



Westmead Catholic Community Education Campus Modification 1

State Significant Development Modification Assessment
(SSD-10383-Mod-1)

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Glossary

Abbreviation	Definition
CAMP	Community Access Management Plan
CELC	Catholic Early Learning Centre
Commission	Independent Planning Commission NSW
Council	City of Parramatta Council
Department	Department of Planning and Environment
EP&A Act	<i>Environmental Planning and Assessment Act 1979</i>
EP&A Regulation	Environmental Planning and Assessment Regulation 2021
FTE	full time equivalent
GTP	Green Travel Plan
Minister	Minister for Planning
Newbury Test	Requirements of a valid condition of consent under case law <i>Newbury District Council v Secretary of State for the Environment</i> [1981] AC 578
Original Application	The SSD for the development of the WCC approved by the Commission on 14 February 2022 (SSD-10383)
OSMP	Open Space Management Plan
Planning Secretary	Planning Secretary of the Department of Planning and Environment
PLEP	Parramatta Local Environmental Plan
SSD	State Significant Development
TfNSW	Transport for NSW
WCC	Westmead Catholic Community Education Campus
Westmead Precinct	Westmead Health and Education Precinct

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1 Introduction

This report provides the Department of Planning and Environment (the Department) assessment of an application to modify the State Significant Development (SSD) consent relating to the Westmead Catholic Community Education Campus (WCC) (SSD-10383).

The modification application (SSD-10383-Mod 1) seeks to modify the design and layout of landscaping, amend conditions relating to the provision and use of an east-west pedestrian connection, establishment of easements / covenants for public access, and provision of community and primary school student access to WCC ovals.

The modification application has been lodged by Ethos Urban Pty Ltd on behalf of Catholic Education Diocese of Parramatta (the Applicant) pursuant to section 4.55(1A) of the *Environmental Planning and Assessment Act 1979* (EP&A Act).

1.1 Background

The site is located at 2 Darcy Road, Westmead, forming part of the WCC, and comprising two allotments, legally described as Lot 1 DP1095407 and Lot 1 DP1211982.

The site is located approximately 27 kilometres (km) west of Sydney Central Business District (CBD), approximately 2.7km north-west of Parramatta CBD and approximately 1km north-west of Westmead Railway station (**Figure 1**).

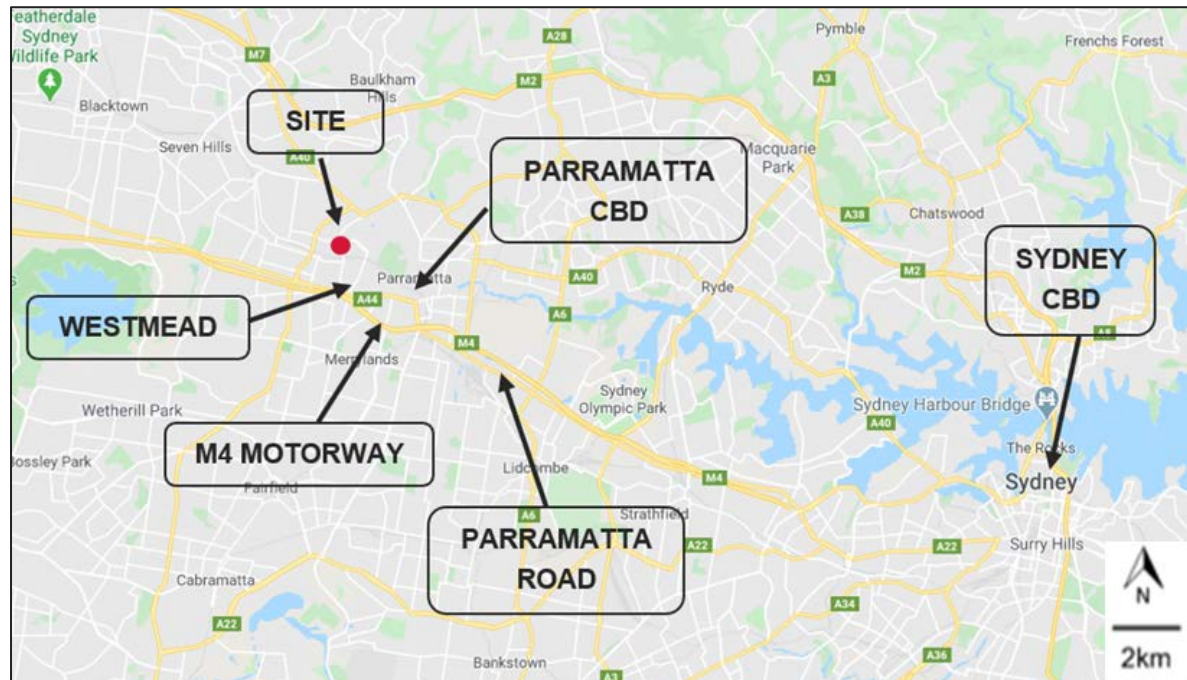


Figure 1 | Regional Context Map (Base source: Department's Assessment Report SSD-10383, 2021)

The WCC and application site

The WCC site is approximately 12 hectares (ha) and is irregular in shape. It has frontage to Darcy Road in the north / north-east and is bounded by the Main Western railway line to the south, Western Sydney University Westmead campus to the east, and high-density residential development to the west.

The WCC site accommodates several one to four storey school buildings for three schools including the Catherine McAuley Westmead, Parramatta Marist High School, and the Mother Teresa Primary School, as well as two ovals, playing fields, courts, outdoor play areas and car parking. The schools currently accommodate 2606 students (2186 high school and 420 primary school students). Vehicle access is from Darcy Road via four non-signalised driveways. Pedestrian access is via secure entry from the southern side of Darcy Road (**Figure 2**). A multi-storey carpark currently under construction (under a separate approval by City of Parramatta Council) at the north-eastern corner of the WCC site includes 260 car spaces, along with driveway access from Darcy Road.

The application site (the site) is located in the north-west corner of the WCC site, fronts Darcy Road to the north and north-east, a creek to the west, Parramatta Marist and Catherine McAuley Westmead high schools to the east, and the WCC ovals to the south.

The site contains the existing Mother Teresa Primary School buildings, open grassed play areas, a hockey field, three basketball/tennis courts and minor supporting structures. The site incorporates the north-western WCC driveway, carpark, and pick-up / drop-off area (**Figure 2**).

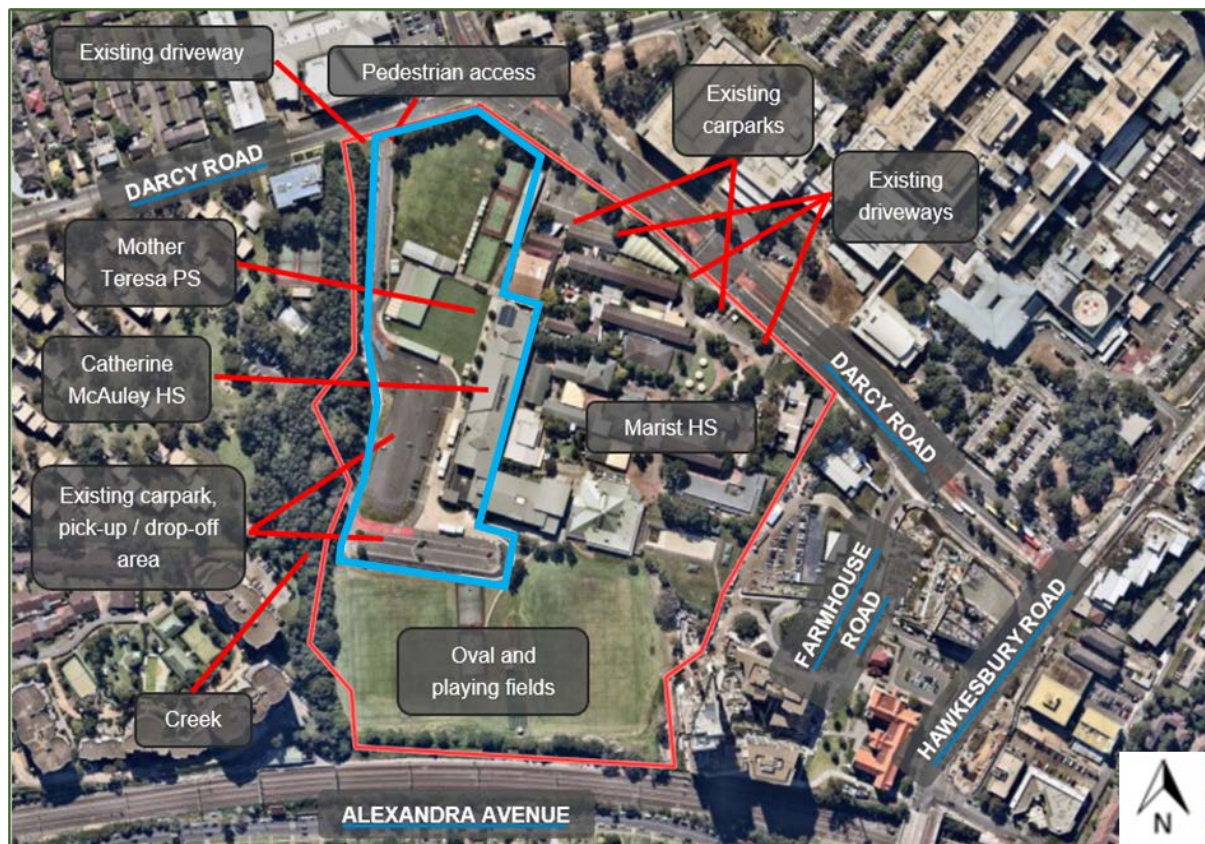


Figure 2 | WCC site (in red) and project site (in blue) context map (Base source: Department's Assessment Report SSD-10383, 2021)

Surrounding development

The WCC site is located within a wider precinct known as the Westmead Health and Innovation Precinct (Westmead Precinct), identified under the Westmead Place Strategy. The land to the north and north-east of the WCC site contains health services including Westmead Private, Public and Children's Hospitals, and industrial developments further north, beyond Westmead Hospital. Westmead town centre and railway station are located south-east of the site, and low and medium density housing further to the east, south and west. The land north-west of the WCC site contains commercial developments and a retirement village (**Figure 3**).



Figure 3 | Regional context map (Source: DPE Assessment Report SSD-10383, 2021)

1.2 Approval history

On 14 February 2022, development consent SSD-10383 (Original Application) was granted by the Independent Planning Commission (the Commission) for the redevelopment of the site. The development consent permits:

- alterations to an existing school building (Mother Teresa Primary School) and change of use to provide an early learning centre for 200 places and 25 full time equivalent (FTE) staff
- construction of a six-storey new primary school building, including classrooms and learning spaces, recreation spaces, canteen, storage, amenities and rooftop open space
- construction of a new parish church with 400 seats
- upgrades and alterations to two existing driveways, retention of 212 existing car parking spaces and provision of 12 additional car parking space
- associated works including tree removal, pedestrian access, and landscaping

- staged increase in student numbers accommodating a total of 1680 students (1260 additional) and 76 additional FTE staff.

The development consent includes the following conditions relevant to the modification application:

Conditions B1 and B2 – Through site pedestrian link

Conditions B1 and B2 require that, prior to the issue of any construction certificate, the Applicant prepares schematic drawings for a future through site link for pedestrians from Farmhouse Road to the western boundary of the site, to facilitate a possible future pedestrian connection from the western boundary of the site to Bridge Road further to the west, via a neighbouring property under separate ownership. The location of this link through the site is to be consistent with a schematic location identified in SSD-10383 documentation, shown in **Figure 4**.

Condition E4 – Pedestrian connection and easements

Condition E4 requires the Applicant to provide evidence (prior to the issue of the occupation certificate) that two internal through site links (one from the multi-storey car park at the north-eastern corner of the WCC site and the other from Farmhouse Road) are constructed, and any easements and covenants over adjoining sites (if required) have been created (**Figure 4**).

