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SYDNEY NSW 2000**

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31 August 2022

Mr Ray Brownlee
Chief Executive Officer
Northern Beaches Council
Attn: Alex Keller, Principal Planner

Dear Alex,

SECTION 4.55 (1A) MODIFICATION APPLICATION TO D2021/1483 - ASPECT VERN BARNETT SCHOOL

1. INTRODUCTION

This Section 4.55(1A) modification application has been prepared by Urbis on behalf of Autism Spectrum Australia (Aspect) ('**Aspect**'/ 'the **Applicant**') and in support a Section 4.55(1A) modification application. Development Application (**DA**) DA2021/1483 was approved by Northern Beaches Council on 30 November 2021 for the alterations and additions to the existing school at 41 Cook Street Forestville.

This Section 4.55(1A) is seeking to modify and essentially reduce some of the approved alterations and additions largely due to a reallocation of project funding and detailed design amendments. This application also seeks to resolve inconsistencies between the NSW Rural Fire Service (RFS) General Terms of Approval, the Bushfire Report lodged with DA2021/1483 and conditions of consent under DA2021/1483.

The Applicant is seeking a reduced Asset Protection Zone (APZ) consistent with the requirements of Planning for Bushfire Protection 2019 (PBP). The Applicant is also seeking confirmation of the extent of existing building upgrades that result in improved ember protection outcomes, as opposed to new works that are subject to the construction requirements of AS3959-2018 Construction of Buildings in Bushfire Prone Areas.

This letter includes a description of the site, a description of the approved development, details of the proposed modification, consideration of the proposed modification against Section 4.55(1A) of the *Environmental Planning and Assessment Act 1979* (**EP&A Act**); and an assessment of the proposed modifications against Section 4.15 of the EP&A Act.

The proposal is the subject of a Section 4.55(1A) application, as the proposed amendments will result in substantially the same development approved under DA/2021/1483 and the proposed amendments will result in minimal environmental impacts.

2. THE SITE AND SURROUNDING CONTEXT

2.1. SITE DESCRIPTION

The Aspect Vern Barnett School is located on a 13,320m² lot at 41 Cook Street, Forestville. The site is legally described as Lot 2754 in Deposited Plan 752038. A site context map is shown in **Figure 1** below.

Figure 1 – Aerial Map



Source: NearMap

The site slopes from the west to the east, with Cook Street significantly higher than the school buildings. The land drops away steeply to the east towards the National Park.

The site has a single street frontage of 65m to Cook Street, at the west of the site. The northern boundary is 154m and borders residential dwellings, the southern boundary is 159m and borders a seniors' living development and the eastern boundary is 155m and borders Garigal National Park.

2.2. EXISTING DEVELOPMENT

The site currently accommodates the Aspect Vern Barnett School, which consists of:

- Single storey school buildings and administration buildings;
- Outdoor play areas, including play equipment and a pool;
- Staff car parking and pick up and drop off areas.

Figure 2 – Site Photos



Picture 1 – Entry to Administration Building



Picture 2 – Outdoor play area



Picture 3 – Car park area to the front of the school



Picture 4 – Internal Hallway Area

Source: Urbis

2.3. LOCALITY CONTEXT

The Aspect Vern Barnett School is set in a low density residential setting. The surrounding development includes:

- **North:** low density residential housing immediately adjoins the site and Warringah Road is further to the north.
- **South:** Anglicare Retirement Village and Garigal National Park.
- **East:** Garigal National Park
- **West:** Low density housing is on the western side of Cook Street and Forestville local shops are further to the west.

3. PROJECT BACKGROUND

Development application DA2021/1483 was approved by Northern Beaches Council on 30 November 2021 for the:

- Demolition of the existing library building and ramps;
- Demolition of internal walls, removal of floor finishes and amenities throughout the school;
- Construction of a new library building; extension to existing general learning areas;
- Upgrades and internal fit out to existing general learning areas; administration building and multi purpose hall.
- General alterations and additions to improve access through the school and movement of activities around the site including office areas, multi purpose hall;
- New landscaping surrounding the buildings, including new shade canopies and upgrades to existing play areas located centrally and at the northern end of the site;
- New outdoor roof to the covered outdoor learning area and entryway;

Aspect are seeking to undertake minor modifications to the approved works, as discussed in detail below. It is also noted that the approval was an integrated development approval, obtaining approval under Section 100B of the *Rural Fires Act 1997*. A further concurrence is sought from RFS as part of this application.

