



# Planning & Environment

## **STATE SIGNIFICANT DEVELOPMENT: Section 96(1A) Modification**

**Amend Condition D2(h) and an awning structure at  
Abercrombie and Cleveland Street**

**157 – 163 Cleveland Street, Redfern  
SSD-4949-2011 MOD 8**



Secretary's  
Environmental Assessment Report  
*Section 96(1A) of the  
Environmental Planning and Assessment Act, 1979*

**July 2014**

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Published July 2014  
NSW Department of Planning & Environment  
[www.planning.nsw.gov.au](http://www.planning.nsw.gov.au)

Cover photo: photomontage of northwest elevation (Source: Applicant's EIS)

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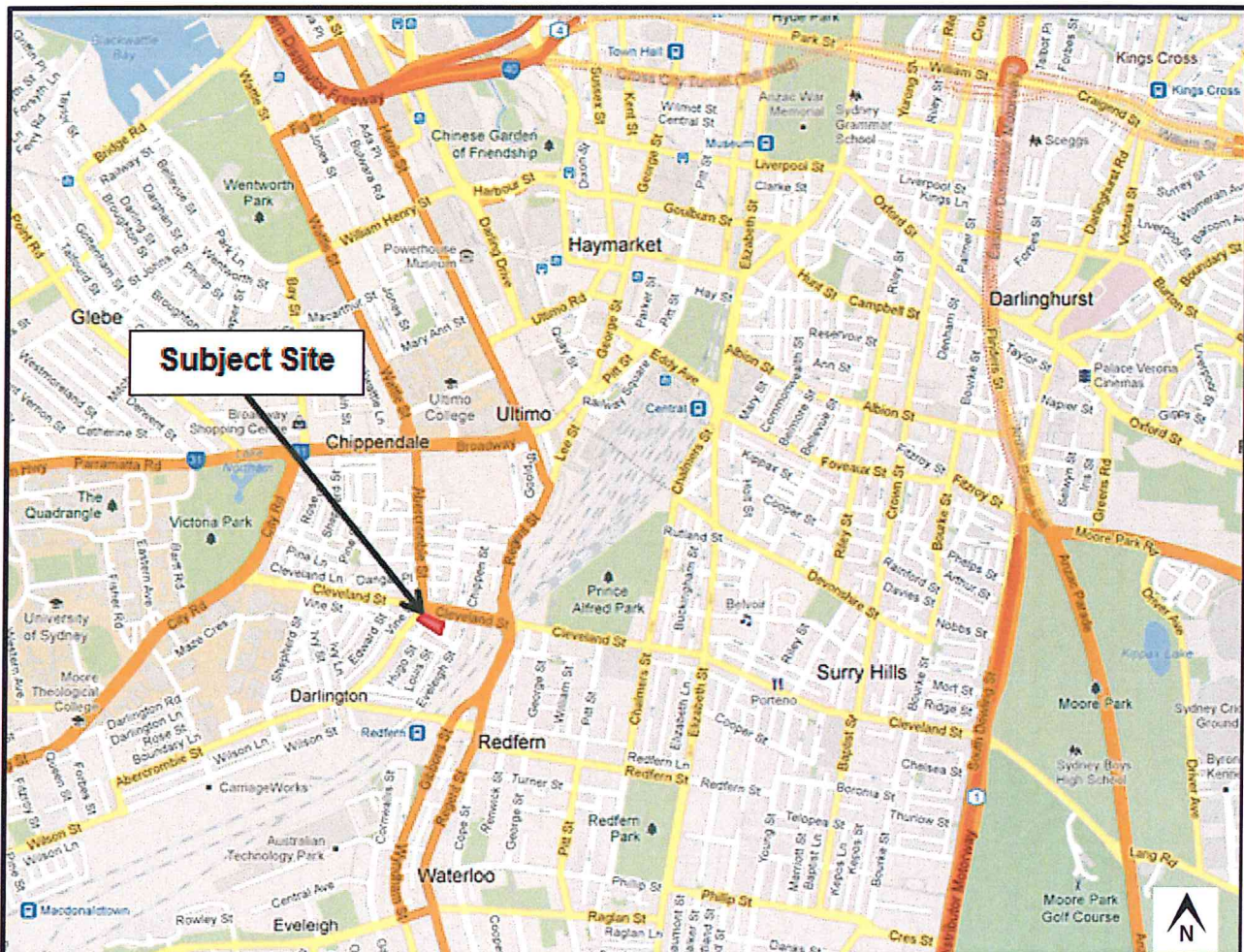
# 1. BACKGROUND

