

Notice of decision – Sydney Modern SSD 6471

Section 2.22 and clause 20 of Schedule 1 of the *Environmental Planning and Assessment Act 1979*

Application type	State significant development
Application number and project name	SSD 6471 Sydney Modern
Applicant	Art Gallery of NSW
Consent Authority	Minister for Planning

Decision

The Minister for Planning has, under s.4.38 of the *Environmental Planning and Assessment Act 1979 (the Act)*, granted consent to the development application subject to the recommended conditions.

A copy of the Department of Planning & Environment's Assessment Report, development consent and conditions are available [here](#).

Date of decision

20 November 2018

Reasons for decision

The following matters were taken into consideration in making this decision:

- the relevant matters listed in section 4.15 of the Act and the additional matters listed in the statutory context section of the Department's Assessment Report;
- the prescribed matters under the *Environmental Planning and Assessment Regulation 2000*;
- the objects of the Act;
- all information submitted to the Department during the assessment of the modification application;
- the findings and recommendations in the Department's Assessment Report; and
- the views of the community about the project (see Attachment 1).

The findings and recommendations set out in the Department's Assessment Report were accepted and adopted as the reasons for making this decision. Additional reasons for making the decision are also recorded in the Department's Assessment Report.

The key reasons for granting consent to the application are as follows:

- Benefits – the project will provide a range of benefits for the region and the State as a whole, including delivering on the NSW Government's vision for an expanded Art Gallery of NSW contributing to Sydney's art and cultural ribbon. The project would also contribute significantly to the growth of Sydney as an international arts and cultural destination at significant social, economic and environmental benefit to the State.
- Consistent with NSW Government Policy – the project is permissible with development consent and is consistent with NSW Government Policies, including the Greater Sydney Region Plan, Eastern City District Plan and the State Infrastructure Strategy 2018-2038.
- Impacts can be managed – the impacts on the community and the environment can be appropriately minimised, managed or offset to an acceptable level, in accordance with applicable NSW Government policies and standards. These include replacement tree planting, heritage impacts, construction impacts and operational noise.
- Community views considered – the issues raised by the community during consultation have been considered and adequately addressed through design enhancements to the project and the recommended conditions of consent. In particular, the design of the building and entry canopy has been revised, more trees will be retained/planted, and public access to the site has been improved. Conditions are recommended to increase the area of green roofs, provide landscape screening to the fuel bunker wall, and the proposed external materials are to be endorsed by the Office of Environment and Heritage (OEH).
- Public Interest – weighing all relevant considerations, the project is in the public interest.

Attachment 1 – Consideration of Community Views

The Department exhibited the Environmental Impact Statement for the project from 16 November 2017 until 15 December 2017 (30 days). The Department received 292 submissions, comprising one submission from Council, eight submissions from government agencies, and 283 submissions (202 objections) from the general public. This included a submission from Alex Greenwich, Member for Sydney.

The application was subsequently amended through the Response to Submissions process and the amended proposal was placed on the Department's website and was renotified to government agencies and Council. Representatives of The Wharf Terraces and the Woolloomooloo Finger Wharf

The Department also undertook the following consultation activities:

- visited the site on several occasions
- attended meetings with representatives of The Wharf Terraces, the Woolloomooloo Finger Wharf and other community members
- exhibition on the Department's website, at service NSW and at Council's offices
- advertised the proposal in the *Sydney Morning Herald* and *The Daily Telegraph* on 15 November 2017.

The key issues raised by the community (including in submissions) and addressed in detail in the Department's Assessment Report and by the decision maker include use of public open space, visual impacts, alternative locations, tree loss and design. These and other key issues raised are summarised in the table below.

