



# Sirius Building Modification 1

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Removal and replacement of two trees along Gloucester Walk  
State Significant Development Modification Assessment (SSD  
10384 MOD 1)

March 2022

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# Glossary

Abbreviation	Definition
<b>Council</b>	City of Sydney
<b>Department</b>	Department of Planning and Environment
<b>EIS</b>	Environmental Impact Statement
<b>EP&amp;A Act</b>	<i>Environmental Planning and Assessment Act 1979</i>
<b>EP&amp;A Regulation</b>	Environmental Planning and Assessment Regulation 2021
<b>EPBC Act</b>	<i>Environment Protection and Biodiversity Conservation Act 1999</i>
<b>EPI</b>	Environmental Planning Instrument
<b>Heritage</b>	Heritage NSW, Department of Premier and Cabinet
<b>LEP</b>	Local Environmental Plan
<b>Minister</b>	Minister for Planning
<b>Planning Secretary</b>	Secretary of the Department of Planning and Environment
<b>PMNSW</b>	Place Management NSW
<b>SEPP</b>	State Environmental Planning Policy
<b>SRD SEPP</b>	State Environmental Planning Policy (State and Regional Development) 2011
<b>SSD</b>	State Significant Development

# Executive summary

The report provides an assessment of a modification application seeking to amend the development consent for the Sirius building (SSD 10384). The proposal seeks to remove two existing Plane trees along Gloucester Walk and plant four replacement Black Tupelo trees.

The application has been lodged by The Trustee for Sirius Developments Unit Trust (the Applicant) pursuant to Section 4.55(1A) of the *Environmental Planning and Assessment Act 1979* (EP&A Act).

## Engagement

The Department made the modification application available on its website and referred it to the City of Sydney Council (Council), Heritage NSW and Place Management NSW (PMNSW). Council objects to the proposal and suggested the Applicant explore all opportunities to retain the existing trees in their current location. No public submissions were received.

The Applicant submitted a response to the issues raised by Council and additional information as requested by the Department, however has been unable to amend the proposal to retain the trees.

## Assessment

The Department has considered the merits of the proposal in accordance with the relevant matters under section 4.15(1) of the EP&A Act, the issues raised by Council and the Applicant's response to these. The Department has also sought advice from its Chief Engineer and concludes that the proposal is acceptable as:

- the existing retaining wall beneath the Sirius building is in a state of structural failure and cannot be retained in situ, as previously anticipated when consent was granted to the development
- the demolition of the existing wall would render the trees unstable due to their structural dependence on the wall and adjacent soil
- the Applicant and the Department's Chief Engineer have explored all feasible options to reconstruct the retaining wall, however have been unable to recommend a construction methodology which would allow the safe construction while retaining the trees
- four replacement trees will be planted within Gloucester Walk to offset the loss of the two Plane trees, with the species and size selected in consultation with Council and PMNSW
- it complies with the relevant statutory provisions and the proposal remains consistent with relevant EPIs and the strategic planning context
- it is substantially the same development as originally approved.

## Conclusion

For the reasons set out above, the Department considers the modification application to remove the two Plane trees represents the safest and practical means of constructing the Sirius redevelopment and is therefore in the public interest. The Department recommends the modification application be approved, subject to the recommended modified conditions of consent.

# 1 Introduction

This report provides an assessment of an application seeking to modify the State significant development consent for the Sirius building at 2-60 Cumberland Street, the Rocks (SSD 10384).

The modification seeks to remove two Plane trees along Gloucester Walk and plant four replacement Black Tupelo trees.

The application was lodged by The Trustee for Sirius Developments Unit Trust and are pursuant to section 4.55(1A) of the Environmental Planning and Assessment Act 1979 (EP&A Act).

## 1.1 Background

The site is located at 2-60 Cumberland Street, The Rocks and is legally described as Lot 100 and 101 DP 264104 (**Figure 1**). The site has an area of 3,664.5 m<sup>2</sup>, is irregular in shape and has a frontage of approximately 115 m to Cumberland Street (west) and 120 m to Gloucester Walk (east) within the City of Sydney Local Government Area (LGA).

The surrounding area contains a mix of commercial, retail and residential uses including 88 Cumberland Street, terrace buildings and the Mercantile Hotel, with Sydney Opera House located 600m to the east of the site and Circular Quay Wharf located 350m southeast of the site.

