

18 June 2015

Carolyn McNally
The Secretary
NSW Department of Planning & Environment
23-33 Bridge Street
Sydney NSW 2000

Attention: Amy Watson, Team Leader Government Sites and Social Projects

Dear Ms McNally,

Section 96 Modification Application: SSD_5093 – M2 Site, North Ryde Priority Precinct

1 Introduction

This Statement has been prepared by Urbis on behalf of UrbanGrowth NSW (UGNSW) to accompany an application under Section 96(2) of the *Environmental Planning and Assessment Act 1979* (EP&A Act) to modify Development Consent SSD_5093 for the M2 Site, within the North Ryde Priority Precinct. The Executive Director of the Department of Planning and Environment (DP&E), as a Delegate of the Minister for Planning approved SSD_5093 on 6 March 2015.

Consent SSD_5093 approved the relocation of an existing gas pipeline that has an alignment from Wicks Road crossing approved Lot 201 to the Hills M2 Motorway corridor lands to an alignment that runs north east along Wicks Road to the M2 Motorway abutment and follows the eastern boundary of the M2 Motorway within approved Lot 201. Reference is made to the approved drawing 13656B C-0-3-00 Rev 6 General Arrangement Plan Sheet 1 of 2 prepared by Robert Bird Group listed in Condition A5.

This modification application seeks consent to change the alignment of the approved gas pipeline relocation from within UGNSW land, to Roads and Maritime Services (RMS) land adjacent to the Hills M2 Motorway and Wicks Road. The works adjacent to the M2 Motorway extend up to five metres from the boundary line between UGNSW and RMS land commencing adjacent to Wicks Rd, Macquarie Park, west of the M2 Motorway overpass, and proceeding approximately 200m south along the M2 motorway's western boundary (M2 Motorway corridor lands).

The works will involve the removal of an existing gas pipeline within the UGNSW land. The works will require the removal of vegetation (primarily weeds and exotic species), disturbance to an artificial drainage line and some soil disturbance. Mitigation measures to minimise and avoid indirect impacts are recommended by ELA will be undertaken through the implementation of a Construction Environmental Management Plan (CEMP). A CEMP is required by Condition B3 of the SSD_5093 Consent. A new condition of consent is invited to be included in Part C of the SSD_5093 Consent, that will require UGNSW to implement the recommended measures to rehabilitate disturbed areas from the Flora and Fauna Assessment submitted with this application following the relocation of the gas pipeline.

The report has been prepared with reference to the Director General's Environmental Assessment Requirements (DGEARS) issued on 19 May 2014 for SSD_5093. This report should be read in conjunction with the following:

- **Modified General Arrangement Plan** titled, "Plan of proposed new route of gas main to accompany an application by UGNSW to amend consent SSD_5093" (Ref: Drawing No. 13656B C-0-9-20 Rev. 1) and prepared by Robert Bird Group (Attachment A);
- **Lachlan's Line Gas Main Relocation – Flora and Fauna Assessment.** prepared by Eco Logical Australia dated June 2015 (Attachment B); and
- **Legal advice** prepared by Lindsay Taylor Lawyers dated 28 May 2015 (Attachment C).

The application is made on line via the Department of Planning & Environment (DP&E) electronic submission procedures. It is understood that DP&E will issue an invoice for assessment fees to UGNSW.

2 The site

The area where the gas pipeline is to be relocated is bound by Wicks Road to the north, North Ryde Station Precinct area to the south, Hills M2 Motorway in the east and an internal access road in the west. The area includes an artificial drainage line (concrete gutter) running from the south-east to north-west direction and the adjacent M2 road batter. Exotic and noxious weeds have established either side of the concrete gutter.

The M2 Motorway corridor lands are currently zoned SP2 Infrastructure – Classified Road, under the Ryde Local Environmental Plan 2014 (RLEP 2014).

3 Consultation

UGNSW has consulted with representatives of RMS, Transurban (operators of the M2 Motorway) and Jemena in respect of the proposed new alignment of the gas main. Those representatives have indicated support for the proposed realignment of the gas main to within the M2 Corridor Lands in principle, subject to obtaining the necessary approvals and environmental compliance.

