



# Crows Nest Over Station Development Modification 1

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Administrative changes to the conditions of consent  
State Significant Development Modification Assessment  
(SSD 9579 MOD 1)

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Title: Crows Nest Over Station Development – Modification 1

*Cover image: Perspective looking north-west across the intersection of Pacific Highway and Hume Street towards indicative Building A and Building C beyond (Source: Applicant's EIS)*

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# Glossary

Abbreviation	Definition
<b>CIV</b>	Capital Investment Value
<b>Council</b>	North Sydney Council
<b>Department</b>	Department of Planning, Industry and Environment
<b>EIS</b>	Environmental Impact Statement
<b>EPA</b>	Environment Protection Authority
<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>EPBC Act</b>	<i>Environment Protection and Biodiversity Conservation Act 1999</i>
<b>EPI</b>	Environnemental Planning Instrument
<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 9579 for Crows Nest Over Station Development (OSD) (SSD-9579-Mod-1).

The modification seeks approval to administrative changes to conditions, including correct numbering of conditions and clarification of conditions under the Concept Approval. The modification also seeks approval for a new condition allowing Site C OSD to have future access Site A OSD loading dock.

The application has been lodged on 5 August 2021 by Sydney Metro (the Applicant) pursuant to section 4.55(1A) of the *Environmental Planning and Assessment Act 1979* (EP&A Act).

## 1.1 Background

Crows Nest OSD is located in the North Sydney local government area (LGA). The site has a total combined area of 6,356 m<sup>2</sup> and comprises three separate land parcels (see **Figure 1**) being:

- 477- 495 Pacific Highway (Site A)
- 497- 521 Pacific Highway (Site B) and
- 14 Clarke Street (Site C).

The site occupies the air space above the future Crows Nest Metro Station.

Demolition and construction activities for the Crows Nest Metro station have commenced on the site in accordance with the Critical State Significant Infrastructure approval for Sydney Metro City and Southwest (CSSI 7400).



**Figure 1** | Local Context Map (Source: Nearmap with annotations added)

## 1.2 Approval history

On 23 December 2020, development consent was granted by the Minister for Planning and Public Spaces for the concept proposal of the Crows Nest OSD site (SSD 9579). The development consent permits the following works for the mixed-use development:

- three building envelopes comprising:
  - maximum building envelope heights:
    - Building A: RL 175.6m
    - Building B: RL 155m
    - Building C: RL 127m
- maximum GFA of 56,400m<sup>2</sup> for including:
  - 43,400m<sup>2</sup> commercial GFA
  - 13,000m<sup>2</sup> residential GFA
- maximum 101 car parking spaces

This modification is the first modification of the consent (SSD 9579).



## 2 Proposed modification

### 2.1 Proposed Amendments to SSD 9576

The Applicant seeks to modify Condition A26, Condition B3, Condition B4 and Condition B18, delete duplicate Condition B33 and add a new Condition A27 as shown below (words that are proposed to be deleted are shown in ~~bold strike through~~ and words to be inserted are shown in ***bold italics***).

1. Fix the misnumbering of Condition A26:

#### CONSULTATION WITH FIRE AND RESCUE NSW

~~A23. A26~~ The pedestrian connection interfaces between the various sectors of the precinct must be appropriately assessed by fire engineering analysis with respect to emergency occupant egress, fire and smoke compartmentation, smoke hazard management and firefighting intervention.

2. Amend Condition B3 to clarify GFA caps and land use for each site:

B3. The maximum achievable gross floor area (GFA) for the non-station related floor space is 56,400 m<sup>2</sup> (including 43,400 m<sup>2</sup> commercial and 13,000 m<sup>2</sup> residential GFA), ***comprising a maximum of 40,300 m<sup>2</sup> (commercial) on Site A, 13,000 m<sup>2</sup> (residential) on Site B, and 3,100 m<sup>2</sup> (commercial) on Site C.***

3. Insert a new note under Condition B4 to clarify the inter-relationship between rooftop enclosures and articulation zones:

#### ROOFTOP ENCLOSURES

B4. Rooftop enclosures above each of the approved building envelopes (Site A, Site B and Site C) are only permitted as part of future development application(s) when the following requirements are met:

[...]