The two Plane Trees subject to the modification, identified as Tree 50 and Tree 51 are located along Gloucester Walk (**Figures 1 and 2**). The trees are in good health, approximately 20-25 years of age, with a height of approximately 18 m and a canopy spread of 16 m.



**Figure 1** | Aerial view of the site and its immediate surroundings and trees circled in blue (Source: Nearmap)

## 1.2 Approval history

On 18 June 2021, the Director Key Sites Assessments granted consent for alterations and additions to the Sirius building including restoration and refurbishment for a mixed-use development including:

- a gross floor area of 8,419.20 m<sup>2</sup>
- 76 residential apartments, commercial (SOHO apartments) and retail premises
- Cumberland Street building with retail, pool and basement vehicle access
- pedestrian through site link between Cumberland Street and Gloucester Walk
- landscaping, public art and off-site public domain works.

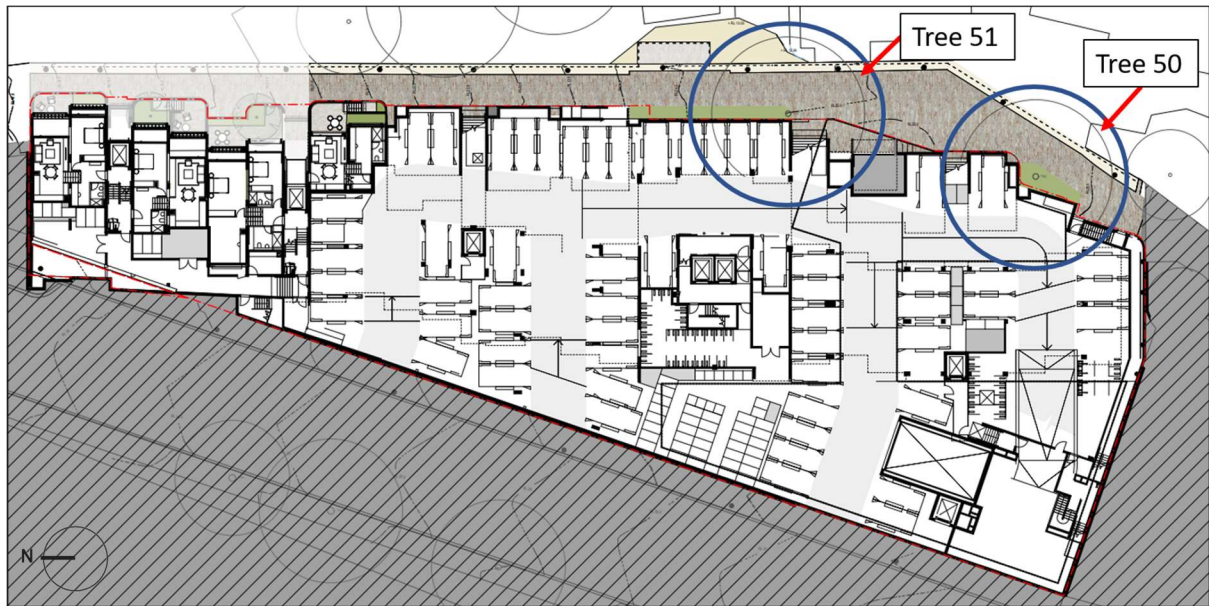
Condition D30 of the development consent approved tree removal and pruning in accordance with the Arboricultural Impact Report and Tree Retention Plan submitted with the SSD application. The Tree Retention Plan noted that the proposed works are within the tree protection zone of the two Plane trees (Trees 50 and 51), however concluded that there will not be any disturbance as the existing wall at the boundary is being retained in situ.

Condition B10 of the development consent requires a pruning specification for Trees 50 and 51 to be prepared by a qualified Level 5 Arborist and submitted to PMNSW for approval prior to the issue of Construction Certificate 1.