4 The Approved Development

On the 5 March 2015, development consent was granted for SSD_5093. The development consent includes the following description of the approved development:

"Concept Proposal including:

- *Subdivision into 12 development lots, 5 public domain space lots, 2 public road lots;*
- *Allocation of a maximum gross floor area to each of the development lots (total of 238,919m² across the site plus an additional 2,500m² to Lot 104 for a community facility);*
- *Infrastructure, civil works and landscaping*

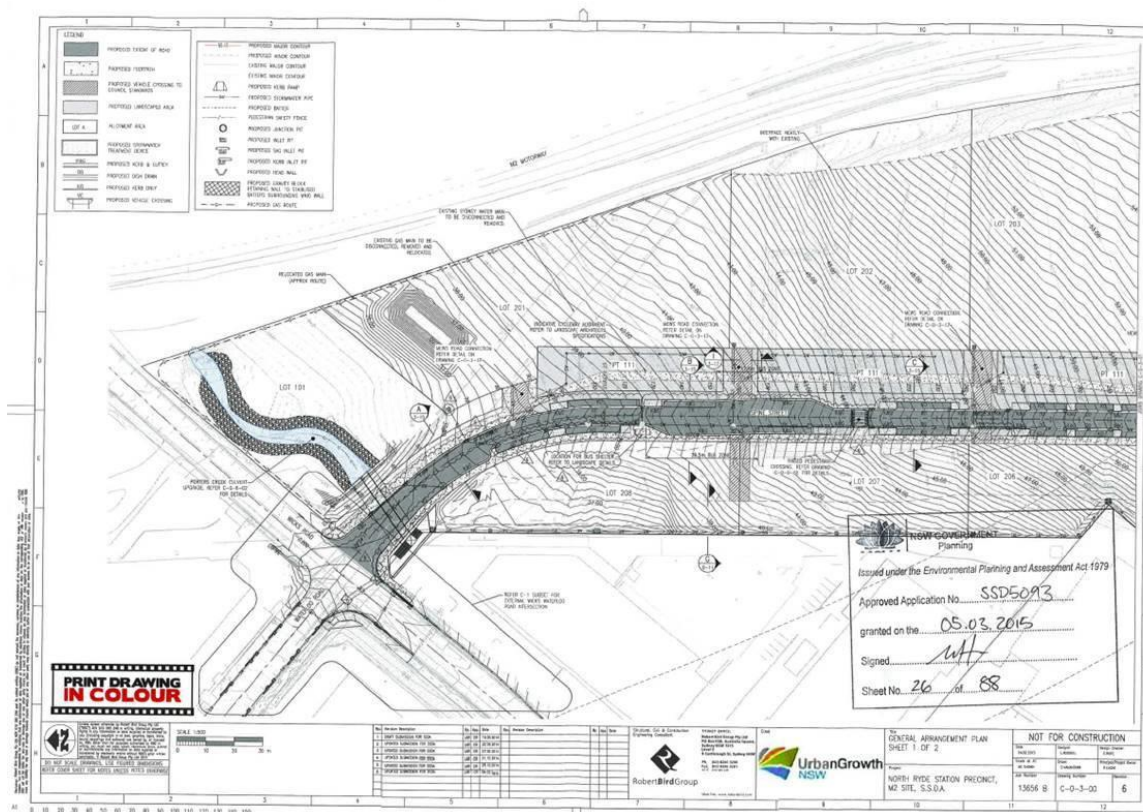
Stage 1 development works in the following phases:

- Phase 1 – Site preparation works including demolition, remediation and rehabilitation, bulk earthworks;
- Phase 2A – superlot subdivision to create 4 public roads and a future public road lot; five public reserve lots; three future development lots and two superlots;
- Phase 2B – Civil and public domain works including road and intersection construction; open space embellishment, pedestrian pathways and cycleways, drainage, public domain works and services infrastructure.
- Phase 3 – subdivision to create 8 development lots; and
- Phase 4 – Construction of a pedestrian bridge over Delhi Road”.

