

## NORTHERN BEACHES COUNCIL ASSESSMENT REPORT

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| <b>Panel Reference</b>  | PPSSNH-160 Northern Beaches  |
| <b>DA Number</b>  | MOD2019/0627   |
| <b>LGA</b>  | Northern Beaches Council   |
| <b>Proposed Development</b>   | Modification to DA2015/0558 granted for Staged Development for new classrooms and ancillary works and staged increase in student numbers at John Colet School  |
| <b>Street Address</b>   | Lot 101 in DP 874509, (No. 8) Wyatt Avenue, Belrose  |
| <b>Applicant/Owner</b>  | Templum Design Architects  |
| <b>Date of DA lodgement</b>   | 11 December 2019   |
| <b>Number of Submissions</b>  | 11   |
| <b>Recommendation</b>   | Approval   |
| <b>Regional Development Criteria (Schedule 7 of the SEPP (State and Regional Development) 2011)</b> | Modification to Regional Panel Consent DA2015/00558 with more than ten (10) submissions  |
| <b>List of all relevant s4.15(1)(a) matters</b>   | <ul style="list-style-type: none"> <li>• Environmental Planning and Assessment Act 1979</li> <li>• Environmental Planning and Assessment Regulation 2000</li> <li>• Warringah Local Environmental Plan 2000</li> </ul> |
| <b>List all documents submitted with this report for the Panel's consideration</b>                  | <p>Attachment 1 – Modified Draft Conditions</p> <p>Attachment 2 – Original Consent and Approved Plans</p> <p>Attachment 3 – Plans of Proposed Modification</p>   |
| <b>Clause 4.6 requests</b>  | Not Applicable   |
| <b>Summary of key submissions</b>   | Inconsistency with the requirements of the C8 Belrose North locality of WLEP 2000; No-compliance with Built Form Controls; Adverse impact on surrounding road network; impact on local residential amenity             |
| <b>Report prepared by</b>   | Nic England – Planner  |
| <b>Report date</b>  | 28 October 2020  |

### Summary of s4.15 matters

Have all recommendations in relation to relevant s4.15 matters been summarised in the Executive Summary of the assessment report?

**Yes**

### Legislative clauses requiring consent authority satisfaction

Have relevant clauses in all applicable environmental planning instruments where the consent authority must be satisfied about a particular matter been listed, and relevant recommendations summarized, in the Executive Summary of the assessment report?

**Yes**

*e.g. Clause 7 of SEPP 55 - Remediation of Land, Clause 4.6(4) of the relevant LEP*

#### Clause 4.6 Exceptions to development standards

If a written request for a contravention to a development standard (clause 4.6 of the LEP) has been received, has it been attached to the assessment report?

**Not  
Applicable**

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#### Special Infrastructure Contributions

Does the DA require Special Infrastructure Contributions conditions (S7.24)?

**Not  
Applicable**

*Note: Certain DAs in the Western Sydney Growth Areas Special Contributions Area may require specific Special Infrastructure Contributions (SIC) conditions*

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#### Conditions

Have draft conditions been provided to the applicant for comment?

**Yes**

*Note: in order to reduce delays in determinations, the Panel prefer that draft conditions, notwithstanding Council's recommendation, be provided to the applicant to enable any comments to be considered as part of the assessment report*

#### Executive Summary

The proposal seeks to modify Staged development consent No.DA2015/0558 issued by the then Joint Regional Planning Panel on 18 May 2015 for "Staged Development for new classrooms and ancillary works and staged increase in student numbers at John Colet School".

The proposed modification seeks to modify Stages "Q" and "L" for a revised Stage Q of the staged consent, which will enlarge the western extension of the existing Chisholm House school building. No increase in the maximum number of approved students (350) is proposed. The applicant has also lodged a specific development application (DA2019/1420), which is currently under assessment by Council.

The modification will enlarge the approved 1<sup>st</sup> floor classrooms by approximately 100m<sup>2</sup> and add a new ground floor art room, 140m<sup>2</sup> in area. Corresponding increases in the overall building height, front boundary setback and side boundary setback will result from the proposed modifications.

During public notification, eleven (11) submissions were received. Issues raised in these submissions ranged from: consistency with objectives and requirements of Council's policies; impact on parking and traffic; and general residential amenity.

The proposed modification will result in non-compliances with the relevant built form controls relating to: Building Height; Front Setback; and Side Setback. A detailed assessment of these non-compliances has found that proposal will still be consistent with the requirements of Council policy and no adverse impact on the amenity of the surrounding area and residents will result from these proposed modifications.

Accordingly, this report recommends that approval be granted to this application in accordance with the amended conditions provided in Attachment 1.

## PROPOSED DEVELOPMENT IN DETAIL

The application is made pursuant to Section 4.55(2) of the Environmental Planning & Assessment Act 1979 and seeks to modify the original consent DA2015/0558 as it related to stage “Q” which adjoins the western boundary of the site.

