

# **Section 4.55(1A)**

## **Modification Application**



Sydney Metro City & Southwest

**Crows Nest Over Station Development – Concept  
Development Application (SSD 9579)**

# Contents

1	Introduction .....	3
2	Consent proposed to be modified .....	4
3	Proposed modifications to the consent .....	7
3.1	Proposed amendments to the development.....	7
3.2	Proposed amendments to conditions .....	7
3.2.1	Condition A21 .....	<b>Error! Bookmark not defined.</b>
3.2.2	Condition A26 .....	7
3.2.3	Condition A27 (proposed new condition).....	7
3.2.4	Condition B3 .....	8
3.2.5	Condition B4 .....	8
3.2.6	Condition B8 .....	<b>Error! Bookmark not defined.</b>
3.2.7	Condition B18 .....	9
3.2.8	Condition B33 .....	9
4	Substantially the same development .....	10
5	Environmental assessment .....	11
5.1	Environmental planning instruments .....	11
5.2	Environmental impacts .....	11
5.3	Design Excellence .....	<b>Error! Bookmark not defined.</b>
5.4	Loading, servicing and parking .....	11
5.5	Reasons given for granting consent .....	12
5.6	Site suitability and public interest .....	12
6	Conclusion .....	13

## Report prepared by:

Name	Kate Tudehope Associate Director, Planning Ethos Urban	Anna Nowland Principal Planner Ethos Urban
Qualifications	Bachelor of Planning (Hons 1) UNSW, MPIA	Bachelor of Planning (Hons 1) UNSW, MPIA
Address	173 Sussex Street, Sydney NSW 2000	
Signatures		
Date	4 August 2021	

# 1 Introduction

---

This modification application is submitted by Sydney Metro to the NSW Department of Planning, Industry and Environment (DPIE) pursuant to section 4.55(1A) of the *Environmental Planning and Assessment Act 1979* (EP&A Act) to modify the concept State Significant Development (SSD) development consent (SSD 9579) for the Crows Nest over station development.

SSD 9579 was approved by the Minister for Planning and Public Spaces on 23 December 2020. It establishes building envelopes, development parameters and strategies for the delivery of over station development (OSD) above Crows Nest metro station, across three sites (Sites A, B and C). SSD 9579 is henceforth referred to in this report as the 'Concept SSD Application'.

This application seeks to amend conditions of consent to:

- refine the conditions of consent to provide further information or clarifications
- propose a new condition (A27) formalising future access and use of the Site A OSD loading dock by the Site C OSD

This modification application is administrative and does not propose any physical changes to the approved development including any architectural plans or environmental assessments. This application identifies the consent, describes the proposed modifications, and provides an assessment of the relevant matters contained in section 4.55(1A) of the EP&A Act. It should be read in conjunction with the Environmental Impact Statement (EIS) prepared by Sydney Metro dated November 2018, and Response to Submissions Reports dated September 2020 and November 2020.

The approved Concept SSD Application has not previously been modified.

## 2 Consent proposed to be modified

Development consent for SSD 9579 (the 'Concept SSD Application') was granted by the Minister on 23 December 2020 for building envelopes, development parameters and strategies for the delivery of over station development (OSD) above the separately approved Crows Nest metro station. OSD will be delivered across three sites shown in **Figure 1** and described below:

- Site A: Six lots in the block bound by the Pacific Highway, Hume Street, Oxley Street and Clarke Lane (497-521 Pacific Highway, Crows Nest)
- Site B: Three lots on the southern corner of Hume Street and Pacific Highway (477-495 Pacific Highway, Crows Nest)
- Site C: One lot on the north-western corner of Hume Street and Clarke Street (14 Clarke Street, Crows Nest).



**Figure 1: Site aerial photograph**

The Concept SSD Application establishes the planning and assessment framework for all subsequent detailed applications to follow. Separate detailed applications will be submitted for each of the three sites, with the detailed SSD Application for Site C submitted in June 2021. Applications for Sites A and B will be prepared and assessed separately in the future.

