



# Waterloo Metro Quarter Over Station Development Concept Proposal - Modification 2

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Modify Condition A12

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# Glossary

Abbreviation	Definition
<b>Council</b>	City of Sydney Council
<b>Department</b>	Department of Planning, Industry and Environment
<b>EIS</b>	Environmental Impact Statement
<b>EP&amp;A Act</b>	<i>Environmental Planning and Assessment Act 1979</i>
<b>EP&amp;A Regulation</b>	Environmental Planning and Assessment Regulation 2000
<b>ESD</b>	Ecologically Sustainable Development
<b>Heritage</b>	Heritage NSW, Department of Premier and Cabinet
<b>LEP</b>	Local Environmental Plan
<b>Minister</b>	Minister for Planning and Public Spaces
<b>SEARs</b>	Planning Secretary's Environmental Assessment Requirements
<b>Planning Secretary</b>	Secretary of the Department of Planning, Industry and Environment
<b>SEPP</b>	State Environmental Planning Policy
<b>SRD SEPP</b>	State Environmental Planning Policy (State and Regional Development) 2011
<b>SSD</b>	State Significant Development
<b>SSI</b>	State Significant Infrastructure
<b>TfNSW</b>	Transport for NSW

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# 1 Introduction

This report provides the NSW Department of Planning, Industry and Environment's (the Department's) assessment of an application to modify the State significant development (SSD) consent SSD 9393 for Waterloo Metro Quarter Over Station Development (WMQ OSD) Concept Proposal (SSD 9393 MOD 2).

Under the Concept Approval, Condition A12 requires the Applicant to enter into a legally binding agreement for the delivery of all public benefits (affordable housing, social housing, publicly accessible open space and a community facility) and provide details of the final design and operation of the community facility, prior to the determination of the first future development application.

The modification application seeks to modify Condition A12 to defer the requirement to submit the final design and operational details of the community facility. The modification application proposes the submission of the details shall be deferred until the occupation of the development for Waterloo Metro Quarter OSD – Central Precinct (SSD 10439).

The requirements to enter into a legal binding agreement to secure the delivery of all public benefits would remain unchanged in Condition A12.

The Detailed Design Application for Waterloo Metro Quarter OSD – Central Precinct (SSD 10439) is currently under assessment by the Department. The application seeks approval for the design, construction and operation of a 22 to 24 storey mixed-use development, including the construction of the community facility and its use as a childcare centre.

The application has been lodged by WL Developer Pty Ltd (the Applicant) pursuant to section 4.55(1A) of the *Environmental Planning and Assessment Act 1979* (EP&A Act).

## 1.1 Background

The Waterloo Metro Quarter (the site) sits approximately 3.3 km south of the Sydney CBD, 700 m south-west of Redfern and five km north-east of Sydney Airport.

The site sits above and around the future Waterloo Metro Station, which is currently under construction and scheduled to open in 2024. The site is largely rectangular in shape and is bound by Cope Street (east), Raglan Street (north), Botany Road (west) and Wellington Street (south) (Figure 1).

The sites surrounding the Waterloo Metro Quarter include commercial premises to the north, light industrial and mixed-use development to the south, residential development to the east (Waterloo Estate) and predominantly commercial and light industrial development to the west.



**Figure 1** | Local context map (Source: Stage 2 WMQ OSD EIS)

## 1.2 Approval history

On 10 December 2019, Concept Approval was granted by the Minister for Planning and Public Spaces for the Waterloo Metro Quarter Over Station Development (OSD) at Waterloo, comprising a new mixed use precinct featuring commercial, residential, community uses and open space.