## 1.1 Introduction

The purpose of this report is to determine an application to modify development consent SSD 4949-2011 issued for a student accommodation development at 157-163 Cleveland Street, Redfern under section 96(1A) of the *Environmental Planning and Assessment Act 1979* (the EP&A Act). The application seeks to modify Condition D2(h) relating to the timing of the submission of an on-site archaeology interpretation plan to the Heritage Council of NSW and amend an approved awning structure at Cleveland and Abercrombie Streets.

## 1.2 Site and Locality

The site location is shown in **Figure 1** below at 157-163 Cleveland Street, Redfern. The site has frontages to Cleveland Street to the north, Abercrombie Street to the west, Hart Street to the east and Hudson Street to the south. The site is located south-west of the Sydney Central Business District, within short walking distance of both Redfern and Central Railway Stations. The site is within close proximity to several tertiary educational establishments including Sydney University, University of Technology Sydney and Notre Dame University. The site falls within the Redfern Waterloo area as defined in the State Environmental Planning Policy (State and Regional Development) 2011.



**Figure 1: Site Location**

The site has an area of 3,360m<sup>2</sup> and was previously occupied by buildings, consisting of a warehouse on the eastern part of the site. The majority of buildings associated with the site have now been demolished for construction of the approved development. However, the façade to the warehouse building (originally two factories) along Hart Street has been retained. The subject site is illustrated in **Figure 2**.





**Figure 2: Subject Site**

### 1.3 State Significant Development Approval

On 16 May 2012, the then Director-General, as delegate of the former Minister for Planning and Infrastructure approved a State Significant Development Application (SSD-4949-2011) for the redevelopment of the site for student accommodation. The SSD included:

- construction of a part 2 and part 5 storey building and partial retention of existing facades to Cleveland and Hart Streets;
- total GFA of 10,080 m<sup>2</sup>;
- total of 404 bedrooms with capacity for up to 461 students;
- provision of communal facilities including reception/lobby, administration room, meeting room, internet/study area, TV/games room, laundry room and communal kitchen;
- landscaped central courtyard; and
- site identification signs to Cleveland Street and Hudson Street.

### 1.4 Previous Modifications

The development consent has been modified on 6 occasions:

- MOD 1, was approved by the Department of Planning & Environment (the department) on 9 August 2012, to amend Condition A4 to defer the requirement to pay the Section 94F Affordable Housing contributions (originally required by the release of Construction Certificate) prior to the Occupation Certificate being obtained;
- MOD 2, was approved by the department on 19 October 2012, to amend conditions E4 and D9 relating to Green Star Rating and hours of work, amendments to Condition B3 relating to external signage on the Cleveland and Hudson Street frontages, materials and finishes and a new Condition A7 relating to external signage;
- MOD 3, was approved by the department on 31 January 2013, to amend Condition D2 (b) relating to Aboriginal and European Archaeology, and for demolition and reinstatement of the Hart Street elevation;



- MOD 4, was approved by the department on 14 August 2013, to reduce the number of student beds, modify the internal layout of the middle wing, fenestration changes in the central wing, and increase the size of the awning at Cleveland and Abercrombie Street;
- MOD 5, was approved by the department on 30 September 2013, to modify Condition E4 relating to Green Star Rating for the development, to enable consideration of the Green Star Rating under a custom tool developed in consultation with the Green Building Council of Australia; and
- MOD 6, was approved by the Planning Assessment Commission (PAC) on 6 June 2014 to modify Condition A4 to delete the requirement for payment of affordable housing contributions.

MOD 7 was withdrawn on 10 April 2014, which sought to defer payment of section 94F contributions to 12 months after the issue of the final Occupation Certificate.