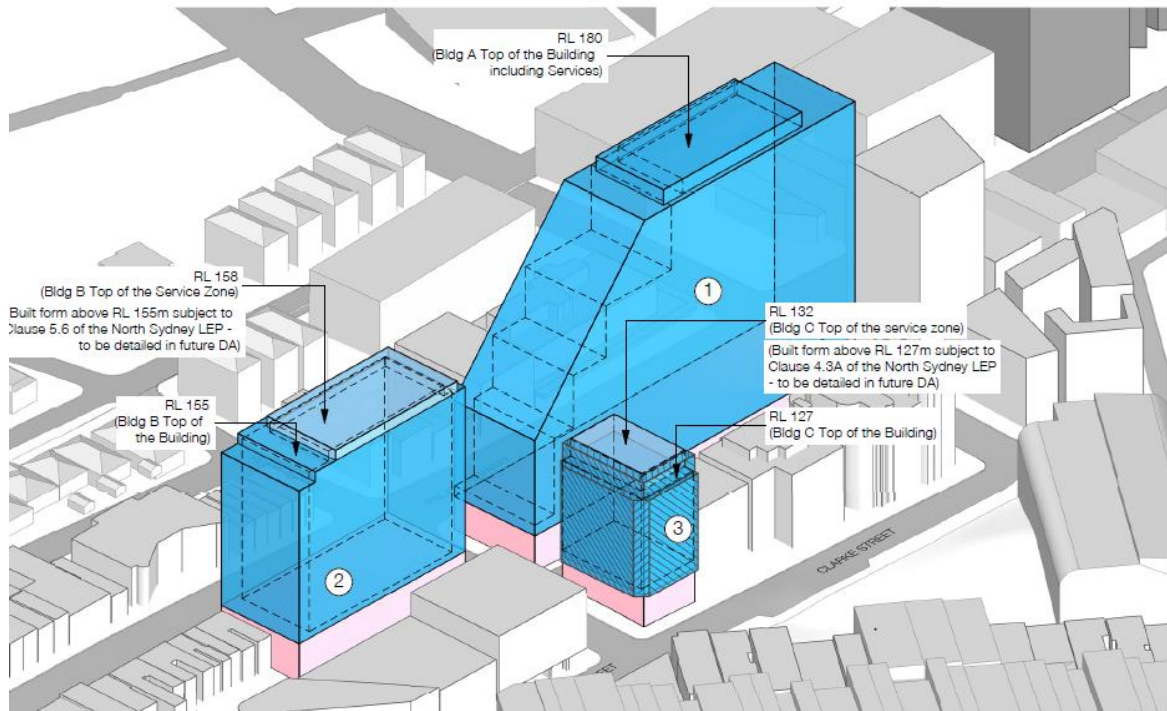
The Concept SSD Application approved the following:

- maximum building envelopes for Sites A, B and C, including street wall heights and setbacks (see **Figure 2** below)
- maximum building heights:
  - Site A: RL 175.60 metres

- Site B: RL 155 metres
- Site C: RL 127 metres
- maximum height for a building services zone on top of buildings to accommodate lift overruns, rooftop plant and services:
  - Site A: RL 180 or 4.4 metres
  - Site C: RL 132 or 5 metres
- maximum gross floor area (GFA) of 56,400m<sup>2</sup> for the OSD comprising the following based on the proposed land uses:
  - Site A: Commercial office premises - maximum 40,300m<sup>2</sup>
  - Site B: Residential accommodation - maximum of 13,000m<sup>2</sup>
  - Site C: Commercial office premises - maximum of 3,100m<sup>2</sup>

Note: GFA figures exclude GFA attributed to the station and station retail space approved under the CSSI Approval

- a minimum non-residential floor space ratio (FSR) for the OSD across combined Sites A, B and C of 6.8:1 or the equivalent of 43,300m<sup>2</sup>
- the use of approximate conceptual areas associated with the OSD which have been provisioned for in the Crows Nest station box (CSSI Approval) including areas above ground level (i.e. OSD lobbies and associated spaces)
- a maximum of 101 car parking spaces on Sites A and B associated with the proposed commercial and residential uses
- modulation and expression of built forms within an articulation zone extending to the property boundary for Site C
- loading, vehicular and pedestrian access arrangements
- strategies for utilities and services provision
- strategies for managing stormwater and drainage
- a strategy for the achievement of ecologically sustainable development
- a public art strategy
- a design excellence framework
- the future subdivision of parts of the OSD footprint, if required.



1. Site A, 2. Site B, 3. Site C

**Figure 2: Approved building envelopes within the Crows Nest station precinct**

### 3 Proposed modifications to the consent

---

This application seeks to amend conditions of consent to:

- refine the conditions of consent to provide further information or clarifications
- propose a new condition (A27) formalising future access and use of the Site A OSD loading dock by the Site C OSD

Specifically, amendments are proposed to the wording of conditions A26, B3, B4, B18, and B33, as well as the introduction of a proposed new condition (A27) as discussed below.

#### 3.1 Proposed amendments to the development

This modification application is administrative and does not propose any physical changes to the approved development including any architectural plans or environmental assessments. The proposed amendments relate to the specific wording of conditions of consent only.

#### 3.2 Proposed amendments to conditions

The proposed changes to the conditions of consent and a description each change is included in the following sections.

