

Pitt Street South Over Station Development

*State Significant
Development
Modification Assessment
(SSD 8876 MOD 1)*

October 2019

© Crown Copyright, State of NSW through its Department of Planning, Industry and Environment 2019

Cover photo

Indicative photomontage of Pitt Street South Over Station Development (Source: EIS)

Disclaimer

While every reasonable effort has been made to ensure this document is correct at time of printing, the State of NSW, its agents and employees, disclaim any and all liability to any person in respect of anything or the consequences of anything done or omitted to be done in reliance or upon the whole or any part of this document.

Copyright notice

In keeping with the NSW Government's commitment to encourage the availability of information, you are welcome to reproduce the material that appears in Pitt Street South Over Station Development Assessment Report. This material is licensed under the Creative Commons Attribution 4.0 International (CC BY 4.0). You are required to comply with the terms of CC BY 4.0 and the requirements of the Department of Planning and Environment. More information can be found at: <http://www.planning.nsw.gov.au/Copyright-and-Disclaimer>.



Glossary

Abbreviation	Definition
AHD	Australian Height Datum
BCA	Building Code of Australia
CIV	Capital Investment Value
CIP	Community Involvement Plan
Consent	Development Consent
Council	City of Sydney Council
Department	Department of Planning, Industry and Environment
EIS	Environmental Impact Statement
EP&A Act	<i>Environmental Planning and Assessment Act 1979</i>
EP&A Regulation	<i>Environmental Planning and Assessment Regulation 2000</i>
EPBC Act	<i>Environment Protection and Biodiversity Conservation Act 1999</i>
EPI	Environmental Planning Instrument
ESD	Ecologically Sustainable Development
GSC	Greater Sydney Commission
LEP	Local Environmental Plan
Minister	Minister for Planning and Public Spaces
RtS	Response to Submissions
SEARs	Secretary's Environmental Assessment Requirements
Secretary	Secretary of the Department of Planning, Industry and Environment
SEPP	State Environmental Planning Policy
SRD SEPP	<i>State Environmental Planning Policy (State and Regional Development) 2011</i>
SSD	State Significant Development
SSI	State Significant Infrastructure



Contents

Glossary	iii
1. Introduction	1
1.1 Background	1
1.2 Approval History.....	2
2. Proposed Modification	3
3. Statutory Context	4
3.1 Scope of Modifications	4
3.2 Consent Authority	5
3.3 Environmental Planning Instruments.....	5
3.4 Objects under the EP&A Act.....	5
3.5 Section 4.15(1) Matters for Consideration.....	5
4. Engagement	7
4.1 Department's Engagement.....	7
4.2 Summary of Submissions.....	7
4.3 Response to Submissions	7
5. Assessment.....	8
5.1 Environmental Performance	8
5.2 Typographic Error	8
6. Evaluation	9
7. Recommendation	10
8. Determination	11
Appendices.....	12
Appendix A – List of Documents	12
Appendix B – Consolidated Consent	12
Appendix C – Notice of Modification	12



1. Introduction

This report is an assessment of an application to modify the State significant development (SSD) consent (SSD 8879) for an Over Station Development (OSD) above the southern entrance of the approved Pitt Street Metro Station.

The modification application (SSD 8879 - MOD 1) seek approval to correct a typographic error in Condition A24 and modify Condition B10 to amend the required environmental performance targets for a residential building.

The application was lodged on 3 September 2019 by Sydney Metro (the Applicant) pursuant to section 4.55(1A) of the *Environmental Planning and Assessment Act 1979* (EP&A Act).

The site is located within the City of Sydney local government area (LGA).

1.1 Background

Pitt Street South (the Site) is located at the northern end of the street block bound by Bathurst Street to the north, Liverpool Street to the south, Castlereagh Street to the east and Pitt Street to the west. (**Figure 1**)

The approved over station development will be located above the southern entrance of the approved Pitt Street Metro Station. The Pitt Street Metro Station is located in the Sydney central business district (CBD), 150 m from Town Hall railway station and 400 m from Museum railway station.

