

4 April 2022
Our Ref: 21333B.2ER_S4.55(1A)



planning consultants

Tahlia Alexander
A/Team Leader, School Infrastructure Assessments
Department of Planning, Industry and Environment
Locked Bag 5022, Parramatta NSW 2124

Dear Tahlia

**RE: SECTION 4.55(1A) APPLICATION TO MODIFY DEVELOPMENT CONSENT NO.
SSD 7610
242A AND 244 CLEVELAND STREET SURRY HILLS**

1.0 Introduction

DFP has been commissioned by NSW Department of Education, c/- School Infrastructure NSW to prepare an application under section 4.55(1A) of the *Environmental Planning and Assessment Act 1979* (EP&A Act) to modify development consent No. SSD 7610 (as modified) in relation to the lighting fixtures attached to the exterior façade of the building.

The section 4.55(1A) application seeks to modify Development Consent No. SSD 7610 (as modified) in relation to the lights which have been installed to the northern, eastern and western façades of the newly constructed 13 storey Inner Sydney High School building.

This letter has been prepared in support of the section 4.55(1A) application and includes the information necessary for the consent authority to assess and determine the application including:

- A background outlining the approved development;
- A brief description of the site context;
- Details and reasons for the proposed modifications;
- An environmental assessment, including specialist advice/assessment prepared by Weir Phillips in respect of heritage impact and Stantec in respect of the Facade Lighting Effects; and
- Our conclusion and recommendations.

We have concluded that the proposed modification will not substantially alter the approved development and accordingly is considered to satisfy the requirements to enable this modification to be approved by the consent authority pursuant to section 4.55 of the EP&A Act.

The proposed modification is unlikely to result in any adverse environmental impact and therefore, we are of the view that the proposed modification is acceptable in this particular instance.

2.0 Background

On 28 February 2018 the Department of Planning Industry and Environment (DPIE) delegate, on behalf of the Minister for Planning and Public Spaces, granted development consent to Development Application No. SSD 7610 for the new Inner Sydney high school at 242A and 244 Cleveland Street, Surry Hills. The approved development comprised redevelopment of the existing Cleveland Street Intensive English High School, including adaptive reuse of existing heritage-listed buildings and a new 13 storey building, with a rooftop basketball court.

Four (4) previous modifications to the originally submitted Development Application have been approved.

An Official Caution notice was issued to School Infrastructure NSW (SINSW) on 28 January 2021 in relation to the lighting structures on the northern, eastern and western façade of the 13 storey building for failure to carry out the development in accordance with the approved plans for the Inner Sydney High School development.

Specifically, the notice stated the following:

The Department has determined that lighting installed to the northern, eastern and western façade of the new 13 storey tower does not form part of the approved development under Development Consent SSD 7610 and as such requires further development consent from the Department.

The approved plans show the structures on the building façade however it was not clear that these were to be illuminated and therefore the lighting was not considered to form part of the approved development. This modification therefore proposes to modify the existing approval to regularise the lighting on the building façades.

Following initial installation the lights were tested to determine compliance with the relevant Australian Standards. The lights have been adjusted to approximately 10 lux and 10% illumination which meets the Australian lighting standards as outlined in the Electrical Report- Façade Lighting Effects prepared by Stantec. A copy of the Stantec report is included with this application. It should be noted the lights have not been used following initial installation and testing.

3.0 Site Context

3.1 Site Description

The school site is located approximately 800m south of Central Station on the corner of Chalmers Street (East) and Cleveland Street (South) in Surry Hills (**Figure 1** and **2**). The site consists of three (3) lots which are legally described as:

- Lot 1 DP 797483
- Lot 1 DP 797484
- Lot 8 DP 821649

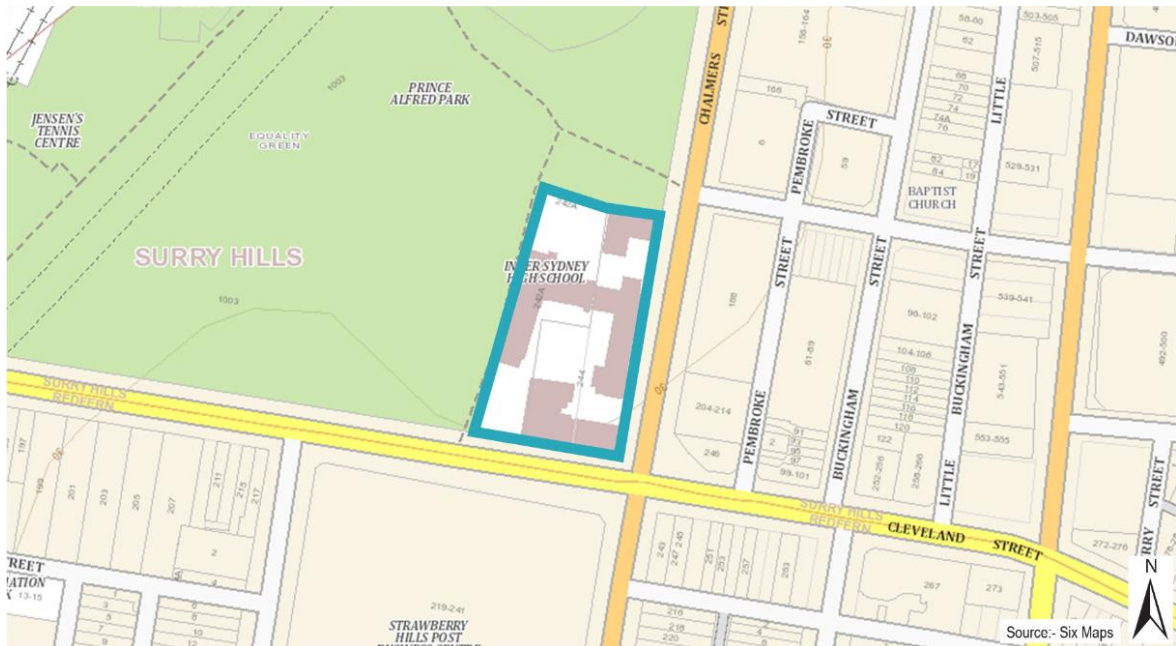


Figure 1 Site Location

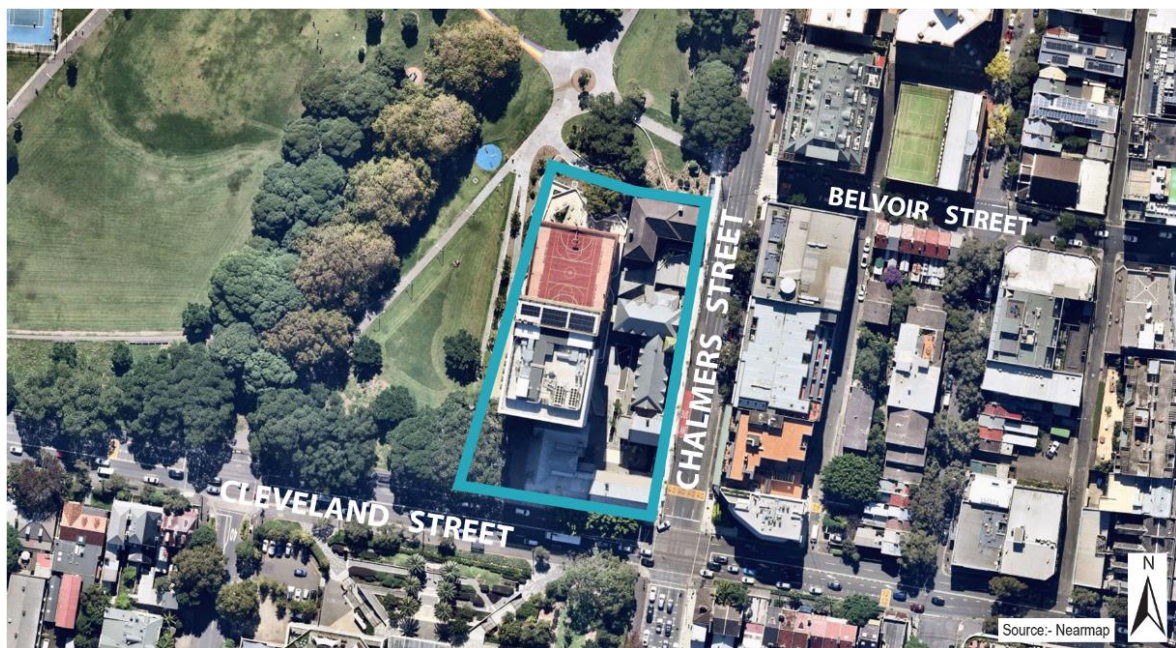


Figure 2 Aerial Map

3.2 Surrounding Development

The site and the surrounding area to the east and south is zoned B4 – Mixed Use and development comprises both residential and commercial buildings. Cleveland Street is to the immediate south of the site. The intersection of Cleveland Street and Chalmers Street is signalised.

To the north and west of the site is the Prince Alfred Park which comprises tennis courts, basketball courts and the Prince Alfred Public Pool.

Mature street trees are established along the eastern side of Chalmers Street in the vicinity of the high school site – refer **Figure 5**.

Figure 3 is an extract of the land use zoning map from Sydney LEP 2012 showing the zoning of the site and surrounding land.

Figures 4 – 6 are photographs of the site and building from various locations to the north, west and east of the site.



Figure 3 Zoning Map



Figure 4 Northern elevation of 13 storey building on the school site showing location of lights on façade (as viewed from Prince Alfred Park)



Figure 5 Site looking south along Chalmers Street. School site located on the right and residential to the left.



Figure 6 Looking south-west from Chalmers Street

4.0 Proposed Modification

This Section 4.55 (1A) Modification has been prepared on behalf of SINSW to respond to the Official Caution issued by DPIE on 28 January 2021.