4. PROPOSED MODIFICATIONS

Following the approval of DA2021/1483, Aspect Schools are proposing to modify (and essentially descope and reduce) some of the approved alterations and additions. This is largely due to a reallocation of project funding and undertaking a detailed design process. This application also seeks to resolve inconsistencies between the NSW RFS General Terms of Approval, the Bushfire Report lodged with the original DA and conditions of consent under DA2021/1483 namely on the following matters;

- Clarification of the land applicable to the APZ and its management
- Level of construction and applicability of upgrade works.

The proposed modifications are detailed on the Architectural Plans at **Appendix A** prepared by Design Inc and the Landscape Plans prepared by New Eden Design Landscape Architecture at **Appendix B**.

4.1. BUSHFIRE CONDITIONS MODIFICATION

4.1.1. Asset Protection Zone

There are several inconsistencies between the conditions of consent imposed in DA2021/1483, the recommendations in Bushfire Consulting Services Assessment Report, submitted with the original DA and the NSW Rural Fire Service General Terms of Approval.

The DA stamped plans show the notation 'Note: Entire site is to be managed as an Asset Protection Zone (APZ) Inner Protection Area (IPA) – Refer to Bushfire Report for Further Details' with the arrow pointing to the red site boundary.

Bushfire Consulting Services' Assessment Report recommended that the area to the east of the site with slopes greater than 18 degrees be excluded from the APZ. This is due to issues managing this area as an APZ in perpetuity and issues with carrying out APZ works and ongoing maintenance within land that steeply slopes. If the entire site is to be managed as an APZ, significant tree removal of the bushland along the eastern portion of the site will be required to comply with the 15% maximum tree canopy requirements for an Inner Protection Area (IPA) APZ. An extract of the recommended APZ as per the Bushfire Consulting Services Report is below [BF to confirm this is accurate].

Figure 3 Recommended APZ zone



Source: Bushfire Consulting Services

It is noted that this significant tree removal was unlikely to be Council's intention, noting that Condition 19 requires the retention and protection of all existing trees and vegetation on the site.

Condition 17, 27 and 35 draw reference to the Asset Protection Zone boundary. It is likely that a re-referral of the application to RFS is required to agree on the APZ boundary as being limited to the established cleared land indicated as yellow, above. To manage these inconsistencies and support the retention of trees, it is recommended the following condition is inserted (at Condition 2a):

'At the commencement of the development, and in perpetuity, the curtilage surrounding the subject building shall be managed as an Inner Protection Area (IPA) Asset Protection Zone as outlined in PBP 2019 Appendix 4, except where the slope is greater than Downslope 18 degrees'.

Condition 2 of the consent remains as drafted. This modification application seeks to amend the General Terms of Approval referenced in Condition 2.

4.1.2. Upgrades to Existing Buildings

Condition 12 of DA2021/1483 requires all recommendations by the NSW RFS General Terms of approval to be incorporated into the construction certificate plans.

The current wording of the NSW RFS General Terms of approval requires all construction on the site to comply with BAL FZ ratings. As outlined in the Bushfire Report at **Appendix C**, it is requested the NSW RFS confirm if the following proposed building upgrades will be acceptable:

1. *Existing open timber slat soffits will be provided with protection by either;*
 - a) *Carefully remove external soffit slats (preferred option), install metal ember proof mesh behind the slats and then reinstall same slats back onto soffits (with the mesh behind); or*
 - b) *Retain timber soffit slats and install over the slats 6mm FC painted sheet soffits to all external ceilings where required.*
2. *Existing polycarbonate roof skylights to be replaced with BAL 40 rated skylights.*
3. *All windows in the existing structure are to be completely covered by a tightly fitting, metal-framed screen with a mesh or perforated sheet with a maximum aperture of 2mm made from corrosion-resistant steel or bronze.*
4. *Non-combustible gutter guards are to be fitted to gutters and roof valleys. All external side-hung doors are to be fitted with a draft excluder at the base.*
5. *External screen doors shall be fitted with a mesh or perforated sheet with a maximum aperture of 2mm made from corrosion-resistant steel or bronze.*
6. *All gaps, vents or weepholes in the subfloor space shall be covered with a mesh or perforated sheet with a maximum aperture of 2mm made from corrosion-resistant steel or bronze. The intent is to stop embers reaching combustible flooring and support elements.*
7. *All gaps under ridge caps, valleys and where roof sheeting meets fascias or walls are to be covered a mesh or perforated sheet with a maximum aperture of 2mm made from corrosion-resistant steel or bronze. Alternatively, corrosion-resistant steel or bronze sheet cut specifically to the profile of the roof sheet corrugations may be used to seal gaps. The intent is to stop embers reaching combustible roofing elements.*
8. *Replace existing timber decking with non-combustible materials.*
9. *The replacement of existing translucent roof sheeting with either;*
 - i. *a combination of standard 970x970mm BAL40 Velux Skylights and replacement roofing (ie colorbond) to remaining area, or*
 - ii. *Replacement roofing only (ie with no skylight)*
10. *Vegetation under the COLA to be permitted and provided with an automatic water supply plan*

11. *Bushfire-resisting timber species may be used for playground equipment located at least 6m from the buildings.*

It is also requested this application is re-referred to NSW RFS to confirm the following:

- If the small sections of walls that are being modified (with new windows and doors) and are part of existing buildings that are not BAL FZ construction to be protected with the recommended bushfire protection measures in accordance with RFS recommendations for ember protection.
- If vegetation under the covered outdoor learning area is permitted with the inclusion of an automatic water supply plan.
- If bushfire-resisting timber species can be used for playground equipment located at least 6m from the buildings.

If an amended GTA is obtained from RFS addressing the above, Condition 12 can remain as drafted.

