

17 August 2018

14448  
Ms Carolyn McNally  
Secretary  
Department of Planning and Environment  
GPO Box 39  
SYDNEY NSW 2001

Attention: Anthony Witherdin (Director of Modification Assessments)

Dear Mr Witherdin,

**SECTION 4.55 (1A) MODIFICATION APPLICATION – STATE SIGNIFICANT DEVELOPMENT APPLICATION  
6952  
WENONA SCHOOL**

This Section 4.55(1A) is submitted to the NSW Department of Planning and Environment on behalf of Wenona School Limited pursuant to Section 4.55(1A) of the *Environmental Planning and Assessment Act 1979* (EP&A Act) to modify Development Consent SSD 6952 which relates to the approval of the educational facility at Wenona School, North Sydney.

This application relates to the proposed location of the kiosk substation and associated tree removal to facilitate its repositioning. The modifications are a direct response to in-depth discussions with Ausgrid and North Sydney Council (Council) regarding the location of the substation. During these discussions, it was determined that the amendments are necessary to mitigate the potential conflicts between the tree and the kiosk substation. It is noted that the proposed modifications do not amend the approved building, nor will they result in any additional environmental impacts.

The application identifies the consent, describes the proposed modifications and provides a planning assessment of the relevant matters for consideration contained in Section 4.55(1A) of the EP&A Act. The application should be read in conjunction with the following documentation:

- Architectural Plans prepared by Tonkin Zulaikha Geer Architects (**Attachment A**);
- Landscape Plans prepared by 360 Degrees (**Attachment B**);
- Electrical Services Report prepared by Connect Infrastructure (**Attachment C**);
- Arboricultural Statement prepared by Plateutrees (**Attachment D**);
- Arboricultural Impact Assessment prepared by Landscape Matrix (**Attachment E**);
- Tree Removal Statement prepared EPM Projects (**Attachment F**); and
- Correspondence regarding the kiosk substation prepared by Ausgrid (**Attachment G**).

## 1.0 Background

Development consent (SSD 6952) was granted on 18 December 2015 by the NSW Department of Planning and Environment for the redevelopment of Wenona School involving construction of a six storey education building, a new pedestrian overpass crossing above Elliott Street, alterations and additions to existing buildings and associated landscaping. The application necessitated the removal of eight (8) trees which were identified as having low to medium retention value in order to accommodate the building's footprint.

The approval also granted consent to the installation of a 500kVA kiosk substation on the site's Miller Street frontage located directly to the north of a *Lophostemon Confertus* (Brush Box tree) that was proposed for retention.

The SSD nominated that the kiosk substation be located on the Miller Street side of the building given there is a requirement for it to be placed in proximity of the main switch room. The precise location of the kiosk substation was to be certified at a later date to ensure compliance with Ausgrid's standards.

Subsequent to the approval of the SSD, the Applicant undertook the detailed design of the substation. The proposed location of the substation was certified by Ausgrid in February 2017. However, following a site inspection, Ausgrid raised concern that the substation was located too close to the *Lophostemon Confertus*. In an effort to retain the tree, the Applicant undertook an extensive investigation that sought to demonstrate that its age, species and structural root system would not be impacted by the kiosk substation. However, following consultation with Council and Ausgrid, it was concluded that the tree posed a significant risk to the operation of the substation. Likewise, the placement of the substation could compromise the tree's root system, ultimately necessitating its removal.

In accordance with Ausgrid's requirements and consultation with Council, this application seeks consent for the removal of the tree and the slight repositioning of the substation to remove potential conflicts between the two that may interfere with the site's utility services and present new health and safety risks.

## 2.0 Description of Proposed Modifications

The proposed modifications are illustrated in the Architectural Drawings at **Attachment A** and Landscape Drawings at **Attachment B**. The detailed specifications of the kiosk substation are addressed within the Electrical Services Report at **Attachment C**, including the required excavation works. The modifications include the following:

- the required relocation of the approved kiosk substation 2.25m from the site's southern boundary;
- excavation works including the addition of supporting piers to a depth of 1860mm to 1980mm and earth rods with a depth of 5.4m to facilitate the installation of the kiosk substation;
- removal of the *Lophostemon Confertus* located to the south of the substation; and
- inclusion of a *Tristaniopsis Laurina* adjacent the substation.