This condition also requires that the through site pedestrian link from Farmhouse Road, and its extension within the neighbouring property to the west (located across the watercourse from the western boundary) be made available to the school students as well as the public in the future. The easements and covenants (as required) must stipulate these requirements.

Condition F1 and F2 – Through site pedestrian link

Condition F1 and F2 require that the Applicant construct the through site pedestrian link (required by conditions B1 and B2) from the western boundary of the site to Bridge Road, and establish easements / covenants / agreements (as required) to provide the link within a stipulated timeframe post occupation of the proposed school.

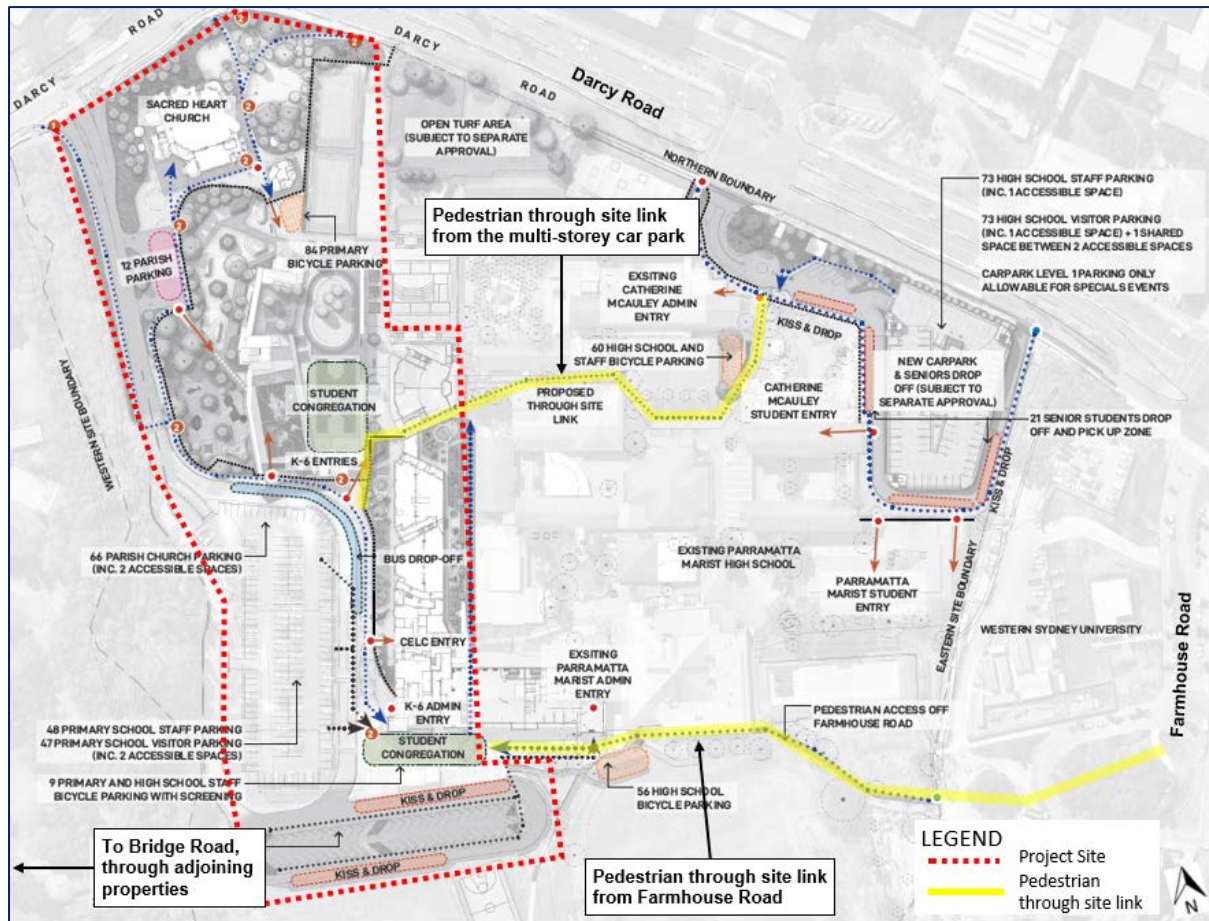


Figure 4 | Internal through site pedestrian links (yellow) (Base source: SSD-10383)

In determining the original application, the Commission's Statement of Reasons considered the additional connectivity through the Westmead Precinct would be beneficial for the local community. However, the Commission acknowledged that it is the Applicant's responsibility to ensure student safety, and concluded allowing public access through the site was not justified at this stage. The Commission stated it would, however, be reasonable to require public access through the site as part of the future staged delivery of the masterplan for the site, and imposed Conditions B1, B2 and E4.

The Commission agreed with the Department's recommendation that the preparation of a schematic design for a future through site pedestrian link to Bridge Road from Farmhouse Road would be useful, to ensure the opportunity for future connection is recognised and considered, and imposed in Condition B1. However, the Commission did not agree that the Applicant should be required to provide details of possible easements over adjoining properties to facilitate a pedestrian connection to Bridge Road, as that would not be within the scope of the application.

The Commission amended the Secretary's recommended condition B1 so that it did not require the creation of easements over adjoining properties. However, the Commission did not remove similar requirements for easements / covenants within conditions B2, E4, F1 or F2, that require the provision of pedestrian access infrastructure within the development site.

Conditions E5 – open space provision

Condition E5 requires the preparation of an Open Space Management Plan (OSMP) to ensure the primary school students have appropriate access to uncovered and open to air play spaces, including the WCC ovals.

Conditions E43 – community access to recreational facilities

Condition E43 requires the preparation of a Community Access Management Plan (CAMP) to allow other schools and/or local community groups to access the WCC sports ovals outside school hours.

In determining the original application, the Commission considered that the Applicant should not be required to provide public access to all of its recreation facilities and sports ovals. However, the Commission supported the preparation of a CAMP to provide community access to WCC ovals, noting the condition provides the Applicant with flexibility to limit access to specified groups, rather than the entire community. The Commission amended recommended condition E43 to limit community access requirements to WCC ovals only.

2 Proposed modification

2.1 Description of modification summary

The modification application, as refined by the Submissions Report (RtS) seeks approval to amend a number of conditions and landscaping layout as summarised below and identified in **Figure 5** to **Figure 7**:

- modify the landscaping layout, design and planting, and increase the amount of unencumbered open space (**Section 2.2**)
- amend and delete conditions (**Section 2.3**), including:
 - amend conditions B1 and B2 to:
 - revise the western destination of the through site pedestrian link from the 'western boundary' of the WCC site to the 'primary school'
 - amend the permitted users of the through site pedestrian link from 'students' to 'school users'
 - remove the requirement that the through site pedestrian link be extended further west, across the neighbouring property (under separate ownership) to Bridge Road
 - remove the requirement that the design of the through site pedestrian link be prepared in consultation with City of Parramatta Council (Council)
 - amend condition E4 and delete conditions F1 and F2 to:
 - remove the requirement to establish easements on or off the site, to facilitate protection of the through site pedestrian link in condition B1
 - in lieu of the easement creation, adjust internal lot boundaries so that the future through site pedestrian link is located wholly within the Lot 1 DP1095407 (the northern lot) (**Figure 5**).

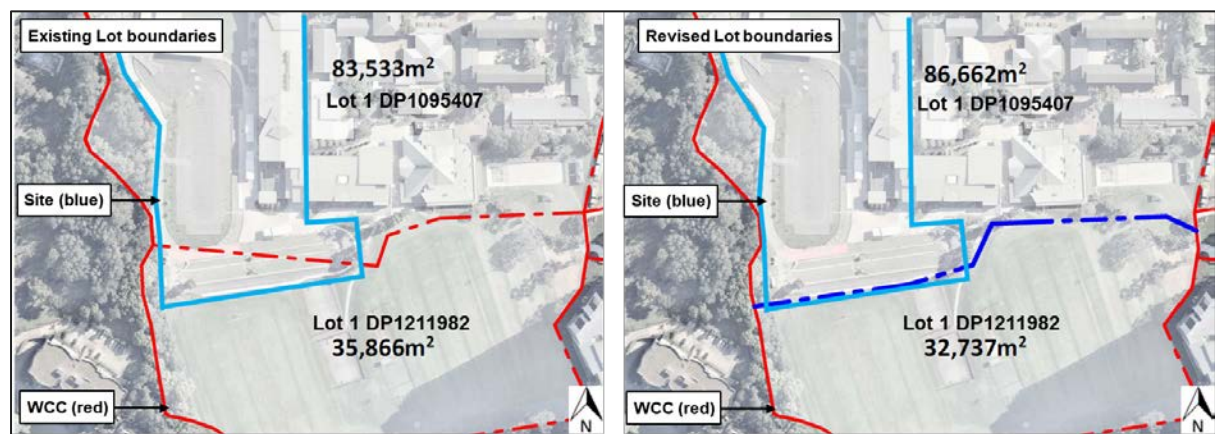


Figure 5 | Existing lot boundaries (top left) and proposed Lot boundaries (top right) (Base source Applicant's RtS 2023)

- amend condition E5 by replacing the word to have access to 'ovals' with the word access to 'open space'
- amend condition E43 by replacing the word for community access to 'WCC ovals' with 'school facilities within the site'.

2.2 Modifications to landscape design and layout

The modification application includes revisions to the approved landscape design and layout, to maximise open play space at all levels of the proposed building to allow children to participate in active play.

The key changes to landscaping design and layout occur at ground and roof (Level 5) levels, discussed below and shown at **Figure 6** and **Figure 7**. A comparison is provided between the approved / proposed landscape and open space areas at **Table 1**:

Ground floor level

- relocate the formal playground structures from the south-west of the site to the weather protected undercroft, and replace with three small synthetic soccer pitches
- remove mounded landscaping and mass plantings from the north-west of the site, and replace with open grassed areas for active recreation
- other minor changes the approved landscape design, footpath and furniture layouts
- increase the number of trees from 43 to 50.

Roof / Level 5

- replace a lined multi-sports court with two small synthetic soccer pitches
- replace some passive play areas with more active play areas
- remove the covered walkway and provide a pavilion for covered play
- relocate toilets and redesign the running track
- reduce the total number of trees at this level from 11 to four.

Changes to landscaping layout and design are also proposed at Levels 1 to 4. However, these changes consist of minor reconfigurations and alterations, and do not materially alter the landscaping at these levels.

The proposed amendments result in an overall increase in unencumbered open space (+401m²), active areas (+576m²) and quantum of open space per child (+0.3m²). There is no change to the total number of proposed trees to be removed or replaced.

