



Pemulwuy Mixed Use Development Concept Plan Modification 3 and Project Modification 4

Modification to car parking spaces on Caroline Street
State Significant Development and Concept Plan
Modification Assessment
(MP06_0101 MOD 3 and MP11_0093 MOD 4)

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Glossary

Abbreviation	Definition
AHD	Australian Height Datum
BCA	Building Code of Australia
CIV	Capital Investment Value
Council	City of Sydney
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	Environmental Planning and Assessment Regulation 2000
EPI	Environmental Planning Instrument
ESD	Ecologically Sustainable Development
LEP	Local Environmental Plan
Minister	Minister for Planning and Public Spaces
Planning Secretary	Secretary of the Department of Planning, Industry and Environment
SEARs	Planning Secretary's Environmental Assessment Requirements
SEPP	State Environmental Planning Policy
SRD SEPP	State Environmental Planning Policy (State and Regional Development) 2011
SSD	State Significant Development

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1 Introduction

1.1 Background

This report provides a concurrent assessment of a modification application to the Concept Plan (MP06_0101 MOD 3) and Project Approval (SSD-MP11_0093 MOD 4) and for the Pemulwuy mixed use development, Redfern.

The modification applications seek to:

- amend the layout of eight car parking spaces on Caroline Street between Eveleigh Street and Louis Street
- modify land dedicated to Council
- amend Schedule 1 of the Concept Plan that makes reference to a railway overbridge which was deleted in MOD 2.

The applications have been lodged by Deicorp Ltd (the Applicant) pursuant to section 75W and section 4.55(1A) of the *Environmental Planning and Assessment Act 1979 (EP&A Act)*.

1.2 Subject site

The site is located within the City of Sydney local government area (LGA), approximately 1.2 kilometres (km) southwest of the Sydney Central Business District (CBD) and to the north of Redfern Station. The site has a total area of approximately 10.37 hectares and is bound by Lawson Street to the south, Louis Street to the west, Vine Street to the north and Eveleigh Street and the railway corridor to the east (**Figures 1 and 2**)

Historically, the majority of the site contained several 2-storey residential terraces, administered by the Aboriginal Housing Company (AHC), providing affordable residential accommodation to the Aboriginal and Torres Strait Islander (ATSI) community. Most buildings on the site were demolished between 1990 and 2004 and now the site is largely vacant, comprising grassed areas secured with chain-link fencing and hoardings. A 2-storey gym building remains on the site at the corner of Vine and Eveleigh Streets (**Figure 2**).