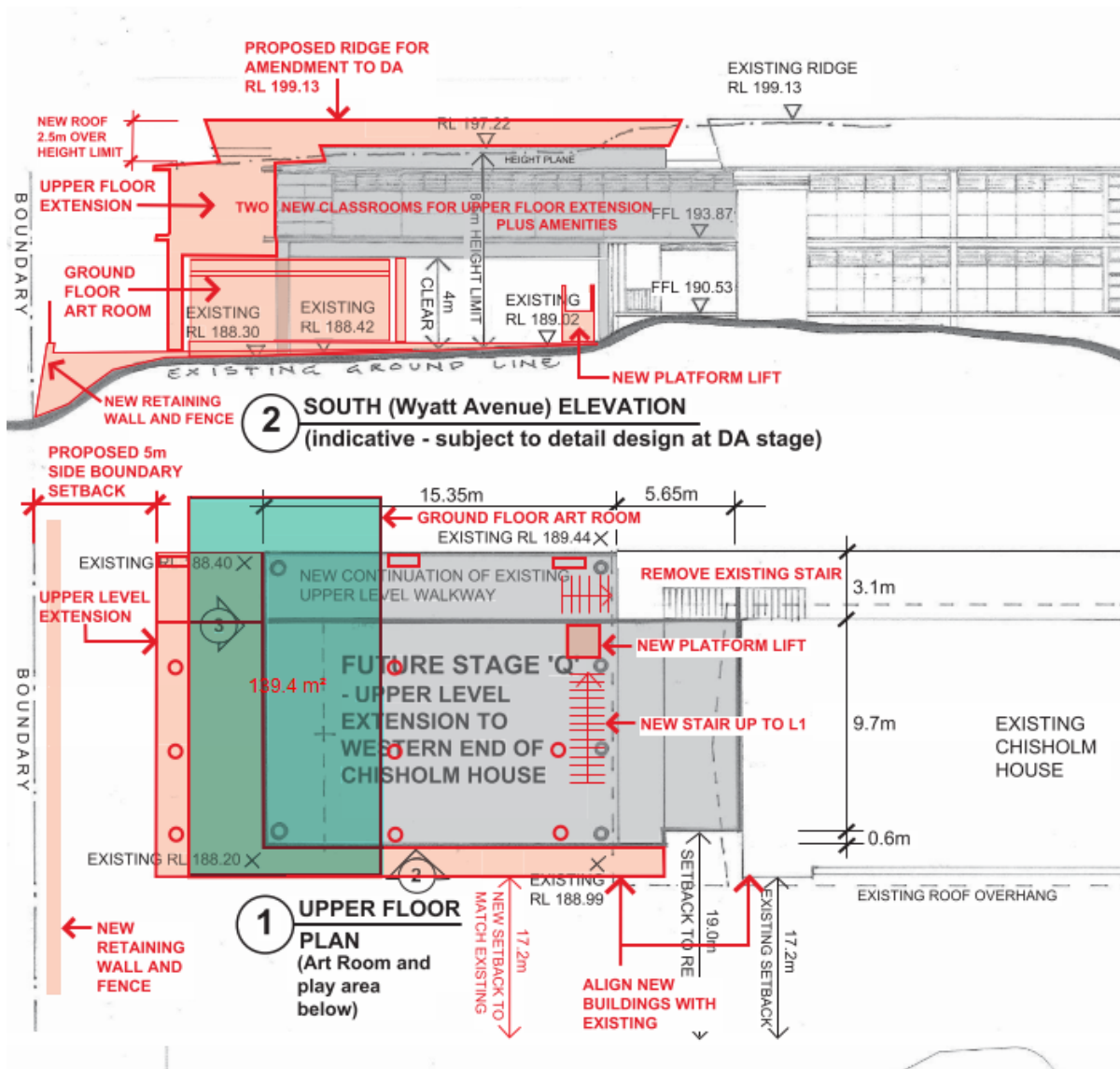
Building Q was originally approved as a cantilevered 1<sup>st</sup> floor extension to the existing Chisholm House.

In summary, the modification will consist of:

- moving the building 5m closer to the western side boundary;
- positioning the building 1.2m closer to the south front boundary; and
- raising the overall height of the building by 1.9m.

The 1<sup>st</sup> floor classroom area will be increased by approximately 100m<sup>2</sup>. The ground level underneath the 1<sup>st</sup> floor, approved as vacant, will be partly infilled by a 140m<sup>2</sup> art room. Detailed landscaping works are also proposed on the western boundary adjoining the revised building.

An excerpt of the plans provided below demonstrates the proposed modification:



Further modifications to the conditions of consent are as follows:

*No.1(a) Approved Plans and Supporting Documentation*

Update of approved plans to reflect modified development.

*No.5 Staged Development Consent – Future Stages*

Update the list of stages on the approved plan “F to Q” to incorporate stage “L” (approved as as landscaped area along the western boundary) into stage “Q”.

The proposal does not involve any increase to staff and/or student numbers.

*No.8 Policy Controls (Warringah Section 94A Development Contribution Plan)*

Amend the contribution to reflect the staged nature of the consent and specify an amount that relates to Stages A to E (“1”) that was approved in DA2015/0558.

In association with the proposed modification to the Staged consent is a development application, DA2019/1420, which relates to Stage “Q” for extension to Chisholm House, for the purposes of two (2) classrooms and an art room.

## **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 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 provided by relevant Council / Government / Authority Officers on the proposal.

## **SITE DESCRIPTION**

The land subject to the application is located on the northern side of Wyatt Avenue, known as Lot 101 in DP 8747509, No. 8 Wyatt Avenue, Belrose.

The land is used for the purposes of a primary school, known as the “John Colet School”. The school occupies a total of seven (7) buildings, with parking for 19 vehicles. The school currently has approval for a maximum of 225 students.

The site possesses significant areas of vegetation, particularly adjoining the northern rear boundary, where approximately 400m<sup>2</sup> of remnant vegetation is situated.

Development adjoining the site consists of the following:

- Undeveloped Crown land to the north of the site;
- Unformed road reserve immediately adjacent the western boundary;
- Residential dwellings to the east and west; and
- Public open space (Wyatt Reserve and sportsfields) to the south of the site on the opposite side of Wyatt Avenue.

## **RELEVANT BACKGROUND**

A search of Council records reveals that the site has been the subject of numerous applications since approval was granted on 15 March 1995 under Consent No. 95/135 for the occupation of the existing premises as an educational establishment.

Applications/ consents of most relevance to the subject application include the following:

DA2015/0558: consent for “Staged Development for new classrooms and ancillary works and staged increase in student numbers at John Colet School” which was approved by the then Sydney East Joint Regional Planning Panel on 18 May 2016. This consent is the subject of the proposed modification.

The consent was issued under the Staged development provisions of the then Section 83B of the Environmental Planning & Assessment Act 1979. It gave conceptual consent to future upgrades and further intensification of the school land use, over eleven (11) stages, “A” to “Q”.

Specifically, this consent permitted Stage “1” (A to E), for 2 new classrooms and various site works and an increase in students from 225 to 285. This is the maximum number of students currently permitted on the land.

The consent allowed a further 350 students and 30 staff, which was to be subject of future application/s.

PLM2019/0056: A pre-lodgement meeting was held on 16 April 2019, to discuss proposed modifications to the existing Staged consent.

The proposal included non-compliances to the front, side setbacks and floor-to-ceiling heights.

