

**ITEM 5. SECTION 96(2) MODIFICATION: 29A AND 31 ULTIMO ROAD
ULTIMO****FILE NO:** D/2000/559/A**SUMMARY****Date of Submission:** 3 November 2011 with amended plans received 2 March 2012**Applicant:** Urbis Pty Ltd for Transgrid**Architect:** Bates Smart**Developer:** Transgrid

Summary: Application under Section 96(2) of the Environmental Planning and Assessment Act, 1979 to amend a Stage 1 consent for a commercial building envelope over an existing Transgrid substation at No. 31 Ultimo Road. The building envelope was originally approved on 6 October 2000 and allowed for the construction of a 4 storey substation predominantly below ground (now complete and in operation) and a 12 storey office building above with off-street car parking for 31 cars. The office building has not yet been built.

Since the original approval, Transgrid bought a small rectangular piece of land (No. 29A Ultimo Road) that lies between the substation and the Ultimo Pedestrian Network (UPN) (a wide pedestrian corridor running along the back of the ABC television building, UTS and connecting with the Devonshire Street pedestrian tunnel associated with Central Railway Station). The acquisition of No. 29A Ultimo Road has now led to Transgrid seeking an increase in height and width of the approved building envelope.

The assessment of modification to the building envelope undertaken in this report focuses on massing, height and overshadowing impacts as well as issues regarding separate planning controls which apply to No. 29A Ultimo Road. A full assessment of the detailed design of the commercial tower is contained in a Stage 2 DA (reference D/2011/1783) - which has been the subject of a competitive design process - and submitted to the Central Sydney Planning Committee for consideration.

- Summary Recommendation:** The proposed modification to the Stage 1 consent is considered to be substantially the same as was approved under the original consent, as it:
- retains the same uses as that approved under the original development;
 - seeks only a marginal increase (5m) in height but remains within the permitted height limit;
 - maintains the approved Floor Space Ratio (FSR); and
 - maintains retail use at ground level onto the UPN contributing to its activation.

The proposed modification is considered to be acceptable and is recommended for approval.

Attachments:

- A - Selected Drawings
- B - Original Stage 1 consent (D/2000/559)

RECOMMENDATION

It is resolved that consent be granted for the proposed modification to the building envelope at 29A and 31 Ultimo Road, Ultimo, and that the approved development description as well as Condition 1 within D/2000/559 be modified (with changes shown in **bold italics** and ~~strikethrough~~) as follows:

Approved Development Description

Stage 1 development application for the construction of a four storey predominantly below ground substation structure with a 12 storey office building above and associated basement car parking for ~~34~~ **25** cars and as described in Schedule 3.

SCHEDULE 1A**Approved Development/Design Modifications/Covenants and Contributions/Use and Operation**

Note: Some conditions in Schedule 1A are to be satisfied prior to issue of a Construction Certificate and some are to be satisfied prior to issue of Occupation Certificate, where indicated.

APPROVED DEVELOPMENT

- (1) Stage 1 development consent is granted for:-
- (a) the design of the structure of the substation and car parking for ~~34~~ **25 cars and 3 service** vehicles (excluding external architectural treatment and finishes);
 - (b) the arrangement of uses within the development;
 - (c) the maximum floor space ratio of the development;
 - (d) the maximum height of the building and its envelope and massing; and
 - (e) survey, demolition, excavation and construction of the substation component;

as detailed in the submitted Development Application D2000/00559 dated 30 June 2000, the associated Statement of Effects documents Volume 1 and Volume 2 prepared by The Cox Group Pty Ltd and dated June 2000, and the following plans prepared by the Cox Group Pty Ltd:-

Plan No	Date
A-001 Site Plan	28 June 2000
A-002 Site services Plan	28 June 2000
A-003 B3 Plan	28 June 2000
A-004 B2 Plan	28 June 2000
A-0005 B2 Mezzanine Plan	28 June 2000

A-006 B1 Plan	28 June 2000
A-007 Foyer Plan	28 June 2000
A-008 Mezzanine Plan	28 June 2000
A-009 Level 1 Plan Issue B	29 August 2000
A-010 Typical Floor Plan	28 June 2000
A-011 Roof Plant	28 June 2000
A-012 West East Section	28 June 2000
A-013 North South Section	28 June 2000
A-014 West Elevation	28 June 2000
A-015 North Elevation	28 June 2000
A-016 South Elevation	28 June 2000
A-017 East Elevation	28 June 2000