Issue	Consideration
• Use of public open space	• Much of the open space required for the development is located above man-made structures (fuel bunker and land bridge) with limited soil depth for significant landscaping. The rest of the site predominantly comprises a steep, landscaped embankment which provides limited opportunities for public use. Although these areas contribute to the amenity of the Domain and provide harbour views in some locations, they do not relate to the historic and landscaped quality of the Domain and, with the exception of the land bridge, are poorly connected. • The total amount of open space proposed (7,684 m²) equates to the proposed building footprint (7,716 m²). Overall, 5,768 m² of publicly accessible open space is proposed (75% of the proposed building footprint). Of this, 2,365 m² would be accessible 24 hours-per-day, seven days-per-week with the remaining 3,403 m² of roof terraces and courtyards publicly accessible available during gallery opening hours. • The proposed development would create a series of diverse, multi-functional and interconnected public spaces, including the forecourt plaza, entry plaza, and roof terraces which would provide new gathering points, undercover areas, seating areas and locations for new public views. Although not all areas of proposed open space would be publicly accessible, this would be counterbalanced by the proposed quality and variety of public spaces. • Given the proposed public domain and landscape works, and that the proposed building would be available for free public use and would have significant cultural and educational public benefits, the Department considers the

proposed use of public open space to be justified and acceptable.

Recommended Conditions/Response

Conditions include:

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| <ul style="list-style-type: none"> • Adverse visual impact • Loss of public views | <ul style="list-style-type: none"> • Convert the roof of gallery 1 to a green roof. • The Department considers the revised VIA submitted with the RTS accurately identifies the visual impacts of the proposal, including views from the Domain, RBG, TWT, Lincoln Crescent and the WFW. • The Department considers the visual impact of the proposed development to be moderate to minor from many of the vantage points assessed in the VIA. • Where more significant visual impacts have been identified, the Department considers these impacts would be reasonably mitigated by the proposed building design which avoids a dominant built form and steps down with the site topography, proposed setbacks and landscaping, use of appropriate materials provision, and the provision of new public view opportunities. • However, the Department considers the design of the proposed entry plaza canopy could be further rationalised to ensure it improves sightlines between the existing gallery building and the Woolloomooloo Gate and enhances its built form interface with its landscape setting. |
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Recommended Conditions/Response

Conditions include:

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| <ul style="list-style-type: none"> • Submission of a revised design for the entry plaza canopy that reconsiders its extent, its street alignment and orientation, and its setbacks to Art Gallery Road. • Convert the roof of gallery 1 to a green roof. • External materials to be endorsed by OEH. • Landscape plan for greening of the fuel bunker wall to be endorsed by OEH. | <ul style="list-style-type: none"> • The extension should be located elsewhere in Sydney • The extension should be located elsewhere around the existing gallery building. |
| <ul style="list-style-type: none"> • The proposed expansion of the AGNSW adjacent to the existing gallery building is consistent with a significant number of strategic planning strategies and policies. • The Department notes there are significant impediments including appropriate site location, costs and organisational difficulties associated with locating an extension of the gallery at a separate location within Sydney. • The Department considers the proposed location of the extension to the north-eastern side of the gallery would provide the required space for the expansion and would allow for the adaptive re-use of the fuel bunker while | |

minimising environmental and heritage impacts. Expansion to the rear (south-east) of the existing building is prohibited by lack of space while the location of the Eastern Suburbs railway line/tunnel, significant trees, the Domain playing fields and greater heritage impacts on the existing gallery building reasonably preclude expansion to the south-west side of the gallery.

- The Department concludes the benefits of locating the proposed extension adjacent to the location of the existing gallery outweigh the disbenefits and that the proposed location is underpinned by sound locational and logistical justification.

• Tree removal and loss of biodiversity.

- 124 trees are proposed to be removed with six of these evaluated as being of high value with the remaining 118 evaluated as being of either moderate, low or very low value. A further eight trees are to be relocated.
- The Department engaged an arboricultural consultant to provide expert advice in relation to the proposed tree removal, tree transplantation and replacement tree planting scheme.
- The Department considers the proposed development is located in the most appropriate location in proximity to the existing gallery and that some loss of trees is unavoidable. However, the design retains 88 trees within the site and the proposal includes the planting of 273 new trees.
- The replacement trees would have an initial planting height of 4 m to 8 m and will range in maximum height from 5 m to over 30 m. The replacement trees will gradually replace the amenity of the trees to be removed with a greater overall amenity outcome achieved over time.
- OEH consider the proposal is acceptable in relation to biodiversity subject to replacement trees including some locally indigenous species (included as part of the approved landscape plans).
- Consistent with advice received by the Department's arboricultural expert, the Department concludes the proposed tree removal and tree replacement scheme are acceptable and the development includes works that would form part of an overall improved public domain outcome.

