

13 January 2025

Keiran Thomas
Director, Regional Assessments
Department of Planning Housing and Infrastructure
4 Parramatta Square, 12 Darcy Street
Parramatta NSW 2150

Dear Keiran,

**Section 4.55(1A) Modification Application to DA 22/5186
Digital Advertising Signage - Princes Highway, Loftus**

1 Introduction

This Modification Report has been prepared by *Keylan Consulting Pty Ltd* (Keylan) for *JCDcaux* on behalf of *Sydney Trains* (the Applicant) to accompany a request to modify development consent (DA22/5186) pursuant to Section 4.55(1A) of the *Environmental Planning and Assessment Act 1979* (EP&A Act). DA22/5186 relates to a digital advertising sign at Princes Highway, Loftus (the site).

On 28 June 2023, development consent was granted by the Department of Planning, Housing and Infrastructure (DPHI). A copy of the development consent for DA22/5186 is provided at Attachment 1.

The Applicant seeks to amend the development consent to allow for the removal of trees in proximity of the site. This will enable the approved advertising structure to be constructed.

This modification application is accompanied by an Arboricultural Impact Assessment (AIA) and Tree Removal Plan prepared by *Syner Tree Urban Arboriculture*, provided at Attachment 2 & 3 respectively. The AIA includes a Tree Management Plan which details appropriate strategies to mitigate impacts of the proposal, including tree protection measures for the retained trees and an offset strategy for replacement trees.

2 Background

On 28 June 2023, development consent was granted by DPHI. The development consent (DA 22/5186) was granted for the following:

Construction and operation of a new single sided monopole digital advertising sign on the northern side of the Princes Highway, Loftus.

The consent has not been previously modified.

3 Request to modify the Conditions of Consent

The Applicant is seeking to modify the development consent to allow for the removal of 14 trees in proximity of the site in accordance with the AIA and Tree Removal Plan at Attachment 2 & 3 respectively. The removal of these trees will facilitate the construction of the approved advertising structure.

The modification proposes changes to Condition A2, A6 & B12 of DA 22/5186 as outlined below. The words proposed to be inserted are shown in ***bold italics*** and words proposed to be deleted are shown in ~~***bold italics***~~.

Condition A2

A2. The development may only be carried out:

- (a) in compliance with the conditions of this consent;
- (b) in accordance with all written directions of the Planning Secretary;
- (c) in accordance with the SEE and Response to Submissions;
- (d) in accordance with the approved plans and reports in the tables below:

Plans prepared by Dennis Bunt Consulting Engineers Pty Ltd			
DWG	Rev	Name of Plan	Date
DA01	B	Proposed Digital Sign General Arrangement & Site Plan	11/01/2022
DA02	C	Proposed Digital Sign General Arrangement & Site Plan	27/10/2022
Survey Plans prepared by LTS			
Job No.	Rev	Name of Plan	Date
51585 001DT	-	Plan Of Detail & Levels At Proposed Signage Location - Princes Highway, Loftus, Sheet 1 of 2	17/11/2021
51585 001DT	-	Plan Of Detail & Levels At Proposed Signage Location - Princes Highway, Loftus, Sheet 2 of 2	17/11/2021
Tree Removal Plan prepared by Syner Tree Urban Arboriculture			
-	-	<i>TMP01-Tree Removal Plan</i>	<i>8/12/2023</i>

Technical Report	Rev	Author	Date
Statement of Environmental Effects	1	Keylan Consulting Pty Ltd	25/3/2021
Digital Signage Safety Assessment	3	The Transport Planning Partnership	23/03/2022
Lighting Impact Assessment	C	Electrolight Australia Pty Ltd	22/03/2022
Statement of Public Benefit	-	Transport Sydney Trains	21/03/2022
Response to Submissions and Request for Information	-	Keylan Consulting Pty Ltd	03/11/2022
Utilities and Services Investigation	-	WSP	11/10/2022
Biodiversity Impact Assessment	2	Écologique	11/08/2022
Structural Feasibility Statement	-	Dennis Bunt Consulting Engineers Pty Ltd	14/10/2022
<i>Arboricultural Impact Assessment</i>	-	<i>Syner Tree Urban Arboriculture</i>	<i>8/12/2023</i>

Condition A6

A6. This consent does not approve:

- (a) vegetation or tree removal **with the exception of trees listed to be removed in the Arboricultural Impact Statement (AIA prepared by Syner Tree Urban Arboriculture dated December 2023) and (i) in accordance with the Tree Management Plan in the AIA and (ii) unless the offset strategy mentioned in the AIA results in five trees planted for every one tree removed**
- (b) works associated with the installation of any electricity or telecommunications cables to service the site

Separate development application(s) must be lodged, and consent obtained, for the above works (except where consent is not required under an Environmental Planning Instrument or exempt and complying development applies).

We also note that works relating to the servicing of the site (Condition A6) will be undertaken separate to this modification application, as exempt development.

Condition B12

B12. Prior to the commencement of any works, a Tree Protection Plan prepared in accordance with Australian Standard AS 4970-2009 'Protection of Trees on Development Sites' must be submitted and approved by the Certifying Authority. The Plan must:

- (a) *be prepared by a qualified Arborist;*
- (b) *identify all trees surrounding the location of construction activities, **with the exception of those identified for removal in the Arboricultural Impact Statement prepared by Syner Tree Urban Arboriculture dated December 2023;***
- (c) *detail protection measures for trees identified in condition B12(b) to ensure they are retained during construction and operation of the development;*
- (d) *show the Tree Protection Zones for retained vegetation, amelioration measures if works are to be undertaken within the tree protection zone; and*
- (e) *identify any stockpiling areas*

4 Statutory Planning Framework

The following section provides an assessment against the statutory environmental planning instruments relevant to the development. The section includes a discussion and evaluation of the key issues and matters for consideration under Sections 4.15(1) and 4.55 of the EP&A Act. Noting that as the Applicant is a public authority, the subject application is a Crown Development Application pursuant to Part 4 Division 4.6 of EP&A Act.

Overall, the proposed modification is consistent with the statutory planning framework assessment provided and approved as part of DA 22/5186. Notwithstanding, a high level assessment is provided below to confirm compliance.

4.1 Environmental Planning and Assessment Act 1979

Section 4.55(1A) of the EP&A Act states:

A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:

Section 4.55(1A) Provision	Response
(a) <i>it is satisfied that the proposed modification is of minimal environmental impact, and</i>	<ul style="list-style-type: none"> The proposed modification is minor in nature as it only seeks to remove 14 trees in proximity to the site, many of which are dead, dying, diseased, declining or cannot be protected for other reasons. Further, appropriate strategies are proposed to mitigate the impact of the proposal, including tree protection measures for the retained trees as well as an offset strategy for replacement trees which the applicant is prepared to accept a condition of consent to require five trees be planted for every tree removed. The assessment provided at Section 5 which determined the application will have minimal environmental impact.
(b) <i>it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all), and</i>	<ul style="list-style-type: none"> The proposal as modified results in substantially the same development to that approved under DA 22/5186. Importantly, no physical changes are proposed to the advertising structure or in regard to lighting or dwell time. Further, the approved location, orientation and size of the advertising panels will remain unchanged. The application also only proposes to remove 14 trees. A qualified arborist has evaluated the removal of these trees and determined that minimal impacts are anticipated in regard to biodiversity as well as the amenity and character of the area.
(c) <i>it has notified the application in accordance with:</i> <ol style="list-style-type: none"> <i>the regulations, if the regulations so require, or</i> <i>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</i> 	<ul style="list-style-type: none"> The application will be notified in accordance with the EP&A Regulations if required.

Section 4.55(1A) Provision	Response
(d) <i>it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.</i>	<ul style="list-style-type: none"> It is considered that further consultation is not required given the minor nature of the proposal.

Table 1: Section 4.55(1A) Assessment

Section 4.55(3) of the EP&A Act states:

In determining an application for modification of a consent under this section, the consent authority must take into consideration 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.

The following section also includes a discussion and evaluation of the key issues and matters for consideration under Section 4.15(1) of the EP&A Act.

This section provides an assessment against Section 4.15(1) of the EP&A Act.

Provision	Comment
(a) <i>The provisions of:</i>	
(i) <i>any environmental planning instrument, and</i>	<ul style="list-style-type: none"> The original Development Application and subsequent information provided to DPHI during the assessment stage addressed the development's level of compliance against relevant planning instruments, including: <ul style="list-style-type: none"> State Environmental Planning Policy (Industry and Employment) 2021 State Environmental Planning Policy (Transport and Infrastructure) 2021 Transport Corridor Outdoor Advertising and Signage Guidelines (Signage Guidelines) Sutherland Local Environmental Plan 2015 Sutherland Development Control Plan 2015 The proposed modification remains consistent with the above planning instruments.
(ii) <i>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 Planning Secretary has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and</i>	<ul style="list-style-type: none"> Not applicable.