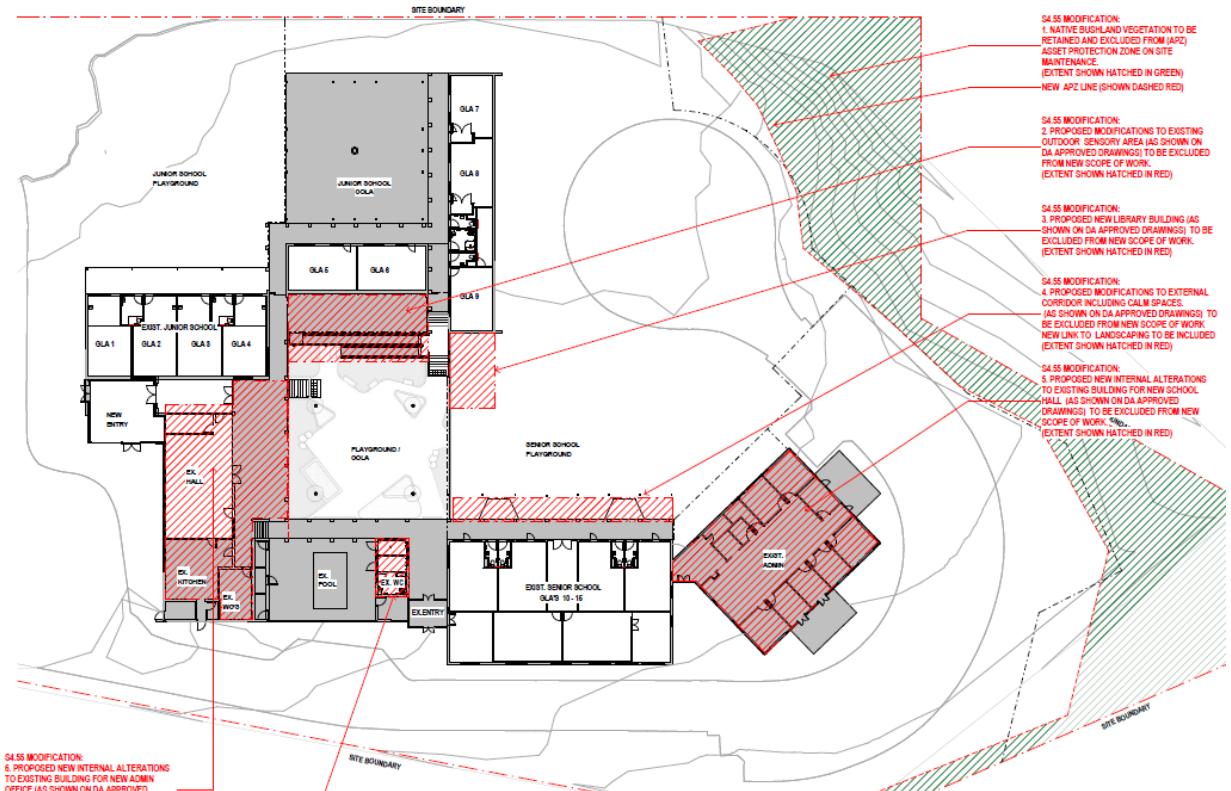
4.2. DESCOPING OF THE PROPOSAL

This modification application is seeking to remove some of the approved works under DA2021/1483 from the scope. This includes:

- Modifications to existing outdoor sensory area to be removed from the scope;
- Approved new library building to be removed from the scope;
- Modifications to external corridor including calm spaces to be removed from the scope;
- Approved new roof to calm spaces to be removed from the scope;
- Reduction to new verandah roof overhang over existing junior school;
- Internal alterations to existing building for a new school hall and new administration office is to be removed from the scope.

The removed scope is largely due to a reallocation of project funding and is shown in red hatching on the Architectural Plans at **Appendix A**.

Figure 4 Architectural Plans modifications



Source: DesignInc

4.3. DESIGN DEVELOPMENT

The following minor modifications are required due to design development:

- Relocation of change rooms and accessible toilet entry doors next to the pool area. The new doors are to be relocated to the eastern façade along the corridor.
- Minor modifications to the landscape play equipment and ground materials. This includes:
 - Addition of platform seating in the playground
 - Additional turf and planting in the area where the library was approved to be located.
 - Modifications to the types of playground equipment.

The design modifications are shown on the Architectural Plans at **Appendix A** and the Landscape Plans at **Appendix B**.

DA-200 / D Floor Plan Ground Floor AR-125 S4.55 Future Modifications Ground Floor Plan	26.7.2021 11/02/22	DesignInc
DA-202 / D Roof Plan AR-126 S4.55 Future Modifications Roof Plan	26.7.2021 11/02/22	DesignInc
DA-301 / C Elevations	9.7.2021	DesignInc
DA-310 / C Sections	26.7.2021	DesignInc
DA-402 / C Materials Board	9.7.2021	DesignInc

c) The development is to be undertaken generally in accordance with the following:

Landscape Plans		
Drawing No.	Dated	Prepared by
LA-010 / D Landscape Master Plan	26.7.2021	DesignInc
LA-100 / D Landscape Plan General Arrangement Hardscape Sheet 1	26.7.2021	DesignInc
LA-101 / D Landscape Plan General Arrangement Hardscape Sheet 2	26.7.2021	DesignInc
LA-200 / D Landscape Plan General Arrangement Softscape Sheet 1	26.7.2021	DesignInc
LA-201 / D Landscape Plan General Arrangement Softscape Sheet 2	26.7.2021	DesignInc
LA-300 / D Sections Sheet 1	26.7.2021	DesignInc
LA-300 / D Sections Sheet 2	26.7.2021	DesignInc
LA-400 / D Typical Landscape Details	26.7.2021	DesignInc
LA-500 / D Schedules / Palette	26.7.2021	DesignInc
100/ E/ Site Plan	06.06.22	New Eden Design Landscape Architecture
101/ E/ Landscape Plan Junior Playground	11.04.22	New Eden Design Landscape Architecture
102/ E/ Landscape Plan COLA	06.06.22	New Eden Design Landscape Architecture
103/ E/ Landscape Plan Senior Playground 1/2	06.06.22	New Eden Design Landscape Architecture
104/ E/ Landscape Plan Senior Playground 2/2	06.06.22	New Eden Design Landscape Architecture

