



13-23 Gibbons Street, Student Accommodation Modification 6

Extension of construction hours and external design changes
State Significant Development Modification Assessment

(SSD 9194 MOD 6)

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Glossary

| Abbreviation | Definition |
|------------------------------|---|
| Applicant | The Trustee for WH Gibbons Trust |
| Council | City of Sydney |
| Department | Department of Planning and Environment |
| EIS | Environmental Impact Statement |
| EPA | Environment Protection Authority |
| EP&A Act | <i>Environmental Planning and Assessment Act 1979</i> |
| EP&A Regulation | Environmental Planning and Assessment Regulation 2021 |
| EPI | Environmental Planning Instrument |
| EPL | Environment Protection Licence |
| ESD | Ecologically Sustainable Development |
| LEP | Local Environmental Plan |
| Minister | Minister for Planning |
| RtS | Response to Submissions |
| RMS | Roads and Maritime Services, TfNSW |
| Planning Secretary | Secretary of the Department of Planning and Environment |
| Planning Systems SEPP | State Environmental Planning Policy (Planning Systems) 2021 |
| SEARs | Planning Secretary's Environmental Assessment Requirements |
| SEPP | State Environmental Planning Policy |
| SSD | State Significant Development |
| TfNSW | Transport for NSW |

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1 Introduction

This report provides the NSW Department of Planning and Environment's (the Department) assessment of an application to modify the State significant development (SSD) consent for an 18-storey student accommodation development at 13-23 Gibbons Street, Redfern.

The application has been lodged by CW Strategic Planning Services on behalf of The Trustee for WH Gibbons Trust (the Applicant) pursuant to section 4.55(1A) of the *Environmental Planning and Assessment Act 1979* (EP&A Act).

The modification application, as amended, seeks approval for the following:

- extension of construction hours to allow internal construction work to be undertaken from 7:00 am to 10:00 pm, seven-days-a-week, for the entire construction period
- minor external amendments to the façade finish on Gibbons Street.

1.1 The site and surrounding context

The site (**Figure 1** Error! Reference source not found.) is located at 13-23 Gibbons Street, Redfern and is legally described as SP 60485. The site is bounded by Gibbons Street to the west, and Margaret Street to the south.