Table 1 | Numerical comparison between the approved and modified landscape / open space

Landscape element	Approved	Proposed	Difference
Unencumbered open space	13,986.8m ² :	14,387.8m ² :	+401m ²
(Ground)	(4985.8m ²)	(5392.8m ²)	(+407m ²)
(Levels 1-4)	(6265m ²)	(6265m ²)	(No change)
(Level 5)	(2736 m ²)	(2730 m ²)	(-6m ²)
Active areas	2238.5m ²	2814.9m ²	+576.4m ²
Open space (m²) per student (approx.)	8.2m ²	8.5m ²	+0.3m ²
Trees removal	128	128	No change

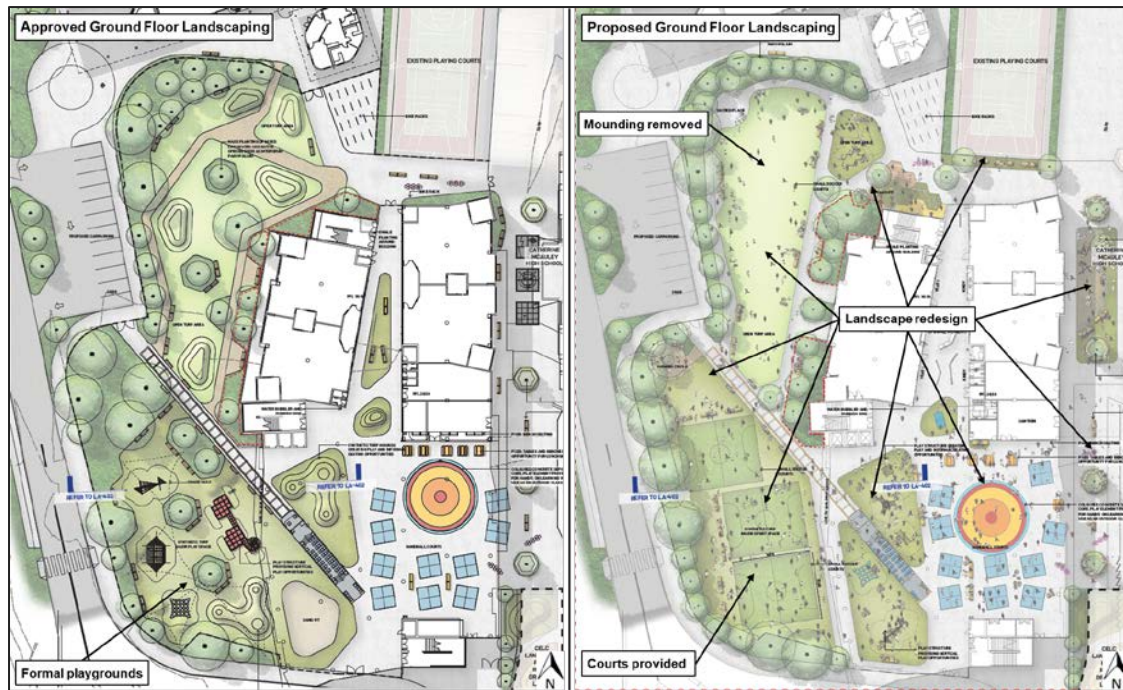


Figure 6 | Approved (left) and proposed (right) ground floor landscaping layout and design (Base source Applicant's RtS 2023)

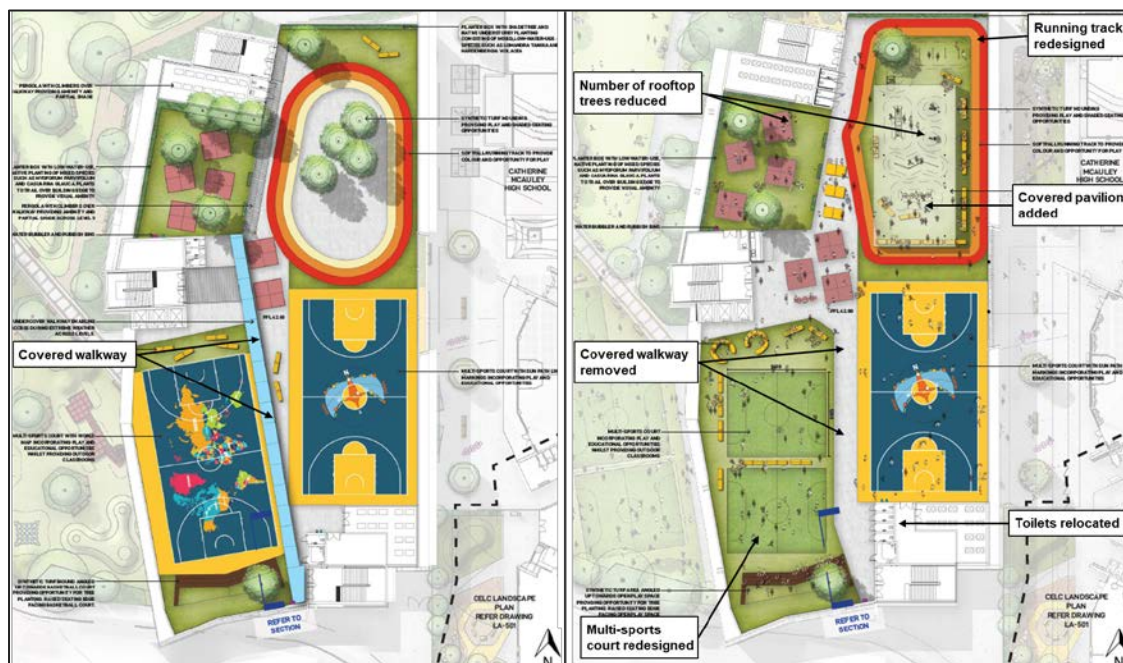


Figure 7 | Approved (left) and proposed (right) roof / level 5 landscaping layout and design (Base source Applicant's RtS 2023)

2.3 Modification of conditions

The proposed modification of conditions (**bold underlined and strikethrough in red font**) and the Applicant's justification for the proposed changes is provided at **Table 2**. The Applicant's modification application is supported by legal advice which identifies that a number of conditions failed to meet planning principles regarding the validity of conditions established under *Newbury District Council v Secretary of State for the Environment* [1981] AC 578 (Newbury Test).

Table 2 | Proposed amendments to conditions as originally proposed, as updated by the RtS, and Applicant's justification

Original modification application	RtS - revised modification application	Applicant's Justification
<p>B1. Through site pedestrian link</p> <p>Prior to the issue of any construction certificate for the landscaping works within the site (or an alternate timeframe agreed with the Planning Secretary), the Applicant must submit an amended site plan to the satisfaction of the Planning Secretary including the following:</p> <p>(a) a schematic diagram of a through site direct and paved pedestrian connection from Farmhouse Road to the western boundary of the site (Lot 1 DP 1095407 and Lot 1 DP 1211982) to facilitate active access solutions supporting the GTP and to allow for alternate student access to the site, in addition to the existing Darcy Road entry points, consistent with Figure 6.6 of <i>Transport & Accessibility Impact Assessment</i> prepared by Transport Planning Partnership dated 25 August 2021; and</p> <p>(b) ensure the diagram prepared under (a) provides for a possible future pedestrian connection linking the east-west pedestrian link to Bridge Road (to the west) including possible access through the adjoining properties to the west and the riparian zone.</p>	<p>B1. Through site pedestrian link</p> <p>Prior to the issue of any construction certificate for the landscaping works within the site (or an alternate timeframe agreed with the Planning Secretary), the Applicant must submit an amended site plan to the satisfaction of the Planning Secretary including the following:</p> <p>(a) a schematic diagram of a through site direct and paved pedestrian connection from Farmhouse Road to the western boundary of the site (Lot 1 DP 1095407 and Lot 1 DP 1211982) <u>primary school</u> to facilitate active access solutions supporting the GTP and to allow for alternate student access to the site <u>by staff, and students (and their carers) of the Catholic schools and CELC on Lot 1 DP 1095407 and Lot 1 DP 1211982</u>, in addition to the existing Darcy Road entry points, consistent with Figure 6.6 of Transport & Accessibility Impact Assessment prepared by Transport Planning Partnership dated 25 August 2021; and</p> <p>(b) ensure the diagram prepared under (a) provides for a possible future pedestrian connection linking the east-west pedestrian link to Bridge Road (to the west) including possible access through the adjoining properties to the west and the riparian zone <u>the primary school to the western boundary of the site.</u></p>	<ul style="list-style-type: none"> it is unnecessary for the schematic diagram for the pedestrian link to extended beyond the primary school at this stage. the link would be used by all school users, not just students. the link route has not been finalised and requiring consistency with Figure 6.6 limits the design flexibility. the reference to the Green Travel Plan (GTP) is superfluous / not necessary.
<p>B2. Through site pedestrian link</p>	<p>B2. Through site pedestrian link</p>	<ul style="list-style-type: none"> reference to 'consultation' could be inferred by a Certifier as requiring the

<p>The pedestrian link diagrams must be prepared in consultation with Council and evidence of such consultation provided to the Planning Secretary along with details in condition B1.</p>	<p>The <u>schematic</u> pedestrian link diagrams must be <u>prepared in consultation with submitted to</u> Council and evidence of such <u>consultation submission</u> provided to the Planning Secretary along with details in condition B1.</p>	<p>‘endorsement’ or ‘approval’ of Council and delay the project.</p> <ul style="list-style-type: none"> the insertion of ‘schematic’ reflects condition B1 wording.
<p>E4. Pedestrian connections and easements</p> <p>At least 2 months prior to the issue of the first occupation certificate for the school, the Applicant must:</p> <p>(a) provide evidence that the internal site link from the multi-storey car park to the school and CELC has been completed so that the users can access the site safely from the multi-storey car park area;</p> <p>(b) provide evidence that the paved pedestrian link through the site connecting Farmhouse Road to the western boundary of the site, as required by condition B1(a) is operational and in a satisfactory condition for use by the school/CELC and parish church users;</p>	<p>E4. Pedestrian connections and easements</p> <p>At least 2 months prior to the issue of the first occupation certificate for the school, the Applicant must:</p> <p>(a) provide evidence that the internal site link from the multi-storey car park to the school and CELC has been completed so that the users can access the site safely from the multi-storey car park area;</p> <p>(b) provide evidence that the paved pedestrian link through the site connecting Farmhouse Road to the western boundary of the site <u>primary school</u>, as required by condition B1(a) is operational and in a satisfactory condition for use by the school/CELC and parish church users;</p>	<ul style="list-style-type: none"> replacing ‘western site boundary’ with ‘primary school’ is consistent with the revisions to condition B1. it would be impossible to distinguish between ‘parish church users’ and the public; allowing public access would pose a student safety risk. church users would mainly access the site via vehicles and therefore would not use the through site pedestrian link.
<p>(c) provide satisfactory evidence to the Certifier that all required easements (if any) under section 88B and/or positive covenants, have been created within the site (where necessary) to establish this pedestrian link and allow the use of this link by the students of the proposed school, CELC or the users of the parish church at all times; and</p>	<p>(c) provide satisfactory evidence to the Certifier that <u>all required easements (if any) under section 88B and/or positive covenants, have been created within the site (where necessary) to establish this pedestrian link and allow the use of this link by the students of the proposed school, CELC or the users of the parish church at all times; and the boundary between Lot 1 DP1095407 and DP1211982 has been adjusted so that the pedestrian link is located wholly within Lot 1 DP1095407, by effecting the registration of a Plan of Identification or similar at NSW Land Registry Services.</u></p>	<ul style="list-style-type: none"> the boundary realignment would ensure the link is wholly contained within Lot 1 DP1095407 (the northern lot) (Figure 5). students would continue to have access to the link in the event that the southern lot was sold in the future.
<p>(d) provide satisfactory evidence to the Certifier that a positive covenant has been created under section 88B to allow for the east-west pedestrian link (required by condition B1(a)) or any similar east-west pedestrian link within the site (Lot 1 DP 1095407 and Lot 1 DP 1211982) to be used as public pedestrian access between 7am and 5pm (school days), when the connection is extended from the site to Bridge Road in the future.</p>	<p>No change / delete entire condition</p>	<ul style="list-style-type: none"> public access through the site raises significant safety and child protection issues, and it is not possible to install appropriate security/fence at this stage. in determining the original application, the Commission stated that public access through the site is not appropriate at this stage.