2. Compliance with Other Department, Authority or Service Requirements

The development must be carried out in compliance with all recommendations and requirements, excluding general advice, within the following:

Other Department, Authority or Service	EDMS Reference	Dated
NSW Rural Fire Service	Response RFS Referral	11.10.2021 as amended

2a. 'At the commencement of the development, and in perpetuity, the curtilage surrounding the subject building shall be managed as an Inner Protection Area (IPA) Asset Protection Zone as outlined in PBP 2019 Appendix 4, except where the slope is greater than Downslope 18 degrees'.

6. SECTION 4.55(1A) ASSESSMENT

6.1. MINIMAL ENVIRONMENTAL IMPACT

The potential environmental impacts of the proposed amendments are minimal and can be considered under the provisions of Section 4.55(1A) as outlined below.

- The modifications relating to the bushfire conditions seek to resolve inconsistencies between the conditions of consent, the recommendations in Bushfire Consulting Services Assessment Report and the NSW Rural Fire Service letter.
- The modifications relating to the bushfire conditions of consent also seek to retain significant native bushland to the east of the site, whilst ensuring appropriate risk mitigation measures are incorporated.
- The proposed descoping of approved works are minor in nature will reduce any potential environmental impact that was approved under DA2021/1483.
- The proposed design development modifications are minor and will not create additional environmental impacts than what was assessed under DA2021/1483.

6.2. SUBSTANTIALLY THE SAME DEVELOPMENT

The NSW Land and Environment Court has established several precedents on what may be considered as being "substantially the same development," and what should be factored into the consideration of this threshold test.

The consideration of this test should not only include the physical characteristics of the approved and modified schemes, but also the nature and magnitude of the impacts of the developments. In these respects, the modified scheme should be "essentially or materially" the same as that originally approved.

- The proposed descoping of approved works will reduce any potential environmental impact that was approved under DA2021/1483 and the proposal still constitutes "alterations and additions to an existing school". The use is unchanged and the general composition of the school remains generally the same.
- The proposed modifications to the bushfire conditions will not create any material changes and seek to retain the significant bushland to the east of the site. The application clarifies the fire hazard and management measures through seeking to clarify the asset protection zone boundary.
- The proposed design development modifications seek to make minor changes to the landscape design and minor building elements. The design development modifications do not increase gross floor area or building heights.

The proposed modifications will therefore not result in any meaningful environmental impacts above those already assessed by Northern Beaches Council.

6.3. PUBLIC NOTIFICATION AND SUBMISSIONS

As the proposed modifications are minor, it is not expected Council will require to notify the proposal.

7. SECTION 4.15 ASSESSMENT

7.1. ENVIRONMENTAL PLANNING AND ASSESSMENT ACT

The development, as modified, constitutes integrated development pursuant to Clause 4.46 of the EP+A Act 1979. As the land is bushfire prone land and the development is a school ('special fire protection purpose'), concurrence is sought from the Rural Fire Service under Section 100B of the Rural Fires Act 1997. An amendment to the General Terms of Approval is sought in this application.

7.2. ENVIRONMENTAL PLANNING INSTRUMENTS

7.2.1. State Environmental Planning Policy (Transport and Infrastructure) 2021

State Environmental Planning Policy (Transport and Infrastructure) 2021 (Transport and Infrastructure SEPP 2021) seeks to facilitate the delivery of new and improved education facilities by streamlining approval processes across NSW.

The Transport and Infrastructure SEPP enables a range of development types to be carried out as exempt, complying, or development without consent for the purpose of a school. The works subject of this modification application require consent from Council.

The R2 Low Density Residential zone is a prescribed zone for the purposes of the Transport and Infrastructure SEPP and development for the purpose of a school is, permissible on the site with consent. As detailed in Section 7.1.3 below, the proposed modifications are permissible under *Warringah Local Environmental Plan 2011* and as such does not rely on the Transport and Infrastructure SEPP for permissibility.