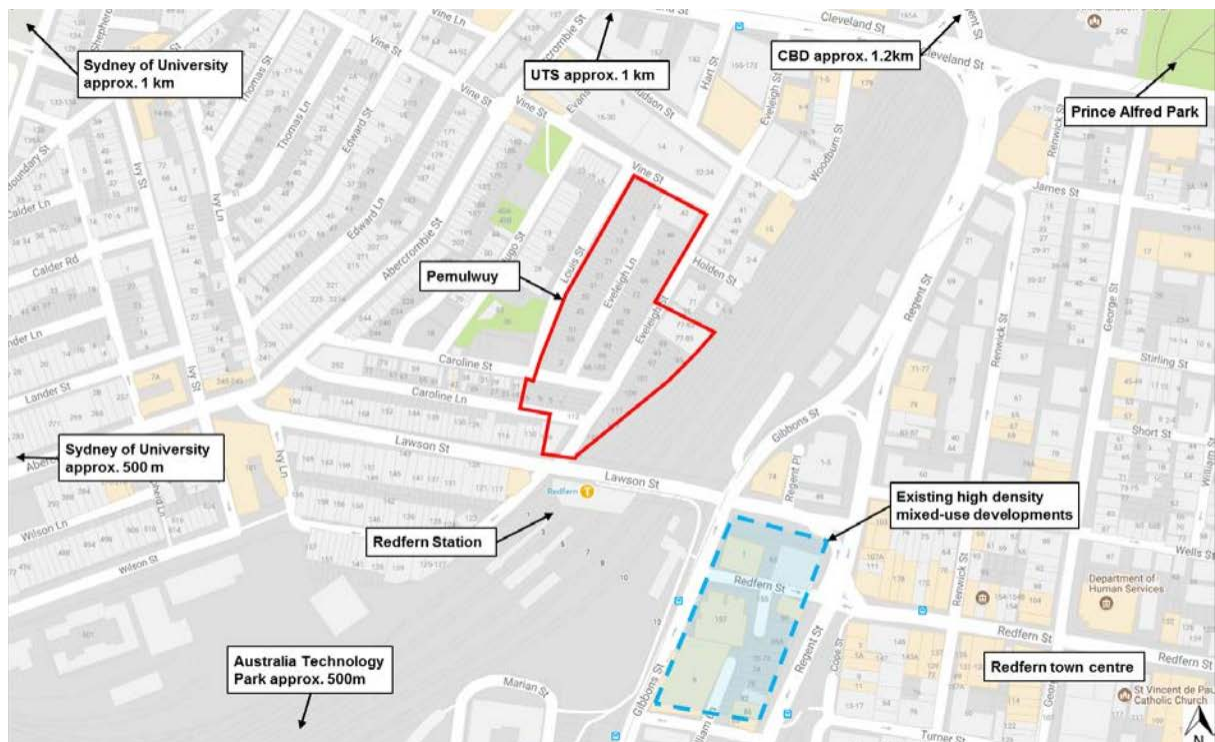


Figure 1 | The Pemulwuy Precinct site location, outlined in red (Base source: Nearmap)