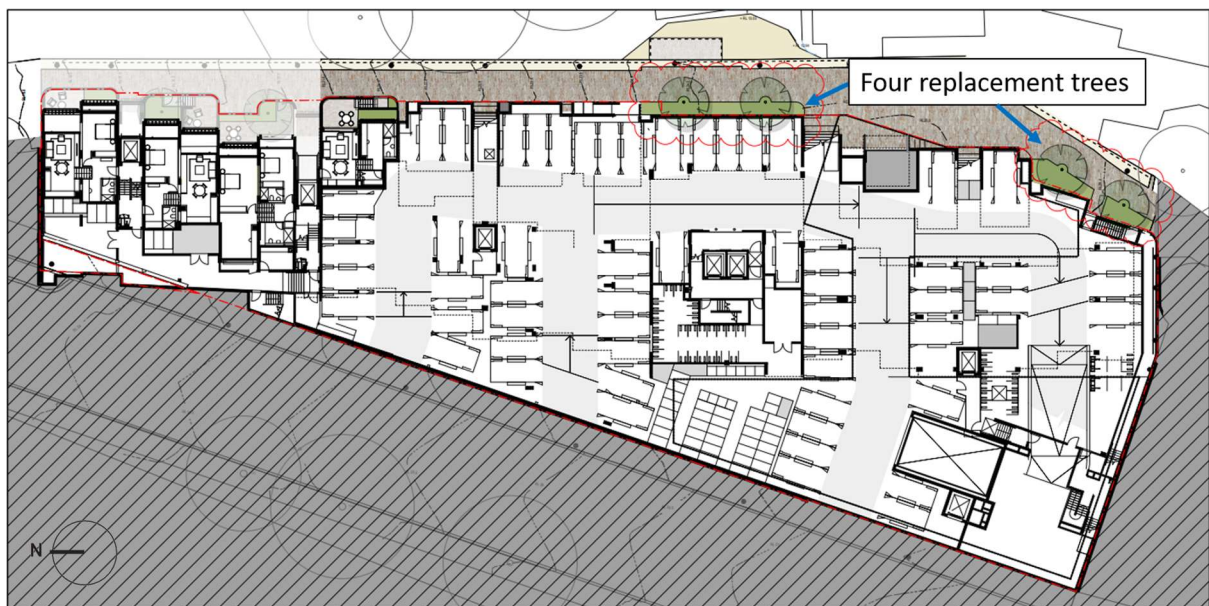
## 2 Proposed modification

The modification application seeks to modify the development consent to allow for the removal of two existing Plane Trees (**Figure 2 and 4**) and planting of four replacement Black Tupelo trees along Gloucester Walk (**Figure 3**).

The Applicant contends that it is necessary to remove the trees to facilitate the demolition and reconstruction of the existing retaining wall, which was not anticipated in the approved development. (**Figure 5**).



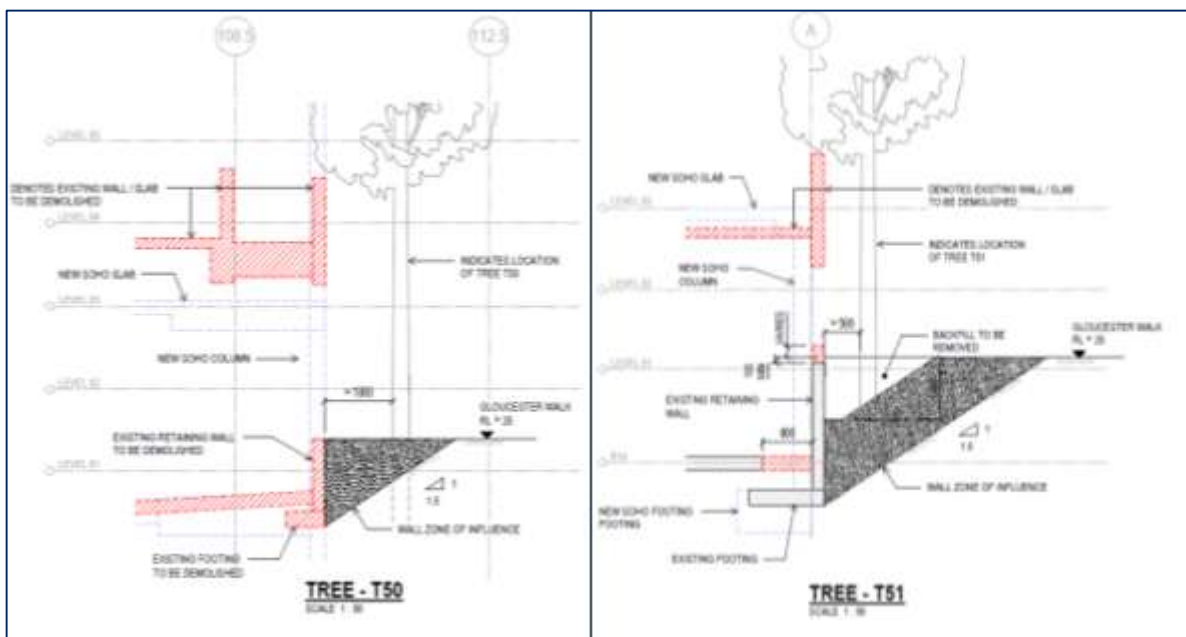
**Figure 2 |** Location of Trees 50 and 51 (Source: Approved Landscape Plan Basement B2-B1)