Amendments are proposed to the wording of conditions A26, B3, B4, B18, and B33 and a new condition of consent (A27) is proposed to formalise future access and use of the Site A OSD loading dock by the Site C OSD.

Words that are proposed to be deleted are shown in ~~**bold strike through**~~ and words to be inserted are shown in ***bold italics***.

##### 3.2.1 Condition A26

###### *CONSULTATION WITH FIRE AND RESCUE NSW*

*A25. Fire and Rescue NSW must be consulted with respect to the operational compatibility of the Precinct's proposed fire and life safety systems and their configuration at the project's preliminary and final design phases.*

***A23 A26. The pedestrian connection interfaces between the various sectors of the precinct must be appropriately assessed by fire engineering analysis with respect to emergency occupant egress, fire and smoke compartmentation, smoke hazard management and firefighting intervention.***

###### **Reason**

The proposed amendment corrects the misnumbered condition.

##### 3.2.2 Condition A27 (proposed new condition)

###### ***SERVICING AND LOADING***

***A27. Upon completion of the Site A OSD loading dock, vehicles associated with the operation of the Site C OSD shall be provided with access to the Site A OSD loading dock for the purposes of deliveries, servicing, and loading.***

###### **Reason**

Site C accommodates the station portal and is the smallest site within the Crows Nest Station precinct, and as such it was determined in the approved Concept SSD Application

that there is no opportunity to provide an on-site loading dock in this location. The approved Concept SSD Application resolved that loading and servicing for Site C would occur from the lay-by in Clarke Lane. However, there is an opportunity to facilitate future access to the neighbouring Site A OSD loading dock for the Site C OSD for the purposes of deliveries, servicing, and loading. The proposed condition of consent would formalise this shared arrangement discussed further in **Section 5** below.

### 3.2.3 Condition B3

#### MAXIMUM BUILDING ENVELOPES

*B3. The maximum achievable gross floor area (GFA) for the non-station related floor space is 56,400 m<sup>2</sup> (including 43,400 m<sup>2</sup> commercial and 13,000 m<sup>2</sup> residential GFA), **comprising a maximum of 40,300 m<sup>2</sup> (commercial) on Site A, 13,000 m<sup>2</sup> (residential) on Site B, and 3,100 m<sup>2</sup> (commercial) on Site C.** This amount can only be achieved subject to demonstration of:*

- (a) compliance with the conditions of this concept approval*
- (b) demonstration of design excellence consistency with the Design Guidelines (as amended by Condition A20)*
- (c) being wholly contained within the approved building envelopes, with the exception of rooftop enclosure(s) and the Site C articulation zone:*
  - (i) Rooftop enclosure can only be used as prescribed under Condition B4*
  - (ii) Articulation zones can only be used as prescribed under Condition B5*
- (d) have a building efficiency target of 85% for Site A and 80% for Site B, (building efficiency target is the measure of built form as a percentage of the total volume of the respective building envelope).*

#### Reason

The proposed change provides further detail to clarify the individual GFA caps applying to each site under the Concept SSD Application, ensuring future development will be delivered consistent with the Concept SSD Application.

### 3.2.4 Condition B4

*B4. Rooftop enclosures above each of the approved building envelopes (Site A, Site B and Site C) are only permitted as part of future development application(s) when the following requirements are met:*

- (a) roof enclosure above Building B or C must demonstrate consistency with clauses 4.3A or 5.6 of the NSLEP as applicable*
- (b) any roof enclosure shall be discrete and/or integrated into the architectural design of the building and shall demonstrate that it does not have an adverse visual impact on the design and appearance of the building or the surrounding streetscape.*
- (c) where roof enclosures are visible from the surrounding streetscape(s), they shall be designed or architecturally treated / screened so that they form a decorative roof feature*
- (d) roof enclosures shall not have an unacceptable amenity impacts, particularly in terms of adverse:*
  - (i) overshadowing of residential properties and public open spaces,*
  - (ii) loss of outlook.*

*(e) roof enclosures shall not include GFA and shall not be reasonably capable of modification to include GFA.*

**Note: The rooftop enclosures may be located or protrude into the articulation zone subject to Condition B5.**

#### **Reason**

The proposed amendment confirms that rooftop enclosures can form part of the articulation zone on Site C if these areas would also separately meet the criteria in Condition B5. Condition B5 specifies that built form within the articulation zones cannot occupy more than 25% of the total volume of these zones and cannot contribute to GFA above RL 127m.

