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Aerial photo of the Sydney Modern  
Project © Craig Willoughby  
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Section 4.55(1A) Modification – Response to Submissions and  
Amendment Report

# Art Gallery of NSW Expansion Project – Sydney Modern

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# 1. Introduction

## 1.1 Preliminary

This Response to Submissions and Amendment Report has been prepared by Architectus Australia Pty Ltd (Architectus) on behalf of the Art Gallery of New South Wales Trust, for submission to the NSW Department of Planning and Environment (DPE) to accompany an application made pursuant to section 4.55(1A) of the *Environmental Planning and Assessment Act 1979* (EP&A Act) to modify approved State Significant Development (SSD) 6471 for the Art Gallery of New South Wales (AGNSW) Expansion Project, known as the Sydney Modern Project. This is the eighth modification to the approved development (Proposed Modification 8).

The Sydney Modern Project development is located predominantly north of the existing AGNSW on underutilised and disturbed parts of the Domain, including the existing former naval Fuel Bunker, and the land bridge above the Eastern Distributor (the site).

The Proposed Modification as Amended is in response to the Request for Additional Information letters received for both Modification 8 and Modification 9. This Modification includes minor design changes that are as the result of ongoing design development under the original Modification 8 application, and proposed extension to Construction Hours under the original Modification 9 application.

The scope of Modification 9 is now incorporated into Modification 8 (this application) and once Modification 8 is determined Modification 9 will be withdrawn on the advice of DPE.

The Proposed Modification is not considered to alter the design intent or environmental impact of the approved development and is considered to be substantially the same development as the development for which consent was originally granted.

A detailed description of the Proposed Modification as Amended is provided at **Section 2** of this report.

This report provides an overview of the approved development, describes the proposed modifications, provides a planning assessment of the relevant matters for consideration under sections 4.55(1A) and s4.55(3) of the EP&A Act, and provides a response to submissions. For reasons set out in **Section 3** below, we consider that the application is within the requirements for a modification pursuant to section 4.55(1A).

This Response to Submissions and Amendment Report is supported by the following documentation:

- **Appendix A:** Extended Working Hours (EWH) Management Plan, prepared by Richard Crookes Constructions (RCC);
- **Appendix B:** Construction Noise and Vibration Management Plan (CNVMP), prepared by Pulse White Noise Acoustics;
- **Appendix C:** Traffic Management Plan (TMP), prepared by Transport and Traffic Planning Associates (TTPA);
- **Appendix D:** Response to submissions (Modification 8), prepared by Art Gallery of NSW; and
- **Appendix E:** Response to submissions (Modification 9), prepared by Architectus.

Refer to an overview of the site, the planning framework, assessment of environmental impacts, and response to submissions below.

## 1.2 Subject Site

The site has a total area of 23,045m<sup>2</sup> and is located within the Crescent Precinct of the Domain, to the east of the Phillip Precinct and Sydney CBD.

The proposed expansion area is predominantly north of the existing AGNSW on underutilised and disturbed parts of the Domain, including the former naval Fuel Bunker, and partly over the land bridge above the Eastern Distributor.

It is noted that following determination of SSD 6471, which provided approval for subdivision, the land title details at the site have changed from those described within the initial Application.

Works that are the subject of this modification application are primarily contained within Lots 1001 and 1002 DP 1249710. Note these are newly created lots, being the result of the approved subdivision granted by SSD 6471.

The site is shown outlined in red at **Figure 1** below.



**Figure 1** Site Location Plan  
Source: NearMaps with Architectus overlay

## 1.3 Approved Development

The AGNSW Expansion Project, known as the Sydney Modern Project, was approved by the Minister for Planning on 20 November 2018.

The approved development, designed as a separate, stand-alone building, comprises a new Entry Plaza, new exhibition spaces, shop, food and beverage facilities, visitor amenities, art research and education spaces, multipurpose spaces, adaptive re-use of a former naval Fuel Bunker, new roof terraces and landscaping and associated site works and infrastructure, including loading and service areas, services infrastructure and an ancillary seawater heat exchange system.

The new building, designed by Pritzker Prize-winning architects, SANAA, together with the existing AGNSW will provide close to double the current exhibition space. The expansion will enable AGNSW to show more of its outstanding art collection and host more of the best exhibitions from around the world, increasing visitation to over two million people a year.

The expanded AGNSW includes a prominent destination for Aboriginal and Torres Strait Islander art, a large gallery for major exhibitions, a spectacular contemporary art space repurposed from a decommissioned WWII oil tank, and spaces for family, learning and educational programming to significantly increase student and teacher visits annually. A

public art garden will link the new and existing buildings, for all visitors to AGNSW, the Domain and adjacent Royal Botanic Garden to enjoy.

The Sydney Modern Project development will provide a significant increase in the AGNSW capabilities to meet its charter as a State cultural institution with a collection valued at over \$1.7 billion, as well as accommodate future increases in patronage and remain competitive as a leading cultural institution in Australia, and as a major cultural destination in the wider Asia-Pacific region.

The Sydney Modern Project development will allow the AGNSW to reinforce its position as the State art gallery and Sydney's pre-eminent cultural institution, contributing to the wellbeing and prosperity of Sydney, NSW, and Australia.