**Figure 3 |** Four proposed trees along Gloucester Walk (Source: Landscape Plan Basement B2-B1)



**Figure 4** | Tree 50 (left) and Tree 51 (right) (Source: MOD 1 RtS - updated arborist advice dated 27 January 2022)



**Figure 5** | Sections indicating locations of Trees 50 and 51 and the retaining wall to be demolished (red hatched) (Source: Structural engineer advice dated 21 September 2021)

## 3 Statutory context

### 3.1 Scope of modification

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

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

Therefore, the Department is satisfied the proposed modification is within the scope of section 4.55(1A) of the EP&A Act and does not constitute a new development application. Accordingly, the Department considers that the application should be assessed and determined under section 4.55 (1A) of the EP&A Act rather than requiring a new development application to be lodged.

### 3.2 Consent authority

The Minister for Planning is the consent authority for the application under section 4.5(a) of the EP&A Act. However, in accordance with the Ministers delegation, the Executive Director, Key Sites and Regional Assessments, may determine the application as:

- a political disclosure statement has not been made
- no public submissions in the nature of objections were received
- Council has made a submission by way of objection.

### 3.3 Mandatory matters for consideration

The following are relevant mandatory matters for consideration:

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

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

## 4 Engagement

### 4.1 Department's engagement

The application was made publicly available on the Department's website and referred to the City of Sydney Council, Heritage NSW and Place Management NSW (PMNSW) for comments.

### 4.2 Summary of submissions and agency advice

The Department received advice from Heritage NSW, PMNSW and Council. A summary of the issues raised is provided below in **Table 1**.

A link to the full copy of the advice is provided in **Appendix A**.

No submissions were received from the public.

**Table 1** | Summary of submissions and agency advice

City of Sydney Council	
<b>Modification Application</b>	Council objects to the removal of the trees on the basis of their high landscape value and provided the following recommendations: <ul style="list-style-type: none"><li>the Applicant should explore options to retain the trees, including modifications to the proposed design and/or tree sensitive methodologies to retain the existing soil/retaining wall to allow the trees to be retained.</li><li>a detailed landscape plan should be provided.</li></ul>
<b>Response to Submissions</b>	Council reviewed the RtS and continues to object to the removal of the trees. It noted that it is likely that the majority of the trees' roots are growing east (away from the wall) and on this basis the removal of the wall is less likely to cause tree failure. Council provided the following additional recommendations: <ul style="list-style-type: none"><li>non-destructive root mapping should be undertaken to understand tree root activity, tree stability and to inform the proposed design</li><li>further options should be explored to retain the trees, including:<ul style="list-style-type: none"><li>constructing the new wall and footing in front of the existing wall and footing without the use of large machinery</li><li>sensitively and selectively remove and construct small sections of the wall without damaging structural roots.</li></ul></li></ul>
<b>Response to Request for Additional information (RFI)</b>	Council maintains its position and considers the previous recommendations have not been adequately investigated and the additional documentation does not justify tree removal.
Heritage NSW	
<b>Modification Application</b>	Heritage NSW raises no objection to the proposal as the affected trees do not form part of the original landscaping and setting of the site. It recommends a condition be imposed to any unexpected archaeology encountered during excavation.
Place Management NSW	

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**Modification Application**

PMNSW advised the Plane trees are an important scenic element and would prefer the trees be retained. It supported the Applicant further exploring options to retain the trees. Notwithstanding, PMNSW granted landowners consent to the application in acknowledgment of the serious public safety issues involved in retaining the trees with respect to removing walls within the tree protection zone.