		<ul style="list-style-type: none"> the legal advice argues that the condition does not satisfy the Newbury test as it does not fairly and reasonably relate to the development.
<p>E5. Open space provisions</p> <p>To allow for appropriate access to “uncovered and open to air” play spaces (all open spaces outside the footprint and roof overhang of the school building), the Applicant must provide an Open Space Management Plan to the satisfaction of the Planning Secretary, prior to the issue of any occupation certificate. The plan must demonstrate that all students of the primary school would have sufficient and regular access to ground level ovals within the site (Lot 1 DP 1095407 and Lot 1 DP 1211982), without requiring the displacement of other students (such as the high school students) from these ovals.</p>	<p>E5. Open space provisions</p> <p>To allow for appropriate access to “uncovered and open to air” play spaces (all open spaces outside the footprint and roof overhang of the school building), the Applicant must provide an Open Space Management Plan to the satisfaction of the Planning Secretary, prior to the issue of any occupation certificate. The plan must demonstrate that all students of the primary school would have sufficient and regular access to ground level <u>ovals-open space</u> within the site (Lot 1 DP 1095407 and Lot 1 DP 1211982), without requiring the displacement of other students (such as the high school students) from <u>these ovals-this open space</u>.</p>	<p>The modification ensures that:</p> <ul style="list-style-type: none"> students have access to all ground level open space, not just the ovals. all WCC open-air play spaces are available to the primary school students. there is an increase in the amount of unencumbered active open space.
<p>E43. Community access to recreational facilities</p> <p>Prior to the issue of the occupation certificate for the school (unless alternate timeframe is agreed within the Planning Secretary), the Applicant must provide evidence that:</p> <p>(a) a management plan has been developed in conjunction with the other existing schools within the site to allow access to the sports ovals to other local schools and/or local community groups outside the school hours, and a copy of the management plan has been approved by the Certifier and provided to Council for information;</p> <p>OR</p> <p>(b) satisfactory consultation has been undertaken with the other owners of the site in developing a management plan referred to in condition E43(a) and that this plan can be delivered within 12 months of commencement of operation of the school.</p>	<p>E43. Community access to recreational facilities</p> <p>Prior to the issue of the occupation certificate for the school (unless alternate timeframe is agreed within the Planning Secretary), the Applicant must provide evidence that:</p> <p>(a) a management plan has been developed in conjunction with the other existing schools within the site to allow access to the <u>sports ovals-facilities within the site</u> to other <u>s local schools and/or local community groups</u> outside the school hours, <u>subject to availability and on a hire basis</u>, and a copy of the management plan has been approved by the Certifier and provided to Council for information;</p> <p>OR</p> <p>(b) satisfactory consultation has been undertaken with the other owners of the site in developing a management plan referred to in condition E43(a) and that this plan can be delivered within 12 months of commencement of operation of the school.</p>	<p>The modification ensures that:</p> <ul style="list-style-type: none"> access would be provided to the full range of facilities within the site. a broad range of external users are able to have access to the site. facilities are made available only when feasible / available.
<p>F1. Through site pedestrian link</p>	<p>No change / delete entire condition</p>	<p>The deletion of this condition is consistent with the modifications to conditions B1 and E4.</p>

~~Within 12 months of commencement of operation of the school, the Applicant must provide the following to the satisfaction of the Planning Secretary:~~

~~(a) evidence that:~~

- ~~(i) an east-west link from the site to Bridge Road (to the west) including possible access through the adjoining properties to the west and the riparian zone (in accordance with the schematic plans in condition B1, or otherwise agreed with the Planning Secretary) has been constructed; and~~
- ~~(ii) all required easements (for the internal site link, if needed and the extended pedestrian link to Bridge Road) under section 88B and/or restriction or public positive covenant under section 88E of the Conveyancing Act 1919 naming Council/Planning Secretary (or the relevant public authority) as the prescribed authority, which can only be revoked, varied or modified with the consent of the Council/ Planning Secretary (or the relevant public authority), have been registered, to establish this pedestrian link and allow the use of this link by the students of the proposed school, CELC or the users of the parish church at all times;~~

OR

~~(b) where an east-west link from the site to Bridge Road (to the west) including possible access through the adjoining properties to the west is not built/completed, but an agreement(s) is/are in place for the link providing a realistic timeline for delivery of the link is provided to the Planning Secretary and the timeframe of the delivery of the link is agreed with.~~

OR

~~(c) evidence that:~~

- ~~(i) the Applicant has undertaken extensive consultation and engagement with the adjoining property owners and the relevant public authorities to establish the above link in condition F1(b);~~
 - ~~(ii) evidence of this consultation is provided; and~~
-

~~(iii) the reasons for which the pedestrian link cannot be established through the adjoining properties and/or riparian zone adjoining the site.~~

F2. Through site pedestrian link

If an alternate timing for delivery of the through site link to Bridge Road (as required by condition F1(b)) is agreed with the Planning Secretary, then the link must be delivered within that time.

~~F2. Through site pedestrian link~~

~~If an alternate timing for delivery of the through site link to Bridge Road (as required by condition F1(b)) is agreed with the Planning Secretary, then the link must be delivered within that time.~~

The deletion of this condition is consistent with the modifications to conditions B1 and E4.

3 Strategic context

The Department considers that the proposed modification would not change the original proposal's consistency with the following:

- *Greater Sydney Region Plan, A Metropolis of Three Cities*, as it proposes the development of new educational infrastructure and provides for the shared use of facilities with the community to meet the growing needs of Sydney
- *Central City District Plan*, as it would provide additional and contemporary school infrastructure with opportunities to co-share the new facilities with the local community
- *NSW Future Transport Strategy 2056*, as it supports the ongoing provision of an existing education facility in a highly accessible location close to public transport
- *State Infrastructure Strategy 2022-2024*, as it would provide new facilities to support the demand for increased student enrolments in the non-government school's sector
- *Westmead Place Strategy 2036*, as it would provide new school facilities to support increased primary school student enrolments, to address projected growth in Westmead South and Parramatta North and incorporates modern, innovative learning environments.

The modification would have no impact on the operational or construction jobs created by the original application.

3.1 Westmead Place Strategy 2036

On 21 October 2022, the then Minister for Planning and Homes adopted the Westmead Place Strategy 2036 (the Strategy) and a Ministerial Direction under section 9.1 of the EP&A Act. This direction requires any future proposals within the precinct to be consistent with the Westmead Place Strategy (see **Figure 8**).

The Strategy sets out a vision to develop the Westmead precinct as a world-class health and innovation district by 2036. The Strategy is relevant during strategic planning processes and future planning proposals, through future Ministerial Direction(s).

The Strategy establishes a planning framework which emphasises connectivity, productivity, liveability, and sustainability. The Department notes, however, that it does not set objectives for, or outline the scale of, development that should occur at the WCC site.

The Strategy should be read in conjunction with the Westmead Place-based Transport Strategy(see below).

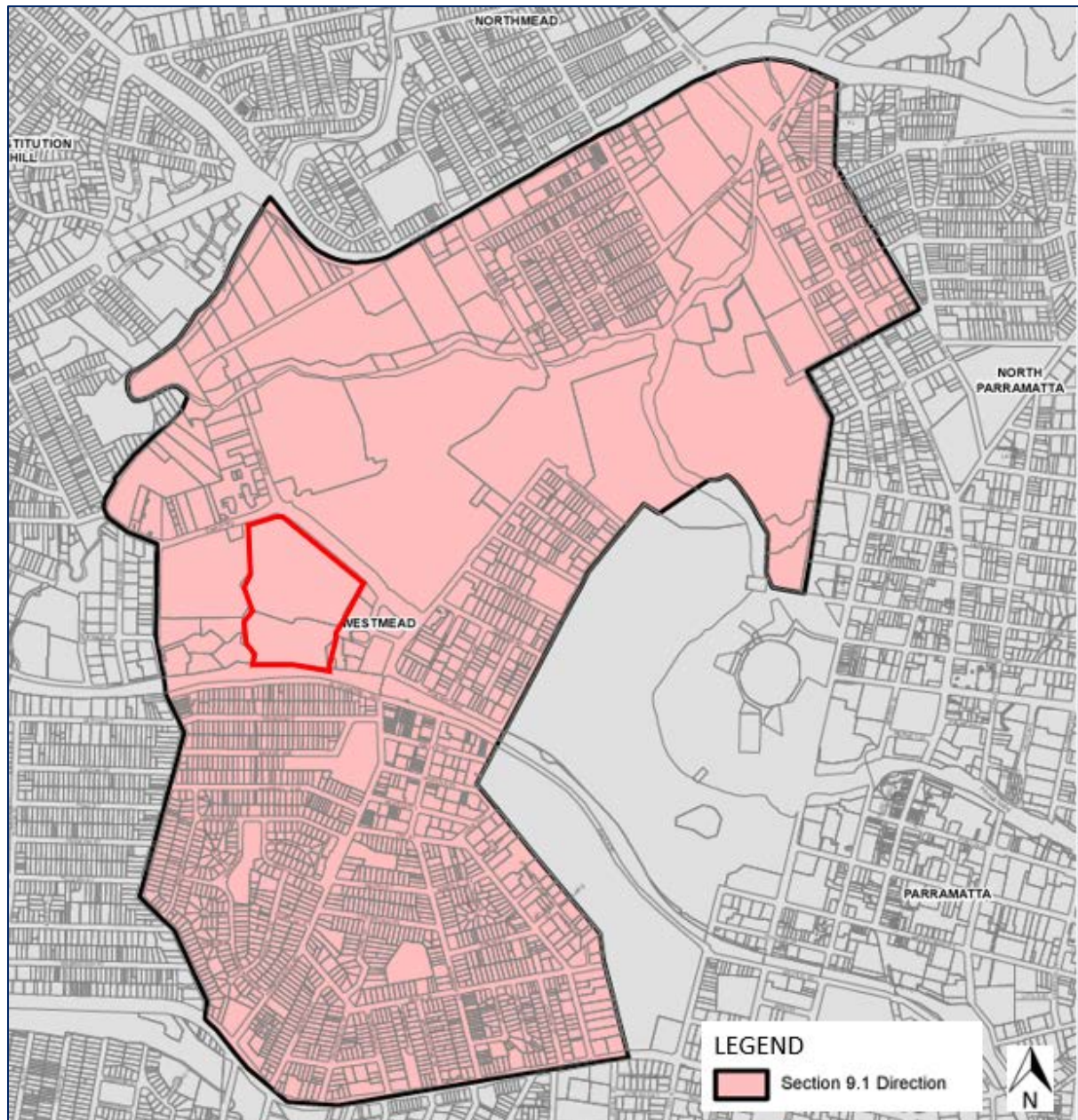


Figure 8 | Westmead Place Strategy precinct area and WCC site in red (Source: DPE 2022)

3.2 Westmead Place-based Transport Strategy

Transport for NSW (TfNSW) prepared a Place-based Transport Strategy (Transport Strategy) to support the future development of Westmead under Westmead Place Strategy. The vision for the future of transport in Westmead aligns with the four place-based goals in the Westmead Place Strategy: connectivity, productivity, liveability and sustainability.

The Transport Strategy includes initiatives recommended for further investigation including potential cross-block links through the WCC site (**Figure 9**).

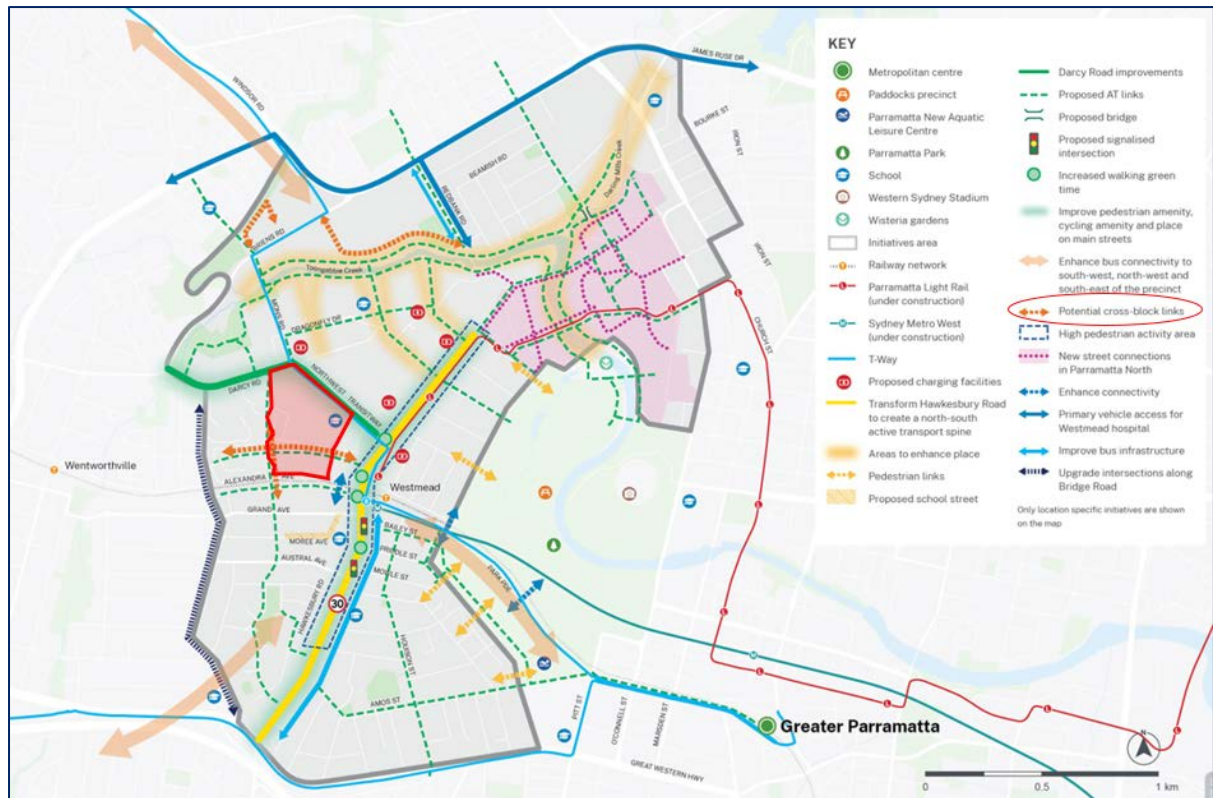


Figure 9 | Cross block link through the WCC site (in red) (Source: TfNSW 2022)

The proposed modification application contributes to elements of both the Strategies as:

- the school provides new facilities to support the demand for increased primary school student enrolments, noting projected residential growth in Westmead and Parramatta North
- it provides upgraded learning spaces and modern, innovative learning environments.

