

14 June 2024

City of Sydney Town Hall House 456 Kent Street Sydney NSW 2000

Dear Sir/Madam

Re: SECTION 4.55(2) MODIFICATION APPLICATION FOR DEVELOPMENT CONSENT NO. D/2022/431

This letter has been prepared on behalf of QMS Media Pty Limited (QMS) to form part of an application under Section 4.55(2) of the *Environmental Planning and Assessment Act 1979* to modify development consent no. **D/2022/431**, approved on 6 September 2023.

The consent was granted to enable installation of an automated public toilet (APT) on an existing paved area within Sydney Place (at the northern end of Dowling Street), Woolloomooloo.

The purpose of this modification is to streamline the wording of conditions of consent under D/2022/431 relating to tree protection measures and construction method, so that the controls imposed by the conditions can be complied with. As presently worded, they would have the practical effect of preventing the approved development from proceeding.

A further purpose of the modification is also to enable the conditions of consent to align with the requirement of condition 2 of the same consent to adjust the position of the APT.

Proposed Modifications

The main changes are to condition 12 'Hand excavation within tree root zones'. Parts (a) and (b) of the condition require excavation within Tree Protection Zones (TPZs) of specified trees to be undertaken by hand using small hand tools. It is not practical or possible to comply with these requirements to be able to install the APT.

Four trees are listed in the condition to which the requirement applies. In view of condition 2 of the consent requiring a change to the location of the APT, this list of trees needs to be changed. These modifications are explained further below.

DESCRIPTION OF THE PROPOSALS – MODIFICATIONS TO WORDING OF CONDITIONS

This modification application proposes changes to the wording of conditions 1, 2 and 12, explained below.

Parts (a) and (b) of **Condition 12** <u>currently</u> require the following:



(a) Excavation undertaken within the specified radius from the trunks of the following trees shall be hand dug.

Tree No.	Species Name	Tree Location	TPZ (m) from Trunk
1 – 3	Melaleuca quinquener∨ia	Raised garden area of Basketball courts (northern side of ATP location)	5.5m
4	Corymbia maculata	Centre of Sydney Plan (southern side of ATP location)	4m

(b) Small hand tools such as mattocks or using compressed air or water jetting only shall be used. Roots with a diameter equal to or in excess of 50mm shall not be severed or damaged unless approved in writing by the project arborist.

It is not possible to excavate footings of the proposed APT without larger tools or machinery. This is due to the asphalt surface used at Sydney Place and anticipated sub-surface obstructions – which have been commonly found by QMS in installation of many other street furniture items throughout the city in the last two years. Indeed, below the surface material is often a concrete slab, which cannot be removed using only hand tools.

Therefore, a series of wording changes are needed to parts (a) and (b) of **Condition 12** to enable the approved APT to be installed.

The same issue was identified in respect of tree-related conditions of consent attached to another QMS street furniture consent (D/2021/1279) for the installation of new taxi shelters and associated digital signage panels at Jamison Street in the CBD – within the TPZs of London Plane trees in Jamison Street.

Conditions similarly required that only hand tools be used in the TPZs of those trees. In that instance, Council approved a Modification to that consent (**D/2021/1279/C**, approved on 9 January 2024). The approach proposed in this proposed modification to APT consent D/2022/431 is similar, as set out below.

A further change to Condition 12 is in the list of trees specified in the condition and their respective TPZs. This is necessitated by changes to the location of the APT required under Condition 2 of the consent, which was imposed by the Local Planning Panel in determining the DA on 6 September 2023.

Condition 2 currently requires:

(2) DESIGN MODIFICATION – APT RELOCATION

The proposed APT is not approved to be installed in the currently proposed location.

The proposed APT is to be relocated to the eastern side of the basketball court entrance gates on Sydney Place, adjacent to the retaining wall between Sydney Place and the basketball court.

A plan showing the precise location of the relocated APT is to be submitted to and approved by Council's Area Planning Manager prior to the issue of a Construction Certificate.

The submitted plan must provide dimensions confirming the precise location of the APT to comply with the following:

- The distance between the nearest part of the APT and the most eastern side of the basketball court entry gates is to be 2 metres.
- A 1000mm clearance is to be provided between the north rear elevation of the APT and the adjacent retaining wall between the basketball courts and Sydney Place.