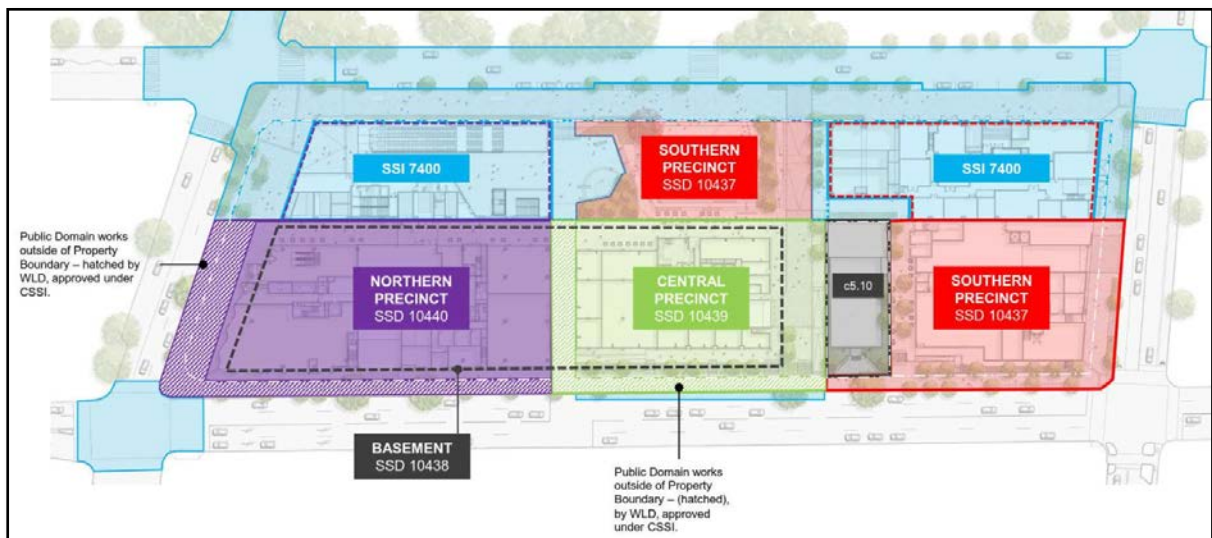
The Applicant has since lodged the following Detailed SSDAs and modification applications relating to the Waterloo Metro Quarter Over Station Development:

- Waterloo Metro Quarter OSD – Southern Precinct (SSD 10437) for the design, construction and operation of a 25 storey student housing tower and a 9 storey social housing building, including some non-residential uses in the podium levels of the student housing building and the delivery of a publicly accessible open space along Cope Street.
- Waterloo Metro Quarter OSD – Amending DA (SSD 10441) to create a new mid-rise building envelope (instead of the approved tower development) and change the use (from residential to commercial) of the Northern building and an extension of the podium of the Central building.
- Waterloo Metro Quarter OSD – Central Precinct (SSD 10439) for the design, construction and operation of a 22 – 24 storey mixed-use development comprising 126 residential units, 24 affordable housing units, a community hub, a 2,200m<sup>2</sup> child care centre, including some

public domain works and the delivery of 'Grit Lane', a publicly accessible shared laneway within the development site.

- Waterloo Metro Quarter OSD – Northern Precinct (SSD 10440) for the design, construction and operation of a 9 - 17 storey commercial building with retail uses at the base of the building and office use above, including a pedestrian through site link 'Raglan Walk', from Raglan Street to Cope Street.
- Waterloo Metro Quarter OSD – Basement Car Park (SSD 10438) for the design, excavation and construction of a shared, two level basement for a maximum of 155 car parking spaces, bicycle parking and an end of trip facility, motorcycle parking and residential storage situated entirely underground, below the western portion of the Waterloo Metro Quarter OSD
- Section 4.55(1A) modification application (SSD 9393-MOD 1) to modify the wording of Condition B4 of the Concept Approval and allow communal facilities associated with the student housing tower in the Southern Precinct's podium and enable a skylight, plant enclosure and lift overrun higher than the approved envelope.

All five SSD applications, including the Section 4.55(1A) are currently under assessment by the Department.



**Figure 2** | Proposed site plan and SDA precinct boundaries for WMQ OSD (Source: Applicant's report)

## 2 Proposed modification

### Amendments proposed to Condition A12

The modification application seeks approval to modify Condition A12 as follows:

*A12. Prior to the determination of the first Future Development Application, the Applicant or its successors must enter into a Planning Agreement and/or other legally binding agreement to the satisfaction of the Planning Secretary securing the provision of the following public benefits of the Concept:*

- (a) A minimum 5% of approved residential gross floor area dedicated or transferred to a Registered Community Housing Provider as affordable housing*
- (b) 70 social housing dwellings dedicated or transferred as agreed by NSW Land and Housing Corporation*
- (c) Publicly accessible open space provision of minimum 2,200sqm across the Metro Quarter site including its final area, design and ongoing management, noting partial provision of this publicly accessible open space may also be delivered under the CSSI Approval*
- (d) Community facilities gross floor area of a minimum 2,000sqm-including its final area, design and future operating model.-Community facilities are as defined in the Sydney Local Environmental Plan 2012.*