### **3.2.5 Condition B18**

*B18. Future development application(s) must demonstrate compliance with the following maximum parking limits:*

*(a) the maximum number of car spaces to be provided for the development is limited to 101 spaces, including commercial and residential spaces, but excluding service vehicle spaces, and comprising:*

- (i) a maximum of 46 spaces within Site A, **including 6 accessible spaces***
- (ii) a maximum of 55 spaces within Site B, **including 6 accessible spaces***
- (iii) no spaces within Site C*
- (iv) a minimum of 12 accessible spaces.***

*(b) the maximum number of motorcycle spaces to be provided for the development is limited to 26 spaces, **and comprising:***

- (i) a maximum of 24 spaces within Site A***
- (ii) a maximum of 2 spaces within Site B***
- (iii) no spaces within Site C.***

#### **Reason**

The proposed changes further detail the motorcycle and accessible parking breakdown applying to each site, ensuring that future development delivers the correct number of spaces.

### **3.2.6 Condition B33**

~~**B33. Future development applications for aboveground works shall include a Reflectivity Assessment demonstrating that external treatments, materials and finishes of the development do not cause adverse or excessive glare.**~~

#### **Reason**

This condition is proposed to be deleted as it is a duplicate of Condition B9.

## 4 Substantially the same development

---

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 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)”*.

The development, as proposed to be modified, is substantially the same development as that originally approved as there are no physical changes proposed, including to any architectural plans or environmental assessments. The proposed modifications are administrative in nature.

## 5 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 relevant matters to the application referred to in section 4.15(1) of the EP&A Act and the reasons given by the consent authority for the grant of the original consent.

This modification application generates no additional environmental impacts by virtue of the proposed changes being amendments to the conditions of consent only, with no changes proposed to the level of design or environmental assessments for any of the three sites.

The proposed modifications do not give rise to any further impacts or need for assessment against the relevant matters under section 4.15(1) of the EP&A Act beyond those already addressed in the original EIS and RTS reports. The proposed modifications do not alter the level of compliance with, nor give rise to the need for additional assessment against, the relevant environmental planning instruments and policies.

Nevertheless, for the purposes of completeness, the following section considers the relevant matters under section 4.15(1).

### 5.1 Environmental planning instruments

The proposed amendments do not alter the development’s consistency with any environmental planning instrument, including the *North Sydney Local Environmental Plan 2013*, as no changes are proposed to the design or environmental impacts and strategies for the development.

### 5.2 Environmental impacts

The proposed modifications will not generate additional or significant environmental, social or economic impacts by virtue of the proposed changes relating solely to the conditions of consent, with no physical changes proposed to the approved development including any architectural plans or environmental assessments for any of the sites.

### 5.3 Loading, servicing and parking

#### Loading docks

This application does not propose any change to the number or location of loading docks within the precinct, which remain consistent with the approved Concept SSD Application.

The proposed new Condition A27, however, seeks to formalise a shared future use of the OSD loading dock to be provided on Site A for the Site C OSD. This shared arrangement aligns the Concept SSD Application with the separate concurrent detailed SSD Application for the Site C OSD (SSD-13852803), as described in the Environmental Impact Statement prepared for this site. This will benefit the future operation of the precinct and enable service vehicles to use the loading dock in Site A in addition to the loading bays adjacent to Site C in Clarke Lane and the rolled kerbs in Clarke Lane.

#### Parking

The proposed modifications to Condition B18 provide further context and detail to the breakdown of car and motorcycle parking within the precinct. Accordingly, no change is proposed to the number of parking spaces as assessed and approved in the Concept SSD Application.

## 5.4 Reasons given for granting consent

The proposed amendments to the conditions of consent are consistent with the reasons given by the Minister for granting consent to the Concept SSD Application, as follows:

- *Consistent with NSW Government Policy* – the development's consistency with relevant strategic policy remains unchanged.
- *Benefits* – the development will continue to provide benefits for the region and state, including through the provision of new residential, retail, and commercial uses.
- *Impacts can be managed* – the amendments are administrative in nature and will not result in significant or additional environmental impacts.
- *Community views considered* – as no changes are proposed to the design or environmental impacts or assessments of OSD, the proposed amendments to the conditions of consent will not materially impact the feedback received during the design and assessment of the proposal.

## 5.5 Site suitability and public interest

As the proposed amendments to the conditions of consent correct minor administrative errors or provide further clarification, these amendments do not impact the suitability of the site and are considered to be in the public interest.

## 6 Conclusion

---

This proposed modification application seeks to amend conditions of consent to:

- refine the conditions of consent to provide further information or clarifications
- propose a new condition (A27) formalising future access and use of the Site A OSD loading dock by the Site C OSD

No changes are proposed to the design of the development itself, including with regard to the approved envelopes and/or built form.

In accordance with section 4.55(1A) of the EP&A Act, DPIE may modify the Concept SSD Application (SSD 9579), as:

- the proposed changes introduce no new environmental impacts; and
- the development as proposed to be modified is substantially the same as that originally approved.