**Figure 2** Photomontage of the approved gallery building  
*Produced by Kazuyo Sejima and Ryue Nishizawa / SANAA*  
*Source: AGNSW*

#### **1.4 Summary of Previous Modifications**

Modifications previously submitted in relation to SSD 6471 include:

**Mod 1: Cooling towers** – deletion of seawater heat exchange system. Location of new cooling plant within approved excavated area with associated changes to landscaping above to allow for new vents (approved 17 September 2019).

**Mod 2: Administrative changes to conditions** – modifications to the referencing of conditions of consent (approved 13 December 2019).

**Mod 3: Design development** – design development changes to ensure more efficient construction processes and to manage irregularities that have become apparent during preliminary construction works and the addition of a new circular gallery space (approved 18 November 2020).

**Mod 4: Landscape amendments** – various modifications to the approved landscape design, including the forecourt plaza, entry plaza and land bridge (approved 24 May 2021).

**Mod 5: Design amendments** – design changes to ensure more efficient construction processes, improve aspects of safety and accessibility, and to improve amenity. In addition, the modification amended conditions relating to the artwork commission area (approved 22 October 2021).

**Mod 6: Minor design changes** – design changes that are a result of ongoing design development to ensure the functioning of the building, and to improve amenity and the cost efficiency of the project (approved 16 December 2021)

**Mod 7: Artwork Commission Area** - minor landscape design changes in the artwork commission area including the refinement of key landscape elements, including paths, lawn, seating and planter beds; and an increase in the number of new trees from 26 to 40 (approved 24 December 2021).

### **1.5 Overview of Proposed Modification as Amended**

A detailed description of the Proposed Modification as Amended is provided at **Section 2.3** of this report. Modification 8 originally proposed minor architectural and landscape design changes to the approved SSD 6471. Modification 8 was lodged with DPE in March 2022.

Modification 9 was lodged on 3 March 2022 and comprises amendments to Construction Hours to enable certain works outside of standard construction hours.

The Proposed Modification as Amended is as a result of feedback provided from DPE requiring Modification 9 to be incorporated into Modification 8 as Modification 9 cannot be considered without changes to design owing to findings of a recent court case. As such, once, Modification 8 is determined, Modification 9 will be withdrawn.

### **1.6 Construction Status**

Construction works associated with SSD 6471 commenced on 28 November 2019 and are currently underway.

Construction of the Sydney Modern Project is scheduled for completion this year, with the official opening to be held on 3<sup>rd</sup> December 2022.

### **1.7 Authorship**

This report has been prepared by Boris Santana, Senior Urban Planner, and Timothy Coorey, Urban Planner.

Jane Fielding, Senior Associate, Urban Planning has reviewed the report.

# 2. The Proposal

## 2.1 Proposed Modification as Amended

The Proposed Modification as Amended seeks to modify the nature of Modification 8 to include the scope under Modification 9, in response to advice provided by DPE which states that an application to modify construction hours cannot be considered in isolation and must include changes to the development, owing to the findings of a recent court case.

In response, this application seeks to integrate the design changes included in Modification 8, with the changes to construction hours originally under Modification 9. This specifically now also comprises of extended hours of operation for certain internal and external activities.

Once Modification 8 is determined Modification 9 will be withdrawn.

### Proposed Amendments

Condition C2 was imposed for SSD 6471 restricting construction hours to:

- 7.00am and 6.00pm, Mondays to Fridays inclusive;
- 8.00am and 3.30pm, Saturdays;
- No work on Sundays or Public Holidays.

Condition C4 was also imposed to allow certain works outside the standard hours of construction in limited circumstances.

The Proposed Modification as Amended seeks to amend C4 of the consent to allow for additional works at the following times:

- 6pm – 12am Monday to Friday (6 additional hours per weekday);
- 3:30pm – 12am on Saturday (8.5 additional hours per Saturday); and
- 7am to 12am on Sunday (17 hours per Sunday).

The proposed works that will be undertaken during these hours are described in the Out of Hours Management Plan at **Appendix A**. These works are also outlined in **Table 1** and **Table 2** for ease of reference.

The details of the original Modification 8 application are contained under the “Design Changes” subheading, and details of the original Modification 9 application are under the subheading “Construction Hours”. Refer to **Section 2.3** of this report.

## 2.2 Rationale for Amendments to the Modification

### Construction hours

The NSW Government has instructed RCC to complete contract works by 20 June 2022, which requires all main building construction and commissioning works to be completed by 20 May 2022.

As a result, certain works are proposed outside of standards hours to overcome disruptions to the work programme caused by the COVID outbreak, to ensure that the instructed completion date in June 2022 is still met for the project.

The COVID outbreak necessitated a two-week shutdown of all construction activities on the site in July 2021. Since recommencement, a series of public health orders have continued to apply to businesses, restricting site productivity with limitations on:

- Construction workers accommodated on site;
- Vaccination requirements of workers;

- Locked down Local Government Areas;
- Square metre room limitations;
- Social distancing; and
- Isolation of COVID positive workers, casual and close contacts.

Although NSW Government recently relaxed some of the COVID restrictions for businesses, self-isolation rules for cases and people exposed to COVID still applies, which continues to have considerable impact by depleting the available workforce. For instance, the workforce during January and February 2022 was down 50% from the required 450 workers.

