

Prepared for:
Art Gallery of New South Wales Trust
Date:
21 February 2022
Image:
Aerial photo of the Sydney Modern
Project © Craig Willoughby
November 2021



Section 4.55(1A) Modification – Minor Design Changes

Art Gallery of NSW Expansion Project – Sydney Modern

Architectus Australia Pty Ltd
ABN 90 131 245 684

Adelaide
Level 1, 15 Leigh Street
57 Wyatt Street
Adelaide SA 5000
T +61 8 8427 7300
adelaide@architectus.com.au

Brisbane
Level 2, 79 Adelaide Street
Brisbane QLD 4000
T +61 7 3221 6077
brisbane@architectus.com.au

Melbourne
Level 25, 385 Bourke Street
Melbourne VIC 3000
T +61 3 9429 5733
melbourne@architectus.com.au

Perth
QV1 Upper Plaza West
250 St Georges Terrace
Perth WA 6000
T +61 8 9412 8355
perth@architectus.com.au

Sydney
Level 18, 25 Martin Place
Sydney NSW 2000
T +61 2 8252 8400
sydney@architectus.com.au

Report Contact

Jane Fielding
Senior Associate, Planning
jane.fielding@architectus.com.au

Revision history

Issue Reference	Issue Date	Issue Status
A	21 February 2022	Draft for Client Review
B	3 March 2022	Final

File Ref: \\architectus.local\DFS\Projects\140419.02\Docs\Client\SSDA Mod 8

Contents

1. Introduction	4
1.1 Preliminary	4
1.2 Subject Site	4
1.3 Approved Development	5
1.4 Summary of Previous Modifications	6
1.5 Overview of Proposed Modification	6
1.6 Construction Status	6
1.7 Authorship	7
2. The Proposal	8
2.1 The Proposed Modification	8
2.2 Consultation	14
3. Planning Context and Regulatory Framework	15
3.1 Applicable Planning Framework	15
3.2 Substantially the Same Development	15
3.3 Consideration of the Reasons Given by The Consent Authority for The Grant of The Consent That Is Sought to Be Modified	16
4. Environmental Assessment	17
4.1 Section 4.15 (1)(a) Matters for Consideration – General	17
4.2 Section 4.15 (1)(b) The Likely Impacts	17
4.3 Section 4.15 (1)(c) Suitability of the Site	20
4.4 Section 4.15 (1)(d) Submissions Made	20
4.5 Section 4.15 (1)(e) The Public Interest	20
5. Conclusion	21

Appendices

List of appendices

- A** **Amended Architectural Plans**
Prepared by Architectus
- B** **Architectural Design Statement**
Prepared by Architectus
- C** **Amended Landscape Plans**
Prepared by McGregor Coxall
- D** **Landscape Statement**
Prepared by McGregor Coxall

Figures

List of figures

Figure 1	Site Location Plan	5
Figure 2	Photomontage of the approved gallery building	6
Figure 3	Proposed Site Plan	10
Figure 4	Proposed Landscape Masterplan – Drawing no. LD_DA_00-01 – Modification 8	10
Figure 5	Current approved layout of trees	18
Figure 6	Proposed layout of trees – Modification 8	18
Figure 7	Current landscaped elements in Medich Garden	19
Figure 8	Proposed landscaped elements in Medich Garden – Modification 8	19

1. Introduction

1.1 Preliminary

This 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 is for minor design changes that are as the result of ongoing design development to ensure more efficient construction processes, improve aspects of safety and accessibility, and to improve amenity.

The Proposed Modification is not considered to alter the design intent 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 is provided at **Section 2** of this report.

This report provides an overview of the approved development, describes the proposed modifications, and provides a planning assessment of the relevant matters for consideration under sections 4.55(1A) and s4.55(3) of the EP&A Act. 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 report is supported by the following documentation:

- **Appendix A:** Amended Architectural Plans, prepared by Architectus;
- **Appendix B:** Architectural Design Statement prepared by Architectus;
- **Appendix C:** Amended Landscape Plans, prepared by McGregor Coxall; and
- **Appendix D:** Landscape Statement prepared by McGregor Coxall.

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

1.2 Subject Site

The site has a total area of 23,045m² 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.