Drawing Number	Architect	Date
<i>DA 01.001 rev 2</i>	<i>Bates Smart</i>	<i>01.03.12</i>
<i>DA 01.002 rev 2</i>	<i>Bates Smart</i>	<i>01.03.12</i>
<i>DA 01.003 rev 1</i>	<i>Bates Smart</i>	<i>25.10.11</i>
<i>DA 01.004 rev 1</i>	<i>Bates Smart</i>	<i>25.10.11</i>
<i>DA 01.005 rev 1</i>	<i>Bates Smart</i>	<i>25.10.11</i>
<i>DA 01.006 rev 1</i>	<i>Bates Smart</i>	<i>25.10.11</i>
<i>DA 01.007 rev 1</i>	<i>Bates Smart</i>	<i>25.10.11</i>
<i>DA 01.008 rev 1</i>	<i>Bates Smart</i>	<i>25.10.11</i>

except as amended by the following conditions:-

BUILDING ENVELOPE

- (2) The approved building envelope is defined generally as follows:-
- (a) Maximum height of ~~46.6m above~~ **50m (RL 59.437) at roof level (ridge line) and 50.5m (RL 59.9) to the top of the lift core at Thomas Street and the Ultimo Pedestrian Network (RL 56);**
 - ~~(b) Maximum street wall height excluding architectural roof features to Thomas Street and the Ultimo Pedestrian Network of 41.6m (RL 51);~~
 - (b) Maximum height of 54.5m (RL 59.437) at roof level (ridge line) and 55m (RL 59.9) to the top of the lift core at Ultimo Road;**
 - ~~(c) Maximum street wall height excluding architectural roof features to Ultimo Road of 46.1m (RL 51);~~

- (d) Minimum set back of commercial tower from the east boundary 5.3m.

FLOOR SPACE RATIO

- (5) The following applies to Floor Space Ratio (FSR):-
- (a) The FSR of that part of the development contained within the boundary of the ~~Central Sydney Local Environmental Plan 2005~~ 1996 shall not exceed ~~10.03:1~~ **8.99:1** calculated in accordance with that plan. For the purpose of the calculation of FSR, the Floor Space Area of the development is ~~17,715 sqm~~ **21,658sqm including the substation**.
- (b) A Registered Surveyor shall provide certification of the total and component Floor Space Areas (by use) in the development, on completion of the construction of the office tower and prior to its occupation.

BUILDING HEIGHT

- (6)
- (a) The height of the building (as defined in the Dictionary in the Central Sydney Local Environmental Plan 1996) must not exceed ~~RL 56~~ **RL 59.9** (excluding architectural roof features).
- (b) A Registered Surveyor shall provide certification of the height of the building on completion of the construction of the office tower and prior to its occupation.

SCHEDULE 3

Details of Approved Development

Building Height	50m 55m
Building Height (RL AHD)	RL 56 RL 59.9
Floor Space Ratio (LEP 1996 part of site)	10.03:1 8.99:1
Floor Space (LEP 1996 part of site)	17,715 sqm 21,658 sqm
Total Parking Spaces (maximum)	34 25 cars plus 3 servicing

BACKGROUND

The Site and Surrounding Development

1. The subject site has a total area of 2,409.1m² and is generally rectangular in shape. It is located at 29A and 31 Ultimo Road in Haymarket and is bounded by Ultimo Road to the north, 61-79 Quay Street to the east (approval granted for a mixed use development), Thomas Street to the south and the Ultimo Pedestrian Network (UPN) to the west. Levels fall across the site from Thomas Street to Ultimo Road by 4.5m. A location Plan is shown in **Figure 1** below.



Figure 1: Location Plan

2. The site currently consists of a substation, which is mainly below ground level, but projects two storeys above Ultimo Road. There is basement carparking accessed from Ultimo Road and the existing administration offices are accessed from Thomas Street. The substation was constructed to accommodate a building above.