The Notes provided to the applicant following the meeting concluded that the proposed modifications could be supported subject to design amendments being made on the recommendation of Council’s Urban Designer, specifically in regard to issues of the treatment of the western façade which is subject to the non-compliance with the western (side) setback. Specific comments in relation to this façade include:

*“The drawings submitted for the pre-lodgement meeting show little detail and articulation to the treatment of the western façade. Acknowledging that there are constraints in that this elevation faces west and has the height compounded / exaggerated by the fall in topography at this point the design development requires a careful articulation of materials and through modulation softening or layering of materiality; open/closed, transparent/opaque strategies to reduce the impacts of the bulk and form of the end of the new building.*

*Strategies that comprise layering of material; glazing, battening or other such treatments that engage in a dialogue with the surrounding neighbourhood and context is highly encouraged.”*

DA2019/1420: A development application for Building Q, or what is in effect “Stage 2” of the Staged development consent, has been lodged concurrent with the proposed modification. This application is currently under assessment and is under the delegation of the Northern Beaches Local Planning Panel.

## **ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979 (EPAA)**

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 DA2015/0558, in full, with amendments detailed and assessed as follows:

The relevant matters for consideration under Section 4.55 (2) of the Environmental Planning and Assessment Act, 1979, are:

| Section 4.55 (2) - 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 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>Consideration of whether a development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted, Justice Bignold established the following test in the <i>Moto Projects (No 2) Pty Ltd v North Sydney Council</i> (1999) 106 LGERA 289 where His Honours states:</p> <p><i>"[54] The relevant satisfaction required by s96(2)(a) to be found to exist in order that the modification power be available involves an ultimate finding of fact based upon the primary facts found. I must be satisfied that the modified development is substantially the same as the originally approved development.</i></p> <p><i>[55] The requisite factual finding obviously requires a comparison between the development, as currently approved, and the development as proposed to be modified. The result of the comparison must be a finding that the modified development is "essentially or materially" the same as the (currently) approved development.</i></p> <p><i>[56] The comparative task does not merely involve a comparison of the physical features or components of the development as currently approved and modified where that comparative exercise is undertaken in some type of sterile vacuum. Rather, the comparison involves an appreciation, qualitative, as well as quantitative, of the developments being compared in their proper contexts (including the circumstances in which the development consent was granted)."</i></p> <p>The applicant has provided the following justification to support their argument that the modifications are substantially the same:</p> <ul style="list-style-type: none"> <li>• the proposed modification will not result in any change to the existing approved intensity of the approved land use in the original consent;</li> <li>• there will no specific amenity impacts on adjoining residences as a result of the proposed modification; and</li> <li>• the extent of the proposed modifications will not represent any substantial change to the overall built form and presentation of the approved development of the Staged masterplan.</li> </ul> <p>Reviewing the above comments and the court judgement by Justice Bignold established in the <i>Moto Projects (No 2) Pty Ltd v North Sydney Council</i> (1999) 106 LGERA 289 it is concurred that</p> |

| Section 4.55 (2) - Other Modifications  | Comments  |
|---|---|
|   | the proposed modification is consistent with the (original) consent and can be considered under Section 4.55 of the Act.  |
| (b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 5) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and | Development Application DA2015/0558 did not require concurrence from the relevant Minister, public authority or approval body.  |
| (c) it has notified the application in accordance with:<br><br>(i) the regulations, if the regulations so require, or<br><br>(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 2000 and Warringah Development Control Plan 2011. |
| (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.  | See discussion on "Notification & Submissions Received" in this report.   |

## 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 | None applicable.  |
| Section 4.15 (1) (a)(iii) – Provisions of any development control plan               | Part A7 (Notification) of the Warringah Development Control Plan applied at the time the proposal was notified. The proposal has been notified and advertised in accordance with the DCP.   |
| Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement                    | None applicable.  |
| Section 4.15 (1) (a)(iv) – Provisions of the regulations                             | <p>Division 8A of the EP&amp;A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p>Clauses 54 and 109 of the EP&amp;A Regulation 2000, Council requested additional information and has therefore considered the number of days taken in this assessment in light of this clause within the Regulations. No additional information was requested.</p> |



| Section 4.15 'Matters for Consideration'  | Comments  |
|---|---|
|   | <p>Clause 92 of the EP&amp;A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p>Clauses 93 and/or 94 of the EP&amp;A Regulation 2000 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> <p>Clause 98 of the EP&amp;A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This clause is not relevant to this application.</p> <p>Clause 98 of the EP&amp;A Regulation 2000 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> |
| <b>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</b> | <p>i) The environmental impacts of the proposed modification on the natural and built environment are addressed under the General Principles of Development Control in this report. In summary, the proposal is satisfactory with conditions, having regard to environmental impacts.</p> <p>(ii) The proposed modification will not have a detrimental social impact on the locality considering the educational character of the proposal.</p> <p>(iii) The proposed modification will not have a detrimental economic impact on the locality considering the mixed semi-rural uses within the surrounding locality and the existing and ongoing use of the site for educational purposes.</p>  |
| <b>Section 79C (1) (c) – the suitability of the site for the development</b>  | <p>The site is considered suitable for the proposed development.</p>  |
| <b>Section 79C (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs</b>  | <p>Refer to the previous discussion in Public Exhibition.</p>   |
| <b>Section 79C (1) (e) – the public interest</b>  | <p>Issues raised in the public interest have been addressed in this assessment and by existing conditions of development consent.</p> <p>No matters have arisen that would justify the refusal of the application in the public interest.</p> <p>The wider public interest is served by ensuring that the proposal is consistent with the relevant planning controls under WLEP 2000.</p>   |

## BUSHFIRE PRONE LAND

The site is located within bushfire prone land, however no changes are proposed to the general terms of approval as issued by NSWRFs in the original application.

## NOTIFICATION & SUBMISSIONS RECEIVED

The subject application has been publicly exhibited in accordance with the EPA Regulation 2000, Warringah Local Environment Plan 2000 and Warringah Development Control Plan.

As a result, the application was notified to 137 surrounding land owners and occupiers (and objectors to the original submission) for a period of not less than 21 days commencing on 11 January 2020 and ending on 8 February 2020. The application was also advertised in the Manly Daily for the same period. A second notification was undertaken between 21 April 2020 and ending on 23 May 2020, as result of amended plans.

Furthermore, a notice was placed upon the site.