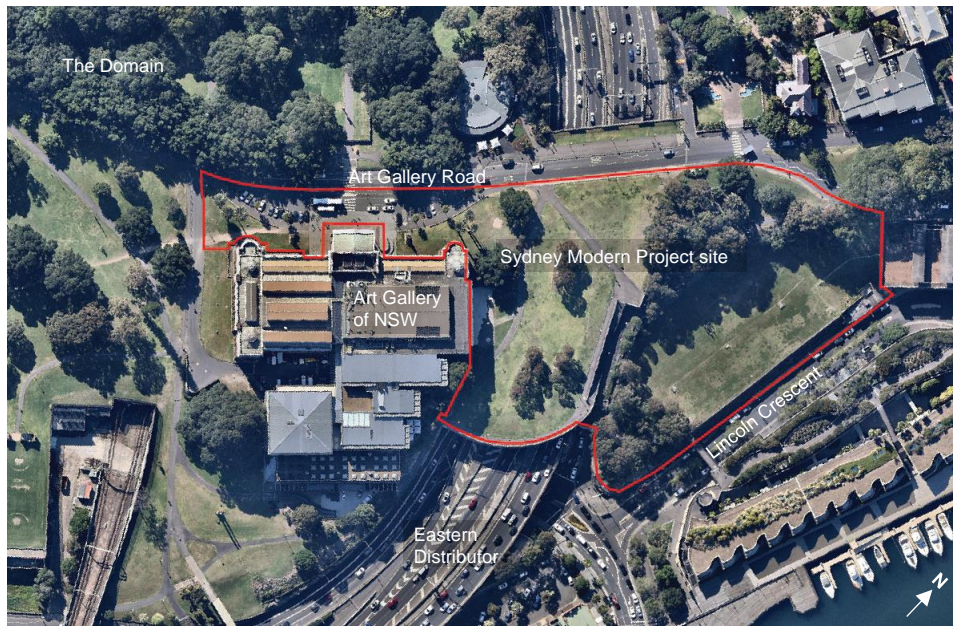


Figure 1 Site Location Plan
Source: NearMaps with Architectus overlay

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

A detailed description of the Proposed Modification is provided at **Section 2.2** of this report. The Proposed Modification comprises minor architectural and landscape design changes to the approved SSD 6471.

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 in 2022.

1.7 Authorship

This report has been prepared by Boris Santana, Senior Urban Planner, and Amy Wilkins, Urban Planner.

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

2. The Proposal

2.1 The Proposed Modification

The Proposed Modification comprises minor architectural and landscape design changes to the approved SSD 6471 and is the result of ongoing design development to ensure more efficient construction processes, improve aspects of safety and accessibility, and to improve amenity.

The Proposed Modification seeks approval for the following works:

Medich Garden (*numbered 1 on the Amended Architectural Plans and 3 on the Amended Landscape plans*)

The Medich Garden is a proposed and approved courtyard. Its layout has been modified to accommodate an increased pavement area. This change results in reductions to and relocation of understorey planting as well as materials.

Relocation of Planters and Furniture at the Entry Plaza (*numbered 2 on the Amended Architectural Plans and 1 on Amended Landscape plans*)

As a result of continuing design development, and as a result of the placement of sculptures, there has been a minor rearrangement in the location of furniture and planter boxes within the Entry Plaza. The pot sizes of potted trees have been updated to accommodate these changes and also the latest procurement availability of the tree species. The potted trees are now more in scale and sited appropriately relative to sculptures, furniture, grades and functionality of spaces in the Entry Plaza.

Safety Barrier to landscaped area over the Lincoln Lobby (*numbered 3 on the Amended Architectural Plans and 5 on Amended Landscape Plan*)

For safety reasons, an additional pipe handrail has been introduced between the end of a previously proposed balustrade and existing stairway on the southern boundary of the site above the Lincoln Crescent escarpment.

Swale and Safety Fence (*numbered 4 on the Amended Architectural Plans and 6 on Amended Landscape Plans*)

A swale which captured overland flow into a channel was previously approved adjacent to Gallery 2 and along the Rammed Earth Wall (REW) to the north of the Multipurpose space. This stone lined swale was captured on Landscape sections LD-DA-50-01.

The Architectural and Landscape drawings have been updated to capture this drainage requirement on all relevant plans. Furthermore, a safety fence is proposed on the western edge of the swale to limit access.

Service Enclosure at Ming Wei Entry Door (*numbered 5 on the Amended Architectural Plans*)

A service enclosure has been introduced to provide for an airtight enclosure to the Ming Wei sliding door. The enclosure is not visible to the public.