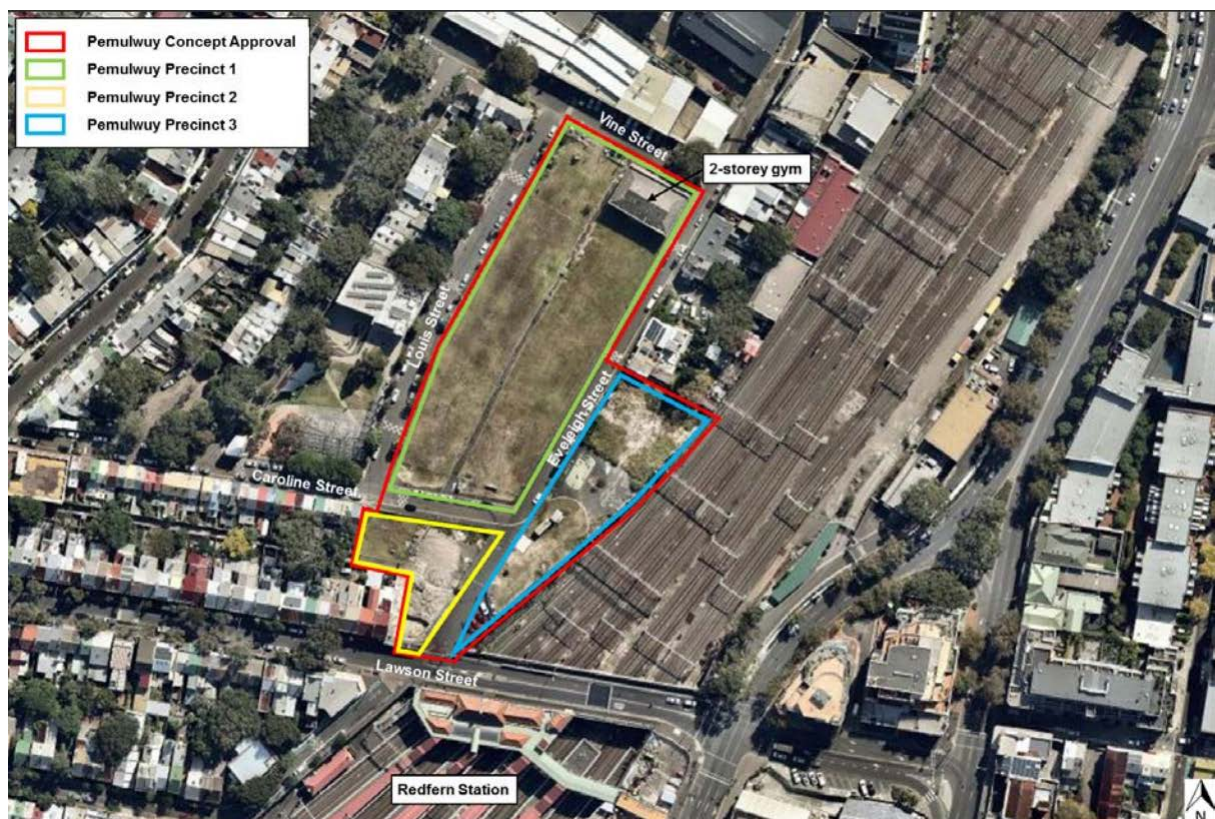


Figure 2 | Local Context Map (Base source: Nearmap)

1.3 Approval history

1.2.1 Pemulwuy Concept Plan

On 30 June 2009, the Minister for Planning approved a Part 3A concept plan (MP06_0101) for the redevelopment of the site into three precincts for a new mixed-use neighbourhood, comprising retail/commercial, residential (including student accommodation), cultural and community uses and open space.

The Concept Approval (MP06_0101) has been modified twice (**Table 1**).

Table 1 | Summary of modifications to the Concept Approval (MP06_0101)

Mod No.	Summary of Modifications	Approval Authority	Type	Approval Date
MOD 1	Increase total GFA, reduce the amount of retail/commercial, community and cultural facilities GFA, increase open space GFA and more parking, no community re-use of 1-11 Vine Street	Deputy Director-General	S75W	21 December 2012
MOD 2	Increase size of Precinct 3 building envelope, deletion of retail, commercial and gallery uses from Precinct 3, replace retail use in Precinct 1 with gallery use, deletion of the land-bridge over the railway corridor, deletion of 80 m ² public open space in Precinct 3 and dedication of an additional 438 m ² open space to Council	Commission	S75W	4 March 2019

1.2.2 Pemulwuy Project

On 21 December 2012, the then Deputy Director-General approved a Part 3A project application (MP11_0093) for the construction of 8 buildings throughout the three precincts, ranging from 3 to 8 storeys, basement car parking, eight ground level car parking spaces, and landscaping and public domain works.

The project application (MP11_0093) has been modified once and one modification (in addition to the subject modification) is under assessment (**Table 2**).

Table 2 | Summary of modifications to the project application (MP11_0093)

Mod No.	Summary of Modifications	Approval Authority	Type	Approval Date
MOD 1	Deletion of all Precinct 3 buildings and works from the Project Approval, deletion of the land-bridge over the railway corridor, replace retail use within Precinct 1 with gallery use, amendment of the design and layout of the public domain	Independent Planning Commission	4.55(1A)	4/3/2019
MOD 2	Modify the number of adaptable units proposed from 57 to 16	N/A	4.55(1A)	Application Withdrawn
MOD 3	Amendments to boundary, childcare centre design and floor level changes, reduce GFA	Director	4.55(1A)	Under Assessment

1.4 Transition from Part 3A Approval to an SSD Approval

On 7 June 2018 an Order made under delegation from the Minister for Planning and Public Spaces, in accordance with clause 6 of Schedule 2 of the Environmental Planning and Assessment (Savings, Transitional and Other Provisions) Regulation 2017, was made to transition the Part 3A project MP11_0093 from a Part 3A approval to an SSD approval. The Order took effect upon publication in the NSW Government Gazette on 15 June 2018.

2 Proposed modification

2.1 Modifications to the Concept Plan (MP06_0101)

The modification application seeks approval for the following:

- Amend the eight at-grade 90-degree car parking spaces on the northern side of Caroline Street to four kerbside car parking spaces on either side of Caroline Street
- Remove reference to land bridge over railway corridor which was deleted in Mod 2
- Amend the areas of public domain land to be dedicated to Council
- Amend Conditions in relation to the modifications sought

2.2 Modifications to the Project Application (MP11_0093)

The modification application seeks approval for the following:

- Amend the eight at-grade 90-degree car parking spaces on the northern side of Caroline Street to four kerbside car parking spaces on either side of Caroline Street
- Amend the areas of public domain land to be dedicated to Council
- Amend Conditions in relation to the modifications sought



Figure 3 | Proposed at-grade kerbside car parking spaces on Caroline Street (MP06_0101)

3 Statutory context

3.1 Scope of modifications

3.1.1 Concept Plan Modification 3

The concept plan was originally approved under Part 3A of the EP&A Act. The modification is a transitional Part 3A project under Schedule 2 to the *Environmental Planning & Assessment (Savings, Transitional and Other Provisions) Regulation 2017* (ST&OP Regulation).

