with the Stadium Fitness Facilities assessed as part of the concurrent modification to the Stage 2 SSD DA.
- This integrated but ancillary structure does not change the approved building envelope for the stadium itself, or its subsequent approved design and operation as explored through the concurrent Stage 2 modification.

Based on the above, our view is that the development as modified remains substantially the same as the development as originally approved.

Further, Section 4.55(1a) allows for modifications where there is "minimal environmental impact". Our view is that the modification is well within the bounds of this threshold, as explored in the section below.



Overlay of originally approved and the proposed site boundary showing the portion of site that formed part of the original DA, and the comparable areas

Figure 6 History of the site boundary

Source: SJB + COX Architecture + Ethos Urban edits

5.0 Environmental assessment

Section 4.55(1A) of the EP&A Act states that a consent authority may modify a development consent if “it is satisfied that the proposed modification is of minimal environmental impact”. Under section 4.55(3) the consent Authority must also take into consideration the relevant matters to the application referred to in section 4.15(1) of the EP&A Act and the reasons given by the consent authority for the grant of the original consent.

The proposed modification does not give rise to any further impacts or need for assessment against the relevant matters under section 4.15(1) beyond those already addressed in the original Environmental Impact Statement. The proposed modification does not alter the level of compliance with, nor give rise to the need for additional assessment against, the relevant environmental planning instruments and policies, noting there is a separate

concurrent modification to the Stage 2 SSD DA (9835) addressing the detailed design, construction, operation of the Stadium Fitness Facilities and any associated environmental impacts.

The inclusion of a part of the SCG practice area, a tennis court, and a wall will not impact the Urban Design Principles or ultimate design and operation of the approved stadium on the site. These areas operate independently of the site entrances and circulation pathways for the stadium, including the integration of the external concourse with the existing patron circulation zones of the SCG, and will not undermine the continued operation of the SCG and its practice wickets that are retained.

The site remains suitable for the proposed development, and the proposed modification is in the public interest as it will support the reinstatement of the Stadium Fitness Facilities, integrated with the SFS redevelopment. The SCG will continue to be able to host cricket matches and other sporting events independently.

5.1 Biodiversity

The Concept Proposal and Stage 1 DA was accompanied by a Biodiversity Development Assessment Report (BDAR) prepared by Jacobs. The BDAR included a review of existing information regarding threatened species, populations and communities within a 10km radius of the site and a field survey to review the findings of the background research, including vegetation surveys and a habitat assessment on the identified list of threatened flora and fauna species known or predicted to occur in the subregion. The 'Study Area' for the BDAR included the additional land considered in this modification application (see **Figure 7** below).

The BDAR confirmed that the site had been heavily modified from its original state and that there was little natural terrestrial vegetation in the locality. In view of this, Jacobs confirmed that there were no threatened ecological communities located in or directly adjacent to the development site, and that the vegetation on site was not a suitable habitat for any threatened or migratory species. The proposal did not require the preparation of an offset strategy for the purchase and retirement of biodiversity credits. A waiver was subsequently issued in relation to the Stage 2 SSD DA confirming that no further assessment was required.

The land to which this modification relates comprises a turfed tennis court, cricket practice area, and masonry wall; no vegetation forms part of this land. A portion of this land formed part of the original approved site boundary, and the remaining portions of land were considered in the Study Area by Jacobs in the BDAR. The proposed modification, therefore, does not change the findings of this assessment and does not require further verification.

It is further emphasised that this modification does not seek to amend Conditions C8(d) and C56, or compliance with these conditions, that were generated from the recommendations of the BDAR. These conditions require that the Stage 2 detailed design of the stadium provide microbat roosting structures and plant species appropriate for Grey-Headed Flying Fox foraging.



Figure 7 Site map for the BDAR

Source: Jacobs

5.2 Contamination

SFS has been the subject of a Preliminary Site Contamination Investigation (Phase 1) and Detailed Site Investigation (Phase 2) report, which was then reviewed by an EPA-accredited Site Auditor (Jason Clay of Senversa Pty Ltd). A portion of the land to be added to the project boundary was previously included in the approved boundary, and then later removed as part of MOD 1, ensuring part of the land was considered in the original assessments.