Relocation of security fence adjacent to Gallery 3 (*numbered 6 on the Amended Architectural Plans and 4 on Amended Landscape plans*)

The security fence near the southern façade of Gallery 3 and the rammed earth wall have been shortened, to be less intrusive and allow a better view of the stone-faced façade.

Relocation of security fence adjacent to Multipurpose Space (numbered 7 on the Amended Architectural Plans and 4 on Amended Landscape plans)

The security fence near the eastern façade of Gallery 3 and multipurpose space has been redesigned to a different alignment. The north end termination at the rammed earth wall has been adjusted to better integrate with the safety fence along that wall.

LL2 Tree Relocation (numbered 8 on the Amended Landscape Plans)

A previously approved proposed tree adjacent to Gallery 7 has been relocated to the adjacent tree cluster to reduce the extent of deep soil build-up at the location where the slab span would be at its longest.

Gallery 2 egress handrail (numbered 9 on the Amended Landscape Plans)

A physical barrier is to be installed as a risk mitigation measure north of the Egress Path from Gallery 2.

Entry Pavilion Access Handrail (numbered 10 on Amended Landscape Plans)

Addition of two removable handrails as a safety requirement for access to and from the Entry Pavilion.

Forecourt Walls at Wombat Crossing Removed (numbered 11 on Amended Landscape Plan)

The forecourt walls at Wombat Crossing have been removed and replaced with bollards 3m away from kerb. These changes have been made as a design response to City of Sydney requirements regarding safety performance.

Forecourt and Domain Bollard Adjustments (numbered 12 on Amended Landscape Plan)

The bollards that have been approved at the Domain have now been removed. The bollards approved along Art Gallery Road have been relocated away from Art Gallery Road kerb to be in-line and set back 3m away from the kerb.

External Lighting (numbered 13 on Amended Landscape Plan)

The location of external lighting has been updated to reflect the revised lighting and services design.

Existing AGNSW Building North Retaining Wall Extension (numbered 14 on Amended Landscape Plan)

The retaining wall adjacent to the existing dish gutter of the existing AGNSW building will be extended to improve surface drainage away from the building.

Water Feature Skate Deterrent Paving (numbered 15 on Amended Landscape Plan)

The paving layout within the forecourt to the existing AGNSW has been amended in response to skate deterrent strategy.

Terrace Water Feature and Garden Alignment (numbered 16 on Amended Landscape Plan)

The water feature has been updated during design development. The garden bed between the terrace water feature and rain catcher has been redesigned to accommodate a higher capacity passive drainage strategy.

Sculpture Garden Trellis (numbered 17 on Amended Landscape Plan)

The Trellis post locations have changed location due to constraints of existing conditions of the existing concrete slab and land bridge foundations.

Lincoln Crescent LL2 Treatment (numbered 18 on Amended Landscape Plan)

Planting at the second tier above the Fuel Bunker Wall has been removed to deal with the capacity of stormwater overland flow along the LL2 footpath.

These changes are shown in the Amended Architectural Plans at **Appendix A** and Landscape Plans at **Appendix C**. Each change is cross-referenced to a description on the Architectural Design Statement at **Appendix B** and Landscape Design Statement at **Appendix D**, respectively.

The proposed modification site plans can be found at **Figure 3** to **Figure 4** below.

