

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2023/0531
Responsible Officer:	Michael French
Land to be developed (Address):	Lot B DP 395193, 24 Alfred Road BROOKVALE NSW 2100 Lot 100 DP 1250521, 37 - 43 Federal Parade BROOKVALE NSW 2100 Lot 13 DP 568333, 60 Federal Parade BROOKVALE NSW 2100
Proposed Development:	Modification of Development Consent Modification of Development Consent DA2021/2567 granted for Demolition works, construction of two carparks and an increase in student numbers at an educational establishment
Zoning:	Warringah LEP2011 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Land and Environment Court Action:	No
Owner:	The Trustees of the Order of Hermits of St Augustine
Applicant:	St Augustine's College Sydney

Application Lodged:	13/10/2023
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Refer to Development Application
Notified:	17/11/2023 to 01/12/2023
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	Nil
Recommendation:	Approval

PROPOSED DEVELOPMENT IN DETAIL

The amendment of Condition 17 of the parent application DA2021/2567. The condition reads as follows:

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.

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.

The applicant seeks to have sub-condition 17(c) relating to the fence and gate height within the front building setbacks to be altered to enable a fence and gate height of 2.2m.

ASSESSMENT INTRODUCTION

The application has been assessed in accordance with the requirements of the Environmental Planning and Assessment Act 1979 and the associated Regulations. In this regard:

- An assessment report and recommendation has been prepared (the subject of this report) taking into account all relevant provisions of the Environmental Planning and Assessment Act 1979, and the associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon the subject site and adjoining, surrounding and nearby properties;
- Notification to adjoining and surrounding properties, advertisement (where required) and referral to relevant internal and external bodies in accordance with the Act, Regulations and relevant Development Control Plan;
- A review and consideration of all submissions made by the public and community interest groups in relation to the application;
- A review and consideration of all documentation provided with the application (up to the time of determination);
- A review and consideration of all referral comments provided by the relevant Council Officers, State Government Authorities/Agencies and Federal Government Authorities/Agencies on the proposal.

SUMMARY OF ASSESSMENT ISSUES

Warringah Development Control Plan - D13 Front Fences and Front Walls

SITE DESCRIPTION

Property Description:	Lot B DP 395193 , 24 Alfred Road BROOKVALE NSW 2100 Lot 100 DP 1250521 , 37 - 43 Federal Parade
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	<p>BROOKVALE NSW 2100 Lot 13 DP 568333 , 60 Federal Parade BROOKVALE NSW 2100</p>
Detailed Site Description:	<p>The subject site consists of three (3) allotments.</p> <p>37-43 Federal Parade, Brookvale This site contains the main section of the St Augustine's College campus (Primary and Secondary school) and is located at 37-41 Federal Parade, Brookvale. The site comprises of one (1) allotment known as Lot 100 DP 1250521. The site is irregular in shape and adjoins Alfred Road, Gulliver Street, Federal Parade and Consul Road. The site has a surveyed area of 21700.0 m². The site is located in a R2 Low Density Residential pursuant to the Warringah Local Environmental Plan 2011.</p> <p>24 Alfred Road, Brookvale This site contains St Augustine's College Church and is located at 24 Alfred Road, Brookvale. The site comprises of one (1) allotment known as Lot B DP 395193. The site is irregular in shape and adjoins Alfred Road and Federal Parade. The site has a surveyed area of 6228.0 m². The site is located in a R2 Low Density Residential pursuant to the Warringah Local Environmental Plan 2011.</p> <p>60 Federal Parade, Brookvale This site has been approved as an educational establishment (ancillary administration) associated with St Augustine's College, and as a carpark under DA2021/2567. The site comprises of one (1) allotment known as Lot 13 DP 568333. The site is irregular in shape and adjoins Federal Parade. The site has a surveyed area of 909.0 m². The site is located in a R2 Low Density Residential pursuant to the Warringah Local Environmental Plan 2011.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by residential dwellings to the north, west and south of the subject site, and Brookvale Oval to the east.</p>

Map:



SITE HISTORY

The land has been used as St Augustine College for an extended period of time. A search of Council's records has revealed the following relevant history:

