

***National Indigenous Development Centre
Lots 1, 2 & 3 DP 817283
160-202 George Street, Redfern
Proposed by the Indigenous Land Corporation***

Modification MP06_0267 MOD 1

Modification of Minister's Approval under Section 75W of the
Environmental Planning and Assessment Act 1979

April 2008



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1. INTRODUCTION

On 27 November 2007, the Indigenous Land Corporation (the Proponent) submitted an application to the Director-General to modify MP 06_0267 (**Tag B**) pursuant to Section 75W of the *Environmental Planning and Assessment Act 1979* (the Act). On 13 February 2008, the Proponent requested further revision to the staging process as part of this modification application (**Tag C**).

The Proponent is therefore seeking to modify the existing approval to permit the following changes:

- Amendment to Condition A2 to reflect the increased height of the west fence to Playground 2 (Renwick Street) from RL 29.800 to 30.200 (0.4 metres);
- Amendment to Condition B1 to reflect a revised construction process from the approved 4 stage process, to a total of 10 stages;
- Amendment to Condition B2 to permit the offsetting of the Redfern Waterloo Authority (RWA) Section 94A Levy of \$598,749 in view of the significant material public benefit provided by the National Indigenous Development Centre (NIDC) project;
- Amendment to Condition B4 to reflect the staged Interim Audit Statement and Site Audit Statement process of remediation recommended by the Site Auditor; and
- Consequential amendments to approved Conditions B5 – B11; C9; G1; F1, F2, F4 and F10, as a result of the proposed 10 stage process.

2. THE SITE

The site is located on land at 160 – 202 George Street, Redfern (Lots 1, 2 and 3 DP 817283), which formerly accommodated Redfern Public School (the site). The site is located in the City of Sydney Local Government Area and the Redfern-Waterloo Authority's operational area, and is owned by the Indigenous Land Council and City of Sydney Council.

The site has a total area of 1.63ha, and accommodates 5x3-storey buildings formerly used by the Redfern Public School, 2 of which have local heritage significance. The western side of the site adjacent to Cope Street accommodates an area of open space formerly used as a playground.

The site is located within close proximity to public transport – Redfern station is approximately 500m and frequent bus services are available on Redfern and Regent Streets.

3. ORIGINAL APPLICATION MP 06_0267

On 4 October 2007, the Minister for Planning approved the Major Project 06_0267 for the construction of the National Indigenous Development Centre (NIDC), in accordance with Section 75J(2) of the Act. MP 06_0267 granted consent to the development described in detail below:

- Refurbishment of existing buildings for educational, office and accommodation uses;
- Demolition of existing toilet blocks associated with the former use of the site as a school;
- Construction of a multi-purpose sports and recreation building and 25m swimming pool;
- Construction of a new Child Care Centre;
- Provision of a new multi football code playing field and associated earth works;
- Provision of landscaping and fencing around the perimeter and within the site;
- Remodelling the cul-de-sac configuration at the end of the existing Renwick Street carriageway to facilitate the construction of new car park and a manoeuvring area for large service vehicles;
- Construction of a new service vehicle access off George Street; and
- Refurbishment of existing car park and construction of new Phillip Street car park.

The original projected cost of the development was \$30.6 million. A copy of the original consent is at **Tag D** and a copy of the original report is at **Tag E**.

4. DESCRIPTION OF PROPOSED MODIFICATIONS

Section 75W of the Act provides for modification of the Minister's approval. The modification application seeks approval for the following amendments to the existing approval:

4.1 INCREASE IN FENCE HEIGHT TO RENWICK STREET – CONDITION A2

The approved plans the subject of Condition A2 denote the top of the west fence of Playground 2, at the Renwick Street frontage of the site at Building G, as RL 29.800. The adjacent playground level is RL 28.000. This constitutes a fence of 1.8m in height. The Proponent proposes to modify the approved plans, as a requirement to raise the height of this fence by 0.4 metres has been identified during the landscape consultation process.

Due to the identified need to create a more child-friendly surface to the playground, the Landscape Consultants have proposed to erect a timber deck over the existing ground to maintain a level surface. As a consequence, the height of the adjacent ground level at the line of the fence will increase from RL 28.000 to RL 28.400. Therefore, this increase in ground level will result in an increase to the top of fence height from RL 29.800 to 30.200 (0.4 metres), to maintain the required 1.8 metre height of the fence.

4.2 AMENDED STAGING PROCESS – CONDITION B1 – STAGING OF CONSTRUCTION

The existing Condition B1 states:

Separate Construction Certificates may be obtained relating to the following stages of development, as approved:

- Stage 1 - Archaeological test excavations;
- Stage 2 - Demolition of toilet blocks and other minor items and civil and earth works;
- Stage 3 - Construction of new buildings, swimming pool and refurbishment of existing buildings being retained on the site
- Stage 4 - External works including the oval, landscaping and public domain works.

The Proponent seeks to amend Condition B1 to reflect the revised 10-stage construction process and therefore requests that Condition B1 be modified as follows:

Separate construction certificates may be obtained for various sections of work as required for the project. Construction Certificates may be obtained separately and in any order for the following portions of work:

- Portion 1 – Demolition
- Portion 2 – Remediation/Excavation (including Archaeological Test Excavation)
- Portion 3 – Renwick Street Car Park and Pathway
- Portion 4 – Playing Field
- Portion 5 – Building A Refurbishment
- Portion 6 – Building B Refurbishment
- Portion 7 – Building C/D Refurbishment
- Portion 8 – Building F
- Portion 9 – Building G
- Portion 10 – External Works (including Public Domain Works)

4.3 OFFSETTING DEVELOPER CONTRIBUTIONS THROUGH MATERIAL PUBLIC BENEFIT

The existing Condition B2 – Developer Contributions, requires the following contributions to be paid:

Redfern-Waterloo Authority Contributions Plan 2006

Prior to issue of the Stage 1 Construction Certificate, a levy in the amount of \$598,749.52 (2% of the proposed cost of development) is to be paid to the Redfern-Waterloo Authority, unless agreement is reached in accordance with Clause 16 of the Redfern-Waterloo Authority Contributions Plan.

