



MN/BH/GK
13473
11 June 2015

Ms Carolyn McNally
Secretary
Department of Planning and Environment
23 Bridge Street
SYDNEY, 2000

Attention: Ben Lusher

**SECTION 96(1A) MODIFICATION APPLICATION TO SSD-6457
409 HUNTER STREET, 300 KING STREET, NEWCASTLE AND 20 LAMAN STREET**

On behalf of the University of Newcastle (UON) we hereby submit an application pursuant to section 96(1A) of the *Environmental Planning and Assessment Act, 1979* (EP&A Act) to modify Development Consent SSD-6457 relating to the development of the NeW Space Facility in Newcastle.

Since receiving the development consent, UON has undertaken further design development and is now seeking a series of minor modifications to the approved development. Such design development changes are to be expected in a building of this scale and nature.

Fundamentally, the proposed changes result in development that is substantially the same as originally approved. The changes do not affect the quality of design or the delivery of a key educational establishment and associated pedestrian connections that will facilitate the first stage of the Newcastle City Centre urban renewal.

This application identifies the consent, describes the proposed modifications and provides a planning assessment of the relevant matters for consideration contained in section 96(1A) and 79C(1) of the EP&A Act. It should be read in conjunction with the Environmental Impact Statement (EIS) prepared by JBA dated August 2014 and is accompanied by:

- Amended Architectural Drawings, prepared by Lyons and EJE Architecture (**Attachment A**);
- Amended Public Domain / Landscape Drawings, prepared by McGregor + Coxall (**Attachment B**);
- Statement of Heritage Impact prepared by EJE Heritage (**Attachment C**).

1.0 BACKGROUND

1.1 Consent proposed to be modified

Development Consent SSD-6457 was granted on 15 February 2015 by the delegate of the Minister for Planning. The approved development includes the construction of an educational establishment, known as the New Space Project, comprising:

- a new ten storey educational building to provide lecture theatres, library, teaching and learning spaces, office spaces and ancillary retail space;
- refurbishment works to University House;
- construction of pedestrian links between the new education building and University House;

- upgrade and expansion of the existing Laman Street Car Park; and
- associated civil and landscaping works.

2.0 OVERVIEW OF PROPOSED MODIFICATIONS

The further detailed design review of the building has created the impetus for the proposed modifications. The building changes essentially reflect the natural evolution that occurs within the development process as the construction documentation is commenced and original assumptions about the workings and mechanics of the building designs are tested through more detailed analysis. These design development driven changes are to be expected in any project, especially given the state significant nature and scale of the approved NeW Space project.

An overview of the proposed key modifications is provided within **Table 1** below and further detailed in the Architectural Drawings provided at **Attachment A**.

Table 1 – Proposed modifications

Component	Summary of key design development changes
Ground Level	<ul style="list-style-type: none"> ▪ (V5) Revolving door at the southern ground level entrance replaced with a frameless glazed auto doors and airlock; ▪ (V11) Angle of Hunter Street entrance canopy altered to allow cross fall drainage; ▪ (V21) Angled Glazing over the southern entry to Level 1 extended by 1.15m; and
Levels 1 - 8	<ul style="list-style-type: none"> ▪ (V13) Meeting space in internal learning suite extended north east by 600mm; ▪ (V15) Glazed façade at levels 5 and 6 extended to match building corner alignment; ▪ (V16) Eastern wall of the level 5/6 urban room shifted east by 1m; ▪ (V19) Height of the urban room extrusion reduced by 1000mm; and ▪ (V3) General internal revisions to void extent or removal.
Roof	<ul style="list-style-type: none"> ▪ (V17) Reduced height of plant room by 500mm and alterations to plant walls; ▪ (V18) Lift motor room removed from plant room with fire sprinkler tank relocated to above lift shafts, in turn lowering the maximum building height; ▪ Addition of a roof access ladder on building plant; ▪ (V19) Canopy over learning suite extended by 1.2m.; and ▪ (V31) fig face planting removed from pebble roof.
Northern Façade	<ul style="list-style-type: none"> ▪ (V2) Vertical sun shade louvres reduced from 800mm to 400mm in depth; and ▪ (V2) 50% rationalisation in the number of horizontal sun shades, depth rationalised to 400mm; and ▪ (V6) Replace operable louvres with fixed double glazed units.
Eastern Façade	<ul style="list-style-type: none"> ▪ (V1) Removal of pop out window boxes; ▪ (V2) 50% rationalisation in the number of horizontal sun shades, depth rationalised to 400mm. ▪ (V2) Vertical sun shade louvres reduced from 800mm to 400mm in depth. ▪ (V22) Addition of entry canopy over auto glazed door; and ▪ (V6) Replace operable louvres with fixed double glazed units.
Southern Façade	<ul style="list-style-type: none"> ▪ (V1) Rationalisation and redistribution of pop out window boxes ; ▪ (V6) Delete vertical sun shade louvres; and ▪ (V6) Replace operable louvres with fixed double glazed units.
Western Façade	<ul style="list-style-type: none"> ▪ (V1) Rationalisation and redistribution of pop out window boxes; ▪ (V2) Vertical sun shade louvres reduced from 800mm to 400mm in depth; and ▪ (V2) 50% rationalisation in the number of horizontal sun shades, depth rationalised to 400mm; and ▪ (V6) Replace operable louvres with fixed double glazed units.