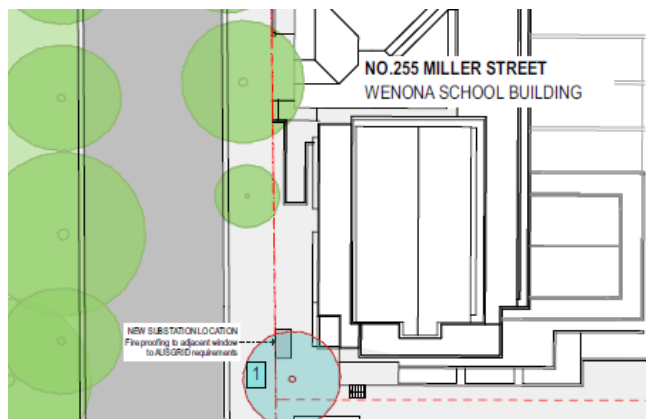
### Tree Removal and Replacement Planting

The proposed tree removal relates to a *Lophostemon Confertus* located at the southern end of the Miller Street frontage. The tree is required to be removed due to its proximity to the proposed kiosk substation. The location of the tree is illustrated below in **Figures 1** and **2**. As shown below, the tree is one of many located along the street frontage.



**Figure 1** Approved location of the kiosk substation in relation to the tree

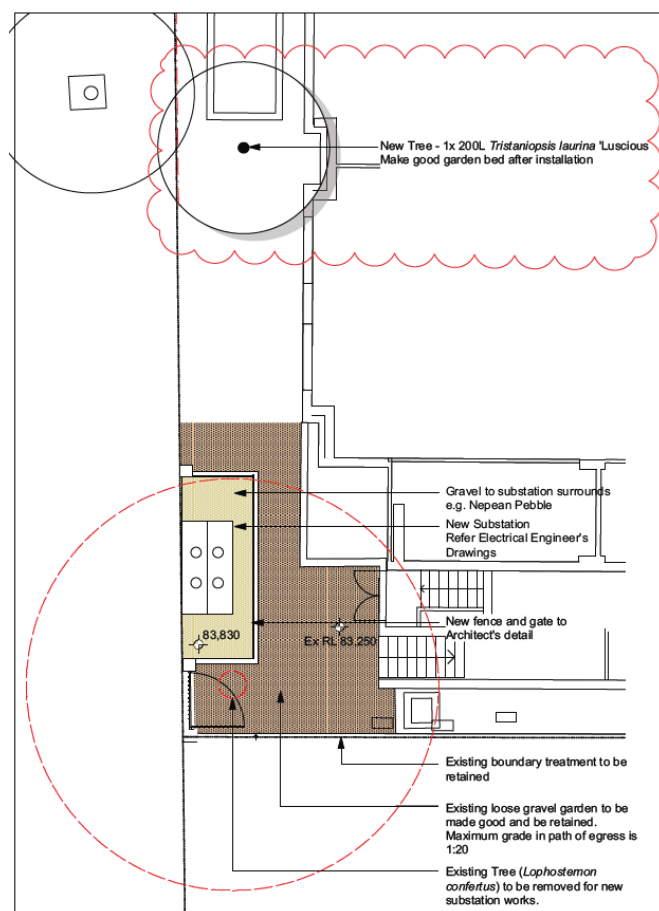
Source: Tonkin Zulaikha Greer Architects



**Figure 2** Proposed location of the kiosk substation in relation to the tree

Source: Tonkin Zulaikha Greer Architects

To offset the removal of the tree, a *Tristanopsis Laurina* is proposed to be along the Miller Street frontage. The tree will reach an approximate height of 6m in height (refer to **Figure 3**). The tree planting will be accompanied by make-good works to the garden bed. The species of tree has been selected on the basis that it is consistent with Council's *Street Tree Strategy* and its root structure and size will not come into conflict with existing services of the adjacent building.

