



Planning

***SECTION 75W MODIFICATION
APPLICATION
COLLEGE OF FINE ARTS (COFA)
REDEVELOPMENT, PADDINGTON***

***Proposed by UNIVERSITY OF NEW
SOUTH WALES***

MP 08_0104 (MOD 1)

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

May 2010

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1. INTRODUCTION

This is a report on an application seeking to modify the Project Application approval (MP 08_0104) for the redevelopment of the existing College of Fine Arts Campus (CoFA), Paddington.

The site is located on the corner of Oxford Street and Greens Road, Paddington, and occupies an entire block bounded by Greens Road (east), Napier Street (north), Albion Avenue (south) and Selwyn Street (west) (Figure 1).

On the 6 June 2008, the then Minister for Planning formed the opinion that the proposal was a project to which Part 3A of the Environmental Planning and Assessment Act 1979 (EP&A Act), applied. At the same time, the Minister agreed to delegate to the City of Sydney Council (Council) the responsibility for the preparation of the Director General's assessment requirements (DGRs) and assessment of the project application.

On the 16 December 2008, following an assessment of the proposal by Council, the then Minister for Planning approved the project application MP 08_0104, for the following:

- Demolition of existing structures (Building B, Building C (south) and Building D);
- Alterations and additions to Building F;
- Construction of a new 4 storey building with basement car parking for 62 cars; and
- Associated landscaping.

A copy of the Project Application approval is at **TAG C** and a copy of the assessment report is at **TAG D**.

On 23 March 2010, RPS Australia East Pty Ltd, acting on behalf of the University of New South Wales (UNSW) (the proponent), submitted a modification application under section 75W of the EP&A Act to modify the approval in relation to the wording of conditions imposed in the Instrument of Approval, particularly in relation to sign-offs/approvals required prior to the commencement of works and clarification of timing of these approvals.

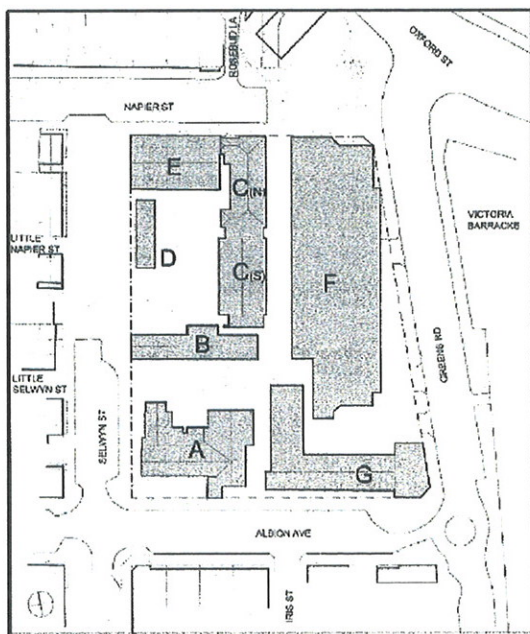


Figure 1: Existing COFA site

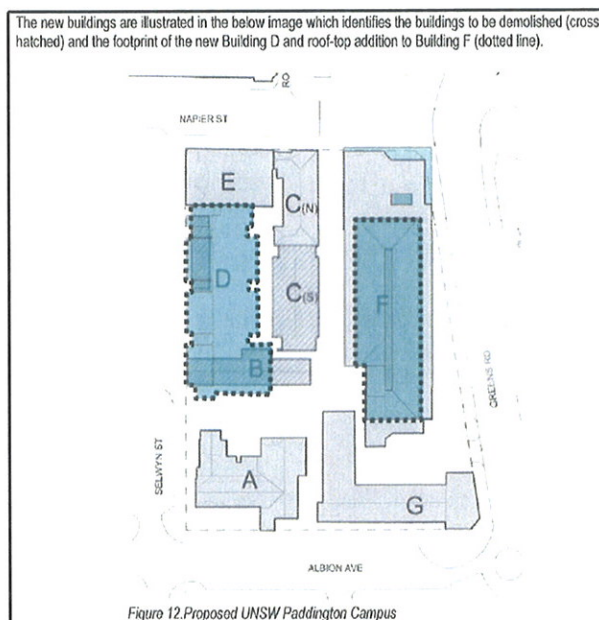


Figure 2: Proposed COFA site

2. STATUTORY CONTEXT

2.1 MODIFICATION OF A MINISTER'S APPROVAL

Section 75W(2) of the EP&A Act provides that a proponent may request the Minister to modify the approval of a project. The Minister's approval is not required if the project as modified will be consistent with the original approval. As the subject modification seeks to change the terms of the Minister's determination through amending the conditions of approval, the modification requires approval.