It is acknowledged that the Minister of Planning has made various ministerial orders since March 2020 to 24 December 2021 help with the economic recovery of NSW by allowing certain low impact construction works on Saturday, Sunday or public holidays.

The current Ministerial Order, *Environmental Planning and Assessment (Covid-19 Development – Construction Work Days) Order 2022*, was made on 4 February 2022 and only extends until 31 March 2022. It provides for the following extended construction hours

- Saturday: 8am to 5pm (1.5 additional hours per Saturday compared with development consent condition);
- Sunday: 9am to 5pm on Sunday (8 hours per Sunday compared with development consent condition);

Although these extended hours helped to minimise some delays, this has provided little assistance given the considerable impact of the COVID outbreak and restrictions on the workforce, resulting in an 11-week construction delay. The Management Plan prepared by RCC provides an analysis of the depleted workforce, noting also that there was no relief provided in January 2022 by the Minister of Planning.

Further extending the construction hours would enable works to be undertaken over a longer duration, make available additional night-time workforce, and accelerate works when workers return from isolation. Accordingly, much like the ministerial order, this Proposed Modification as Amended seeks to allow low impact activities outside standard construction hours, to assist in delivery of a high-profile public project and the economic recovery of NSW.

### **2.3 Details of The Proposed Modification as Amended**

#### Design Changes

Refer Modification Report under Modification 8 as lodged for a detailed description of the proposed modification works.

#### Construction hours

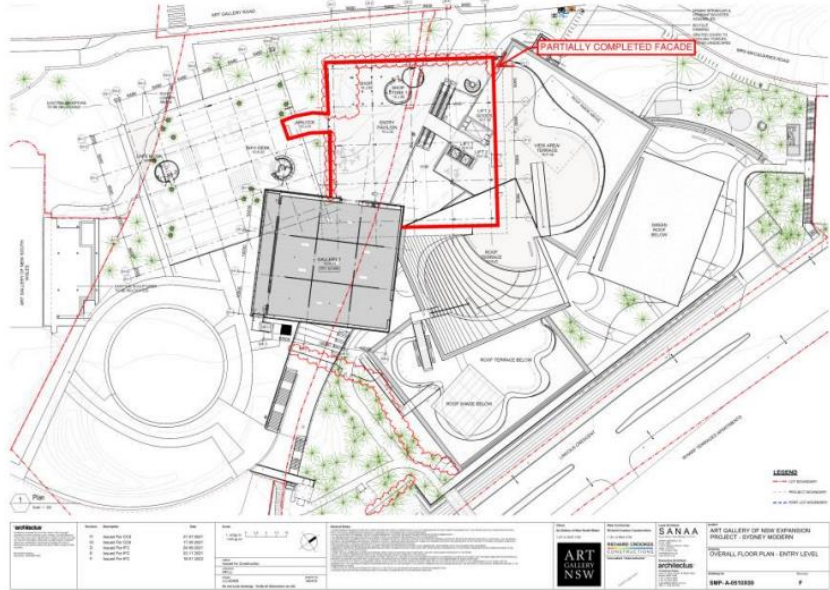
The Proposed Modification as Amended seeks to apportion low impact works under the proposed extended hours. Most of these works are to be undertaken internal to the buildings, with external works minimised to those away from Lincoln Crescent and the western half of the site to limit impacts on sensitive receivers along Lincoln Crescent.

**Table 1** outlines work that will be undertaken internally by a maximum of 100 personnel onsite as well as the equipment to be used.

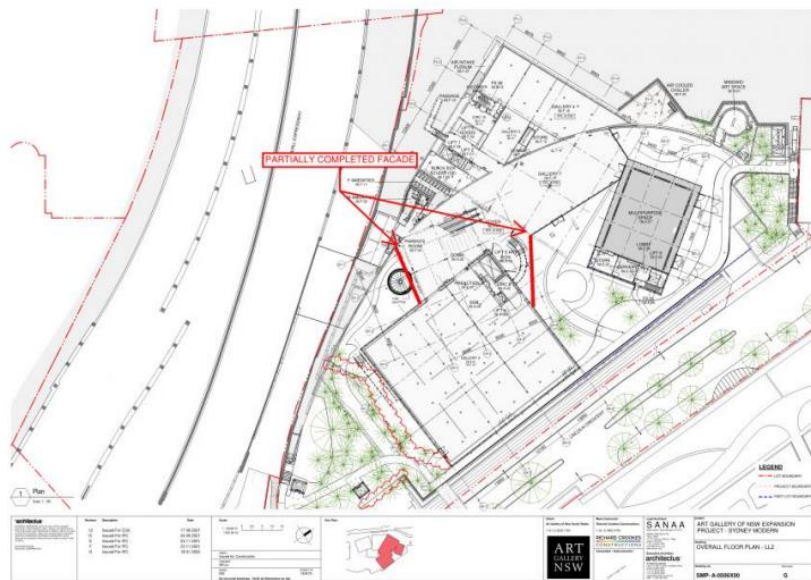
**Table 1 Overview of internal out-of-hours works**