3. The surrounding uses consist of a mix of commercial, educational and student accommodation, including UTS to the north across Ultimo Road, the ABC complex directly opposite to the west, the Citigate Central Sydney Hotel to the south on the opposite side of Thomas Street, and a proposed mixed use residential development at 61-79 Quay Street adjacent to the site to the east. The UPN is level with the existing former railway bridge to the north west of the site and is a pedestrian corridor running along the back of the ABC television building, UTS and connecting with the Devonshire Street pedestrian tunnel associated with Central Railway Station. Photos of the site and the surrounding area are included below as Figures 2 to 7.



Figure 2: View of the substation from the north east on Ultimo Road.



Figure 3: View of the northern elevation of the substation showing existing vehicle access.



Figure 4: View of the substation from the north west, with access to the UPN in the foreground.



Figure 5: View of the existing substation from the UPN level.



Figure 6: View of the substation from the south on Thomas Street.



Figure 7: Urbanest student accommodation located on the corner of Quay and Thomas Streets with Citigate Central Sydney Hotel in the foreground.

History of Development Applications Relevant to this Site

4. D/2000/559 granted consent 6 October 2000 for a *'Stage 1 development application for the construction of a four storey predominantly below ground substation with a 12 storey office building above and associated basement car parking for 31 cars and as described in Schedule 3'*. Schedule 3 approved the FSR as 10.03:1 (17,715m²) and a height of 50m (RL 56). This consent has been activated and is the subject of this modification.
5. D/2001/890 granted 10 April 2002 for the Stage 2 development for the construction of a four storey predominantly below ground substation with an eight storey office building above and associated car parking for 30 cars. This consent has lapsed.
6. D/2002/715 approved 15 November 2002 for a Stage 2 development for the construction of a four storey predominantly below ground electricity substation with associated landscape works to the UPN. The substation has been constructed.
7. D/2005/1171 approved 13 December 2005 for a Stage 2 development for a nine storey office building above the existing substation with retail tenancies at ground level, outdoor eating areas fronting the UPN and basement car parking for 44 cars. This consent has lapsed.

Approved development

8. Further to the description of the Stage 1 consent above, the approved building envelope included:
 - (a) A maximum overall height of 46.6m (RL 56) above Thomas Street and the UPN;
 - (b) Maximum street wall height excluding architectural roof features to Thomas Street and UPN of 41.6m (RL 51);
 - (c) Maximum Street wall height excluding architectural roof features to Ultimo Road of 46.1m (RL 51); and
 - (d) Minimum setback of the commercial tower from the east boundary of 5.3m.
9. The approved uses within the development included:
 - (a) Substation and carpark accessed off Ultimo Road to be provided predominantly below Thomas Street level;
 - (b) Retail uses and commercial office foyer to be provided at ground level fronting Thomas Street and the UPN; and
 - (c) Commercial offices above Thomas Street and the UPN ground levels.

PROPOSAL

10. The application is made under Section 96(2) of the Environmental Planning and Assessment Act, 1979 (EP&A Act 1979) to amend a Stage 1 consent for a commercial building envelope over an existing Transgrid substation at No. 31 Ultimo Road. The building envelope was originally approved on 6 October 2000 and allowed for the construction of a 4 storey substation predominantly below ground (now complete and in operation) and a 12 storey office building above with off-street car parking for 31 cars. The office building has not yet been built.
11. Since the original approval, Transgrid bought a small rectangular piece of land (No. 29A Ultimo Road) that lies between the substation and the UPN. The acquisition of No. 29A Ultimo Road has now led to Transgrid seeking an increase in height and width of the approved building envelope.
12. In accordance with Condition 10 of the Stage 1 consent, the Stage 2 development, being the commercial tower component, was to be the subject of a competitive design process. This was held in 2011 and Bates Smart was selected as the winning design, notwithstanding that it did not conform with the approved Stage 1 building envelope, due to the expansion in the size of the subject site to the west and an increase in height.
13. This modification, therefore seeks to amend the site to include 29A Ultimo Road and amend the building envelope to allow an extension to the west and to facilitate an increase in height, as shown in **Figures 8 to 10** below.