These assessments confirmed at the time that the site was suitable without the need for any remediation, provided that unexpected finds are managed appropriately during the demolition phase. An Unexpected Contamination Procedure was subsequently prepared and implemented in accordance with the requirements of Condition B7 of Schedule 3 of the consent, which formed part of the Construction Environmental Management Plan which applied to the demolition and early works.

The Stage 1 early works have since been completed, having been finalised on 28 February 2020, and accredited by the Site Auditor. The Site Auditor issued a Section B Site Audit Statement and supporting Remediation Action Plan on 15 March 2020. The documents collectively confirm the Auditor's satisfaction that materials have been appropriately tracked and the Unexpected Finds Protocol implemented. Under MOD 4, the Section B Site Audit Statement was required to be provided to the DPIE which was fulfilled on 15 March 2020.

In addition, it is worth highlighting that SSD 9835 contains several conditions of consent relating to site contamination. The modified development will continue to implement the appropriate framework for managing any unexpected finds that is already in place, including the relevant conditions of consent imposed under SSD 9835 that will continue to apply to the Stadium Fitness Facilities site. Certification by the Site Auditor that the site is appropriate for use also forms part of the Stage 2 SSD DA.

5.3 Building envelope

Whilst no change is proposed to the approved and enacted building envelope for the stadium, including compliance with Conditions C5 and C6 of the consent, the Modification Application proposes to introduce a substantially smaller secondary building envelope in which the Stadium Fitness Facilities will be constructed as part of the Stage 2 SSD DA (9835). The detailed design of the Stadium Fitness Facilities within this building envelope has been assessed by the Design Integrity Panel, as detailed in the concurrent Modification Application to the Stage 2 SSD DA.

The proposed secondary building envelope is appropriate for the following reasons:

- it does not impact the provision of, or reduce, appropriate public areas surrounding the stadium and for the SCG, given the proposed Stadium Fitness Facilities will occupy an inaccessible undercroft space created by the SFS entry stairs and part of a secure SCG cricket training area and tennis court;
- it does not impact free and unimpeded movement through the site from Driver Avenue and Moore Park Road, or the future provision of an east/west link through Fox Studios;
- it continues to provide a strong street edge to Driver Avenue, supporting the stadium better engaging in the public realm and activating the street;
- it does not result in additional shadowing as evidenced by the concurrent modification to the Stage 2 SSD DA; and
- it is minor in scale, is separated from residential areas, and facilitates the replacement of facilities that were previously operating on the site without generating any significant additional or adverse environmental impacts, as confirmed through the concurrent modification to the Stage 2 SSD DA.

5.4 Reasons given for granting consent

The proposed modifications do not alter the approved development insofar as the matters identified by the Minister as the reasons for granting the original development consent. These include:

- the Tier 1 stadium which will ensure that NSW's sporting facilities are competitive into the future;
- the new stadium aims to provide an enhanced experience for patrons, improved access and egress in and around the stadium, improved facilities for a more diverse range of sports and events, and better integration with the neighbouring precincts;
- the stadium is expected to result in \$674 million capital investment, support approximately 600 construction jobs and 300 additional operational jobs;
- the project is permissible with development consent, and is consistent with NSW Government policies including the NSW Stadium Strategy, A Metropolis of Three Cities - The Greater Sydney Plan, NSW Future Transport Strategy 2056 and the Eastern City District Plan;
- the impacts on the community and the environment can be appropriately minimised, managed or offset to an acceptable level; and
- the project is in the public interest.

6.0 Conclusion

The proposed modifications are minor and administrative in nature, and do not impact upon the substance of the original State Significant Development Consent (SSD 9249). The proposed modification does not give rise to any environmental impacts and does not undermine the efficient ongoing operation and use of the adjacent SCG and the approved Sydney Football Stadium redevelopment. The proposed modification will enable the future reinstatement of Stadium Fitness Facilities that operated in conjunction with the former, demolished stadium. No physical works are proposed as part of this application.

In accordance with section 4.55(1a) of the EP&A Act, the Minister may modify the consent as:

- the proposed modification is of minimal environmental impact; and
- is substantially the same development as development for which the consent was granted.

We trust that this information is sufficient to enable a prompt assessment of the proposed modification.

Yours sincerely,



Anna Nowland
Senior Urbanist



Michael Oliver
Associate Director