This is Modification 8 of the approval that is explained in **section 2** below.

## 2. PROPOSED MODIFICATION

Urbanest Pty Ltd (the applicant) has lodged a modification application under section 96 (1A) of the EP&A Act to modify development consent (SSD 4949-2011). The proposal seeks to:

- modify condition D2 – Aboriginal & European Archaeology to extend the timeframe for the submission of:
  - the outline of the interpretation plan from 6 months to 12 months after the completion of the excavation programme; and
  - the final interpretation plan from 6 months to 12 months from the completion of the final excavation report for the site.
- amend the design of the approved awning structure at Cleveland and Abercrombie Streets to allow for additional weather protection on Cleveland Street.

## 3. STATUTORY CONTEXT

### 3.1 Modification of Approval

Section 96(1A) of the EP&A Act provides that a consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority, and subject to and in accordance with the regulations, modify a consent that is deemed to be substantially the same development.

Section 96(1A) of the EP&A Act identifies a number of matters which need to be considered in respect of modification applications, which are identified in **Table 1** below.

**Table 1:** Matters to be considered under section 96(1A) of the EP&A Act

Consideration	Comment
<i>The proposed modification is of minimal environmental impact</i>	<ul style="list-style-type: none"> <li>• The department considers that the proposal is of minimal environmental impact as the proposed amendments to Condition D2 and proposed awning are minor modifications. An assessment of the environmental impacts is provided in section 5 of this report.</li> </ul>
<i>The development to which the consent as modified relates is substantially the same as the development original approved</i>	<ul style="list-style-type: none"> <li>• The department considers that the proposed awning is substantially the same as the approved awning albeit providing additional length and weather protection in Cleveland Street. The amendment to Condition D2 provides a reasonable timeframe in order to provide certainty that the condition will be satisfied. Should the proposed modification be approved it will result in a development that is substantially the same to that which was originally approved.</li> </ul>
<i>Whether notification has occurred and any submissions have been considered</i>	<ul style="list-style-type: none"> <li>• The modification application was uploaded on the department's website. The City of Sydney Council and the Heritage Council of NSW do not object to the modifications, subject to conditions. No public submissions were received in relation to the modification application.</li> </ul>



*Consideration of relevant matters referred to in section 79C(1) of the EP&A Act*

- The relevant considerations under section 79C(1) are the impacts of the proposed modification on the natural and built environment. The modification request does not result in any additional adverse impacts on the surrounding locality or the effect the suitability of the site for the development.

### 3.2 Environmental Planning Instruments

The following EPIs were considered in the environmental assessment of the original development application:

- State Environmental Planning Policy (State & Regional Development) 2011;
- State Environmental Planning Policy (Major Development) 2005;
- State Environmental Planning Policy (Infrastructure) 2007;
- State Environmental Planning Policy No. 65-Design Quality of Residential Flat Development & accompanying Residential Flat Design Code;
- State Environmental Planning Policy (Affordable Rental Housing) 2009;
- State Environmental Planning Policy (Urban Renewal) 2010; and
- State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004.

Given the proposed modifications seek to amend Condition D2(h) relating to the timeframe of submission of interpretation plans and amend an approved awning the department's assessment concludes that the proposed modifications are minor and will continue to comply with the previously considered relevant EPIs.

### 3.3 Delegated Authority

In accordance with the Minister for Planning's delegation effective 1 October 2011, the Director, Industry, Key Sites and Social Projects may determine the application as:

- the relevant local council has not made an objection;
- a political donation disclosure statement has not been made; and
- there are less than 10 public submissions in the nature of objections.

## 4. CONSULTATION AND SUBMISSIONS

### 4.1 Notification

The application was notified in accordance with the Environmental Planning & Assessment Regulation 2000. The modification request was made available on the department's website and referred to the City of Sydney Council and Heritage Council of NSW for comments. Due to the minor nature of the proposal, the modification request was not exhibited by any other means.