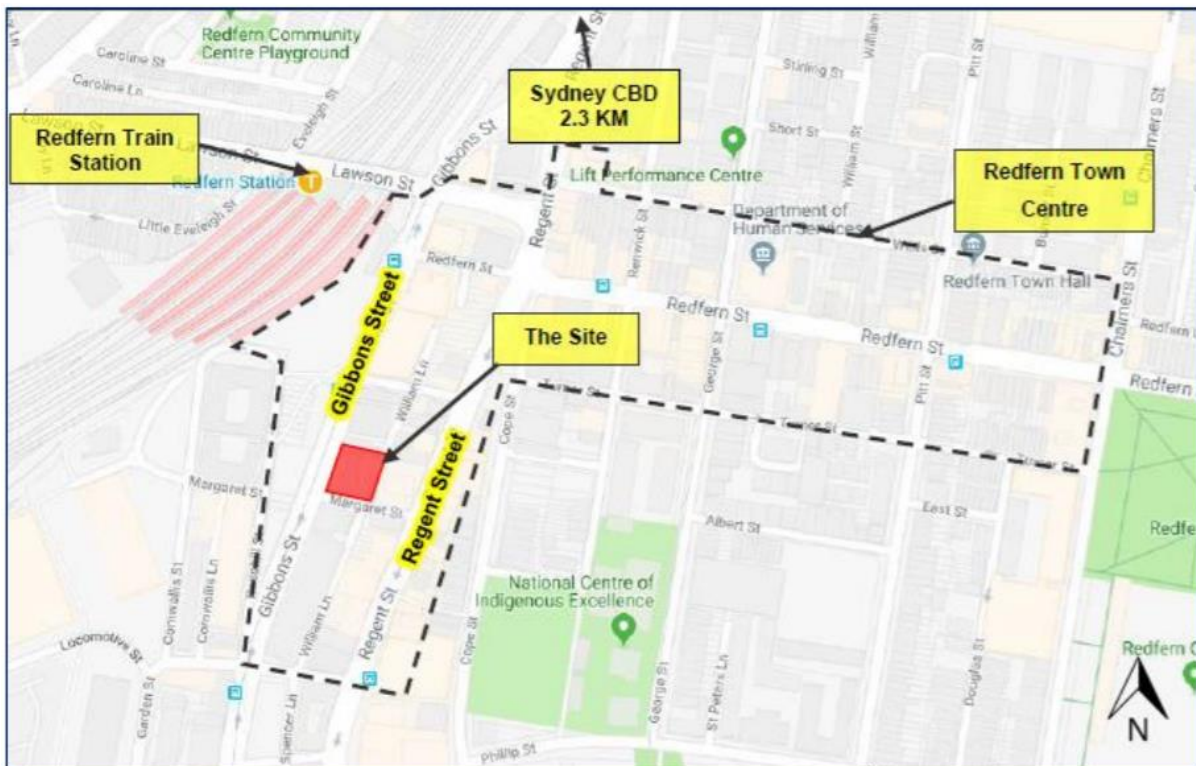


Figure 1 | Site location (as shown in red) (Base source: NearMap)

The site is located within the Redfern Town Centre and is approximately 2.3 km to the south-west of the Sydney Central Business District and 150 m to the east of Redfern Train Station.

The Redfern Town Centre is characterised by a mix of uses, including commercial, residential and public use buildings ranging from two to 18 storeys in height. Gibbons Street and Regent Street are four-lane, one-way State classified roads which run northbound and southbound respectively through the Town Centre.

The Redfern Town Centre is undergoing significant urban renewal transitioning from the traditional lower density mixed use, retail and residential developments of two to four storeys in height to buildings up to 18-storeys in accordance with the current planning controls for the area.

Development within the vicinity of the site (Error! Reference source not found.) includes:

- 1 Lawson Square: 18-storey mixed use development (under construction)
- 56-58 Regent Street: 21-storey hotel (SEARs issued)
- 157-159 Redfern Street (known as the Deicota building): 19-storey mixed use development (completed)
- 60-78 Regent Street: 18-storey student housing development (completed)
- 80-88 Regent Street: 18-storey student housing development (under construction)
- 7-9 Gibbons Street (known as the Urba building): 18-storey mixed-use development comprising a three-storey podium for retail/commercial uses and 15-storey residential tower above (completed)
- 11 Gibbons Street: 18-storey social and affordable housing development with ground floor retail/commercial uses (completed)
- 90-102 Regent Street: proposed 18-storey student housing development (under construction)
- 104-116 Regent Street: 18-storey student housing development (approved on 17 November 2022).

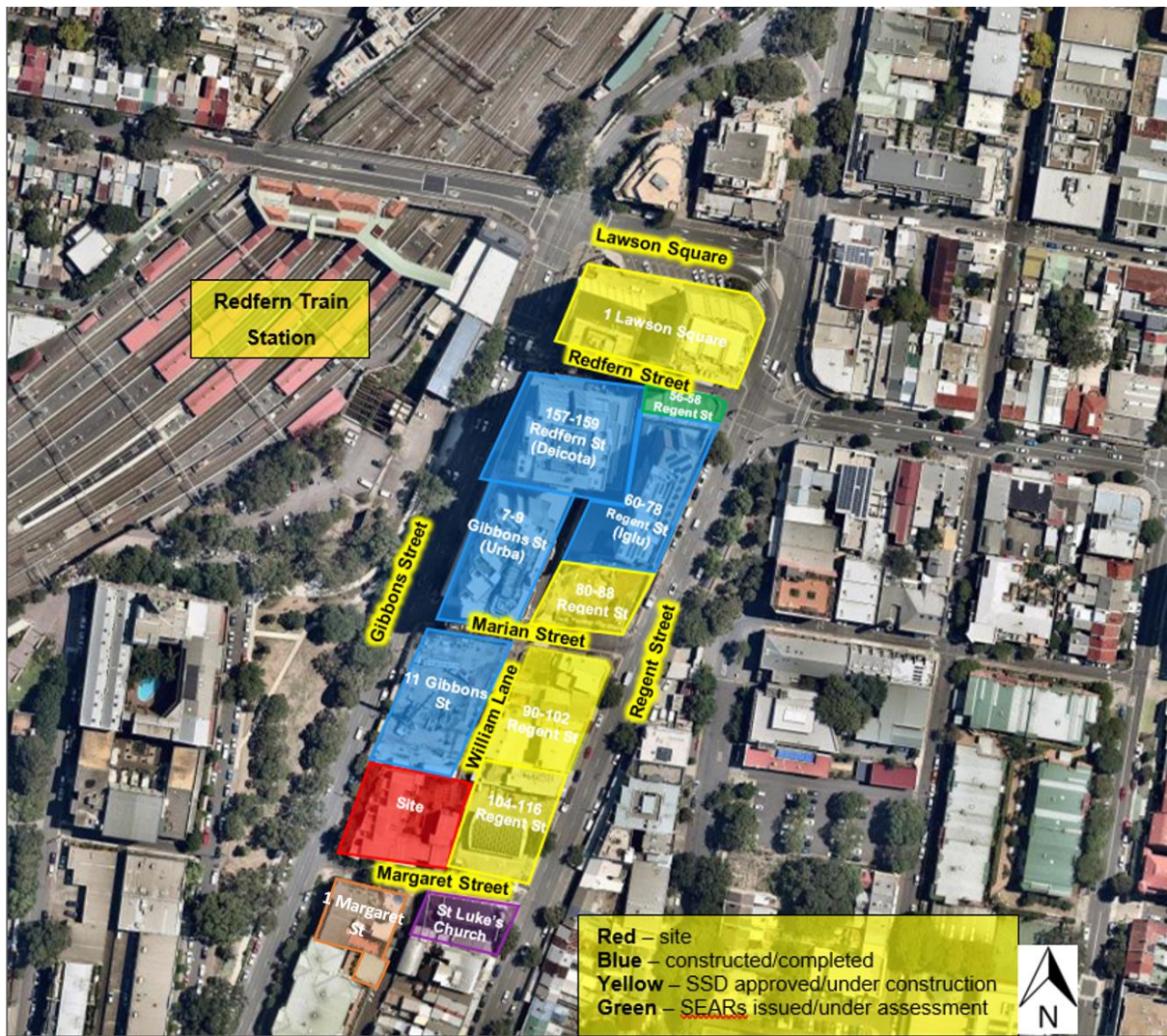


Figure 2 | Site location and context (Base source: NearMap)

1.2 Approval history

On 6 October 2020, the Executive Director, Regions, Industry and Key Sites, as delegate of the Minister for Planning, granted development consent (SSD 9194) for an 18-storey mixed use student accommodation building comprising:

- 419 student accommodation beds
- communal student facilities, including lounge areas, games room, gymnasium and external terraces on levels 2, 3 and 4
- one ground floor retail tenancy
- new through-site link, public domain and landscaping works.

The development consent has been modified on five occasions (**Table 1**).

Table 1 | Summary of Modifications

| Mod No. | Summary of Modifications | Approval Authority | Type | Approval Date |
|----------------|---|---------------------------|-------------|----------------------|
| MOD 1 | Amendments to Condition B32 and C32 | Director | 4.55(1A) | 9 December 2020 |
| MOD 2 | Relocation of ground level substation | Director | 4.55(1A) | 14 April 2021 |
| MOD 3 | Internal and external changes to the building, including amendments to internal layout of rooms, window sizes, and waste storage rooms | Team Leader | 4.55(1A) | 29 June 2021 |
| MOD 4 | Internal and external changes to the building, including increasing beds from 419 to 472, reduction in ceiling heights and addition of louvers to ground level openings on the southern elevation | Team Leader | 4.55(1A) | 21 December 2021 |
| MOD 5 | Amendments to the through-site link and eastern façade | Team Leader | 4.55(1A) | 12 December 2022 |

2 Proposed modification

On 2 February 2023, the Applicant lodged modification application SSD 9194 MOD 6 seeking approval under section 4.55(1A) of the EP&A Act for the extension of construction hours for internal construction work and minor external amendments to the façade finish on Gibbons Street.

The current approved construction hours are 7:00 am to 6:00 pm from Monday to Fridays and 7:30 am to 3:30 pm on Saturday. No work is currently allowed on Sundays or public holidays.

The application originally sought approval to extend the construction hours for internal works to 24-hours-a-day, seven-days-a-week, for the entire construction period. The internal fit out works proposed to be undertaken during the extended construction hours include installation of plasterboard walls and ceilings, painting, fit out of services, internal loading of materials, furniture installation, defecting works, lift installation and cleaning. The Applicant confirmed that concrete pumping, demolition works, truck loading or other noise intensive works would not be undertaken during the extended construction hours period.

As part of the Applicant's Response to Submissions, the construction hours for internal works were reduced from 24-hours-a-day to 7:00 am to 10:00 pm, seven-days-a-week, for the entire construction period. The Applicant proposes the following additional condition (Condition D4A).

D4A. Construction may also be undertaken at any time outside of these hours if the construction works are carried out in accordance with the Construction Noise Management Plan: Extended Hours Assessment' prepared by Acoustic Logic and dated 06/03/2023, including:

- (a) Construction works may not be carried out before 7:00 am or after 10:00 pm daily;**
- (b) construction works are only permitted internally behind a closed façade as specified; and**
- (c) construction works must comply with the established Noise Management Levels; and**
- (d) in the event of a complaint, immediate action is taken to investigate and take remedial action where required.**

To protect the privacy of adjoining residents during the extended construction hours, prior to commencement of works under this condition, hoardings must be installed over any windows facing residential premises where privacy screens are shown on the plans approved by condition A2 but have not yet been installed.

The Applicant justifies that the extended construction hours are required to complete the development on time and recover time lost during extreme rainfall events and COVID-19.

The application also proposes minor external changes to the façade finish of an alcove on the Gibbons Street elevation from a dark grey colour to a brick finish (**Figure 3**).



Figure 3 | Location of façade change outlined in red (Source: Applicant’s modification report)

3 Statutory context

3.1 Scope of modifications

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

- would not increase the environmental impacts of the project as approved
- is substantially the same development as originally approved; and
- would not involve any further disturbance outside the already approved disturbance areas for the project.

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

3.2 Consent authority

The Minister for Planning is the consent authority for the application under section 4.5(a) of the EP&A Act. However, under the Minister's delegation, the Director, Key Sites Assessments, may determine the application as:

- a political disclosure statement has not been made
- there are less than 15 public submissions in the nature of objections
- Council had not made a submission by a way of objection.

3.3 Mandatory matters for consideration

The following are relevant mandatory matters for consideration:

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

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

3.4 Biodiversity Conservation Act 2016

Clause 30A(2)(c) of the Biodiversity Conservation (Savings and Transitional) Regulation 2017 specifies that if the determining authority is satisfied a modification will not increase the impact on biodiversity values, a biodiversity development assessment report (BDAR) is not required.

The Department is satisfied that there will be no additional impacts beyond those previously assessed and considered under the original approval.

For the reasons discussed above, the Department's assessment concludes a BDAR is not necessary for the proposed modification.

4 Engagement

4.1 Department's engagement

Section 105(4) of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation) specifies that the notification requirements of the EP&A Regulation do not apply to section 4.55(1A) modification applications. Accordingly, the application was not notified or advertised.

However, the application was made publicly available on the NSW Planning Portal and referred to City of Sydney Council (Council), NSW Environment and Protection Authority (EPA), Transport for NSW (TfNSW) and Roads and Maritime Services (RMS). The surrounding landowners were also notified of the modification application.

4.2 Summary of submissions

In response to the application, the Department received:

- comments from City of Sydney Council
- comments from the EPA and TfNSW
- 12 objections and 3 comments from the public.

A link to the submissions is provided in **Appendix A**.

4.3 Key issues - Government agencies and Council

Table 2 | Summary of advice and key issues

| Council | |
|----------------------------|---|
| Modification report | Recommended construction hours are permitted only between 6:00 am and 10:00 pm to limit sleep disturbances. |
| TfNSW (RMS) | |
| Modification report | The proposal would not have a detrimental on the surrounding classified road network. |
| EPA | |
| Modification report | Recommended that the community are appropriately notified of the extended construction hours. |

4.4 Key issues – public submissions

The Department received a total of 15 submissions from the members of the community, of which 11 were unique submissions. Of the 15 submissions, 12 submissions objected to the proposal (of which 8 were unique) and 3 submissions provided comment only. All of the community members who made a submission live within 5 km of the proposed development.