- DA2021/2567 dated 12 May 2023- Demolition works, construction of two carparks and an increase in student numbers at an educational establishment.
- Mod2023/0314 dated 22 July 2023- Modification of Development Consent DA2021/2567 granted for Demolition works, construction of two carparks and an increase in student numbers at an educational establishment.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

The relevant matters for consideration under the Environmental Planning and Assessment Act, 1979, are:

The application has been assessed in accordance with the requirements of the Environmental Planning and Assessment Act 1979 and the associated Regulations. In this regard:

- An assessment report and recommendation has been prepared and is attached taking into all relevant provisions of the Environmental Planning and Assessment Act 1979 and associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon all lands whether nearby, adjoining or at a distance;
- Consideration was given to all documentation provided (up to the time of determination) by the applicant, persons who have made submissions regarding the application and any advice given by relevant Council / Government / Authority Officers on the proposal;

In this regard, the consideration of the application adopts the previous assessment detailed in the

Assessment Report for DA2021/2567, in full, with amendments detailed and assessed as follows:

The relevant matters for consideration under Section 4.55(1A) of the Environmental Planning and Assessment Act, 1979, are:

Section 4.55(1A) - Other Modifications	Comments
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	<p>Yes</p> <p>The modification, as proposed in this application, is considered to be of minimal environmental impact for the following reasons:</p> <ul style="list-style-type: none"> - The proposal solely requests the alteration of condition 17 regarding the approved fence height. - The proposal will not have an adverse impact on surrounding and adjacent development.
(b) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and	<p>The consent authority can be satisfied that the development to which the consent as modified relates is substantially the same as the development for which the consent was originally granted under DA2021/2567 for the following reasons:</p> <ul style="list-style-type: none"> - The environmental impact of the development is similar to existing. - The proposal solely requests the alteration of condition 17 regarding the approved fence height.
(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 under section 72 that requires the notification or advertising of applications for modification of a development consent, and	The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021, and the Northern Beaches Community Participation Plan.
(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.	No submissions were received in relation to this application.

Section 4.15 Assessment

In accordance with Section 4.55 (3) of the Environmental Planning and Assessment Act 1979, in determining an modification application made under Section 4.55 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 relevant matters for consideration under Section 4.15 of the Environmental Planning and Assessment Act, 1979, are:

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	<p><u>Part 4, Division 2</u> of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clauses 36 and 94</u> of the EP&A Regulation 2021 allow Council to request additional information. No additional information was requested in this case.</p> <p><u>Clause 61</u> of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 2001: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Development Control Plan section in this report.</p> <p>(ii) Social Impact</p>

Section 4.15 'Matters for Consideration'	Comments
and economic impacts in the locality	The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 17/11/2023 to 01/12/2023 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

As a result of the public exhibition of the application Council received no submissions.

REFERRALS

Internal Referral Body	Comments
NECC (Flooding)	The proposal is for minor modifications to an existing development application at St Augustine's College, 0L Federal Parade, Brookvale. Specifically alterations of the height of fencing and car park paver. The proposed changes are minor and are not expected to affect the flood compatibility of the development with councils DCP and LEP. There are no objections subject to the retention of the conditions of consent from DA2021/2567 (as modified under Mod2023/0314).

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

All, Environmental Planning Instruments (SEPPs and LEPs), Development Controls Plans and Council

Policies have been considered in the merit assessment of this application.

In this regard, whilst all provisions of each Environmental Planning Instruments (SEPPs and LEPs), Development Controls Plans and Council Policies have been considered in the assessment, many provisions contained within the document are not relevant or are enacting, definitions and operational provisions which the proposal is considered to be acceptable against.

As such, an assessment is provided against the controls relevant to the merit consideration of the application hereunder.

State Environmental Planning Policies (SEPPs) and State Regional Environmental Plans (SREPs)

SEPP (Resilience and Hazards) 2021

Chapter 4 – Remediation of Land

Sub-section 4.6 (1)(a) of Chapter 4 requires the Consent Authority to consider whether land is contaminated. Council records indicate that the subject site has been used as an educational establishment for a significant period of time with no prior land uses. In this regard it is considered that the site poses no risk of contamination and therefore, no further consideration is required under sub-section 4.6 (1)(b) and (c) of this Chapter and the land is considered to be suitable for the current land use.