A total of 11 submissions were received in response to the public exhibition of the application:

| Name:   | Address:  |
|---|---|
| Mr Philip Bloom                                 | C/- Stocklands Sheds Pty Ltd Po Box 159 KELLYVILLE NSW 2155 |
| Mr Ronald John Patton<br>Mrs Cynthia Joy Patton | 19 Wyatt Avenue BELROSE NSW 2085                            |
| Mr David Vaughan Berry                          | 22 Charleroi Road BELROSE NSW 2085                          |
| Ms Clare Danielle McElroy                       | 1 Wyatt Avenue BELROSE NSW 2085                             |
| Mrs Stephanie McLafferty                        | 9 Wyatt Avenue BELROSE NSW 2085                             |
| Blake Marc                                      | Address Unknown   |
| Belrose Rural Community Association Inc         | Po Box 224 BELROSE WEST NSW 2085                            |
| Barry Burton Yeomans<br>Beverly Ann Yeomans     | 15 Wyatt Avenue BELROSE NSW 2085                            |
| Mrs Anna-Louise Ainsworth                       | 10 Patrick Street BEACON HILL NSW 2100                      |
| Mr Richard John Barnett                         | 27 Cotentin Road BELROSE NSW 2085                           |
| Mr Ian Jon Berry                                | 14 Stratford Drive BELROSE NSW 2085                         |

The issues raised in the submissions have been summarised and are addressed below:

- There is not a sufficient kerb and gutter on the northern side of Wyatt Avenue, and during school functions cars park on the road reserve and hinder access to No.24 Wyatt Avenue. Approval should be conditional upon the provision of this infrastructure.*

Comment: The proposed modification relates to a minor modification to one stage of the overall Staged consent. The original consent required no upgrades to the surrounding areas infrastructure, specifically the surrounding road network and drainage system. Based on the modification being substantially the same as the original consent, it would not be reasonable to impose an additional condition that requires this infrastructure to be provided.

- Any application on the land would increase the level of traffic generated from the school, which would diminish the efficiency and safety of the local road network.*

Comment: The proposed modification substantially retains the nature of the original consent and no increase to students or staff beyond what is already approved, is proposed. Hence, there will be adverse impact on the safety and efficiency of the surrounding road network.

- The proposed modification would result in an adverse reduction in building setbacks and a loss of landscaped open space on the site.*

Comment: A discussion of the proposed modification in regard to the Built Form controls of WLEP 2000 is provided elsewhere in this report. In summary, the proposed setbacks will provide an adequate response to the existing character of the built form in the locality and there will remain adequate landscaped open space on the site to achieve the objectives of the control.

- *Traffic management measures and a traffic report required by condition 6 of the Staged consent have not been provided with the application.*

Comment: The applicant has provided an assessment from a qualified traffic engineer to determine the compliance of the Staged consent with the requirements of Condition 6. This condition required that all parking spaces and the one-way access road north of the staff common area be consistent with the relevant Australian Standards. This documentation demonstrates that the proposal is consistent with the requirements of this condition.

- *The application makes no comment on the number of students proposed and if it would exceed the maximum number of 350 students specified in the Staged consent.*

Comment: The proposed modification does not seek to modify the existing consent (condition No.7) which sets the maximum number of students at 350. This is stated on page 8 of the Statement of Modification provided with the application.

- *There is insufficient parking in the school to accommodate for the demands of staff parking, based on other independent sources of information relating to the level of staffing in the school.*

Comment: The development as approved provides adequate car parking spaces to accommodate the demands of students and staff. The proposed modification will not change this aspect of the approved development, hence there is adequate parking on the site to cater for the traffic generated.

- *The proposed works are not consistent with the Desired Future Character of the locality and is not a low impact, low intensity land use.*

Comment: A detailed consideration of the proposed modification in regard to the Desired Future Character of the C8 locality is provided elsewhere in this report. In summary, the proposed modification will retain the intensity of the approved land use and hence no adverse impact is caused in this regard.

- *The bulk and scale of the proposed development is not consistent with the locality or the objectives of the WLEP 2000.*

Comment: The proposed modification will result in a bulk and scale that is consistent with the surrounding locality and be typical of a low intensity, low impact land use as specified in the Desired Future Character of the locality.

- *Insufficient measures to protect the existing natural environment have been provided with the application.*

Comment: The proposed modification will have a very minor impact on the natural environment of the site as the area of landscaped open space that will be removed adjoining the western boundary is heavily modified and contains no significant area of habitat.

- *The application is not in the public interest as the proposal is motivated by profit and will result in adverse impacts on the adjoining built and natural environments.*

Comment: The impact of the proposed modification on the natural environment is not adverse and the commercial viability of the existing land use is not a relevant matter of consideration in the assessment of the proposed modification.

- *The application will result in adverse levels of illumination in evening periods to the adjoining dwelling at No.9 Wyatt Avenue.*

Comment: The existing school operates predominantly during the day and evening activities are infrequent. The proposed modification to “Q” is situated at least 50m from the adjoining residence at No.9 Wyatt Avenue and no adverse level of light spill is likely from this part of the site.

- *The application will not comply with the Front Setback built form control and adopting the same setback as the existing building is not adequate to justify the non-compliance.*

Comment: A complete discussion of the compliance with the Front Setback built form control is provided elsewhere in this report. In summary, the adoption of the existing front setback of Chisholm House for the “Q” extension provides a unified built form response to the existing streetscape and the context of the surrounding area is adequate to justify the non-compliance.

- *The application will not comply with the Building Height built form controls of WLEP 2000.*

Comment: A detailed consideration of the variation to the Building Height control is provided elsewhere in this report. In summary, the variation in the height is justified based on the existing built form of Chisholm House, the surrounding context of the streetscape and the absence of any adverse amenity impact on any adjoining residence.

- *The plans provided with the application are misleading and do not correctly represent the proposed modification.*

Comment: The plans provided are sufficient to demonstrate the nature of the proposed modification.

- *There is insufficient stormwater management provided.*

Comment: Council’s Development Engineers have advised that the existing stormwater management system on the land is adequate to accommodate the proposed modification.

- *The applicant claims that the proposed modifications are minor, however in nature they are major, particularly in relation to the non-compliances proposed.*

Comment: In the assessment of a modification to an existing consent, the critical test does not involve whether the modifications are either “minor” or “major” in nature, but whether the modification will constitute substantially the same development as that originally approved. In the context of the existing approved development, the proposed modifications have been found in this assessment to be substantially the same development as that approved.