Condition A5 provides that the applicant is required to carry out the approved development generally in accordance with SSD_5093, conditions of consent, and drawings listed in the table that include civil engineering drawings that reference the relocation of the existing gas pipeline.

The gas pipeline currently exists on the northern side of the existing access road and extends westwards along the northern side of Waterloo Road. The gas main was approved to be relocated as it would be aligned through an approved development lot on the M2 site and would impact on the ability to build basements to serve residential developments. The SSD_5093 includes approval to relocate the gas pipeline along, but within, the eastern and northern boundaries of the M2 site and removal of the existing gas pipeline. Figure 1 shows the approved plan illustrating the approved alignment of the relocated gas pipeline.

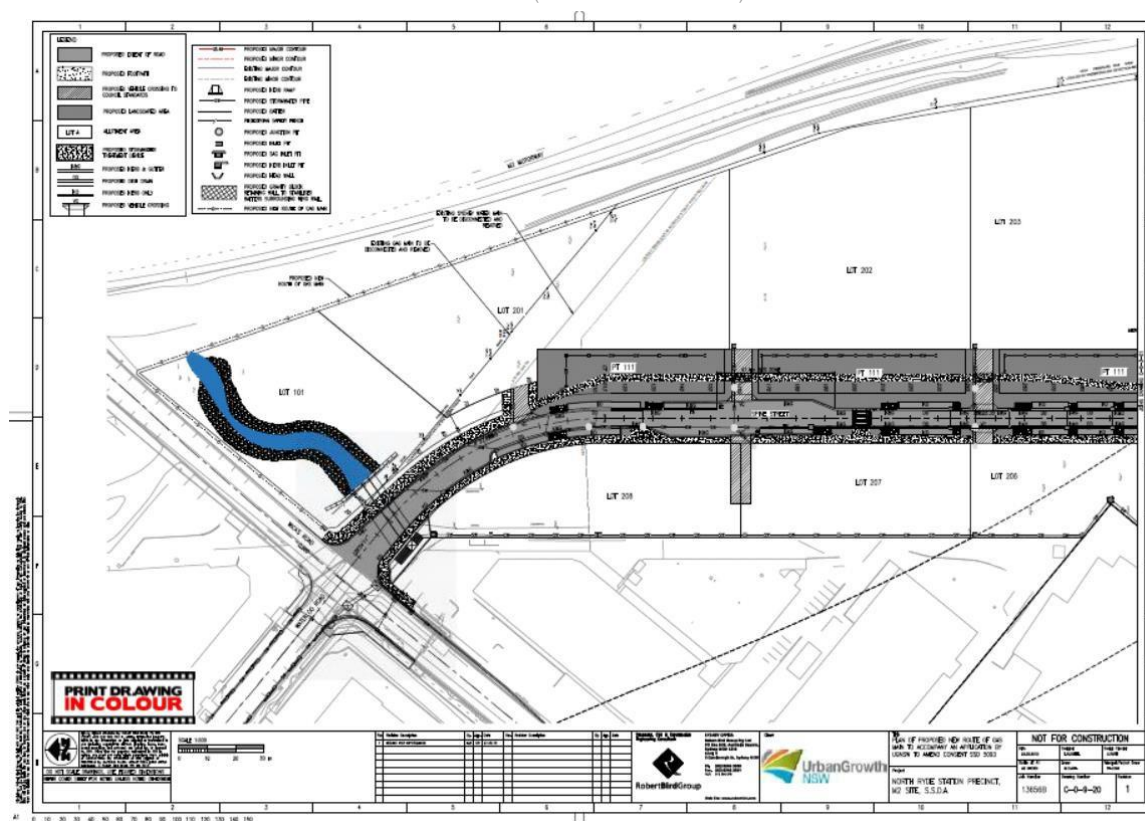
FIGURE 1 – APPROVED GAS MAIN RELOCATION (REFERENCE: DRAWING 13656B C-0-3-00 REV 6 GENERAL ARRANGEMENT PLAN SHEET 1 OF 2)