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### 4.3 Responses to submissions

Following the exhibition of the modification application, the Department placed copies of all submissions received on its website and requested the Applicant to provide a response to the issues raised.

On 9 December 2021, the Applicant provided its RtS, which included additional information and justification in response to the issues raised in the submissions. The RtS analysed the feasibility of three alternative options and clarified the existing and proposed tree canopy cover.

The RtS was made publicly available on the Department's website and was referred to Council.

On 4 February 2022, the Applicant provided additional information including further arboriculture and structural engineering advice, and consideration to further options presented by Council in its comments on the RtS. The additional information concluded all options to retain the tree have been fully explored however that it is not possible to retain the trees.

## 5 Assessment

In assessing the merits of the proposed modification, the Department has considered:

- the modification and associated documents
- the Environmental Impact Statement and conditions of approval for the original application (as modified)
- all submissions received on the proposal and the Applicant's response to these.

The Department has assessed the proposed tree removal and replacement planting below.

### 5.1 Tree removal

The proposal seeks consent to remove two Plane trees within Gloucester Walk. The trees are located 0.5 m and 0.8 m from the masonry retaining wall beneath the Sirius building.

The development consent requires the retention of these trees in accordance with the Arboricultural Impact Report and Tree Retention Plan submitted with the SSD application. This document identifies the trees are in good health and of high landscape significance and will not be disturbed as the existing retaining wall will be retained in situ.

The Applicant, however, has now advised that the removal of the trees is required to facilitate the demolition and reconstruction of the existing retaining wall which has structurally failed, is not certifiable under current Australian Standards and fails National Construction Code strength and stability requirements.

The Application is supported by:

- an Arborist Report which notes the two trees are being supported by the existing retaining walls, will be rendered unstable by the proposed works and concludes that there is no practically achievable and arboriculturally acceptable method to stabilise the trees in the short and longer term.
- root mapping which indicates the tree roots located adjacent to and underneath the retaining walls and footings
- an Engineering advice and construction methodology which concludes:
  - the root ball of the trees is exerting pressure behind the wall as evidenced by cracking, twisting and visible root penetration
  - demolition of the wall, including removal of soil behind the trees would be likely to result in:
    - the collapse of existing soft ground material inwards which gives rise to the risk of significant injury or death to workers.
    - instability of tree roots results in overturning of trees over Gloucester walk and the public below.

Council does not support the removal of the trees on the basis of their high landscape value and raised concerns about the root mapping undertaken, the current condition of the wall, and inadequate consideration of alternative options to retain the trees.

The Department sought advice from its Chief Engineer to assist with the assessment of the technical aspects of the Applicant's proposal. The Chief Engineer confirmed:

- the input parameters and assumptions of the Applicant's engineering advice are accurate and appropriate, and the results of the analysis clearly indicate that the wall is overloaded and in a state of structural failure
- the current wall cannot be certified as compliant with current standards and needs to be replaced
- there are limited options to safely construct the wall and retain the trees, in particular:
  - Council's proposed option of using rock anchors to support the existing retaining wall is not feasible due to engineering constraints and public safety risks
  - the internal basement height is too low to accommodate machinery to build a soldier pile wall behind the original wall, as recommended by Council
  - a replacement wall, without soldier piles, cannot fit into the space available
- more comprehensive tree root mapping would not better inform whether the trees are able to be retained.

The Chief Engineer therefore concluded that the safest, most practical means to complete the project is for the trees to be removed.

The Department has carefully considered Council's comments, the Applicant's response and the advice of the Chief Engineer. The Department acknowledges the high landscape value of the Plane trees and required the Applicant to thoroughly investigate all options to retain the trees. The Department also met with Council, the Applicant and Chief Engineer to understand the constraints and explore opportunities to retain the trees.

Through these discussions, the Department is satisfied that:

- the existing retaining wall is in a state of structural failure and must be replaced to allow the redevelopment of the Sirius building in accordance with the development consent
- the demolition of the existing wall would render the trees unstable due to their structural dependence on the wall and adjacent soil
- the Applicant and the Chief Engineer have sufficiently explored alternative means of constructing the new retaining wall to retain the trees, however these options are not feasible due to engineering and spatial constraints
- further detailed investigations will not alter the engineering assumption of the load on the current wall and significant risk of the trees collapsing, either inwards towards the basement or across Gloucester Walk during demolition/construction.