A summary of the key issues raised by the community is provided in **Table 3** below.

Table 3 | Summary of key issues raised by members of the community

| Issue | % of Submissions |
|---|------------------|
| Construction noise (from vehicles, workers and equipment) | 93% |
| Privacy concerns | 87% |
| Development blocking access to properties | 20% |
| Safety and security concerns | 67% |
| Waste from construction site | 73% |
| Inadequate justification for proposal | 20% |
| Inadequate noise assessment | 13% |

4.5 Response to submissions and Government Agency advice

On 8 March 2023, the Applicant submitted a Response to Submissions (RtS). The RtS proposed the following amendments:

- reduced the construction hours for internal works from 24-hours-a-day to 7:00 am to 10:00 pm, seven-days-a-week, for the entire construction duration
- provide hoarding to windows where privacy screens have been approved but not constructed to reduce privacy impacts
- amended the Construction Noise Management Plan to include management measures to control noise generated from workers.

5 Assessment

In assessing the merits of the proposal, the Department has considered:

- the modification application and associated documents
- the Environmental Assessment and conditions of approval for the original application
- relevant environmental planning instruments, policies and guidelines
- the requirements of the EP&A Act and Regulation
- submissions from Council, Government agencies and the public.

The Department has considered the proposed amendments below.

5.1 Noise

The application originally sought approval to extend the construction hours for internal works to 24-hours-a-day, seven-days-a-week for the entire construction period.

Council recommended construction hours are permitted only between 6:00 am and 10:00 pm to limit sleep disturbance. The EPA recommended that the community are appropriately notified of the extended construction hours.

Public submissions raised concerns about the proposed 24-hour works and associated the construction noise impacts generated from vehicles, workers and equipment. Public submissions also raised issues about the adequacy of the noise assessment.

In response, the Applicant reduced the construction hours for internal works to 7:00 am to 10:00 pm, seven-days-a-week, for the entire construction period. The RtS was supported with an amended construction noise management plan which concluded the proposed internal construction works would comply with the noise management levels for all surrounding receivers.

The amended construction noise management plan recommended that construction works be limited to internal works, are undertaken behind a closed façade, workers are inducted on noise management procedures and that any complaints are managed in accordance with the construction noise management plan.

The Department acknowledges public submissions raised concerns about noise impacts associated with 24-hour works and the Applicant has reduced the proposed extended construction hours to address these concerns. Despite the reduction in the proposed hours, the Department remains concerned about potential amenity impacts associated with works on Sundays and public holidays and the need for residents to have respite from ongoing construction activity.

The Department therefore recommends no works should be undertaken on Sundays and public holidays as it has the potential to result in amenity impacts, lacks sufficient justification and is inconsistent with the NSW Interim Construction Noise Guideline.

Overall, the Department considers the extended construction hours from Monday to Saturday are acceptable as:

- they appropriately balance the Applicant’s proposal against the need to maintain residential amenity and respite from ongoing, long-term construction activity
- the works would be limited to internal works only including installation of plasterboard walls and ceilings, painting, fit out of services, internal loading of materials, furniture installation, defecting works, lift installation and cleaning, with all other works occurring during the existing approved construction hours
- the proposal is unlikely to result in any significant noise impacts as the noise generated at the nearest residential properties is expected to be less than 50 dB(A) which is below the existing background noise levels (54 dB(A)) in this location. In addition, no works are proposed after 10pm to ensure the proposal does not result in any sleep disturbance
- internal construction works would be managed in accordance with the construction noise management plan including undertaking work behind a closed façade, inducting workers on noise management procedures and managing complaints in accordance with the construction noise management plan
- the reduced construction hours for the internal works are consistent with Council’s recommendations and would minimise potential sleep disturbance impacts
- the extended construction hours would reduce the overall construction timeframe for the project.

The Department therefore recommends Condition D2A (not Condition D4A as proposed) is imposed to permit internal construction work between 7:00 am and 10:00 pm on Monday to Saturday only.

