



Planning &
Infrastructure

MODIFICATION REQUEST:
Deletion of Condition B25
14-28 Ultimo Road, Ultimo
(MP09_0153 MOD 2)



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

September 2012



© Crown copyright 2012
Published September 2012
NSW Department of Planning & Infrastructure
www.planning.nsw.gov.au

Disclaimer:

While every reasonable effort has been made to ensure that this document is correct at the time of publication, the State of New South Wales, its agents and employees, disclaim any and all liability to any person in respect of anything or the consequences of anything done or omitted to be done in reliance upon the whole or any part of this document.

1. BACKGROUND

1.1 The Site

The University of Technology, Sydney (UTS) has lodged a section 75W application (MP09_0153 MOD 2), seeking approval to delete Condition B25 from the Instrument of Approval for MP09_0153.

The site is bounded by Mary Ann Street, Omnibus Lane, Ultimo Road and the Ultimo Pedestrian Network (UPN). A Location Plan is provided at **Figure 1** below. The site is vacant and early works have commenced in accordance with a Part 4 approval issued by the City of Sydney Council (council).

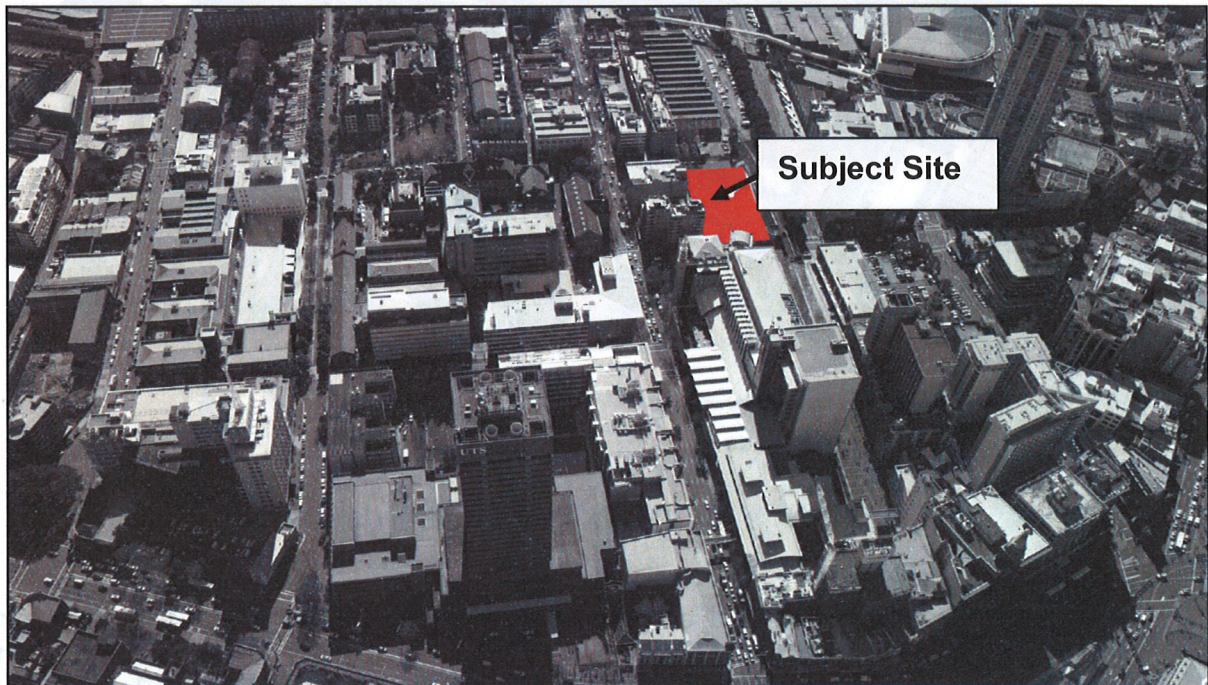
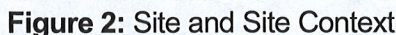


Figure 1: Project Location

1.2 Site Context

The site is located within a commercial and educational precinct. Immediately north of the site is the Powerhouse Museum and a number of five to nine-storey commercial buildings.