5 The Proposed modification

It is proposed to relocate the approved gas main alignment to a similar position to that presently approved but outside the M2 Site owned by UGNSW and within the M2 Motorway corridor lands and within the Wicks Road reserve. The new alignment is intended to be cleared of existing vegetation for the trenching and relocation of a gas pipeline. The corridor impacted is up to 5m wide by 200m long and resides within land under RMS ownership, commencing adjacent to Wicks Rd, west of the M2 overpass, and proceeding south along the M2 motorway's western boundary. Figure 2 shows the propose replacement plan illustrating the new alignment of the gas pipeline.

FIGURE 2 – PLAN OF PROPOSED GAS MAIN RELOCATION (REFERENCE: C-0-9-20)



6 Reason for modification

The modification to the alignment of the gas pipeline will allow bulk earthworks to proceed on the M2 Site without the constraint of Jemena's works to relocate the gas pipeline. The proposed alignment of the gas pipeline to within the M2 Motorways corridor lands and within Wicks Road, which will eliminate the need for an encumbrance on the title of approved Lot 201 and the Northern Bushland Park.

The new alignment of the gas pipeline will assist in minimising impacts on existing native vegetation in the Northern Bushland Park when compared to the approved alignment.

7 Proposed modifications to conditions of consent

Based on the amended development proposal set out in section 4 above, it is proposed to amend the conditions A5 of SSD_5093 as set out in the following section.

7.1.1 CONDITION 1(A) APPROVED DEVELOPMENT

Table 1 describes the amended drawing to be substituted and approved under Condition A5:

TABLE 1 – CIVIL PLANS BY ROBERT BIRD GROUP

DRAWING NUMBER	REVISION	NAME OF PLAN	DATE
C-0-3-00	6	General Arrangement Sheet 1 of 2	04-02-15
C-0-9-20	1	Plan of Proposed New Route of Gas Main to Accompany an Application by UGNSW TO Amend Consent SSD5093	27.05.15

7.1.2 PROPOSED NEW CONDITION C23 – REHABILITATION OF THE NATIVE VEGETATION ON M2 MOTORWAY CORRIDOR LANDS

Mitigation measures at seek to minimise and avoid indirect impacts as a result of the relocation of the gas pipeline are recommended by ELA. The following condition of consent is invited to be inserted in Part C of the SSD_5093 Consent that will require UGNSW to implement the recommended measures to rehabilitate disturbed areas from the Flora and Fauna Assessment:

REHABILITATION OF DISTURBED AREAS FOR GAS PIPELINE ON M2 MOTORWAY CORRIDOR LANDS

C23. Rehabilitation of the M2 Motorway Corridor Lands disturbed by works associated with the relocation of the gas pipeline is to be carried out in accordance with the recommendations of the Flora and Fauna Assessment prepared by Eco Logical Australia Pty Ltd dated June 2015.

8 Section 96(2)

The appropriate means of administering this application is under Section 96(2) of the EP&A Act. The relevant part states the following:

“Section 96(2) Other modifications:

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 the consent if:

- a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and*

- b) *it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 5) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and*
- c) *it has notified the application in accordance with:*
 - (i) *the regulations, if the regulations so require, or*
 - (ii) *a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and*
- d) *it has considered any submissions made concerning the proposed modification within the period prescribed by the regulations or provided by the development control plan, as the case may be”.*

The NSW Land and Environment Court has established several precedents as to what may be considered as being “substantially the same development”, and what should be considered for this threshold test.

The consideration of this test should not only include the physical characteristics of the approved and modified schemes, but also the nature and magnitude of the impacts of the developments. In these respects, the modified scheme should be “essentially or materially” the same as that originally approved.

A very similar scale of impacts are expected as a result of excavating of trench for the relocated gas pipeline when compared to the approved development, and as such the proposed modified development is considered to be substantially the same as the original approval (SSD_5093).