## REFERRALS

## **External Referrals**

### ***Ausgrid***

The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.

### ***NSW Rural Fire Service (RFS)***

The proposal is a modification to an approved 'Integrated Development' pursuant to section 4.47 of the Environmental Planning and Assessment Act 1979. In this regard, a bushfire safety authority is required from the RFS under Section 100B of the Rural Fire Services Act 1997.

The application was referred to the NSW Rural Fire Service (RFS) for comment and concurrence. The RFS raise no objection to the proposed modification. It was further recommended that the Masterplan be upgraded to ensure that the internal access road within the site be able to comply with the emergency vehicle access standards within the guidelines *Planning for Bushfire Protection 2019*.

## **Internal Referrals**

### ***Building Assessment***

The application was referred to Council's Building Assessment division for consideration. The following comments have been provided:

*"The application has been investigated with respects to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of the development subject to inclusion of the attached conditions of approval and consideration of the notes below."*

The condition imposed by Council's Building Assessment division relates to fire safety matters which were already imposed on DA2015/0558. Therefore, the recommended condition has not been duplicated within the approval for this application.

### ***Development Engineering***

The application was referred to Council's Development Engineer for consideration. The following comments have been provided:

*"No objections are raised to the proposed modifications. No additional condition is required. The proposal is therefore supported."*

### ***Environmental Health***

The application was referred to Council's Environmental Health Officer for comment. The following comments were provided:

*"MOD2019/0627 seeks to vary the approved building envelope for Stage Q of DA2015/0558. Environmental Health has reviewed the relevant information and finds that the conditions in the DA are suffice for the proposal. No further conditions required."*

### ***Landscape Officer***

The application was referred to Council's Landscape Officer for consideration. The following comments have been provided:

*"The Arborist's Report and Landscape Plan provided with the application are noted. The works will require removal of 5 trees as identified in the Arborist's Report. The Landscape Plan indicates replacement tree planting to compensate for the tree removed. No objections are raised to the modification in relation to landscape issues subject to conditions as recommended. The proposal is therefore supported."*

### **Urban Design**

The application was referred to Council's Urban Designer for comment, which are provided below:

#### **"GENERAL COMMENTS**

*The proposed modifications as presented in the drawings represents an orderly and cohesive extension to the school, suggesting a cohesive built form outcome that is sympathetic to the existing buildings on the site.*

#### **HEIGHT OF BUILDINGS**

*The increase in the height is relevant to the overall built form, in particular the roof line/type with the revised drawings demonstrating an orderly outcome across the site with a consistent roof typology across the site.*

#### **SIDE SETBACK - Encroached Approx. 5m**

*The extension to the western end of the building encroaches the side setback. However it is considered the buffer between the building and the nearest neighbour provides sufficient setback at the point of the building extension.*

#### **FRONT SETBACK - Encroached approx. 2.5m**

*In considering the front setback zone encroachment it is assessed that a more orderly configuration of front building line, in line with those of the existing buildings presents a better built form outcome and planning across the site as it presents to the public realm.*

*The proposal is therefore supported."*

### **ENVIRONMENTAL PLANNING INSTRUMENTS (EPis)**

All Environmental Planning Instruments (SEPPs, REPs 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, REPs 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 acceptable against the applicable planning controls.

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

### **LOCAL ENVIRONMENTAL PLANS**

## **Warringah Local Environment Plan 2000 (WLEP 2000)**

The property is subject to Clause 1.3(1A) of the Warringah Local Environmental Plan 2011 and is classified as 'Deferred Land'. The development is therefore guided by the provisions of the Warringah Local Environment Plan 2000 and is located within the C8 Belrose North locality.

### **C8 Belrose North**

The Desired Future Character Statement for Locality C8 states:

*"The present character of Belrose North locality will remain unchanged except in circumstances specifically addressed as follows.*

*The natural landscape including landforms and vegetation will be protected and, where possible, enhanced. Buildings will be grouped in areas that will result in the minimum amount of disturbance of vegetation and landforms and buildings which are designed to blend with the colours and textures of the natural landscape will be strongly encouraged.*

*Development will be limited to new houses conforming with the housing density standards set out below and low intensity, low impact uses.*

*A dense bushland buffer will be retained or established along Forest Way. Fencing is not to detract from the landscaped vista of the streetscape.*

*Development in the locality will not create siltation or pollution of Middle Harbour."*

The subject application relates to a land use defined as a "primary school", which is a Category 3 land use in the locality. In the context of the existing consent, the application is considered an "existing Category 3 development" pursuant to Clause 16 of WLEP 2000.

Clause 16 of the WLEP 2000 states:

*"How is existing Category Three development dealt with?*

- (1) In this clause, existing Category Three development means development classified as Category Three that could have been lawfully carried out immediately before it became so classified, including development that could have been lawfully carried out at that time because it was an existing use, as defined in section 106 of the Act.*
- (2) Development applications for existing Category Three development consisting of:*
  - a) alterations or additions to, or the rebuilding of, a building, or*
  - b) the expansion or intensification of existing Category Three development. which, in the opinion of the consent authority, is of a minor nature and does not, to any significant extent, change the scale, size or degree of any building or land use, may be granted consent even if the development is not consistent with the desired future character of the locality.*
- (3) The provisions of clauses 14 and 15 do not apply to such applications."*

As stated previously, the proposed modification is considered to be substantially the same development as that originally approved. Following from this, the modification is considered to be an

expansion or intensification of an existing Category Three development which is of a minor nature and does not, to any significant or unreasonable extent, change the scale, size or degree of any building or land use.

In this regard, and subject to Clause 16(3), the development is not subject to Clause 14 and 15 and is not required to be referred to an independent public hearing (pursuant to Clause 15(2)).

Nonetheless, as the number of submissions received to the application exceed ten (10), and the original consent was determined through the Sydney North Joint Regional Planning Panel, the application has been referred to the Sydney North Planning Panel for determination.