Department assessment

The Department notes both the Strategies apply to future planning proposals in the precinct. The proposed modification application includes a through site pedestrian link for the school users and maintenance of a GTP (which was submitted with the original application) that demonstrate that the proposal would capitalise on transport connectivity and reduce car dependency. The Department considers that the modification application is generally consistent with the Strategies.

4 Statutory context

4.1 Scope of modifications

The Department has reviewed the scope of the modification application and considers that the application can be characterised as a modification involving minimal environmental impacts, as the proposal:

- would not increase the environmental impacts of the project as approved
- is substantially the same development as originally approved
- would not involve any further disturbance outside the already approved disturbance areas for the project.

Therefore, the Department is satisfied the proposed modification is within the scope of section 4.55(1A) of the EP&A Act and does not constitute a new development application (DA).

Accordingly, the Department considers that the application should be assessed and determined under section 4.55(1A) of the EP&A Act rather than requiring a new DA to be lodged.

4.2 Consent authority

Commission's delegate as consent authority

The Commission is the consent authority for the application under section 4.5(a) of the EP&A Act and section 2.7 of the State Environmental Planning Policy (Planning Systems) 2021 (Planning Systems SEPP). However, under the Commission's delegation dated 14 June 2022, the Deputy Secretary, Development Assessment, may determine the application, as:

- the relevant local council has made an objection
- a political disclosure statement has not been made
- there are less than 15 public submissions by way of objection.

4.3 Mandatory matters for consideration

Section 4.55(1A) of the EP&A Act requires the matters listed in **Table 3** require consideration for modification applications involving minimal environmental impact.

Table 3 | Mandatory matters for consideration

Matter	Consideration
Whether the proposed modification is of minimal environmental impact	The proposed modifications sought under this application are considered to have minimal environmental impacts as discussed in Section 6 .
Whether the development to which the consent	The development, as modified, is considered to be substantially the same development for which the consent was originally granted.

as modified related is substantially the same development

Whether notification has occurred, and any submissions have been considered	The application has been notified in accordance with the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation).
Any submission made concerning the proposed modification has been considered	The modification application and associated documents were publicly notified for 14 days during which time the Department received comments and submissions from Council, government agencies and the community. These submissions are considered in Section 5 and 6 .
Any relevant provisions of section 4.15(1) of the EP&A Act.	The Department conducted a comprehensive assessment of the project against the mandatory matters for consideration as part of the assessment of the original application. The Department considers this modification application does not result in significant changes that would alter the mandatory matters for consideration under section 4.15 of the EP&A Act and conclusions made as part of the original assessment.
Consideration of the reasons for the granting of the consent that is sought to be modified.	The Department has considered the findings and recommendations of the Department's Assessment Report and the Commission's Statement of Reasons for the original application. The Department is satisfied that the key reasons for the granting of consent continue to apply to the development, as proposed to be modified.

Since lodgement of the modification application, all NSW State Environmental Planning Policies have been consolidated into 11 policies. The consolidated SEPPs commenced on 1 March 2022, with the exception of State Environmental Planning Policy (Housing) 2021, which commenced on 26 November 2021.

The SEPP consolidation does not change the legal effect of the repealed SEPPs, as the provisions of these SEPPs have simply been transferred into the new SEPPs. Further, any reference to an old SEPP is taken to mean the same as the new SEPP. As such, the Department has considered the development against the relevant provisions of the consolidated SEPPs.

As noted in **Table 3**, the Department considers the proposal does result in significant changes that would alter the mandatory matters for consideration under section 4.15 of the EP&A Act, and conclusions made as part of the original assessment.

5 Engagement

5.1 Department's engagement

In accordance with clause 10 of Schedule 1 of the EP&A Act and section 106 of the EP&A Regulation, the Department publicly exhibited the application for 14 days from 21 July to 3 August 2022 on the Department's website. The Department notified adjoining landowners and relevant public authorities including the City of Parramatta Council (Council) and Cumberland City Council in writing. Previous submitters were notified of the modification application and invited to make a submission.

The Department has considered the comments raised in the public authority and public submissions during the assessment of the application, and by way of recommended conditions in the instrument of modification (**Appendix C**).

5.2 Summary of submissions

During the exhibition, the Department received four submissions, including an objection from the public, an objection from City of Parramatta Council, and a submission from Cumberland City Council.

A summary of the submissions is provided below; full copies are provided in **Appendix A**.

Council objected to the modification application for the following reasons:

- deletion of reference of Lot and DP numbers in condition B1(a) is not supported, as it is required to ensure the location of easement(s) is adequately defined.
- conditions B1(b) and E4(d) do not fail the requirements for a valid condition of consent as established under case law *Newbury District Council v Secretary of State for the Environment* [1981] AC 578 (Newbury Test), as they ensure the school redevelopment is considered wholly in the context of the entire block between Bridge Road and Farmhouse Road. In this regard, the easement serves a clear purpose, and the Bridge Road link relates to the orderly development of the site to provide adequate pedestrian access.
- condition B2 should not be amended noting the concerns given in the objection to condition B1.
- with regard to deleting condition E4(b), the justification that church goers would be indistinguishable from the public is insufficient. Further, access to the site for church users only via vehicles (as assumed) is inconsistent with the GTP and the original application, which encourages pedestrian access to the site.
- condition E4(c) should be retained as easements / covenants are required to ensure access is maintained via the through site pedestrian link.
- deletion of condition E4(d) is not supported, as public access can be provided by this Applicant, as has been successfully demonstrated at other schools within the City of Parramatta Local Government Area.
- condition E5 is required to be retained to ensure the increased density of the school does not compromise the quality of open space provided for students.
- condition E43 should be retained as the Applicant should consider opportunities for shared use.

- condition F1 ensures the orderly development of the site (for the same reasons as provided for condition B1(b) and condition E4(d)) and would not infringe the Applicant's ability to develop the site to its full potential. Consequently, this condition should not be deleted.

The concerns raised in the public submission include objection to the amendment / removal of conditions B1 and F relating to the provision of a through site pedestrian link to Bridge Road.

TfNSW and Cumberland City Council provided no comments, only an acknowledgement of receipt of the referral.

5.3 Response to Submissions and additional information

The Department reviewed the modification application and requested the Applicant provide additional information:

- additional justification for the deletion of condition B1(b), including consideration of the Commission's Statement of Reasons regarding future-proofing public access via a through site pedestrian link
- further clarification and evidence clarifying no easement is required pursuant to condition E4(c), to facilitate school student and staff access in relation to the site pedestrian link
- additional justification for the deletion of condition E5, including clarification why the OSMP is not required, and how students access ovals
- comparison of approved and proposed unencumbered space, and clarification as to how much passive space is to be converted into active space
- clarification regarding the intended child access, use and management within covered and open aired open space areas, and use and access to ovals
- clarification whether the proposal includes a reduction in overall tree planting / canopy cover
- additional justification for the deletion of condition E43, noting this condition already incorporates flexibility for limited access at the WCC's discretion.

On 2 June 2023, the Applicant submitted its Submissions Report (RtS), which responded to comments raised in submissions and to the Department's request for additional information. The Applicant stated it now proposes to retain and amend conditions B1(b), E4(c), E5 and E43, and a further amend conditions B1 and B2, and delete condition F2, as outlined in **Table 2**

The RtS was made publicly available on the Department's website and referred to Council. The Department received additional advice from Council which maintained its objection to the application, and provides the following additional grounds to its objections:

- reiterated that the proposed deletion or amendment of conditions, (including B1(b)) which seeks to remove the requirement for through site pedestrian access for students and staff to the western boundary and beyond the Bridge Road, is not supported
- has not agreed with the Applicant's legal advice with respect to Westmead Place Strategy 2036 that little weight should be given in determining the modification application
- does not support the proposed deletion of condition F1 and F2
- does not support the rewording of 'western boundary of the site' to 'primary school' in condition B1(a) and E4(b).

No submissions were received from the public or advice from TfNSW or Cumberland City Council.

On 24 August 2023, the Department consulted with Council on draft conditions. Council provided their comments on 25 August 2023, and they have not agreed to the proposed amendment to conditions B1(a), B1(b) and E4(b) and the deletion of condition F1 and F2, and reiterated their concerns.

6 Assessment

The Department has considered the merits of the modification application in accordance with the relevant matters under section 4.55(1A) and the objectives of the EP&A Act.

This section of the report assesses the Applicant's final proposal, as amended by the RtS and as summarised by the Department in **Section 2** and **Section 5**.

The Department considers the key issues of the proposed modification to be the proposed changes to the extent, route, destination, users, and required easements / covenants applying to the through site pedestrian link. These issues are discussed below. Other issues considered during the assessment of the application are discussed at **Section 6.3**.

6.1 Pedestrian through site link destination, route, and users

6.1.1 Condition B1(a) – through site pedestrian link

Condition B1(a) currently requires the Applicant to prepare a schematic diagram showing the location of a future through site pedestrian link connecting Farmhouse Road in the east with the western boundary of the site, to provide a cross block link through the WCC site, and to provide an alternative student access to the main access from Darcy Road.

The modification (as amended by the RtS) proposes to amend condition B1(a) by changing the destination of the schematic through site pedestrian link from its delivery all the way through to the 'western boundary' to it being delivered to the 'primary school', broadening users of the link to include staff and school users, but deleting reference to **Figure 6.6** and the GTP, as outlined at **Table 2**.

The Applicant has stated that the amendments are appropriate as:

- the link's purpose is to provide an alternative student access to Darcy Road. It is therefore unnecessary for the link be extended to the western boundary (beyond the school) at this time
- approval was for a primary school, and any new paths should be for the purpose of the school
- the pedestrian link would be used by all school users, not just students. Therefore, it is necessary to include reference to staff, Catholic Schools and Catholic Education Learning Centre (CELC)
- the condition requires consistency with Figure 6.6 of the TAIA, which specifies a precise route for the link from Farmhouse Road to the western boundary of the site. However, the link route has not been designed or finalised. To ensure the most appropriate link is provided, flexibility is required, and the link route should not be precisely defined at this stage
- the reference to the GTP is superfluous.