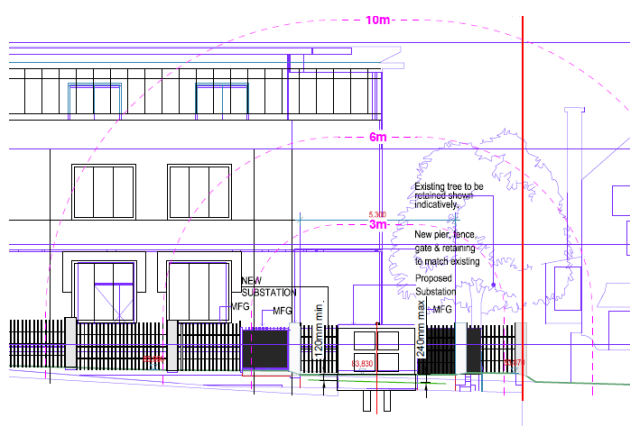


**Figure 3** Proposed location of the replacement tree planting

Source: 360 Degrees

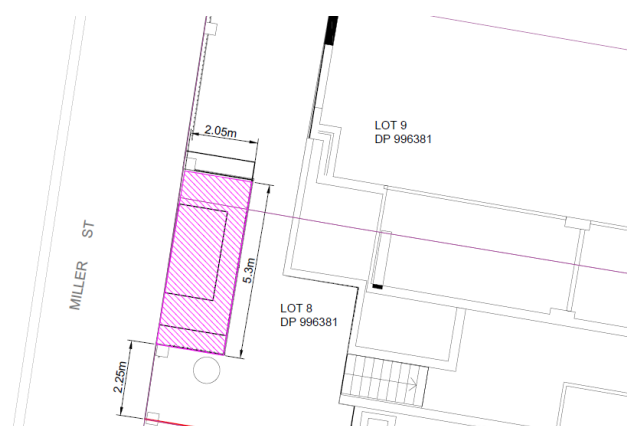
### Kiosk Substation and Easement

The kiosk substation has a height of 1.2m and will be screened by its own perimeter fencing (refer to **Attachment A** and **Figure 4**). The substation requires the establishment of an easement that corresponds with its size and is proposed to be 5.3m in length and 2.05m in width (refer to **Figure 5**). The easement will be established on Lot 8 of DP 996381. The details of the substation, along with the excavation works required to facilitate its installation, are provided in the Electrical Services Report prepared by Connect Infrastructure at **Attachment C**.



**Figure 4 Kiosk substation along Miller Street**

Source: Connect Infrastructure



**Figure 5 Proposed easement**

Source: Connect Infrastructure

The Mechanical and Electrical Services Statement at Appendix K of the SSD application (SSD 6952) noted that the initial placement of the substation was indicative, and was to be further developed to ensure compliance with Ausgrid's standards. In light of this, the substation has been located to comply with Ausgrid's standards and certification.

As per Ausgrid's requirements, the kiosk substation is required to be located slightly south of the originally proposed location and hence too close to the base of the *Lophostemon Confertus*. The tree is expected to grow to a height of 18m and given the scale of the tree, its root system is likely to be expansive and will encroach on the substation and easement. Furthermore, the location of the kiosk substation is proposed in order to provide a blast clearance zone of 3m from the existing school building at 255 Miller Street. The blast clearance zone is required in order to meet Ausgrid's standards pertaining to the selection and site preparation for kiosk substations, and for electrical safety purposes.

In determining the location of the kiosk substation and the need for the removal of the tree, the Applicant and its project team have engaged in lengthy discussions with Council. The correspondence contained at **Attachment B** also confirms that Ausgrid has consulted with North Sydney Council's Tree Preservation Officer who has confirmed support for the removal of the existing tree to facilitate the delivery of the kiosk substation in its proposed location.

## 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 strike through~~ and words to be inserted are shown in **bold italics**.

### Terms of Consent

A2. The Applicant shall carry out the development generally in accordance with the:

- a) *State Significant Development Application SSD 6952;*
- b) *Environmental Impact Statement, except where amended by the Response to Submissions;*
- c) *The following drawings, except for:*

- i) any modifications which are Exempt or Complying Development  
 ii) otherwise provided by the conditions of this consent.

