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Section 4.55(1A) Planning Report

Modification of Approved Carparks Development

St Augustine's College

Federal Parade, Brookvale

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1 Introduction

1.1 Commission

DFP has been commissioned by St Augustine's College to prepare a Planning Report to accompany a Section 4.55(1A) Modification Application (section 4.55 Application) to modify the approved demolition works, construction of two carparks and an increase in student numbers at an education establishment at Federal Parade, Brookvale (the site).

The site is zoned R2 Low Density Residential (the R2 Zone) under *Warringah Local Environmental Plan 2011* (the LEP).

The application is made pursuant to section 4.55(1A) of the *Environmental Planning and Assessment Act 1979* (EP&A Act) to modify Development Consent No. DA2021/2567 issued by Northern Beaches Council (Council) on 29 May 2023.

This section 4.55 Application seeks to modify a condition of development consent (Condition 17) in relation to requirements to amendments to the approved plans insofar as it related to a reduction in the height of fencing and gates within the front building zone.

1.2 Purpose of this Statement

The purpose of this report is to provide Council and relevant NSW State Government Agencies with the relevant information necessary to assess the proposed modifications pursuant to Part 4 of the EP&A Act and the *Environmental Planning and Assessment Regulation 2000* (the Regulation) and for Council to determine the application in accordance with section 4.55(1A) of the EP&A Act.

2 Site Context

2.1 Location

The main part of the College site is located at 37-41 Federal Parade, Brookvale. It comprises of two (2) allotments as seen in **Figure 1**. DA2020/1406 approved the use of 60 Federal Parade, Brookvale (Lot 13 DP 568333) as an educational establishment (ancillary administration) associated with the College. The location of 60 Federal Parade in relation to the main College campus is shown in **Figure 1**. **Figure 2** is an aerial photograph of the main campus, including 60 Federal Parade.

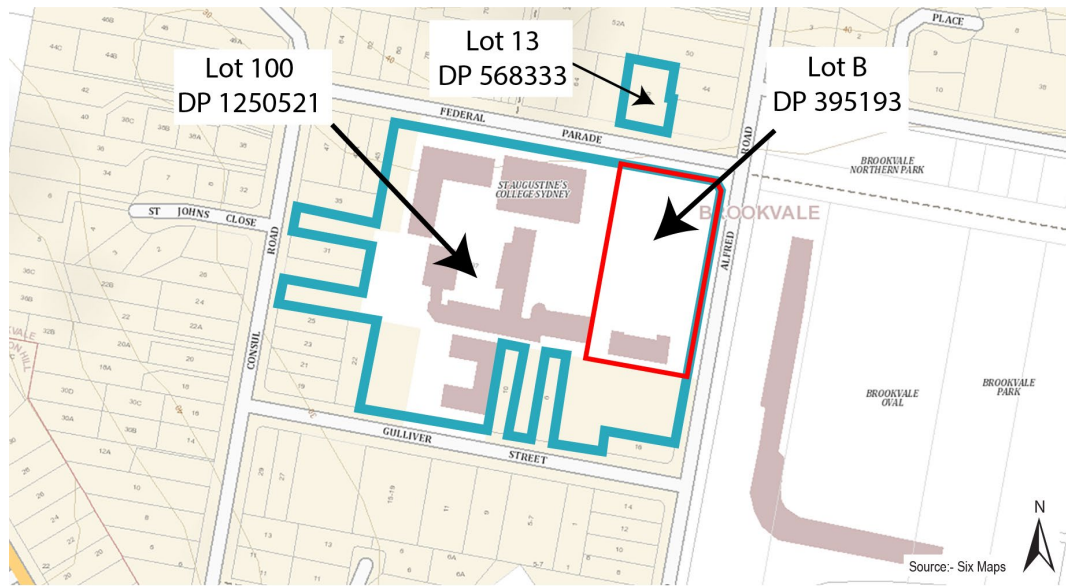


Figure 1 Site Location.



Figure 2 St Augustine's College Campus showing both allotments which comprise the site.

2.2 Site Description

The main part of the College site is legally described as Lot 100 in Deposited Plan (DP) 1250521 and Lot B in DP 395193. The real property description of 60 Federal Parade is Lot 13 DP 568333. An aerial image showing the configuration of the College's overall campus is shown in **Figure 3**, which also demonstrates how the College campus has expanded through the purchase of adjoining allotments.

2 Site Context



Figure 3 Aerial view of the site.

The main campus is bound by Federal Parade to the north, Alfred Road to the east, Gulliver Street to the south and Consul Road to the west. There is residential development to the north, west and east of 60 Federal Parade.

The main campus contains a range of buildings of varying size and scale with the majority of the College's open space located on the eastern side of the site.

The south-eastern corner of the main College site is currently a grassed playground area for students with a 2.2m iron bar fence (refer photograph at **Figure 4**).