Warringah Local Environmental Plan 2011

Is the development permissible?	Yes
After consideration of the merits of the proposal, is the development consistent with:	
aims of the LEP?	Yes
zone objectives of the LEP?	Yes

Principal Development Standards

This Modification Application does not propose any changes that would alter/increase the existing Principal Development Standard calculations.

Compliance Assessment

Clause	Compliance with Requirements
5.3 Development near zone boundaries	Yes
6.2 Earthworks	Yes

Warringah Development Control Plan

Built Form Controls

This Modification Application does not propose any changes that would alter/increase the existing Built Form Control calculations.

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
C3 Parking Facilities	Yes	Yes
C6 Building over or adjacent to Constructed Council Drainage Easements	Yes	Yes
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
D3 Noise	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	Yes	Yes
D8 Privacy	Yes	Yes
D10 Building Colours and Materials	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D13 Front Fences and Front Walls	Yes	Yes
D14 Site Facilities	Yes	Yes
D18 Accessibility and Adaptability	Yes	Yes
D20 Safety and Security	Yes	Yes
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E2 Prescribed Vegetation	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes

Detailed Assessment

D13 Front Fences and Front Walls

Clause D13 Front Fences and Front Walls requires the following:

- 1. Fences, including side fences, located within the street setback area are to be compatible with the existing streetscape character.*
- 2. Where a solid fence is required it is to be articulated to provide visual interest and set back to allow for landscaping to soften and screen the appearance of the fence.*
- 3. Fences located within the front building setback area are to complement the existing streetscape character.*
- 4. Fences are to be constructed to allow casual surveillance, except where there is excessive noise.*
- 5. Gates are not to encroach over the property boundary when opening or closing.*
- 6. Fences should complement the architectural period of the building.*

The applicant proposes that condition 17 be amended to allow a 2.2m fence height along the Alfred Street / Gulliver Street car park, and the Federal Parade carpark. The 2.2m fence height at the Alfred Street / Gulliver Street car park is supported as proposed, however, concern is raised regarding the visual impact of a 2.2m fence along the front boundary line of the Federal Parade Carpark. It has been deemed that this aspect of the proposal is not considered to wholly meet the stipulated requirements of *Clause D13 Front Fences and Front Walls*. To address this, condition 17 of the parent consent has been modified to read as follows:

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 the Alfred Street / Gulliver Street car park are to be a maximum 2.2m 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.*
- (f) The fence height and any gates to the Federal Street car park are to be a maximum 2.2m above footpath level, and set back a minimum of 1.5m from the front boundary line.*
- (g) Screen planting shall be inserted between the Federal Street Carpark front fence and the front boundary line. The selected planting is to comprise of native species capable of attaining a minimum height of 2.2m at maturity. This planting should screen the entire length of the fence, excluding the length of any gates, such that pedestrian and vehicle access is not restricted.*

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

The above-mentioned amendment to Condition 17 ensures that the amended proposal is considered to wholly align with the requirements and objectives specified in the subject clause.

The condition incorporates a 1.5m setback with screen planting in front of the 2.2m hollow iron rail fence, providing the necessary articulation to ensure that the proposal adequately maintains the streetscape character and residential feel on the northern side of federal parade. This not only provides visual interest but also allows for landscaping to soften the fence's appearance, to match the existing and proposed character of the streetscape. While the proposed fence height exceeds the initial requirement, the design choice of a hollow iron rail fence ensures casual surveillance, promoting safety without compromising visual permeability. The addition of the privacy screening will not be for the length of the gate/s, and therefore casual surveillance can be adequately maintained. Additionally, the consistency in fencing style and height contributes to visual cohesion with the existing fencing surrounding the college. The increased front fencing height to 2.2m is further justified on the grounds of enhanced safety and security, discouraging unauthorised access to the schools land outside of operational hours.

In summary, the proposed alteration to increase the front fence height to 2.2m is supportable with the addition of the amended condition. The condition of consent ensures justified compliance with the specified requirements of the subject clause.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

The proposal will not significantly affect threatened species, populations or ecological communities, or

their habitats.