### 4.2 Public Authority Submissions

The City of Sydney Council and Heritage Council of NSW do not object to the proposed modifications. Both public authorities recommended a condition to be included in the approval regarding the interpretation strategy that *requires all endorsed interpretation works for the site be completed prior to the issue of an Occupation Certificate*. Each public authority submission is discussed further in **Section 5** below.

### 4.3 Public Submissions

No public submissions were received in relation to the modification request.

## 5. CONSIDERATION OF PROPOSED MODIFICATIONS

### 5.1 Condition D2 - Aboriginal & European Archaeology

The existing Condition D2(h) requires:

- an outline of an interpretation plan to be submitted to the Heritage Council of NSW for comment and endorsement within six (6) months of the completion of the excavation programme; and
- the final interpretation plan to be submitted to the Heritage Council of NSW for comment and endorsement within six (6) months of the completion of the final excavation report for the site.

As explained in **Section 2**, the modification request proposes to extend the timeframe of each of the above requirements from 6 months to 12 months, following completion of the excavation programme/report respectively.

The applicant has advised that it is not possible to provide the outline and final interpretation plans within the 6 month timeframe due to delays in appointing a suitably qualified archaeologist to the project.

The Heritage Council of NSW initially advised that it did not support the deferral of the submission of the requirements by a further 6 months, on the basis that the applicant had not yet provided an outline of the interpretation plan, which it considered to be required by June 2014.

The applicant confirmed that notification of the completion of the excavation programme was provided to the Heritage Council on 22 January 2014, and therefore considers that the outline must be submitted to the Heritage Council by 22 July 2014 in accordance with the existing condition.

The applicant subsequently provided a draft outline of an interpretation plan to the Heritage Council for review. The Heritage Council advised that the draft outline did not provide a sufficient level of detail for the proposed interpretation of the site. Notwithstanding, the Heritage Council advised that it now supports a modified timing for submission on the basis of the proponent providing:

- an outline of the interpretation plan being submitted by 1 September 2014; and
- the final interpretation plan being submitted within 12 months of completion of the final excavation report for the site which would be (22 January 2015).

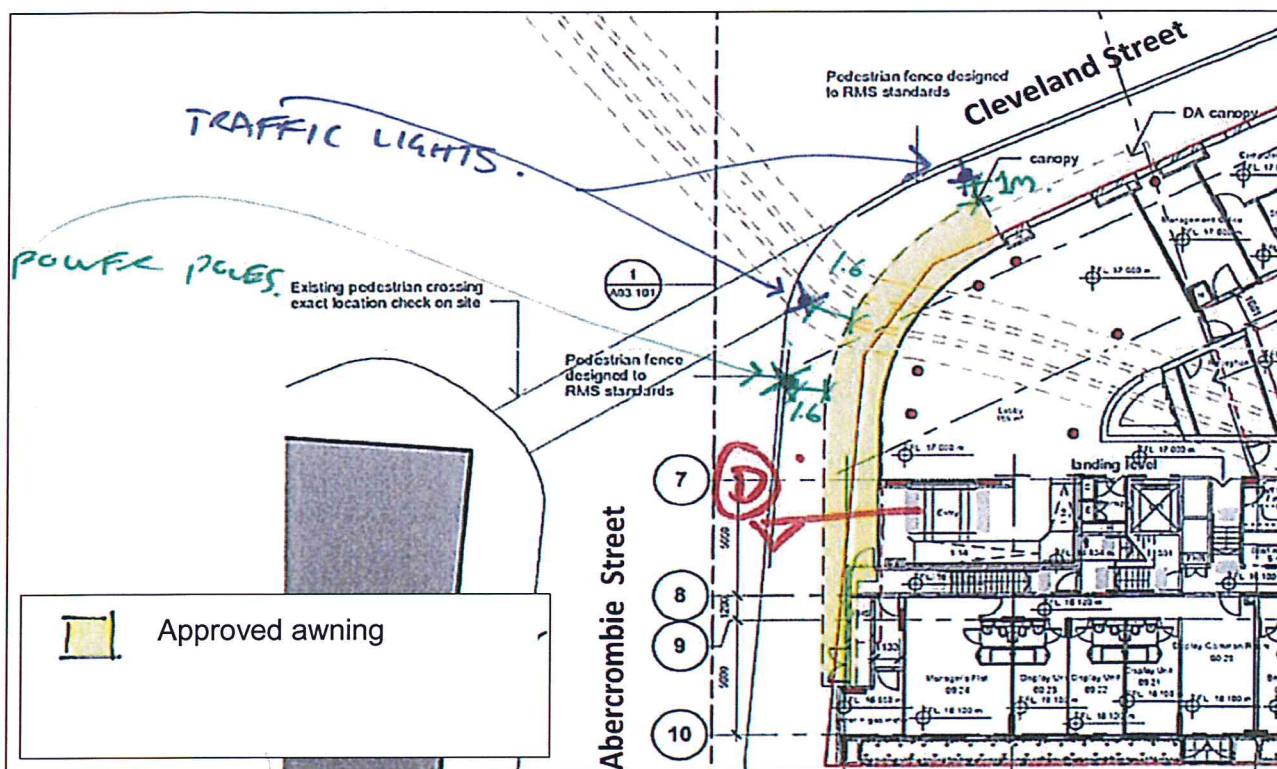
The City of Sydney Council raised no objection to the proposed extension of the submission timeframe to 12 months. In order to provide certainty on the completion of the interpretation works, Council recommended that a condition be imposed requiring all endorsed interpretation works be completed prior to the issue of an Occupation Certificate. The Heritage Council of NSW also supported the imposition of this condition.