Figure 4 Looking towards SE corner of College site from Gulliver Street

2 Site Context

2.3 Surrounding Development

The College is located at the interface of the Brookvale industrial precinct and the Brookvale residential area.

Established residential land uses are located to the north, west and south of the site. Further south is Brookvale Public School. Opposite the site to the east is Brookvale Oval with the Brookvale industrial precinct located approximately 200m to the south east.

Figure 5 is an aerial photograph of the main College site and surrounding development.



Figure 5 Surrounding Development

3 Proposed Modifications

3.1 Proposed Modifications

Condition 17

The section 4.55(1A) application seeks to amend Condition 17 in relation to requirements to amendments to the approved plans insofar as it related to a reduction in the height of fencing and gates within the front building zone.

Condition 17 of the consent is provided below.

17. Amendments to the Approved Plans:

The following amendments are to be made to the plans:

(a) 60 Federal Parade car park - The paved material finish is to be drivable grassed pavers within the 6.5m front setback, or two parking space widths; to coordinate with parking bays and the remaining paving is to be water permeable paving.

(b) Alfred Street / Gulliver Street car park - The paved material finish is to be drivable grassed pavers within the front setback to Gulliver Street, or one parking space widths; to coordinate with parking bays and the remaining paving is to be water permeable paving.

(c) The fence height and any gates to both car parks within the front building setback zone are to be a maximum 1.3m above footpath level.

(d) A gated pedestrian entry separated from the vehicular entry is to be provided. The gate is to be the same height as the front fence. No gates are to encroach over the property boundary when opening, closing, or stationary.

(e) A clear path of travel for pedestrians is to be provided from the public footpath.

The modifications are to be submitted to and approved by the Certifying Authority prior to the issue of a Construction Certificate.

It is requested that sub-condition 17(c) relating to the fence and gate height within the front building zones be deleted to enable a fence and gate height of up to 2.2 metres to match the existing fencing around large parts of the school campus (see **Figure 6**).



Figure 6 Existing 2.2m iron fencing located at the school boundary on Alfred Road

4 Statutory Provisions

4.1 General

Section 4.55 of the EP&A Act contains the provisions that must be considered by a consent authority in determining an application to modify a Notice of Determination. 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 modification proposed is considered to be minor in nature and have only minimal environmental impact.

In addition to the EP&A Act, clause 115 of the *Environmental Planning and Assessment Regulation 2000* (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 in the following subsections.

4.2 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 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:”

4.2.1 Minimal Environmental Impact (section 4.55(1A)(a))

“(a) It is satisfied that the proposed modification is of minimal environmental impact”.

The modification relates only to an increase in the front fencing and gates of the two proposed car parks to match existing fencing around parts of the school site. The modification proposed is considered to be minor in nature and have only minimal environmental impact.

4.2.2 Substantially the Same Development (section 4.55(1A)(b))

“(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 only to an increase in the front fencing and gates of the two proposed car parks. The development is substantially the same development as the development for which the consent was originally granted.

4.2.3 Notification (section 4.55(1A)(c))

“(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 proposed modifications will have no notable amenity impacts and so it is anticipated that the modification application will have no cause to be notified.

4.2.4 Consideration of Submissions (section 4.55(1A)(d))

“(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 Council 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 5** of this submission.

4 Statutory Provisions

4.2.5 Matters for Consideration and Reasons for Granting Consent

Section 4.55(3) of the EP&A Act requires that such of the matters referred to in section 4.15(1) of the EP&A Act as are of relevance to the proposed modification must be taken into consideration in determining the application for modification. These relevant matters are addressed in **Section 5** of this Report.

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.

Council's development assessment report for the original DA stated that:

“Overall, the development (as amended and supplemented by the applicant) performs satisfactorily against the relevant planning and related controls, and subject to special and standard conditions, will not result in unreasonable impacts on adjoining or nearby properties, or the natural environment.”

4.3 Clause 115 of the EP&A Regulation 2000

Subclause 115(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 report and the accompanying application form.

5 Environmental Planning Assessment

The following subsections provide an environmental assessment of the proposed modifications in respect of the relevant matters for consideration under section 4.15(1).

The reason stated on the consent for Condition 17 is as follows:

Reason: To minimise the visual impact of development on and improve the visual quality of the streetscape and to aid water infiltration and protect the natural environment and to ensure that development maintains and enhances the security and safety of the community.

Visual impact

The proposed fencing would be a hollow light-weight iron rail fencing which is visually unobstructive and non-imposing.

No. 60 Federal Parade adjoins a tall timber paling fence which sits on top a rendered retaining wall (see **Figure 7**).



