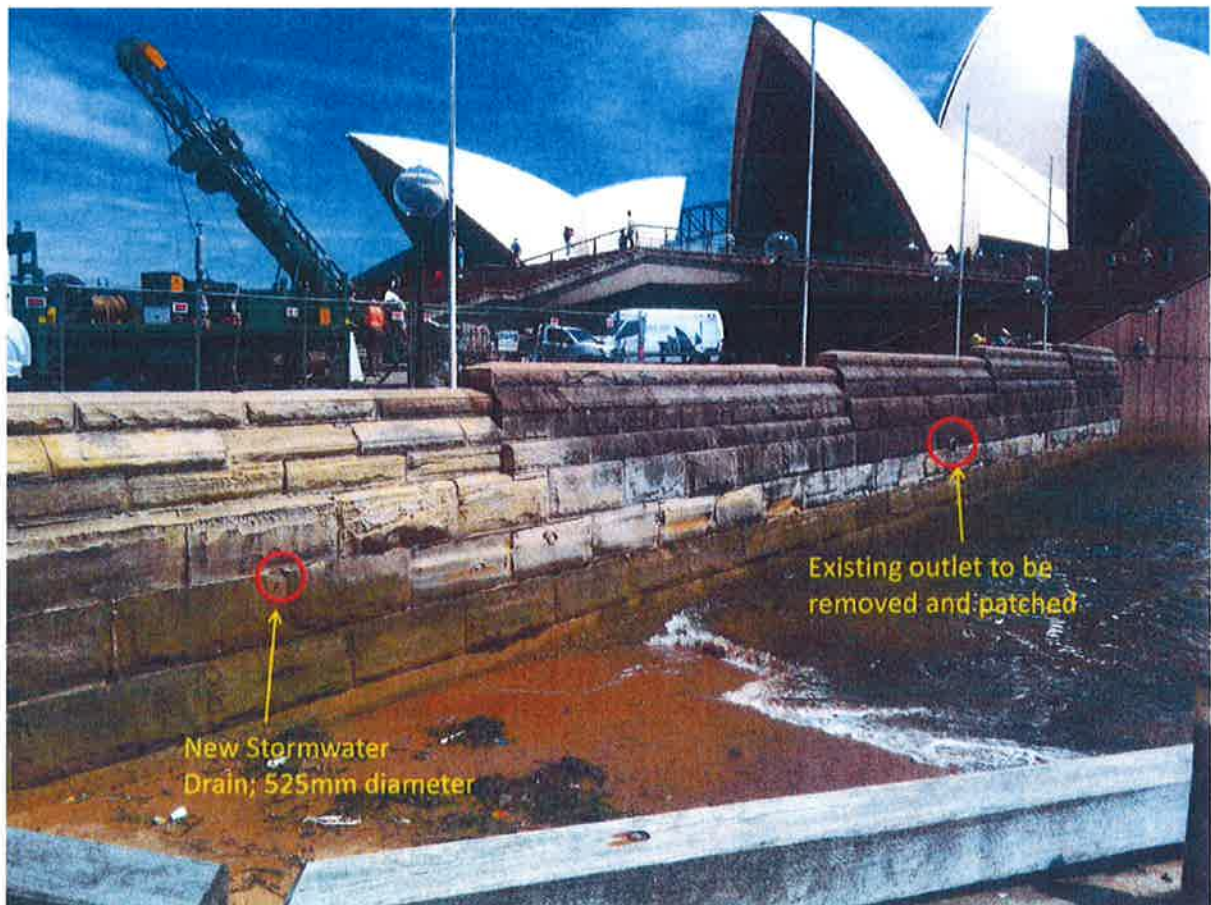


**MAJOR PROJECT ASSESSMENT:  
Sydney Opera House - Stormwater Drain  
Diversion (MP09\_0122 MOD 1)**



Director-General's  
Environmental Assessment Report  
Section 75W of the  
*Environmental Planning and Assessment Act 1979*

October 2011

## ABBREVIATIONS

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CIV	Capital Investment Value
Department	Department of Planning & Infrastructure
DGRs	Director-General's Requirements
Director-General	Director-General of the Department of Planning & Infrastructure
EA	Environmental Assessment
EP&A Act	<i>Environmental Planning and Assessment Act 1979</i>
EP&A Regulation	Environmental Planning and Assessment Regulation 2000
EPI	Environmental Planning Instrument
MD SEPP	State Environmental Planning Policy (Major Development) 2005
Minister	Minister for Planning and Infrastructure
PAC	Planning Assessment Commission
Part 3A	Part 3A of the <i>Environmental Planning and Assessment Act 1979</i>
PEA	Preliminary Environmental Assessment
PFM	Planning Focus Meeting
PPR	Preferred Project Report
Proponent	Sydney Opera House Trust
RtS	Response to Submissions

Cover Photograph: Eastern Seawall

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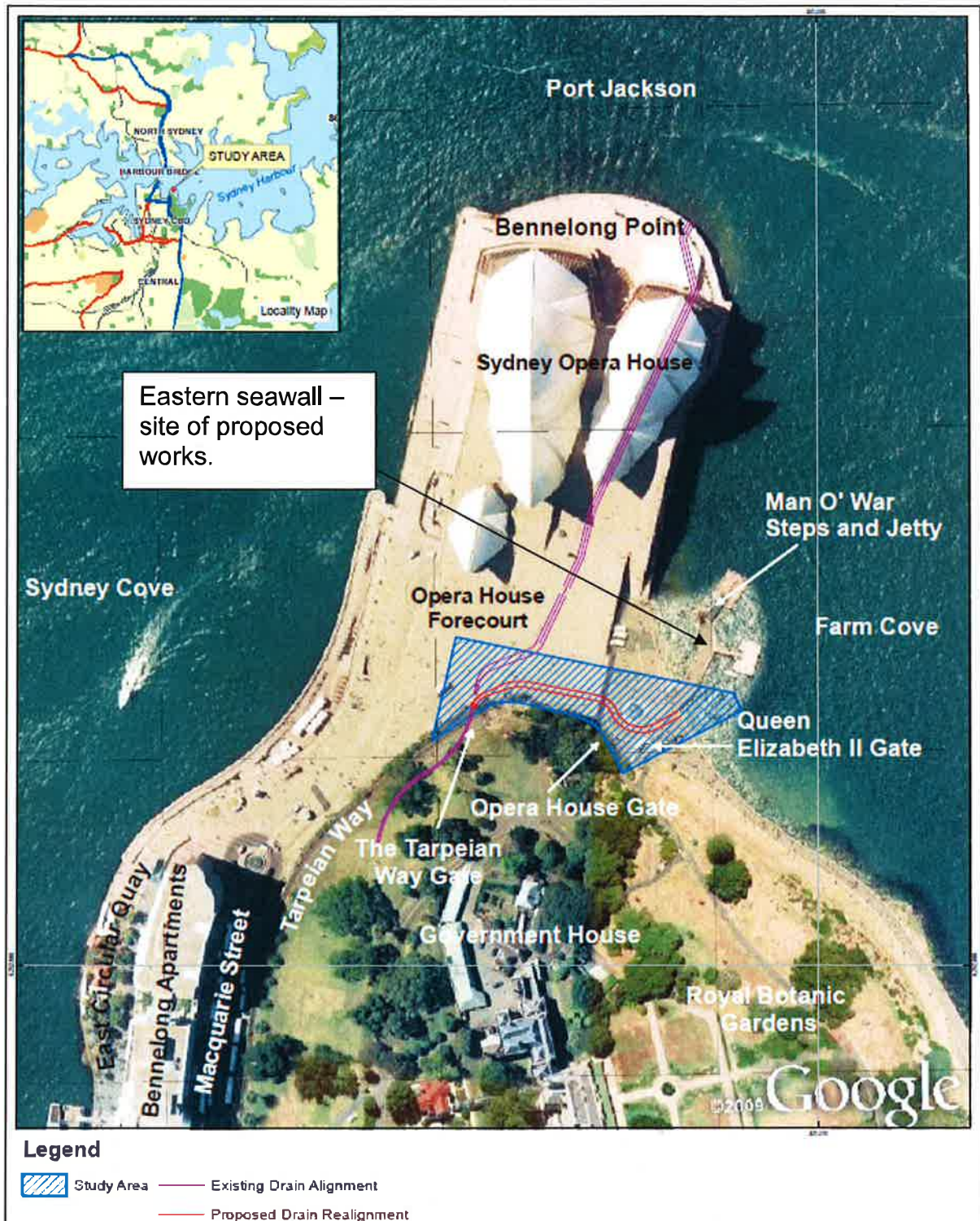
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## 1. BACKGROUND

On 26 August 2010, the Deputy Director-General, under delegation from the then Minister for Planning, granted approval to the Sydney Opera House Trust (MP09\_0122) to divert stormwater drains from beneath the forecourt of the Sydney Opera House. The project location is shown in Figure 1.

Figure 1 – Project Location



## 2. PROPOSED PROJECT

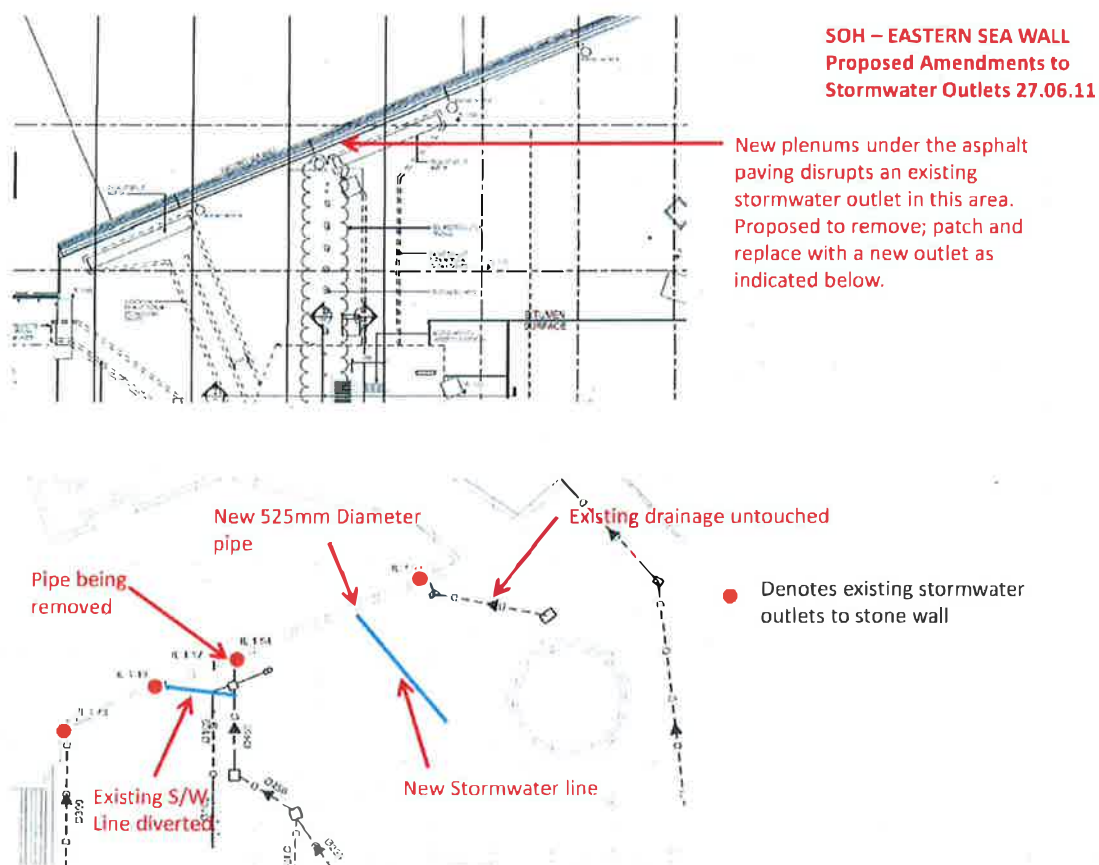
### 2.1. Project Description

This application seeks approval to modify the existing approval to allow for the following:

- removal of an existing stormwater pipe and sealing of its 375mm diameter outlet that penetrates the sandstone seawall;
- diverting an existing stormwater line to an existing outlet; and
- the construction of a new stormwater line and new 525mm diameter outlet in the sandstone seawall.

The project is shown in **Figure 2** and is illustrated in the photo on the cover of this report.

**Figure 2: Project Layout**



This modification will require adding a reference in condition A2 (Development in Accordance with Plans and Documents) to the Plan, the Sandstone Plugging Specification, and the Heritage Impact Statement. It also requires amending condition B2 (Stormwater and Drainage Works) to read as follows:

*“Prior to the issue of a Construction **Certificate**, the proponent shall submit to the satisfaction of Sydney Water all details of the that part of the proposed stormwater drainage system that forms part of its system. An “Application for Approval of Stormwater Drainage Connections” (if applicable) must also be submitted to the Council for connection of stormwater to the Council’s drainage system”.*

## 2.2. Project Need and Justification

As part of the Vehicle and Pedestrian Safety (VAPS) Project (MP09\_0200), approval was granted for the relocation of a significant amount of existing services, including electrical substations beneath the eastern side of the forecourt, just inside the Eastern Seawall.

These substations were proposed to fit between the existing stormwater lines however Energy Australia has advised that a plenum needs to be constructed between these substations and the Eastern Seawall to provide adequate ventilation for these substations.

As a result of the need for this plenum and the fact that the pipes can not penetrate the plenum, these pipes and their related outlets need to be relocated.

## 3. STATUTORY CONTEXT

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### 3.1. Modification of the Minister's Approval

The modification application has been lodged with the Director-General pursuant to s.75W of the Act. It is considered that modifications to the environmental assessment requirements are not warranted as the proposal is minor.

On 14 September 2011, the Minister for Planning and Infrastructure delegated responsibility for modifying an approval or disapproving a modification under s75W of the EP & A Act to the Executive Director, Major Projects Assessment of the Department where there are less than 10 public submissions in the nature of objections in respect of the modification request and where there are no reportable political donations.

Sydney City Council has not objected to this proposal or the original application, and on this basis the application can be determined by the Executive Director, Major Projects Assessment.

### 3.2. Permissibility

The site is zoned 'Parks and Community Places' under the provisions of the *Sydney Local Environmental Plan 2005*. The works are permissible with consent.

### 3.3. Environmental Planning Instruments

All relevant Environmental Planning Instruments were considered in the assessment of the original application and have been reviewed as part of this assessment. There is nothing in this proposed modification which alters those considerations.

### 3.4. Objects of the EP&A Act

Decisions made under the EP&A Act must have regard to the objects of the Act, as set out in Section 5 of the Act. The relevant objects are:

- (a) *to encourage:*
  - (i) *the proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment,*
  - (ii) *the promotion and co-ordination of the orderly and economic use and development of land,*
  - (iii) *the protection, provision and co-ordination of communication and utility services,*
  - (iv) *the provision of land for public purposes,*
  - (v) *the provision and co-ordination of community services and facilities, and*



- (vi) *the protection of the environment, including the protection and conservation of native animals and plants, including threatened species, populations and ecological communities, and their habitats, and*
- (vii) *ecologically sustainable development, and*
- (viii) *the provision and maintenance of affordable housing, and*
- (b) *to promote the sharing of the responsibility for environmental planning between the different levels of government in the State, and*
- (c) *to provide increased opportunity for public involvement and participation in environmental planning and assessment.*

The Department has considered the objects of the EP&A Act and considers that this proposed modification is consistent with the orderly and economic use and development of the land.

### **3.5. Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act)**

The site of the Sydney Opera House (SOH) is listed on both the World Heritage List and National Heritage List under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act). Actions that significantly affect world or national heritage listed sites require approval under the EPBC Act.

The SOH was, until recently, the subject of a Bilateral Agreement entered into between the Australian and NSW Government in August 2005, pursuant to section 45 of the EPBC Act. Under the terms of that agreement, the assessment regimes under the EP & A Act was automatically accredited under the EPBC Act. The terms of that agreement required that the proposed actions be in accordance with the *Management Plan for the Sydney Opera House* in force under the Environmental Planning and Assessment Amendment (Sydney Opera House Management Plan) Regulation 2005.

Therefore, any approval under the provisions of the EPBC Act were satisfied by approval under Part 3A of the E.P & A Act, provided that the proposal was compliant with the *Management Plan for the Sydney Opera House 2005* (Management Plan 2005).

This Agreement expired in December 2010 and is currently being renegotiated.

As part of the assessment of this application, comment was sought from the Commonwealth Department of the Environment, Water, Heritage and the Arts. On 25 August 2011, it advised that it was satisfied that the remedial works would be done to a satisfactory standard and raised no objection to the proposed works. On this basis, the Department is satisfied that these minor works are consistent with the Sydney Opera House Management Plan 2005.

### **3.6. Ecologically Sustainable Development**

The EP&A Act adopts the definition of Ecologically Sustainable Development (ESD) found in the *Protection of the Environment Administration Act 1991*. Section 6(2) of that Act states that ESD requires the effective integration of economic and environmental considerations in decision-making processes and that ESD can be achieved through the implementation of:

- (a) *the precautionary principle,*
- (b) *inter-generational equity,*
- (c) *conservation of biological diversity and ecological integrity,*
- (d) *improved valuation, pricing and incentive mechanisms.*

The proposed works are consistent with the principle of inter-generational equity in that they are preserving the integrity of the Eastern Seawall. Further, the proposed works are consistent with the original assessment.

## 4. CONSULTATION AND SUBMISSIONS

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### 4.1. Exhibition

Under s75W of the Act, a request for a modification of an approval does not require public exhibition. However, under s75X (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 cl. 8G of the *Environmental Planning and Assessment Regulation 2000* the modification application was published on the Department's website.

A copy of the application was forwarded to the following government agencies who commented on the original application: Commonwealth Department of Environment, Water, Heritage and the Arts; NSW Maritime; Sydney Water; NSW Primary Industries (Fisheries); NSW Office of Environment and Heritage; and Council of the City of Sydney.

A summary of the issues raised in submissions from these agencies is provided below:

**Council of the City of Sydney (Tag B)** – considers the proposed outlet to be too large and visually intrusive at low tide, and has recommended that two smaller pipes and outlets be used in place of the proposed single pipe and outlet, and that these new outlets be well separated.

The proponent has submitted supplementary engineering and heritage advice to justify the proposed single outlet and this has now been accepted by both Council and the Department. This is discussed in detail in section 5.2.

**Commonwealth Department of Environment, Water, Heritage and the Arts (Tag C)** – are satisfied that the remedial works as proposed will be done to a high standard and have no comments on the proposed works.

**Department of Primary Industries (Fisheries) (Tag D)** – raised no objection to the proposal.

**Sydney Water** – has advised that as these lines are not part of its system, they can not make any comment on the proposal.

**Maritime NSW (Tag E)** – has advised that it has no further comments in relation to this modification.

**NSW Heritage Office (Tag F)** – has advised that it raises no objection to the proposal.

**NSW Office of Environment and Heritage (Tag G)** – has advised that it has no concerns with the proposal.

The Department has considered the issues that have been raised in submissions in its assessment of the project.

## 5. ASSESSMENT

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The Department considers the key environmental issues for the project to be:

- archaeological impact;



- function; and
- appearance.

### 5.1. Archaeological Impact

The Proponent submitted a Heritage Impact Statement (**Tag H**) prepared by Godden MacKay Logan which concludes that the proposed new stormwater pipe and its outlet will not cause any archaeological impacts as the area adjacent to the seawall has low to nil potential to contain significant archaeological evidence, particularly at the level that is required for the proposed new works.

The heritage assessment report and sandstone plugging specification have been considered by both the NSW Office of Environment and Heritage and the Commonwealth Department of the Environment, Water, Heritage and the Arts. Neither agency has raised any objection to this proposal.

### 5.2. Function

Council's suggestion of two smaller pipes instead of the one larger pipe was forwarded to the Proponent for their consideration. In response it has advised (**Tag I**) that the use of two smaller pipes was considered as an option but was dismissed for the following reasons:

- Using two pipes would require a larger upstream pit which, in turn, would increase the footprint of the excavation works;
- The opportunity to significantly separate two smaller outlets is extremely limited because of the presence of the plenum located towards the Opera House, and the existing outlet located towards the Botanical Gardens; and
- The pipe and outlet immediately to the right of the proposed outlet is covered by an Easement in favour of the Opera House car park operators and they have denied permission to connect into this service because of the risk of flooding the car park.

Council has since advised that following its review of the supplementary engineering advice and the heritage and plugging reports it is satisfied:

- that the stormwater outlet can not be reduced in size through bifurcation;
- with the plugging specification for the making good of the sandstone; and
- with the archaeological impact assessment report prepared by Godden Mackay Logan.

The Department and Council are both satisfied that the single pipe option is a superior option to the suggested twin pipe solution.

### 5.3. Appearance

The original stormwater diversion works approval (MP09\_0122) involved the construction of a new box culvert that discharges via a 2.7m wide by 2.2m high outlet into Farm Cove, immediately south of the Man O'War Steps. It was a condition of this approval that this culvert be lined with sandstone to match the existing fabric of the seawall to approximately 1-1.5m from the outlet.

There are currently four 375mm diameter outlets along the length of this section of wall north of the Man O'War Steps and this proposal involves closing off one of these and constructing a 525mm outlet to serve a new stormwater pipe.

The Proponent has advised that the end of the new outlet will be finished with sandstone, in a similar manner to that of the adjacent newly completed box culvert while the redundant outlet will be plugged using sandstone that matches that of the existing seawall. The Proponent has submitted a Sandstone Plugging Specification Note prepared by Scott Carver

that details the proposed work methods. The Commonwealth and State heritage agencies and the City Council have not raised any objection to this proposal and on this basis the Department is satisfied that the appearance of the proposed works will be acceptable and in keeping with the existing appearance of the Eastern Seawall.

## 6. RECOMMENDATION

The need for the project has arisen as a result of changed circumstances on site and the requirement to provide a ventilation plenum for the new underground electrical substations.

The impacts of these works are primarily visual, with the majority of the work being underground. The only elements that will be visible from the public domain are the new outlet and the plugged redundant outlet. There were no objections from relevant government agencies but Sydney City Council did suggest that two smaller pipes as opposed to one larger outlet would be less visually prominent than the proposed larger outlet. However, following their review of supplementary engineering and heritage advice, Council is now satisfied that the proposed approach is superior to their twin pipe suggestion.

The Department is satisfied that the proposed design and work methods are suitable for this circumstance and recommends that the application be approved.

It is recommended that the Executive Director, Major Projects Assessment, in accordance with the Instrument of Delegation issued by the Minister on 14 September 2011:

- Consider** the findings and recommendations of this report;
- Approve** the modification, subject to conditions; and
- Sign** the attached Instrument of Modification (**Tag A**)

Prepared by:



John Phillpott  
Senior Environmental Planner  
Metropolitan and Regional Projects - South

Endorsed by



Michael Woodland  
Director  
Metropolitan and Regional Projects - South

10/10/2011

Note To File  
Discussed with Commandant  
on Friday 7.10.11 +  
Confirmed that there  
is no legal impediment  
to the matter being  
determined by  
the State.



10.10.11

## **APPENDIX A ENVIRONMENTAL ASSESSMENT**

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See the Department's website at [www.planning.nsw.gov.au](http://www.planning.nsw.gov.au)

## **APPENDIX B SUBMISSIONS**

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See the Department's website at [www.planning.nsw.gov.au](http://www.planning.nsw.gov.au)



## **APPENDIX C    POLITICAL DONATION DISCLOSURES**

See the Department's website at [www.planning.nsw.gov.au](http://www.planning.nsw.gov.au)

## **APPENDIX D    RECOMMENDED CONDITIONS OF APPROVAL**

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