2.2 ENVIRONMENTAL ASSESSMENT REQUIREMENTS (DGRs)

Section 75W(3) of the EP&A Act provides the Director General with scope to issue environmental assessment requirements (DGRs) that must be addressed with respect to the proposed modification. As the modification application largely relates to administrative amendments to a number of conditions of approval and post determination approvals, the Department considered it unnecessary to re-issue the DGRs.

2.3 CONSULTATION AND EXHIBITION

While section 75W of the EP&A Act does not require a modification application to be publicly exhibited, the application was placed on the Department's website in accordance with section 75X(2)(f) of the EP&A Act and clause 8G of the Environmental Planning and Assessment Regulation 2000.

At the time of finalisation of this assessment report, the Department had received 28 public submissions, 2 submissions from the Lord Mayor of Sydney, Ms Clover Moore, MP (letters to the Minister for Planning), a submission from a City of Sydney Councillor, and submissions from the Director City Planning and Regulatory Services, City of Sydney Council. The key issues raised are summarised below.

Ms Clover Moore, MP (Lord Mayor) & Councillor Irene Doutney

- Strong opposition to the Department's intervention in the approval of CoFA's Construction Traffic Management Plan (CTMP).
- Council's approved CTMP provided a solution enabling CoFA's rapid redevelopment while minimising impacts on surrounding streets.
- The City should be the approval authority for CoFA.
- Concern the Department of Planning's review of the CTMP will seriously impact on CoFA's tight timeframes, and jeopardise their stimulus funding.
- Local residents are likely to have significant concerns and lose confidence in CoFA's redevelopment process.
- Any review of the Community Liaison Committee (CLC) terms of reference is likely to create significant anxiety for residents.

Comment:

The Department notes that the Minister for Planning, not Council, is the approval authority for the CoFA project application. However, the conditions of the Minister's approval require certain matters to be submitted to Council for additional post determination approvals. The proposed modification seeks to amend these conditions such that the post determination approvals are required by the Department rather than Council. These proposed modifications are considered in Section 3.

It is also noted that Department has not intervened in the CoFA project application but has received an application from UNSW under section 75W of the EP& Act, which it is obliged to assess.

The Department's consideration of the CTMP and CLC condition and proposed modifications are outlined in Section 3.

City of Sydney Council

Napier Street Road Closure

- Ballast solution to ground protection of Napier Street road closure acceptable and cost effective and in accordance with Council's approved CTMP of March 2010.
- No amendment of the approved CTMP is required.
- Disagree with UNSW's contention that the naturally ventilated classrooms/operable windows in Building F is reason to not use the Napier Street road closure for construction related traffic. The project involves the demolition of buildings directly opposite Block F, and jackhammer noise from demolition is going to have a far greater noise impact on students than the trucks collecting demolition material.

Reasonableness

- The City has been both proactive, considered and reasonable on the issues in question.
- The approved CTMP does not seek to favour residents over students, but rather assist UNSW to honour their own commitment not to use Selwyn Street and Albion Avenue (with agreed and noted exceptions).

Conditions of Approval

Council provided the Department with a copy of a letter it sent to UNSW on 1 April 2010, in relation to several post determination approvals. This letter advised the following:

- Condition 6: Subject to compliance with some recommendations, Council would be satisfied that the condition has been complied with.
- Condition 8: Council note proponent is unable to provide a plan showing the southern elevation of Block C until such time as Block C has been demolished. No objections are raised to amending this condition.
- Condition 32: This condition has been satisfied.
- Condition 40: Notification requirement satisfied. Dilapidation reports should be sent to Council prior to the issue of a Construction Certificate.
- Condition 92: Part B of this condition has been satisfied.