Component	Summary of key design development changes
Internal modifications	<ul style="list-style-type: none"> ▪ (V12) Glazed staircase under level 5 extension moved north east by 1.4m to improve internal circulation. Level 5 glazed wall subsequently moved outwards.
Materials	<ul style="list-style-type: none"> ▪ (V7) Soffit under the Level 5 'extension' amended to flat painted metal product in metallic finish to match adjacent anodised sunshade; and ▪ (V8) Zinc roofing to atrium amended to colorbond metallic grey.
Required modifications	<ul style="list-style-type: none"> ▪ (V10) Substation doors, louvres and steps altered to meet Ausgrid requirements; and ▪ (V10) Fire Booster and water doors to Hunter Street adjusted.
Landscape	<ul style="list-style-type: none"> ▪ (V30) Replacement of NCC concrete precast pavers to Auckland Street with 600mm x 450mm Bluestone pavers; ▪ (V30) Replacement of NCC precast pavers to Christie Place Laneway with Bluestone pavers; ▪ (V30) Replacement of Bruce Rock paving to site landscaping with Urbanstone Engineered Paving; ▪ (V34) Replace green wall to eastern side of campus green with native grass ground planting; and ▪ (V34) Replace green wall to Christie Place Substation with ground cover planting.

3.0 MODIFICATIONS TO CONDITIONS

The proposed modifications described above necessitate amendments to the consent conditions which are identified below. Words proposed to be deleted are shown in ~~bold italic strike through~~ and words to be inserted are shown in **bold italics**.

Architectural (or Design) Drawings prepared by Lyons and EJE Architects			
Drawing No.	Issue	Name of Plan	Date
A-100	T1	SITE PLAN- EXISTING	31.10.14
A-101	T1 T42	SITE PLAN - PROPOSED	31.10.14 06.05.15
A-300 DA-200	T1 T4	PLAN - GROUND LEVEL FLOOR PLANS - GROUND, LEVEL 1, 2 & 3	31.10.14 10.06.15
A-301 DA-201	T1 T2	PLAN - LEVEL 1 FLOOR PLANS - LEVEL 4, 5, 6 & 7	31.10.14 06.05.15
A-302 DA-202	T1 T4	PLAN - LEVEL 2 FLOOR PLANS - LEVEL 8, 9 & ROOF PLAN	31.10.14 10.06.15
A-303	T1	PLAN - LEVEL 3	31.10.14
A-304	T1	PLAN - LEVEL 4	31.10.14
A-305	T1	PLAN - LEVEL 5	31.10.14
A-306	T1	PLAN - LEVEL 6	31.10.14
A-307	T1	PLAN - LEVEL 7	31.10.14
A-308	T1	PLAN - LEVEL 8	31.10.14
A-309	T1	PLAN - LEVEL 9	31.10.14
A-310	T1	PLAN- ROOF	31.10.14
A-400 DA-250	T1 T2	BUILDING ELEVATIONS- NORTH ELEVATIONS - NORTH & WEST	31.10.14 06.05.15
A-401 DA-251	T1 T3	BUILDING ELEVATIONS- EAST ELEVATIONS - SOUTH & EAST	31.10.14 10.06.15
A-402 DA-252	T1 T3	BUILDING ELEVATIONS- SOUTH ELEVATIONS - LANEWAY NORTH & SOUTH	31.10.14 10.06.15