The amount payable is 2% of that proposed cost as indexed between the date of determination and the date the levy is required to be paid, in accordance with clause 25J(4) of the Environmental Planning and Assessment Regulation 2000 and clause 10 of Redfern-Waterloo Authority Contributions Plan 2006.

A copy of Redfern-Waterloo Authority Contributions Plan 2006 is available for inspection at the Redfern-Waterloo Authority office, Level 11, Tower 2, 1 Lawson Square, Redfern.

Redfern-Waterloo Authority Affordable Housing Contributions Plan 2006

Prior to issue of the Stage 1 Construction Certificate, a contribution in the amount of \$226,383 is to be paid to the Redfern-Waterloo Authority towards the provision of affordable housing.

A copy of Redfern-Waterloo Authority Affordable Housing Contributions Plan 2006 is available for inspection at the Redfern-Waterloo Authority office, Level 11, Tower 2, 1 Lawson Square, Redfern.

The Proponent seeks to amend Condition B2 to permit the offsetting of the entire Redfern Waterloo Authority (RWA) Levy of \$598,749.52 pursuant to Clause 16 of the RWA Development Contributions Plan. This offset is sought on the basis that a significant material public benefit is provided in the form of the capital works comprising the NIDC project, which the Proponent has valued at \$16,994,214. No changes to the affordable housing component of the contributions are proposed.

4.4 STAGED VALIDATION – CONDITION B4 – LAND CONTAMINATION

The existing Condition B4 states:

Prior to issue of a Stage 1 Construction Certificate, a Site Audit Statement must be prepared and submitted by an independent NSW EPA accredited Site Auditor to the Certifying Authority, which confirms that the site has been remediated to the standard suitable for the proposed land use.

The Proponent seeks to amend Condition B4 to reflect the staged Interim Audit Statement and staged Site Audit Statement process of site remediation recommended by the Site Auditor.

The Proponent therefore requests that Condition B4 be modified as follows:

B4 – Land Contamination

*Prior to construction commencement of Building F or Building G, an **Interim Audit Statement** must be prepared and submitted by an independent NSW EPA accredited Site Auditor to the Certifying Authority, which confirms that the site can be remediated to the standard suitable for the proposed land use.*

*Prior to the issue of an Occupation Certificate for Portions 4 – 9, a **Site Audit Statement** must be prepared and submitted by an independent NSW DEC accredited Site Auditor to the Certifying Authority, which confirms that the site has been remediated to the standard suitable for the proposed land use.*

4.5 CONSEQUENTIAL AMENDMENTS TO APPROVED CONDITIONS

The Proponent contends that due to the proposed amendments to the above mentioned Conditions, consequential amendments will be required to approved Conditions B5 – B11; C9; G1; F1, F2, F4 and F10, as a result of the proposed 10 – portion process, as follows:

- **B5 – Disabled Access:** Delete “Stage” and insert “Portion”
- **B6 – Heritage Significance of Existing School Buildings:** “Stage 3 Construction Certificate” to be replaced with “Construction Certificate for the Heritage Buildings A and B”.
- **B7 – Stormwater and Drainage:** Delete “Stage 2” and insert “Portion 3 - 10”.

- **B8 – Noise Attenuation Measures:** Delete “Stage 3” and insert “Portion 5 – 9”.
- **B9 – Mechanical Ventilation:** Delete “Stage” and insert “Portion”.
- **B10 – Lighting and Security:** Delete “Stage 3” and insert “Portion 3”.
- **B11 – Sydney Water – Section 73 Certificate:** Delete “Stage 1”.
- **C9 – Aboriginal and European Archaeological Test Excavation:** Test Excavation must be undertaken during the course of the excavation works and must be completed prior to the commencement of Building F Construction.
- **G1 – Noise Control – Plant and Machinery:** Insert the word “Final” in front of Occupation Certificate.
- **F1 – Accessibility:** Insert the word “Final” in front of Occupation Certificate.
- **F2 – Heritage:** Insert the word “Final” in front of each reference to Occupation Certificate.
- **F4 – Post Construction Dilapidation Reports:** Insert the word “Final” in front of Occupation Certificate.
- **F10 – Waste Management:** Insert the word “Final” in front of Occupation Certificate.

There are several other conditions affected by the change to the staging that also require amendment. These are discussed in Section 7.5 of this report.

5. MAJOR PROJECT APPROVAL

On 4 October 2007, the Minister for Planning approved the Major Project 06_0267 for the construction of the National Indigenous Development Centre (NIDC) at 160 – 202 George Street, Redfern. The original approval is discussed in Part 2 of this report. This application represents the first modification (MOD 1) to this approval.

6. STATUTORY CONTEXT

6.1 MODIFICATION OF A MINISTER'S APPROVAL

The modification application has been lodged with the Director-General pursuant to Section 75W of the Act, which provides for the modification of the Minister's approval, including revoking or varying a condition of the approval or imposing an additional condition of the approval.

Under Section 75W(2), the Minister's approval for a modification is not required if the project, as modified, will be consistent with the existing approval under this Part. In this instance, it was concluded that the proposed modifications (as listed above) required a formal application to modify the approval as they involved changes to conditions, staging and validation of the development. The power to make such a change therefore lies with the Minister.

On 27 November 2007, the Proponent submitted an application prepared by Incoll Development and Project Management, to modify the approval of the Minister for the NIDC project, pursuant to Section 75W(3) of the Act.

On 13 February 2008, the Proponent amended the application to further alter the number of construction stages to a total of 10 stages and amend the timing of site validation. The assessment of this application is based upon the application as amended.