5.2 External design amendments

The application seek approval to amend the façade finish of an alcove on the Gibbons Street elevation from a dark grey colour to a brick finish.

No submissions raised concerns regarding the proposed change.

The Department considers the proposed external change is acceptable as it is consistent with the remainder of the façade on Gibbons Street and would not substantially alter the appearance of the approved building or its materiality.

The Department recommends Condition A2 is updated to reflect the updated architectural drawing.

5.3 Other issues

Other relevant issues for consideration are addressed in **Table 4**.

Table 4 | Department’s consideration of other issues

| Issue | Findings | Recommendation |
|---------|---|--|
| Privacy | <ul style="list-style-type: none"> • 87% of the public submissions raised concerns regarding privacy impacts and noted that the proposal would allow construction workers to | <ul style="list-style-type: none"> • The Department recommends including hoarding to windows where privacy screens have been approved but not |

have direct views into 1 Margaret St during sensitive times.

- In response, the Applicant advised that hoarding would be provided to windows where privacy screens have been approved but not yet constructed.
- The Department considers that privacy impacts would be minimised by undertaking work behind privacy screens and hoardings. In addition, the Department considers that the reduced construction hours would limit privacy impacts during sensitive times.
- The Department supports including hoarding to windows where privacy screens have been approved but not yet constructed.

yet constructed under Condition D2A.

Access to properties, waste disposal, safety and security issues

- Public submissions raised concerns that the proposal would exacerbate existing issues relating to access to properties (20% of submissions), construction waste (73%) and safety and security concerns (67%).
- In response, the Applicant advised the proposal would not result in any changes to the approved Construction Pedestrian and Traffic Management Plan and that traffic changes would be limited to workers accessing and leaving the site.
- The Applicant also advised that the proposal would be limited to internal works only and therefore would not have any material impact outside of the building or impact their ability to comply with existing conditions in relation to safety, security or waste management.
- The Department notes that the site is required to be managed in accordance with the existing Construction Environmental Management Plan, Construction Pedestrian and Traffic Management Plan and Waste Management Plan. The Department recommends these plans are implemented to minimise construction impacts.

- No additional conditions are recommended. The existing conditions must be implemented to minimise construction impacts.

Lack of justification for the proposal

- Public submissions raised concerns that the proposal does not have sufficient justification for extended construction hours.
- In response, the Applicant advised that the proposal would allow the overall construction timeframe to be reduced which would deliver

- No additional conditions are recommended.

positive amenity outcomes to surrounding receivers.

- The Department considers the proposal would not result in any significant amenity impacts as works would be limited to internal works only and permitted between 7:00 am and 10:00 pm only to limit sleep disturbance impacts. Further, the works would be undertaken behind privacy screens or hoarding to minimise privacy impacts.
-

6 Evaluation

The Department has assessed the modification application and supporting information in accordance with the relevant requirements of the EP&A Act. The Department's assessment concludes that the proposed modification is appropriate as:

- would be limited to 7:00 am to 10:00 pm on Monday to Saturday to minimise potential amenity impacts and provide appropriate respite from ongoing construction activity
- the proposed works are internal works only and would comply with the noise management levels for surrounding receivers
- the proposal would be constructed behind privacy screens or hoardings to limit potential privacy impacts
- the proposed change to the façade on Gibbons Street is minor and consistent with the remainder of the façade and would not substantially alter the appearance of the approved building
- the development would remain compliant with other relevant statutory provisions in EPIs and the strategic planning context
- the development is substantially the same as the approved development.

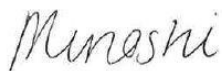
The Department considers the modification application is in the public interest and should be approved, subject to the recommended modified conditions of consent.

7 Recommendation

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

- **considers** the findings and recommendations of this report
- **determines** that the application SSD 9194 MOD 6 falls within the scope of section 4.55(1A) of the EP&A Act
- **accepts and adopts** all of the findings and recommendations in this report as the reasons for making the decision to approve the modification
- **agrees** with the key reasons for approval listed in the draft notice of decision;
- **modify** the consent SSD 9194 MOD 6
- **signs** the attached approval of the modification (**Appendix C**).