Under clause 3BA of Schedule 2 of the ST&OP Regulation a concept approval may continue to be modified under section 75W after March 2018 where the Minister is satisfied that:

- the proposed modification is to correct a minor error, misdirection or miscalculation; or
- the proposed modification is of minimal environmental impact; or
- the project to which the concept plan as modified relates is substantially the same as the project to which the concept plan currently relates (including any modifications previously made under section 75W).

The Department considers the Minister (or delegate) can reasonably form the view that the modification request is of minimal environmental impact and is substantially the same development. The modification is therefore within the scope of section 75W of the EP&A Act and is capable of being determined pursuant to the transitional provisions under clause 3BA of Schedule 2 of the ST&OP regulation. Consequently, this report has been prepared in accordance with the requirements of Part 3A and associated regulations, and the Minister (or delegate) can be satisfied that the concept plan may be modified under section 75W of the EP&A Act.

Section 75W of the EP&A Act provides that a Proponent may request the Minister to modify the Minister's approval for a project.

3.1.2 Project Modification 4

The Department has reviewed the scope of the modification to the Project Approval and considers the application can be characterised as a modification involving minimal environmental impacts as the proposal:

- would not increase the environmental impacts of the project as approved; and
- is substantially the same development as originally approved.

Therefore, the Department is satisfied the proposed modification is within the scope of section 4.55(1A) of the EP&A Act and does not constitute a new development application. An assessment of the proposed modification application against the requirements of section 4.55(1A) of the EP&A Act is provided in **Appendix C**.

Accordingly, the Department considers that the application should be assessed and determined under section 4.55(1A) of the EP&A Act rather than requiring a new development application to be lodged.

3.2 Consent authority

The Minister for Planning and Public Spaces (Minister) is the consent authority for the modification requests. However, under the Minister's delegation, the Director, Key Sites Assessments, may determine the application as:

- there were no public submissions received
- a political disclosure statement has not been made.

3.3 Mandatory matters for consideration

The following are relevant mandatory matters for consideration:

- section 4.55(1A) of the EP&A Act, including environmental planning instruments or proposed instruments;
- EP&A regulation;
- likely impacts of the modification application, including environmental impacts on both the natural and built environment, and social and economic impacts;
- suitability of the site;
- any submissions;
- the public interest; and
- the reasons for granting approval for the original application.

The Department has considered all of these matters in its assessment of the proposal. The Department has also given consideration to the relevant matters in **Section 5** and **Appendix C** of this report.

3.4 Consistency with Concept Approval

The Department has considered the proposed modification and is of the opinion it remains consistent with the concept approval MP06_0101 (as proposed to be modified) as it relates to relocation of car parking in Caroline Street and minor amendments to public domain.

4 Engagement

4.1 Department's engagement

The applications were made publicly available on the Department's website and referred to City of Sydney Council (Council) for comments.

4.2 City of Sydney Submission

Council raised no objection to the proposed amendments to car parking spaces on Caroline Street, however it noted the proposed land dedication plan was inconsistent with the subdivision application currently under assessment by Council.

In response, the Applicant provided additional information, including a revised land dedication plan.

On 15 September 2020, Council advised that the revised land dedication plan is consistent with the subdivision application currently under assessment and did not raise any further concerns.

5 Assessment

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

- the modification application and associated documents
- the Environmental Impact Assessment and conditions of consent for the original application (as modified)
- Council's submission on the proposal
- relevant environmental planning instruments, policies and guidelines
- the requirements of the EP&A Act

The Department has assessed the potential impacts associated with the proposal in **Table 3**.