8.1 RYDE LOCAL ENVIRONMENTAL PLAN 2014

The new alignment of the gas pipeline is proposed within the M2 Motorway corridor lands. Under the provisions of the Ryde LEP 2014, the M2 Corridor Lands are zoned SP2 Infrastructure “Classified Road”.

The objectives of the S2 Infrastructure zone are:

“To provide for infrastructure and related uses.

To prevent development that is not compatible with or that may detract from the provision of infrastructure.

To ensure the orderly development of land so as to minimise any adverse effect of development on other land uses”.

The proposed development of a gas pipeline is consistent with the SP2 Zone objectives in that the pipeline is infrastructure and works proposed involve the relocation of a utility serving in the Ryde community. The pipeline works will not prevent the continued operation of the M2 Motorway, and is considered to be compatible with the use of the corridor as a motorway.

Classified Roads is the specific use identified on the Land Use Map. Roads and any development that is ordinarily incidental or ancillary to development for that purpose is permissible with consent. The gas pipeline is categorised as infrastructure works that are ancillary to the M2 Motorway use. The gas pipeline currently exists in the M2 Motorway corridor and it is proposed to extend the pipeline within the M2 Motorway corridor lands from the point where the existing gas pipeline enters the M2 Site to Wicks Road to the north.

It is intended to carry out the gas main relocation works in an orderly manner, and in accordance with a construction management plan, to minimise and avoid impacts on the operation of the M2 Motorway. This obligation is already covered by Condition 83 of Consent SSD 5093, so no further amendment of the consent is required for this purpose.

8.2 ANY PLANNING AGREEMENT

UGNSW has made an offer to the Minister for Planning to enter into a VPA. The amendment sought in this application does not affect UGNSW’s offer or the proposed VPA in any way.

8.3 THE REGULATIONS

None applicable for this proposal.

8.4 COASTAL MANAGEMENT PLAN

None applicable for this proposal.

9 Key Planning considerations

9.1 INTRODUCTION

This section provides an assessment of the proposed DA pursuant to the heads of consideration contained in Section 79C(1)(b), (c), (d) and (e) of the EP&A Act:

“79C (1)

(b) the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,

(c) the suitability of the site for the development,

(d) any submissions made in accordance with this Act or the

regulations, (e) the public interest”

10.2 LIKELY IMPACTS OF THE PROPOSED DEVELOPMENT

10.2.1 FLORA AND FAUNA

Eco Logical Australia (ELA) was commissioned by UGNSW to assess the direct and indirect ecological impacts associated with the proposed relocation of the gas pipeline to the M2 Motorway corridor lands. ELA previously conducted surveys within UGNSW land to the west of the study area to inform the Environmental Impact Assessment (EIA) associated with the North Ryde Station Precinct and the ecological assessment of the original gas line relocation. The Flora and Fauna Assessment, provided at **Attachment B** should be read in conjunction with the following reports submitted with SSD_5093, prepared by ELA:

- Ecological Impact Assessment (EIA); and
- Vegetation Management Plan (VMP)

Approximately 0.51 ha of Sydney Sandstone Ridgetop Woodland ecological community in low condition was identified within the study area by Ecological Australia. The proposed impact area has been assumed to be the study area as it is unknown the exact width of the impacted area until a contractor has been engaged to undertake the works.

ELA undertook its assessment having regard to relevant Commonwealth and State legislation and policies, as well as local policies apply to the assessment, planning and management of ecological issues within the study area, as follows:

- *Environmental Protection and Biodiversity Conservation Act 1999 (EPBC Act);*
- *Environmental Planning and Assessment Act 1979 (EP&A Act)*
- *Threatened Species Conservation Act 1995 (TSC Act)*

ELA found no threatened flora species during the field survey. In addition, the study area was considered to be disturbed and was dominated by exotic vegetation in the understorey. As such, impacts to threatened flora are not considered likely to occur as a result of the relocation of the high pressure gas pipeline.