### Built Form Controls (Development Standards)

The following table outlines compliance with the Built form Controls of the above locality statement:

| Built Form Control                    | Required                              | Approved                              | Proposed                              | Compliance  |
|---------------------------------------|---------------------------------------|---------------------------------------|---------------------------------------|---|
| <b>Housing Density</b>                | 1 dwelling per 20 hectares            | The proposal does not involve housing | The proposal does not involve housing | N/A   |
| <b>Building Height</b>                | 8.5 metres<br>7.2m (floor to ceiling) | 8.8m                                  | 10.2m<br>Not specified                | <b>No</b><br><b>No</b><br><br>See discussion under Clause 20 below. |
| <b>Front Building Setback</b>         | Wyatt Avenue: 20m                     | 18.4m                                 | 17.2m                                 | <b>No</b>   |
| <b>Rear and Side Building Setback</b> | 10m                                   | 10m                                   | Rear: No change<br>Side (west): 5m    | No change<br><b>No</b><br><br>See discussion under Clause 20 below. |
| <b>Bushland Setting</b>               | 50% (5,895m <sup>2</sup> )            | 50.5% (7,663.5m <sup>2</sup> )        | 56% (6,560m <sup>2</sup> )            | Complies  |
| <b>Extractive Industry</b>            | Applies to quarry sites               |                                       | Not applicable                        | N/A   |
| <b>National Park Setback</b>          | N/A                                   |                                       | N/A                                   | N/A   |

## CLAUSE 20

### Clause 20(1) stipulates:

*“Notwithstanding clause 12 (2) (b), consent may be granted to proposed development even if the development does not comply with one or more development standards, provided the resulting development is consistent with the general principles of development control, the desired future character of the locality and any relevant State environmental planning policy.”*

### Building Height

#### Description of non-compliance

The non-compliance occurs relates to an overall building height of 10.2m.

This represents a variation of 17%.

#### Merit consideration



With regard to the consideration for a variation, the development is considered against the underlying Objectives of the Control as follows:

- *Ensure that development does not become visually dominant by virtue of its height and bulk.*

The overall height of the proposed modification to Stage Q has been predicated on the existing height of the Chisholm House building. By adopting this height, the extension integrates with the existing built form and hence when viewed from Wyatt Avenue is not considered to become visually dominant by virtue of its height and bulk.

The development is considered to satisfy this objective.

- *Preserve the amenity of surrounding land.*

As noted elsewhere in this report, the extension is located adjacent to non-residential uses (i.e. predominantly open space and bushland areas) with the only exception being a residential property which is located approximately 50m to the south-east across Wyatt Avenue.

In this regard, the increased building height would not create any adverse or unreasonable amenity impact to surrounding land.

The development is considered to satisfy this objective.

- *Ensure that development responds to site topography and minimises excavation of the natural landform.*

The extension occurs at the front and side of the existing building and does not involve any significant excavation works, apart from the minor terracing works for the landscaping.

The development is considered to satisfy this objective.

- *Provide sufficient area for roof pitch and variation in roof design rather than a flat roof.*

The development includes a pitched roof form which is considered to provide sufficient variation to complement the existing school which predominantly consists of traditional pitched roof forms.

The development is considered to satisfy this objective.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the aims and objectives of WLEP 2000 and the objectives specified in s.5(a)(i) and (ii) of the *Environmental Planning and Assessment Act, 1979*.

Accordingly, this assessment finds that the variation to the Building Height built form control is supported, in this particular circumstance.

## **Front Building Setback**

### Description of non-compliance

The non-compliance occurs at the front of the building facing Wyatt Avenue and results in a front setback of 17.2m.

The control permits a front setback of 20m resulting in a variation of 14%.

#### Merit consideration

With regard to the consideration for a variation, the development is considered against the underlying Objectives of the Control as follows:

- *Create a sense of openness.*

The frontage of the extension is setback to generally align with the facade of the existing school buildings facing Wyatt Avenue.

The proposed front setback of 17.2m is considered sufficient to maintain a sense of openness to the street.

The development is considered to satisfy this objective.

- *Provide opportunities for landscaping.*

The proposed front setback is considered sufficient to allow for the continued level of landscaping currently evident within the front setback area.

The development is considered to satisfy this objective

- *Minimise the impact of development on the streetscape.*

The proposed front setback will align the development to the existing building frontage while maintaining a sufficient level of landscaping to soften the built form.

The development is considered to satisfy this objective.

- *Maintain the visual continuity and pattern of buildings, front gardens and landscape elements.*

The proposed front setback will align the development to the existing building frontage while maintaining a sufficient level of landscaping to soften the built form.

As such, the development will maintain the visual continuity and pattern of buildings, front gardens and landscape elements of the site when viewed from the street.

The development is considered to satisfy this objective.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the aims and objectives of WLEP 2000 and the objectives specified in s.5(a)(i) and (ii) of the *Environmental Planning and Assessment Act, 1979*.

Accordingly, this assessment finds that the variation to the Front Building Setback built form control is supported, in this particular circumstance.

#### **Rear and Side Building Setback**

##### Description of non-compliance

The non-compliance at the eastern side of the building and results in a side setback of 5m.

Mod2019/0627– 8 Wyatt Avenue, Belrose

The control permits a side setback of 10m resulting in a variation of 50%.

#### Merit consideration

With regard to the consideration for a variation, the development is considered against the underlying Objectives of the Control as follows:

- *Create a sense of openness in rear yards.*

The non-compliance does not occur within the rear area of the site.

This objective is not relevant to the proposal.

- *Preserve the amenity of adjacent land.*

The western facade of the proposed extension faces an unformed road reserve, 20m in width. Beyond that, is an access handle, also 20m in width, for an adjoining property which is also undeveloped. Hence, the proposed modification will not have any adverse impact upon the amenity of that land.

The development is considered to satisfy this objective.

- *Maintain the visual continuity and pattern of buildings, rear gardens and landscape elements.*

The proposed side setback will align the development to the side setback of the existing building while maintaining a sufficient level of landscaping to soften the built form.

As such, the development will maintain the visual continuity and pattern of buildings, front gardens and landscape elements of the site when viewed from the neighbouring bushland.

The development is considered to satisfy this objective.

- *Provide opportunities to maintain privacy between dwellings.*

As stated previously, western façade of the proposed extension faces vacant public and private land and will not have any adverse impact upon the privacy of that land.