6.2 ENVIRONMENTAL ASSESSMENT REQUIREMENTS (DGRS)

Section 75W(3) of the Act provides that the Director-General may notify the Proponent of environmental assessment requirements (DGRs) with respect to the proposed modification that the Proponent must comply with before the matter will be considered by the Minister.

In this instance, following an assessment of the modification request, it was not considered necessary to notify the Proponent of environmental assessment requirements pursuant to Section 75W(3) with respect to the proposed modification, as sufficient information was provided to the Department to consider the application.

7. CONSULTATION AND EXHIBITION

Under Section 75W of the Act, a request for a modification of an approval does not require public exhibition. However, under Section 75X(2)(f) of the Act, the Director-General is to make publicly available requests for modifications of approvals given by the Minister. In accordance with Clause 8G of the *Environmental Planning and Assessment Regulation 2000*, the request for the modification was placed on the Department's website.

The modification application was referred to the City of Sydney Council, the Department of Environment and Climate Change (DECC), and RWA on 14 December 2007 for 21 days until 4 January 2008. RWA responded on 10 January 2008 and provided comments in support of the changes to the required Section 94 contributions. DECC responded on 23 January 2008 and raised no issues with the proposed modifications. Council provided no comment in relation to the proposed modifications.

8. CONSIDERATION OF PROPOSED MODIFICATIONS

8.1 INCREASE IN FENCE HEIGHT TO RENWICK STREET

The approved concept landscape plan provides for a new timber deck adjacent to Building G over the existing ground to maintain a more child friendly flat surface. This will result in a level change on the site from RL 28.000 to 28.400 and as a consequence, a 0.4 metre height increase is proposed to the Renwick Street frontage fence. The Renzo Tonin Acoustic Report as approved under MP 06_0627, and the City of Sydney Development Control Plan (DCP) each require a fence of 1.8 metres in height, in order to contain noise levels and therefore ensure the amenity of the surrounding neighbourhood is preserved. Therefore, this increase in ground level will result in a corresponding increase to the top of fence height from RL 29.800 to proposed RL 30.200, to maintain the height of the fence at 1.8m.

It is considered that the proposed increase in height of 400mm is minor as it will be minimally discernible and will permit the playground to be more child-friendly. Condition A2 – Development in Accordance with Plans, will therefore need to be amended to reflect this additional plan.

8.2 AMENDED STAGING PROCESS – CONDITION B1 – STAGING OF CONSTRUCTION

The Proponent seeks to amend Condition B1 to reflect the revised staging process proposed, from the original 4 – staged process, to 10 stages.

No objections are raised to the proposed 10 stages, as it provides for a logical construction methodology on a large site that minimises delays to the construction and occupation of various components of the development. Further, the staging process will be integrated with the staged process of site remediation recommended by the Site Auditor and this ensures the environmental impacts of the project, namely potential contamination, are minimised.

The amended staging proposes a separate stage for remediation / excavation. This is necessitated by the fact that excavated material is being relocated on site to increase the level of the land in the area of the playing fields, and also involves soil which needs to be remediated. In particular, the approved multi-purpose sporting facility (Building F) involves excavation consisting of approximately 1 storey below George Street level at the northern end to 1/2 a storey at the southern end.

However, concern has been raised regarding the separation of the excavation stage from the construction stages of the associated buildings. This poses the risk of a large excavated area remaining on site, should works cease for a period of time after Stage 2. This would result in a negative visual impact upon the locality.

In order to be certain that the separation of the staging will not result in incomplete development should the development not proceed beyond Stage 2, it is recommended that the wording of Stage 2 be amended as follows:

Stage 2 – Remediation and Earthworks (including Archaeological Test Excavation but excluding Bulk Excavation.)

This amendment will ensure that any bulk excavation on site is associated with the construction of Buildings F and G, and therefore will occur during Stages 8 and 9 respectively.

In addition, although not included in the Proponent's requested amendments to Condition B1, the original opening and concluding sentences will be retained as it is an important component of Part B of the Approval Instrument. Further, this wording provides the same outcome sought by the proponent, gives flexibility and is unambiguous.

Therefore, it is recommended that Condition B1 be amended as follows:

B1 – Staging of Construction

Separate construction certificates may be obtained relating to the following stages of development as approved:

Stage 1 – Demolition

Stage 2 – Remediation and Earthworks (including Archaeological Test Excavation but excluding Bulk Excavation.)

Stage 3 – Renwick Street Car Park and Pathway

Stage 4 – Playing Field

Stage 5 – Building A Refurbishment

Stage 6 – Building B Refurbishment

Stage 7 – Building C/D Refurbishment

Stage 8 – Building F (Sports and Recreational Hall)

Stage 9 – Building G (Child Care Centre)

Stage 10 – External Works (including Public Domain Works)

The following conditions relate to each stage and must be completed, unless otherwise stated, prior to the issue of a Construction Certificate for each stage.

8.3 STAGED VALIDATION – CONDITION B4 – LAND CONTAMINATION

The Proponent seeks to amend Condition B4 to reflect the staged process of site remediation recommended by the Site Auditor. This will involve the preparation of an Interim Audit Statement prior to commencement of construction for Building F and again for Building G, and a Site Audit Statement prior to issue of an Occupation Certificate for Stages 4-9. As an added measure, following completion of each of these stages, a protocol will be put in place to avoid re-contaminating the land that has been validated. The process described above is consistent with the DECC *Guidelines for the NSW Site Auditor Scheme*.

DECC have advised that they have no comments in relation to the proposed modifications to the Site Audit Statement process of site remediation. Internal advice from within the Department has confirmed that the proposed process of site remediation is appropriate.