On this basis, the Department has found that the retention of trees would create an unacceptable safety risk given their proximity to, and the need to replace, the existing structurally failing wall beneath the Sirius building. The Department therefore concludes that the proposed removal of the trees is the only safe and practical option to allow the redevelopment of the Sirius development to proceed.

## 5.2 Replacement trees

The Applicant proposes to plant four Black Tupelo trees to replace the removed Plane Trees. The Landscape Architect for the project has advised that:

- the Black Tupelos are smaller and have a less aggressive root system than Plane trees and its columnar canopy shape and form are more compatible with the space
- the species has also been proposed as street tree planting in Cumberland Street and the continuation of the same planting will enhance the amenity and identity of the precinct
- the total canopy cover of the replacement trees (200m<sup>2</sup>), while less than the existing Plane trees (402m<sup>2</sup>), when considered in the context of the approved street tree planting along Cumberland Street, represents an increase of 260m<sup>2</sup> more canopy cover than the existing public domain canopy area.

Council recommended that any replacement trees should be in accordance with the specifications of Council's Street Tree Manual 2011 for The Rocks area.

PMNSW did not raise any concerns regarding the proposed tree species but advised that replacement planting should be determined in consultation with Council and PMNSW.

The Department notes that Black Tupelo are not listed as a preferred species in the Council's Street tree manual and therefore recommends a condition requiring the final trees species and sizes be determined in consultation with Council and PMNSW.

## 5.3 Detailed Landscape Plan

Council requested the Applicant provide a detailed landscape plan for consideration.

The Department notes that Condition B7 requires a detailed landscape plan be prepared in consultation with Council and PMNSW and approved by the Planning Secretary prior to issue of a Construction Certificate for external works, landscaping and public domain.

The Department considers the existing condition remains appropriate and ensures that Council is consulted during the preparation of the detailed landscape plan.

## 6 Evaluation

The Department has assessed the merits of the application in accordance with the relevant requirements of the EP&A Act. The Department considers the proposed modification is acceptable as:

- the existing retaining wall beneath the Sirius building is in a state of structural failure and cannot be retained in situ, as previously anticipated when consent was granted to the development
- the demolition of the existing wall would render the trees unstable due to their structural dependence on the wall and adjacent soil
- the Applicant and Chief Engineer have explored all feasible options to reconstruct the retaining wall, however have been unable to recommend a construction methodology which would allow the safe construction while retaining the trees
- four replacement trees will be planted within Gloucester Walk to offset the loss of the two Plane trees, with the species and size selected in consultation with Council and PMNSW
- it complies with the relevant statutory provisions and the proposal remains consistent with relevant EPIs and the strategic planning context
- it is substantially the same development as originally approved.

Consequently, the Department considers the modification application to remove the two Plane trees represents the safest and practical means of constructing the Sirius redevelopment and is therefore in the public interest. The Department recommends the modification application be approved, subject to the recommended modified conditions of consent (**Appendix C**).

## 7 Recommendation

It is recommended that the Executive Director, Key Sites and Regional Assessments, as delegate of the Minister for Planning:

- **considers** the findings and recommendations of this report
- **determines** that the application SSD 10384 MOD 1 falls within the scope of section 4.55(1A) of the EP&A Act
- **accepts and adopts** all of the findings and recommendations in this report as the reasons for making the decision to approve the modification
- **modify** the consent SSD 10384
- **signs** the attached approval of the modification (**Appendix C**).

Prepared by:  
David Glasgow, Principal Planner  
Jennie Yuan, Planning Officer

Recommended by:



**Amy Watson**

Team Leader  
Key Sites Assessments

Recommended by:



**Anthony Witherdin**

Director  
Key Sites Assessments

## 8 Determination

The recommendation is **Adopted** by:

A handwritten signature in blue ink that reads "Sargeant". The signature is written in a cursive, slightly stylized font.

28/3/2022

**Anthea Sargeant**

Executive Director

Key Sites and Regional Assessments

as delegate of the Minister for Planning

# Appendices

## Appendix A – List of referenced documents

The following documents and information supporting the assessment can be found on the Major Project's website through this link: <https://www.planningportal.nsw.gov.au/major-projects/project/42691>.