Proposed Activities	Proposed equipment for the activities
Internal fit-out of services including electrical, hydraulic, mechanical, fire, security, communications audio visual and vertical transport, including isolation, servicing and testing of services.	<ul style="list-style-type: none"> <li>- Impact drivers</li> <li>- Oxy/acetylene kits</li> <li>- Hammers/small hand tools</li> <li>- Battery operated tools</li> <li>- Cable crimpers</li> <li>- Cable cutters</li> <li>- Cable pushers/rollers</li> <li>- Cable testing equipment</li> <li>- Hammer drills EWP's</li> <li>- Mini-crawler cranes</li> </ul>
Internal fit-out of architectural finishes including ceiling and partitions, wall living, painting, tiling joinery, floor covering and finishes, handrails and balustrade, waterproofing, signage and wayfinding, window frames and glazing, automated door installation, roller shutter installation and commercial kitchen, concrete topping slabs and floor polishing.	<ul style="list-style-type: none"> <li>- Hand tools</li> <li>- Screw guns</li> <li>- Impact drivers</li> <li>- Disc sanders</li> <li>- Mixer bit on drill</li> <li>- Drop saws</li> <li>- Rollers</li> <li>- Brushes</li> <li>- Screeders</li> <li>- Cordless grinders</li> <li>- Drop saw</li> <li>- Circular saw</li> <li>- Screw guns</li> <li>- Nail guns</li> <li>- Concrete helicopters</li> <li>- Concrete grinding</li> <li>- Hammer drills</li> <li>- EWP's</li> <li>- Hammer drills EWP's</li> </ul>
Internal logistical activities including cleaning and material movement	<ul style="list-style-type: none"> <li>- Non powered hand tools</li> <li>- Internal temporary materials hoist</li> <li>- Internal goods lift</li> </ul>

All of these works will be undertaken in areas that can be completely enclosed, apart from the Lower Level 2 – Circulation Space and Entry Pavilion, noting that the external stone cladding will be partially completed. Refer to **Figure 3** and **Figure 4** below.



**Figure 3 Entry Level partially completed façade outline**  
Source: RCC (2022)



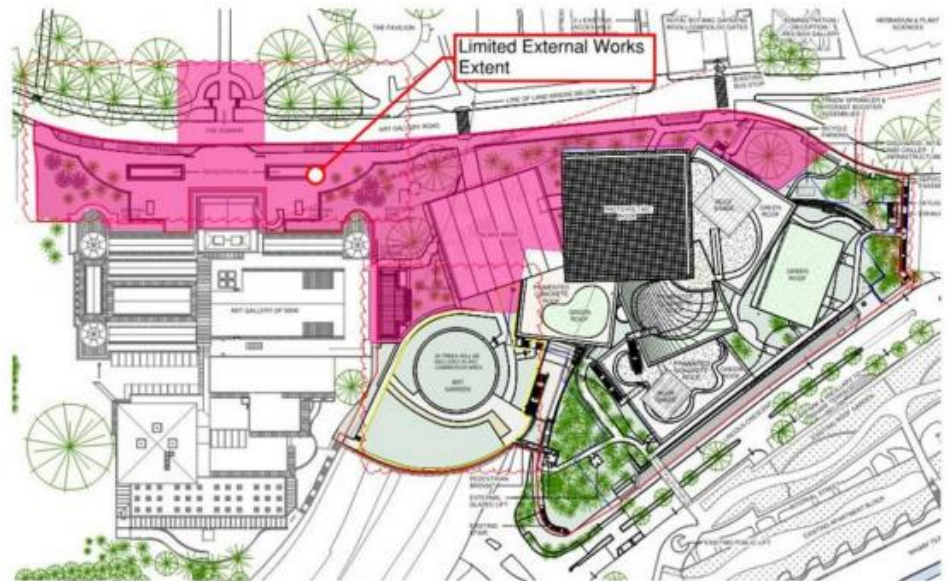
**Figure 4 Entry Level partially completed façade outline**  
Source: RCC (2022)

Table 2 outlines work that will be undertaken externally by a maximum of 50 personnel onsite as well as the equipment to be used.

**Table 2 Overview of external out-of-hours works**

Proposed Activities	Proposed equipment for the activities
Limited External works including drainage cell, waterproofing, soft landscaping, irrigation, paving (no cutting), fixtures and finishes, balustrades, signage, and line marking.	<ul style="list-style-type: none"> <li>- Hand tools</li> <li>- Mixer bit on drill</li> <li>- Rollers</li> <li>- Brushes</li> <li>- Screeders</li> <li>- Light Tower</li> </ul>

The extent of these external works is shown in **Figure 5** below. It should be noted that these works have been purposefully restricted to the Art Gallery Road frontage of the site to maximise the distance between works and residences. Refer to **Figure 7** for location and distance of residential receivers from the site.



**Figure 5 Extent of External works**  
Source: RCC (2022)

The above proposed works and equipment have been assessed under the CNVMP located at **Appendix B**.

It is intended for this CNVMP, in conjunction with all other management plans required by Part 5 of the consent for SSD-6471, to be implemented during construction.