However, the requested wording of the first part of Condition B4 raises concerns as it seeks an Interim Audit Statement prior to commencement of construction for Building F or Building G. This wording should be amended to incorporate Building G as well as Building F, as the construction of these buildings is now separated into 2 stages (8 and 9). Therefore, both Stages 8 and 9 will require an Interim Audit Statement before construction is commenced, not one or the other.

In addition, the requested wording of the first part of Condition B4 raises concerns as it seeks for the Interim Audit Statement to simply confirm that the site can be remediated to the standard suitable for the proposed land use. The Department, in discussions with the proponent, brought to their attention the advice of their Site Auditor that has confirmed that the purpose of an Interim Audit Statement is to verify that remediation has taken place in an area on the site. As a result, the proposed wording of Condition B4 is to be altered to require interim validation to confirm that the parts of the site requiring remediation have been remediated to the appropriate level prior to issue of the Stage 8 and 9 Construction Certificates, as follows:

B4 – Land Contamination

Prior to the issue of Construction Certificate for Stages 8 and 9, an Interim Audit Statement must be prepared by an independent NSW EPA accredited Site Auditor and submitted to the Certifying Authority, which confirms that the area of the site associated with Stages 8 and 9 has been remediated to the standard suitable for the proposed land use.

8.4 OFFSETTING DEVELOPER CONTRIBUTIONS THROUGH MATERIAL PUBLIC BENEFIT

Developer contributions was a key issue addressed in the assessment of MP06_0267, during which time it was concluded that the development is subject to payment of the S.94A contributions. Hence, Condition B2 – Developer Contributions was imposed, requiring that the Proponent pay a S.94A levy of \$598,749.52.

The Proponent now seeks to amend Condition B2 to permit the offsetting of this S.94A levy, on the basis that they are providing a significant Material Public Benefit (MPB) in the form of the capital works comprising the NIDC project. The Proponent considers the NIDC to be public infrastructure and a community facility specifically intended to meet the sporting, education and social/cultural needs of Indigenous children and youth, and therefore should not be subject to development contributions.

8.4.1 Proponent's claim for a MPB

The Proponent maintains that NIDC will also provide benefit to the wider community through its targeted provision to the local community, which is largely populated by a low socio-economic demographic. The ILC believes the NIDC facilities and programs will assist in the Redfern area becoming a safer and better serviced community.

Specifically, the ILC claims a S.94A reduction based on the provision of the following facilities, which are targeted at the local community:

- **Child Care Centre** – a 59 place centre catering for the immediate surrounding community, both Indigenous and non-Indigenous;
- **Exodus Tutorial Centre** – targets both Indigenous and non-Indigenous children from local public schools to improve numeracy and literacy;
- **PCYC** – this facility will be available to the local community 7 days a week for a range of programs and activities. It is critical to the Redfern Waterloo Youth Services Plan, as it performs the important role of the “Sport and Recreation Youth Services Hub”;
- **Dining facility** – will have the capacity for the local community to hire out the dining hall for functions and events;
- **Hostel** – the main user groups of the Hostel will be organisations that run programs targeting children from the local community; and
- **Community meeting rooms** – available to be booked by any local community groups.

The Proponent has provided a figure of \$16,994,214 for the provision of capital works by way of the abovementioned facilities, and therefore, given the value of these works, considers that the entire S.94A levy of \$598,749.52 should be offset.

8.4.2 Redfern-Waterloo Authority Contributions Plan 2006

Clause 16 of the RWA Contributions Plan offers an alternative to payment of the development levy following the grant of an approval requiring payment of a development levy:

If the applicant does not wish to pay the development levy, the applicant may make an application to the Minister under section 75W or section 96 of the EP&A Act (as applicable) to modify the consent by substituting for the condition requiring payment of the development levy a condition requiring the carrying out of works or the provision of a material public benefit towards the public purpose to which the development levy was to be applied.

In this case, the MPB involves the provision of certain public amenities or services that may have wider benefit, and that may or may not exist in the area such as a community facility that is not included in a development contributions plan. As mentioned above, the Proponent seeks to claim an offset for the S.94A burden, on the basis that they are providing a MPB in the form of community facilities.

Development Contributions Practice Notes – Exemptions, discounts, credits and refunds, dated July 2005, provides the key considerations in assessing a MPB including:

- The overall benefit of the proposal;
- The monetary value of the MPB;
- What needs of the population would be satisfied and whether these equal or exceed those provided by conventional means;
- Whether the works program in the adopted development contributions plan remains valid or requires amendment;
- The financial implications for cash-flow and the continued implementation of the adopted works program;
- Whether Council or the appropriate authority may need to make up the short-fall in anticipated contributions;
- The timing of completion and future recurrent costs; and
- Future dedication, handover and management arrangements.

8.4.3 Consideration of MPB

The following facilities are considered to constitute a MPB:

1. Multi-purpose sports and recreational hall for local community use (PCYC)

- The proposed multi-purpose facility is intended to provide a facility and services for both local and broader community use, including an outdoor swimming pool; indoor sports court, 3 multi-use activity rooms, boxing ring and training gym, general gymnasium, counselling room, arts and crafts centre, photography room, cafe, and drop in centre;
- Predominantly targeting youth and children, this facility is in accordance with the Redfern East Youth Services Precinct model as identified in the RWA Human Services Plan;
- There is no additional contribution required from Council or RWA for construction or ongoing operations.
- It is envisaged that this will become an important community asset for current and new populations in the area.
- Estimated capital works value = \$9,843,714.

