

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2023/0262
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Responsible Officer:	Dean Pattalis
Land to be developed (Address):	Lot 13 DP 1083731, 5 Forest Road WARRIEWOOD NSW 2102
Proposed Development:	Modification of Development Consent DA2021/2083 granted for Increase in student numbers at an existing educational establishment from 850 students to 1100 students
Zoning:	SP2 Infrastructure
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Land and Environment Court Action:	No
Owner:	Trustees of the Roman Catholic Church
Applicant:	Trustees of the Roman Catholic Church

Application Lodged:	18/05/2023
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Refer to Development Application
Notified:	03/07/2023 to 17/07/2023
Advertised:	Not Advertised
Submissions Received:	6
Clause 4.6 Variation:	Nil
Recommendation:	Approval

PROPOSED DEVELOPMENT IN DETAIL

The application proposes to modify the conditions of consent under DA2021/2083 including the following:

- Delete Condition 2. Footpath Construction
- Amend Condition 5. Footpath Construction

The modification to the conditions reflects recent written correspondence that has taken place between the applicant and Council's Traffic Team.

The modification to condition 5 as proposed in the Statement of Modification prepared by Urbis (dated 10 May 2023) has been slightly amended as per recommendation from Council's Traffic Engineer.

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

There are no assessment issues.

SITE DESCRIPTION

Property Description:	Lot 13 DP 1083731 , 5 Forest Road WARRIEWOOD NSW 2102
Detailed Site Description:	<p>The subject site consists of one allotment located on the western end of Forest Road.</p> <p>The site is irregular in shape with a frontage of approximately 165m along Forest Road and a depth of approximately 214m. The site has a surveyed area of 51470m². The site is located within the SP2 Infrastructure zone</p> <p>The site currently accommodates Mater Maria Catholic College which comprises of ten buildings including administration, classrooms, a lecture theatre, a gymnasium, and a library. Vehicle and pedestrian access to the College is via Forest Road and Angaphora Circuit.</p> <p>The site contains undeveloped areas of native bushland to the west, north and south of the established building elements. Fern Creek traverses the southern portion of the site. There are no known threatened species on the site.</p> <p>The site is located within the Warriewood Valley Urban Land</p>

Release Area. The locality is characterised by a mix of residential, retail, commercial, industrial, recreational, and educational land uses.

Map:



SITE HISTORY

The land has been used for educational establishment purposes for an extended period of time.

The original consent subject to this modification application (**DA2012/2083**) gained consent for an increase in student numbers at an existing educational establishment from 850 students to 1100 students. The application was approved subject to deferred commencement conditions of consent on 2 November 2022 by Northern Beaches Local Planning Panel.

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 DA2021/2083, 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
<p>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:</p>	
<p>(a) it is satisfied that the proposed modification is of minimal environmental impact, and</p>	<p>Yes The modification, as proposed in this application, is considered to be of minimal environmental impact for the following reasons:</p> <p>No physical works or changes to the approved works under the original consent are proposed as a result of this modification. The application proposes to modify conditions of consent only.</p>
<p>(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>	<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 DA2021/2083 for the following reasons:</p> <p>No physical works or changes to the approved works, apart from those related to traffic outside the site, under the original consent are proposed as a result of this modification. The application proposes to modify conditions of consent only, which includes changes to approved works in relation to student pick-up and drop-off.</p> <p>The consent authority is 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 DA2021/2083.</p>
<p>(c) it has notified the application in accordance with:</p> <p>(i) the regulations, if the regulations so require,</p> <p>or</p> <p>(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</p>	<p>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.</p>
<p>(d) it has considered any submissions made concerning the proposed</p>	<p>No submissions were received in relation to this application.</p>

Section 4.55(1A) - Other Modifications	Comments
modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.	

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	Pittwater 21 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>Clause 29</u> of the EP&A Regulation 2021 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</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 - 1991: The Demolition of Structures. This clause is not relevant to this application.</p> <p><u>Clauses 62 and/or 64</u> of the EP&A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has been addressed via a condition of consent.</p>

Section 4.15 'Matters for Consideration'	Comments
	<p>Clause 69 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>Clause 69 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>
<p>Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality</p>	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Pittwater 21 Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(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.</p>
<p>Section 4.15 (1) (c) – the suitability of the site for the development</p>	<p>The site is considered suitable for the proposed development.</p>
<p>Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs</p>	<p>See discussion on “Notification & Submissions Received” in this report.</p>
<p>Section 4.15 (1) (e) – the public interest</p>	<p>No matters have arisen in this assessment that would justify the refusal of the application in the public interest.</p>

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The original application DA2021/2083 was referred to the NSW RFS as integrated development. The NSW RFS issued a bush fire safety authority, subject to conditions. The recommendations of the Bush Fire Report, along with the conditions from the NSW RFS as part of the bush fire safety authority, were recommended as conditions of consent and remain relevant to this modification consent.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 03/07/2023 to 17/07/2023 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 process council is in receipt of 6 submission/s from:

Name:	Address:
Zamri Burns	16 / 13 - 19 Angophora Circuit WARRIEWOOD NSW 2102
Ms Susan Ruth Jenkins	31 / 2 Forest Road WARRIEWOOD NSW 2102
Debra Fowler	6 / 25 Angophora Circuit WARRIEWOOD NSW 2102
Mr Craig Everett	19 / 13 - 19 Angophora Circuit WARRIEWOOD NSW 2102
Ruth Elizabeth Anne Westover	7 / 10 Angophora Circuit WARRIEWOOD NSW 2102
Mr Nicolaas Jacobus Holtzhausen	207/65-69 Lorikeet Grove WARRIEWOOD NSW 2102

Submissions from 6 unique objectors were received during the notification period.