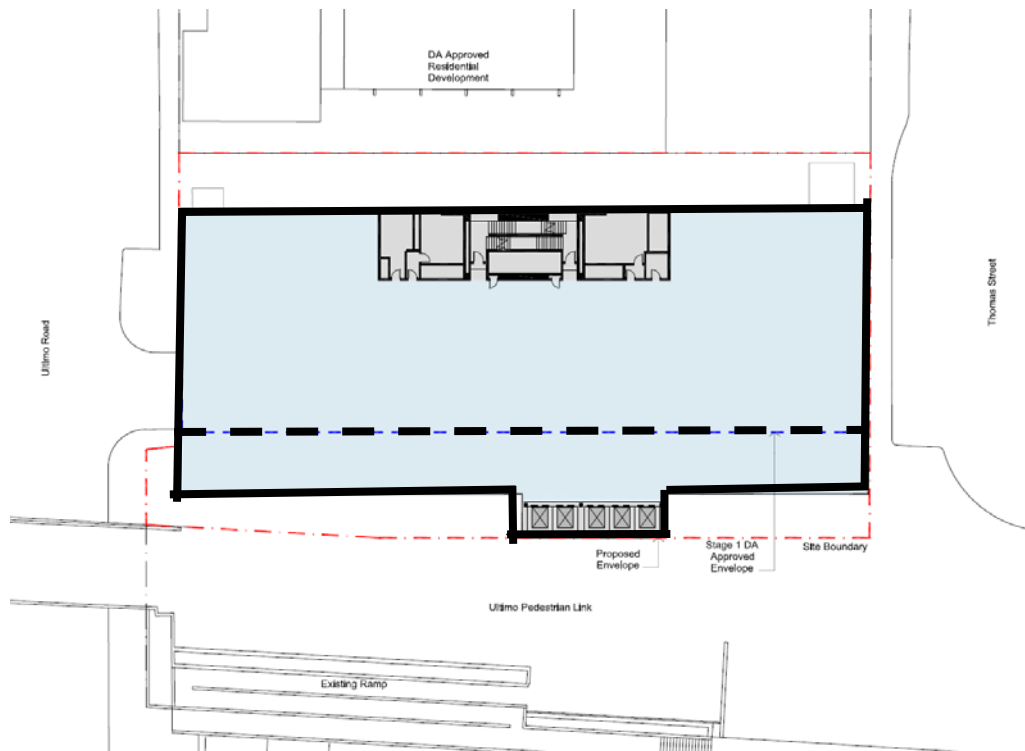


Figure 8: Proposed change in the building envelope (solid line is proposed, dashed is approved).