Architectural (or Design) Drawings prepared by Tonkin Zulaikha Greer Architects		
Drawing No.	Name of Plan	Date
A-0010	General Demolition	29.07.16
A-0011	No. 255 Miller Street Level 1 Demolition Plan	29.07.16
A-0012	No. 255 Miller Street Level 2 Demolition Plan	29.07.16
A-0013	No. 255 Miller Street Level 3 Mez Demolition Plan	29.07.16
A-0014	No. 255 Miller Street Level 4 Demolition Plan	29.07.16
A-0015	No. 255 Miller Street Level 5 Demolition Plan	29.07.16
A-0016	No. 255 Miller Street Level 6 Demolition Plan	29.07.16
A-1001	Site Plan	<del>29.07.16</del> 30/4/18
A-1002	Level 0 Plan	29.07.16
A-1003	Level 1 Plan	29.07.16
A-1004	Level 2 Plan	29.07.16
A-1005	Level 3 Plan	29.07.16
A-1006	Level 4 Plan	<del>29.07.16</del> 14/6/18
A-1007	Level 5 Plan	29.07.16
A-1008	Level 6 Plan	29.07.16
A-1009	Roof Plan	29.07.16
A-2001	Elevation Miller Street	29.07.16
A-2002	Elevation Elliott Street	29.07.16
A-2003	Elevation North	29.07.16
A-3000	Section A-A	29.07.16
A-3001	Section B-B, C-C	29.07.16
A-3002	Section C-C	29.07.16
A-5002	Materials Schedule	29.07.16

Landscape Plans prepared by 360 Degrees			
Drawing No.	Revision	Name of Plan	Date
2	B	Lower Ground Mez Plan Public Domain Make-Good Works	26.05.15
3	B	Level 3 Landscape Plan	14.06.16
4	<del>B</del> I	Level 4 Landscape Plan	<del>14.06.16</del> 8/8/18
5	C	Level 5 Landscape Plan	14.06.16
6	B	Level 6 Landscape Plan	14.06.16
7	A	Planting Schedule & Palette	14.06.16
1	A	Tree Location Plan & Tree Schedule	14.06.16
8	C	Landscape Sections	14.06.16

## 4.0 Substantially the Same Development

Pursuant to Section 4.55(1A) of the EP&A Act, the consent authority may modify a development consent if *“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)”*.

The development, as proposed to be modified, is substantially the same development as that originally approved in that:

- it retains the same use as the approved development in that it provides an educational establishment;
- it relates to the minor relocation of the substation already approved under SSD 6952;
- the location of the kiosk substation represents a minor change in response to Ausgrid’s requirements and does not represent a substantial amendment;
- the proposed modifications do not seek to modify the type of educational facilities provided by the development;
- the proposed modifications do not necessitate amendments to the approved building envelope and will therefore not amend the development’s bulk, mass and scale; and
- the environmental impacts are the same as the approved development, with the removal of the tree necessary in order to prevent any future environmental impacts in the form of tree instability or safety risks associated with potential conflicts between the tree and the kiosk substation.

The proposed modification will result in a development which is substantially the same as the approved development. The modification of the SSD approval can therefore be lawfully made under Section 4.55(1A) of the EP&A Act.

## 5.0 Environmental Assessment

Section 4.55(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”*. Under Section 4.55(3), the consent authority must also take into consideration the matters referred to in Section 4.15(1) of the EP&A Act as are of relevance to the development the subject of the application.

The following assessment considers the relevant matters under Section 4.15(1) and demonstrates that the development, as proposed to be modified, will be of minimal environmental impact.

### 1.1 Section 4.15(1)(a) Planning Instruments

The EIS submitted with the original DA addressed the proposed development’s level of compliance against relevant planning instruments, including:

- *Environmental Planning and Assessment Act 1979* (EP&A Act);
- *State Environmental Planning Policy (State and Regional Development) 2011* (SRD SEPP);
- *State Environmental Planning Policy (Infrastructure) 2007* (SEPP Infrastructure);
- *State Environmental Planning Policy 55 – Remediation* (SEPP 55);
- *North Sydney Local Environmental Plan 2013* (North Sydney LEP 2013);
- North Sydney Development Control Plan 2013 (North Sydney LEP 2013);
- North Sydney Section 94 Contributions Plan 2013;
- NSW 2021;

- A Plan for Growing Sydney
- NSW Long Term Transport Masterplan 2012;
- Sydney's Cycling Future 2013;
- Sydney's Walking Future 2013; and
- Healthy Urban Development Checklist, NSW Health.

The proposed modifications do not substantially alter the development and are proposed for the purposes of removing potential safety risks and to prevent any interference with the site's utility services. As the proposed changes are minor and do not require the amendment of the approved development's bulk, mass and scale, compliance with relevant planning instruments remains unchanged. Where variations are proposed, these are addressed below.

### **North Sydney LEP 2013**

The site is located within the 'B4 – Mixed Use' zone. Within this land use zone, the proposed amendments are permitted with consent. The proposal will comply with the aims of the zone, as it will:

- continue to provide for an educational establishment in an accessible location, and will add to the vibrancy of the mixed-use centre;
- mitigate potential safety risks and contribute to the achievement of a high quality, safe urban environment; and
- result in minimal streetscape or visual impact and will not prevent the achievement of a high quality urban environment.

### **North Sydney DCP 2013**

The proposed development is consistent with the *North Sydney Tree and Vegetation Management Policy* and the aims and objectives of Part 16 of the NSDCP for the reasons as follows:

- in accordance with Section P3(a) of the NSDCP 2013, the tree is required to be removed due to its proximity to and potential interference with essential infrastructure services;
- the tree removal will not compromise the amenity of the locality given that a number of trees exist in the streetscape and a large quantity of trees are proposed for retention within the school campus;
- replacement planting is proposed along the site's Miller Street frontage to offset its removal;
- the tree proposed for removal is not identified as being of ecological significance; and
- the tree is not known to provide a habitat for any fauna.

## **1.2 Section 4.15(1)(b) Environmental Impacts**

The EIS submitted with the original application addressed the likely environmental impacts of the development, including:

- Consistency with Relevant EPIs, Policies and Guidelines
- Urban Design and Built Form
- Heritage
- Parking and Traffic
- Amenity Impacts
- Tree Removal and Ecological Impacts
- Stormwater Management



- Construction Impacts
- BCA and Fire Safety
- Accessibility
- Structural Adequacy
- Soils, Geotechnical and Groundwater
- Environmentally Sustainable Development
- Crime Prevention Through Environmental Design
- Development Contributions
- Site Suitability
- Public Interest

Compliance with relevant strategic and statutory plans and policies has been considered above. The planning assessment of the proposed modified development remains generally unchanged with respect to the above matters. However, the following matters warrant further assessment.

### **Urban and Architectural Design**

As illustrated in the Architectural Plans at **Attachment A**, the proposed substation reaches no more than 1.2m in height and will be screened by fencing that will line the perimeters of the kiosk substation. As a result, the substation will not appear obtrusive in the streetscape nor will it detract from the architectural design of the building. It is noted the inclusion of the substation along the Miller Street frontage has already been approved under SSD 6952. The proposed relocation of the substation that forms the subject of this application therefore does not involve the introduction of a new structure. It is therefore considered that the visual impacts associated with the proposal will not substantially change.

### **Electrical Services and Utilities**

An Electrical Services Report is included at **Attachment C** and confirms that the proposed location of the kiosk substation is consistent with Ausgrid's requirements.

In addition, correspondence from Ausgrid is included at **Attachment G** and provides further detail regarding the conflict between the location of the tree and the kiosk substation. Ausgrid's correspondence confirms that the kiosk substation is required to be located in proximity to the tree in order to provide a blast clearance zone of 3m from the existing school building at 255 Miller Street. The blast clearance zone is required in order to meet Ausgrid's standards pertaining to the selection and site preparation for kiosk substations, and for electrical safety purposes.

As per the correspondence contained at **Attachment G**, the location of the substation necessitates the removal of the tree on the basis that there will likely be a conflict with its root system. The tree proposed for removal could reach a height of approximately 18m and given the scale of the tree, it is likely to have an expansive root system that would encroach on the kiosk substation and its associated easement. The proximity of the substation would likely render the tree unstable and create a safety risk for the site and its occupants.

### **Ausgrid's correspondence also confirms that Ausgrid has consulted with North Sydney Council's Tree Preservation Officer who has provided in principle support for the removal of the tree to enable construction of the substation in the proposed location. Tree Removal and Ecological Impacts**

The proposal seeks consent for the removal of a *Lophostemon Confertus* located along the site's Miller Street frontage. The Arboricultural Report prepared by Landscape Matrix that was submitted alongside the EIS nominates a number of trees as priorities for retention (refer to **Attachment E**). The selection of these trees is based on a range of factors including species, dimensions, health, maturity, safe use and life expectancy. Landscape Matrix confirm that the *Lophostemon Confertus* is of high landscape significance, of moderate health and as having high retention value. As such, it is identified as a priority for consideration for retention / protection.



