

Notice of decision

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

Application type	State significant development modification
Application number and project name	SSD-6471 MOD 4: Sydney Modern
Applicant	Art Gallery of NSW
Consent Authority	Minister for Planning and Public Spaces

Decision

The Executive Director under delegation from the Minister for Planning and Public Spaces has, under 4.55(2) of the *Environmental Planning and Assessment Act 1979* (**the Act**) modified the consent subject to the recommended conditions outlined in the instrument of consent.

A copy of the Department of Planning & Environment's assessment report, instrument of modification and conditions is available [here](#).

Date of decision

24 May 2021

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 reasons given by the consent authority for the grant of the original consent;
- the objects of the Act;
- all information submitted with the modification application during the assessment and information considered in the Department's Assessment Report;
- the findings and recommendations in the Department's Assessment Report;
- the submissions made concerning the modification; 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. The Department's Assessment Report also identifies additional reasons for making the decision.

The decision maker was satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted was modified.

The key reasons for granting the modification are as follows:

- *Benefits* - the modification would provide a range of benefits for the region and the State as a whole, including facilitating the delivery of the NSW Government's vision for an expanded Art Gallery of NSW which will contribute 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 modification is permissible with 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.
- *Community views considered* - the issues raised by the community during consultation and in submissions have been considered and adequately addressed through changes to the project and in the Department's Assessment Report.
- *Public interest* – weighing all relevant considerations, the modification is in the public interest.

Attachment 1 – Consideration of Community Views

The Department exhibited the modification from 18 November 2020 until 1 December 2020 (14 days) and received six submissions, including comments from City of Sydney Council (Council) and NSW Heritage (Heritage Council), and one submission making comments from the public.

The Department also undertook the following consultation activities:

- exhibited the modification application on the Department's website
- notified Council, NSW Heritage (Heritage Council), the Government Architect and the public submitter of the Applicant's Response to Submissions.

The key issues raised by the community (including in submissions) and considered in the Department's Assessment Report and by the decision maker include the landscape design of the forecourt plaza, tree planting and erection of the proposed trellis adjacent to the existing gallery building. Other issues are addressed in detail in the Department's Assessment Report.

<i>Issue</i>	<i>Consideration</i>
Potential heritage impacts from elements within the forecourt plaza, including • reflection pools and bollards • proposed density of tree planting • overall cluttered design resulting in constriction of mobility and detracting of views.	• The Department received submissions from Council and NSW Heritage (Heritage Council) raising concerns regarding the design of the forecourt plaza and potential adverse heritage impacts. One public submission provided suggestions how the design could be improved. • The RTS simplified the design of the forecourt plaza, increased circulation space and amended the proposed tree planting to palm species to provide more unrestricted sightlines to the existing and new gallery buildings. • In response to the RTS, NSW Heritage (Heritage Council) have maintained concerns regarding the potential visual impact of the proposed reflection pools and new trees within the forecourt plaza. • Council recommended the proposed bollards be realigned and that a new condition be imposed requiring the final form, materiality and spacing of the bollards be approved by Council. In addition, Council recommended that six of the proposed 12 Cabbage Palms revert to the originally proposed Red Bloodwoods to increase canopy cover. • The proposed amendments to the forecourt plaza have been subject to detailed review by the DIP and are consistent with the recommendations of the DIP. • The area around the proposed reflection pools has been increased to allow increased space and clearances. The height and size of the pools are also necessary in order for the pools to form a hostile vehicle security function. The Department considers the reflection pools have been subject to detailed review by the DIP and would provide an attractive feature within the forecourt that would not detract from the views of the existing gallery building. • The Department considers the proposed palm trees are acceptable as they have been located to either side of forecourt plaza and are a species that will minimise any view impacts to the existing gallery building. In addition, the trees will enhance the landscaped appearance of the site within the Domain and will provide areas of shade within the forecourt for visitors. • The Department considers the proposed revised landscape design of the forecourt plaza, as amended in the RTS, provides greater detail and would significantly enhance the original approved landscape design whilst retaining the predominantly open nature of the approved plaza. In addition, the Department considers the revised landscape works would integrate sympathetically with the existing gallery building and surrounding landscaping within the RBG and the Domain. • The Department is satisfied the proposed modification will result in an improved landscape and heritage outcome compared to the approved form of development. • The Department recommends Condition B20 (New Steps, Ramp and Pedestrian Control Structures) is amended to specifically include design details of hostile vehicle management measures as requiring review and endorsement by NSW Heritage. In addition, the condition will also require