***In addition to the public benefits required under condition A12(a)-(d), prior to the issue of an Occupation Certificate for the Central Precinct of the Waterloo Metro Quarter (Building E on the building envelope plans under this approved by this consent) the Applicant or its successor must enter into a Planning Agreement and/or other legally binding agreement to the satisfaction of the Planning Secretary which documents the following:***

- (e) The final area, design, and future operating model of community facilities on the site comprising gross floor area of a minimum 2,000sqm. Community facilities are as defined in the Sydney Local Environmental Plan 2012.***

## 3 Statutory context

### 3.1 Scope of modification

Section 4.55(1A) of the Environmental Planning and Assessment Act (EP&A Act) outlines the matters that a consent authority must take into consideration when determining an application that seeks to modify an SSD application. The matters for consideration under section 4.55(1A) of the EP&A Act that apply have been considered in **Table 1**.

**Table 1 |** Assessment against Section 4.55 of the EP&A Act

Section 4.55 (1A) Evaluation	Consideration
a) that the proposed modification is of minimal environmental impact, and	<p>The Department is satisfied that the proposed modification will have minimal or nil environmental impact as the amendments are administrative and relate to staging of Condition A12 only.</p> <p><b>Section 5</b> of this report provides an assessment of the modification application.</p>
b) 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	<p>The Department is satisfied the modification application is substantially the same development as the changes only seek to stage Condition A12. The condition will continue to require the Applicant to deliver all public benefits, including the design, construction and use of the community facility as required under the Sydney LEP 2012 and the Concept Approval. The modification only seeks to defer the timing for providing details on the final design and operation of the community facility.</p>
c) the application has been notified in accordance with the regulations, and	<p>The Department notified Council on this application. The application was also made publicly available on the Departments website.</p>
d) any submission made concerning the proposed modification has been considered.	<p>The Department consulted with the City of Sydney Council. Council raised no objection to the proposed modifications.</p>

### 3.2 Consent authority

The Minister for Planning and Public Spaces is the consent authority for the application under Section 4.5(a) of the EP&A Act. However, under the Minister's delegation dated 9 March 2020, the Team Leader, Key Sites Assessments, may determine the application as:

- a political disclosure statement has not been made;
- Council has not objected to the application;
- there have been no public submissions in the nature of an objection.

### 3.3 Mandatory matters for consideration

The Department conducted a comprehensive assessment of the project against the mandatory matters for consideration as part of the original assessment of SSD 9270. The Department considers that this modification application does not result in significant changes that would alter the mandatory matters for consideration under Section 4.15 of the EP&A Act and conclusions made as part of the original assessment.

**Table 2** identifies the matters for consideration that apply to the proposed modification.

**Table 2** | Section 4.15 Evaluation

Section 4.15 (1) Evaluation	Consideration
(a)(i) any environmental planning instrument	The modified proposal is in keeping with the legislative instruments, being the Sydney LEP 2012 (SLEP 2012). The modified proposal will continue to remain consistent with the land use zone objectives, the requirements outlined under the site specific clauses (clauses 6.45 and 6.46) and a guarantee to deliver all the public benefits (affordable housing, publicly accessible open space and community facility) outlined under clause 6.46 of the SLEP 2012 will still be required prior to the determination of the detailed design development application.
(a)(ii) any proposed instrument	The draft Central Sydney Planning Strategy applies to the site. However, there is no specific provision under the strategy that applies to the modification.
(a)(iii) any development control plan	Under clause of the SRD SEPP, Development Control Plans do not apply to SSD. Nevertheless, there is no specific provision under the DCP that applies to the modification.
a)(iv) any planning agreement	Not applicable.
(a)(iv) the regulations	The application meets the relevant requirements of the EP&A Regulation, including the procedures relating to applications (Part 6), the requirements for notification (Part 6, Division 6) and fees (Part 15, Division 1AA).