A-403	T1	BUILDING ELEVATIONS- WEST	31.10.14
A-450 DA-253	T1 T3	BUILDING SECTIONS- SECTION A-A SECTIONS A & B	31.10.14 10.06.15
A-451	T1	BUILDING SECTIONS- SECTION B-B	31.10.14
A-452 DA-254	T1 T3	BUILDING SECTIONS- SECTION C-C SECTION C & HUNTER STREET ELEVATION	31.10.14 10.06.15
A-130	T1	UH- BASEMENT AND GROUND FLOOR PLAN	31.10.14
A-131	T1	UH- LEVEL 1 FLOOR PLAN	31.10.14
A-132	T1	UH- LEVEL 2 FLOOR PLAN	31.10.14
A-133	T1	UH- LEVEL 3 FLOOR PLAN	31.10.14
A-135	T1	UH- DEMOLITION PLANS- BASEMENT & GROUND FLOOR	31.10.14
A-136	T1	UH- DEMOLITION PLAN -LEVEL 1	31.10.14
A-137	T1	UH -DEMOLITION PLAN - LEVEL 2	31.10.14
A-138	T1	UH -DEMOLITION PLAN -LEVEL 3	31.10.14
A-170	T1	UH- ELEVATIONS- SHEET 1	31.10.14
A-171	T1	UH- ELEVATIONS- SHEET 2	31.10.14
A-175	T1	UH- SECTIONS A-A & B-B	31.10.14
A-176	T1	UH- SECTIONS C-C, D-D & E-E	31.10.14
DA-500	Rev 2	CONSERVATORIUM CAR PARK	23.06.14
New Space Project Landscape (or Design) Drawings prepared by McGregor Coxall			
09	Rev A	SITE ANALYSIS	
04	Rev F Rev G	MASTER PLAN	
05	Rev G	Landscape Plan	

Reason for Amendment: This condition is updated to reflect the proposed design development changes and as reflected within the amended architectural drawings and public domain/ landscape drawings and references to this section 96 modification application.

4.0 SECTION 96 OF THE EP&A ACT, 1979

The power to amend a development consent is found in section 96 of the EP&A Act. Section 96 is an independent facilitative power that is separate to the grant of a development consent.

The statutory requirements to be satisfied for the grant of consent to modify a development consent are set out in Section 96. These depend on whether or not the modification is made under subsection (1), (1A) or (2).

This modification application to development consent SSD-6457 is accordingly made under Section 96(1A) of the EP&A Act. Pursuant to Section 96(1A) of the EP&A Act, the Minister or his delegate may modify development consent if:

(1A) Modifications involving minimal environmental impact

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 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*

(emphasis added)

The development, as proposed to be modified, is substantially the same development and is of minimal environmental impact as that originally approved in that it:

- retains the approved use for the site;
- retains the same built form envelope and footprint with only minor cosmetic alterations and improvements to the façade treatments and ‘pop out’ elements;
- fundamentally retains the same relationship to the public domain and surrounding buildings;
- retains the approved number of car parking spaces as well as the approved upgrading works to the Laman Street Car park;
- will reduce the height of the building and does not result in any significant environmental impacts;
- the proposed changes result in no more than a minor increase to the amount of approved floor space that will not exceed the maximum permitted under the Newcastle LEP 2012;
- the proposed development will continue to act as a catalyst project for the renewal of Newcastle’s Central Business District;
- the environmental impacts of the modified development are in the order of the approved development; and
- the proposed changes considered in their totality and in the context of the scale of the overall development are of a moderate nature reflective of normal development processes.

A comparison of the key components of the approved development and the proposed modified development is provided at **Table 2**. **Table 2** demonstrates that all key elements of the approved development remain, resulting in a development that clearly meets the test of being substantially the same as originally approval.

Table 2 – Consistency with approved development

Component	Approved development	Amended Proposed Development	Consistency / Substantially the Same
Envelope	Angular and striking built form	No change	✓
Use	Mixture of educational establishment, offices and retail.	No change	✓
Gross Floor Area	12,434m ² (NeW Space) FSR 3.02:1	12,403m ² (NeW Space) comprising a decrease of 31 m ² (FSR 3.19:1)	✓
Height / Storeys	Maximum Height: RL48.05m Storeys: 9	Maximum Height: No change + ladder maximum to RL49.3m Storeys: 9 (No change)	✓
Vehicular Access / Loading	Access provided off from Auckland Street. Ground floor loading area	No change	✓
Pedestrian Access	Primary access to the building from Hunter Street with entrances at Auckland Street and Christie Place.	No change	✓
Sustainability	GBCA Green Star target rating of 5 star	No change	✓
Public Domain / Landscaping			
Public domain materials and treatment	Precast pavers and Bruce Rock	Minor changes to paving materials	✓
Landscaping of Central Courtyard and Surrounds	Creation of a central courtyard and 'lawn dune'.	No change	✓
Christie Place Extension + University House Deck	Landscaping of outdoor central courtyard and a deck to the eastern façade of University House.	Minor change with removal of vertical landscape element to existing substation.	✓

As shown above, the consent authority may be satisfied that the modified proposal represents substantially the same development for which consent was originally granted. The modification of development consent SSD-6457 can therefore lawfully be approved under Section 96(1A) of the EP&A Act.