The department considers that the proposed modification to Condition D2 is acceptable as it will allow a reasonable extension of time to the proponent to satisfy the requirements of the condition. The department supports the timeframes provided by the Heritage Council and the recommended condition provided by Council, as it provides a greater level of certainty that the interpretation works will be completed in a timely and achievable manner.

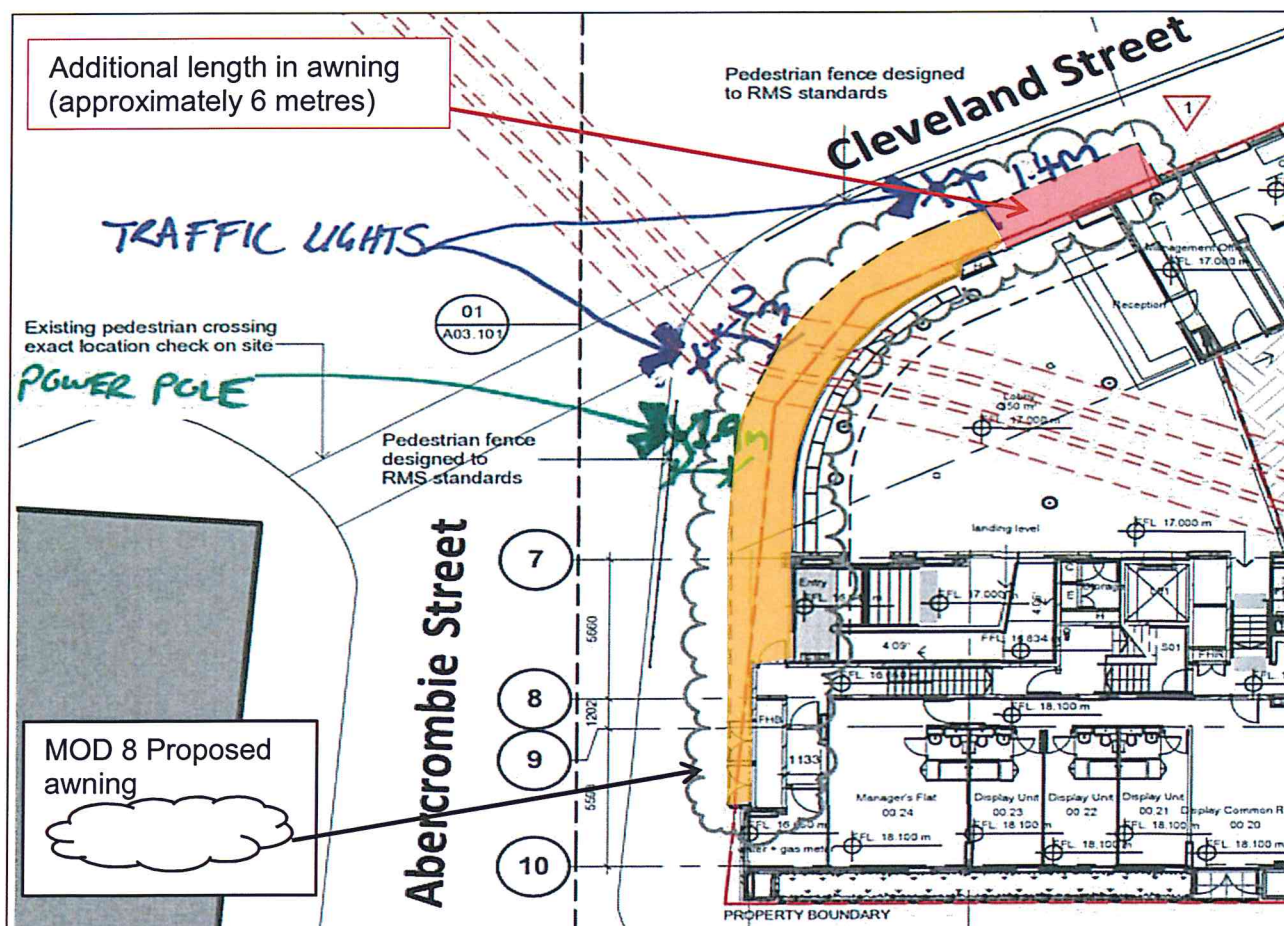
### 5.2 Awning

The modification seeks approval for amendments to the approved awning to provide greater weather protection at Cleveland and Abercrombie Streets (refer to **Figure 3 and 4**). The proposed modification is similar in width to the previously approved awning and will provide an additional length of approximately 6 metres as outlined in **Figure 4**.





**Figure 3:** Extract of awning structure approved under modification 4 of the approval



**Figure 4:** Extract of proposed awning structure (clouded) showing setbacks from existing street utilities, and additional length in awning coverage (shown in red)



The City of Sydney Council raised no objection to the proposed modified awning as it will not result in adverse impacts to the streetscape or pedestrian amenity. The Heritage Council of NSW made no comments to the modification of the proposed awning.

The department considers the proposed modified awning is generally consistent with the existing approved awning and will provide greater weather protection along Cleveland Street than the approved awning. The proposed awning complies with the awning sizes and setbacks from utility poles and traffic lights as set out in the guidelines for awnings in the Sydney Development Control Plan 2012. In this regard, the proposed modification to the awning is considered acceptable.