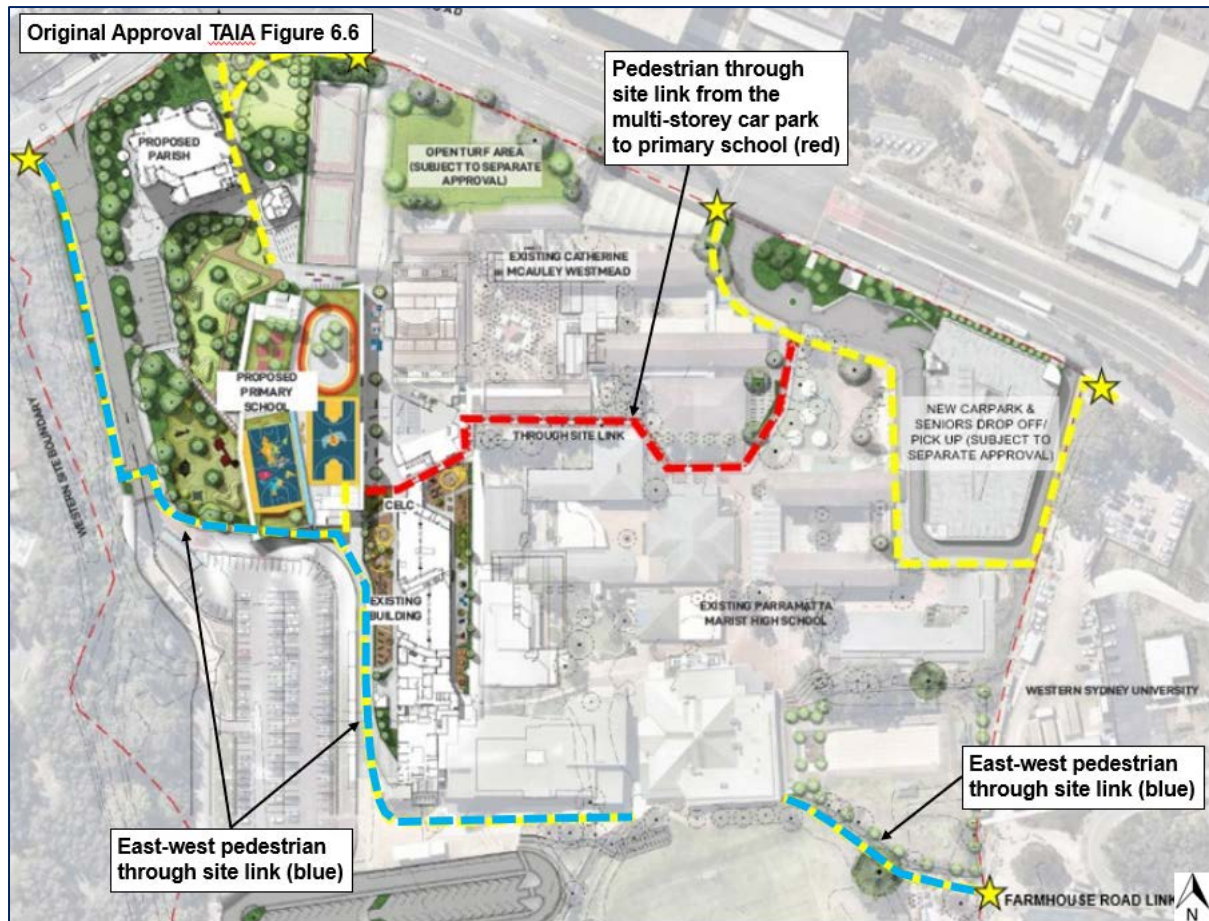


Figure 10 | Original Application TAIA Figure 6.6 dated 25 August 2021 (Base source: SSD 10383)

Council did not support the rewording of 'western boundary of the site' with 'primary school' in the RtS. Council did not object to the deletion of the reference to GTP.

Destination of the pedestrian through site link

The Department considers the amendment of the destination of the link is acceptable as:

- the intent of the condition is to secure alternative access, as noted by the Applicant
- based on the current development, there would be no particular reason for pedestrians to access the western boundary / fence-line beyond the primary school or the western carpark
- the amendment does not prevent a link extension to the western boundary being provided in the future, noting there are no buildings or structures that would obstruct such a route.

The Department agrees with the Applicant. However, the Department considers the proposed reference to the 'primary school' as the revised link destination is unclear and could result in the link ending in an awkward, inconvenient, or unsatisfactory location, depending on what space / structure can be defined as the 'primary school'.

The Department notes Council's concerns with proposed rewording. However, after consideration, the Department notes the Commission's original intent of the condition was to require public access through the WCC site in the future, as part of the staged delivery of the Master Plan for the WCC site. Therefore, the Department considers it logical and reasonable that the link terminates at the main school entry adjacent to the western car park as shown at **Figure 11**.

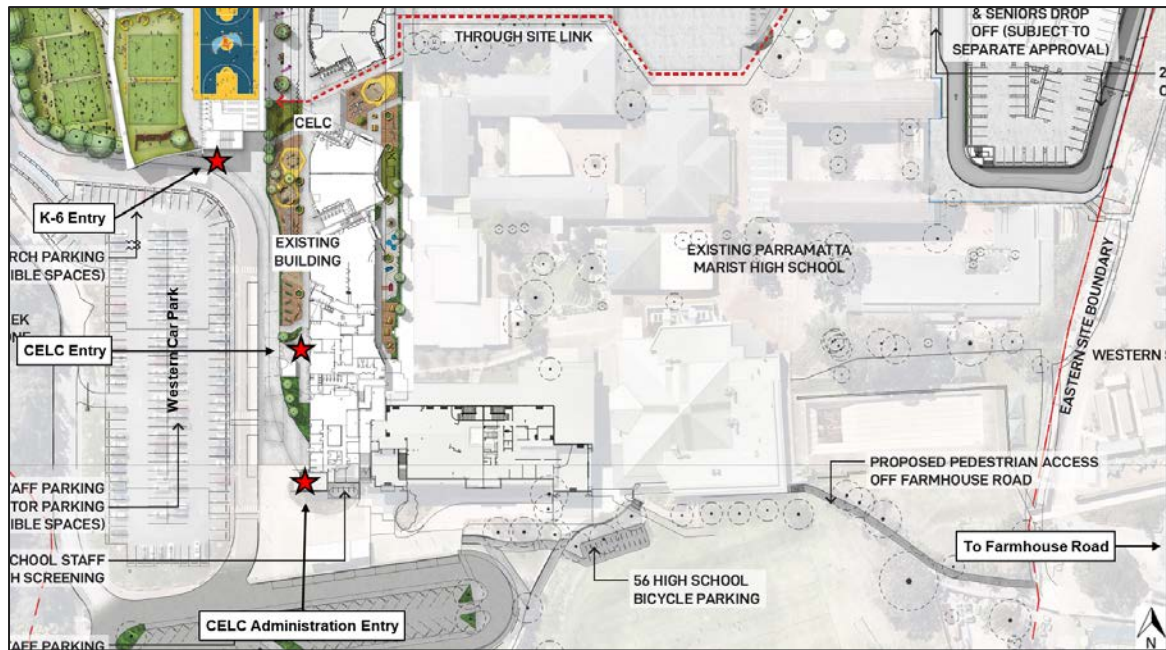


Figure 11 | Location of key school entries (Base source: Applicant's RtS 2023)

The Department therefore recommends the condition be reworded, to require the destination of the through site pedestrian link be changed from the 'western boundary of the site' to the 'K-6 school entry, passing the CELC administration and CELC entries fronting the western car parking area'.

Users of the through site pedestrian link

The Department does not object to the proposed broadening of the definition of the users of the link from not only capturing students. However, the Department considers the proposed wording of 'Catholic schools' is vague and could be misinterpreted to be any Catholic school rather than the schools within the WCC site. The Department therefore recommends the condition be reworded to:

- change the users of the link from 'students' to 'all users of schools and CELC (except external users of the parish church and the users of facilities required by condition E43(a)) located on Lot 1 DP1095407 and Lot 1 DP 1211982'
- confirm users 'exclude parish church users' in accordance with the proposed modifications to condition E4(c), discussed at **Section 6.1.3** and **Section 6.2**.

Design of the link

The Department supports the deletion of the reference to Figure 6.6 to allow flexibility in the design of the pedestrian link route as:

- the precise location and design of the link has not been finalised at this stage
- requiring a precise link route at this stage could jeopardise the provision of the best route for the development
- Figure 6.6 shows a pedestrian link route through to the western boundary of the site, which is not consistent with the proposal as modified.

Notwithstanding, to ensure the future pedestrian link route achieves a high standard of design and usability, the Department recommends condition B1(a) include the following design performance parameters, which require the future pedestrian link route:

- be as direct as possible, avoiding convoluted / circuitous route(s) around / through buildings
- achieve a high standard of design and construction ensuring:
 - user safety
 - equitable access and that access along the route is not obstructed
 - an appropriate path width, comfortably accommodating users walking abreast in each direction.

The Department agrees that the reference to the GTP is not necessary, noting the condition requires the link to facilitate 'active access solutions'.

6.1.2 Condition B1(b) – extension of the through site pedestrian link to Bridge Road

Condition B1(b) requires the Applicant consider and facilitate within the school site the future creation of through site pedestrian link from the western boundary of the site, through an adjacent property, to Bridge Road.

The modification (as amended by the RtS) proposes to amend condition B1(b) by deleting the requirement to show potential future extension of the through site pedestrian link through adjacent properties to Bridge Street, as outlined at **Table 2** and shown below:

B1(b) Ensure the diagram prepared under (a) provides for a possible future pedestrian connection linking ~~the east-west pedestrian link to Bridge Road (to the west) including possible access through the adjoining properties to the west and the riparian zone~~ **the primary school to the western boundary of the site.**

The Applicant stated that condition B1(b) should be amended to delete the requirement for future access to be shown over adjoining properties to Bridge Road. This statement was supported by legal advice provided by the Applicant which identified that:

- it is not the Applicant's responsibility to commit to a pedestrian connection through a neighbouring property that it does not own
- provision of a through site pedestrian link to Bridge Road has no connection to the proposal, and is beyond the scope of this application
- the development does not generate a need for pedestrian access to Bridge Road, and the condition does not fairly and reasonably relate to the development, which is a requirement for a valid condition of consent as established under the Newbury Test.

Council stated that condition B1(b) does not fail the Newbury Test as it ensures the school redevelopment is considered wholly in the context of the entire block, and the Bridge Road link relates to the orderly development of the greater block to provide adequate pedestrian access. Additionally, Council does not agree with the Applicant's legal advice which states that the Westmead Place Strategy 2036 should not be given weight in the modification application.

With regard to Council's concerns, the Department notes that the signed Ministerial Direction under Section 9.1 of the EP&A Act requires any future planning proposals within the Westmead precinct be consistent with the Westmead Place Strategy 2036 (see Figure 8 and Figure 9). Given this modification application is not a planning proposal or subject to a planning proposal, consistency with Westmead Place Strategy is not a prescribed requirement under the Minister's direction.

Notwithstanding, in determining the original application, the Commission stated the preparation of a schematic design for a through site pedestrian link to Bridge Road would be useful, to ensure the

opportunity for future connection is considered. However, the Commission also stated that the creation of a through site pedestrian link to Bridge Road was beyond the scope of the application.

The Department has considered the concerns raised in submissions and the Applicant's response including the Applicant's legal advice. Noting the Commission's comments about the reasonable scope of the application, and based on the Applicant's legal advice supporting the modification application, the Department agrees with the Applicant's recommended amendments to condition B1(b).

The Department notes the Applicant's proposed re-wording of condition B1(b) would require future pedestrian access from the primary school to the western boundary of the site. However, as there is currently no particular reason for pedestrians to access the western boundary / fence-line of the site based on the current layout, the proposed re-wording serves no functional purpose.

Based on the above, the Department recommends condition B1(b) be deleted in its entirety and be replaced with a new B1(b) condition with the design performance parameters. In effect, this means that the through site pedestrian link would terminate at the school's western carpark, and not progress to the western boundary to facilitate a future connection in the adjoining site to Bridge Road via the neighbouring property to the west.

6.1.3 Condition E4(b) – pedestrian link internal destination and users

Condition E4(b) states that the through site pedestrian link required by condition B1 should connect to the western boundary and may be used by the school/CELC and parish church users.