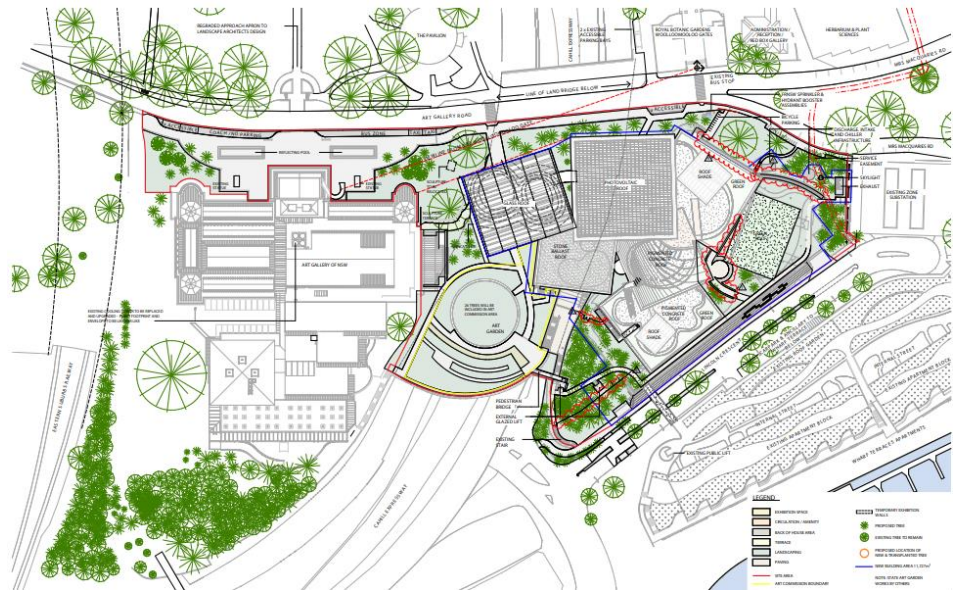


Figure 3 Proposed Site Plan
Source: SANAA and Architectus (2022)

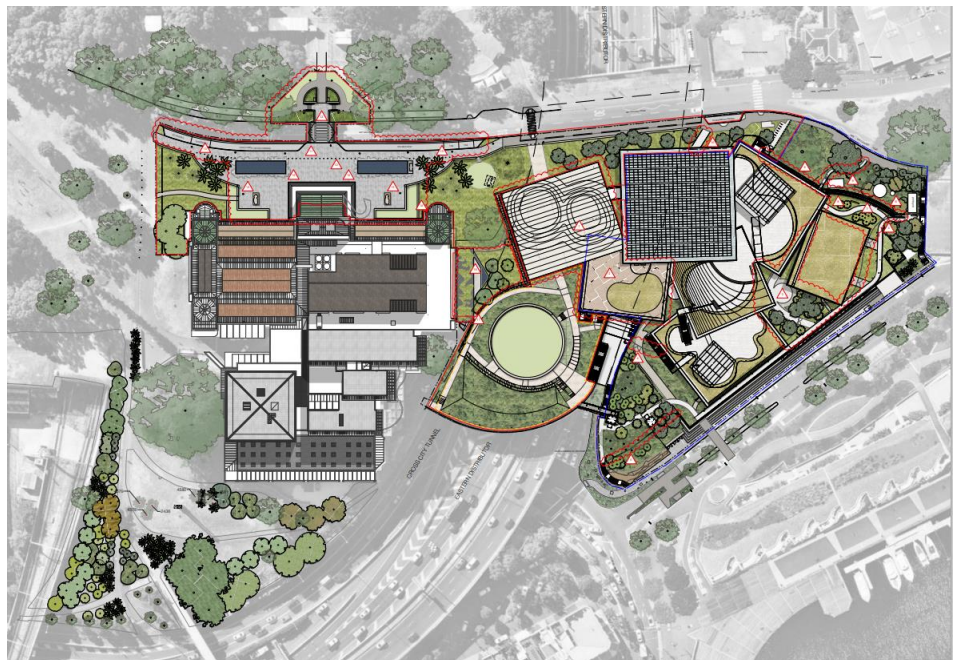


Figure 4 Proposed Landscape Masterplan – Drawing no. LD_DA_00-01 – Modification 8
Source: McGregor Coxall (2022)

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.

It is proposed to amend Condition A2 of SSD 6471 to read as follows (as emphasised by Architectus in red and strikethrough text):

Terms of Consent

A2. The development may only be carried out:

- a) In compliance with the conditions of this consent;
- b) In accordance with all written directions of the Planning Secretary;
- c) In accordance with the EIS and RTS; and
- d) In accordance with the approved plans in the table below:
- e) As amended by the Section 4.55(1A) Modification prepared by Architectus Australia Pty Ltd dated 20 June 2019 and Response to Submissions prepared by Architectus Australia Pty Ltd dated 23 August 2019;
- f) As amended by the Section 4.55(1) Modification prepared by Art Gallery NSW Trust dated 21 November 2019;
- g) As amended by the Section 4.55(1A) Modification prepared by Architectus Australia Pty Ltd dated 19 August 2020 and Response to Submissions prepared by Architectus Australia Pty Ltd dated 30 October 2020;
- h) As amended by the Section 4.55(2) Modification prepared by Architectus Australia Pty Ltd dated 6 November 2020, Response to Submissions prepared by Architectus Australia Pty Ltd dated 10 March 2021 and Response to Further Submissions dated 12 April 2021;
- i) As amended by the Section 4.55(1A) Modification prepared by Architectus Australia Pty Ltd dated 25 August 2021 and Response to Submissions prepared by Architectus Australia Pty Ltd dated 12 October 2021;
- j) As amended by the Section 4.55(1A) Modification prepared by Architectus Australia Pty Ltd dated 11 November 2021;
- k) As amended by the Section 4.55(1A) Modification prepared by Architectus Australia Pty Ltd dated 10 December 2021.
- l) As amended by the Section 4.55(1A) Modification prepared by Architectus Australia Pty Ltd dated 03 March 2022.