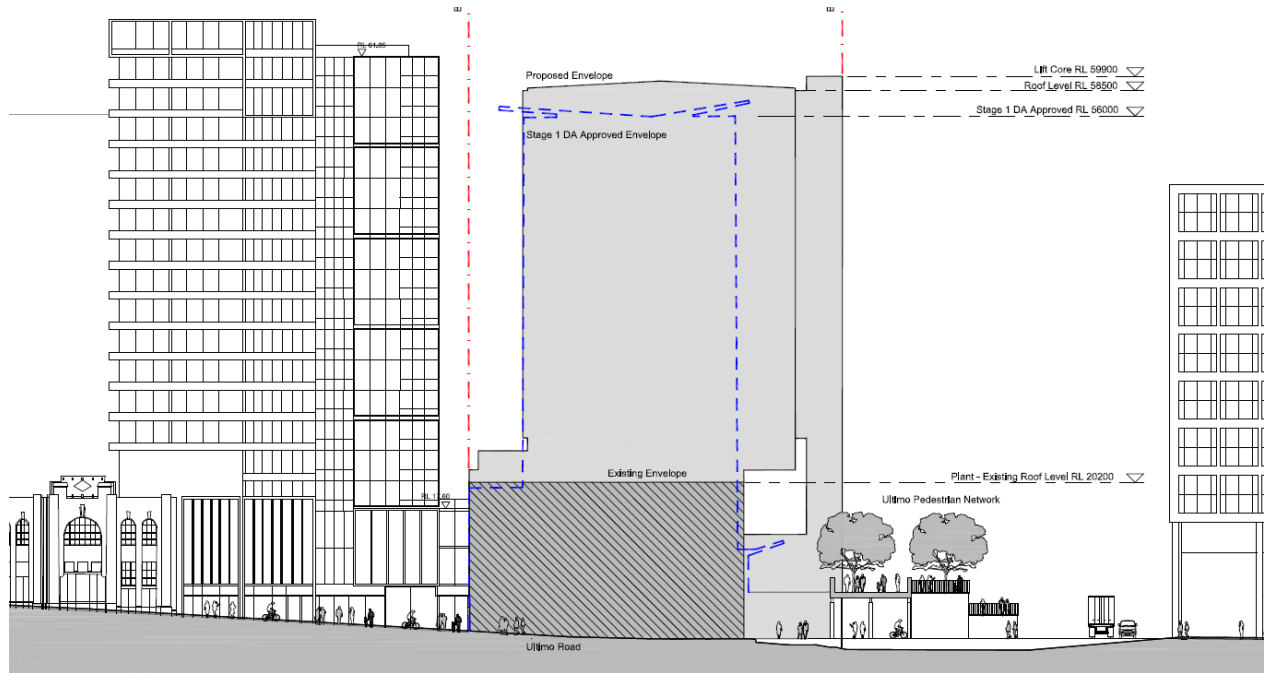


Figure 9: Approved and proposed envelope depicting the change in height (dashed approved).

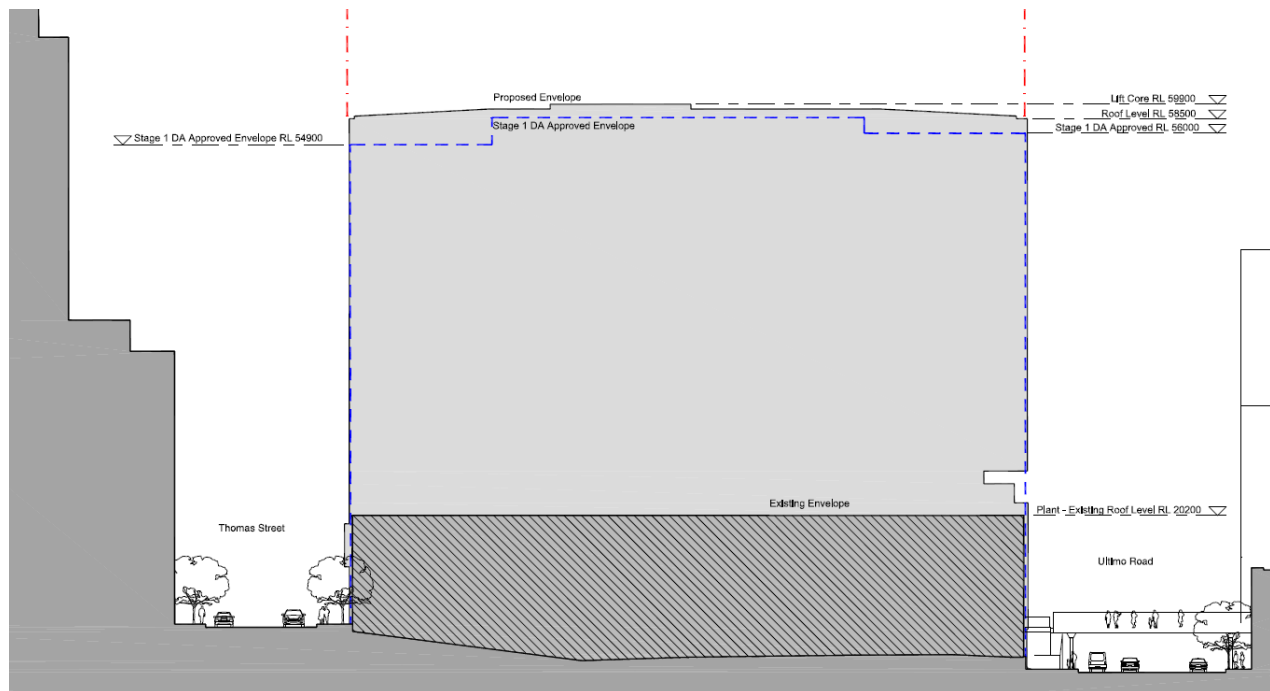


Figure 10: Approved and proposed building envelope (dashed approved).