Figure 7 Existing fencing at 42 Alfred Road along the Federal Parade Boundary

No. 60 Federal Parade is immediately opposite the school's sports oval which is bounded by 2.2m high hollow light-weight iron rail fencing. It is proposed that this same fencing would be replicated along the frontage of 60 Federal Parade. This would sit lower than the adjoining timber at 42 Alfred Road.

The proposed fencing along the Gulliver Street car park frontages would match existing fencing along Gulliver Street and Alfred Road (see **Figure 6**).

Consistency of fencing style and height around the site would be visually cohesive with the established streetscape.

If fences to the frontage of the new car parks is limited to 1.3m, it will not provide sufficiently security for the School (as discussed below) and consideration may need to be given to the provision of a secondary line of fences outside of the front setback zones to ensure child safety and site security. It is considered that this duplication of fencing might result in a poorer design outcome.

Water infiltration and protect the natural environment

The proposed increase in the height of front fencing would have no impact on water infiltration or protection of the natural environment.

Security and safety

The proposed front fencing and associated gates are important for discouraging persons from entering the school site outside of designated entry points and outside of operational hours.

5 Environmental Planning Assessment

To maximise amenity to surrounding residents, appropriate fencing should be permitted that would better discourage trespassing and anti-social behaviour. This is particularly important for the front fencing along Gulliver Street where a reduction in the height of fencing would compromise the integrity of security for the whole main campus.

Increasing the front fencing from 1.3m (as required under Condition 17) to 2.2m (as proposed on the stamped landscape plans) would provide greater safety and security for the site.

The modification would have no more than a minimal environmental impact and accordingly, is considered to satisfy the requirements under section 4.55(1A) of the EP&A Act.

5.1 Planning Controls

The following subsections assess the proposal against the relevant provisions of applicable Environmental Planning Instruments (EPIs), Draft EPIs, Development Control Plans (DCPs), Planning Agreements and matters prescribed by the Regulation in accordance with section 4.15(1)(a) of the EP&A Act.

5.1.1 State Environmental Planning Policy No. 55 – Remediation of Land (SEPP 55)

The proposed development does not involve a change to the use of the sites. SEPP 55 matters have been previously considered in prior development applications relating to the sites and the *residential accommodation to educational establishment* development applications which have changed the use of the land.

It is considered that no further assessment of the proposed development under clause 7 of SEPP 55 is required.

5.1.2 State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017 (Education SEPP)

Clause 35 ‘*Schools—development permitted with consent*’ provides that development for the purpose of a school may be carried out by any person with development consent on land in a prescribed zone.

Both the main College campus and 60 Federal Parade are zoned *R2 Low Density Residential* under the Warringah Local Environmental Plan 2011 (see **Section 5.1.5** below). The R2 zone is a prescribed zone for the purposes of the Education SEPP. The development is therefore proposed pursuant to Clause 35(1).

Clause 35(6)(a) of the Education SEPP requires the determining authority to take into consideration the design quality of the development against the design quality principles in Schedule 4 of the SEPP.

The proposed increase in height of the front fencing to match existing fencing already located on site (around parts of the main school campus including opposite 60 Federal Parade) is appropriate for the local context and established streetscapes. The increase in fence and gate heights will provide greater security to the school campus to improve the durability and maintenance of the campus, and improve student safety. The proposed 2.2m fencing is light-weight and transparent to ensure it does not have any unreasonable adverse aesthetic or amenity impacts.

Clause 35(6)(b) of the Education SEPP requires the determining authority to take into consideration whether the development enables the use of school facilities to be shared with the community. No community use of the proposed car park facilities is proposed.

Clause 57 of the Education SEPP sets out provisions relating to traffic generating development. The height of the fencing would have no impact on traffic generation.

5.1.3 State Environmental Planning Policy (Coastal Management) 2018 (Coastal SEPP)

The Coastal SEPP commenced on 3 April 2018 and combines into one policy the following now repealed state environmental planning policies:

5 Environmental Planning Assessment

- SEPP 14 (Coastal Wetlands),
- SEPP 26 (Littoral Rainforests), and;
- SEPP 71 (Coastal Protection).

Clause 3 of the Coastal SEPP specifies that:

'The aim of this Policy is to promote an integrated and co-ordinated approach to land use planning in the coastal zone in a manner consistent with the objects of the Coastal Management Act 2016, including the management objectives for each coastal management area, by:

- (a) managing development in the coastal zone and protecting the environmental assets of the coast, and*
- (b) establishing a framework for land use planning to guide decision-making in the coastal zone, and*
- (c) mapping the 4 coastal management areas that comprise the NSW coastal zone for the purpose of the definitions in the Coastal Management Act 2016.'*

The maps accompanying the Coastal SEPP indicate that:

- There are no littoral rainforests or wetlands on, or within the vicinity of the site; and
- The nearest wetland is approximately 2.1km to the north-east of the site.

On this basis there will not be any impacts arising on environmental assets and the proposed development is considered to be consistent with the aims of the SEPP.