(b) the likely impacts of that development including environmental impacts on both the natural and built environments, and social and economic impacts in the locality	The Department considers the likely impacts of the development are acceptable and have been appropriately addressed (refer to <b>Section 5</b> of this report).
c) the suitability of the site for the development	The site remains suitable for the development as assessed in the original application.
(d) any submissions	No submissions were received for this proposal
(e) the public interest	<p>The Department considers the modified proposal continue to be in the public interest as the changes are only administrative. The proposed condition will continue to require the Applicant to deliver all the public benefits outlined under the condition, including the delivery of a community facility.</p> <p>The proposal would remain consistent with the objects of the Act and the objectives of the zone.</p>

### 3.4 Objects of the Act

The Minister or delegate must consider the objects of the EP&A Act (the Act) when making decisions under the Act. The Department is satisfied the proposed modifications are consistent with the objects of the Act.

### 3.5 Reasons for Granting Consent

The proposed modification is consistent with and does not detract from the reasons for granting the original consent.

### 3.6 Biodiversity Impacts

A biodiversity assessment report (BDAR) waiver was issued under the *Biodiversity Conservation Act 2016* for the Concept SSD application. The proposed modification would not change the circumstance or require the submission of or amendments to the previously granted BDAR waiver for the site. The Department is therefore satisfied that the modification will not increase biodiversity impacts pursuant Section 7.17(2)(c) of the *Biodiversity Conservation Act 2016*.

## 4 Engagement

### 4.1 Department's engagement

Clause 117(3B) of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation) specifies that the notification requirements of the EP&A Regulation do not apply to Section 4.55(1A) modifications with minimal environmental impact applications. Accordingly, due to the minor nature of the proposed modification, the application was not publicly exhibited.

The modification application was made publicly available on the Department's website and was also referred to Council. Council did not object to the modifications, but recommends only one planning agreement be entered into for the required public benefits and alternative mechanisms such as covenants can be imposed to secure them.

## 5 Assessment

### 5.1 Amendment of Condition A12

This modification application seeks to amend Condition A12 of SSD 9393. The condition currently requires the Applicant to enter into a legally binding agreement to secure the provisions of public benefits, including the final area, design and future operating model of a 2,000 m<sup>2</sup> community facilities. This agreement must be entered into prior to the determination of the first future detailed design development application.

The Applicant submits that a legally binding agreement would be entered into to secure the provision of the public benefits, including the community facilities. The Applicant however seeks to defer the submission of the final design and operating model of the community facilities until the issue of an Occupation Certificate (OC) for the Central Precinct (SSD 10439).

The Applicant contends that deferring the requirement for details of the final design and operation of the community facility is appropriate as it will allow for proper resolution of the final design following approval of the land use, general layout and area of the childcare centre that are part of the Detailed Design Application for the Central Precinct (SSD 10439). The Applicant also indicates that additional time is required following the approval of the Detailed Design Application for the Central Precinct to confirm arrangements for the final operating model of the community facilities.

The Department consulted with Council on the modification application. Council raised no objection in relation to the modified condition. Council, however, recommends only one planning agreement should be entered into on the site for simplicity or alternative mechanism such a covenant may be imposed to secure the social housing, affordable housing in perpetuity.

The Department notes the reason that Condition A12 requires the inclusion of the final design and operating model in a legally binding agreement is to ensure the proposed community facility would meet the minimum area (2,000m<sup>2</sup>) requirement of the SLEP 2012 and the relevant definition for community facilities under the SLEP 2012 as outlined below.

*Community facility means a building or place – (a) owned or controlled by a public authority or non-profit community organisation, and (b) used for the physical, social, cultural or intellectual development or welfare of the community, but does not include an educational establishment, hospital, retail premises, place of public worship or residential accommodation.*

The Department, however, acknowledges the Waterloo Metro Quarter Over Station Development would be delivered in four stages, as reflected in the submitted Detailed Design Applications currently being assessed by the Department (See **Section 1.2**). As such, the Department accepts the final design and operating model of the community facilities and related property arrangement to allow a public authority or non-profit organisation to own or control the facility cannot be practically resolved until after the approval of the Detailed Design Application for the Central Precinct.

The Department therefore accepts the proposed modification to Condition A12 is appropriate because:

- the modified condition will not alter the delivery mechanism or change the quantum of public benefits agreed for Waterloo Metro Quarter. The Applicant will still need to enter into a legally

binding agreement and provide all public benefits, including the community facility required under Condition A12 and the SLEP 2012.