The proposed modification to Development Application No. SSD 7610 (as modified) is for the approval of the façade lighting effects installed to the northern elevation and parts of the eastern and western elevations of the recently constructed 13 storey building, shown as red in **Figure 7**.

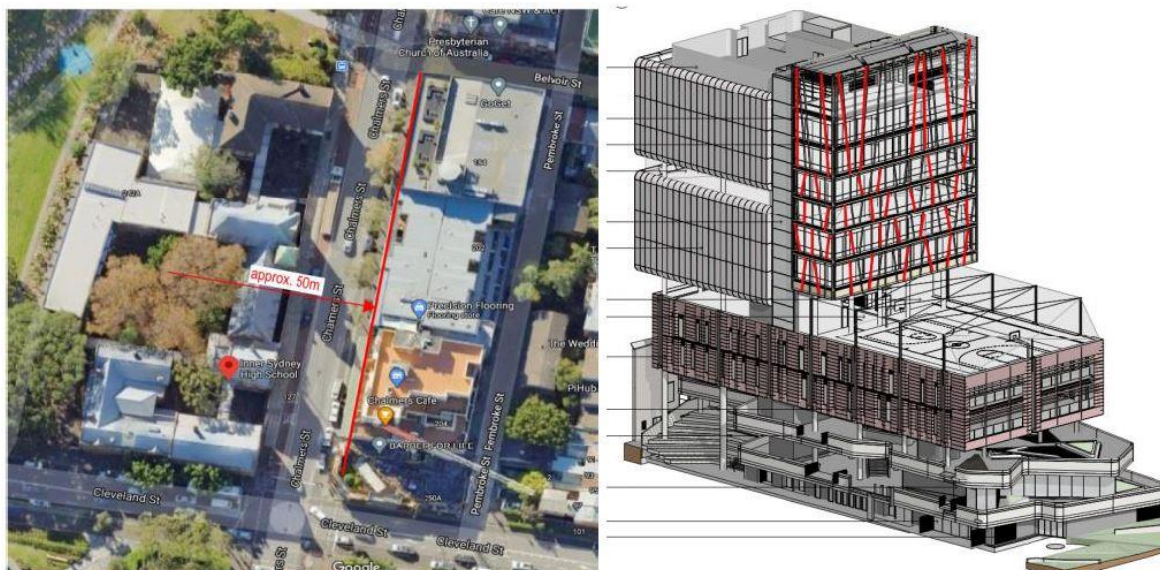


Figure 7 façade lighting effects are shown in red on the northern elevation and eastern and western returns of the building

In terms of operational factors, the following considerations are of relevance:

- The lights will only operate during special events (i.e. – not every night). As a general guide, the lights will operate between 6pm-8pm in Eastern Standard time and 7pm-9pm during Eastern Daylight Saving time for these special events. During events such as VIVID, the times may vary according to the specifications of the event. It is anticipated that there would be 10 special events per year.
- The lights will operate at 10% illuminance. Refer discussion in **Section 6.2.1** in relation to illuminance.
- The lights will change colour but will not be flashing or moving.

The technical specifications for the lights are detailed in **Table 1** below.

Table 1 – Technical Specifications for Lights

Luman Output Range	85 lm/m
Module Power	24w/m
Operation Mode	24V Constant Voltage
Colour Temperature	2700K/3000K/4000K/6000K/RGB/RGBW
CRI Option	>80,90+

Table 1 – Technical Specifications for Lights

Lifetime	50000 hours
Dimension	24mm x 12mm
IP Rate	IP67/IP68*
Dimming Option	1-10V/DALI
Operating Temperature	-40°C - 65°C

Stantec Australia Pty Ltd undertook an assessment of the lights to assess the potential disruption the lighting might cause on the surrounding area and, in particular, the residential properties to the east of the site. A copy of the Stantec assessment is included with this application.

The report concluded that dimming the lights to 10 lux with a 10% illuminance level would reduce the amount of spill and glare of the light to the surrounding sites. This reduction would also comply with AS4284:1997 – *Control of the Obtrusive Effects of Outdoor Lighting*.

It should be noted that the feature lighting is intended to be used during the early evening periods on special occasions and/or school events.

In response to Government Architect's comments in relation to the proposed building the following comments, specifically:

'The Department has identified the following Design Principles to be applied in the design and master planning of any multi-level school, including both indoor and outdoor spaces:

- *the anatomy of the schools and their design elements must enable the buildings and outdoor spaces to be learning tools in themselves;*

With respect to the façade lighting, students could programme a light display as part of the learning curricular by designing a lighting theme to align with particular events such as NAIDOC Week. This could then be displayed for the community to participate in and to show the learnings of the school and engage directly with the wider community.

5.0 Statutory Provisions

Section 4.55 of the EP&A Act contains the provisions that must be considered in determining an application to modify a consent. In this regard, the relevant provision is section 4.55(1A) of the EP&A Act.