It is noted however, 4 of these objectors opposed to the increase in number of students and the impact of this increase on the surrounding locality. The student number increase has already been approved and addressed under DA2021/2083 and is not relevant to this modification application.

The 2 remaining objectors raised the following concerns:

- **Impact of pedestrian crossing upon school driveway**

Comment:

Council's Traffic Engineer has reviewed the application in relation to impacts of the conditioned pedestrian crossing on surrounding infrastructure and raised no objection to approval.

- **Conditioned pedestrian crossing will not improve traffic flow**

Comment:

Council's Traffic Engineer has reviewed the application in relation to impacts of the conditioned pedestrian crossing on traffic flow in the locality and raised no objection to approval.

- **Removal of parking on Forest Road**

Comment:

No removal of parking is proposed on Forest Road under this modification application.

- **Requirement for school to provide supervisor at school driveway entrance to guide students**

Comment:

Issues in relation to staffing at the school should be raised internally with the institution.

- **Existing traffic or congestion issues including illegally parked vehicles or abandoned vehicles**

Comment:

Abandoned or illegally parked cars may be communicated to Council via a complaint on Council's website or through Council's customer service line.

REFERRALS

Internal Referral Body	Comments
NECC (Development Engineering)	The proposed modification of a footpath construction condition has no impact on development engineering conditons.
Road Reserve	There is little impact on existing road infrastructure.
Traffic Engineer	<p>There are no traffic engineering objections to the removal of condition 2 of the consent and the replacement of condition 5 with a reworded condition as per the wording below which is similar to that outlined in the Urbis report dated 10 May 2023 supporting the applicant's Section 4.55 (1A) Application.</p> <p>"The applicant shall provide a safe pedestrian crossing facility between the pedestrian access point at the College and the northern footpath on Forest Road, east of the driveway serving No. 2 Forest Road. This facility is to include, but not limited to, signage, line marking and kerb blisters to ensure compliance with the requirements of AS 1742.10-2009 Manual of Uniform Traffic Control Devices - Pedestrian Control and Protection.</p> <p>The design and construction shall be in accordance with Council's standard specifications.</p> <p>Detailed designs demonstrating compliance are to be submitted to and approved by Council through an application to the Northern Beaches Council Local Traffic Committee.</p> <p>Reason: To facilitate drop-off/pick-up activity and to ensure pedestrian safety."</p>

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 (Transport and Infrastructure) 2021

Part 3.4 - SCHOOLS

Part 3.4, Section 3.36 of Chapter 3 stipulates that:

(6) Before determining a development application for development of a kind referred to in subclause (1), (3) or (5), the consent authority must take into consideration—

(a) the design quality of the development when evaluated in accordance with the design quality principles set out in Schedule 8, and

(b) whether the development enables the use of school facilities (including recreational facilities) to be shared with the community.

Comment:

The original application granted consent for an increase in student numbers with no physical works proposed, however physical works were required as per the final conditions of consent. This modification application proposes to modify conditions of consent in relation to traffic matters, and therefore the design quality principles set out in Schedule 4 do not apply and there is no change in the school facilities proper.

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 for educational facility purposes 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 educational facility land use.

Pittwater Local Environmental Plan 2014

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

Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
5.10 Heritage conservation	Yes
5.21 Flood planning	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.4 Floodplain risk management	Yes
7.6 Biodiversity protection	Yes
7.7 Geotechnical hazards	Yes
7.10 Essential services	Yes

Pittwater 21 Development Control Plan

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.14 Warriewood Locality	Yes	Yes
A4.16 Warriewood Valley Locality	Yes	Yes
B3.1 Landslip Hazard	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B3.11 Flood Prone Land	Yes	Yes
B4.15 Saltmarsh Endangered Ecological Community	Yes	Yes
B4.18 Heathland/Woodland Vegetation	Yes	Yes
B5.15 Stormwater	Yes	Yes
B6.3 Off-Street Vehicle Parking Requirements	Yes	Yes
C6.5 Utilities, Services and Infrastructure Provision	Yes	Yes
D14.1 Character as viewed from a public place	Yes	Yes

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 consistent with the principles of Crime Prevention Through Environmental Design.

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;
- Pittwater Local Environment Plan;
- Pittwater 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. Mod2023/0262 for Modification of Development Consent DA2021/2083 granted for Increase in student numbers at an existing educational establishment from 850 students to 1100 students on land at Lot 13 DP 1083731,5 Forest Road, WARRIEWOOD, subject to the conditions printed below:

Modification Summary

The development consent is modified as follows:

A. Modify Condition 5. Footpath Construction to read as follows:

The applicant shall provide a safe pedestrian crossing facility between the pedestrian access point at the College and the northern footpath on Forest Road, east of the driveway serving No. 2 Forest Road. This facility is to include, but not limited to, signage, line marking and kerb blisters to ensure compliance with the requirements of AS 1742.10-2009 Manual of Uniform Traffic Control Devices - Pedestrian Control and Protection.

The design and construction shall be in accordance with Council's standard specifications.

Detailed designs demonstrating compliance are to be submitted to and approved by Council through an application to the Northern Beaches Council Local Traffic Committee.

Reason: To facilitate drop-off/pick-up activity and to ensure pedestrian safety.

B. Delete Condition 2. Footpath Construction.

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

Signed



Dean Pattalis, Planner

The application is determined on 20/07/2023, under the delegated authority of:



Steven Findlay, Manager Development Assessments