



Crows Nest Over Station Development Modification 2

Changes to conditions of consent relating to Design Excellence
State Significant Development Modification Assessment
(SSD 9579 MOD 2)

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Cover Image: Perspective looking north-west towards indicative Buildings A and C (Source: Applicant's EIS)

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Glossary

Abbreviation	Definition
CIV	Capital Investment Value
Council	North Sydney Council
Department	Department of Planning 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>
EPI	Environmental Planning Instrument
ESD	Ecologically Sustainable Development
GANSW	Government Architect NSW
LEP	Local Environmental Plan
Minister	Minister for Planning
SEARs	Planning Secretary's Environmental Assessment Requirements
Planning Secretary	Secretary of the Department of Planning and Environment
SMDRP	Sydney Metro Design Review Panel
SDRP	State Design Review Panel
SEPP	State Environmental Planning Policy
SRD SEPP	State Environmental Planning Policy (State and Regional Development) 2011
SSD	State Significant Development
SSI	State Significant Infrastructure

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1 Introduction

This report provides the Department's assessment of an application to modify SSD - 9576 for Crows Nest Over Station Development (OSD) (SSD-9579-Mod-2). The modification application seeks approval to amend:

- Conditions A21 and B8 to nominate the State Design Review Panel (SDRP) as the design review panel for Sites A and B for Design Excellence
- amend the Public Domain and Place section of the Design Guidelines to include public art and/or activation facing Clarke Lane to facilitate an active public domain.

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

1.1 Background

The Crows Nest OSD is located in the North Sydney local government area (LGA). The site has a total combined area of 6,356 m² and comprises three sites (**Figure 1**) being:

- 497 – 521 Pacific Highway (Site A)
- 477 – 495 Pacific Highway (Site B)
- 14 Clarke Street (Site C).

The site occupies the air space above the future Crows Nest Metro Station. Demolition and construction activities for the Metro station have commenced on the site in accordance with the Critical State Significant Infrastructure approval for Sydney Metro City and Southwest (CSSI 7400).



Figure 1 | Local Context Map (Source: Nearmap with annotations added)

1.2 Approval history

Concept Plan (SSD 9579)

On 23 December 2020, development consent was granted by the Minister for Planning and Public Spaces for the concept proposal of the Crows Nest OSD site (SSD 9579). The development consent permits the following works for the mixed-use development:

- three building envelopes comprising:
 - maximum building envelope heights:
 - Building A: RL 175.6m
 - Building B: RL 155m
 - Building C: RL 127m
- maximum GFA of 56,400m² for including:
 - 43,400m² commercial GFA
 - 13,000m² residential GFA
- maximum 101 car parking spaces

Modification 1 (SSD-9579-Mod-1)

On 8 October 2021, consent was granted by the Team Leader, Key Sites Assessments, as delegate of the Minister for Planning and Public Spaces, to modify the concept approval for the Crows Nest OSD site (SSD-9579-Mod-1).

The modification related to administrative changes to conditions including the correct numbering of conditions, and clarification of conditions. The modification also sought approval for a new condition allowing Site C OSD to have future access to the Site A OSD loading dock.

Post Approval (SSD-9579-PA-6)

On 26 November 2021 updated Design Quality Guidelines (dated March 2021) were approved as part of post approval SSD-9579-PA-6. The requirements of Condition A20 and Attachment A of the Concept Approval were addressed in these updated Design Quality Guidelines.

2 Proposed modification

Justification for modification

Amend condition A21

The Applicant, Sydney Metro seeks to amend Condition A21 to nominate the State Design Review Panel (SDRP) as the relevant Design Review Panel for Sites A and B and to separate the Design Excellence Strategy for Site A and B, from that for Site C. The Applicant requests the amendment because:

- Sydney Metro will not be the future landowner or the proponent for the future Stage 2 development applications for Site A and Site B. As such, the proposed change will align with Sydney Metro's divestment strategy and allow future landowners of the sites to manage the design review process with the SDRP instead of the Sydney Metro DRP (SMDRP)
- the Design Excellence Strategy for Site C has already been approved by DPIE. A separate Design Excellence Strategy has been prepared for Sites A and B in consultation with the SMDRP and GANSW. The Design Excellence Strategy for Sites A and B was supported by GANSW in October 2021.

Amend condition B8

The condition will be modified to reference and align with the changes to Condition A21.

Amend the Design Quality Guidelines (referenced in condition A20)

The Applicant has amended the Public Domain and Place section of the approved Design Quality Guidelines to include public art and/or activation facing Clarke Lane so to facilitate an active public domain.