The development is considered to satisfy this objective.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the aims and objectives of WLEP 2000 and the objectives specified in s.5(a)(i) and (ii) of the *Environmental Planning and Assessment Act, 1979*.

Accordingly, this assessment finds that the variation to the Rear and Side Building Setback built form control is supported, in this particular circumstance

#### **General Principles Of Development Control**

The following General Principles of Development Control as contained in Part 4 of Warringah Local Environmental Plan 2000 are applicable to the proposed modification:

| General Principles  | Applies | Comments   | Complies |
|---|---------|--|----------|
| <b>CL38 Glare and reflections</b>   | NO      | These specific matters are relevant to the detailed DA's required to complete the Staged consent.  | N/A      |
| <b>CL39 Local retail centres</b>  | NO      | No comment required  | N/A      |
| <b>CL40 Housing for Older People and People with Disabilities</b>                   | NO      | No comment required  | N/A      |
| <b>CL41 Brothels</b>  | NO      | No comment required  | N/A      |
| <b>CL42 Construction Sites</b>  | NO      | Construction conditions were imposed on DA2015/0558 and will apply to all subsequent DA's in the staged consent. No additional construction conditions are required to be imposed in the subject application.  | N/A      |
| <b>CL43 Noise</b>   | YES     | The proposed modification will result in a small increase in floor area of the existing building yet no increase in student numbers or staff. Therefore, it is considered that the development would not have any adverse acoustic impact on neighbouring land.  | Yes      |
| <b>CL44 Pollutants</b>  | NO      | No comment required  | N/A      |
| <b>CL45 Hazardous Uses</b>  | NO      | No comment required  | N/A      |
| <b>CL46 Radiation Emission Levels</b>   | NO      | No comment required  | N/A      |
| <b>CL47 Flood Affected Land</b>   | NO      | No comment required  | N/A      |
| <b>CL48 Potentially Contaminated Land and CL49 Remediation of Contaminated Land</b> | YES     | <p>Council records indicate that part of the subject site has been used continuously for educational purposes for a significant period of time.</p> <p>Therefore, no further consideration is required under Clauses 48 and 49 and the site is considered to be suitable for the extension to the existing educational land use.</p>   | Yes      |
| <b>CL49a Acid Sulphate Soils</b>  | NO      | No comment required  | N/A      |
| <b>CL50 Safety and Security</b>   | YES     | <p>The following safety design features are already incorporated into the premises:</p> <ul style="list-style-type: none"> <li>Controlled access to the school grounds is achieved from the street by a gate from the subject site;</li> <li>Entrance to the building is clearly identifiable from the street; and</li> <li>Casual surveillance is provided over the carparking facilities.</li> </ul> <p>The proposed modification will not change these existing arrangements.</p> | YES      |
| <b>CL51 Front Fences and Walls</b>  | NO      | No comment required  | N/A      |
| <b>CL52 Development Near Parks, Bushland Reserves and other public Open Spaces</b>  | NO      | No comment required  | N/A      |
| <b>CL53 Signs</b>   | NO      | No comment required  | N/A      |

| General Principles   | Applies | Comments  | Complies                           |
|--|---------|---|------------------------------------|
| <b>CL54 Provision and Location of Utility Services</b>   | YES     | Water and electricity services are available to the site.   | Yes                                |
| <b>CL55 Site Consolidation in 'Medium Density Areas'</b>   | NO      | No comment required   | N/A                                |
| <b>CL56 Retaining Unique Environmental Features on Site; and</b><br><br><b>CL58 Protection of Existing Flora</b> | YES     | The area of open space that will be lost as a result of the increased footprint of the building does not contain any significant habitat or fauna. Council's Landscape Officer has no objection to the removal of the existing trees and is satisfied that the revised landscape plan for the side setback on the western boundary is adequate to ensure future propagation of beneficial vegetation. | Yes                                |
| <b>CL57 Development on Sloping Land</b>  | NO      | No comment required   | N/A                                |
| <b>CL59 Koala Habitat Protection</b>   | NO      | No comment required   | N/A                                |
| <b>CL60 Watercourses and Aquatic Habitats</b>  | NO      | No comment required   | N/A                                |
| <b>CL61 Views</b>  | NO      | No comment required   | N/A                                |
| <b>CL62 Access to sunlight</b>   | NO      | No comment required   | N/A                                |
| <b>CL63 Landscaped Open Space</b>  | YES     | The will not unreasonably decrease the existing provision of landscaped open space currently on the site such that it will conflict with the objective the Landscaped Open Space built form control.  | Yes                                |
| <b>CL63A Rear Building Setback</b>   | NO      | No comment required   | N/A                                |
| <b>CL64 Private open space</b>   | NO      | No comment required   | N/A                                |
| <b>CL65 Privacy</b>  | YES     | The non-residential use of the development is not located adjacent to any dwellings (the nearest dwelling is located approximately 50m south-east and across Wyatt Avenue).   | Yes                                |
| <b>CL66 Building bulk</b>  | YES     | The development maintains the built form and scale of the existing building to which it is attached. The resulting bulk and scale is therefore visually consistent with the overall school development.   | Yes                                |
| <b>CL67 Roofs</b>  | YES     | The proposed modification will retain the existing roof form of the existing Chisholm House building and provide a unified and consistent built form to the streetscape.  | Yes                                |
| <b>CL68 Conservation of Energy and Water</b>   | N/A     | No comment required   | N/A                                |
| <b>CL69 Accessibility – Public and Semi-Public Buildings</b>   | YES     | The proposed modification has demonstrated that it will achieve compliance with the appropriate standards for provision of Access/Egress and Essential Services as provided for under Part D and Part E of the BCA.   | Yes, subject existing to condition |
| <b>CL70 Site facilities</b>  | YES     | Existing site facilities are adequate to cater for the proposed modification.   | Yes                                |
| <b>CL71 Parking facilities (visual impact)</b>   | YES     | No change is proposed to the approved parking facilities.   | Yes                                |
| <b>CL72 Traffic access and safety</b>  | YES     | No change is proposed to the existing traffic access/egress arrangements and, because the modification does not involve any increase to staff and/or student numbers, will not generate additional traffic volume.  | Yes                                |