	the form, materiality and spacing of bollards to be finalised in consultation with Council.
Potential heritage impacts from elements within the entry plaza	• The Department received a submission from NSW Heritage (Heritage Council) raising concerns regarding the potential adverse heritage impact of elements within the entry plaza, including the proposed rain catcher and sandstone channel and tree planting. • The RTS simplified the design of the rain catcher and sandstone channel. In addition, the Applicant confirmed the 14 trees would be planted within 400L pots beneath the entry plaza canopy. • Council commented that the new potted trees located beneath the entry plaza canopy are unlikely to reach maturity. NSW Heritage (Heritage Council) have raised no concerns in response to the RTS. • The proposed amendments to the entry plaza have been subject to detailed review by the DIP and are consistent with the recommendations of the DIP. • The Department considers the proposed amendments to the landscape design of the entry plaza provides greater detail and will significantly enhance the original approved landscape design whilst maintaining a predominantly open and landscaped entry plaza to the new gallery building. • The Department is satisfied the proposed modification will result in an improved landscape and heritage outcome compared to the approved form of development.
Potential heritage impacts from the proposed trellis structure adjacent to the existing gallery building.	• The Department received a submission from NSW Heritage (Heritage Council) raising concerns regarding the potential adverse heritage impact of the proposed trellis structure adjacent to the existing gallery building. • The RTS reduced the size of the proposed trellis and amended the materials to be of a lightweight steel construction. The trellis will also contain native climbers to provide an improved landscaped appearance. • NSW Heritage (Heritage Council) requested the detailed design of the trellis be subject to further detailed design review. • The Department considers the proposed trellis would be a relatively minor and attractive feature within the surrounding landscape and would not adversely impact the heritage value of the adjacent existing gallery building. In addition, the detailed design of the trellis is required to be submitted to NSW Heritage for review and endorsement, consistent with Condition B22 (External Materials).
Proposed artwork commission area	• In response to the RTS, Council requested a new condition be imposed to ensure the new artwork commission contains sufficient tree canopy cover. • NSW Heritage (Heritage Council) requested the design of the proposed landscaping on the land bridge should be subject to further detailed heritage review to ensure the landscape reflects the aesthetics of the RBG. • The proposed amendments to the art garden have been subject to detailed review by the DIP and are consistent with the recommendations of the DIP. • The Department considers the proposed amendments to the landscape design of the lawn area/art garden would significantly enhance the original approved landscape design and would result in an attractive landscaped area comprising a significant artwork conceived as a landscape comprising a minimum of 26 native trees. This area of the land bridge will therefore comprise a living artwork that will grow and mature over time and will itself become an attraction for future visitors. The area will retain its approved purpose as a central public lawn/art garden that will provide amenity for all visitors and persons utilising the adjacent through-site links. • The Department supports the proposed future art commission in this location and notes it will contain 26 additional native trees. Although the trees are not shown on the proposed plans as the artist's commission will finalise their location and species, the Department notes the final location of the trees will also be informed by expert structural advice with regard to minimising structural loads on the land bridge. • The Department recommends a new condition (Condition D30) be imposed requiring the final landscape design for the art commission area to be prepared in consultation with NSW Heritage, TfNSW and Transurban, and to be submitted to the Planning Secretary for approval. This includes a requirement for the final landscape plan to identify the approximate location

	of future artworks in the art commission area and maximum size/height specifications.
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