2. Space for various community organisations (Exodus tutorial centre & Meeting Rooms)

- The proposed premises will provide national organisations (such as the National Aboriginal Sports Corporation Australia) as well as local community groups accommodation to run their services, including the Literacy Tutorial Centre which assists students failing in the public school system.
- The RWA Human Services Plan indicates that the number and condition of current accommodation for community organisations in Redfern-Waterloo is poor. The proposed new accommodation will provide additional and better quality accommodation for organisations than what is currently available in the local area.
- There is no additional contribution required from Council or RWA for construction or ongoing operations.
- Estimated capital works value = \$1,507,066

The Child Care centre and short-stay hotel accommodation do not constitute material public benefit in the local area as the centre is a relocation of an existing local facility on the site which can now cater to up to 59 children and the short stay hotel accommodation and dining facilities do not provide for local needs in the area and caters for those people coming from other areas in Australia for short stays to use the facility.

The above facilities, being the multi-purpose sports and recreation hall and the space for the community organisations, constitute a total capital works value of \$11,350,780 and are considered to be an acceptable MPB on the basis that they are being operated by community based organisations, and the offsetting of the required contribution of \$598,749.52 is supported.

The Redfern-Waterloo Authority supports this offset, subject to:

- Both facilities being provided as part of the development of the National Indigenous Development Centre. If the ILC does not provide these capital works as part of the development it will be required to pay the RWA the development contribution of \$598,749.52 set out in Schedule 2, B2 in the Determination of MP 06_0267 prior to issue of the Final Occupation Certificate.
- Both facilities being made available to local community use on a managed basis and any fees charged being reasonable, taking into account the social and demographic profile of the local Redfern-Waterloo community.

The Department's Practice Note provides information for the carrying out of an agreement to offset a required monetary contribution by way of provision of a MPB. In this case, the RWA and the Proponent agree on the value of the offset. As Condition B2 requires the Proponent to pay a S.94A levy in relation to the subject development, the Instrument of Approval must still reflect the monetary value of the S.94A levy required.

However, it is important to specify when the facility is to be provided, in order to ensure that it is both completed and that the MPB is provided to the community. Therefore, it is recommended that the condition be further amended to require that if the facility is not provided within 5 years of the first Construction Certificate issued for the development, the Proponent will have to pay the full S.94A contribution of \$598,749.52.

In addition, it is recommended that a Section 88B Instrument (a covenant) be registered on the title, requiring that the community facilities be made available to the community and operated by a community based organisation. It is therefore recommended that a Condition be added to PART F, to require that a Section 88B instrument has been registered prior to issue of the Occupation Certificate for Stage 8. This is discussed in more detail in Section 8.5.15 of this Report.

8.4.4 Recommended Condition

Therefore, Condition B2 will be amended to reflect the agreement to offset the amount of \$598,749.52 in exchange for a MPB as discussed above. In particular, it is important to include the conditions to which the agreement is subject, as follows:

Condition B2 – Developer Contributions

1. Redfern-Waterloo Authority Contributions Plan 2006

The following community facilities are accepted in lieu of payment of a S.94A levy in the amount of \$598,749.52:

- a) Multi-purpose sports and recreational hall (PCYC or equivalent community organisation); and*
- b) Accommodation space for various community organisations.*

However, if these community facilities are not provided as part of the development and/or the facilities are not made available for local community use on a managed basis, the full amount of the S.94A levy is to be paid to the Redfern-Waterloo Authority, (or equivalent entity within the State Government), within 5 years of the date of issue of the first Construction Certificate.

The amount payable is 2% of the proposed cost as indexed between the date of determination and the date the levy is required to be paid, in accordance with clause 25J(4) of the Environmental Planning and Assessment Regulation 2000 and clause 10 of Redfern-Waterloo Authority Contributions Plan 2006.

2. Redfern-Waterloo Authority Affordable Housing Contributions Plan 2006

Prior to issue of the Stage 1 Construction Certificate, a contribution in the amount of \$226,383 is to be paid to the Redfern-Waterloo Authority towards the provision of affordable housing.

A copy of Redfern-Waterloo Authority Contributions Plan 2006 and Redfern-Waterloo Authority Affordable Housing Contributions Plan 2006 is available for inspection at the Redfern-Waterloo Authority office, Level 11, Tower 2, 1 Lawson Square, Redfern.

8.5 CONSEQUENTIAL AMENDMENTS TO APPROVED CONDITIONS

The proposed modifications to the approved MP 06_0267 will consequently result in the necessity to change the wording of a number of Conditions of approval, in particular to reflect the amended staging process. The Proponent has requested that Conditions B5 – B11; C9; G1; F1, F2, F4 and F10 be amended to reflect the proposed changes to the staging process.

There are several other conditions affected by the change to the staging and these are also addressed below:-

8.5.1 Condition B3 – Structural Details

Prior to issue of the Construction Certificate for each Stage, the Proponent shall submit to the satisfaction of the Certifying Authority, structural drawings prepared and signed by a suitably qualified practising Structural Engineer that complies with:

- (a) the relevant clauses of the BCA,*
- (b) the relevant development consent,*
- (c) drawings and specifications comprising the Construction Certificate, and*
- (d) the relevant Australian Standards listed in the BCA (Specification A1.3).*

Comment: Due to the changes to the staging of the proposal, including the isolation of demolition activity to Stage 1, this condition is now only relevant to particular Stages which require issue of Construction Certificates. Therefore, the wording of this condition will be amended to include “where relevant”.

Condition B3 – Structural Details

Prior to issue of the Construction Certificate for each Stage, where relevant, the Proponent shall submit to the satisfaction of the Certifying Authority, structural drawings prepared and signed by a suitably qualified practising Structural Engineer that complies with:

- (e) the relevant clauses of the BCA,*
- (f) the relevant development consent,*
- (g) drawings and specifications comprising the Construction Certificate, and*
- (h) the relevant Australian Standards listed in the BCA (Specification A1.3).*

Prior to work commencing, structural details and a Structural Certificate for Design in accordance with Clause A2.2(a)(iii) of the Building Code of Australia must be submitted to the satisfaction of the Certifying Authority.