***Note: The use of articulation zone for Site C is also subject rooftop enclosures may be located or protrude into the articulation zone subject to Condition B5.***

4. Amend Condition B18 to clarify the minimum amount of accessible parking spaces and the maximum amount of motorcycle parking spaces for each site:

#### CAR, MOTORCYCLE AND BICYCLE PARKING

B18. Future development application(s) must demonstrate compliance with the following maximum parking limits:

- (a) the maximum number of car spaces to be provided for the development is limited to 101 spaces, including commercial and residential spaces, but excluding service vehicle spaces, and comprising:
  - (i) a maximum of 46 spaces within Site A, ***including 6 accessible spaces***
  - (ii) a maximum of 55 spaces within Site B, ***including 6 accessible spaces***
  - (iii) no spaces within Site C
  - ~~(iv) a minimum of 12 accessible spaces.~~

(b) the maximum number of motorcycle spaces to be provided for the development is limited to 26 spaces, **and comprising:**

***(i) a maximum of 24 spaces within Site A***

***(ii) a maximum of 2 spaces within Site B***

***(iii) no spaces within Site C.***

5. Delete duplicate Condition B33. Condition B9 of the Concept Approval outlines the requirements for reflectivity.

**~~REFLECTIVITY ASSESSMENT~~**

**~~B33. Future development applications for aboveground works shall include a Reflectivity Assessment demonstrating that external treatments, materials and finishes of the development do not cause adverse or excessive glare.~~**

6. Insert a new Condition A27:

**SERVICING AND LOADING**

***A27. Upon completion of the Site A OSD loading dock, vehicles associated with the operation of the Site C OSD shall be provided with access to the Site A OSD loading dock for the purposes of deliveries, servicing, and loading.***



## 3 Statutory context

### 3.1 Scope of modifications

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 either administrative errors or clarifications. The new Condition A27 seeks to provide Site C OSD future access to the Site A loading dock. The loading dock would accommodate Site C service and delivery vehicles, in addition to the lay-bys on Clark Lane, reducing any potential traffic or on-street queuing impacts along the laneway.</p> <p>However, the Department does not support the changes sought to Condition B4. <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 largely administrative. The amendments will continue to require the applicant to provide adequate parking, comply with the maximum GFA for each building and provide certainty regarding the loading arrangements for Site C. The modifications proposed do not alter key aspects or elements of the Concept Approval.</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>No submissions were received as part of the application.</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 26 April 2021, 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 undertook a comprehensive assessment of the development against the mandatory matters for consideration as part of the original assessment of SSD 9579. The Department considers 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 or 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 will continue to remain consistent with relevant legislation, including the North Sydney LEP 2013.
(a)(ii) any proposed instrument	Not applicable.
(a)(iii) any development control plan	Development Control Plans do not apply to SSD.
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	The Department considers the modified proposal continue to be in the public interest as the changes are only

administrative. The proposed conditions will continue to require the Applicant to comply with the Concept Approval. The proposal would remain consistent with the objects of the Act and the objectives of the zone.

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### **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 Conservation Act 2016**

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 and administrative nature of the proposed modifications, the application was not publicly exhibited.

The modification application was made publicly available on the Department's website. The Department received no submissions from the public.

The modification application was also referred to Council for comments. In response to the Department's request regarding the above matter, Council raises no objection to the proposed amendments. However, Council remains concerned regarding the safety and efficiency of maintaining the truck lay-over space in Clark Lane, despite being included in the original approval.

## 5 Assessment

The Department has considered the proposed modification application and the potential environmental impacts resulting from the modification and considers the key issues relevant to the proposal are:

- administrative modifications
- loading and servicing arrangement.

### 5.1 Administrative modifications

The modification application seeks approval to modify Condition A26, Condition B3, Condition B4, Condition B18 and delete condition B33 of the Concept Approval (SSD 9576).

The Applicant's report states that these changes will:

- Delete Condition B33, which is a duplicate of Condition B9
- Correct the numbering for Condition A26
- provide greater clarity on GFA and parking allocations approved for each building (Condition B3 and B18) under the Concept Approval
- include a Note to Condition B4 to enable the future Site C rooftop enclosure to occupy a part of the articulation zone subject to Condition B5.

Council raised no objection to the amendments proposed to these conditions.

The Department acknowledges that proposed changes to Condition A26, B3, B18 and B33 are administrative in nature and do not change the approval or the effects of the conditions.