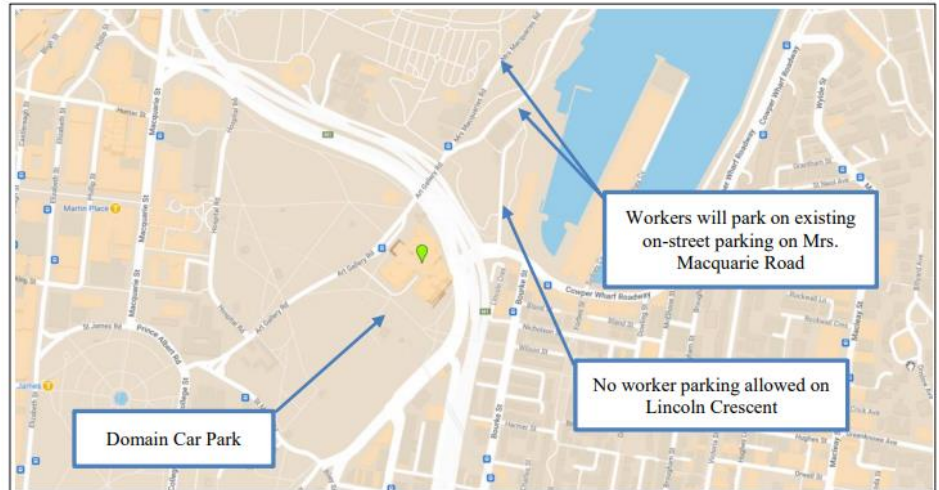
#### Traffic Management

A TMP has been prepared by TTPA (refer **Appendix C**) to limit/minimise the potential noise impact associated with vehicles/workers arrival and departure from the site during the proposed extended hours work period.

Given the site's proximity to high frequency public transport services, all workers will be encouraged to use public transport to access the site. The TMP identifies railway stations and bus stops in close proximity to the site that workers can rely on.

The TMP makes the conservative assumption that 20% of workers will drive to/from the site. Workers will be instructed not to park on Lincoln Crescent when they require access to the site during the proposed extended hours period and must enter from Art Gallery Road.

All workers will be briefed and instructed to park on Mrs Macquarie Road, Art Gallery Road and in the Domain Car Park as indicated in **Figure 6**.



**Figure 6 Location of worker parking**

Source: ARUP (2018)

The workers' travel routes will be limited to Art Gallery Road and Mrs Macquarie's Road. Workers will not travel on Lincoln Crescent during out of hours periods. The vehicle travel route is indicated in the TMP.

The TMP also specifies compliance and monitoring measures including:

- Site induction program with weekly toolbox talks - to ensure that workers are made aware of the responsibilities;
- Lincoln Crescent Gates will be locked after the standard construction hours;
- A shift supervisor will monitor Lincoln Crescent to ensure access compliance;
- Workers failing to follow the requirements of the plan will be removed from the site;
- and
- A register of complaints will be established.

## 2.4 Conditions of consent

To facilitate the Proposed Modification as Amended, it is proposed to amend the consent as follows:

### ***Amendment to Condition A2 (Approved Drawings)***

To facilitate the proposed design modifications outlined above, it is proposed to amend Condition A2 of SSD 6471, being the schedule of approved drawings to incorporate the amended architectural and landscape plans respectively.

Refer to the Modification Report under Modification 8 as lodged for details of proposed amendments to Condition A2.

### ***Amendment to Condition C4 (Construction Hours)***

Condition C4 currently allow works outside the standard hours of construction in C2 if required by the Police or a public authority for the delivery of vehicles, plant or materials; or in the case of an emergency to avoid the loss of life, damage to property or to prevent environmental harm.

The Proposed Modification seeks to amend Condition C4 to allow low impact works described in the EWH Management Plan at **Appendix A** during the specified times outside of the approved hours in Condition C2, in accordance with the requirements of appended CNVMP.

It is proposed to amend Condition C4 of SSD 6471 to read as follows (as emphasised by Architectus in **red (additions)** and ~~strikethrough~~ text (omissions)):

### **Construction Hours**

C2 Construction, including the delivery of materials to and from the site, may only be carried out between the following hours:

- a) between 7.00am and 6.00pm, Mondays to Fridays inclusive;
- b) between 8.00am and 3.30pm, Saturdays.

C3 No construction work may be carried out on Sundays or public holidays.

C4 Activities may be undertaken outside of these hours if required:

- a) by the Police or a public authority for the delivery of vehicles, plant or materials; or
- b) in an emergency to avoid the loss of life, damage to property or to prevent environmental harm; or
- c) to allow for low impact internal and external works as described in the Out-Of-Hours Management Plan prepared by Richard Crookes Constructions, dated 10 March 2022 between the following hours:
  - i. 6pm – 12am Monday to Friday;
  - ii. 3:30pm – 12am on Saturday; and
  - iii. 7am to 12am on Sunday.

*in accordance with the requirements outlined in the Extended Working Hours Construction Noise and Vibration Management Plan prepared by Pulse White Noise, Revision 3, dated 22 March 2022 and management measures outlined in the Out-of-Hours Works Management Plan prepared by Transport and Traffic Planning Associates, Ref 142/2019 and 31 March 2021.*

C5 Notification of such activities must be given to affected residents before undertaking the activities or as soon as is practical afterwards.

C6 Rock breaking, rock hammering, sheet piling, pile driving and similar activities may only be carried out between the following hours:

- a) 9.00am to 12.00pm, Monday to Friday;
- b) 2.00pm to 5.00pm, Monday to Friday; and
- c) 9.00am to 12.00pm, Saturday.

### **Amendment to Condition of Consent C24**

Condition C24 has been imposed for SSD 6471 to ensure that all the requirements of the management plans required by Part B of this consent are implemented during construction.

The Proposed Modification as Amended seeks to amend Condition C24 to ensure that works are undertaken in accordance with the CNVMP accompanying this Modification Application in conjunction with all other management plans that have been implemented in accordance with Part B of this consent.

It is proposed to amend Condition C24 of SSD 6471 to read as follows (as emphasised by Architectus in **red (additions)** and **strikethrough** text (omissions)):

### **Implementation of Management Plans**

C24 *The Applicant must ensure the requirements of the **Construction Environmental Management Plan, Construction Noise and Vibration Management Plan** required under both **Condition B63 and C4(c)**, **Construction Pedestrian Traffic Management Plan** required under both Condition B62 and 4(c), **Construction Waste Management Plan, Geotechnical Design, Certification and Monitoring Plan, Tree Protection Plan, Air Quality and Odour Management Plan and Acid Sulfate Soils Management Plan** required by **Part B** of this consent are implemented during construction.*

## **2.5 Consultation and response to submissions**

Both Modification 8 and Modification 9 applications have been notified by and submissions have been received for each application. A response to submissions received for Modification 8 can be found in **Appendix D**. A separate response to submissions received for Modification 9 can be found in **Appendix E**.

# 3. Planning Context and Regulatory Framework

## 3.1 Applicable Planning Framework

The Environmental Impact Statement (EIS) dated 3 November 2017 submitted for SSD 6471 took into consideration relevant legislation and regulations applicable to the proposal, including: Environment Protection and Biodiversity Conservation Act 1999, the Environmental Planning and Assessment Act 1979 (EP&A Act), the Royal Botanic Gardens and Domain Trust Act 1980; the Art Gallery of New South Wales Act 1980, the Marine Pollution Act 2012; the Fisheries Management Act 1994; the Protection of the Environment Operations Act 1997; the Biodiversity Conservation Act 2016; the Contaminated Land Management Act 1997; the Heritage Act 1977; the National Parks and Wildlife Act 1974 and applicable Regulations.

Having regard to the above, the Proposed Modification as Amended does not engage any further legislative provisions, and the overall use of the Sydney Modern Project remains the same. Accordingly, the same legislative consideration as was undertaken for the approved SSD 6471 remains applicable to the Proposed Modification as Amended.

## 3.2 Substantially the Same Development

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

*“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—*

- a) *it is satisfied that the proposed modification is of minimal environmental impact, and*
- b) *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*
- 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*
- 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.”*

For the Minister, or their delegate, to approve a 4.55(1A) modification, they must be satisfied that the modification will be 'substantially the same development' and the modification will have 'minimal environmental impacts.' For the reasons set out below, and elsewhere in this report, it is considered that the proposed modification meets these requirements. The Proposed Modification as Amended generally comprises minor

architectural and landscape design changes, as well as changes to the construction hours as described in **Section 2** of this report.

The Proposed Modification as Amended will not alter the building gross floor area (GFA). The Proposed Modification does not alter the built form, scale, or design intent of the approved development. Further, the low impact works outside of standard construction hours have been assessed to ensure that it does not result in any adverse impact to the surrounds. It is therefore considered that the Proposed Modification as Amended is substantially the same as the development for which the consent was originally granted.

Overall, the Proposed Modification as Amended is considered to result in minimal environmental impact.

### **3.3 Consideration of the Reasons Given by The Consent Authority for The Grant of The Consent That Is Sought to Be Modified**

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

*“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.”*

Having regard to Notice of Decision for SSD 6471, the Proposed Modification as Amended is consistent with the key reasons for granting consent to the application, as follows:

- Benefits: the project will refine aspects of the original development to ensure a more efficient construction process, improve aspects of safety and drainage and to improve amenity. Further, the project will help to overcome delays to the work program due to major disruptions associated with the COVID outbreak to ensure that the original development can be delivered on time and realise its benefits.
- Consistent with NSW Government Policy: the proposed development, inclusive of the proposed design modifications, is permissible with development consent and is consistent with NSW Government Policies.
- Community views considered: the views raised by the community during consultation of the original development, as well as during subsequent modification applications, have been considered where relevant to ensure that the design changes are sympathetic to these views. Furthermore, the submissions made in response to the notification of Modification 8 and Modification 9 have been addressed in **Appendix D** and **Appendix E**.
- Public Interest: weighing all relevant considerations, the Proposed Modification as Amended is in the public interest. Refer to **Section 4.5** below.

# 4. Environmental Assessment

## 4.1 Section 4.15 (1)(a) Matters for Consideration – General

Matters for consideration under this provision have been addressed in **Section 4** of this report.

There are no substantive provisions under the Sydney Local Environmental Plan 2012 (Sydney LEP 2012), Sydney Development Control Plan 2012 (Sydney DCP 2012) and various State Environmental Planning Policies (SEPPs) that relate to the Proposed Modification as Amended. The Proposed Modification as Amended does not propose changes to the bulk, scale, setback, siting or use of the approved development under SSD 6471. Refer to **Section 4.2** below, which provides consideration of likely impacts specific to the proposal for extended construction hours.

## 4.2 Section 4.15 (1)(b) The Likely Impacts

A discussion of the likely anticipated impacts resulting from the Proposed Modification as Amended is set out below.