8.5.2 Condition B5 – Disabled Access

Access and facilities for people with disabilities shall be provided in accordance with Part D3 of the BCA's Access Policy. Prior to the issue of the Construction Certificate for each Stage a certification of compliance with this condition from an appropriately qualified person shall be provided to the Certifying Authority.

Comment: The Proponent has requested that the word “Stage” be deleted and “Portion” be inserted in its place. However, as the development is to continue to be referred to as a “staged” development in order to retain consistency with other Departmental approvals, this request is unnecessary and the condition will therefore remain unchanged.

8.5.3 Condition B6 – Heritage Significance of Existing School Buildings

An experienced conservation architect is to be commissioned to work with the consultant team throughout the design development, contract documentation and construction stages of the project.

The conservation architect is to be involved in the resolution of all matters associated with the existing buildings on the site only, where significant fabric and spaces are to be subject to preservation, restoration, reconstruction, adaptive reuse, recording and demolition. The conservation architect is to be provided with full access to the site and authorised by the proponent to respond directly to the consent authority where information or clarifications is required regarding the resolution of heritage issues throughout the project.

Evidence of the above commission on the above terms is to be provided to the consent and certifying authorities prior to issue of a Stage 3 Construction Certificate.

Comment: The Proponent has requested that “Stage 3 Construction Certificate” be replaced with “Construction Certificate for the Heritage Buildings A and B”. This is considered an acceptable amendment, however it excludes Buildings C and D and this has been corrected. The condition has also been amended to correspond with the appropriate construction stages:

B6 – Heritage Significance of Existing School Buildings

An experienced conservation architect is to be commissioned to work with the consultant team throughout the design development, contract documentation and construction stages of the project.

The conservation architect is to be involved in the resolution of all matters associated with the existing buildings on the site only, where significant fabric and spaces are to be subject to preservation, restoration, reconstruction, adaptive reuse, recording and demolition. The conservation architect is to be provided with full access to the site and authorised by the proponent to respond directly to the consent authority where information or clarifications is required regarding the resolution of heritage issues throughout the project.

Evidence of the above commission on the above terms is to be provided to the consent and certifying authorities prior to issue of a Construction Certificate for Stages 5, 6 and 7, whichever occurs first.

8.5.4 Condition B7 – Stormwater and Drainage

- (1) Prior to the issue of a Stage 2 Construction Certificate, details of the proposed stormwater disposal and drainage from the development including on site stormwater detention in accordance with the City of Sydney Council's standard requirements and details of the provision and maintenance of overland flow paths must be submitted to an approved by the City of Sydney Council. All approved details for the disposal of stormwater and drainage are to be implemented in the development.*
- (2) The requirements of Sydney Water with regard to the on site detention of stormwater must be ascertained and complied with. Evidence of the approval of Sydney Water to the on-site detention must be submitted prior to the issue of a stage 2 construction certificate.*

Comment: The Proponent requests that “Stage 2” be deleted and “Portions 3 – 10” be inserted in its place. The amendments to the staging of the development will result in the need for stormwater disposal and drainage details to be submitted for all stages, excluding Stage 1 which relates to demolition. The Proponent's request to submit these details for only Stages 3-10 is not supported.

In light of the Proponent's amendments to the various stages of the development, it is considered reasonable to amend Condition B7 to require the stormwater disposal and drainage details be submitted prior to issue of each Construction Certificate, excluding Stage 1, as follows:

B7 – Stormwater and Drainage

- (1) *Prior to the issue of each Construction Certificate, excluding Stage 1, details of the proposed stormwater disposal and drainage from the development including on site stormwater detention in accordance with the City of Sydney Council's standard requirements and details of the provision and maintenance of overland flow paths must be submitted to and approved by the City of Sydney Council. All approved details for the disposal of stormwater and drainage are to be implemented in the development.*
- (2) *The requirements of Sydney Water with regard to the on site detention of stormwater must be ascertained and complied with. Evidence of the approval of Sydney Water to the on-site detention must be submitted prior to the issue of each Construction Certificate excluding Stage 1.*

8.5.5 Condition B8 – Noise Attenuation Measures

Prior to issue of a stage 3 Construction Certificate, the Proponent shall submit to the satisfaction of the Certifying Authority, drawings and documentation demonstrating that the construction and fit out of the building incorporates the recommendations of the Acoustic Assessment Report prepared by Renzo Tonin and Associates, March 2007.

Comment: The Proponent has requested that "Stage 3" be deleted and "Portions 5 – 9" inserted. As part of the original approval for MP 06_0267, Stage 3 involved "*Construction of new buildings, swimming pool and refurbishment of existing buildings being retained on the site*". The amended staging the subject of this modification will result in construction and refurbishment of the new and existing buildings respectively to Stages 5-9. It is acceptable to amend this condition to permit the submission of drawings and documentation demonstrating compliance with the Acoustic Assessment Report prior to issue of the Construction Certificates for Stages 5 – 9.

The wording of the condition will be amended to refer instead to Stages 5 – 9, as follows:

B8 – Noise Attenuation Measures

Prior to issue of each Construction Certificate for Stages 5 – 9 inclusive, the Proponent shall submit to the satisfaction of the Certifying Authority, drawings and documentation demonstrating that the construction and fit out of the building incorporates the recommendations of the Acoustic Assessment Report prepared by Renzo Tonin and Associates, March 2007.

8.5.6 Condition B9 – Mechanical Ventilation

All mechanical ventilation systems shall be designed in accordance with Part F4.5 of the Building Code of Australia and shall comply with Australian Standards AS1668.2 and AS3666 Microbial Control of Air Handling and Water Systems of Building, to ensure adequate levels of health and amenity to the occupants of the building and to ensure environment protection. Details shall be submitted to the satisfaction of the Certifying Authority prior to the issue of the Construction Certificate for each stage.

Comment: Due to the changes to the staging of the proposal, this condition is relevant to Stages 5-9 relating to the construction and refurbishment of the new and existing buildings. The wording of this condition will be amended to refer to Stages 5 – 9.