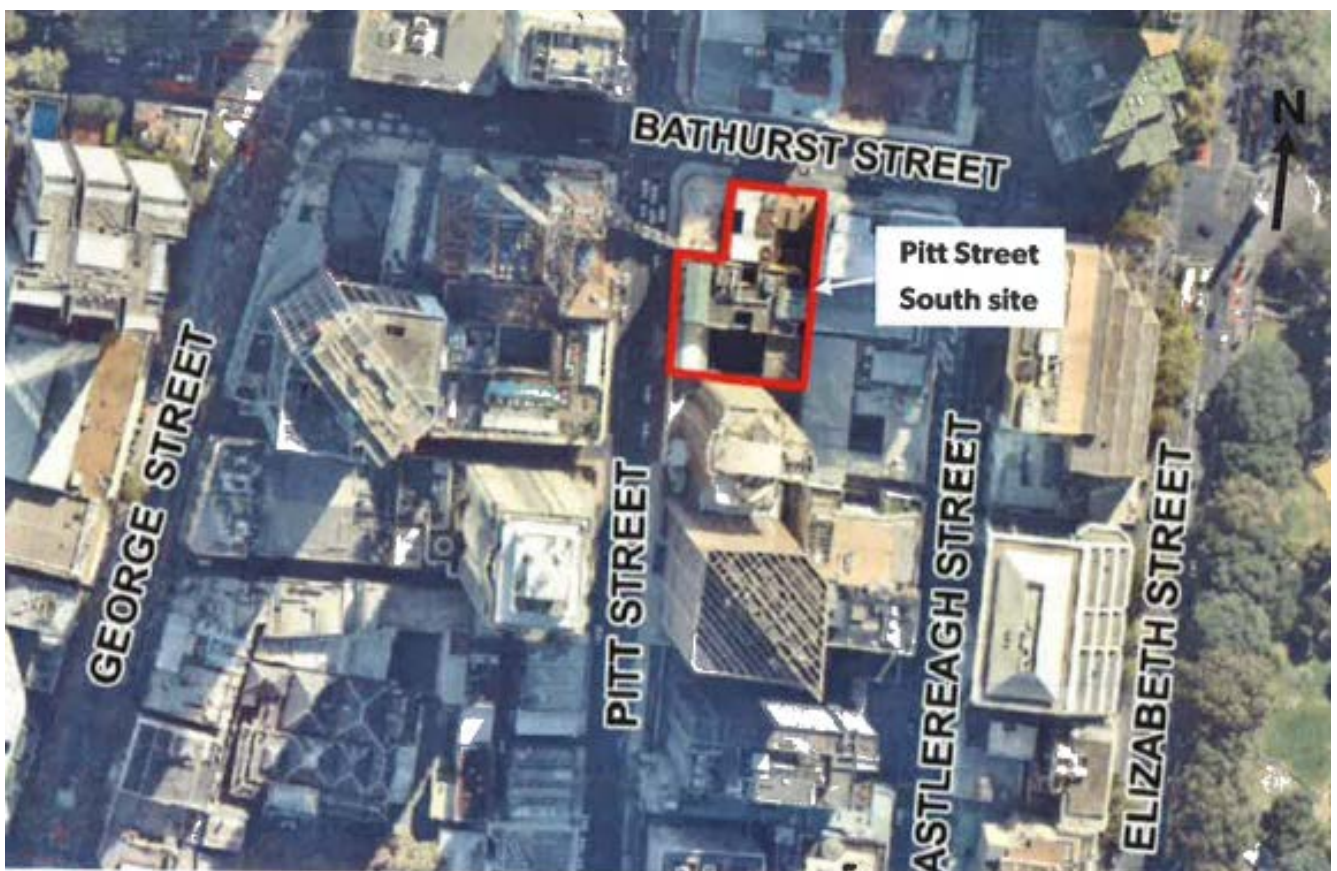


Figure 1 | Pitt Street Metro South OSD (source: Applicant's EIS).

1.2 Approval History

On 25 June 2019 the Minister for Planning approved an SSD for the Concept Development Application for Pitt Street South OSD (SSD 8876). The approval includes:

- a maximum building envelope, including street wall and setbacks for the over station development
- a maximum building height of RL 171.6 metres
- podium level car parking for a maximum of 34 parking spaces
- conceptual land use for either one of a residential or a commercial scheme (not both).

Currently there have been no other modification applications for this development consent.



2. Proposed Modification

The modification application (SSD 8879 - MOD 1) seek approval to correct a typographic error in Condition A24 and modify Condition B10 to amend the required environmental performance targets for a residential building.

Condition A24 sets out amendments required to the *Sydney Metro Pitt Street South Over Station Development Design Guidelines*. Subclause e) i) reads:

- (e) insert new clause 12 in (Built Form above the Podium)
 - (i) Side and rear setback above the podium of:
 - a) a minimum 3 m continuous setback to the eastern boundary
 - b) a minimum 12 metres above the podium with permitted reduction to minimum 3 metres within the **structure reservation zone** in accordance with **Condition A17** for essential structural support and service to integrate the over station development with the station below.
- Alternative options must be considered before any built form is proposed within the structure reservation zone. Any structure or built forms within the structure reservation zone must be designed to minimise its impacts to the outlook and amenity of the adjoining Princeton Apartments (304 – 308 Pitt Street, Sydney).

The Applicant noted Condition A17 with respect to the structure reservation zone as referenced in Condition A24 is incorrect. The Applicant noted the correct reference should be Condition A18, which defined the structure reservation zone.