7.2.2. State Environmental Planning Policy (Resilience and Hazards) 2021

Clause 2.12 of *State Environmental Planning Policy (Resilience and Hazards) 2021* (Resilience and Hazards SEPP) requires that development consent must not be granted to development on land within the coastal zone unless the consent authority is satisfied that the proposed development is not likely to cause increased risk of coastal hazards on that land or other land. The modifications will not cause increased risk of coastal hazards such as coastal erosion and inundation on the site or surrounds.

Clause 2.13 of the Resilience and Hazards SEPP requires that development consent must not be granted to development on land within the coastal zone unless the consent authority has taken into consideration the relevant provisions of any certified coastal management program that applies to the land. The proposed modifications do not bring rise to any new matters for consideration under the SEPP or will not compromise the aspects of any coastal management program.

7.2.3. Warringah Local Environmental Plan 2011

Warringah Local Environmental Plan 2011 (Warringah LEP 2011) is the primary environmental planning instrument applying to the site and the proposed development.

The site is zoned R2 Low Density Residential in accordance with the Warringah LEP 2011. The proposed development is consistent with the zone objectives as outlined below:

- *To provide for the housing needs of the community within a low density residential environment.*

- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To ensure that low density residential environments are characterised by landscaped settings that are in harmony with the natural environment of Warringah.*

The proposed modifications are for an 'educational establishment'. Educational establishments are permitted with development consent in the R2 Low Density zone. The following table assesses the compliance of the proposed development with other relevant clauses in the LEP.

Table 1 Warringah LEP 2011 Compliance Table

Clause	Provision	Comment	Complies
Clause 4.3 – Height of Building	Maximum height of building: 8.5m	No additional buildings are proposed and the proposal remains compliant.	Yes
Clause 4.4 – Floor Space Ratio	Maximum floor space ratio: None prescribed. Not adopted in Warringah LEP.	The proposed descoping of the proposal will reduce the floor space across the site.	Yes
Clause 5.10 – Heritage Conservation	Forestville Park to the north east of the site is identified as Item C7 – Heritage Conservation Area.	As the modified proposal is for alterations and additions to an existing school, and the conservation area shares no common boundary with the site, there are no heritage implications from this proposal.	Yes
Clause 5.21 – Flood Planning	Development consent must not be granted to flood prone sites without adequate flood planning.	The site is not flood prone.	Yes
Clause 6.1 – Acid Sulfate Soils	Development consent is required for excavation works in acid sulfate soils.	The site is not identified as land containing acid sulfate soils.	Yes

7.3. DRAFT ENVIRONMENTAL PLANNING INSTRUMENTS

No draft environmental planning instruments apply to the site. Northern Beaches Council are currently finalising character and environmental studies, with the draft LEP and DCP due to be reported to Council in 2023.

7.4. DEVELOPMENT CONTROL PLAN

Warringah Development Control Plan 2011 (**Warringah DCP 2011**) provides detailed planning controls relevant to the site and the proposal. An assessment against the relevant controls is provided in the table below.

Table 2 Warringah DCP 2011 Compliance Table

Clause	Provision	Comment	Complies
Part B – Built Form Controls			
B5 – Side Setbacks	0.9m	6m side setback proposed and unchanged.	Yes
B7 – Front setback	6.5m	59m front setback is proposed and unchanged.	Yes
B9 – Rear setback	6m	18m rear setback is proposed and unchanged.	Yes
Part D – Design			
D1 – Landscaped Open Space	40% of the site is to be landscaped open space	Greater than 40% of the site is landscaped open space. The removal of the approved library building from the scope will increase landscaping across the site.	Yes
Part E – The Natural Environment			
E1 – Preservation of Trees	Tree removal is not permitted without a Vegetation Clearing Permit under the provisions of Part 3 of the Vegetation SEPP.	Tree removal is not proposed.	N/A
E5 – Native Vegetation	For modification to native vegetation greater than 100m ² , a Flora and Fauna Assessment must be prepared.	Native vegetation is identified on the eastern edge (to the rear of the site). No changes are proposed to this native vegetation, therefore a Flora and Fauna Assessment is not required.	Yes

Clause	Provision	Comment	Complies
E11 – Flood Prone Land	Development on flood prone land requires the preparation of a Flood Management Report.	The site is not identified as flood prone.	N/A

7.5. PLANNING AGREEMENT

No planning agreements are relevant to this proposal.