Recommended by:



Minoshi Weerasinghe
Senior Planning Officer
Key Sites Assessments

Recommended by:



Cameron Sargent
Team Leader
Key Sites Assessments

8 Determination

The recommendation is **Adopted** / ~~Not adopted~~ by:

AWatson

19/04/2023

Amy Watson

A/Director

Key Sites Assessment

as delegate of the Minister for Planning

Appendices

Appendix A – List of referenced documents

The following supporting documents and supporting information to this assessment report can be found on the Department's website as follows:

1. Modification Application

<https://www.planningportal.nsw.gov.au/major-projects/projects/mod-6-extension-construction-hours-design-changes>

2. Submissions

<https://www.planningportal.nsw.gov.au/major-projects/projects/mod-6-extension-construction-hours-design-changes>

3. Response to Submissions

<https://www.planningportal.nsw.gov.au/major-projects/projects/mod-6-extension-construction-hours-design-changes>

Appendix B – Statutory considerations

A consent authority may modify the consent if it is satisfied the proposed modification application meets the requirements of section 4.55(1A) of the EP&A Act. An assessment of the proposed modification application against the requirements of section 4.55(1A) of the EP&A Act is included in **Table 1**.

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

| Section 4.55(1A) | Department's consideration |
|--|---|
| (a) The proposed modification is of minimal environmental impact | As discussed in Section 5 of this report, the potential environmental impacts arising from the proposal are minor in nature. |
| (b) The development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified. | The amended proposal is substantially the same development as that originally approved. |
| (c) The application has been notified in accordance with the regulations. | Section 4 of this report demonstrates the modification applications followed the consultation requirements as outlined in the EP&A Regulation. |
| (d) Any submission made concerning the proposed modification has been considered. | Submissions have been considered in Section 4 and 5 of this report. |

Under section 4.55(3) of the EP&A Act, the consent authority must consider the matters referred to in section 4.15(1) of relevance to the development. **Table 2** identifies the matters for consideration under section 4.15(1) of the EP&A Act that apply to the proposed modification.

Table 2 | Consideration of the matters listed under Section 4.15(1) of the EP&A Act

| Section 4.15(1) Matters for consideration | Department's consideration |
|--|--|
| (a)(i) any environmental planning instrument | The proposed modifications are consistent with the relevant EPIs as addressed in this report. |
| (a)(ii) any proposed instrument | The proposed modifications are consistent with the relevant draft EPIs |
| (a)(iii) any development control plan | Under the State Environmental Planning Policy (Planning Systems) 2021, DCPs do not apply to SSD. |
| (a)(iiia) any planning agreement | Not applicable. |
| (a)(iv) the regulations | The applications satisfactorily meet the relevant requirements of the EP&A Regulation, including the procedures relating to applications, the requirements for notification, and fees as addressed in Section 4 . |
| (b) the likely impacts of that development including environmental impacts on both the | The Department considers the likely impacts of the proposed modifications acceptable and have been appropriately addressed in Section 5 . |

natural and built environments, and social and economic impacts in the locality,

| | |
|---|--|
| (c) the suitability of the site for the development | The site is suitable for the development. |
| (d) any submissions | Not applicable. |
| (e) the public interest | The Department considers the modified proposal to be in the public interest as it would facilitate the orderly and efficient construction of the student accommodation building. |

Environmental Planning Instruments

Controls considered as part of the assessment of the proposal are:

- State Environmental Planning Policy (Planning Systems) 2021
- State Environmental Planning Policy (Transport and Infrastructure) 2021
- State Environmental Planning Policy (Resilience and Hazards) 2021
- State Environmental Planning Policy (Biodiversity and Conservation) 2021
- State Environmental Planning Policy (Industry and Employment) 2021
- Sydney Local Environmental Plan 2012

The Department undertook a comprehensive assessment of the proposal against the relevant EPIs in its original assessment. Due to the minor nature of the modification application, the Department is satisfied the application remains consistent with the EPIs.

Appendix C – Modification instrument

The modification instrument can be found on the Department's website at:

<https://www.planningportal.nsw.gov.au/major-projects/projects/mod-6-extension-construction-hours-design-changes>