Provision	Comment
(iii) <i>any development control plan, and</i>	<ul style="list-style-type: none"> The proposed modification remains consistent with the approved development's compliance with the relevant provisions of the <i>Sutherland Development Control Plan 2015</i>.
(iiia) <i>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</i>	<ul style="list-style-type: none"> No planning agreement or draft planning agreement has been entered into as part of this application.
(iv) <i>the regulations (to the extent that they prescribe matters for the purposes of this paragraph)</i>	<ul style="list-style-type: none"> The application is consistent with the relevant matters of the EP&A Regulations as outlined at Section 4.2 below.
(b) <i>the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,</i>	<ul style="list-style-type: none"> The request to modify the Development Consent DA 22/5186 will facilitate the construction of the approved sign, resulting in minimal environmental impacts. This is confirmed in the assessment contained in this letter (Section 5) as well as the AIA prepared by a qualified arborist (Attachment 2).
(c) <i>the suitability of the site for the development,</i>	<ul style="list-style-type: none"> The site is suitable for the approved use for the reasons outlined in the original application DA 22/5186.
(d) <i>any submissions made in accordance with this Act or the regulations,</i>	<ul style="list-style-type: none"> Any submissions made on this subject modification application will be duly considered and addressed by Keylan.
(e) <i>the public interest.</i>	<ul style="list-style-type: none"> The modification will allow the approved advertising sign to be constructed, therefore ensuring revenue can be generated to provide the public benefits, as outlined in the original application. Once operational, the advertising sign will help fund essential Sydney Trains services to the benefit of the whole of NSW. In addition, the advertising sign will provide affordable advertising space for road safety messages in prime locations, contributing to the reduction in the number of deaths on NSW roads.

Table 2: Section 4.15(1) Assessment

4.2 Other relevant EPIs

Statutory policy	Discussion
<i>Environmental Planning and Assessment Regulation 2021</i> (EP&A Regulations)	<ul style="list-style-type: none"> The proposal is compliant with the relevant matters of the EP&A Regulations as outlined below: <ul style="list-style-type: none"> <i>Clause 67 Modification or surrender of development consent or existing use right</i> <ul style="list-style-type: none"> this letter is the written notice to DPHI (the consent authority) to modify the development consent DA 22/5186 the required information is either contained in this letter, attached to this letter, or stated on the Planning Portal digital form at time of submission <i>Clause 98 Modification applications for development</i> <ul style="list-style-type: none"> the proposal is in the approved form and contains the relevant information <i>Clause 99 Making a modification application</i> <ul style="list-style-type: none"> the modification application is accompanied by written consent from the owner of the land <i>Clause 100 Content of development applications</i> <ul style="list-style-type: none"> the proposal is in the approved form, contains the relevant information and paid the relevant fees it is presumed DPHI, as the consent authority have given Council a copy of the DA <i>Clause 294 Crown development</i> <ul style="list-style-type: none"> the proposal is on behalf of a public authority and therefore clause 294(a) applies
<i>Biodiversity Conservation Act 2016</i> (BC Act)	<ul style="list-style-type: none"> The site is not identified on the Biodiversity Values Map prepared by DPHI under Part 7 of the BC Act. Further, the Biodiversity Impact Assessment (BIA) prepared in response to a request for information by DPHI for the original application (refer Attachment 4) found: <ul style="list-style-type: none"> the proposal “unlikely to provide habitat important to any threatened species” in the locality whilst this BIA did not assess the removal of vegetation, it found the landscape to be “highly degraded” and “dominated by weeds” the BIA also contains a test of significance pursuant to Section 7.3, which found “that fauna species sensitive to noise and light pollution would prefer the adjacent vast expanse of National Park with more intact vegetation and habitat features available” Based on the information provided, a new test of significance is not required for this modification application.
<i>State Environmental Planning Policy (Transport and Infrastructure) 2021</i> (Transport and Infrastructure SEPP)	<ul style="list-style-type: none"> The proposal as modified will not compromise the operation and function of the Princes Highway as a classified road or the adjoining railway line.
<i>State Environmental Planning Policy (Industry and Employment) 2021</i>	<ul style="list-style-type: none"> The proposal as modified remains consistent with the objectives of the Industry and Employment SEPP, as well as Schedule 5 and the <i>Transport Corridor Outdoor Advertising &</i>