7.6. REGULATIONS

The application has been prepared in accordance with the relevant provisions of the *Environmental Planning and Assessment Regulations 2021*.

7.7. LIKELY IMPACTS OF THE PROPOSED DEVELOPMENT

7.7.1. Bushfire

- The modifications relating to the bushfire conditions of consent seek to resolve inconsistencies between the conditions of consent, the recommendations in Bushfire Consulting Services Assessment Report and the NSW Rural Fire Service letter.
- The modifications relating to the bushfire conditions also seek to retain significant native bushland to the east of the site. It is noted that this significant tree removal was likely not Council's intention, noting that Condition 19 requires the retention and protection of all existing trees and vegetation on the site.
- It requested that this application and the supporting documentation are referred to NSW RFS for review and amendment to their GTAs..

7.7.2. Built Form

The bulk and scale of the approved development was designed to integrate with the low rise, bushland setting of the existing school and Forestville locality. The minor modifications are consistent with this and are considered appropriate as:

- The proposed descoping of approved works will reduce any potential environmental impact that was approved under DA2021/1483.
- The proposed design development and landscaping modifications are minor and will not create additional environmental impacts than what was assessed under DA2021/1483.
- All works are somewhat internalised in the site and do not pose any new built form elements closer to the site boundaries than that approved.

7.7.3. Building Code of Australia

A Building Code of Australia Capability Statement has been prepared by MBC Group (**Appendix C**). MBC Group have assessed the proposed architectural plans against the Deemed-to-Satisfy provisions and Performance Requirements of the National Construction Code Series (Volume 1) Building Code

of Australia 2019, Amd 1. MBC Group confirms that compliance with the A2.1 of the BCA is readily achievable.

7.8. SUITABILITY OF THE SITE

The modified proposal remains suitable for the proposed development for the following reasons:

- The site is zoned R2 Low Density Residential under the Warringah LEP 2011. The modified development is permissible with consent and consistent with the land use objectives of the R2 Low Density Residential zoning.
- The proposed design development modifications are minor and will not create additional environmental impacts than what was assessed under DA2021/1483.

7.9. SUBMISSIONS

It is acknowledged that any submissions arising from the public notification of this application will need to be assessed by Council.

7.10. THE PUBLIC INTEREST

The modified development is considered in the public interest for the following reasons:

- The modified proposal is consistent with relevant State and local strategic plans and complies with the relevant State and local planning controls.
- No adverse environmental, social or economic impacts will result from the modified proposal.
- This application also seeks to resolve inconsistencies between the NSW RFS recommendations and conditions of consent under DA2021/1483.
- The proposed design development and landscaping modifications are minor and will not create additional environmental impacts than what was assessed under DA2021/1483.

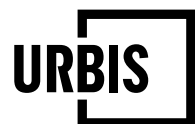
8. CONCLUSION

This Section 4.55(1A) modification application has been prepared by Urbis on behalf of Aspect to amend DA2021/1483 to modify the scope of the proposal. The proposed modifications have been assessed in accordance with Section 4.55(1A) and Section 4.15 of the EP&A Act and are considered appropriate as summarised below:

- The proposed modifications will not result in any adverse impacts on both the natural and built environment and the locality, is suitable for the site and is in the public interest.
- The proposed development generally satisfies the relevant provisions of the applicable State Environmental Planning Instruments including the Transport and Infrastructure SEPP, Warringah LEP 2011 and the Warringah DCP 2011 and is acceptable.

Based on the content contained throughout this report, it is considered that the proposed modifications to DA2021/1483 will result in substantially the same development as was originally approved and therefore should be approved, subject to the implementation of appropriate conditions.

If you have any questions, please do not hesitate to contact the undersigned.



Kind regards,

A handwritten signature in black ink that reads "gmckenzie". The signature is written in a cursive, lowercase style.

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Attachment A

Attachment B

Attachment C

Attachment D

Amended Architectural Plans

Amended Landscape Plans

Bushfire Assessment Report

BCA Capability Statement