The modification (as updated by the RtS) proposes to amend condition E4(b) to replace reference to the 'western site boundary' with the 'primary school' and delete reference to 'parish church users' as outlined at **Table 2** and shown below:

E4(b) provide evidence that the paved pedestrian link through the site connecting Farmhouse Road to the ~~western boundary of the site~~ **primary school**, as required by condition B1(a) is operational and in a satisfactory condition for use by the school/CELC ~~and parish church users~~;

The Applicant's justifications are discussed in **Table 2**.

Council did not comment with respect to the deletion of 'parish church users' in the RtS advice. However, Council did not support the replacement of 'western boundary of the site' with 'primary school'.

The Department notes that it would be difficult to differentiate church users from the general public and the challenges for the site including increased security risk. Given that, having regard to the Secretary's assessment report and Commission's Statement of Reasons, the primary intent of the condition was to provide an alternate pedestrian route for the school users, the Department agrees to delete the reference to "parish church users".

The Department notes that church gatherings are likely to occur outside school hours and on weekends (as prescribed by condition E36), when the proposed through site pedestrian link would be closed. Consequently, it is unlikely that this link would be used by users outside WCC.

As discussed in **Section 6.1.1**, the Department supports altering the destination of the link from the 'western boundary' of the site to the school entries. To ensure consistency, the Department

recommends condition E4(b) be amended to replace 'western boundary' with wording consistent with the revised condition B1(a) wording, as well as remove the reference to 'parish church users'.

The Department further recommends inclusion of a definition of 'primary school K-6', and 'CELC administration', 'CELC entries' and 'users', in the definitions schedule, to avoid misinterpretation of the through site pedestrian link ending points in the condition.

The Department also recommends inclusion of the requirement that the Planning Secretary be provided with the evidence in the condition.

Additionally, the Department recommends inclusion of a new condition (F14A) that the through site pedestrian links required under conditions E4(b) and E4(a) must be operational and be maintained by the Applicant for the life of the development.

6.2 Through site pedestrian link easement(s) / covenant(s)

6.2.1 Condition E4(c) – easement(s) / covenant(s) allowing for user access

Condition E4(c) currently requires the Applicant to create all necessary easements and covenants (if any) to establish the internal through site pedestrian link and allow use of the link by the school students and parish church users.

The modification application (as updated by the RtS) proposes to replace the requirement of condition E4(c) to establish easement(s) / covenant(s) with a new requirement that the site boundary be realigned as outlined at **Table 2** and shown below:

E4(c) provide satisfactory evidence to the Certifier that ~~all required easements (if any) under section 88B and/or positive covenants, have been created within the site (where necessary) to establish this pedestrian link and allow the use of this link by the students of the proposed school, CELC or the users of the parish church at all times; and~~ **the boundary between Lot 1 DP1095407 and DP1211982 has been adjusted so that the pedestrian link is located wholly within Lot 1 DP1095407, by effecting the registration of a Plan of Identification or similar at NSW Land Registry Services.**

The Applicant has stated the boundary realignment would ensure the future through site pedestrian link required by condition B1 is wholly contained within Lot 1 DP1095407 (the northern lot) (**Figure 5**). In addition, students would continue to have access to the link if the southern lot is sold in the future.

The Applicant has also indicated that the boundary adjustment would be achieved by registering a 'Plan of Identification' at NSW Registry Services. In addition, development consent is not required for this kind of boundary adjustment process as it not defined as 'subdivision' under the EP&A Act.

Council stated the creation of easement / covenant is required to ensure access is maintained via the internal WCC site pedestrian link.

As discussed at **Section 6.1.1**, one of the Applicant's key justifications for changes to condition B1 is that the route of the through site pedestrian link has not been finalised and may change during design development. The Applicant therefore requests maintaining flexibility in designing and locating the through site pedestrian link.

The Department considers that the Applicant's justification to remove the requirement for easement contradicts its request to amend the design of the link in condition B1(a), and does not support the

proposed re-wording of condition E4(c) as:

- the link route is uncertain (as noted by the Applicant) and imposing a condition requiring the only solution to be via a boundary adjustment would be premature and irrelevant
- boundary adjustment did not form a part of the original application, and is not within the scope of the modification application. As such, required boundary adjustment can be completed under a separate planning pathway and the condition can still be achieved
- the boundary adjustment assumes a specific through site pedestrian link location / route, which is contrary to the Applicant's assertion that the pathway for the through site pedestrian link has not been finalised
- it would be inappropriate to secure any boundary adjustment via condition as:
 - the adjustment impacts multiple owners and no owner agreements have been provided
 - it has not been formally consulted or a planning pathway ascertained.

The Department concludes that condition E4(c) should not be amended as proposed by the Applicant and the requirements of condition E4(c) to establish appropriate easement(s) / covenant(s) be retained in full, unless the Applicant can provide satisfactory evidence that an easement and/or positive covenants are not required, which is reflected in the amended condition E4(d) (see **Section 6.2.2**).

As discussed in **Section 6.1.1** and **6.1.3**, the Department supports amending the permitted users of the link to include all school users (including carers) and exclude parish church users. Therefore, to ensure consistency, the Department recommends condition E4(c) also be amended to reflect the changes noted above.

6.2.2 Condition E4(d), F1 and F2 - public access and provision of through site pedestrian link to Bridge Road

Condition E4(d) requires the Applicant to establish a positive covenant to facilitate public access to the through site pedestrian link, which is also required by condition B1(a) to be schematically shown, when the link is extended from the site to Bridge Road in the future. Conditions F1 and F2 include further requirements regarding the delivery of the through site pedestrian link.

The modification application proposes to delete condition E4(d) in its entirety, as:

- public access through the site raises significant safety and child protection issues, in particular:
 - it is not possible to install appropriate security/fence lines based on the current WCC and approved primary school configuration
 - the above provision would rely on the broader redevelopment of the WCC site
 - in determining the original application, the Commission stated that public access through the subject site is not appropriate at this stage and should be part of any future delivery of the masterplan
- the development does not generate a need for public pedestrian access through the site, and the condition does not fairly and reasonably relate to the development, in accordance with the Newbury Test.
- public access was not the subject of the original application, and making provision for future public access across private land is not a matter that should be dealt with by way of a condition.

- the broader WCC 'masterplan' for the site does not have any legal status, and therefore any potential public access as part of the broader WCC site redevelopment would be subject to separate DA(s) in the future.

The Applicant included legal advice to support the above arguments.

Concern was raised in the public submission about the removal of the requirement for the creation of easements to secure the future through site pedestrian link from the western boundary of the site to Bridge Road.

Council stated that condition E4(d) does not fail the Newbury Test as it serves a clear purpose, ensures access is maintained via the through site pedestrian link, public access can be safely provided (as demonstrated at other school campuses), the conditions do not infringe the Applicant's ability to develop the site, and the provision of a Bridge Road link relates to the orderly development of the area.

As discussed at **Section 1.2**, the Department notes the Commission acknowledged the Applicant's responsibility to ensure student safety, and concluded allowing public access through the site was not justified at this stage. The Commission stated it would be reasonable to require public access through the site as part of the future staged delivery of the broader masterplan for the site, and establishment of easement(s) over neighbouring properties is not within the scope of the application.

The Department notes the Applicant and Council's differing views on whether condition E4(d) meets the Newbury Test. However, the Department also notes that the Applicant is committed to further consider public access as part of the evolution of the broader WCC masterplan for the site. Considering this, the Department agrees that the public connection through the site to Bridge Road can be achieved by the Applicant and/or others via a future DA. Deletion of this requirement from the development consent would not deter the provision of the access in the future with agreement between owners of the WCC site and the neighbouring properties.

In addition, the Department agrees with the Applicant's concern that public access cannot be provided safely through the site, based on the current layout, and relies on the broader redevelopment of the WCC site. In this regard, the Department considers that formation of a public access under a future DA would provide the opportunity to the consent authority to assess its merits and the security issues, noting the Crime Prevention Through Environmental Design principles.

Based on the Applicant's legal advice, the Commission's conclusions on public access / creation of easements, and the above assessment, the Department concludes it is appropriate that condition E4(d) be reworded. The Department also agrees that both conditions F1 and F2 (following from condition E4(d)) can be deleted.

Based on the above principle that the deletion of the conditions is appropriate, the Department is satisfied that the application of the Newbury Test is not relevant to the consideration of the rewording of this condition.

6.3 Other issues

Table 4 | Summary of other issues

Issue	Findings	Recommendations
Condition B2	<p>Condition B2 requires the through site pedestrian link diagrams required by condition B1 be prepared in consultation with Council and submitted to the Planning Secretary.</p> <p>The modification (as updated by the RtS) proposes to amend condition B2 to:</p> <ul style="list-style-type: none"> require the diagrams to be 'submitted' to Council, rather than be prepared in 'consultation' with Council clarify pedestrian link diagrams are to be 'schematic'. <p>The Applicant has stated that it is concerned that a Certifier could interpret a requirement for 'consultation' with Council as a requirement for endorsement / agreement or consent. If this occurred, it would delay the project. In addition, the Applicant confirmed it would consult with Council as part of future stages of the site's development.</p> <p>The Applicant stated the insertion of 'schematic' is appropriate as this reflects the wording of condition B1.</p> <p>Council did not provide any comments with respect to the revised wording of condition B2 in the RtS advice.</p>	<p>The Department notes the key intent of condition B2 is to require the Applicant to consult with Council regarding the design of the through site pedestrian link.</p> <p>The Department notes condition B2 specifically requires 'consultation' and does not require Council's endorsement / agreement or consent of the details. Provided the Applicant can submit evidence that consultation has been undertaken with Council, it would have satisfied the specified requirements of the condition.</p> <p>The Department does not support Applicant's interpretation of consultation.</p> <p>However, given that the link is internal, the Department supports the proposed re-wording of the condition to require that diagrams are only 'submitted' to Council.</p> <p>The Department has no objection to the insertion of the word 'schematic', as this reflects the wording of condition B1, and recommends condition B2 be amended accordingly.</p> <p>The Department has also recommended minor rewording of this condition to better relate with condition B1(a) requirement.</p>
Condition E5	<p>Condition E5 requires the preparation of an OSMP, demonstrating that primary school students have appropriate access to uncovered and open to air play spaces and particularly including the two ovals within the WCC site.</p> <p>The modification (as updated by the RtS) proposes to re-word condition E5 to replace the requirement that primary school students have access to 'ovals' with access to 'open space'.</p>	<p>As discussed at Section 1.2, in determining the original application, the Commission considered that children should be provided the opportunity to engage, play and conduct recreation activities at ground level, and the Applicant should facilitate regular and sufficient access to ground level ovals within the WCC site.</p> <p>The Department supports the proposed re-wording of the condition to replace 'ovals' with 'open space' under the</p>

	<p>The Applicant has stated the amendment is necessary to ensure students have access to all ground level open space, not just the ovals. In addition, it would provide greater operational flexibility for the schools by making all WCC open-air play spaces available to the primary school students (including basketball courts, tennis courts, cricket nets, ovals etc).</p> <p>Council did not provide any comments with respect to the revised wording of condition E5 in the RtS advice.</p>	<p>condition that 'open space' includes the WCC ovals. To facilitate this, the Department recommends addition of a separate definition of 'open space' in the development consent which clarifies that open space within the site includes all open to air open spaces, ground level open spaces and the WCC ovals.</p> <p>The Department is satisfied that the rewording would not fundamentally undermine the original intent of the condition.</p>
Condition E43	<p>Condition E43 requires the preparation of a CAMP to allow local community groups / schools access to the WCC ovals outside school hours.</p> <p>The modification (as updated by the RtS) proposes to re-word condition E43 to:</p> <ul style="list-style-type: none"> • replace the requirement for access to 'ovals' with 'facilities within the site' • replace the specified users from 'local community / schools' to 'others' • add the specification that use is 'subject to availability and on a hire basis'. <p>The Applicant argues that the amended wording ensures that access would be provided to the full range of facilities within the site, a broad range of external users are able to have access to the site, and stipulating 'hire basis' ensures facilities are made available only when feasible / available. In addition, the landscaping design is amended to increase the amount of unencumbered active open space.</p> <p>Additionally, the Applicant requested that the users exclude 'local schools' in this condition as this WCC is required to meet open space standards and so it is only fair that other local schools should be subject to the same requirement, instead of relying on WCC's ovals.</p> <p>Council did not provide any comments with respect to the revised wording of condition E43 in the RtS advice.</p>	<p>As discussed at Section 1.2, in determining the original application, the Commission agreed it was appropriate that a CAMP be prepared to provide local community groups / schools access specifically to the WCC ovals.</p> <p>The Department supports the proposed re-wording to replace 'ovals' with 'facilities' subject to including a definition of 'facilities' which includes ovals.</p> <p>The Department does not object in-principle to allowing a broader range of users. However, the Department is concerned that changing the specified users from 'local community / schools' to 'others' is unclear and may result in exclusion of the intended future users that was intended by the condition.</p> <p>The Department notes Applicant's request that the condition exclude 'local schools' in this condition and accepts the argument.</p> <p>Consequently, the Department recommends revised wording specifying users as 'others, including but not limited to local community groups'.</p> <p>The Department supports the additional wording that use is 'subject to availability and on a 'hire basis'.</p> <p>E43 is recommended to be reworded to reflect the above.</p>
E4(a)	<p>Condition E4(a) requires that evidence of the internal through site pedestrian link</p>	<p>The Department has recommended rewording of this condition, so the</p>

from the multi-storey car park to the school and CELC be operational for the users.

evidence is provided to the Planning Secretary and has a similar operational requirement as condition E4(b).