Condition B10 reads:

For future detailed development application(s) the proposed minimum performance targets for environmental performance are:

- (b) *If the entire site is a residential building:*
 - (i) **BASIX 35 Energy**; and,
 - (ii) *Exceed minimum compliance with BASIX Water.*

The Applicant seeks to reduce the environmental performance rating of 35 for BASIX Energy required under Condition B10.



3. Statutory Context

3.1 Scope of Modifications

Section 4.55(1A) of the EP&A Act outlines the matters that a consent authority must take into consideration when determining an application that seeks to modify an SSD application. The matters for consideration under section 4.55(1A) of the EP&A Act that apply have been considered in **Table 1**.

Table 1 | Section 4.55 (1A) Evaluation

Section 4.55(1A) Evaluation	Consideration
a) that the proposed modification is of minimal environmental impact, and	<p>Section 6 of this report provides an assessment of the impacts associated with the modification application.</p> <p>The Department is satisfied that the proposed modification will have minimal environmental impacts. The proposed modification only relates to conditions of consent, including correction of typographic error and change of energy target.</p>
b) 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	<p>The modification application seeks to correct an administrative error and change the required BASIX rating for a residential building. The proposals do not change the scope of the development and the modification applications are considered to result in development that is substantially the same as the originally approved development.</p>
c) the application has been notified in accordance with the regulations, and	<p>Notification of the application is not required. The Department consulted with the City of Sydney Council on the application. Details of the consultation are provided in Section 5.1 of this report.</p>
d) any submission made concerning the proposed modification has been considered.	<p>The Department received a response from City of Sydney Council (Council). The comments made in submissions have been considered in Section 5 and 6 of this report</p>

3.2 Consent Authority

The Minister for Planning and Public Spaces (Minister) is the consent authority for the application under section 4.5(a) of the EP&A Act. However, under the Minister's delegation, the Director, Key Sites Assessment, may determine the application as:

- the relevant local council has not made an objection
- a political disclosure statement has not been made
- there are no public submissions in the nature of objection

3.3 Environmental Planning Instruments

The following Environmental Planning Instruments (EPIs) are relevant to the applications:

- State Environmental Planning Policy (State and Regional Development) 2011
- State Environmental Planning Policy (Infrastructure) 2007 (ISEPP)
- State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004
- Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005
- Draft State Environmental Planning Policy (Environment) 2017
- State Environmental Planning Policy No. 55 – Remediation of Land (SEPP 55)
- State Environmental Planning Policy No. 65 – Design Quality of Residential Flat Development
- Sydney Local Environmental Plan 2012 (SLEP).

The Department undertook a comprehensive assessment of the proposal against relevant EPIs in its original assessment. The Department has considered the above EPIs and is satisfied the modification application has adequately addressed the relevant provisions and remains consistent with these EPIs.

3.4 Objects under the EP&A Act

The Minister or delegate must consider the objects of the EP&A Act when making decisions under the EP&A Act. The Department is satisfied the proposed modifications are consistent with the objects of the EP&A Act.

3.5 Section 4.15(1) Matters for Consideration

Under Section 4.55(3) of the EP&A Act the consent authority must consider the matters referred to in Section 4.15(1) of relevance to the development. **Table 2** identifies the matters for consideration that apply to the proposed modification.

Table 2 | Consideration of Section 4.15(1) of the EP&A Act

Section 4.15(1) Matters for consideration	Assessment
(a)(i) any environmental planning instrument	The modified proposal remains compliant with the relevant legislation, including SEPP Basix.
(a)(ii) any proposed instrument	Not applicable.
(a)(iii) any development control plan	Under clause of the SRD SEPP, Development Control Plans do not apply to SSD. However, the Department has considered the relevant provisions of SDCP 2012 and find the application acceptable.

(a)(iii) any planning agreement	Not applicable.
(a)(iv) the regulations	The application meets the relevant requirements of the EP&A Regulation, including the procedures relating to applications (Part 6), the requirements for notification (Part 6, Division 6) and fees (Part 15, Division 1AA)
(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	The Department considers the likely impacts of the development are acceptable and have been appropriately addressed (refer to Section 6 of this report).
(c) the auditability of the site for the development	The site remains suitable for the development as assessed in the original application.
(d) any submissions	The Department has considered the submissions received (refer to Sections 5 and 6 of this report).
(e) the public interest	The Department considers the modified proposal to be in the public interest as it will meet energy target above minimum compliance.



4. Engagement

4.1 Department's Engagement

The application was made publicly available on the Department's website and referred to Council for comments.

4.2 Summary of Submissions

The Department received a submission from Council. A link to Council's submission is provided in **Appendix A**.

