



12354  
27 June 2013

Megan Fu  
NSW Department of Planning and Infrastructure  
23-33 Bridge Street  
SYDNEY NSW 2000

Dear Megan,

**SECTION 96(1A) MODIFICATION APPLICATION TO SSD 5373  
UNSW, MATERIALS SCIENCE AND ENGINEERING BUILDING**

On behalf of the University of New South Wales (UNSW) we write to request that the Minister (or his delegate) modify State Significant Development Approval (SSD 5373) under Section 96(1A) of the *Environmental Planning and Assessment Act 1979* (EP&A Act) as described below.

This modification seeks an amendment to Condition B17 Flooding, to enable basement openings to be 0.3m above the 1 in 100 year flood level.

This submission identifies the existing State Significant Development (SSD) Approval and describes the proposed modification. It is accompanied by the Application Form, fee and a copy of the REF Stormwater Management Plan prepared by TTW.

**1.0 BACKGROUND**

On 19 June 2013, approval was granted for the construction of a new Materials Science and Engineering Building at the UNSW Kensington Campus. In December 2012, a range of works were authorised on and in the vicinity of the site under Part 5 of the EP&A Act. This included stormwater infrastructure works, which were designed with capacity to cater for the new building.

Following review of the final conditions, it became apparent that Condition B17 was unfeasible, and contrary to the REF authorisation. It is noted that the condition was inserted following the University's review of the draft instrument, and both the Department of Planning and Infrastructure (the Department) and Council have given in principle support to the proposed amendment to this condition.

**2.0 DESCRIPTION OF MODIFICATION**

The proposed modification seeks to amend Condition B17 as follows. Words proposed to be deleted are shown in ~~bold strike-through~~ and words to be inserted are shown in ***bold italics***.

*Flooding*

*B17 The applicant shall demonstrate to the Certifying Authority that any opening into the basement area of the building is located ~~0.5 metres~~ ***0.3 metres*** above the determined one per cent AEP (1 in 100 year) flood or suitably protected up to this level.*

### 3.0 SUBSTANTIALLY THE SAME DEVELOPMENT

Pursuant to Section 96(1A) of the EP&A Act, Council may modify development consent if:

- (a) *it is satisfied that the proposed modification is of minimal environmental impact, and*
- (b) *it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all), 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 any period prescribed by the regulations or provided by the development control plan, as the case may be.*

Section 96(3) of the Act requires the consent authority to take into consideration such of the matters referred to in Section 79C (1) as are of relevance to the development the subject of the application.

The proposed modification will not alter the nature of the approved development. The proposed amendment seeks to make the SSD Approval consistent with the REF Authorisation, and Council's standards which were applicable at the time the stormwater infrastructure works were authorised. It does not seek to change the use, built form, public domain or any other key aspects of the approved SSD development. As a result, the proposed development remains substantially the same as the approved development and is of minimal environmental impact.

The incorporation of the proposed modifications will result in a development which is substantially the same as the approved development. The modification of the SSD Approval can therefore lawfully be approved under Section 96 of the EP&A Act

### 4.0 JUSTIFICATION AND ENVIRONMENTAL ASSESSMENT

Section 96(1A) of the EP&A Act states that a consent authority may modify a development consent if "*it is satisfied that the proposed modification is of minimal environmental impact*".

The following assessment demonstrates that the development, as proposed to be modified, will be of minimal environmental impact.

The modification is required to make the Condition B17 consistent with Council's freeboard provisions at the time the REF works were authorised. Whilst Council's DCP provisions do not apply to REF or SSD applications, Council was consulted during the preparation of the REF, and did not raise any concerns regarding the height of the basement openings.

The Stormwater Management Plan that TTW prepared to support the REF (attached for information) confirms that the 300mm freeboard authorised under the REF complied with the Council provisions at the time, stating that:

*The Campus 2020 Stormwater Strategy also identifies a formal diversion structure that exists on Union Road. Levels are raised around the Applied Science loading dock entry to prevent flooding up to the 100yr ARI. Proposed levels around this area will be designed to ensure that the risk of flooding to this loading dock is not increased. A minimum freeboard of 300mm is provided in accordance with Randwick Council guidelines. The HGL for the 100year ARI at this location is RL28.20m and the level of the entrance to the loading dock is at RL28.90m.*

## 5.0 CONCLUSION

The modification proposed in this Section 96(1A) application relates to a minor change to the wording of Condition 17, to be consistent with Council's standards at the time the stormwater works were approved. The proposed modification will not give rise to any additional environmental impacts, and the development as modified will be substantially the same as that which was approved under SSD 5373.

Should you have any queries about this matter, please do not hesitate to contact me on 9956 6962 or [ktudehope@jbaplanning.com.au](mailto:ktudehope@jbaplanning.com.au).

Yours faithfully,

A handwritten signature in blue ink, reading 'K. Tudehope'.

Kate Tudehope  
*Senior Planner*