- the modified condition remains consistent with the SLEP 2012 and the site-specific requirements under clauses 6.45 and 6.46.
- the modified condition will not result in any physical change to the Concept Approval or result in additional environmental impact.
- final plans and operational details will need to be submitted by the Applicant prior to OC stage of the Central Precinct Building.
- the timing for submitting final plans and operational details of the community space is more appropriate post determination of the Central Precinct SSDA (SSD 10439), once the land use, general layout and area of the community facility is determined.

The Department therefore supports the proposed modification and recommends that Condition A12 be amended as it will allow for approval of detailed design applications in an orderly manner without undue delays and enable the preparation of final design plans and operational details following the determination of the Central Precinct SSDA (SSD 10439).

In response to Council's submission, the Department recommends amendments to the proposed wording to Condition A12 and an additional condition to ensure clarity and potential for alternative mechanism such as a covenant to secure the required public benefits in Condition A12. The Department recommends Condition A12 be modified as follow:

- A12. Prior to the determination of the first Future Development Application, the Applicant or its successors must enter into a Planning Agreement and/or other legally binding agreement to the satisfaction of the Planning Secretary securing the provision of the following public benefits of the Concept:
- a. a minimum 5% of approved residential gross floor area dedicated or transferred to a Registered Community Housing Provider as affordable housing
  - b. 70 social housing dwellings dedicated or transferred as agreed by NSW Land and Housing Corporation
  - c. publicly accessible open space provision of minimum 2,200m<sup>2</sup> across the Waterloo Metro Quarter site including its final area, design and ongoing management, noting partial provision of this publicly accessible open space may also be delivered under the CSSI Approval
  - d. community facilities gross floor area of a minimum 2,000m<sup>2</sup> ~~including its final area, design and future operating model.~~ Community facilities are as defined in the Sydney Local Environmental Plan 2012.

**A12(a). Prior to the determination of the first Future development application, the Applicant must lodge a subsequent Application to seek development consent for the community facilities required under Condition A12(d), including the area and design of the community facilities. Prior to the issue of the first occupation certificate for the subsequent application containing the community facilities, evidence of an executed planning agreement or a registered covenant or restriction on title, securing the final area, design and future operating model of the Community Facilities required under Condition A12(d) must be provided to the Planning Secretary for approval.**

The Applicant has agreed to the Department's recommended wording to Condition A12 and additional condition.

## 6 Evaluation

The Department has assessed the modification request and supporting information in accordance with the relevant requirements of the EP&A Act.

The Department's assessment concludes that the proposed modifications are appropriate as:

- the proposal is substantially the same development as originally approved development
- the modified condition will not result in any physical change to the Concept Approval or result in additional environmental impact.
- the Applicant will remain required to deliver all the public benefits required under the Concept Approval and the SLEP 2012.
- It continues to comply with the relevant statutory provisions and remains consistent with relevant EPIs
- no objection to the proposed modification has been raised by Council.

Consequently, the Department concludes the proposal is in the public interest and should be approved, subject to the recommended changes to existing conditions of consent as outlined in **Appendix B**.

## 7 Recommendation

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

- **considers** the findings and recommendations of this report
- **determines** that the application SSD 9393 MOD 2 falls within the scope of section 4.55(1A) of the EP&A Act
- **accepts and adopts** all of the findings and recommendations in this report as the reasons for making the decision to approve the modification
- **agrees** with the key reasons for approval listed in the draft notice of decision;
- **modify** the consent SSD 9393
- **signs** the attached approval of the modification (**Appendix B**).

**Recommended by:**



**Joina Mathew**  
Planning Officer  
Key Sites Assessments

**Recommended by:**



**Russell Hand**  
Principal Planner  
Key Sites Assessments

## 8 Determination

The recommendation is **Adopted** by:



**Annie Leung**

Team Leader

Key Sites Assessments

as delegate of the Minister for Planning and Public Spaces

# Appendices

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

## **Appendix A – List of referenced documents**

Modification Request

<https://www.planningportal.nsw.gov.au/major-projects/project/41681>

## **Appendix B – Notice of modification**

<https://www.planningportal.nsw.gov.au/major-projects/project/41681>