Notwithstanding, Landscape Matrix confirm that the subject tree is not listed under the *NSW Threatened Species Conservation Act 1995* nor is it listed as a nationally vulnerable species under the *Commonwealth Environment Protection and Biodiversity Conservation Act 1999*. Accordingly, its removal is not considered to have a significant impact on threatened species when applying the relevant test under Section 7.3 of the *Biodiversity Conservation Act*.

Subsequently, an Arboricultural Statement has been prepared by Plateutrees to assess the impact associated with the proposed relocation of the substation on the existing *Lophostemon Confertus* (refer to **Attachment D**). The Statement is based on a site inspection and root mapping works. The root mapping determined that given the necessary location of the kiosk substation, there is a risk that the root structure of the *Lophostemon Confertus* will be impacted. Consequently, there is a possibility that the kiosk substation will have an adverse impact on the health and structural stability of the tree.

As a result of this, the conflict between the proposed kiosk substation necessitates its removal. If the tree were to be retained, its health would be compromised and potentially lead to its decline. This would present a safety risk to users of the site, as well as the general public.

In light of the above, documentation from EPM Projects and Ausgrid confirms that the tree is required to be removed given its likely interference with the kiosk substation (refer to **Attachment F** and **Attachment G**). As highlighted by both EPM Projects and Ausgrid, consultation between Council, the Applicant and Ausgrid has led to the conclusion that locating the substation at the base of the tree poses a significant risk to the ongoing operation of the substation and therefore warrants its removal.

In summary, the statements prepared by Plateutrees and EPM Projects confirm that the colocation of the tree and the substation has the potential to hinder the operation of the substation and result in the instability of the tree. It is considered that together, these two factors have the potential to pose a significant safety risk to occupants of the site and the wider community. Given these factors, and the proposed replacement planting, it is considered that the removal of the tree is acceptable.

#### *Mitigation Measures*

It is considered that the removal of the tree will have a negligible impact on the visual amenity of the streetscape due to its location and the existing planting within the streetscape. The tree proposed for removal is situated behind the footpath and generally in alignment with the building frontage of 255 Miller Street and 243 Miller Street. Consequently, when viewed from the streetscape looking north and south, the tree has minimal visibility. Furthermore, a continuous canopy tree planting lines the Miller Street footpath adjacent to the tree proposed for removal. When viewed in this context, the removal of the tree will not significantly reduce the visual amenity of the streetscape which will remain generally unchanged. As such, an adequate level of canopy coverage will continue to be provided and the aesthetic character of the streetscape will be maintained.

Notwithstanding the above, the Applicant has proposed further replacement planting in addition to that approved under the current approval. Specifically, the modification seeks consent for the inclusion of a *Tristaniopsis Laurina* to the north of the substation along the Miller Street frontage, which will contribute to the canopy coverage along the street frontage and offset the loss of the *Lophostemon Confertus*. The proposed tree has been selected as it is identified by Council to be a native species and therefore its inclusion along the street frontage accords with Council's *Street Tree Strategy*.

### **1.3 Section 4.15(1)(c) Suitability of the site for the proposed development**

The site remains suitable for the proposed development for the reasons outlined in the SEE lodged with the original DA.

## 1.0 Conclusion

This Section 4.55(1A) application seeks consent to finalise the location of the approved substation and remove the nearby tree as required by Ausgrid. The modifications will mitigate potential safety risks associated with the possible instability of the tree due to its proximity to the substation and will permit the substation to function free of interference, in accordance with Ausgrid's requirements. The proposed modifications will not alter the environmental impacts assessed and approved as part of the existing development consent associated with SSD 6952 nor will they give rise to any additional adverse amenity impacts. In accordance with Section 4.55(1A) of the EP&A Act, the Department may modify the consent as:

- the proposed modifications are substantially the same development as that originally approved;
- the modifications will remove safety risks and ensure compliance with Ausgrid's requirements;
- due to the provision of replacement tree planting, the level of amenity provided by the canopy tree planting along the Miller Street frontage will remain unchanged; and
- the proposal will not result in any unacceptable adverse environmental, social or economic impacts.

In light of the above, we therefore recommend that the proposed modification is supported by the Department.

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 the undersigned on 9956 6962 or at [adesgrand@ethosurban.com](mailto:adesgrand@ethosurban.com) or [ktudehope@ethosurban.com](mailto:ktudehope@ethosurban.com).

Yours sincerely,



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