8.5.7 Condition B10 – Lighting and Security

An outdoor lighting strategy endorsed in writing by a NSW Police Crime Prevention Officer must be submitted to the Principal Certifying Authority prior to the issue of the stage 3 Construction Certificate. The lighting plan will identify the type and number of

Luminaries, extent of glare and light spill outside the boundary and any measures needed to mitigate the impacts of nearby residences. With respect to the playing field a lighting expert is to confirm that the lighting will comply with the Australian Standards for ball sports and physical activity.

Comment: It is considered necessary that an outdoor lighting strategy be submitted for the site prior to the commencement of construction works for Stages 3 – 10 inclusive. The wording of this condition will be amended to ensure that the strategy is submitted prior to the issue of the first Construction Certificate relevant to stages 3 - 10.

8.5.8 Condition B11 – Sydney Water – Section 73 Certificate

An application shall be made to Sydney Water for a Certificate under Part 6, Division 9, Section 73 of the Water Board (Corporatisation) Act, 1994 (Compliance Certificate). Evidence that a Compliance Certificate has been applied for (i.e. Notice of Requirements) shall be produced to the satisfaction of the Certifying Authority prior to the issue of the Construction Certificate for Stage 1.

Application must be made through an authorised Water Servicing Coordinator. Please refer to the "Your Business" section of the web site www.sydneywater.com.au then follow the "e-Developer" icon or telephone 13 20 92 for assistance.

Following application a "Notice of Requirements" will advise of water and sewer extensions to be built and charges to be paid. Please make early contact with the Coordinator, since building of water/sewer extensions can be time consuming and may impact on other services and building, driveway or landscape design.

Comment: This needs to be provided prior to the first Construction Certificate being issued relating to the building works and new development and not Stage 1 only as originally required. The wording of this condition will be amended to refer to Stages 3-10 inclusive.

8.5.9 Conditions B12, B13, B14 and B15

Comment: As a consequence of the changes to the staging of the proposal, the wording of conditions B12, B13 and B14 is to be amended to require the submission of the footpath damage bank guarantee, dilapidation reports and construction and traffic management plan, prior to the issue of the first construction certificate. Condition B15 relates to a Construction Waste Management Plan and this is to be required prior to the issue of each Construction Certificate.

8.5.10 Condition C2 - Transport

- (1) Prior to the commencement of works associated with stage 1 on the site the relocation of the pedestrian crossing from George to Phillip Street is to be resolved and endorsed by the Sydney Traffic Committee;*
- (2) The design of the kerbside parking arrangements along George Street as detailed in the Assessment of Traffic and Parking Implications and supplementary Traffic Advice prepared by Transport and Traffic Planning Associates must be endorsed by the Sydney Traffic Committee.*

Comment: Due to the revised staging of the proposal, this condition needs to be amended such that the relocation of the pedestrian crossing is resolved prior to the commencement of the first stage of works on site.

8.5.11 Condition C9 – Aboriginal and European Archaeological Test Excavation

A test excavation must be undertaken on the site by a qualified archaeologist prior to the commencement of work with respect to both Aboriginal and European archaeology. These excavations must be undertaken in accordance with the Aboriginal Heritage Impact Assessment and the Historical Archaeological and Impact Assessment submitted as part of the project application.

All procedures to be followed as part of the test excavations must be as per the Proponent's Statement of Commitments C through to Q as detailed in Schedule 3 of this instrument.

Comment: The Proponent requests that the wording of this Condition be amended to require the following:

Test Excavation must be undertaken during the course of the excavation works and must be completed prior to the commencement of Building F Construction.

The Proponent has not provided any information as to whether they request that this Condition be amended to include this requirement, or if they would prefer the Condition be replaced with this requirement. The most appropriate action is to incorporate this requirement into the existing Condition, taking into account the proposed amendments to the staging process. Therefore it is recommended that the Condition be amended as follows:

C9 – Aboriginal and European Archaeological Test Excavation

Test Excavation with respect to both Aboriginal and European archaeology must be undertaken on the site by a qualified Archaeologist during the course of the excavation works and must be completed prior to the commencement of works associated with Stages 3, 4, 8, 9 and 10 inclusive. These excavations must be undertaken in accordance with the Aboriginal Heritage Impact Assessment and the Historical Archaeological and Impact Assessment submitted as part of the project application.

All procedures to be followed as part of the test excavations must be as per the Proponent's Statement of Commitments C – Q as detailed in Schedule 3 of this Instrument.

8.5.12 Addition of the word “Final” into Conditions

Comment: The Proponent requests that the word “Final” be inserted into a number of conditions. These amendments are considered to be acceptable as the most appropriate time to require documentary evidence or compliance certificates that the proposal complies with certain requirements is prior to issue of the final Occupation Certificate. The following conditions identified below will be amended by the insertion of the word ‘Final’:

- **G1 – Noise Control.**
It is recommended that Condition G1 be amended to incorporate the requirement to submit these Acoustic Reports prior to issue of Occupation Certificates for all building stages.
- **F1 – Accessibility**
- **F3 – Heritage**
- **F6 – Post-Construction Dilapidation Reports**
- **F12 – Waste Management**
- **F15 – Sydney Water.**

8.5.13 Add Condition F4 – Staging

Comment: A new condition is added relating to the Staging to allow separate Occupation Certificates to be obtained for all separate stages of the modified proposal as permitted by Condition B1, as follows:

F4 Staging

Separate Occupation Certificates may be obtained relating to the stages of the development as identified in Condition B1 of this approval.

8.5.14 Condition F3 – Occupation Certificate to be submitted

Comment: This condition is amended to take into account the staging process and allow for separate Occupation Certificates to be obtained for the separate stages of work as permitted by Condition B1 and F4 above, as follows:

F5 Occupation Certificates to be Submitted

An Occupation Certificate for all stages of works must be obtained from the PCA and a copy submitted to the Redfern Waterloo Authority and the Department prior to the commencement of occupation or use of the building.