14. Specifically, the modification proposal includes:

- (a) Maximum building height of 55m comprising:
 - (i) Maximum height of 50m (RL59.437) at roof level (ridge line) and 50.5m (RL 59.9) to the top of the lift core at Thomas St (RL 56 approved)

- (ii) Maximum height of 54.5m (RL 59.437) at roof level (ridge line) and 55m (RL 59.9) to the top of the lift core at Ultimo Road (RL 54.9 approved)
 - (b) A nil setback (above street wall) of the commercial tower above the substation building at Thomas Street;
 - (c) A nil setback (above street wall) to Ultimo Road; and
 - (d) Continuation of the 5.3m setback from the adjoining site to the west (61-79 Quay Street, Haymarket).
 - (e) Reduce the number of car parking spaces to 25 spaces and 3 service vehicle spaces.
15. The applicant initially sought consent to alter the abutment to the Ultimo Pedestrian Bridge on Ultimo Road to allow for a stairway to Ultimo Road. This stair has now been deleted from the proposal, as concurrence of Rail Corp is required for access to construct the stair. This has not been granted.

CROWN AS THE APPLICANT

16. For the purposes of this development application, Transgrid are taken to be the Crown. The provisions of the Environment Planning and Assessment Act 1979, Part 4, Clause 89 states:

A consent authority must not:

- (a) *refuse its consent to a Crown development application, except with the approval of the Minister, or*
 - (b) *impose a condition on its consent to a Crown development application, except with the approval of the applicant or the Minister.*
17. The conditions included in the recommendation of this report have been accepted by the applicant.

IMPLICATIONS OF THE PROPOSAL

THRESHOLD TEST

18. The development as proposed to be modified is considered to be substantially the same as that originally approved. The development generally retains the key elements of the original consent, with the description, use and nature of the development remaining generally unchanged; and the overall FSR remaining comparable due to the increase in site area.
19. The applicant has noted that there are a number of positive features as a result of this proposal, including more functional floor plates and an improvement of the presentation, integration and activation of the ground floor space along the UPN.

Section 79C Assessment

20. The current Stage 1 consent for the site was approved under the Sydney Local Environment Plan 1996 (SLEP 1996) and the Sydney Regional Environmental Plan 26 - City West (SREP 26). This SREP, while still a current instrument no longer applies to the site as this portion of the site now forms Part 3 of Sydney Local Environment Plan 2005 (SLEP 2005).
21. Legal advice obtained by the applicant confirms that the proposed modifications are able to be made within the parameters of Section 96 of the EP&A Act 1979. This includes the additional height to extend beyond the original Stage 1 envelope and the extension of the footprint of the envelope, to include the property at 29A Ultimo Road, notwithstanding that this property was not the subject of the original Stage 1 development consent. This advice has been confirmed as correct by Council's Senior Counsel.
22. The legal advice also clarified the legal position of the applicable planning controls given the controls have changed since the time that the original application was made. The legal advice confirms that the statutory modification power is 'free standing' and there is no constraint upon amending the application under Section 96 even if the proposal breaches the provision in an environmental planning instrument. Therefore, there is no requirement for an application under SEPP 1 (as would have been the relevant mechanism under SREP 26) or Clause 10 under the current SLEP 2005.
23. Besides the other matters discussed in this report, the previous assessment against the provisions of Section 79C of the EP&A Act 1979 are still relevant.

Sydney LEP 2005

24. The majority of the site falls within the controls of Chapter 2 – Central Sydney of SLEP 2005. However, the western portion of the site falls within the controls of Chapter 3 - Ultimo Pyrmont of SLEP 2005, which was formerly SREP 26. This division is shown in **Figure 11** below.



Figure 11: Zoning Maps for Central Sydney and Ultimo Pyrmont.