### Design Changes

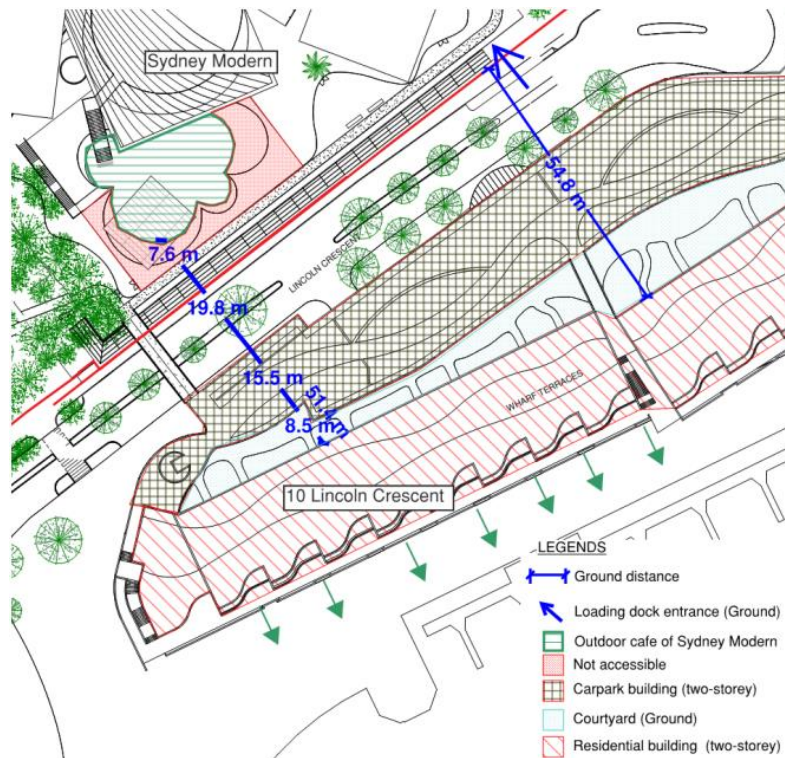
Refer Modification Report under Modification 8 as lodged for an assessment of impacts associated with the Modification 8 scope.

### Construction Hours

#### ***Acoustic Impacts***

The original EIS was supported by an Acoustic Report dated 28 February 2018 and Acoustic Clarification letter dated 4 July 2018, which are both referenced in Condition B63. The assessment considered the acoustic impacts generated by and associated with the proposed development, including construction noise and vibration.

Noise sensitive receivers that were considered as part of the acoustic assessment include the recreation areas of Botanic Gardens and Domain as well as the residences at 10 Lincoln Crescent and 9-31 Lincoln Crescent. These residential residences are shown in the **Figure 7** below.



**Figure 7 Proximity of the development to residences**

Source: ARUP (2018)

The assessment applied the noise limits and work periods of the *Interim Construction Noise Guideline*. Criteria for general comfort vibration affecting structural integrity was taken from the recommendations in *Assessing Vibration: A Technical Guideline 2006*. No other vibration criteria were considered as part of the acoustic assessment.

The predicted noise levels for neighbouring residential properties were predicted to comply with the *Guidelines* subject to appropriate noise mitigating measures. The Acoustic Report further concludes there is unlikely to be any construction vibration impacts subject to detailed vibration monitoring.

Consent was issued by DPE noting that works would be temporary, and impacts can be reasonably mitigated through conditions, including:

- Prepare a Community Consultation Strategy (Condition B6).
- Preparation of a Construction Noise and Vibration Management Plan (Condition B63).
- Construction hours, including hours for high impact activities and instances in which construction can be carried out outside these hours (Condition C2 – C6).
- Specific noise and vibration management requirements during construction (Conditions C7 – C10).

In this case, the Proposed Modification as Amended seeks to amend Condition C4 to allow for works, in accordance with the CNVMP at **Appendix B**, at specified times outside of the approved construction hours in Condition C2. Importantly, this CNVMP has been prepared with regards with the requirements of Condition B63, ensuring that it can be implemented during construction following approval of this Application. In this regard, the CNVMP:

- follows EPA's *Interim Construction Noise Guidelines* to address potential impacts of construction noise on residences and other sensitive land uses. This method involves predicting noise levels at sensitive receivers and comparing them with Noise Management Levels (NML's). Refer to Section 3.1.

- identifies the noise sensitive receivers for the site as those that were considered as part of the Acoustic Report referenced in consent Condition B63. The background noise survey also provided in this report have been used as the basis of this CNVMP. Refer to Section 4.1.

However, the CNVMP also considers additional receivers in applying vibration criteria, including electrical infrastructure building to the north, existing Art Gallery to the west, eastern distributor road infrastructure and heritage storage tanks on site. Refer to Section 2.

- applies the NML's of the *EPA's Interim Construction Noise Guidelines*. Notwithstanding this, the assessment also applies additional levels within the City of Sydney Construction Hours /Noise Code of Practice 1992. Refer to Section 3 and 5.

The CNVMP also applies the vibration criteria from the guideline titled "*Assessing Vibration – A Technical Guide*", *British Standard BS 7385: Part 2-1993* and *German DIN 4150: Part 3 - 1999*. Refer to Section 6.1.