The effect of the requirement in the condition is to adjust the position of the APT approximately 10.8 metres eastwards. This changes its proximity to existing trees – and away from the four trees currently listed in Condition 12 (as pasted above).

The change in location required by Condition 2 imposed by the Local Planning Panel is shown illustratively in **Figure 1** below. Figure 1 is an extract from the LPP agenda papers of 6 September 2023.



Figure 1: Location of APT as proposed (green) and relocated (dotted), as determined by Sydney LPP, 6 September 2023

On 3 June 2024, Council's Area Planning Manager approved the amended location of the APT, consistent with the requirements of Condition 2. Correspondence confirming approval of the drawing showing this relocation is provided at **Appendix 1**. For the avoidance of doubt, this s4.55 application does not therefore seek approval for this relocation, as this has already been given.

This modification application therefore suggests deletion of Condition 2, since its requirements have now been satisfied.

In addition to the changes to Condition 12 above, a housekeeping amendment is needed to **Condition 1** of the consent. This is to update the Location Plan drawing number to reflect the change imposed by Condition 2 of the consent to amend the location of the APT.



Propo (Additi	Notes/ Comments						
(1) AP (a) [Condition amended to insert approved						
[Drawing Number	revised location plan drawing details – for					
-	APT16 Issue 4 A1028 / APT16 Issue 07	ocation Plan - 02/08/2023 Proposed 03/06/2024		-	information purposes		
	amended by the conditions						
. ,	SIGN MODIFICATION – A	PT RELOCATION	een complie	ed with]			
trees sł	No. Trunk 1 3 Melaleuca Raised garden area of 5.5m quinquenervia Basketball courts (northern side of ATP location)						
1	Paperbark	-	Raised garden area of 7.2m Basketball courts (northern side of APT location)				
2	Paperbark		Raised garden area of 8.4m Basketball courts (northern side of APT location)				
3	Paperbark	Paperbark Raised garden area of 6.5m Basketball courts (northern side of APT location)					
4	Eucalyptus Sp.	Eucalyptus Sp. Within Sydney Place, south of 4.8m APT location					
5	Kaffir plum (Harpephyllum caffrum)	Raised garden area of Basketball courts (nor side of APT location)					
(b) Sma shall be necess within and the agreed	This wording in part (b) provides some flexibility should some excavation be necessary in a						



Roots or branches with a diameter equal to or in excess of 50mm shall not be severed	TPZ, and
or damaged unless approved in writing by the project arborist.	enables Council
	to control the
Mechanical excavation is permitted beyond this radius when root pruning by	method.
hand along the perimeter line is completed if no tree roots greater than 40mm	
are uncovered within the top 400mm of soil (including the asphalt layer).	Excavation
Exposed roots to be retained shall be covered with mulch or a geotextile fabric	using only hand
and kept in a moist condition and prevented from drying out.	tools to break
	asphalt and
(c) Footings shall be relocated / realigned if any tree root greater than 50mm in	concrete would
diameter is encounter during excavations. A minimum of 150mm clearance shall be	be impossible –
provided between the tree root and footing.	and prevent the
	development
(d) Services shall be redirected where roots greater than 40mm diameter are	being carried
encountered during the installation of any services, including pipes within the specified	out.
TPZ.	
(e) All root and branch pruning must be undertaken in accordance with the Australian	
Standard 4373 "Pruning of Amenity Trees" and carried out by a qualified Arborist	
(minimum qualification of Australian Qualification Framework Level 5 or recognised	
equivalent).	
(f) All excavations and pruning located within the above distance s must be supervised	
by a qualified Consultant Arborist, who holds the Diploma in Horticulture	
(Arboriculture), Level 5 under the Australian Qualification Framework.	
Reason	
To ensure adequate protection of street trees during construction.	

QMS and Mecone would welcome discussion with Council officers and the Tree Management team to refine and agree practical wording, as needed, during the assessment of this new modification application.

PLANNING ASSESSMENT

Section 4.55 of the EP&A Act

This letter includes an assessment of the proposed modification against the matters for consideration listed under Sections 4.55(2) and 4.15(1) of the EP&A Act.