To the east is the Transgrid building and the embankment of the former Darling Harbour Railway Line, which forms part of the UPN. To the south-east of the site is the Ultimo Street Railway Underbridge which is listed as a heritage item on the State Heritage Register. The ABC headquarters and the Inner City Childcare Centre are to the south of the site. To the west of the site is a 10-storey residential flat building and the Former National Cash Register Co building, which is listed as a heritage item in the Sydney Local Environmental Plan (LEP) 2005. **Figure 2** overleaf depicts the site and its context.



The development was declared a major project to which Part 3A of the *Environmental Planning and Assessment Act 1979* (EP&A Act) applies on 5 August 2009, on the basis that it was development described in Group 7, Clause 20 of Schedule 1 of the *Major Development State Environmental Planning Policy* (MD SEPP).

On 24 August 2012, the Director, Metropolitan and Regional Projects North approved a modification to the project (MOD 1) permitting:

- Minor internal and external design modifications.
- Modifications to the conditions of approval to alter the timing for the satisfaction of a number of conditions, and permitting the proponent to obtain a 109R Crown Certificate in lieu of a Construction Certificate.

2.1 Modification Description

The subject modification (MOD 2) seeks approval to delete Condition B25 from the Instrument of Approval. Condition B25 requires the proponent to provide the Certifying Authority with a report from an appropriately qualified consultant confirming that the building will have the ability to withstand intermittent surcharge loads from passing rail traffic, prior to the issue of the relevant 109R Crown Certificate.

2.2 Justification Modification

The proponent has provided a letter from RailCorp confirming that section of the former Darling Harbour Rail Line adjacent to the site is no longer suitable for use, and on this basis Condition B25 is no longer required (see **Appendix A**).

3. STATUTORY CONTEXT

3.1 Changes to Part 3A

In accordance with clause 3 of Schedule 6A of the EP&A Act, section 75W of the Act as in force immediately before its repeal on 1 October 2011, and as modified by Schedule 6A, continues to apply to transitional Part 3A projects.

Consequently, this report has been prepared in accordance with the requirements of Part 3A and associated regulations, and the Minister (or his delegate) may approve or disapprove of the carrying out of the project under section 75W of the EP&A Act.

3.2 Modification of the Minister's Approval

Section 75W (2) of the EP&A Act provides that a proponent may request the Minister to modify the Minister's approval of a project. The Minister's approval of a modification is not required if the project, as modified, would be consistent with the original approval. As the proposed modification seeks to delete Condition B25 from the Instrument of Approval, the modification will require the Minister's approval.

3.3 Environmental Assessment Requirements

Section 75(3) of the EP&A Act provides the Director-General with scope to issue Environmental Assessment Requirements (DGRs) that must be complied with before the matter will be considered by the Minister. DGRs were not issued for this modification as the proponent has addressed the key issues related to the modification request.

3.4 Delegated Authority

The Minister delegated his functions to determine a modification request under section 75W of the EP&A Act where:

- The relevant local council has not made an objection.
- A political disclosure statement has been made but only in respect of a previous application.
- There are less than 10 public submissions in the nature of objections.

No submission was received from the Council or the general public, and no political disclosure statement has been made for this application, or for any related applications. Accordingly, the modification application is able to be determined under delegation by the Director, Metropolitan and Regional Projects North.

4. CONSULTATION AND SUBMISSIONS

4.1 Exhibition

Under section 75X(2)(f) of the EP&A Act and clause 8G of the Environmental Planning & Assessment Regulation 2000, the modification request was made publically available on the department's website. Given that the modification is administrative in nature, and the proponent has provided a letter from RailCorp which supports the deletion of Condition B25, the department did not exhibit the application. Notwithstanding, the department made the application available on its website on 8 September 2012.

4.2 Submissions by Government Agencies and the General Public

No submissions were received at the time of writing this report.

5. ASSESSMENT

The department has reviewed the letter from RailCorp lodged to support the application and is satisfied that the conversion of the former Darling Harbour Rail Line to the Ultimo Pedestrian Link will render the section of the line adjacent to the site unusable. As such the department considers that Condition B24 is no longer required and supports the deletion of this condition.

6. CONCLUSION


The department has considered the proposed modification to the project approval and the key issues associated with this modification. The department is satisfied that the deletion of Condition B25 is appropriate on the basis that the section of the former Darling Harbour Rail Line adjacent to the site is no longer suitable for use.

It is therefore recommended that the modification application be approved, as outlined in the recommended Instrument of Modification.


7. RECOMMENDATION

It is recommended that the Director, Metropolitan and Regional Projects North:

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

 10/09/12

Senior Planner
Metropolitan and Regional Projects North

 10/9/12

Team Leader
Metropolitan and Regional Projects North



Director
Metropolitan and Regional Projects North

12/9/12.

APPENDIX A – LETTER FROM RAILCORP



RailCorp Property
PO Box K349
Haymarket NSW 1238
Tel: (02) 8922 1987 Fax: (02) 8922 4890
Email: jim.tsirimiagos@railcorp.nsw.gov.au

5 September 2012

Ms Liz Stuart
Project Co-ordinator
Campus Development Planning & Design
University of Technology, Sydney
PO Box 123
Ultimo NSW 2007

Dear Ms Stuart,

PROJECT APPLICATION – MP 09_0153
The Dr Chau Chak Wing Building, UTS, Sydney

I refer to my email dated 4 September 2012 regarding Condition B25 in relation to the above application.

RailCorp has reviewed your request and advises that at the time of RailCorp's submission to the Department of Planning on 22 June 2011 there was a distinct possibility of intermittent use of the rail line by the Powerhouse Museum.

However, since then it has become apparent that the line will not be able to be used for running trains due to present condition of the Ultimo Road underbridge and proposed treatment of the area for a pedestrian/cycleway network. Therefore RailCorp can now waive the requirement contained in Condition B25.

Please contact me if you require any further assistance.

Yours sincerely

A handwritten signature in blue ink, appearing to read "Jim Tsirimiagos", written over a circular stamp.

Jim Tsirimiagos
Manager, Land Use & Planning
RailCorp Property

APPENDIX B - MODIFICATION REQUEST

See the Department's website at:

<http://majorprojects.planning.nsw.gov.au>



Project Co-ordinator
Project Co-ordinator
Project Co-ordinator
Project Co-ordinator
Project Co-ordinator

6 September 2012

Ms Liz Stuart
Project Co-ordinator
Transport for NSW
University of Technology, Sydney
PO Box 123
Ultimo NSW 2007

Dear Ms Stuart,

PROJECT APPLICATION - MP 02 0125
The Dr Chau Chak Wing Building, UTS, Sydney

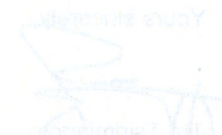
I refer to my email dated 4 September 2012 regarding Condition 125 in relation to the above application.

Transport for NSW has reviewed your request and advises that at the time of Transport for NSW's submission to the Department of Planning on 22 June 2011 there was a distinct possibility of intermittent use of the rail line by the Powerhouse Museum.

However, since then a has become apparent that the line will not be able to be used for running trains due to present condition of the Ultara Road underpass and proposed treatment of the area for a pedestrian/cycleway network. Therefore Transport for NSW can now waive the requirement contained in Condition 125.

Please contact me if you require any further assistance.

Yours sincerely,


Michael Lunn
Manager, Land Use & Planning
Transport for NSW

APPENDIX B - SUBMISSIONS

No submissions in the nature of objections were received.

APPENDIX C - RECOMMENDED MODIFYING INSTRUMENT