25. Compliance of the proposal with the LEP controls is summarised below:

COMPLIANCE WITH SYDNEY LEP 2005

Development Controls	Approved Stage 1 under Sydney LEP 1996	Proposal as assessed under Sydney LEP 2005
Zoning	City Centre	City Centre and Public Recreation Permissible with consent. (Refer to Issues Section)
Floor Space Area	17,715m ²	15,718m ² , this area excludes the substation (5,940m ²).
Floor Space Ratio Site Area: Original = 1,766.8m² Modified = 2,409.1m²	10.03:1 Supported by a SEPP 1 objection	8.99:1 for the entire site due to the inclusion of the additional land.
Height	50m above street level. 46.6m above Thomas Street and the UPN and 51.1m above Ultimo Road (RL 56).	RL 59.437 (roof level); RL 59.9 (to top of lift core).
Parking	31	25 plus 3 service vehicles

Draft Sydney LEP 2011

26. The Draft Sydney LEP 2011 was placed on public exhibition in February 2011. The provisions of the Draft LEP have been taken into consideration in the assessment of the proposal. These provisions were approved by CSPC on 8 March 2012 for forwarding to the Department of Planning for gazettal.
27. The site is located within the B8 Metropolitan Centre zone and RE1 Public Recreation zone. While the proposed café use is permissible within the Public Recreation zone, office use is not. Notwithstanding this, the UPN, which is approximately 170m in length and 25m, will generally be preserved with a consistent width. The remaining key controls for the site being height and floor space remain consistent with the existing controls.

Central Sydney DCP 1996

28. The proposal is generally in accordance with the previous assessment against the provisions of the Central Sydney DCP 1996.

Urban Development Plan for Ultimo Pyrmont Precinct 1999 Update

29. The proposal is generally in accordance with the previous assessment against the provisions of the UDP 1999 Update.

Issues

30. The issues identified in the above instruments/policies as non-complying or requiring further discussion in the abovementioned tables are discussed in detail below:

Land Use

31. The subject site now extends to the west, across the land at 29A Ultimo Road, which is zoned Public Recreation. The SLEP 2005 states that in regard to the Public Recreation Zone:

'Only uses which the consent authority is satisfied are generally consistent with the zone objectives are permissible in this zone. However, the consent authority may consent to other uses being carried out beneath land used as a public recreation area.'

The objectives of this zone are:

- (a) *to establish public recreation areas which serve the needs of residents and workers within City West and the adjoining suburbs, and*
 - (b) *to provide public access to all parts of the public domain, especially waterfront areas and escarpments, and*
 - (c) *to provide a variety of public areas and recreational opportunities, and*
 - (d) *to provide for facilities which accommodate or are ancillary to recreation opportunities relating to the use of the public domain, and*
32. Notwithstanding this, the SLEP 2005 allows for uses that are permissible in the adjoining zone *'are also permissible in the public recreation zone for a distance of 10 metres from the zone boundary'*. The land in the eastern portion permits retail and commercial development and therefore the proposed extension of uses is permissible as it extends 8.545 metres into the Public Recreation zone.
33. The proposed encroachment of the lift core and ground level activities onto, and the tower cantilevered over, the Public Recreation zone is considered to be not inconsistent with the objectives. It will maintain public access along the UPN as the additional building envelope will be cantilevered over the ground level plane, with an undercroft height of 15.8m, which will not overwhelm pedestrians walking along the UPN and Ultimo Road. Furthermore, changes are to be made at the ground level that will present an improved interface between the UPN by providing additional retail space and the commercial lift lobby access point, activating the area and introducing natural surveillance.

Design Excellence/Competitive Process

34. The Stage 1 consent required that the applicant undertake a competitive design process for the detailed design of the exterior of the building (including the treatment of the external substation walls) and the internal layout of the commercial office tower as part of the Stage 2 consent.

35. This competitive design process was held in 2011, with Bates Smart judged as having the winning design, notwithstanding that it did not conform with the approved Stage 1 building envelope due to the expansion in size of the subject site to the west.
36. This Stage 1 modification seeks to amend the approved Stage 1 consent building envelope to conform to the winning design.

Urban Design

37. The proposed extension of the building footprint including the overall building envelope is considered to be acceptable. The design of the commercial tower has been guided by the location and design of the existing substation, which forms a strong podium for the proposed tower.
38. The massing and shape of the building, which represents the winning Bates Smart design is similar in form to the building envelope as approved by the Stage 1 consent, with the proposal maintaining the 5.3m setback to the east of the site, which adjoins the recently approved mixed use development at 61-79 Quay Street.
39. The main material difference is the fact that the footprint of the building had to be modified to incorporate the new block of land to the site area and an increase in height.
40. It is also considered that the proposed massing and height of the building is consistent with the scale of adjacent sites and in particular is similar in height to the approved mixed use development to the north-east, being 61-79 Quay Street with an approved height of 55m, and the existing ABC building to the south-west, see **Figure 9** above.
41. The applicant has also submitted shadow diagrams with the application, which demonstrate that there will be some minor additional overshadowing of the UPN at midday on June 21 and September 22. The amount of shadows cast remain acceptable due to the north south orientation of the building and will maintain a good degree of solar access for the remainder of the day.