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

The proposal is inconsistent with the principles of Crime Prevention Through Environmental Design.

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2022

Section 7.12 contributions were levied on the Development Application.

CONCLUSION

The site has been inspected and the application assessed having regard to all documentation submitted by the applicant and the provisions of:

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2021;
- All relevant and draft Environmental Planning Instruments;
- Warringah Local Environment Plan;
- Warringah Development Control Plan; and
- Codes and Policies of Council.

This assessment has taken into consideration the submitted plans, Statement of Environmental Effects, all other documentation supporting the application and public submissions, and does not result in any unreasonable impacts on surrounding, adjoining, adjacent and nearby properties subject to the conditions contained within the recommendation.

In consideration of the proposal and the merit consideration of the development, the proposal is considered to be:

- Consistent with the objectives of the DCP
- Consistent with the zone objectives of the LEP
- Consistent with the aims of the LEP
- Consistent with the objectives of the relevant EPIs
- Consistent with the objects of the Environmental Planning and Assessment Act 1979

It is considered that the proposed development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed.

RECOMMENDATION

THAT Council as the consent authority grant approval to Modification Application No. Mod2023/0531 for Modification of Development Consent Modification of Development Consent DA2021/2567 granted for Demolition works, construction of two carparks and an increase in student numbers at an educational establishment on land at Lot B DP 395193,24 Alfred Road, BROOKVALE, Lot 100 DP 1250521,37 - 43 Federal Parade, BROOKVALE, Lot 13 DP 568333,60 Federal Parade, BROOKVALE, subject to the conditions printed below:

Modification Summary

The development consent is modified as follows:

MODIFICATION SUMMARY TABLE

Application Number	Determination Date	Modification description
Mod2023/0531	The date of this notice of determination	Modification of Development Consent DA2021/2567 granted for Demolition works, construction of two carparks and an increase in student numbers at an educational establishment.
Mod2023/0314	19 July 2023	<p>Modification of Development Consent DA2021/2567 granted for Demolition works, construction of two carparks and an increase in student numbers at an educational establishment.</p> <p>Amendment of Condition 1 - <i>Approved Plans and supporting Documentation</i></p> <p>Amendment of Condition 2 to read as follows: <i>Maximum Student Numbers - construction of car parks</i></p> <p>The maximum student numbers are limited to a maximum 1200. The maximum student numbers may be increased to 1600 on completion of both the Federal Parade and Alfred Road carparks. On a trial basis the school can operate with a maximum number of 1560 students for period of up to 270 days from the date of this consent, subject to meeting the following criteria:</p> <p>(a) The construction of the Federal Parade and Alfred Road carparks are to be commenced within 90 days from the date the consent is issued via the NSW Planning Portal (29 May 2023).</p> <p>(b) Both carparks are to be fully constructed and operational within 180 days from the date of the commencement of construction, and</p> <p>(c) During the period from the date of the consent to the date of completion of the carparks, the traffic safety measures contained in the approved Traffic and Parking Management Plan are to be fully implemented.</p> <p>Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of final</p>

	<p>Occupation Certificate.</p> <p>Reason: To ensure there is sufficient carparking to support the increase in student enrolments and minimise impacts on the availability of on street carparking.</p>
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Modified conditions

A. Modify Condition 17 - Amendments to the Approved Plans, to read as follows:

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 the Alfred Street / Gulliver Street car park are to be a maximum 2.2m 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.
- (f) The fence height and any gates to the Federal Street car park are to be a maximum 2.2m above footpath level, and set back a minimum of 1.5m from the front boundary line.
- (g) Screen planting shall be inserted between the Federal Street Carpark front fence and the front boundary line. The selected planting is to comprise of native species capable of attaining a minimum height of 2.2m at maturity. This planting should screen the entire length of the fence, excluding the length of any gates, such that pedestrian and vehicle access is not restricted.

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

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.

In signing this report, I declare that I do not have a Conflict of Interest.

Signed



Michael French, Planner

The application is determined on 21/12/2023, under the delegated authority of:



Daniel Milliken, Manager Development Assessments