Architectural drawings prepared by SANAA and Architectus Architects

Drawing No.	Revision	Name of Plan	Date
DA_0054	J	Site Demolition Plan	11/06/21
DA_0055	Q	Ancillary Works Plan	11/06/21
DA_0057	K	Site and Building Areas	11/06/21
DA_0058	M N	Open Space / External Publicly Accessible Areas	11/06/21 03/03/2022
DA_0059	L	Land Subject to Landscape Embellishments	11/06/21
DA_0100	U V	Proposed Site Plan	30/09/2021 03/03/2022
DA_1000	T U	Roof Plan Proposed Area of Landbridge 'Works'	30/09/2021 03/03/2022

DA_1001	S T	Entry Level Plan	11/06/21 03/03/2022
DA_1002	Q R	Lower Level 1 Plan	11/06/21 03/03/2022
DA_1003	R S	Lower Level 2 Plan	11/06/21 03/03/2022
DA_1003.5	B	Lower Level 3 Mezzanine	22/08/19
DA_1004	J	Lower Level 3 Plan – Demolition Plan	06/08/18
DA_1005.0	K	Lower Level 3 Plan – Proposed Plan (confidential)	06/07/20
DA_1005	L	Lower Level 3 Plan – Proposed Plan	11/06/21
DA_1006	J	Lower Level 4 Plan – Demolition Plan	06/08/18
DA_1007.0	K	Lower Level 4 Plan – Proposed Plan (confidential)	01/07/20
DA_1007	J	Lower Level 4 Plan – Proposed Plan	11/06/21
DA_2000	K	Sections AA & BB	06/08/18
DA_2001	Q P	Sections CC & DD	30/09/2024 03/03/2022
DA_2002	F	Perspective Section Sheet 1	06/08/18
DA_2003	F	Perspective Section Sheet 2	06/08/18
DA_2004	G	Perspective Section Sheet 3	01/07/20
SMP-C-1300X01	C	Building Structure Bulk Earthworks Plan, Cut and Fill	30/04/20
DA_2006	D	Proposed Excavation Sections	06/08/18
DA_2009	A	Perspective Section Sheet 4	01/07/20
DA_2051	C	Section 1 and 2 – Zone B	11/06/21
DA_2052	C	Section 3 and 4 – Zone B	11/06/21
DA_2053	B	Section 1 & 2 – Zone M	11/06/21
DA_2054	B	Section 3 & 4 – Zone M	11/06/21
DA_2055	B	Section 1 & 2 – Plant Room	11/06/21
DA_3000	J	North & South Elevations	06/08/18
DA_3001	P Q	East & West Elevations	27/10/2024 03/03/2022
DA_3002	F	Overall West Elevation	06/08/18
DA_3010	E	North Part Elevation A	06/08/18
DA_3011	E	North Part Elevation B	06/08/18
DA_3012	E	South Elevation	06/08/18
DA_3013	F G	East Part Elevation A	30/11/2024 03/03/2022
DA_3014	E	East Part Elevation B	06/08/18
DA_3015	E	West Part Elevations	06/08/18
DA-5000	K	Gross Floor Area Calculation	11/06/21
DA-5001	L	Gross Floor Area Diagrams	11/06/21
DA-6001	A	External Materials	21/09/18