The M2 Motorway corridor lands were considered by ELA to provide limited habitat for common native fauna species. Despite this it is considered to be unlikely to provide suitable habitat for any threatened fauna. It is noted that some fauna species may utilise the study area intermittently as marginal foraging habitat. However, due to the large availability of foraging habitat in the locality, disturbed nature of the vegetation and dominance of exotic species in the understorey, adverse impacts to these fauna are not considered likely to occur as a result of the relocation of the gas pipeline.

Potential indirect impacts identified that may result from the proposed gas line relocation and include:

- Changes to hydrology through run off, sedimentation and erosion from construction works.
- Increased edge effects (including spread of weeds).

ELA concluded that these indirect impacts are likely to be limited, due to the current disturbance of the study area, current dominance of exotic species and weeds in the understorey, and its position adjacent to the M2 road batter.

Mitigation measures to minimise and avoid indirect impacts are recommended by ELA will be undertaken through the implementation of a Construction Environmental Management Plan (CEMP). A CEMP is required by Condition B3 of the SSD_5093 Consent. A condition of consent is invited to be included in Part C of the SSD_5093 Consent that requires UGNSW to implement the recommended measures to rehabilitate disturbed areas from the Flora and Fauna Assessment submitted with this application following the relocation of the gas pipeline..

10.3 SUITABILITY OF THE SITE

The proposed development is considered to be suitable for the subject site for the following reasons:

- The modified proposed alignment of the gas pipeline is located in the M2 motorway batter and in Wicks Road. The development will not have any adverse impacts on the adjoining properties or the operation of the M2 Motorway,
- No adverse direct or indirect impacts on endangered and threatened ecological communities or species are likely.
- The proposed modification is permissible as subdivision works in the Ryde LEP 2014 and has been assessed against the relevant planning controls and determined to be generally consistent with the approved development.

For the above reasons, the proposal is considered suitable for the subject site.

10.4 PUBLIC SUBMISSION AND PUBLIC INTEREST

Submissions received by DP&E in response to this proposal will be considered under Section 79C of the EP&A Act.

The proposal is considered to be in the public interest for the following reasons:

- Allows for the civil and subdivision works on the M2 Site to occur in an orderly manner that will facilitate the achievement of the Lachlan's Line development, a high quality mixed use and transit oriented community; and
- Is consistent with the intent of underlying zoning of the M2 Motorway corridor lands to allow utilities and services within the road corridor.

11 Summary and Conclusion

In summary:

The relocation of the gas pipeline, as modified, is considered to be substantially the same development as was approved under the original consent SSD_5093.

The gas pipe relocation works proposed within the M2 Motorway corridor lands in this application are 'State Significant Development', under Clause 8(2) of the SRD SEPP, and is consistent with the underlying intent of the land use zone for the land.

The works will see the removal of vegetation to construct a trench for the gas pipeline. Direct and indirect environmental impacts have been considered by ELA and found to be minimal and manageable. No impacts are expected on any threatened or endangered ecological communities or species. Mitigation measures are to be employed through the implementation of a CEMP to minimise sedimentation and erosion of the land during excavation and construction works. A condition of consent is invited to be included in Part C of the SSD_5093 Consent, requiring the ELA recommendations to rehabilitate the M2 Motorway Corridor Lands following the gas pipeline relocation.

As demonstrated within this report and the attached documentation, the modified consent is considered to be acceptable under the relevant considerations of Section 79C of the EP&A Act, and as such it is recommended that approval be granted to the proposal as modified.

Yours sincerely,



Murray Donaldson
Director

Attachment A

Modified General Arrangement Plan titled, "Plan of proposed new route of gas main to accompany an application by UGNSW to amend consent SSD_5093" (Ref: Drawing No. 13656B C-0-9-20 Rev. 1) and prepared by Robert Bird Group.

Attachment B

Lachlan's Line Gas Main Relocation – Flora and Fauna Assessment. prepared by
Eco Logical Australia dated June 2015.

Attachment C

Legal advice prepared by Lindsay Taylor Lawyers dated 28 May 2015.