5.0 ENVIRONMENTAL ASSESSMENT

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.

Section 79C(1) of the EP&A Act states:

“In determining a development application, a consent authority is to take into consideration such of the following matters as are of relevance to the development the subject of the development application:

(a) the provisions of:

- (i) any environmental planning instrument, and*
- (ii) any draft environmental planning instrument that is or has been placed on public exhibition and details of which have been notified to the consent authority, and*
- (iii) any development control plan, and*

(iv) any matters prescribed by the regulations, that apply to the land to which the development application relates,

(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.”

5.1 Section 79C(1)(a) Planning Instruments

The Environmental Impact Statement (EIS) submitted with the original State Significant Development Application (SSDA) addressed the proposed development’s level of compliance against the relevant environmental planning instruments, including:

- Mine Subsidence Compensation Act 1961;
- State Environmental Planning Policy – (State & Regional Development) 2011;
- State Environmental Planning Policy – Infrastructure 2007;
- State Environmental Planning Policy No. 55 Remediation of Land; and
- Newcastle Local Environmental Plan 2012;

As is evident from **Table 1**, the proposed modifications involve minor internal and external changes that respond to the design development stage and to feedback from relevant authorities including Ausgrid. The proposed modifications will therefore not alter the level of compliance of the development with the above relevant planning instruments. For completeness, **Table 3** provides a summary overview of the proposed modified development’s continued level of compliance with relevant planning instruments.

Table 3 – Compliance with relevant environmental planning instruments

Instrument	Comments
Mine Subsidence Compensation Act 1961	Mine subsidence stabilisation works have been completed as part of Development Consent 2013/1405.
SEPP (State & Regional Development)	The modified development continues to meet the threshold for State Significant Development.
SEPP (Infrastructure)	The provisions of the Infrastructure SEPP apply more during the consideration and assessment of the original SSDA in terms of requirements and referrals for development applications (i.e. not modification applications). Further referral of this modification application to relevant agencies and approval bodies is not considered necessary, given the minor nature of the changes.
SEPP 55 (Remediation of Land)	The site remains suitable for the proposed development as determined in the original assessment.
Newcastle LEP 2012	The modification does not alter the development’s consistency with the Newcastle LEP 2012 in regards to land use, height or FSR compliance.

5.2 Section 79C(1)(b) Impact on the Environment

The proposed modified development does not give rise to any material alteration to the assessment of the potential impacts considered as part of the original SSDA. Where relevant, the technical reports and plans addressing the above matters have been updated to provide an assessment of the modified design (refer attached technical reports and plans). The following matters however warrant further assessment and consideration.

Height

An access ladder is proposed to be included in the centre of the roof to provide access to the plant. This ladder will have a maximum height of RL49.3m, being approximately 200mm above the *Newcastle Local Environmental Plan 2012* (Newcastle LEP 2012) maximum height limit of RL49.1m.

It is not considered that this ladder is included in the 'maximum building height' under the definition of building height contained within the Newcastle LEP 2012. Items such as '*masts, flagpoles, chimneys, flues and the like*' (*our emphasis*) are excluded from the building height. Due to the lightweight nature of the ladder and its function, this appropriately falls into the category of 'and the like' and is therefore not included in the maximum building height. As such, the proposal remains consistent with the maximum building height contained in the Newcastle LEP 2012.

Furthermore, the ladder will be located in a central location of the roof and will not be visible from the street level. The ladder is a lightweight and compact structure which will not create any additional shadow impacts or visual impact.

Materiality

The proposed amendments to building materials are a result of more detailed material selection to ensure the most robust and durable materials are provided and the original design intent of the building is maintained and enhanced. Generally, the changes to roofing material include the use of metallic 'Colourbond', which has been chosen due to its durable nature to ensure that it will not fade and reduce the aesthetic quality of the building. Other amendments such as the amended soffit treatment will ensure a more durable treatment with the same visual outcome is provided.