Subdivision Drawings prepared by YSCO Geomatics

0714/12C Sheet 1 of 2	-	Proposed subdivision of Lot 34 in DP 39586	18/10/18
0714/12C Sheet 2 of 2	-	Proposed subdivision of Lot 34 in DP 39586	18/10/18
0741/14C Sheet 1 of 3	-	Proposed subdivision of part of Eastern Distributor, being Lot 108 in DP 1105308, Lot 4 in DP 259027 and Lot 52 in DP 1105375	22/10/18
0741/14C Sheet 2 of 3	-	Proposed subdivision of part of Eastern Distributor, being Lot 108 in DP 1105308, Lot 4 in DP 259027 and Lot 52 in DP 1105375	22/10/18
0741/14C Sheet 3 of 3	-	Proposed subdivision of part of Eastern Distributor, being Lot 108 in DP 1105308, Lot 4 in DP 259027 and Lot 52 in DP 1105375	22/10/18
0741/13C	-	Proposed subdivision of land bridge over Eastern Distributor, being Lot 3001 in Subdivision of Lot 108 in DP 1105308, Lot 4 in DP 259027 and Lot 52 in DP 1105375	23/10/18

Landscape Drawings prepared by McGregor Coxall

Drawing No.	Revision	Name of Plan	Date
DA_00-01	AA AB	Landscape Masterplan – Roof	02/08/2024 07/02/22
DA_00-02	AA AB	Landscape Masterplan – GF Level	02/08/2024 07/02/22
DA_10-01	I J	Vernon Curtilage	02/08/2024 03/02/2022
DA_10-02	J K	Entry Plaza	02/08/2024 03/02/2022
DA_10-03	M N	Fuel Bunker Garden	02/08/2024 07/02/2022
DA_10-04	K L	Sandstone Woodland	02/08/2024 07/02/2022
DA_10-05	J K	Art Garden	19/02/2024 07/02/2022
DA_00-15	V	Tree Significance	19/02/21
DA_00-17	I J	Cooling Tower Corner	03/07/20 07/02/22
DA_00-18	J	Tree Significance – High	19/02/21
DA_00-19	I	Tree Significance – Medium	19/02/21
DA_00-20	I	Tree Significance – Low	19/02/21
DA_20-01	H I	Sections	19/02/2024 03/02/2022
DA_20-02	G H	Sections	19/02/2024 01/02/2022

DA_20-03	↓ J	Sections	19/02/2024 03/02/2022
DA_20-04	B C	Sections	19/02/2024 03/02/2022
DA_20-05	B C	Sections	19/02/2024 03/02/2022
DA_30-01	J	Plant Palette	19/02/21
DA_30-02	J	Plant Palette	19/02/21
DA_30-03	L	Plant Palette	19/02/21
DA_30-04	S	Existing Tree Plan	01/08/18
DA_30-05	Z AA	Trees Proposed	19/02/2024 07/02/2022
DA_50-01	↓ J	Cooling Tower Sections	03/07/2020 03/02/2022

Artwork Commission Plan prepared by DCG Design

L101	02	Art Commission Area – Arrangement Plan	23/10/21
------	----	--	----------

2.2 Consultation

Consultation was not undertaken for the purposes of this Proposed Modification given it constitutes only minor design changes. However, it is noted that proposed adjustment of bollards within the forecourt and the Domain follows consultation with City of Sydney on the matter in accordance with Condition B20 of the consent.

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 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.

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 generally comprises minor architectural and landscape design changes, as described at **Section 2** of this report.

The Proposed Modification 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. It is therefore considered that the development as it is proposed to be modified is substantially the same as the development for which the consent was originally granted.

Overall, the Proposed Modification 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 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.
- 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 Proposed Modification does not introduce any matters that would require changes to any conditions, particularly those imposed to address issues raised by the community.
- Public Interest: weighing all relevant considerations, the Proposed Modification 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 clause 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. The Proposed Modification 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.

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

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

Built Form and Massing

The Proposed Modification is limited to minor external amendments around the building envelope and within the building envelope. The design changes are required to improve the safety and amenity of the proposed development. There are no changes to the overall built form or presentation of the approved Gallery building.

The Proposed Modification will not result in additional or increased impacts as it relates to overshadowing and privacy.

Land Uses

The Proposed Modification will not alter the approved key land uses of SSD 6471. It is noted that the Medich Garden occupies an area on site that has been approved as a publicly accessible courtyard (refer to Architectural Drawing No. DA_0058).

The proposed development only seeks to increase paving in this area and reduce understorey planting. As the use of the space as a courtyard will not change it is unlikely to result in any additional acoustic impacts.

Visual Impact

The Proposed Modification retains the main elements that will be viewed from the public domain. The amendments do not negatively affect any views from surrounds, including the Domain, Royal Botanical Gardens (RBG), from the east and along Lincoln Crescent.

It is noted that DPE, in response to submissions received for SSD 6471, imposed Condition D27 which requires a fuel bunker wall greening plan to be endorsed by OEH. Although removal of planting at the second tier above the Fuel Bunker Wall is proposed for drainage purposes, the fuel bunker wall consists of approximately 5 tiers (refer to Landscape Drawing LD_DA_20-01). Therefore, this amendment does not preclude the greening of the Fuel Bunker Wall in accordance with Condition D27.

In this regard, it is considered that the Proposed Modification will result in negligible additional visual impact and view loss.

Heritage Impacts

Heritage impacts to the existing Gallery, RGB and Domain as well as the fuel bunker will not change because of the minor amendments.

Tree Removal and Biodiversity

The Proposed Modification will relocate one (1) previously approved tree closest to Gallery 7 to the adjacent tree cluster. The relocation of this tree will aim to reduce the extent of deep soil build-up at the location where the slab span would be at its longest. This relocation is illustrated in **Figure 5** and **Figure 6** below.



Figure 5 Current approved layout of trees
Source: McGregor Coxall (2022)

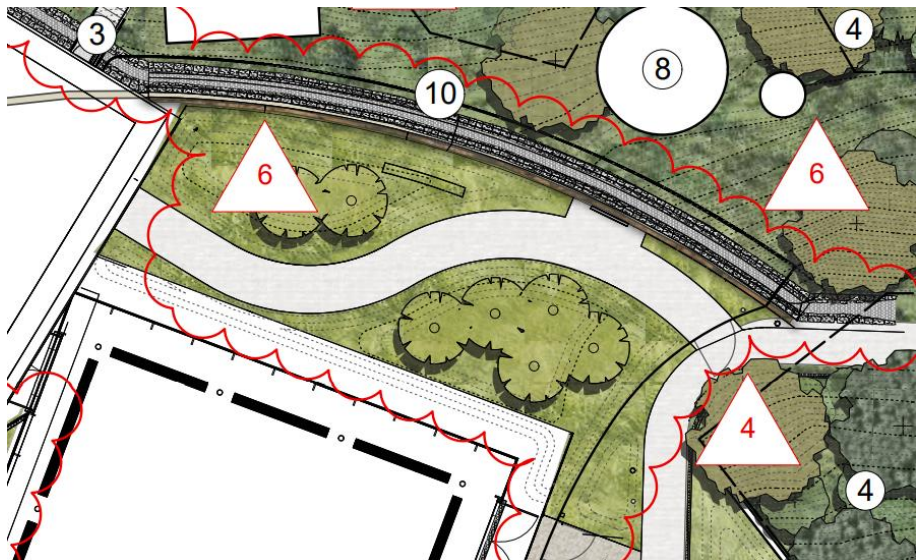


Figure 6 Proposed layout of trees – Modification 8
Source: McGregor Coxall (2022)

The Proposed Modification also proposes to modify the layout of the existing courtyard referred to as Medich Garden. This change introduces a focal point in the courtyard with redesigned paving and planting. Consequently, these changes result in the minor reduction and relocation of understory planting as well as relocation of tree planting.

This relocation is illustrated in **Figure 7** and **Figure 8** below.



Figure 7 Current landscaped elements in Medich Garden
Source: McGregor Coxall (2022)



Figure 8 Proposed landscaped elements in Medich Garden – Modification 8
Source: McGregor Coxall (2022)

The Proposed Modification has no impact on biodiversity, as the tree proposed for relocation is a previously approved proposed tree. Although the understorey planting in the Medich Garden has been reduced to better accommodate the paving elements, the reduction is minor and the changes will enhance the use of this space as a publicly accessible courtyard.

Overall, it is considered that the proposed amendments to tree locations are substantially the same as the approved scheme with minimal impacts to biodiversity.

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

There are no known site conditions that would hinder the Proposed Modification. 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

Any submissions made on this the Proposed Modification application will be duly considered and addressed.

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

For the reasons discussed within this report, the Proposed Modification 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 are collectively considered to be minimal.

The Proposed Modification 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 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 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 (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 is considered the Proposed Modification 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 is considered to result in minimal environmental impact.

The Proposed Modification 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 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.