Amendments to conditions

The Applicant proposes the following amendments to Conditions A21 and B8 as shown below (words that are proposed to be deleted are shown as ~~struck out~~ words and the insertion of new words are shown in **bold and underlined**):

1. Condition A21:

DESIGN EXCELLENCE

A21. Prior to the lodgement of **the relevant** future development applications, the Applicant shall submit an updated Design Excellence Strategy for **Site C and a separate Design Excellence Strategy for Sites A and B** to the satisfaction of the Planning Secretary addressing the following:

- (a) independent design review process through use of the Sydney Metro Design Review Panel **(for Site C)** subject to its Terms of Reference endorsed by GANSW or **the State Design Review Panel (for Sites A and B)**
- (b) presentation of the Design Excellence Strategy to the Sydney Metro Design Review Panel and seek their advice and endorsement on the design excellence benchmarks for Crows Nest OSD.
- (c) include a Design Integrity process description, prepared in consultation with GANSW, for the design development and construction documentation phases as required by conditions of this development consent.

Note: Nothing in this condition prevents the submission of separate Design Excellence Strategies for individual sites.

2. Condition B8:

~~B8. Consideration of the approved Design Guidelines (Condition A20)~~ Future development applications shall address the following:

- (a) submission of a Design Integrity Report (DIR) to the satisfaction of the Planning Secretary that demonstrates how design excellence and design integrity will be achieved in accordance with:
 - (i) the design objectives of the Concept Development Application
 - (ii) consistency with the approved Design Guidelines as amended by Condition ~~A14~~ **A20**
 - (iii) the DEEP's Design Excellence Report
 - (iv) the advice of the **State** DRP or **Sydney Metro DRP**-(under Condition ~~A15~~ **A21**)
 - (v) the conditions of this consent.
- (b) the DIR as required by **this condition** ~~Condition B7(b)~~ must include a summary of feedback provided by the ~~SDRP~~ **State DRP or Sydney Metro DRP** ~~(or alternative approved in accordance with Condition A15)~~ and responses by the Applicant to this advice. The DIR shall also include how the process will be implemented through to completion of the approved development.

3 Statutory Context

3.1 Scope of modification

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 | Assessment against section 4.55 of the EP&A Act

Section 4.55 (1A) Evaluation	Consideration
a) that the proposed modification is of minimal environmental impact, and	The Department is satisfied the proposed modification will have minimal environmental impacts. The proposed modification is to allow the appropriate Design Review Panel to be referenced in the conditions and to separate the Design Excellence Strategy for Sites A and B from that for Site C. The changes to the Design Quality Guidelines will provide parameters for future built form design for subsequent developments.
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	The Department is satisfied the modification application is substantially the same development as the proposed modifications. The modifications proposed do not alter the key aspects or elements of the original development as approved.
c) the application has been notified in accordance with the regulations, and	In accordance with the EP&A Regulation, due to the minor nature of the proposed modifications, the Department did not formally notify the application. However, the Department made the application publicly available on the Department's website.
d) any submission made concerning the proposed modification has been considered.	No submission was received for this proposal

3.2 Consent authority

The Minister for Planning is the consent authority for the application under section 4.5(a) of the EP&A Act. Under the Minister's delegation, dated 26 April 2021, the Team Leader, Key Sites Assessments, may determine the application as:

- no political disclosure statement has been made
- no submissions in nature of an objection have been received.

3.3 Mandatory matters for consideration

The Department conducted a comprehensive assessment of the project against the mandatory matters for consideration as part of the original assessment of SSD 9579. The Department considers the modification application does not result in any significant changes that would alter the mandatory matters for consideration under section 4.15 of the EP&A Act and conclusions made as part of the original assessment.

Table 2 identifies the matters for consideration that apply to the proposed modification.

Table 2 | Section 4.15 Evaluation

Section 4.15 (1) Evaluation	Consideration
(a)(i) any environmental planning instrument	The modified proposal will continue to remain consistent with relevant legislation, including the North Sydney LEP 2013.
(a)(ii) any proposed instrument	Not applicable.
(a)(iii) any development control plan	Development Control Plans do not apply to SSDs.
(a)(iv) any planning agreement	Not applicable.
(a)(iv) the regulations	The proposal satisfies 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 5 of this report).

(c) the suitability of the site for the development	The site remains suitable for the development as assessed in the original application.
(d) any submissions	No submissions were received for this proposal
(e) the public interest	The Department considers the modified proposal to be in the public interest as the changes are administrative and do not diminish the requirements for the development to achieve Design Excellence. The proposed conditions will continue to require the Applicant to comply with the Concept Approval.

3.4 Objects of the 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 Reason for Granting Consent

The proposed modification does not detract from the reasons for which the original consent was granted.

4 Engagement

4.1 Department's engagement

Clause 117(3B) of the EP&A Regulation specifies that the notification requirements of the EP&A Regulation do not apply to section 4.55(1A) modifications with minimal environmental impact applications.

Accordingly, due to the minor nature of the proposed modifications, the application was not publicly exhibited. The modification application was made publicly available on the Department's website. The Department received no submissions from the public.