Recommended Conditions/Response

Conditions include:

- Planting a minimum 273 replacement trees, in accordance with the approved landscape plans

- Protection of trees to be retained and engagement of a level 5 arborist to ensure adequate tree protection methods are put in place.
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- Poor architecture and urban design
 - Large size/bulk and scale of the building.
 - The proposed building was the winning design of a design excellence competition. Noting opinions of building design are subjective, the Department considers the design excellence process was sound and considers the proposed design represents quality architecture, resulting in appropriate urban design outcomes. Comments provided by the NSW Government Architect are consistent with this view.
 - The Department considers the proposed development would sympathetically integrate with the existing gallery building and the surrounding character of the Domain.
 - The proposed entry plaza would be setback between 12 m and 15 m from Art Gallery Road, including a 7 m to 8 m wide landscaped setback. A landscaped setback between 11 m and 23 m is proposed between gallery 2 and Art Gallery Road. The Department considers the proposed setbacks and landscaping are acceptable and would ensure the proposed development would not be overly dominant when viewed from Art Gallery Road.
 - The entry plaza canopy is orientated away from Art Gallery Road with setbacks ranging between 13 m and 22 m. The Department however considers the design of the proposed entry plaza canopy could be further rationalised to ensure it improves sightlines between the existing gallery building and the Woolloomooloo Gate and enhances its built form interface with its landscape setting.
 - Appropriate setbacks and design features are also proposed to ensure an acceptable relationship to the Domain, the existing gallery building and views of the development from residential properties and businesses to the east and south-east.
 - Minimal overshadowing of public open space would occur.
 - The proposal incorporates significant public benefits such as improved through-site links and two public plazas.

Recommended Conditions/Response

Conditions include:

- Submission of a revised design for the entry plaza canopy.
- Convert the roof of gallery 1 to a green roof.
- External materials to be endorsed by OEH.
- Greening of the fuel bunker wall.

- Adverse impact on the heritage of the Art Gallery and the RBG.
- The Department notes the OEHL are satisfied the proposed building would not diminish the heritage significance of the existing gallery building. In particular, the existing gallery building would remain as the main entry with the Sydney Modern providing a secondary role. Furthermore, an appropriate balance of uses would occur within the existing and proposed buildings.
- OEHL have accepted the proposed entry plaza canopy design. However, the Department considers the design of the proposed entry plaza canopy could be further rationalised to ensure it improves sightlines between the existing gallery building and the Woolloomooloo Gate.
- Subject to a revised design for the entry plaza canopy, the Department considers the visual impact of the proposal on the heritage significance of the existing gallery building and the RBG and Domain would be minor.

Recommended Conditions/Response

Conditions include:

- Submission of a revised design for the entry plaza canopy.
- External materials to be endorsed by OEHL.
- Detailed design of internal works to the fuel bunker to be endorsed by OEHL.
- Interpretation Strategy to be endorsed by OEHL.
- Engagement of a historical archaeologist during construction.

• Insufficient parking • Loss of existing parking • Increased traffic • Impacts from vehicles using proposed loading dock.	• The proposed works include the removal of 24 car parking spaces from the forecourt of the existing gallery building. No replacement or additional car parking is proposed as the nearby underground Domain car park contains sufficient capacity to cater for the anticipated increased demand for car parking. • The submitted TIA concludes increased traffic movements would have a negligible impact on the surrounding road network. • Due to the location of the proposed loading dock, increased traffic movements would occur on Lincoln Crescent. The increased movements however are relatively minor and would be unlikely to result in any adverse traffic impacts. In addition, subject to a condition requiring preparation and implementation of a Loading Dock Vehicle Management Plan (LDVMP), any adverse impacts arising from operation of the loading dock would be minimised.
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Recommended Conditions/Response

Conditions include:

- Prepare a LDVMP to be endorsed by TfNSW, RMS and Council.
- Erection of signage preventing right turn movements from Lincoln Crescent into Cowper Wharf Road.
- Provide 66 public bicycle parking spaces.
- Prepare a Green Travel Plan.