This application is lodged under section 4.55(1A) as the amendment is considered to be minor in nature and will have only minimal environmental impact.

In addition to the EP&A Act, Clause 100 of the *Environmental Planning and Assessment Regulation 2021* (EP&A Regulation) contains the information that must be submitted with an application to modify a consent. The requirements under the EP&A Act and EP&A Regulation are detailed below.

5.1 Section 4.55(1A) of the Act

Section 4.55(1A) of the Act applies to modifications where a minimal environmental impact may occur. Specifically, section 4.55(1A) provides that a number of matters be addressed, as discussed below:

“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”***

The proposed modification relates to the operation of external façade lighting to the building approved under SSD No. 7160.

Subject to the lighting operating at 10 lux, the lighting has been assessed as having minimal environmental impacts.

- “(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)”***

The modification relates to an existing approved development and will not change the nature, intensity or character of the development.

Notwithstanding that the lighting was not noted as being illuminated, the location of the lighting strips corresponds with the feature lines on the approved elevation plans in the architectural plans prepared by FJMT. The design intent of the building facades is therefore retained.

The development as modified will be substantially the same as the development as originally approved.

- “(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 modifications of a development consent,”

The consent authority must consider the notification of this application in accordance with its plans and policies.

- “(d) It has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be”***

Should the consent authority notify the subject application in accordance with section 4.55(1A)(c), it must consider any submissions made during a notification period.

Subsections (1) and (2) of section 4.55 do not apply to the proposed modification. Subsection (3) is addressed in **Section 6.0** of this submission.

5.2 Clause 100 of the EP&A Regulation 2021

Subclause 100(1) of the Regulation details the information required to be submitted with an application to modify a Development Consent under section 4.55. These details are contained in this letter and the information provided on the Planning Portal.

6.0 Environmental Planning Assessment

Section 4.55(3) of the EP&A Act requires that such of the matters referred to in section 4.15(1) as are of relevance to the proposed modification must be taken into consideration in determining the application for modification. Accordingly, the following subsections provide an assessment of any such relevant matters.

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.

6.1 Section 4.15(1)(a) – Planning Controls

The proposed modification to SSD No. 7610 has been assessed as remaining consistent with the following State Environmental Planning Policies which were considered in the assessment of the approved Development Application:

- Chapter 2 – State and Regional Development of *State Environmental Planning Policy (Planning Systems) 2021*
- Chapter 2 – Infrastructure and Chapter 3 – Educational establishments and child care facilities of *State Environmental Planning Policy (Transport and Infrastructure) 2021*
- Chapter 4 – Remediation of Land of *State Environmental Planning Policy (Resilience and Hazards) 2021*

6.1.1 Sydney Local Environmental Plan 2012

The proposed modification will not alter the assessment of any provisions identified in the *Sydney Local Environmental Plan 2012* (Sydney LEP 2012).

The site is mapped as containing a local heritage item – Former Cleveland Street Public School building – under Schedule 5 of Sydney LEP 2012 and while not located within a Conservation Area, the site is located within the Prince Alfred Park East Special Character Area as defined by the Section 9.4.3.1 of the *Sydney Development Control Plan 2012*. The School is classified by the National Trust of Australia and listed on the register of the National Estate as ‘Cleveland Street Public School’.

A heritage impact assessment prepared by Weir Phillips Heritage accompanies this modification and they note the following

The proposed external lighting will have a minimal and acceptable impact for the following reasons:

- *The proposed works will have no impact on the ability to understand the historic significance of each of the heritage items listed within the Heritage Impact Statement.*
- *The proposed lighting system is intended to illuminate and accentuate the architectural details of the existing contemporary building (Building 4) on the site.*
- *The proposed lighting to building 4 is ordered, considered and intended to provide a sense of the whole building at night rather than light spill from secondary sources.*
- *The proposed lighting system will provide indirect and focused on selective illumination of the subject building. The lighting will provide a soft highlight to the contemporary building which will be best viewed from the adjoining park.*

- *The proposed lighting will not conceal significant architectural features of the significant original buildings on site and will not detract from the ability to understand the site of a classically designed and constructed education facility.*
- *The proposed works will not block view corridors to and from the significant original buildings on site. There will be no impact on the ability to understand their architectural significance.*

The assessment concludes that the proposed works relating to the illumination will not result in the loss or concealment of significant fabric of the older significant school buildings. View corridors, character of the site or the heritage significance of the site will not be impacted and the massing, scale form of the building will not be altered.

6.1.2 Sydney Development Control Plan 2012

The proposed modification has been considered in relation to the following provisions of the *Sydney Development Control Plan* (SDCP 2012).

Table 2 - Sydney Development Control Plan 2012		
Provision	Assessment	Compliant
Section 2 Locality Statement		
Section 2.11.8 Prince Alfred Park East	<p>The proposed modification relates to existing lighting features.</p> <p>The lighting was noted as feature lines on the plans submitted with SSD 7610 and therefore the architectural impacts of these features on the façade has already been assessed as appropriate.</p> <p>The luminosity of the lighting will be controlled to ensure that the effect is subtle.</p> <p>The lighting is unlikely to impact adversely on Prince Alfred Park as noted by Weir Phillips Heritage and the approved development will remain substantially the same.</p>	Yes
Section 3 General Provisions		
3.2 Defining the Public Domain		
3.2.8 External Lighting		
<p><u>Provisions</u></p> <ol style="list-style-type: none"> 1. Generally, external lighting of buildings is discouraged to avoid light pollution and the unnecessary consumption of energy and generation of greenhouse gas emissions, unless there is particular and justifiable merit in illuminating a building. 2. Applications for decorative lighting or for the illumination of building facades, billboards, or roof tops (accessible or inaccessible) are required to include a photomontage or computer modelling to illustrate the visual effect of the proposal, including the visual effect of any associated structure during the day. 3. External light fixtures are to be integrated with the architecture of the building. 4. The visual effects of external lighting must contribute to the character of the building, surrounds and skyline. 	<p>The specifications of the façade lighting features are outlined in the Stantec Electrical Report, a copy of which is included with the application.</p> <p>LED lights have been used as these are more energy efficient compared to other forms of lighting.</p> <p>The external light fixtures are attached to the exterior of the building and are integrated into the architectural design of the building, consistent with other architectural features.</p> <p>Light spill beyond the site, including to the residential development on the eastern</p>	Yes

Table 2 - Sydney Development Control Plan 2012

Provision	Assessment	Compliant
5. The external lighting system must be energy efficient and subject to appropriate times of operation. 6. External lighting must not reduce the amenity of residents in the locality. 7. External lighting must not negatively impact areas of habitat for local fauna. 8. External lighting must minimise the light spill into the night sky. 9. LED down lighting is preferred over up lighting to minimise light pollution. 10. The following decorative lighting techniques are inappropriate: <ul style="list-style-type: none"> a) bud-lights and similar festoon lighting on buildings which detract from the architectural qualities of the building; b) broad floodlighting of facades from large light sources located separate to the building; and c) up lighting of flag poles and banner poles 	side of Chalmers Street and Prince Alfred Park, will be minimal due to the reduced lux level and 10% illumination setting. The lights will be set to an appropriate illumination to minimise impacts on the amenity of the surrounding residents. Whilst subdued in terms of illumination, the lighting will provide a level of ambient lighting within Prince Alfred Park which will contribute to enhanced surveillance.	

6.2 Section 4.15(1)(b) – Natural and Built Environmental Impacts

6.2.1 Light Spill and Glare

The lights are fixed to the northern facade and part of the eastern and western returns of the new 13-storey building. The lights are located approximately 50 metres from a residential development to the east and is directly adjacent to Prince Alfred Park to the north and west.

An Electrical Report prepared by Stantec Australia Pty Ltd identified that:

‘the two main lighting effects have the potential for varying degrees of intrusiveness to residents adjacent to the new building is spill and glare.’

A series of simulation tests were undertaken to determine the appropriate amount of lighting having regard to the setting of the development. The simulation considered illuminance of the lights set to 100%, 50%, 25% and 10% - refer **Figures 8 - 11**.

The perspective captured in **Figures 8 – 11** is looking south along Chalmers Street towards Cleveland Street. The 13 storey school building is the tall image at the background towards the right hand side of each figure. The image on the left hand side is the residential apartment building at 184 Chalmers Street, Surry Hills. Chalmers Street is roughly in the centre of each image and the buildings to the right of Chalmers Street (being the black rectangles) are existing lower school buildings, including the heritage listed Cleveland Street Public School building.

Based on the assessment criteria of 10 lux and having regard to the relationship of the lighting with residential properties there were no areas where excessive spill light or glare will be prevalent to residential properties when the façade lighting illuminance is set to 10% during operational hours (**Figure 11**).

100% Illuminance:

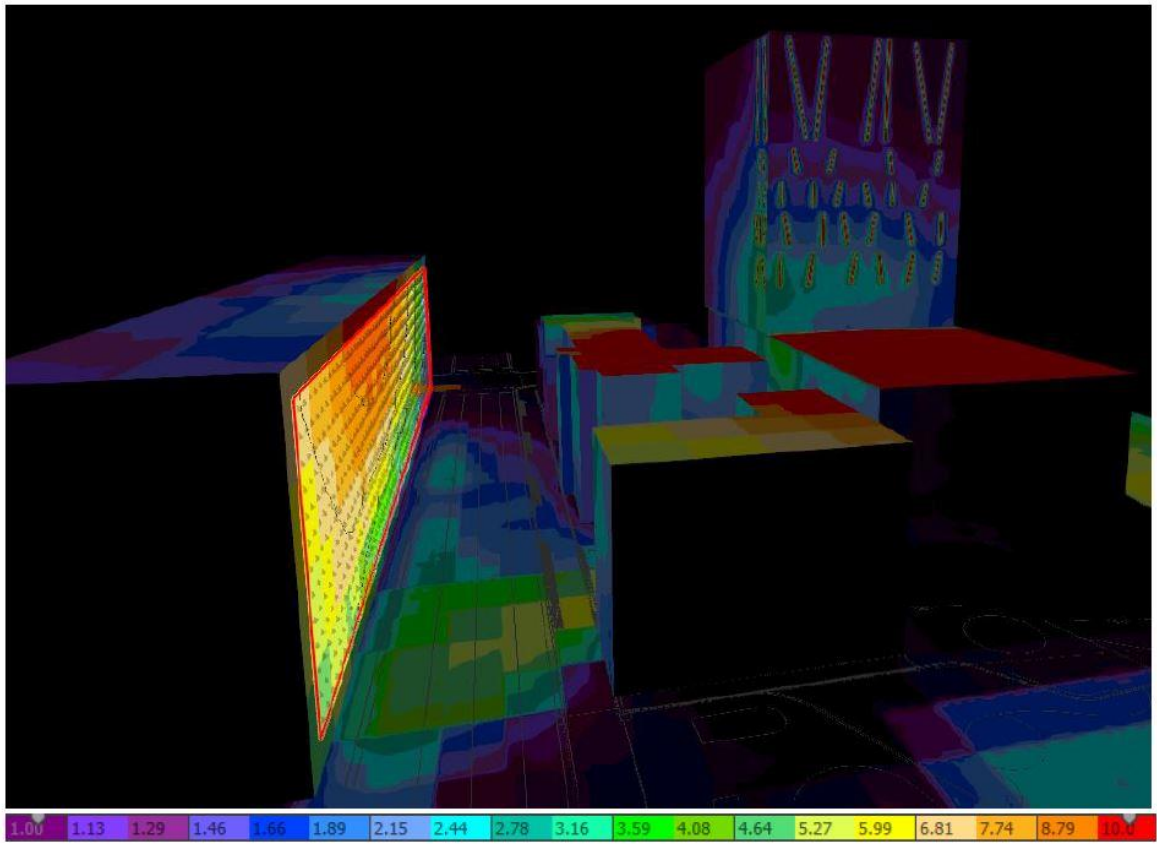


Figure 8 Lights at 100% Illuminance Source: Extract from Electrical Report- Façade Lighting Effect by Stantec Australia Pty Ltd

50% Illuminance:

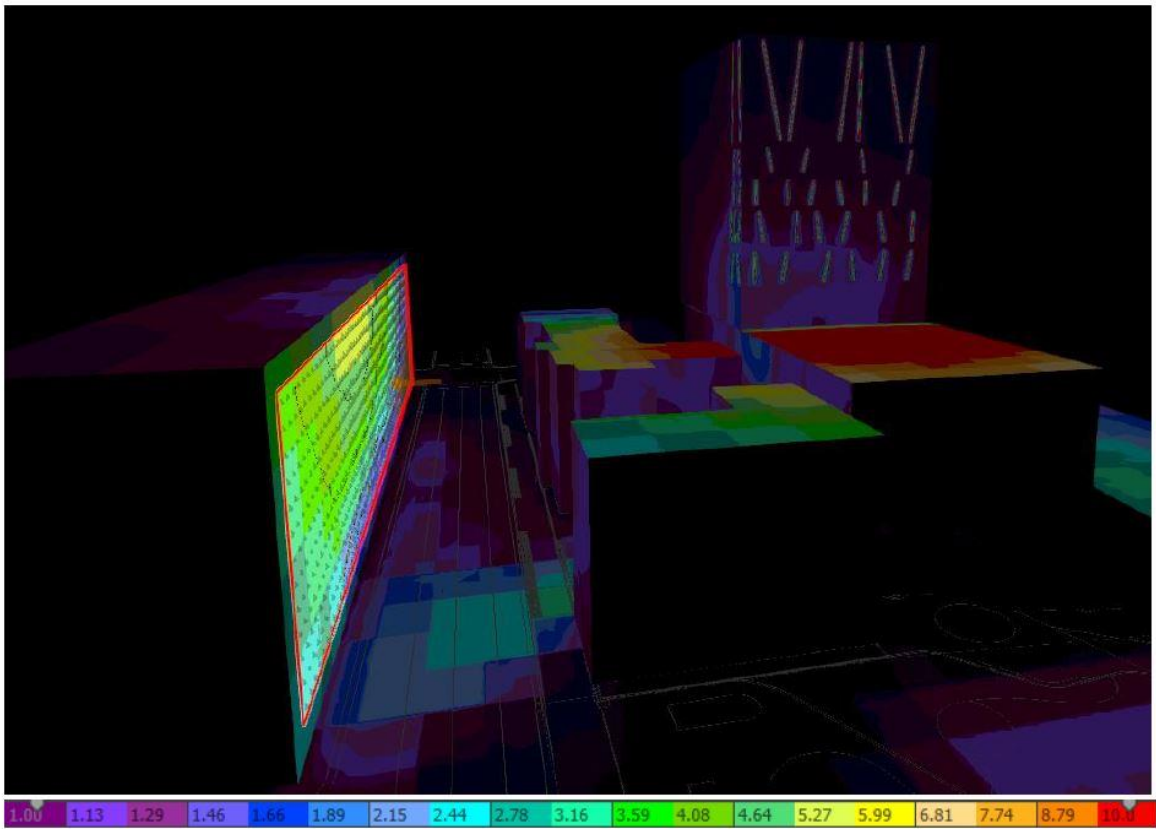


Figure 9 Lights at 50% Illuminance
Source: Extract from Electrical Report- Façade Lighting Effect by Stantec Australia Pty Ltd

25% Illuminance:

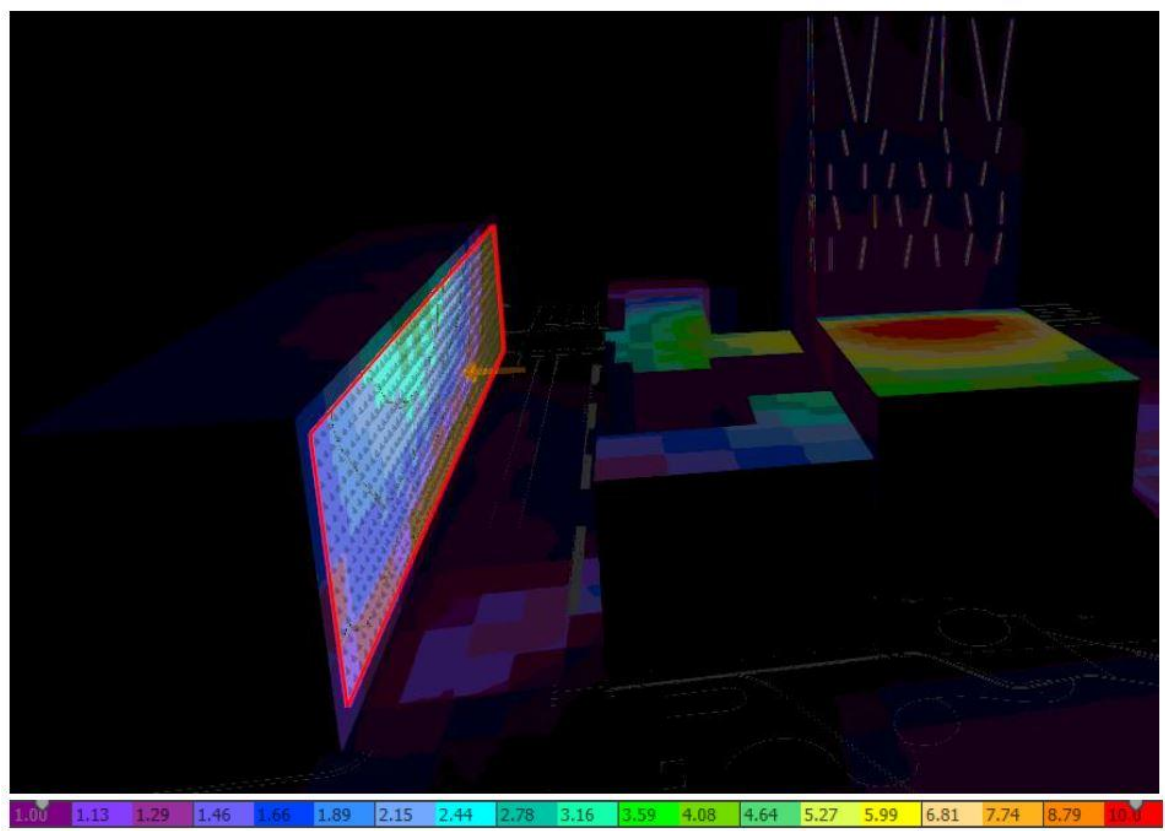


Figure 10 Lights at 25% Illuminance
Source: Extract from Electrical Report- Façade Lighting Effect by Stantec Australia Pty Ltd

10% Illuminance:

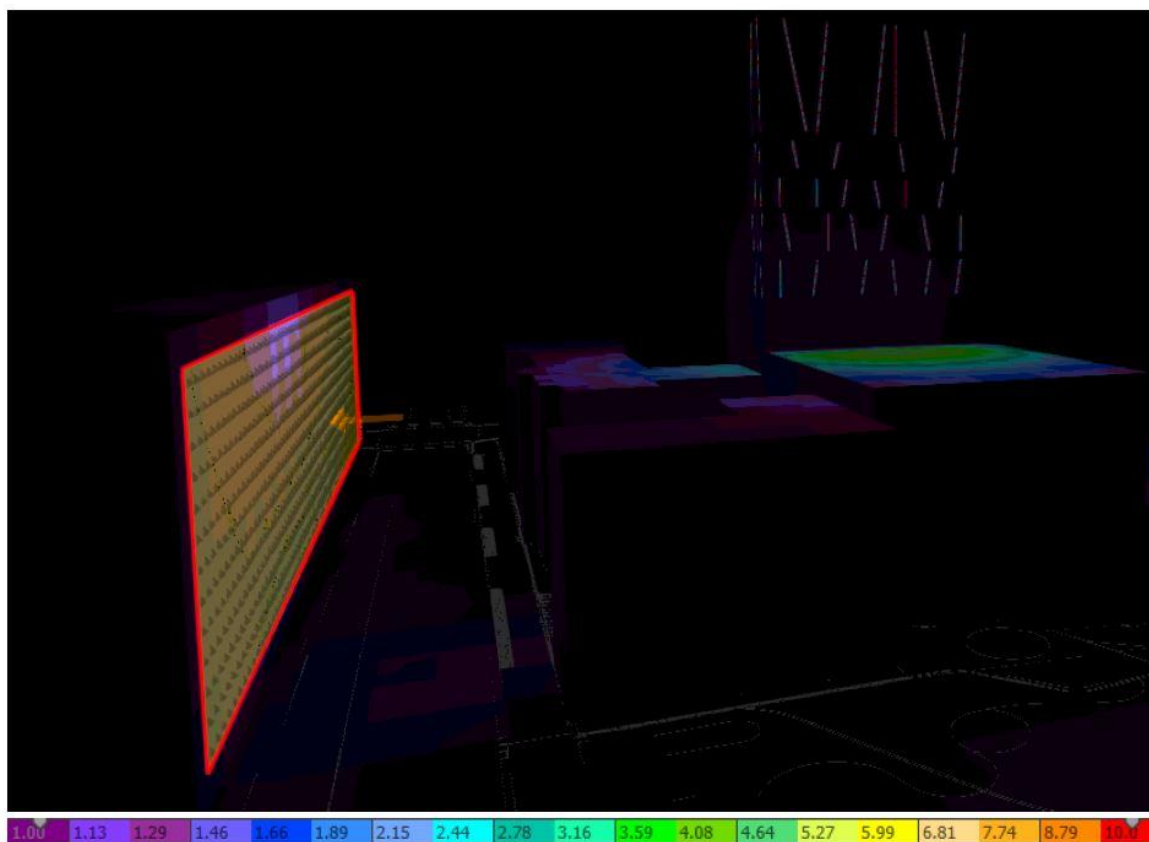


Figure 11 Lights at 10% Illuminance

Source: Extract from Electrical Report- Façade Lighting Effect by Stantec Australia Pty Ltd

6.3 Section 4.15(1)(b) – Social and Economic Impacts

6.3.1 Social Impact

The lights will have minimal impact to surrounding areas. The façade lighting illuminance will be set to 10% during operational hours and is compliant with AS4282:1997.

6.3.2 Economic Impacts

The proposed modification will not result in any negative economic impacts.

6.4 Section 4.15(1)(c) – Suitability of the Site for Development

The suitability of the site for the proposed lighting has been considered in the Stantec report and summarised in Section 6.2.1 of this report.

6.5 Section 4.15(1)(d) – Submissions

The consent authority will be required to give due consideration to any submission made during the notification period.

6.6 Section 4.15(1)(e) – Public Interest

The lighting features to the façade of the building will add interest to the building and the lighting is able to be regulated to minimise light spill and glare. The lighting is capable of satisfying the criteria of AS 4282: 1997 – Control of the Obtrusive Effects of Outdoor Lighting.

In this regard, the lighting is not considered to be contrary to the public interest.



7.0 Conclusion and Recommendations

This submission accompanies an application under section 4.55(1A) of the EP&A Act to modify SSD 7610 (as modified) in relation to the installation of façade lighting fixtures to the northern façade and parts of the eastern and western elevations of the recently completed 13-storey Inner Sydney School building.

The modification will not substantially alter the approved development and accordingly, is considered to satisfy the requirements pursuant to section 4.55(1A) of the EP&A Act.

The proposed modifications are considered to have minimal and acceptable environmental impacts and will not change the nature of the development approved under SSD 7610.

Accordingly, we are of the view that the proposed modification is acceptable in this particular instance and can be approved under section 4.55(1A).

We would be pleased to discuss this application further with DPIE officers should that be required and if you have any queries, in the first instance please contact Helen Mulcahy from the SINSW Statutory Planning Team on 0437 184 280.

Yours faithfully

DFP PLANNING PTY LTD

A handwritten signature in black ink, appearing to read 'ER', written over a horizontal line.

ELLEN ROBERTSHAW
DIRECTOR

erobertshaw@dfpplanning.com.au

Reviewed _____

A handwritten signature in black ink, written over a horizontal line.