- considers the works that are proposed in the EWH Management Plan at **Appendix A** and the noise levels of the proposed equipment to be used on the site during construction. The report uses the noise levels to predict the likely noise emissions of the works and its impacts to surrounding receivers. Refer to Sections 2 and 6.2.
- provides an assessment of noise and vibration impacts in Section 6. Based on a quantitative assessment of out-of-hours construction noise, and subject to the management measures in Section 8, the resulting noise levels at the identified nearest receivers will be acoustically acceptable. Management measures include:
  - All plant and equipment are to be maintained such that they are in good working order.
  - A register of complaints is to be recorded in the event of complaints being received, including location, time of complaint, nature of the complaint and actions resulting from the complaint.
  - A contact number is to be available during the period of works are being conducted such that complaints can be registered, investigated and mitigation undertaken.
  - If required, a noise level measurement of the offending plant item generating complaints is to be conducted and noise mitigations undertaken to reduce noise levels to within noise emission criteria. Alternatively, the equipment/activity is not to be undertaken during the extended hours period
  - The delivery and removal of material to and from the site is to be undertaken during the approved normal working hours of the project.
  - Workers are to be instructed not to park on Lincoln Cresset when they require access to the site during the proposed extended hours period and enter from Art Gallery Road.

Regarding vibration impacts of the proposed works, compliance with vibration criteria at all surrounding locations will be achieved without additional mitigations or controls. Accordingly, no monitoring of these impacts is necessary.

- outlines procedures for community engagement in Section 7. It should be noted that newsletter updates and community information will be available during the out-of-hours period consistent with the Community Consultation Strategy currently being implemented on-site in accordance with Condition B6; and
- provides noise and vibration monitoring measurements in Section 9. It should be noted that current noise monitoring arrangements of all activities will continue during the out-of-hours period, with results to be reviewed and reported to the project website monthly.

Furthermore, the CNVMP has been prepared with regards Noise and Vibration management requirements of Conditions C7 and C10, ensuring that the works can occur without impacts to surrounds, consistent with these conditions of the consent. A TMP has also been prepared by TTPA at **Appendix C** which indicates location of worker parking, worker travel routes, as well as compliance and monitoring measures. The implementation of this TMP will ensure that there are no noise impacts to residences on Lincoln Crescent.

In this case, it is considered that there will be no additional or increased impact to surrounds and the proposed modification is acceptable in the circumstances.

#### **4.3 Section 4.15 (1)(c) Suitability of the Site**

There are no known site conditions that would hinder the Proposed Modification as Amended. The proposed changes are predominantly minor, and to areas that were already assessed for site conditions and their impacts on the proposal under SSD 6471 and in subsequent modifications. There will be no additional or increased adverse impacts.

The site remains suitable for the Sydney Modern Project development for the reasons outlined in the original SSD Application for SSD 6471.

#### **4.4 Section 4.15 (1)(d) Submissions Made**

Submissions made on this the Proposed Modification as Amended have been duly considered and addressed in **Appendix D** and **Appendix E**.

#### **4.5 Section 4.15 (1)(e) The Public Interest**

For the reasons discussed within this report, the Proposed Modification as Amended is not considered to alter the design intent or landscape narrative of the approved development and is considered to be substantially the same development as the development for which consent was originally granted under SSD 6471. The resulting impacts from the Proposed Modification as Amended are collectively considered to be minimal.

The Proposed Modification as Amended will provide public benefits by enhancing the public's enjoyment of the new Sydney Modern Project building and creating significant new civic spaces to be enjoyed by residents and tourists, thereby contributing to the enjoyment and liveability of the city for its communities.

The Proposed Modification as Amended will continue to support the NSW Government's vision for an expanded Art Gallery of NSW and would also continue to facilitate Sydney as an international arts and cultural destination; hence, providing significant social, economic, and environmental benefits to the State.

Therefore, the development as it is proposed to be modified remains in the public interest, for the reasons outlined in the original SSD Application for SSD 6471.

# 5. Conclusion

This Response to Submissions and Amendment Report has been prepared by Architectus Australia Pty Ltd on behalf of the Art Gallery of New South Wales Trust to modify SSD 6471 for the approved AGNSW Expansion Project, known as the Sydney Modern Project, pursuant to section 4.55(1A) of the EP&A Act.

The Proposed Modification as Amended (Modification 8) is the result of ongoing design development to ensure more efficient construction processes, improve aspects of safety, drainage and to improve amenity. It will also enable certain low impact works outside of standard hours in order to overcome disruptions to the work programme caused by COVID and to ensure that the publicised June 2022 completion date is met.

It is considered the Proposed Modification as Amended does not intensify the approved use and does not alter the overall built form, scale, or design intent of the approved development. It is considered to be substantially the same development as the development for which consent was originally granted. Further, the Proposed Modification as Amended is considered to result in minimal environmental impact.

The Proposed Modification as Amended will provide considerable public benefits by enhancing the public's enjoyment of the new Sydney Modern Project building and creating significant new civic spaces to be enjoyed by residents and tourists, thereby contributing to the enjoyment and liveability of the city for its communities. The Proposed Modification as Amended will continue to support the NSW Government's vision for an expanded Art Gallery of NSW contributing to Sydney's art and cultural ribbon and continue to facilitate Sydney as an international arts and cultural destination.

**Having regard to the matters discussed within this report, it is recommended that the Minister for Planning, or their delegate, grant consent to the Proposed Modification as Amended.**