Table 3 | Assessment of issues

Issue	Consideration	Recommendation
Amendments to on street car parking	<ul style="list-style-type: none"> • The Concept and Project Approval includes 115 on-site car parking spaces within a basement car park and eight 90° angle car parking spaces on the northern side of Caroline Street. • The proposal seeks to reconfigure car parking in Caroline Street to provide four parallel kerbside car parking spaces on either side of Caroline Street (eight spaces in total). • The applicant advises the revised design has been informed by discussions with Council in relation to traffic and parking issues associated with the original design. • The applicant also notes that Condition B17 of the Project Approval requires the basement car park layout to comply with Australian Standard (AS) 2890.2 which is the standard for commercial vehicles, however the basement does not accommodate commercial vehicles. • Council raised no objection to the revised car parking design. • The Department considers the proposed amendments to the on-street car parking spaces are acceptable, as there is no change to the number of approved at-grade car parking spaces. The Department also notes that the approved basement does not include any loading/unloading facilities as servicing of the development occurs on the street. The Department therefore agrees that the basement does not need to comply with the AS for commercial vehicles. • The Department recommends that Condition B17 of the Project Approval is amended to: <ul style="list-style-type: none"> ○ include the requirement for the on-street parking spaces to meet the requirements of AS 2890.4 Parking Facilities ○ update the requirement for the layout of the basement car park to comply with AS 2890.1 rather than 2890.2 as it does not provide access for commercial vehicles. 	The Department recommends the list of drawings in the Concept and Project Approval be updated to take account of the amended car parking layout and that Condition B17 of the Project Approval is amended to require the design of the car parking spaces to meet the relevant Australian Standard.
Land dedicated to Council	<ul style="list-style-type: none"> • The proposed reconfiguration of car parking in Caroline Street results in a minor increase in the area of public domain which will be dedicated to Council in accordance with Condition E12 of the Project Approval. • Council initially raised concerns that the proposed land dedication plan was inconsistent with the subdivision application for the public reserve dedication which is currently under assessment by Council. However following review of amended 	The Department recommends the list of drawings in the Concept and Project Approval and Condition E12 be updated to reflect the

	<p>plans, Council confirmed the land dedication plan is consistent with the subdivision application and raised no further concerns.</p> <ul style="list-style-type: none"> • The Department supports the proposed amendment as it results in a 30.7 m² increase in public domain and is consistent with the subdivision application currently under assessment by Council. 	<p>increase in land dedicated to Council.</p>
Reference to the land bridge	<ul style="list-style-type: none"> • The proposal seeks to amend Schedule 1 of the concept plan to remove reference to the railway overbridge on the northern side of Caroline Street within Precinct 1, which was deleted in the determination of MP06_0101 MOD 2. • The Department notes that the overbridge was deleted in the determination of MP06_0101 Mod 2, however it remained referenced in Schedule 1 as Schedule 1 outlines the details of the original approval. • The Department is satisfied that the detailed description of the development is provided in Condition A1 and recommends that Schedule 1 of the modification instrument be reworded to provide a high-level description as follows: "Concept Approval for the redevelopment of the site for commercial, retail, residential and community uses". 	<p>The Department recommends that Schedule 1 of the modification instrument for the Concept Approval is reworded to provide a high-level description of the Concept Approval.</p>

6 Evaluation

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

- it complies with relevant statutory provisions and the proposal remains consistent with relevant EPIs and the strategic planning context
- it is substantially the same development as originally approved and does not result in any adverse impacts
- it retains the same amount of off and on-street car parking spaces and a 30.7m² increase in land dedicated to Council as public domain.

Consequently, the Department concludes the proposal is in the public interest and should be approved, subject to conditions (**Appendix B**).

7 Recommendation

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

- **considers** the findings and recommendations of this report
- **determines** that the Concept Plan modification application (MP06_0101 MOD 3) falls within the scope of section 75W of the EP&A Act
- **determines** that the project modification application (MP11_0093 MOD 4) 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 modifications
- **modify** the approval MP06_0101 and consent MP11_0093
- **signs** the attached instruments of modification (**Appendix B**).