Landscape and open space

The modifications to landscaping and open space are summarised at **Section 2.2**.

The Applicant stated that the landscape and open space modifications are the result of further design development since the original application. In addition, the proposed changes would increase unencumbered open space, active play areas, and provide for the play needs of future students.

In response to the Department's request for clarification, the Applicant also confirmed that the modification does not propose any changes to the approved primary school student access to open space on the site, noting:

- different year groups would continue to access separate open spaces distributed throughout the building, roof top and on the ground for unstructured play
- structured play arrangements will continue to be managed via the OSMP requiring under condition E5, which is no longer proposed to be deleted.

Council did not provide any comments on the modification to landscape and open space provision.

The Department has considered the proposed modification of landscape and open space and considers the changes are acceptable as:

- there is an increase in open space, active play area and the quantum of open space per child
- there is no reduction in the number of trees provided on-site
- the resulting landscape and open space design and layout is appropriate and maximises usability and visual amenity
- there is no change to the approved primary school student access to open space on the site.

The Department concludes the modified landscape and open space provision is acceptable, and recommends condition A2 be amended to incorporate the revised landscape drawings.

7 Evaluation

The Department has reviewed the section 4.55(1A) application to modify SSD-10383 and assessed the merits of the proposal. The Department, in assessing this application, has considered the advice from Council. All environmental issues associated with the proposal have been addressed. The Department concludes that a section 4.55(1A) modification to SSD-10383 is acceptable.

The approved development would not significantly change as a result of the proposed modification. In particular, the proposal would not change the external appearance of the building, parking provisions, or student and staff numbers. The Department has carefully considered the proposed modification and concludes that:

- modification of condition B1 is acceptable, subject to the Department's additional amendments clarifying the destination and users of the through site pedestrian link, and establishing design performance parameters to allow flexibility
- the Department supports the modification of condition B2 to remove the requirement for the link design to be prepared in consultation with Council
- modification of condition E4(b) and E4(d), F1, and F2, to remove the requirement to extend the link to Bridge Road is supported, as its requirement is beyond the scope of this application
- the Department does not support amendment of condition E4(c) to replace the requirement to establish necessary access easement(s) / covenant(s) with a boundary adjustment
- the Department supports the modification of conditions E5 and E43, and recommends definitions for 'open space' and 'facilities' be included in the consent.
- the revised landscaping and increase in open space is appropriate and maximises usability and visual amenity.


The Department considers that the modification application is consistent with the objects of the EP&A Act, and continues to be consistent with the State's strategic direction. The Department concludes the impacts of the development can be appropriately mitigated through the implementation of the recommended conditions of consent, subject to the Department's recommended amendments. Consequently, the Department considers the development is in the public interest, and should be approved subject to conditions.

8 Recommendation

It is recommended that the Deputy Secretary, Development Assessment, as delegate of the Commission:

- **considers** the findings and recommendations of this report.
- **determines** that the application SSD-10383-Mod-1 falls within the scope of section 4.55(1A) of the EP&A Act.
- **accepts and adopts** all findings and recommendations in this report as the reasons for making the decision to approve the modification.
- **agrees** with the key reasons for approval listed in the draft notice of decision.
- **modify** the consent SSD-10383.
- **signs** the attached approval of the modification (**Appendix C**).

Recommended by:



Erica van den Honert
Executive Director
Infrastructure Assessments

9 Determination

The recommendation is **adopted** by:



05/09/2023

David Gainsford

Deputy Secretary

Development Assessments

as delegate of the Commission

Appendices

Appendix A – List of Documents

The following supporting documents and supporting information to this assessment report can be found on the Department of Planning and Environment's website as follows:

1. Applicant's modification application (SSD-10383-Mod-1)
<https://www.planningportal.nsw.gov.au/major-projects/projects/westmead-catholic-community-education-campus-modification-1>
2. Submission and Government Agency advice
<https://www.planningportal.nsw.gov.au/major-projects/projects/westmead-catholic-community-education-campus-modification-1>
3. Applicant's Response to submission
<https://www.planningportal.nsw.gov.au/major-projects/projects/westmead-catholic-community-education-campus-modification-1>
4. The original application and determination (SSD-10383):
<https://www.planningportal.nsw.gov.au/major-projects/projects/westmead-catholic-community-education-campus>

Appendix B – Community view on draft Notice of Decision

Issue	Consideration
Amendment and removal of pedestrian through site link to Bridge Road	<p><i>Assessment</i></p> <ul style="list-style-type: none"> the Applicant provided a supplementary information as part of the Response to Submission (RtS) which provided further justification to the proposed amendment to conditions (including B1(a) and E4(b)) to remove the requirement for a pedestrian through site link to western boundary and on to Bridge Road. The Department notes Applicant's supplementary information as part of the RtS. The Department also note's Commission's original intent of the condition was to require public access through the Westmead Catholic College (WCC) site in the future, as part of the staged delivery of the Master Plan for the WCC site. Therefore, the Department considers it logical and reasonable that the pedestrian through site link terminates at the main school entry adjacent to the western car park. <p><i>Conditions</i></p> <ul style="list-style-type: none"> Conditions B1(a) and E4(b) are amended so that link terminates at the main school entry adjacent to the western car park instead of the western boundary of the site.
Amendment of pedestrian through site link destination, route and users	<p><i>Assessment</i></p> <ul style="list-style-type: none"> The Applicant provided information to justify the deletion of reference to Figure 6.6 (in the supporting Traffic and Transport Assessment Report showing the schematic location of the pedestrian link) in condition B1(b). The Department agrees with the Applicant's justification and supported the deletion of the reference to Figure 6.6 in the condition to allow flexibility in the design of the pedestrian through link route from New Farm Road. <p><i>Conditions</i></p> <ul style="list-style-type: none"> Condition B1(b) is amended to include performance parameters to ensure the future pedestrian link route achieves a high standard of design and usability.
Deletion of lot and DP numbers on condition B1(a)	<p><i>Assessment</i></p> <ul style="list-style-type: none"> The Applicant's RtS includes to retain the lot and DP numbers in condition B1(a). Department considers this appropriate and acceptable. <p><i>Conditions</i></p> <ul style="list-style-type: none"> Lot and DP number are retained in condition B1(a).
Condition B1(b) and E4(d) do no fail the requirements for a valid condition of consent under case law Newbury District Council v	<p><i>Assessment</i></p> <ul style="list-style-type: none"> The Applicant included a legal advice in support of the amendments proposed for condition B1(b) and E4(d). Department notes the Applicant and Council's differing views on whether condition B1(b) and E4(d) meets the Newbury Test. However,

Secretary of State for the Environment [1981] AC 578 (Newbury Test).

Condition F1 and F2 should not be deleted

the Department also notes that the Applicant is committed to further consider public access as part of the evolution of the broader Westmead Catholic College (WCC) masterplan for the site. Considering this, the Department agrees that the public connection through the site to Bridge Road can be achieved by the Applicant and/or others via a future DA. Deletion of this requirement from the development consent would not deter the provision of the access in the future with agreement between owners of the WCC site and the neighbouring properties.

- The Department considered Applicant's legal advice and Commission's comments about the reasonable scope of the application. And based on the Applicant's legal advice supporting the modification application, the Department agrees with the Applicant's recommended amendments to condition B1(b) and E4(d).
- The Department also agrees that both conditions F1 and F2 (following from condition E4(d)) can be deleted.

Conditions

- Condition B1(b) and E4(d) are amended so that the pedestrian link ends at the school entry.
- Condition F1 and F2 are deleted.

Deletion of condition E4(b) has not been justified

Assessment

- The Applicant provided supplementary information stating they no longer wish to delete the condition but rather amend it.
- The Department supports the amendment to the condition.

Conditions

- Condition E4(b) is amended. Per Applicant's request.

Condition E4(c) should be retained

Assessment

- The Applicant proposes to replace the requirement of condition E4(c) to establish easement(s) / covenant(s) with a new requirement that the site boundary be realigned.
- The Department did not support the proposed rewording of condition E4(c) as the link route is uncertain, boundary adjustment did not form part of the original application, the boundary adjustment assumes a specific through site pedestrian link location / route, which is contrary to the Applicant's assertion that the pathway for the through site pedestrian link has not been finalised and is inappropriate to secure any boundary adjustment via a condition.
- The Department considers that condition E4(c) should not be amended as proposed by the Applicant and the requirements of condition E4(c) to establish appropriate easement(s) / covenant(s) be retained in full, unless the Applicant can provide satisfactory evidence that an easement and/or positive covenants are not required.

Conditions

- Condition E4(c) is amended requiring the Applicant to:
 - provide evidence of creation of satisfactory easement; or
 - provide evidence that an easement is not required.

Condition E5 should be retained

Assessment

- The Applicant provided justification to re-word condition E5 to replace the requirement that primary school students have access to 'ovals' with access to 'open space'.
- The Department supports the proposed re-wording of the condition to replace 'ovals' with 'open space' under the condition that 'open space' includes the WCC ovals.

Conditions

- Condition E5 is amended.

Condition E43 should be retained

Assessment

- The Applicant provided justification to re-word condition E43 to replace the requirement for access to 'ovals' with 'facilities within the site', specified users from 'local community/schools' to 'others' and addition of that use is 'subject to availability and on a hire basis'.
- The Department partly supported the amendment of this condition. The Department did not support the term 'others' as the specified users from 'local community / schools' to 'others' is unclear and may result in exclusion of the intended future users that was intended by the condition. Consequently, the Department recommends revised wording specifying users as 'others, including but not limited to local community groups'.

Conditions

- Condition E43 is amended requiring that 'facilities including sports ovals within the site to others, including but not limited to local community groups outside the school hours, subject to availability and on hire basis'.

Not enough weight given to Westmead Place Strategy 2036

Assessment

- The Applicant provided legal advice which states that the Westmead Place Strategy 2036 should not be given weight in the modification application.
- The Department notes that the signed Ministerial Direction under Section 9.1 of the EP&A Act requires any future planning proposals within the Westmead precinct be consistent with the Westmead Place Strategy 2036.
- Given this modification application is not a planning proposal or subject to a planning proposal, the Department is satisfied that consistency with Westmead Place Strategy is not a prescribed requirement under the Minister's direction, and therefore is not required.

Conditions

No conditions required.

Appendix C – Instrument of Modification

<https://www.planningportal.nsw.gov.au/major-projects/projects/westmead-catholic-community-education-campus-modification-1>