The Department however does not support the Note to Condition B4 as it may be contradictory to the approved plans, which shows a delineation between a service zone for rooftop enclosure and articulation zones for Site C. The Applicant since advised the Department that they no longer wish to amend Condition B4 noting that the future Site C scheme would be designed to comply with Condition B4. As such, Condition B4 would not be modified.

The Department therefore accepts the proposed changes and supports the amendments sought only to Condition A26, Condition B3, Condition B18 and the deletion of Condition B33.

### 5.2 Loading and servicing arrangement

Under the Concept Approval (SSD 9579), all loading and servicing for Site C OSD, including waste collection is proposed via a single lay by / service bay provided in Clark Lane.

The Applicant submits that there is now an opportunity to facilitate future access to the Site A loading dock for Site C delivery and service vehicles. To formalise this shared arrangement, the Applicant request that the following new condition is inserted to the Concept Approval ensuring that Site C OSD will have future access to the Site A loading dock:

#### **SERVICING AND LOADING**

***A27. Upon completion of the Site A OSD loading dock, vehicles associated with the operation of the Site C OSD shall be provided with access to the Site A OSD loading dock for the purposes of deliveries, servicing, and loading.***

The Applicant's report notes that the new arrangement will provide a positive outcome for Clark Lane. Off-street spaces would be made available for Site C deliveries and service vehicle, further reducing the likelihood of any potential traffic or queuing impacts on Clark Lane. A single booking system, managed by the Site A OSD building manager, would coordinate deliveries for Site A and Site C ensuring that deliveries are made outside of peak hours and are staggered during the day when parking spaces are available within the Site A loading dock.

In response to the Department's request regarding the above matter, Council raises no objection to the proposed amendments. However, Council remains concerned regarding the safety and efficiency of maintaining the truck lay-over space in Clark Lane, despite being included in the original approval.

The Applicant has considered Council's concerns but submits that the lay over space in Clark Lane was approved under the Concept Approval and cannot be removed as the space is necessary for waste collection.

The Department accepts that:

- the proposed modification does not seek changes to the approved service bay in Clark Lane, which is necessary for waste collection as servicing needs to occur adjacent to Site C. The Department also considers that it is not appropriate to have to transport waste bins between Site C and Site A loading dock via Clark Lane
- Site C's access to the Site A loading dock for deliveries and service vehicle will provide an overall improved outcome for Clark Lane, reducing any potential traffic or queuing impacts on the laneway.

The Department also notes that Condition B16 of the Concept Approval (SSD 9579) required future SSD applications to consider opportunities to integrate the operation of loading docks and servicing bays, in addition to opportunities to share with the loading dock with the overall operation of Crows Nest Metro Station (CSSI 7400). Condition B16 also requires that a Vehicular Servicing Management Plan (VSMP) be prepared to this end as part of the each of the future Crows Nest OSD detailed SSD applications. The VSMP will further coordinate the shared use of the Site A loading dock.

The Department is therefore satisfied that the proposed changes to servicing and delivery arrangement is acceptable and a new condition as requested by the Applicant is inserted into the Concept Approval (SSD 9579).



## 6 Evaluation

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

- it is substantially the same development as the approved development and would not result in any adverse environmental impacts
- complies with relevant statutory provisions and the proposal remains consistent with relevant EPIs and the strategic planning context
- the proposed loading and servicing arrangement will improve servicing for Site C and reduce potential traffic impacts on Clark Lane
- the proposed administrative changes are acceptable in rectifying errors and clarifying a number of conditions.

The Department's assessment therefore concludes the modification application is in the public interest and is approvable, subject to the recommended modified conditions of consent (**Appendix B**).

## 7 Recommendation

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

- **considers** the findings and recommendations of this report
- **determines** that the application SSD 9579 MOD 1 falls within the scope of section 4.55(1A) of the EP&A Act
- **accepts and adopts** all of the findings and recommendations in this report as the reasons for making the decision to approve the modification
- **agrees** with the key reasons for approval listed in the draft notice of decision
- **modifies** the consent SSD 9579
- **signs** the attached approval of the modification (**Appendix B**).

**Recommended by:**



**Joina Mathew**  
Planning Officer  
Key Sites Assessments

**Recommended by:**



**Paula Bizimis**  
Senior Planning Officer  
Key Sites Assessments

## 8 Determination

The recommendation is **Adopted** by:



8 October 2021

**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/41966>

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

<https://www.planningportal.nsw.gov.au/major-projects/project/41966>