Council provided the following comments:

- BASIX Energy 30 is an appropriate minimum target for residential if greater than 10 stories (or BASIX Energy 35 if 6-10 stories)
- Although a 5 Star Green Star rating will be used as a target it is not certain that credits will not be used predominantly to meet this target
- The supporting information provided notes that space conditioning in common areas affected the BASIX modelling. Council noted that BASIX only models mechanical ventilation, not space conditioning in common areas
- While the supporting information states Condition B10 should read as *"Exceed minimum compliance"* the proponent instead noted in their justification they will *"will comply with minimum standards"* and *"have proposed compliance with the minimum rating of BASIX 25 Energy"*.

No submissions were received from the public.

4.3 Response to Submissions

The Department requested the Applicant provide a Response to Submissions (RtS) to address the issues raised in submissions.

The Applicant's RtS provided additional technical information and committed to BASIX Energy 30 in response to Council's comments.

The RtS was placed on the Department's website and referred to Council. Council replied noting there is no objection to the proposed modification following the RtS.



5. Assessment

The modification application seeks approval for the following modifications to the condition of consent:

- modify Condition B 10 which required a rating of 35 for BASIX Energy for a residential building
- correct a typographic error in Condition A24.

5.1 Environmental Performance

The Applicant submitted a viability study, prepared by GHD, which identified achievement of the BASIX Energy 35 rating required under Condition B10 will not be feasible, because it will require:

- omission of systems and servicing to maintain acoustic amenity and thermal comfort
- onsite renewable energy which is difficult to provided due to limited solar access to the site

The Applicant proposed Condition B 10 be amended to exceed minimum compliance with Basix Energy, which is a rating of 25.

Council provided comments on the proposed modifications as detailed in Section 5 of this report. Council recommended a BASIX Energy 30 should be adopted for a residential development greater than 10 storeys rather than minimum compliance.

The Applicant accepted Council's recommendation. The Applicant's RtS committed to achieving BASIX Energy 30. The RtS was supported by technical information to indicate a BASIX Energy 30 can be achieved by various building services and appliance changes such as 6-star clothes dryers and electric heat pump with gas boost for pool and spa heating.

Following the Applicant's RtS, Council confirmed it raises no objection to the modification application.

The Department notes the minimum energy requirement for a residential development is Basix Energy 25 rating. The proposed BASIX Energy 30 rating will exceed minimum compliance. The Department, therefore considers the proposed modification to Condition B 10 with a new Basix Energy rating of 30 is acceptable.

5.2 Typographic Error

Condition A24 has incorrectly referenced Condition A17 with respect to the structure reservation zone. The correct reference should be Condition A18 which provides a definition of the structure reservation zone.

The Department confirms the correct reference should be A18 and accepts the proposed modification to Condition A24 to correct this typographic error.



6. *Evaluation*

The Department has reviewed the proposed modification and supporting information in accordance with the relevant requirements of the EP&A Act. The Department's assessment concludes that the proposed modification is appropriate as:

- the amended BASIX Energy rating is acceptable as it would still exceed minimum compliance, consistent with the intent of the original condition
- it simply corrects a minor typographic error in existing condition A24
- it is substantially the same development as originally approved and does not result in adverse environmental impacts
- no objections to the proposed modification have been raised by Council.

Consequently, the Department concludes the modification request is in the public interest and should be approved, subject to the recommended changes to existing conditions of consent as outlined in (**Appendix B**).



7. Recommendation

It is recommended that the Director, Key Sites Assessments as delegate of the Minister for Planning and Public Spaces:

- **considers** the findings and recommendations of this report; and
- **determines** that the modification application SSD 8876 MOD 1 falls within the scope of section 4.55(1A) of the EP&A Act
- **accepts and adopts** all the findings and recommendations in this report as the reasons for making the decision to grant approval to the application;
- **modify** the consent SSD 8876
- **signs** the attached modification of the Development Consent (**Appendix B**).

Recommended by:

Adrien Lalchere

Planning Officer

Key Sites Assessments

Recommended by:

Annie Leung

Team Leader

Key Sites Assessments



8. *Determination*

The recommendation is: **Adopted by:**

Anthony Witherdin

Director

Key Sites Assessments



Appendices

Appendix A – List of Documents

The following supporting documents and supporting information to this assessment report can be found on the Department of Planning, Industry and Environment's website as follows:

- Environmental Impact Statement
<https://www.planningportal.nsw.gov.au/major-projects/project/25256>
- Submissions
<https://www.planningportal.nsw.gov.au/major-projects/project/25256>
- Applicant's Response to Submissions
<https://www.planningportal.nsw.gov.au/major-projects/project/25256>

Appendix B – Consolidated Consent

<https://www.planningportal.nsw.gov.au/major-projects/project/25256>

Appendix C – Notice of Modification

<https://www.planningportal.nsw.gov.au/major-projects/project/25256>