The table below provides a summary of the modification application in relation to the relevant provisions under Section 4.55 of the Act.

Clause No.	Clause	Assessment
(2)		made by the applicant or any other person entitled to act on d subject to and in accordance with the regulations, modify
(a)	it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent	Complies There is no change to the design or dimensions of the proposed APT. The modifications to wording of conditions are to resolve practical matters. The modification leads to substantially the

Table 1 – SECTION 4.55 ASSESSMENT



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Clause No.	Clause	Assessment			
	as originally granted was modified (if at all), and	same development as the development for which consent was originally granted.			
(b)	it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 4.8) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and	Not applicable			
(c)	 it has notified the application in accordance with— (i) the regulations, if the regulations so require, or (ii) a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and 	Notification (if required) will be in accordance with Council's Community Participation Plan, July 2023.			
(d)	it has considered any submissions made concerning the proposed modification within the period prescribed by the regulations or provided by the development control plan, as the case may be.	Any submissions received will be addressed and necessary/ appropriate.			
(3)	In determining an application for modification of a consent under this section, the consent authority must take into consideration such of the matters referred to in section 4.15(1) as are of relevance to the development the subject of the application. The consent authority must also take into consideration the reasons given by the consent authority for the grant of the consent that is sought to be modified.	Consideration of the relevant s4.15(1) matters is provided below. It is concluded that the proposal as modified complies with relevant statutory considerations and will be of minimal environmental impact.			



Section 4.15(1) of the EP&A Act

The table below provides a summary of the modification application against the relevant provisions under Section 4.15(1) of the Act.

CLAUSE NO.	CLAUSE	ASSESSMENT					
(1)	Matters for consideration—general						
	In determining a development application, a consent authority is to take into consideration such of the following matters as are of relevance to the development the subject of the development application:						
(a)(i)	The provision of: Any environmental planning instrument, and	The APT approved under development consent D/2022/431 was assessed and approved with regard to the environmental planning instruments listed below.					
		This new modification application will amend only the wording of conditions of the consent. The proposals remain acceptable and consistent with the relevant provisions of the following:					
		 State Environmental Planning Policy (Biodiversity and Conservation) 2021. The location is included within the Sydney Harbour Catchment. The modification relates to the wording of conditions of consent. The change does not conflict with the objectives or relevant controls. 					
		 State Environmental Planning Policy (Resilience and Hazards) 2021 (RHSEPP). 					
		The modification proposal relates to conditions of consent. The land remains suitable for the proposed use with regard to ground conditions and contamination.					
		 City of Sydney Local Environmental Plan 2012. The approved use is a 'community facility', which remains permitted with consent in the RE1 Public Recreation land use zone in the SLEP 2012 and consistent with the zone objectives. In terms of heritage considerations under Clause 5.10 of the SLEP 2012, the changes to the condition wording regarding the method for excavation in TPZs do not give rise to changes in terms of heritage significance or character of the locality. 					
		The proposed modification has been assessed against the relevant planning instruments, and it has been found that the proposal remains consistent with relevant statutory controls.					
(ii)	Any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Director- General has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and	N/A					
(iii)	Any development control plan, and	An assessment against the provisions of the City of Sydney Development Control Plan 2012 was undertaken in respect of					