General comment

- Given the involvement of City assets in Selwyn Street and Napier Street and the willingness to work with CoFA, there are insufficient grounds to remove the City's functions.
- There may be merit in amending some of the Minister's conditions subject to further consultation with the City.

Department comment

As outlined in Section 3, on 26 May 2010, UNSW advised the Department that it now intends to use Greens Road for construction traffic, with a revised CTMP to be submitted to Council for approval. Accordingly, the proposed amendments relating to the CTMP have now been superseded.

Council's comments in relation to other conditions of approval are noted and are considered in Section 3.

Public submissions

- Concern UNSW is bypassing Council's approval role by going to the State Government.
- CoFA has gone back on promises made to the community outlined in their statement of commitments i.e. it would use Greens Road with very limited exceptions.
- CoFA has walked away from consultation and ignored the concerns of local residents.
- Contradicts what the DCP outlines i.e. no use of Selwyn Street, and what has been approved.

- Proposed truck movements will cause detrimental amenity impacts, including noise and air pollution.
- Concern about the impacts on fig trees and a private arborist not Council being in control.
- Delays are a result of UNSW decision making.
- Council should remain the approval body for the CTMP and other requirements.
- Application should be rejected.
- Community support for the CoFA redevelopment and support some modifications to conditions, however strongly object to removing Council's approval role.

Comment

All issues raised in public submissions have been considered in the Department's assessment of the modification application.

Key issue of CTMP is discussed above and in Section 3.

As outlined in Section 3, the Department considers modification of several conditions to be reasonable.

2.4 PERMISSIBILITY

The subject site is zoned Special Uses – Zone 5 University, which permits all university uses, (including ancillary and incidental uses) and encouraging the provision of community facilities, services, utilities or transport facilities.

3. CONSIDERATION OF PROPOSED MODIFICATIONS

The proposed modification seeks to amend 34 of the 92 conditions imposed in the approval, as well as, modify a statement of commitment. A copy of the proposed modifications are at **TAG E**. The proposed changes and the Department's consideration of each are as follows:

CONDITION	PROPOSED CHANGE	REASON	CONSIDERATION
Condition 6 Archaeological Assessment	Delete reference to CC and insert 'prior to commencement of demolition works'.	No CC is required for demolition works, however this approval needs to be completed before demolition works commence.	Council has now advised UNSW (letter dated 1 April 2010) that this condition has been satisfied. Therefore, amendment no longer required.
Condition 7 Building Setback	Insert after CC 'for relevant building works'	To clarify that the CC referred to is for building works.	Minor administrative change. No amenity impacts. Amendment supported.
Condition 8 Southern Elevation Block C (north)	Delete reference to Council and insert DG	To make DG sign-off authority not Council.	The Department considers that this is a relatively minor matter that does not warrant Departmental involvement and can be appropriately dealt with by Council. Amendment not supported. However, any dispute over this condition can be referred to the Department under new Condition 5A.
	Delete reference to CC and insert 'approval after demolition of Block C (south) and prior to a CC for rectification of the wall.	Details cannot be determined until Block C (south) is demolished to reveal the wall. Details need only be provided prior to rectification works, not prior to CC for the whole new building.	Agreed details cannot be determined until Block C is demolished. Amendment supported.