Floor Space Ratio and Height

42. The permissible FSR and height of the eastern portion of the site for commercial development is 7.5:1 increased to 8.25:1 and 50m increased to 55m subject to Clause 10; while the western portion is 5:1 increased to 5.5:1 and 42m increased to 46.2m subject to Clause 10. However, Clause 93 of the SLEP 2005 states that buildings within Public Recreation zone must not exceed 7m in height.
43. The proposed FSR for the eastern portion of the site is 10.28:1 (18,163m²) and for the western portion of the site 5.29:1 (3,402m²) resulting in a total FSR of 8.99:1 (21,565m²) for the entire site including the substation. While the proposed maximum height is 55 metres, which is within the Clause 10 limit.

44. The approved Stage 1 consent permits a FSR of 10.03:1 (17,715m²) and included the substation floor space (5,940m²), which was not exempt under the definition of Floor Space Area within the SLEP 1996. The applicant submitted a SEPP 1 objection regarding the non compliance with the controls, which argued that the extent of the non compliance equates to the floor space of the substation below ground level; that the substation does not increase the height or bulk of the development; and that it represents a major and essential piece of infrastructure for the City and is therefore in the public interest.
45. These arguments were considered to be reasonable, with the SEPP 1 objection supported. The assessing planner stated that there 'are clear advantages in urban design terms in securing the provision of an underground substation allowing for the provision of an above ground building which provides an active inter-relationship with the adjoining UPN.'
46. The applicant's legal advice, which has been confirmed by Council's Senior Counsel states that as the application is a Section 96(2) modification, it is 'free standing' and there is no constraint upon amending the application under Section 96 even though the proposal breaches the height and FSR controls. The height and FSR, as proposed, are considered to be acceptable.

Section 79C(1)(b) Other Impacts of the Development

BCA Matters

47. The BCA Classification of the building is Class 5, 6 and 7.

Section 79C(1)(c) Suitability of the site for the development

48. The site will continue to meet the operational requirements of Transgrid, while providing a suitable scale of development above in terms of its relationship with the surrounding developments and the UPN.

Section 79C(1)(e) Public Interest

49. The proposal continues to incorporate the provision of a significant and necessary piece of public infrastructure and is therefore considered to be in the public interest.

FINANCIAL IMPLICATIONS/SECTION 61 CONTRIBUTIONS

50. The cost of the development is in excess of \$200,000 and is therefore subject to a development levy pursuant to the Central Sydney (Section 61) Contributions Plan 2003. The existing condition remains as part of the consent.

PUBLIC CONSULTATION

Section 79C(1)(d)

EXTERNAL REFERRALS

51. Adjoining and nearby owners and occupiers of residential buildings were notified of the proposal and invited to comment. In addition, notices were placed on the site and the proposal was advertised in the daily press in accordance with the provisions of the City of Sydney Notification of Planning and Development Applications DCP 2005. There were no submissions received as part of this notification.

INTERNAL REFERRALS

52. The application was referred to Council's Senior Urban Designer and Building Services Unit. No objection was raised to the modification.

RELEVANT LEGISLATION

53. The Environmental Planning and Assessment Act 1979.

CONCLUSION

54. It is considered that the proposed modification, namely the inclusion of 8.545 metres wide of land adjacent to the UPN and a marginal increase in height and width of the building is substantially the same as was approved under the original Stage 1 consent.
55. The amended proposal will result in an improved outcome from the original consent, with further ground level activation of the UPN and a Stage 2 application that demonstrates a high quality design outcome. The proposed modification is considered to be acceptable and is recommended for approval.

GRAHAM JAHN

Director City Planning, Development and Transport

(Bridget McNamara, Senior Planner)