		Development Application D/2022/431. It assessed the following provisions: 3.1 Public Domain Elements; 3.5 Urban Ecology; 3.9 Heritage; 3.12 Accessible Design; 3.13 Social and Environmental Responsibilities; and 3.14 Waste. The relevant matters, findings and conclusions are relevant and remain applicable to this modification assessment.
(iiia)	Any planning agreement that has been entered into under Section 7.4, or any draft planning agreement that a developer has offered to enter into under Section 7.4, and	Not applicable.
(iv)	The regulations (to the extent that they prescribe matters for the purposes of this paragraph), and	The proposed modification is consistent with the regulations applying to proposals of this nature.
(b)	The likely impacts of that development, including environmental impacts on both the	There are no significant impacts arising from the amended wording of the conditions of consent as proposed in this modification application.
	natural and built environments, and social and economic impacts in the locality,	Very similar wording has been proposed and accepted by Council in respect of the modification of tree-related conditions of consent attached to another QMS street furniture consent (D/2021/1279/C) for the installation of new taxi shelters and associated digital signage panels at Jamison Street in the CBD – within the TPZs of London Plane trees.
		Conditions in that case also originally required that only hand tools be used in the TPZs of those trees. In that instance, Council approved the Modification to that consent to enable Council's Tree Management Officer to be contacted in advance, and excavation and pruning to be carried out in accordance with an agreed method statement between
		the applicant (or contractor) and Council The approach proposed in this proposed modification to APT consent D/2022/431 follows very similar principles.
		There are not expected to be impacts arising from the condition wording modifications, including environmental impacts on the natural and built environments, and social and economic impacts in the locality.
(c)	The suitability of the site for the development,	The application is consistent with the relevant SEPPs, LEP and DCP controls and has no unacceptable adverse environmental impacts. The site remains suitable for the development.
(d)	Any submissions made in accordance with this Act or the regulations,	This is a matter to be addressed following the notification of the application.
(e)	The public interest	 The proposal is in the public interest as it: Is consistent with the relevant environmental planning instruments; It will enable the practical delivery of a new public amenity serving people in the locality; and The environmental impacts have been considered and have been found to be acceptable or negligible.



CONCLUSION

The purpose of this new s4.55(2) modification application is as follows:

- Streamline the wording of Condition 12 of consent under D/2021/1279 relating to tree protection measures and construction method, so that the controls imposed by the conditions can be complied with and enable the APT to be installed.
- Housekeeping amendments to Conditions 1 and 2 arising from the requirement in the determination of the Sydney LPP, 6 September 2023 to relocate the APT to the eastern side of the gates of the basketball court.

The proposals satisfy the relevant requirements of s4.55(2) and s4.14 of the EP& A Act. Details of the proposed wording changes of the conditions are specified above. This wording can be discussed and refined between the applicant and Council as the application is assessed.

We trust the above and enclosed are in order. If you have any queries on this matter, please do not hesitate to contact me on 02 8667 8668 or at pkeywood@mecone.com.au.

Yours faithfully

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Paul Keywood
Associate Director

Enclosures:

- **Appendix 1:** Approval by Area Planning Manager dated 3 June 2024 of drawing A1028/APT16 Issue 07 showing the relocated APT (in accordance with Condition 2 of the consent)
- Appendix 2: Stamped Approved Location Plan A1028/APT16 Issue 07



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3 June 2024

QMS MEDIA PTY LTD 12/179 Elizabeth St SYDNEY NSW 2000 pmatthews@mecone.com.au

CONDITIONS OF DEVELOPMENT CONSENT FOR 5010 SYDNEY PLACE, WOOLLOOMOOLOO NSW 2011 D/2022/431

I refer to the above mentioned development application and development consent granted by the City of Sydney on 6 September 2023.

Please be advised that Condition 2 – *Design Modification* – *APT Relocation*, which reads as follows:

(2) DESIGN MODIFICATION - APT RELOCATION

The proposed APT is not approved to be installed in the currently proposed location.

The proposed APT is to be relocated to the eastern side of the basketball court entrance gates on Sydney Place, adjacent to the retaining wall between Sydney Place and the basketball court.

A plan showing the precise location of the relocated APT is to be submitted to and approved by Council's Area Planning Manager prior to the issue of a Construction Certificate.

The submitted plan must provide dimensions confirming the precise location of the APT to comply with the following:

- The distance between the nearest part of the APT and the most eastern side of the basketball court entry gates is to be 2 metres.
- A 1000mm clearance is to be provided between the north rear elevation of the APT and the adjacent retaining wall between the basketball courts and Sydney Place.

Reason

To require the proposed APT to be situated to a more suitable and appropriate location on Sydney Place.

is satisfied by the submission of the plan titled 'Location Plan – Proposed' issue 07, dated 3 June 2024.

Please note that any additional changes on the plans that do not specifically relate to the conditions specified above have not been approved.

If you require any further information please email Daniel Stanley on dstanley@cityofsydney.nsw.gov.au.

Yours faithfully

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NATASHA RIDLER Area Planning Manager



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