The modification application was not referred to Council as the scope of the proposed amendments are limited to changes to the approved Design Excellence Strategy and Design Guidelines which have been prepared in consultation with GANSW.

5 Assessment

In assessing the merits of the proposal, the Department has considered:

- the modification application and associated documents
- the Environmental Assessment and conditions of approval for the original application
- relevant environmental planning instruments, policies and guidelines
- the requirements of the EP&A Act and Regulation.

The Department's assessment of the proposal is provided in **Table 3**.

Table 3 | Assessment of proposed changes

Modifications	Findings	Recommendations
Condition A20	<p>The Public Domain and Place section of the Design Guidelines has been amended to include an additional requirement for public art and/or activation facing Clarke Lane. This has been included to facilitate an active public domain.</p> <p>The Department supports this additional requirement which will ensure Clarke Lane is appropriately activated. The Department notes that the updated Design Guidelines have been endorsed by the GANSW.</p> <p>Updated Design Guidelines (dated March 2021) which addressed the requirements of Condition A20 (and Attachment A) of the Concept Approval were approved on 26 November 2021 as part of post approval SSD-9579-PA-6. As such Condition A20 (and Attachment A) is no longer relevant and can be deleted. The amended Design Guidelines, the subject of this application, can be referenced in Condition A2.</p>	<p>Delete Condition A20 (including Attachment A) as it is no longer relevant.</p> <p>Modify Condition A2 to reference the endorsed Design Guidelines, as amended by this application.</p>
Condition A21	<p>The Applicant, Sydney Metro, prepared a Design Excellence Strategy for Sites A and B in October 2021, which was supported by GANSW. The amended Design Excellence Strategy enables design reviews for subsequent development applications for Sites A and B to be reviewed by the State DRP rather than the Sydney Metro DRP.</p>	<p>Modify Condition A21 to reference the relevant Design Review Panel.</p> <p>Delete A21(b) as the design excellence benchmarks are</p>

The Department notes Sydney Metro will not be the future landowner or applicant for the future applications for Site A and Site B.

included in the endorsed Design Excellence Strategy.

The Department considers the proposed changes to the Design Excellence Strategy are acceptable because Site A and Site B would not be delivered as integrated station developments (where the design and construction of the over station development and station would be integrated).

The Department also accepts that the amended Design Excellence Strategy for Site A and B has been endorsed by GANSW as being appropriate to ensure future development achieves Design Excellence. The Department agrees with GANSW and supports the amended Design Excellence Strategy and amendments to Condition A21.

Condition B8	This condition will be amended to reflect and align with the proposed changes to Condition A21.	Condition B8 to be amended to be consistent with amended Condition 21.
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In summary, the proposed changes to the conditions are:

- **Condition A2** - to be modified to reference the Design Quality Guidelines which have been endorsed by GANSW
- **Condition A20** - to be deleted as revising the Design Quality Guidelines is no longer relevant (this has been done and endorsed by GANSW)
- **Condition 21** – to be modified generally consistent with the Applicant’s request with the added deletion of clause (b) as the design excellence benchmarks are included in the Design Excellence Strategy endorsed by GANSW
- **Condition B8** – to be modified generally consistent with the Applicant’s request
- **Attachment A** – to be deleted as the requirements of Attachment A have been incorporated into the Design Quality Guidelines endorsed by GANSW.

The Department consulted with the Applicant on the proposed modified conditions, and no objection or comment was raised by the Applicant.

6 Evaluation

The Department has assessed the modification request 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 proposal is substantially the same development as the originally approved development and consistent with the Concept Approval
- the proposed changes are of minimal environmental impact
- it complies with the relevant statutory provisions and remains consistent with relevant EPIs.

Consequently, the Department concludes the proposal 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 Team Leader, Key Sites Assessments, as delegate of the Minister for Planning:

- **considers** the findings and recommendations of this report
- **determines** that the application SSD 9579 MOD 2 falls within the scope of section 4.55(1A) of the EP&A Act
- **accepts and adopts** all of the findings and recommendations in this report as the reasons for making the decision to approve the modification
- **modifies** the consent SSD 9579
- **signs** the attached approval of the modification (**Appendix B**).

Recommended by:



Paula Bizimis
Senior Planning Officer
Key Sites Assessments

Recommended by:



James Groundwater
Senior Planning Officer
Key Sites Assessments

8 Determination

The recommendation is **Adopted** by:



14 January 2022

Annie Leung

Team Leader

Key Sites Assessments

as delegate of the Minister for Planning

Appendices

Appendix A – List of referenced documents

Modification Request

<https://www.planningportal.nsw.gov.au/major-projects/project/43521>

Appendix B – Notice of Modification

<https://www.planningportal.nsw.gov.au/major-projects/project/43521>