8.5.15 Add Condition F16 – Land Contamination

Comment: This condition is added to require that prior to the issue of an Occupation Certificate for Stages 4-9 inclusive, a Site Audit Statement is provided, in order to confirm that the area relevant to Stage 4-9 has been remediated. A new condition relating to the land contamination is added as follows:

F16 Land Contamination

Prior to the issue of an Occupation Certificate for Stages 4 – 9 inclusive, a Site Audit Statement must be prepared and submitted by an independent NSW DECC accredited Site Auditor to the Certifying Authority, which confirms that the corresponding portion of the site relating to each stage has been remediated to the standard suitable for the proposed land use and the Occupation Certificates relating to Stages 5-9 inclusive must not be issued until the Accredited Site Auditor has confirmed that the playing fields (Stage 4) has been remediated.

8.5.16 Add Condition F17 – Section 88B Instrument

Comment: A new condition relating to the requirement of the Proponent to register an appropriate covenant for the Site is added. This is to ensure that prior to the issue of an Occupation Certificate for Stage 8, a Section 88B Instrument is registered outlining the terms which require the Multi Purpose Sport and Recreation Facility to be available for community uses and operated by a community-based organisation. The condition will read as follows:

F17 – Section 88B Instrument

Prior to the issue of the Occupation Certificate for Stage 8 a Section 88B Instrument is to be registered, with terms which require the Multi Purpose Sport and Recreation Facility to be available to the community and operated by a community-based organisation.

8.6 FURTHER AMENDMENTS TO APPROVED CONDITIONS TO CORRECT MINOR TYPOGRAPHICAL ERRORS.

During assessment of the proposed modifications to the approved MP 06_0267, it has come to light that the original conditions of approval contained some minor typographical errors and references. Although this modification application does not request that these changes be made, it is an opportune time to amend these minor errors and inconsistencies.

8.6.1 Parts F and G to MP 06_0267 Instrument of Approval

PART F—PRIOR TO OCCUPATION OR COMMENCEMENT OF USE and PART G—POST OCCUPATION & ON GOING OPERATIONAL CONDITIONS incorporate some minor typographical errors in numbering of the conditions. For example, Condition G1 of the Approval should actually be referred to as Condition F1, and Part G commences with Condition G2 instead of G1. As a result, the revised numbering for the conditions in these sections will be included in the amended instrument of approval for this modification. *G1 – Noise Control* will be revised to read *F1 – Noise Control*, and *G2 – Commercial and Child Care Centre Kitchens*, will be renumbered to read *G1 – Commercial and Child Care Centre Kitchens*.

As a consequence of the change in numbering, all other conditions in Section F and G have been renumbered.

8.6.2 Condition A2 – Development in Accordance with Plans

It has also been discovered during assessment of this application that Condition A2 incorporates some incorrect and/or missing references in the Landscape Drawing section of the Condition, in the original instrument of approval, as follows:

Landscape Drawings prepared by <i>Context</i> at of the Environmental Assessment.			
Drawing No.	Revision	Name of Plan	Date
1 of 1		Concept Landscape Plan	31 July 2007
1 of 1	A	Cope St Green Wall Elevation	31 July 2007
1 of 1		Public Domain Plan	31 July 2007
2 of 4	DA	Landscape Sections and Elevations	March 2007
3 of 4	DA	Landscape Sections and Elevations	March 2007

Comment: This Condition will be amended to incorporate the correct reference to 360 Degrees and include the Appendix which these plans are located in, as follows:

Landscape Drawings prepared by <i>360 Degrees</i> at Appendix 8 of the Environmental Assessment.			
Drawing No.	Revision	Name of Plan	Date
1 of 1		Concept Landscape Plan	31 July 2007
1 of 1	A	Cope St Green Wall Elevation	31 July 2007
1 of 1		Public Domain Plan	31 July 2007
2 of 4	DA	Landscape Sections and Elevations	March 2007
3 of 4	DA	Landscape Sections and Elevations	March 2007

No other concerns relating to the proposed modifications were raised by the Department or DECC. City of Sydney Council did not comment on the proposal. It is therefore recommended that the proposed modifications be approved, subject to conditions.

9. MODIFICATIONS TO CONDITIONS OF APPROVAL

The Department recommends that Conditions of Approval apply to the proposed modifications, which amend the approved plans. These are included at **Tag A**.

10. CONCLUSION

Under Section 75W(4) of the Act, the Minister may modify the approval (with or without conditions) or disapprove the modification. The preceding report describes the Department's assessment of the requested modifications and supporting documentation as provided by the Proponent, and recommends approving the proposed modifications, subject to some amendments as discussed.

The proposed modifications are minor in detail and do not result in significant changes to the overall design and appearance nor to the conditions of the development as approved.

It is considered that the proposal, as modified, achieves the same objectives as assessed for the originally approved development under Major Project 06_0267 and does not alter the overall nature, need or justification of the approved project.

11. DELEGATION

Under the instrument of delegation dated 7 June 2007, the Minister has delegated his functions under Section 75W of the Act relating to modifying Part 3A approvals to the Executive Director, Strategic Sites and Urban Renewal.

Having regard to the Urban Assessments Guidelines for Delegates, it is considered appropriate that the application be determined under delegation.

12. RECOMMENDATION

It is recommended that the Executive Director, Strategic Sites and Urban Renewal, as delegate of the Minister for Planning:

- (a) **Consider** the findings and recommendations of this report; and
- (b) **Approve** the modification, subject to conditions, under Section 75W of the *Environmental Planning and Assessment Act, 1979*; and
- (c) **Sign** the attached Instrument of Modification (**Tag A**).

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