• Lack of community consultation

- The Applicant undertook community consultation prior to lodgement of the application (Appendix K of the EIS).
- The application was exhibited in accordance with statutory requirements from 16 November to 15 December 2017.
- All documents and submissions relevant to the proposal have been made publicly available throughout the assessment process.

• Construction noise and disruption

- Construction works are expected to take 28 months, commencing in 2019 and completed in 2021.
- Construction works would comply with DECCW Interim Construction Noise Guidelines subject to appropriate noise mitigation measures, including acoustic screening and mufflers.
- The construction works would be temporary and the noise and disruption impacts can be reasonably mitigated by conditions.

Recommended Conditions/Response

Conditions include:

- Prepare a Construction Environmental Management Plan, Construction Pedestrian Traffic Management Plan, Noise and Vibration Management Plan, and Air Quality and Odour Management Plan.
- Prepare a Community Consultation Strategy.
- Undertake environmental monitoring.
- Restriction of construction hours to 7 am to 6 pm Monday to Friday and 8 am to 3.30 pm Saturdays.

• Impacts from the sea water heat exchange system (SWHES)

- The proposed SWHES is similar to other systems operating in Sydney Harbour, including Sydney Opera House and Barangaroo.
- A Marine Impact Assessment submitted with the EIS and revised in the RTS, concludes the SWHES would not adversely impact the receiving waters of Sydney Harbour and would comply with water quality regulations. The EPA have raised no objections subject to recommended conditions.

- The only above ground element of the SWHES is a 950 mm high, 2.5 m diameter upper chamber located close to a cliff face to the north of Lincoln Crescent. The visual impact of the chamber would be negligible.
- Plant associated with the SWHES would be located internally within an underground plant room. Appropriate measures, as recommended in the Applicant's acoustic reports, can be conditioned to mitigate any potential noise impacts. This has been confirmed by the Department's technical specialist.
- A Maritime Archaeology Assessment Report, submitted as part of the RTSAR, concluded there are no potential impacts to marine archaeological deposits from the proposed SWHES works. OEH have raised no objections subject to recommended conditions.

Recommended Conditions/Response

Conditions include:

- The detailed SWHES design to comply with the preliminary design details.
- Prepare an Operational Noise and Vibration Management Plan.
- Operational background noise limits.
- Undertake environmental monitoring.
- SWHES cleaning and waste disposal requirements.
- Maritime archaeology unexpected finds protocol.

• High cost of development • Appropriate use of government funding	• The construction cost and funding of the development are not planning issues and therefore are not matters relevant to the Department's assessment.
• Insufficient justification for the development	• Due to inadequate exhibition space and constrained ceiling heights, the AGNSW is no longer competitive in attracting major exhibitions and has experienced a significant decline in visitation numbers since 2007. • The existing building is at capacity with no room for expansion within its current footprint. • The proposed development would provide a modern, significantly increased exhibition space capable of hosting major international exhibitions and would provide a prominent showcase for Aboriginal and Torres Strait Islander art.
• Potential use of the building as a function centre	• The proposed development does not include any dedicated function facilities. The proposed 450 m² multi-purpose room (3.7% of the proposed GFA) would complement auditorium facilities in the existing gallery building and would provide a flexible space that can accommodate a diverse range of activities in events. The

space would be available events held by schools, corporate members, benefactors and other stakeholders.

Recommended Conditions/Response

Conditions include:

- Multi-purpose room hours of operation to 7 am to 10 pm with no use of outdoor areas at any time.
- Multi-purpose room maximum capacity of 510 persons.