Condition 9 Material & Sample Board	Delete reference to Council and insert DG	To make the DG the sign-off authority not Council	The Department considers that this is a relatively minor matter that does not warrant Departmental involvement and can be appropriately dealt with by Council. Amendment not supported. However, any dispute over this condition can be referred to the Department under new Condition 5A
	Insert after CC 'for relevant building works'		Amendment supported.
Condition 12 Hours of Access – Selwyn Street	Insert 'This condition does not override the needs or rights for vehicle access to Selwyn Street for normal operations and maintenance of campus facilities nor any access approved in a Construction Traffic Management Plan'	Clarification is required to allow UNSW to access the campus from Selwyn Street, including during the construction phase	The Department considers that while it is appropriate for most operational traffic to access the site from Greens Road, there will be limited instances, such as emergency or maintenance vehicles, where access via Selwyn Street is reasonable. Accordingly, the proposed amendment relating to "vehicle access to Selwyn Street for normal operations and maintenance of campus facilities" is supported. However, the second part of the requested amendment relates to construction access. The condition only relates to operational access therefore an inclusion relating to access approved in a CTMP is superfluous. Accordingly, the proposed amendment relating to "access approved in a Construction Traffic Management Plan" is not supported.
Condition 15 Car spaces	Insert after CC 'for relevant building works'	To clarify the CC referred to is for building works	Minor administrative change. No amenity impacts. Amendment supported.
Condition 17 Accessible car parking	Insert after CC 'for relevant building works'	To clarify the CC referred to is for building works	Minor administrative change. No amenity impacts. Amendment supported.
Condition 18 Bicycle parking	Delete subclause (a)	This is not relevant as there is no residential in the project	Rectifies administrative error. Amendment supported.
Condition 23 Location of driveways	Insert after CC 'for relevant building works'	To clarify the CC referred to is for building works	Minor administrative change. No amenity impacts. Amendment supported.
Condition 30 Reflectivity	Insert after CC 'for relevant building works'	To clarify the CC referred to is for building works	Minor administrative change. No amenity impacts. Amendment supported.
Condition 32 Photographic Archival Documentation	In subclause (A) Delete reference to Council and insert instead 'DG'	To make DG sign-off authority not Council	In letter to UNSW dated 1 April 2010, Council state they have approved the documentation in relation to subclause (A). Therefore, amendment no longer required.
	Delete reference to CC and insert instead 'prior to commencement of demolition works'	To clarify that the work needs to be approved prior to demolition as no CC is needed for demolition.	
Condition 34 Waste & Recycling Management	Delete reference to CC and insert instead 'prior to commencement of demolition works'	To clarify that the work needs to be approved prior to demolition as no CC is needed for	Minor administrative change. No amenity impacts. Amendment supported.

		demolition	
Condition 37 No demolition prior to CC	Delete whole condition	This condition prevents demolition work to be commenced prior to a CC for the new building. This unreasonably restricts UNSW to implement its program and attached Commonwealth funding.	Proponent has advised that it is a requirement of Commonwealth funding for project that demolition will not commence unless building is certain to proceed. Demolition does not require a CC. The Department accepts that it is reasonable for demolition work to commence independent of the issue of a building CC. Amendment supported.
Condition 38 Construction Traffic Management Plan	Delete reference to Council and replace with DG	To make the DG the sign-off authority and not Council.	Amendment unnecessary. Detailed consideration provided at the end of the table.
	Delete reference to CC and insert 'prior to commencement of relevant works'	To clarify the plan needs to be approved prior to demolition as no CC is needed for demolition.	Minor administrative change.
	Insert 'Separate CTMPs for demolition, excavation and construction phases may be approved	To clarify that separate plans for different phases may be approved.	
Condition 40 Dilapidation Report	Delete reference to CC and insert instead 'prior to commencement of demolition works'	To clarify that the reports need to be prepared prior to demolition works as no CC is required for demolition.	Minor administrative change. No amenity impacts. Amendment supported.
	Insert 'Dilapidation reports are not required for properties where the owner has refused access or where the proponent has been unable to contact the owner despite reasonable endeavours to do so.	To clarify the wording of the current condition	Given that UNSW has been unable to contact or access some properties, compliance with this condition should not be unreasonably prevented by circumstances beyond the proponent's control, ie, a landowner's reluctance to grant approval to access the property. The proponent should therefore be afforded the ability to prepare the report(s), particularly when they are intended to benefit the landowner by evaluating the current condition of their property prior to the commencement of works. The amendment is supported subject to the proponent providing the Department with clear and detailed information on what constitutes 'reasonable endeavours'.
Condition 49 Electricity Substation	Delete reference to Council Insert after CC 'for relevant building works'	To clarify that Council only needs to approve the details of the substation if it is proposed to be located on Council land. Otherwise, it only needs approval of Energy Australia.	Condition states substation cannot be located in landscaping areas or in any area visible from the public domain. These restrictions place adequate controls on the placement of the substation and therefore further Council approval is unnecessary, unless it is sited on Council land. Amendment supported.
	Insert 'if the substation is proposed to be sited on Council land, Council's approval is required.		
Condition 51 Utilities	Delete reference to CC and insert instead "prior to commencement of	To clarify that the work needs to be done prior to	Minor administrative change. No amenity impacts. Amendment supported.

	demolition works".	demolition as no CC is needed for demolition.	
Condition 52 Access & Facilities for Persons with Disabilities	Delete reference to Council and insert DG	To make the DG the sign-off authority not Council	The Department considers that this is a relatively minor matter that does not warrant Departmental involvement and can be appropriately dealt with by Council. Amendment not supported. However, any dispute over this condition can be referred to the Department under new Condition 5A
	Insert after CC 'for relevant building works'	To clarify the CC referred to is for building works	Minor administrative change. No amenity impacts. Amendment supported.
Condition 53 Installation of Dual Flush Toilets	Insert after CC 'for relevant building works'	To clarify the CC referred to is for building works	Minor administrative change. No amenity impacts. Amendment supported.
Condition 54 Installation of Water Efficient Taps	Insert after CC 'for relevant building works'	To clarify the CC referred to is for building works	Minor administrative change. No amenity impacts. Amendment supported.
Condition 55 Installation of Water Efficient Urinals	Insert after CC 'for relevant building works'	To clarify the CC referred to is for building works	Minor administrative change. No amenity impacts. Amendment supported.
Condition 56 Internal Lighting	Insert after CC 'for relevant building works'	To clarify the CC referred to is for building works	Minor administrative change. No amenity impacts. Amendment supported.
Condition 57 Demolition/Site Rectification	Delete whole condition	This condition prevents demolition work to be commenced prior to a CC for the new building. Unreasonably restricts UNSW program and attached Commonwealth funding. Condition also requires UNSW to pay a \$960,000 bond in case demolition occurs but the new building is not built. Not appropriate to provide a monetary payment as quantum of funding does not provide for a bond and demolition work will not commence unless the new building is assured as the campus cannot operate without the existing or new facilities.	See comments in relation to Condition 37. Amendment supported.
Condition 58 Footpath	Delete reference to CC and insert instead 'prior to	To clarify that the bank guarantee	Minor administrative change. No amenity impacts.

Damage Bank Guarantee	commencement of demolition works'	needs to be in place prior to demolition works as no CC is needed for demolition.	Amendment supported.
Condition 61 Public Domain Plan	Insert after public domain 'for any landscaping on Council land' Insert after CC for 'relevant building works'	To clarify that the Plan only relates to Council land and the CC is for relevant building works.	Clarification ensures there is no uncertainty in relation to what constitutes the public domain. No amenity impacts. Amendment supported.
Condition 62 Alignment Levels	Insert after each reference to CC 'for relevant building works'	To clarify that the CC referred to is for the building works.	Minor administrative change. No amenity impacts. Amendment supported.
Condition 63 Stormwater and Drainage	Insert after each reference to CC 'for each relevant building works'	To clarify that the CC referred to is for the building works.	Minor administrative change. No amenity impacts. Amendment supported.
Condition 64 Construction & Fitout of Food Premises	Insert after each reference to CC 'for each relevant building works'	To clarify that the CC referred to is for the building works.	Minor administrative change. No amenity impacts. Amendment supported.
Condition 68 Mechanical Ventilation	Insert after each reference to CC 'for each relevant building works'	To clarify that the CC referred to is for the building works.	Minor administrative change. No amenity impacts. Amendment supported.
Condition 72 Structural Certification for Design	Insert after CC 'for relevant building works'	To clarify that the CC is for building works, and potential need for shoring works.	Minor administrative change. No amenity impacts. Supported.
Condition 76 Certification of Geotechnical Inspection	Delete reference to CC and insert instead 'prior to commencement of demolition works'	To clarify that the work needs to be done prior to demolition as no CC is needed for demolition.	Minor administrative change. No amenity impacts. Amendment supported.
Condition 78 Protection of street trees	Edit beginning of condition to read 'all street trees immediately adjoining the site boundary adjacent to works on the site'	To clarify which trees are relevant and that the work needs to be done prior to demolition as no CC is needed for demolition.	Agree that extent of boundary needs clarification.
	Delete 'approval of Council' and insert 'approval by a qualified arborist'	To provide for the sign-off by a qualified arborist not Council.	This request is inconsistent with the proponent's statement of commitments which states all trees will be protected and managed in a manner agreed by Council. Amendment not supported.
	Delete reference to CC and insert instead 'prior to commencement of demolition works'		However, the addition of a general dispute resolution condition (new Condition 5A) would enable the matter to be referred to the Director General for determination to resolve any disagreement between Proponent and Council. Minor administrative change. No amenity impacts. Amendment supported.
Condition 88 Loading & Unloading During Construction	In subclause (e) delete construction zone and insert instead 'works zone'	To ensure that the clause uses the term 'works zone' consistently in each subclause.	Agreed.

	Insert 'These provisions do not apply if alternative arrangements are approved in a Construction Traffic Management Plan	To enable a CTMP to be the mechanism to approve other work zones.	The proposed amendment seeks to remove the requirement of the proponent to seek statutory approval from Council to use and utilise their roads for construction/work zones. There is no statutory basis for this amendment and, furthermore, these other approvals are not covered by section 75V of the EP&A Act (ie legislation that must be applied consistently with an approved project). Accordingly, amendment not supported.
Condition 92 Construction Liaison Committee	Delete condition and insert instead 'Prior to commencement of any work, a CLC is to be established by the proponent to ensure that demolition and construction related impacts (including noise and vibration, loading, issues associated with construction workers and vehicles, traffic issues, management of the construction site) from the site can be dealt with expeditiously and cooperatively. The CLC is to comprise representatives of the adjoining neighbourhood. The CLCs terms of reference, size, meeting frequency and operations are to be endorsed by the DG'.	To refine the role of the CLC which has become unworkable due to the wording of the condition and expectations of the community. Refinement of the make-up, role and operations of the CLC is needed and should be endorsed by the DG.	<p>The proponent originally requested the whole condition be deleted and replaced. On 27 May 2010, the proponent requested that only subclause (b) be replaced, which requires the CLC's terms of reference, size and membership, meeting frequency and operations to be determined by UNSW in consultation with Council, and endorsed by the Director General.</p> <p>In addition, the proponent requested that subclause (c) be deleted as the matters are either already addressed in the EA; covered in subclause (a) and (f); and in the case of dilapidation reports, should not be made public due to privacy concerns.</p> <p>The Department considers the suggested amendments acceptable and refine the condition's wording whilst maintaining its intention i.e. the reasonable dissemination of information to the public.</p>
Statement of Commitments	Commitment No.22 Insert after first section "vehicles where access from Greens Road is physically constrained or financially prohibitive and/or would otherwise cause delay in the construction programme and occurs in accordance with the Construction Management Plan approved under Condition 38."	Commitment misinterpreted to mean no vehicle access from Selwyn St. Not UNSW's intention as Buildings B & D, which are to be demolished, only have frontage to Selwyn St and no direct access to other streets. Demolition and excavation traffic is necessary from Selwyn St when access is prohibitive from Greens Rd.	Current wording of SOC enables some use of Selwyn Street by construction traffic. Amendment is therefore considered unnecessary.

Condition 38 – Construction Traffic Management Plan

The original CTMP was submitted to Council in August 2009. This plan proposed construction vehicle access to and from the site during the demolition phase (estimated at 4 months) and excavation phase (estimated at 3 months) via Josephson and Selwyn Streets and Albion Avenue. The plan was approved by Council on 23 October 2009. However, due to a procedural error (Condition 92- Construction Liaison Committee – CTMP needed to be tabled to the CLC prior to being lodged with Council), Council withdrew its approval on 2 December 2009.

A new Plan was prepared by UNSW in February 2010 and resubmitted to Council. The Plan proposed:

- Demolition phase – access from Selwyn Street and Albion Avenue (March-May 2010).
- Excavation phase – traffic access from Greens Road and Napier Street road closure, including use by trucks of the existing laneway on the site between Buildings C and F (May – August 2010).
- Construction Phase – access from Greens Road and Albion Avenue (August 2010-April 2012).

On 23 March 2010 (sent under cover dated 26 March 2010), Council approved the Plan subject to conditions. The key issue relating to Council's approval of the CTMP was the use of Napier Street for construction and demolition in addition to excavation. Council stated Napier Street was the preferred option as it minimised impacts on local residents, and was also canvassed as an option by UNSW's contractors Watpac (February 2010 Report).