## 6. CONCLUSION AND RECOMMENDATION

The department considers that the proposed modification is consistent with the originally approved development application (SSD 4949-2011). The proposed modification does not result in any additional adverse impacts on the surrounding locality.

The modification application has been assessed in accordance with the matters for consideration under section 96(1A) and 79C of the EP&A Act, and all relevant environmental planning instruments, and is considered acceptable, subject to conditions.

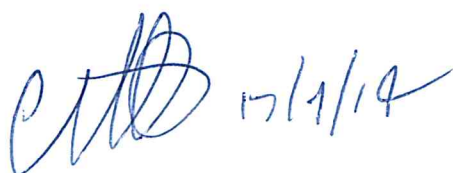
On balance, the department is satisfied with the recommendations made by Council and Heritage Council of NSW regarding Condition D2. In relation to the awning, the department considers that the proposed extension to the awning is acceptable and is generally consistent with the existing approved awning.

It is therefore recommended that the Director, Industry, Key Sites and Social Projects:

- (a) **consider** the findings and recommendations of this report;
- (b) **approve** the modification subject to conditions under section 96(1A) of the *Environmental Planning and Assessment Act 1979*; and
- (c) **sign** the attached Instrument of Modification (**Appendix C**).

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Approved by



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## APPENDIX A      MODIFICATION REQUEST

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See the department's website at:

[http://majorprojects.planning.nsw.gov.au/index.pl?action=view\\_job&job\\_id=6528](http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=6528)



## **APPENDIX B      SUBMISSIONS**

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