• Impacts of reflective materials

- The RTS included a supplemental Reflectivity Report which contained a glare analysis from seven locations including TWT and WFW. The report concludes there would be no or very limited reflectivity impacts, with the exception of the exit of TWT resident car park from the north-eastern glazed wall of the multi-purpose hall.

Recommended Conditions/Response

Conditions include:

- The visible light reflectivity of the proposed external building materials must not exceed 20% and be designed to minimise glare.
- External colours are to be subdued. Large areas of unshaded glass are to be avoided.
- The design of the north-eastern glazed wall of the multi-purpose room must be revised as recommended in the supplemental Reflectivity Report.

• Poor disability access

- The proposed building, sanitary facilities, plazas, pathways, courtyards and lifts would comply with BCA requirements.

Recommended Conditions/Response

Conditions include:

- Access and facilities for people with disabilities to be designed to comply with the BCA.

• Impacts on neighbouring properties from stormwater runoff

- A Drainage and Stormwater Report and Concept Stormwater Plan, were submitted with the EIS.
- Of rainwater falling on the building roof area, 77% would be reused on-site. On-site detention is proposed which is sized to achieve a neutral or beneficial impact compared with existing stormwater discharge from the site.
- The design of the proposed loading dock and lower level of the proposed fuel bunker have been designed to prevent flooding.

Recommended Conditions/Response

Conditions include:

- Prepare a Water and Stormwater Management Plan to be endorsed by Council.

- Proposal does not comply with the *Royal Botanic Gardens and Domain Trust Act 1980* (RBGDT Act)
- The Department considers the proposed development is consistent with the principle objects of the RBGDT Act because:
 - the site forms part of a cultural precinct on the eastern edge of the Domain and is appropriately located within Trust lands
 - the expanded AGNSW would improve the cultural and educational value of the site
 - much of the site would remain publicly accessible
 - the proposed works would provide improved access to and within the Domain allowing for improved use and enjoyment of Trust land
 - although 124 trees would be removed, the majority are of low or medium amenity value and provide limited foraging opportunities for native fauna. The proposed landscape works would result in 273 new trees providing a greater habitat for native fauna species in the future
 - the development would improve the heritage value of the land by allowing public access to the State heritage listed fuel bunker.

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- Impacts from external lighting
 - An Exterior Lighting Report, submitted with the EIS, confirms the proposed lighting would comply with relevant guidelines, including Council's Lighting Masterplan, AS1158 Lighting for Roads and Public Spaces, and AS4282 Control of obtrusive effects of outdoor lighting.

Recommended Conditions/Response

Conditions include:

- All external lighting to comply with the recommendations of the Exterior Lighting Report.

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- Operational noise impacts
 - An Acoustic Report, submitted with the EIS, recommends design treatments to ensure compliance with applicable noise compliance criteria.
 - The Department's technical specialist considers operational noise would not impact residents of the nearest residential property (the TWT) subject to conditions.
 - Potential noise impacts from operation of the loading dock and SWHES would be minimal and suitably mitigated by conditions.

Recommended Conditions/Response

Conditions include:

- Prepare an Operational Noise and Vibration Management Plan.
- Operational background noise limits. Undertake environmental monitoring.

- Maximum hours of operation, including the multi-purpose room (7 am to 10 pm), café (7 am to midnight) and external terraces (7 am to 10 pm).
- Maximum capacity restrictions for the multi-purpose room (510 persons), café (150 persons) and café terrace (500 persons).
- Doors and windows of the café and multi-purpose room to be closed after 10 pm.
- No amplified music to be played outdoors. Indoor amplified music not to be directed towards the public domain or outdoor areas.
- Prepare a Loading Dock Vehicular Management Plan to be endorsed by TfNSW, RMS and Council.

- Privacy impacts

- Although the proposed development includes east facing roof terraces and some glazed elevations, the Department considers no adverse privacy impacts would occur, predominantly due to:
 - the distance to the TWT exceeds 40 m
 - properties within the TWT predominantly face east and are screened by a separate two-storey building containing a lobby, communal spaces and commercial tenancies
 - the multi-purpose room is orientated to the north-east and no windows are proposed in the eastern elevation of gallery 3.