- Modification Report and accompanying appendices
- Submissions and agency advice
- Response to Submissions
- Response to Request for Additional Information

## Appendix B – Statutory Considerations

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

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

The Department has considered these matters in its assessment of the proposal in Error! Reference source not found. and Error! Reference source not found..

**Table 2** | Consideration of section 4.55(1A) of the EP&A Act

Section 4.55(1A) Evaluation	Consideration
a) that the proposed modification is of minimal environmental impact, and	<p><b>Section 5</b> of this report provides an assessment of the impacts associated with the modification application. The Department is satisfied that the proposed removal of two trees and replanting of four trees along Gloucester Walk is of minimal environmental impact as:</p> <ul style="list-style-type: none"> <li>• The removal of the trees would not result in significant impacts on threatened species, populations or communities</li> <li>• The two trees are not naturally occurring</li> <li>• Appropriate replacement planting will be determined in consultation with Council and PMNSW</li> <li>• The changes will have no impact on the adjoining and surrounding properties</li> <li>• The overall use and future operation of the site remains unchanged by this proposal.</li> </ul>
b) that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all), and	The Department is satisfied the proposed modifications are substantially the same developments as the key components of the developments, including their use and overall design, remain unchanged.
c) the application has been notified in accordance with the regulations, and	The EP&A Regulation specifies that the notification requirements of the EP&A Regulation do not apply to section 4.55(1A) modification applications. Accordingly, the application was not notified or advertised. Details of the Department’s engagement are provided in <b>Section 4</b> of this report.
d) any submission made concerning the proposed modification has been considered.	The Department received advice from two agencies and submissions from Council. The issues raised have been listed in <b>Section 4</b> and considered in <b>Section 5</b> of this report.

Reasons given by the consent authority for the grant of the consent that is sought to be modified

The Department has considered the reasons given by the consent authority for the grant of the consent in its assessment in **Section 5** of this report.

**Table 3 | Consideration of the matters listed under Section 4.15(1) of the EP&A Act**

<b>Section 4.15(1) Matters for consideration</b>	<b>The Department's assessment</b>
(a)(i) any environmental planning instrument	The proposed modification is consistent with the relevant Environmental Planning Instruments (EPIs) as addressed below.
(a)(ii) any proposed instrument	The proposed modification is consistent with the relevant draft Environmental Planning Instruments (EPIs) as addressed below in this report.
(a)(iii) any development control plan	Under clause 11 of the SRD SEPP, Development Control Plans (DCPs) do not apply to SSD.
(a)(iiia) any planning agreement	Not applicable.
(a)(iv) the regulations	The applications satisfactorily meet the relevant requirements of the EP&A Regulation, including the procedures relating to applications, the requirements for notification and fees.
(b) the likely impacts of that development including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,	The Department considers the likely impacts of the proposed modification acceptable and have been appropriately addressed (refer to <b>Section 5</b> of this report).
(c) the suitability of the site for the development	The suitability of the site was considered in the Department's original assessment and the modification does not alter its suitability.
(d) any submissions	The Department has considered the submissions received (refer to <b>Sections 4</b> and <b>5</b> of this report).
(e) the public interest	The Department considers the proposed modification to be in the public interest.

### Environmental Planning Instruments

To satisfy the requirements of section 4.15(1)(a)(i) of the EP&A Act, the Department has considered the relevant SEPPs as part of its assessment of the proposal and is satisfied that the modification does not result in any inconsistency with them. The Department notes that several SEPPs has been consolidated into the new SEPPs since 1 March 2022. Most existing provisions in the now repealed SEPP has been transferred as chapters with no policy changes. The Department is therefore satisfied that the proposal remains consistent with the provisions of:

- State Environmental Planning Policy (Planning Systems) 2021
- State Environmental Planning Policy (Precincts – Central River City) 2021
- State Environmental Planning Policy (Transport and Infrastructure) 2021
- Sydney Regional Environmental Plan (Biodiversity and Conservation) 2021

- State Environmental Planning Policy (Resilience and Hazards) 2021
- State Environmental Planning Policy No. 65 – Residential Apartment Development
- State Environmental Planning Policy (Building Sustainability Index – BASIX) 2004
- Draft Design and Place SEPP 2021

## Appendix C – Notice of modification

SSD 10384 MOD 1

<https://www.planningportal.nsw.gov.au/major-projects/project/42691>