Built Form

The proposed changes to the building façade reflect the continued design improvement of the building in order to further express the building massing elements whilst avoiding undesirable building bulk. The modification reduces the complexity and clutter of the façade by rationalising and relocating a number of the façade 'pop out' elements.

Additionally, the façade modifications seek to rationalise the number and the depth of the vertical sunshades. This will further simplify the façade and allow for a greater appreciation of the striking and unique built form. The retention of both the pop-out elements and sunshading on some areas of the façade ensures that the original fine-grain appearance of the building is maintained, but streamlined to provide a more refined expression.

These amendments to the façade directly respond to comments received by the Design Review Panel (DRP) during the Response to Submissions (RtS) phase of the project. During the RtS phase, one of the DRP members commented:

Deletion and relocation of elements [fins and pop outs] in the building facades is considered a positive aspect of design development and a demonstration of efforts to achieve design excellence.

This comment has been further analysed post-approval and it is considered by the design team that further rationalisation will further enhance the building design. In light of the proposed amendments, it is considered that the building design has been improved and design excellence is maintained.

Modifications to the building canopy and overhanging roof elements are a result of further detailed design and seek to establish an improved relationship with the public domain and the level of pedestrian amenity offered at the base of the building.

The modification seeks minor alterations to the building form including the extension of the north-western façade corner at level 5 and 6 to match the building corner alignment. The extension of

the façade in this location will strengthen the building form at the Auckland and Hunter Street corner and will allow for a more functional and usable internal space. As illustrated in **Figure 1**, the minor amendment to this corner does not significantly alter the appearance of the building, but will provide an enhanced corner presence.



Figure 1 – Render of the modified building form viewed from the corner of Hunter and Auckland Streets

Heritage

An addendum Statement of Heritage Impact (SoHI) has been prepared *EJE Heritage* and is provided at **Attachment B**. The SoHI considers the proposed modifications to the approved building and assesses the potential impact on surrounding items of heritage significance, in particular University House.

EJE Heritage determines that the modifications do not alter the conclusions and validity of the original SoHI previously submitted with the original SSDA. As such, no further assessment is considered necessary.

Landscape and Public Domain

The modified paving materials to Auckland Street and Christie Place Laneway are proposed to provide a consistent paving treatment around the entire site which integrates with Council's intended future public domain treatments. The paving treatments will be provided in accordance with Newcastle Council's City Centre Technical Manual pursuant to Condition B6 of the Development Consent (SSD-6457).

The removal of the vertical landscaping treatment to the existing substation and the climbing structure to University House are proposed to simplify the landscaping treatment and allow for a greater appreciation of the eastern façade of University House. A more detailed analysis of the green walls has identified that these landscaping elements have the potential for failure and may result in a suboptimal situation. As such, it is considered that a simpler approach to landscaping is more beneficial as it will allow for an easier maintenance regime and a higher probability of the landscaping surviving and providing an enhanced setting.

5.3 Section 79C(1)(c) Suitability of the site for the proposed development

The site remains suitable for the proposed development for the reasons outlined in the EIS lodged with the original SSDA.

5.4 Section 79C(1)(d) Submissions made

Any submissions made on this subject modification application will be duly considered and addressed by UON and its experienced project team.

5.5 Section 79C(1)(e) The public interest

The proposed modifications to the approved development are considered to be in the public interest, especially given the changes will:

- enable the delivery of a high quality educational establishment that constitutes the initial catalyst development for the Newcastle City Centre Urban Renewal;
- improve the relationship of the building with the public domain;
- result in an enhanced design quality of the building, improving the aesthetics of the building and contributing to the built form quality of the Newcastle City Centre; and
- facilitate an improved pedestrian experience with a better merging of internal and external spaces.

6.0 CONCLUSION

This Section 96 application seeks to facilitate amendments in order to respond to design development and to ensure the future quality of the building. The proposed modifications will not alter the environmental impacts assessed and approved as part of the existing development consent, and will in some aspects result in lesser environmental impacts and an enhanced building design.

In accordance with section 96(1A) of the EP&A Act, the Minister or his delegate may modify the consent as:

- the consent, as proposed to be modified, is substantially the same development as that originally approved;
- the environmental impacts of the building, as modified, are minimal and are commensurate with that of the approved development;
- the modifications result in an overall improvement to the building's design; and
- the building's compliance with key statutory plans and controls remains generally the same as the approved development.

We trust that this information is sufficient to enable assessment and approval of the proposed modification request. Should you have any queries about this matter, please do not hesitate to contact me on 99566962 or gkirkby@jbaurban.com.au.

Yours faithfully



Gordon Kirkby
Director