Recommended by:



Amy Watson

Team Leader

Key Sites Assessments

8 Determination

The recommendation is **Adopted** by:



22 September 2020

Anthony Witherdin

Director

Key Sites Assessments

as delegate of the Minister for Planning and Public Spaces

Appendices

Appendix A – List of referenced 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:

1. Modification applications
2. Concept Plan:
http://www.majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=10607
3. Project Application <https://www.planningportal.nsw.gov.au/major-projects/project/39441>
4. Submissions
5. Concept Plan:
http://www.majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=10607
6. Project Application <https://www.planningportal.nsw.gov.au/major-projects/project/39441>

Appendix B – Notice of modification

7. Concept Plan:
http://www.majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=10607
8. Project Application <https://www.planningportal.nsw.gov.au/major-projects/project/39441>

Appendix C – Statutory considerations

To satisfy the requirements of the EP&A Act, the Department's assessment of the proposal has given detailed assessment to a number of statutory requirements. These include:

- the requirements of section 4.55(1A) of the EP&A Act
- the matters listed under section 4.15(1) of the EP&A Act, including applicable EPIs and regulation.

The Department has considered these matters in its assessment of the proposal in **Table 2** and **Table 3**.

Table 4 | Section 4.55 (1A) Modification involving minimal environmental impact

Section 4.55 (1A) Evaluation	Consideration
a) that the proposed modification applications are of minimal environmental impact, and	Section 5 of this report provides an assessment of the impacts associated with the proposal. The Department

is satisfied that the modifications are of minimal environmental impact.

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 proposed modification applications seek design changes to car parking spaces on Caroline Street, approval of land dedication to Council, and the removal of reference to the land over-bridge. It would not result in any additional impacts on the surrounding area and would not materially change the overall character of the approved development. On this basis, the proposal would result in development that is substantially the same as the originally approved development.
c) the applications have been notified in accordance with the regulations, and	The modification applications have been notified in accordance with the regulations. Details of the notification are provided in Section 4 of this report.
d) any submissions made concerning the proposed modification applications have been considered	The Department received one submission on the proposal from the City of Sydney. The submission is summarised in Section 4 and the issues raised in the submission have been considered in Section 5 of this report.

Table 5 | Consideration of the matters listed under Section 4.15(1) of the EP&A Act

Section 4.15(1) Matters for consideration	The Department's assessment
(a)(i) any environmental planning instrument	The proposed modification applications are consistent with the relevant environmental planning instruments (EPIs) as addressed below in this report.
(a)(ii) any proposed instrument	Not applicable.
(a)(iii) any development control plan	Under clause 11 of the SRD SEPP, Development Control Plans (DCPs) do not apply to SSD.
(a)(iia) any planning agreement	Not applicable.
(a)(iv) the regulations	The applications satisfactorily meet the relevant requirements of the <i>Environmental Planning and Assessment Regulation 2000</i> , including the procedures relating to applications (Part 6), the requirements for notification (Part 6, Division 6) and fees (Part 15, Division 1AA) (refer to Section 4).
(b) the likely impacts of that development including environmental impacts on both the natural and built environments, and social and economic impacts on the locality	The Department considers the likely impacts of the proposed modification applications acceptable and

have been appropriately addressed (refer to **Section 5** of this report).

(c) the suitability of the site for the development	The site is suitable for the development as addressed in Section 5 .
(d) any submissions	The Department has considered the submissions received (refer to Section 4 and 5 of this report).
(e) the public interest	The Department considers the proposed modification applications to be in the public interest.
Reasons given by the consent authority for the grant of the consent that is sought to be modified	The Department has considered the reasons given by the consent authority for the grant of the consent in its assessment in Section 5 .

Environmental Planning Instruments

The following EPIs are relevant to the application:

- State Environmental Planning Policy (State & Regional Development) 2011
- State Environmental Planning Policy (Infrastructure) 2007
- State Environmental Planning Policy (State Significant Precincts) 2005
- State Environmental Planning Policy (Urban Renewal) 2010
- State Environmental Planning Policy No. 55 – Remediation of Land
- Draft Remediation of Land State Environmental Planning Policy
- Redfern-Waterloo Contributions Plan 2006
- Redfern-Waterloo Affordable Housing Contribution Plan 2006

The Department has considered the proposed modification against the above-mentioned EPIs in its original assessment and previous modification assessments. The Department considers the modification does not result in any significant changes that would alter the conclusions made as part of the original assessment.

Objects of 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 modification is consistent with the objects of the EP&A Act.