On 26 May 2010, the Department met with UNSW who advised that they now intend to use Greens Road for construction traffic, and that it intends to prepare an amended CTMP to reflect the changes to lodge with Council shortly. UNSW has also discussed this option with Council who are supportive of Greens Road being the principle construction traffic access road.

The Department considers the use of Greens Road would substantially reduce potential amenity impacts on local residents, and does not unreasonably restrict UNSW from using Selwyn Street for works along this frontage where access cannot be reasonably obtained from Green's Road (as per the current project approval).

Accordingly, the proposed amendment to condition 38 (to enable the CTMP to be submitted for the approval of the Department) is unnecessary. It is noted that should the revised CTMP, once lodged with Council, be delayed or result in any disagreement between UNSW and Council, the Department has recommended a new Condition 5A (see below), that would enable the proponent to refer the matter to the Director General to resolve.

New Condition 5A

The proposed modifications seek to change the post determination approval role for several relatively minor matters from Council to the Department. As outlined in the table above, the Department considers that these matters can be appropriately dealt with by Council. However, the involvement of the Department may be appropriate should any disagreement arise between the proponent and Council on such matters. Accordingly, it considered appropriate to include a new condition that enables any matters of dispute or disagreement arising from the conditions to be referred to the Department for determination.

4. CONCLUSION

The requested amendments largely relate to administrative matters and do not directly result in any physical changes to the approved project or its impacts. Key construction related impacts can still be managed and mitigated in accordance with the Statement of Commitments and conditions of approval. Accordingly, it is considered that most of the proposed amendments to the wording of the conditions are appropriate and reasonable.

Several other, more substantive amendments are also considered reasonable. These include: clarifying that some operational/maintenance related traffic may need to access the site via Selwyn Street (Condition 12); enabling the proponent to demonstrate reasonable endeavours to obtain access to properties to conduct dilapidation reports (Condition 40); and requiring the terms of the construction liaison committee to be determined by the proponent in consultation with Council and endorsed by the Director General (Condition 92).

The key assessment issue for the modification has been the proposed amendment to Condition 38 – Construction Traffic Management Plan. The Department has considered the views of Council, UNSW and local residents, and supports UNSW's proposed preparation of an amended CTMP which will use Greens Road.

The Department considers the use of Greens Road would substantially reduce potential amenity impacts on local residents, and does not unreasonably restrict UNSW from using Selwyn Street for works along this frontage where access cannot be reasonably obtained from Green's Road (as per the current project approval).

Accordingly, the proposed amendment to condition 38 (to enable the CTMP to be submitted for the approval of the Department) has now been superseded.

It is noted that should the revised CTMP, once lodged with Council, be delayed or result in any disagreement between UNSW and Council, the Department has recommended a new Condition 5A, that would enable the proponent to refer the matter to the Director General to resolve.

Post-determination matters required under Conditions 6 and 32 have since been approved by Council (on 1 April 2010) and thus the requested modification of these conditions (i.e. to change the approval role from Council to the Department) has been superseded. In addition, several more minor matters (Conditions 8, 9 and 52) do not warrant Departmental involvement and can be reasonably dealt with by Council.

On the basis of the above, the modifications are partially supported, as outlined in the Instrument of Modification approval.

5. DELEGATION

Under the Instrument of Delegation dated 25 January 2010, the Minister delegated his functions under section 75W of the EP&A Act to the Director General, where there are fewer than 25 public submissions in the nature of objections in respect of the modification request. However, as there were 28 public submissions, the Minister must determine the modification.

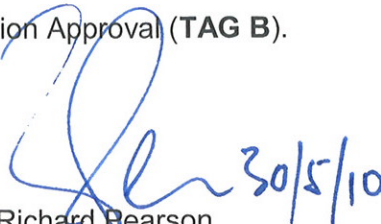
6. RECOMMENDATION

It is recommended that the Minister for Planning:

- (a) **Consider** the findings and recommendations of this report; and
- (b) **Approve** the modification, under section 75W of the *Environmental Planning and Assessment Act 1979*; and
- (c) **Sign** the attached Instrument of Modification Approval (**TAG B**).


Daniel Keary
Director
Government Land and Social Projects

28/5/10


Richard Pearson
Deputy Director General
Development Assessment & Systems
Performance

30/5/10


Sam Haddad
Director General

1/6/2010