5.1.4 State Environmental Planning Policy (Koala Habitat Protection) 2019 (Koala SEPP)

Whilst the site is greater than 1Ha in area, it is not identified on the 'Koala Development Application Map'. There is no impact to native vegetation as a result of the proposed development. Therefore, no impact to koala habitat will arise as a result of the proposal taking place.

5.1.5 Warringah Local Environmental Plan 2011

Table 1 provides a summary assessment of the proposed development against the relevant provisions of the LEP.

Table 1 Assessment against Relevant Provisions of LEP		
Provision	Assessment	Consistent
2.2 – Zoning of land to which Plan applies	The proposed development is permissible within the R2 zone (albeit the proposal is made pursuant to the Education SEPP, see Section 5.1.2) and overall is consistent with the zone objectives, in particular the following: <i>'To enable other land uses that provide facilities or services to meet the day to day needs of residents.'</i>	Yes
2.3 – Zone objectives and Land Use Table		
4.3 – Height of buildings	Modification applies to fencing only and is limited to 2.2m in height	Yes
5.10 – Heritage conservation	The site does not contain any items of environmental heritage, nor is it located within a heritage conservation area. The proposed fencing would have no impacts on any heritage item.	Yes
6.2 – Earthworks	Modification applies to extending the height of approved fencing only	Yes
6.4 – Development on Sloping land	Whilst the site is mapped as an 'Area A' site on the landslip risk mapping, it is not considered that the properties on which the car parking	Yes

5 Environmental Planning Assessment

Table 1 Assessment against Relevant Provisions of LEP

Provision	Assessment	Consistent
	areas are proposed will be subject to a landslip risk.	

5.1.6 Warringah Development Control Plan 2011

Table 2 provides a summary assessment of the proposed development against the relevant provisions of the DCP.

Table 2 Assessment against Relevant Provisions of DCP

Provision	Assessment	Consistent
B5 – Side Boundary Setbacks	The DCP side boundary setbacks map indicates that both 60 Federal Parade and the south-eastern corner of the main College campus are subject to a 900mm side boundary setback. Both car parks have been provided with minimum setbacks of 2m to the adjoining property boundaries	Yes
B7 – Front boundary Setback	Both sites are subject to a 6.5m front setback. The objectives of the front setback controls are: <ul style="list-style-type: none"> To create a sense of openness. To maintain the visual continuity and pattern of buildings and landscape elements. To protect and enhance the visual quality of streetscapes and public spaces. To achieve reasonable view sharing. The front setback areas to both car parks are proposed to be landscaped. The proposed car parking areas achieve the objectives of the control.	No – Justifiably inconsistent The proposed fencing would be a hollow light-weight iron rail fencing which is visually unobstructive and non-imposing. The proposed fencing would match some existing fencing on the site and would be visually cohesive with the established streetscape.
C5 – Erosion and Sedimentation	Erosion and sediment control plans prepared by Core Project Consultants are included in the civil plan set that accompanied the original DA submission	Yes
C6 – Building over or adjacent to Constructed Council Drainage Easements	The car park on 60 Federal Parade is located over Council stormwater infrastructure. The proposed does not involve a building and the existing infrastructure will not be impacted by the proposed works.	Yes

5.2 Likely Impacts of the Development

An assessment of the likely impacts of the development has been undertaken in accordance with section 4.15(1)(b) of the EP&A Act.

For the reasons outlined in this report, the modification would have no more than a minimal environmental impact.

5.3 Suitability of the Site for Development

An assessment of the suitability of the site has been undertaken in accordance with section 4.15(1)(c) of the EP&A Act.

5 Environmental Planning Assessment

The site is considered suitable for the proposed 2.2m high fencing, consistent with existing fencing around parts of the school campus.

5.4 Public Interest

In accordance with section 4.15(1)(e) of the EP&A Act the consent authority to consider the public interest. The public interest is an overarching requirement, which includes the consideration of the matters discussed in this report. The proposed development is considered to meet the provisions of relevant environmental planning instruments and Council's DCP objectives, subsequently as these instruments and plans have been created having regard to the objects of the EP&A Act following community consultation, they are considered to express planning controls that seek to protect the public interest. The proposed development creates benefits for the local community by providing safe and secure education infrastructure.

Accordingly, it is considered that the proposal is not prejudicial to the public interest.

6 Conclusion

This report accompanies an application under section 4.55(1A) of the EP&A Act to modify Condition 17 of Development Consent No. DA2021/2567 (as modified under Mod2023/0314).

The proposal involves minor modifications to the height of proposed front fencing and gates at two new school car parks.

The new fencing would be visually cohesive with the established streetscape and would provide greater security to the school sites.

Accordingly, the proposed modifications are considered to be acceptable in this particular instance and can be approved by Council under section 4.55(1A).