Statutory policy	Discussion
(Industry and Employment SEPP)	<i>Signage Guidelines 2017</i> as per the assessment provided and approved as part of DA 22/5186.
<i>State Environmental Planning Policy (Biodiversity and Conservation) 2021</i> (Biodiversity and Conservation SEPP)	<ul style="list-style-type: none"> Pursuant to Section 2.6, a permit is required to clear land in non-rural areas of the State. This modification application is taken to be the request for the vegetation removal and any removal or pruning will be undertaken in accordance with this development consent once received.
<i>Sutherland Local Environmental Plan 2015</i>	<ul style="list-style-type: none"> The site is located on land classified as Environmentally Sensitive – Terrestrial Biodiversity, as per Clause 6.5 of the SLEP 2015. This modification application seeks consent for vegetation removal to allow for the approved digital advertising sign to be constructed. The vegetation to be removed has been assessed by a qualified arborist as acceptable as outlined in the AIA (Appendix 2). Impacts are also assessed at Section 5 below. On the basis of this assessment, the proposed modification complies with Clause 6.5.
<i>Sutherland Development Control Plan 2015</i>	<ul style="list-style-type: none"> The proposal as modified remains generally consistent with the aims, objectives and key provisions of the DCP. In areas of non-compliance the proposal has been well justified as detailed in the original SEE.

Table 3: Statutory assessment

5 Environmental Planning Assessment and Justification

The proposed modification seeks to modify the Development Consent (DA 22/5186) to permit the removal of 14 trees, including 11 high category trees and three low category trees.

As outlined in the AIA and Tree Removal Plan prepared by *Syner Tree Urban Arboriculture* (Attachment 2 & 3), the purpose for the modification is to allow the Applicant to remove vegetation in proximity of the site to enable the approved advertising structure to be constructed.

The impact of the removal of these trees on biodiversity values, as well as the character and amenity of the area is considered appropriate, as justified below:

- The AIA finds three of the trees proposed to be removed are categorised as ‘unimportant trees’, as they are dead, dying, diseased, declining or cannot be protected for other reasons. To this effect, the AIA states that “none of these trees are considered important or worthy of special measures to ensure their preservation”.
- The AIA finds the remaining 11 trees are categorised as ‘important’, and, to compensate for their removal, an offset strategy for replacement trees is proposed to be prepared and implemented, noting:
 - The AIA states that trees to be planted as part of this offset strategy should: “...have the potential to reach a significant height without excessive inconvenience and be sustainable into the long term, significantly improving the potential of the site to contribute to local amenity and character...”

- This is reflected in the proposed amendment to Condition A6 which requires tree removal in accordance with the AIA and a Tree Management Plan be prepared by Syner Tree Urban Arboriculture. As shown in the proposed condition amendments, the applicant is prepared to accept a condition of consent to require five trees be planted for every tree removed.
- There is a significant amount of vegetation in proximity to the site that will be retained, and precautions to protect these retained trees will be followed in accordance with the AIA, noting:
 - The Tree Management Plan (refer AIA, Appendix 4) includes protective measures that will be followed, such as fencing and hessian wrapping.
 - This is reflected in the proposed amendment to Condition A6 & B12 above.
- Information was provided by the Applicant during the original DA assessment in relation to surrounding vegetation, noting:
 - The BIA submitted at this time (refer Attachment 4) includes information on the flora and fauna species in the area as well as mapping and habitat requirements which is useful for the context of this modification.
 - Using this information, the BIA found the proposal “unlikely to provide habitat important to any threatened species” in the locality. Whilst this BIA did not assess the removal of vegetation, it found the landscape to be “highly degraded” and “dominated by weeds”.
 - The BIA also contains a test of significance pursuant to Section 7.3, which found “that fauna species sensitive to noise and light pollution would prefer the adjacent vast expanse of National Park with more intact vegetation and habitat features available”.

Based on the above, it is concluded that the proposed modification will result in minimal change to the site, and character and amenity of the area. To this effect, the AIA describes the trees proposed to be removed are:

“...not currently visible from outside the site and the retention of all significant boundary tree cover will ensure there is no impact on the wider setting...”

6 Conclusion

The proposed modifications to DA 22/5186 are a result of the Applicant’s investigations into the construction of the approved advertising sign. The Applicant found that 14 trees in proximity to the site need to be removed to allow the sign to be constructed.

Given the minor nature of the modification and the assessment provided within this letter and the accompanying AIA, the proposed modification is expected to result in minimal impact on the biodiversity values, and the character and amenity of the area.

It is also noted, the modification will allow the approved advertising sign to be constructed, therefore ensuring revenue can be generated to provide the public benefits, in accordance with the original application.

In summary, we consider that the information in this letter has shown good cause for DPHI to modify the consent as requested.

Please do not hesitate to contact Lauren Donohoe on lauren@keylan.com.au or (02) 8417 4081 if you wish to discuss any aspect of this application.

Yours sincerely

Padraig Scollard

Padraig Scollard BA MRUP
Associate

Attachment 1	Existing development consent
Attachment 2	Arboricultural Impact Assessment
Attachment 3	Tree Removal Plan
Attachment 4	Biodiversity Impact Assessment