| General Principles   | Applies | Comments   | Complies |
|--|---------|--|----------|
| <b>CL73 On-site Loading and Unloading</b>  | YES     | Adequate access for the loading and unloading of construction materials is available from Wyatt Avenue.<br><br>No change is required for student pick-up/set-down areas or for supplies and delivery parking.                                  | Yes      |
| <b>CL74 Provision of Carparking</b>  | YES     | The applicant confirms that the development does not increase in staff and/or student numbers. Therefore, the development will not generate a need for additional carparking beyond what is already approved, and provided for, at the school. | Yes      |
| <b>CL75 Design of Carparking Areas</b>   | YES     | No change is proposed to the provision of on-site carparking.  | Yes      |
| <b>CL76 Management of Stormwater</b>   | YES     | The application has been reviewed by Council's Development Engineer who advises that no objection is raised and no additional conditions are required to be imposed.   | Yes      |
| <b>CL77 Landfill</b>   | NO      | No comment required  | N/A      |
| <b>CL78 Erosion and Sedimentation</b>  | NO      | No comment required  | N/A      |
| <b>CL79 Heritage Control</b>   | NO      | No comment required  | N/A      |
| <b>CL80 Notice to Metropolitan Aboriginal Land Council and the National Parks and Wildlife Service</b> | NO      | No comment required  | N/A      |
| <b>CL82 Development in the Vicinity of Heritage Items</b>  | NO      | No comment required  | N/A      |
| <b>CL83 Development of Known or Potential Archaeological Sites</b>                                     | NO      | No comment required  | N/A      |

## Other Relevant WLEP 2000 Clauses

### Schedule 5 - State Policies

|                                |  |
|--------------------------------|--|
| <b>Bushland In Urban Areas</b> | The proposed development is consistent with the aims and objectives of Schedule 5. |
|--------------------------------|--|

### Schedule 8 - Site Analysis

|                      |  |
|----------------------|--|
| <b>Site Analysis</b> | A formal site analysis plan was submitted with the original development application and additional site information is contained in the Statement of Environmental Effects, the survey, tree survey and the architectural plans, which satisfy the site analysis requirements of Schedule 8. |
|----------------------|--|

### Schedule 11 - Koala Feed Tree Species and Plans of Management

|  |   |
|--|---|
| <b>Koala Feed Tree Species and Plans of Management</b> | The site is not identified as containing any Koala population or Koala habitat. The proposal is consistent with the requirements for the protection of koala habitat. |
|--|---|

### Schedule 15 - Statement of Environmental Effects

|   |  |
|---|--|
| <b>Statement of Environmental Effects</b> | A Statement of Environmental Effects was submitted with the development application which satisfies the requirements of Schedule 15. |
|---|--|

Having regard to the above review of the applicants Statement of Environmental Effects, it is considered that the application is satisfactory having regard to the criteria listed under Schedule 15 of Warringah Local Environmental Plan 2000.

### **Schedule 17 - Carparking Provision**

|                             |   |
|-----------------------------|---|
| <b>Carparking Provision</b> | <p>The proposal does not include any increase to the current enrolment for the School. Parking requirements are addressed under the heading "General Principles" – Clause 71 to 75 previously in this report.</p> <p>The approved provision of carparking on the existing school site is satisfactory in accordance with Schedule 17.</p> |
|-----------------------------|---|

### **THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES**

The modification will not result in any changes to the impact of the development on threatened species, populations or ecological communities or their habitats.

### **CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN (CPTED)**

The modification will not result in any changes to proposals consistency with the principles of Crime Prevention through Environmental Design.

### **Warringah Section 94A Development Contribution Plan**

The original consent is subject to the application of Council's previous Section 94A Development Contributions Plan. The contribution specified in the existing consent related to the entire cost of the staged consent and did not factor in what contributions would apply to subsequent applications. Therefore an amended condition is proposed to correct the contribution to only the stages that were given physical consent (A to E). Each subsequent application will then be subject to a separate contribution, as a component of the entire construction cost of the staged consent.

### **CONCLUSION**

The site has been inspected and the application assessed having regard to the provisions of Section 79C of the Environmental Planning and Assessment Act, 1979, the provisions of relevant Environmental Planning Instruments, including the WLEP 2000, and the relevant codes and policies of Council.

The application is made pursuant to Section 4.55(2) of the Environmental Planning & Assessment Act 1979 and seeks to modify the original Staged development consent DA2011/1370 for "Alterations and additions to an existing school" (the John Colet School).

The purpose of the modification is to consolidate 2 stages of the works ("Q" and "L"), for a modified "Q" building, which has:

- a 1.9m increase in the building height;
- 1.2m increase in the front setback;

- 5m increase in the side setback;
- 100m<sup>2</sup> area increase in 1<sup>st</sup> floor classroom area; and
- 140m<sup>2</sup> art room on the ground floor.

The proposal does not involve any increase to staff and/or student numbers, beyond that maximum already approved in Condition No.7 of DA2015/0558, which was 350 students. The modified “Q” building is already the subject of a specific application (DA2019/1420) which is currently under assessment by Council.

The development involves the expansion or intensification of an existing Category Three development which is of a minor nature and does not, to any significant extent, change the scale, size or degree of any building or land use. In this regard, and subject to Clause 16(3), the development is not subject to Clause 14 and 15 and is not required to be referred to an independent assessment panel (pursuant to Clause 15(2)).

Non-compliances were considered in relation to the Building Height, Front Building Setback and Rear and Side Building Setback built form controls. In each instance, the non-compliances were found to be relatively minor, consistent with the objectives of each control and subsequently supported.

The application has been publicly exhibited in accordance with the EPA Regulation 2000, WLEP 2000 and Warringah Development Control Plan. A total of 11 submissions were received during public notification. Upon consideration of the issues raised in these submissions, none were considered to warrant the refusal of the application.

Hence, the proposed development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed.

As a result of the application and the consideration of the matters detailed within this report it is considered that Council as the consent authority grant approval.

## **RECOMMENDATION (APPROVAL)**

THAT Council as the consent authority grant approval Modification Application No. Mod2016/0195 for Modification of Staged Development Consent DA2015/0558 granted for Staged Development for new classrooms and ancillary works and staged increase in student numbers at John Colet School on land at Lot 1 DP 601101,8 Wyatt Avenue, Belrose, subject to the conditions printed below: