

Notice of decision

Section 2.22 and clause 20 of Schedule 1 of the *Environmental Planning and Assessment Act 1979*

Application type	State significant development modification
Application number and project name	SSD-10383-Mod-1 – Westmead Catholic Community Education Campus Modification 1
Applicant	Catholic Schools Parramatta Diocese
Consent Authority	Independent Planning Commission

Decision

The Director under delegation from the Independent Planning Commission] has, under 4.55(1A) of the *Environmental Planning and Assessment Act 1979 (the Act)* modified the consent subject to the recommended conditions.

A copy of the instrument of modification and conditions is available [here](#).

A copy of the Department of Planning and Environment's assessment report is available [here](#).

Date of decision

05/09/20023

Reasons for decision

The following matters were taken into consideration in making this decision:

- the relevant matters listed in section 4.15 of the Act and the additional matters listed in the statutory context section of the Department's assessment report;
- the prescribed matters under the Environmental Planning and Assessment Regulation 2021;
- the reasons given by the consent authority for the grant of the original consent;
- the objects of the Act;
- all information submitted with the modification application during the assessment and information considered in the Department's assessment report;
- the findings and recommendations in the Department's assessment report;
- the submissions made concerning the modification; and
- the views of the community about the project (see Attachment 1).

The findings and recommendations set out in the Department's assessment report were accepted and adopted as the reasons for making this decision.

The decision maker was satisfied that the modification is of minimal environmental impact and that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted was modified.

The key reasons for granting the modification are as follows:

- the modification would not alter the range of benefits offered by the original approved application.
- the modification does not impact on the permissibility of the original proposal.
- the impacts on the community and the environment can be appropriately minimised, managed or offset to an acceptable level, in accordance with applicable NSW Government policies and standards.
- the issues raised by the community during consultation and in submissions have been considered and adequately addressed through changes to the project and the recommended conditions of consent. Engagement on the project is considered to be in line with the *Undertaking Engagement Guidelines for State Significant Projects*, including the community participation objectives outlined in these guidelines.
- weighing all relevant considerations, the modification is in the public interest.

Attachment 1 – Consideration of Community Views

The Department exhibited the modification from 21 July 2022 until 3 August 2022 (14 days) and received two submissions in the form of objection, one from public and one from City of Parramatta Council (Council).

The key issue raised by public and Council and considered in the Department's Assessment Report and by the decision maker include pedestrian through site link destination, route and users; and through site pedestrian link easement(s)/covenant(s). The other issues are addressed in detail in the Department's Assessment Report.

<i>Issue</i>	<i>Consideration</i>
<i>Amendment and removal of pedestrian through site link to Bridge Road</i>	<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.
<i>Amendment of pedestrian through site link destination, route and users</i>	<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.
<i>Deletion of lot and DP numbers on condition B1(a)</i>	<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).
<p><i>Condition B1(b) and E4(d) do not fail the requirements for a valid condition of consent under case law Newbury District Council v Secretary of State for the Environment [1981] AC 578 (Newbury Test).</i></p> <p><i>Condition F1 and F2 should not be deleted</i></p>	<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, 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

	<p>the access in the future with agreement between owners of the WCC site and the neighbouring properties.</p> <ul style="list-style-type: none"> • 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. <p><i>Conditions</i></p> <ul style="list-style-type: none"> • Condition B1(b) and E4(d) are amended so that the pedestrian link ends at the school entry. • condition F1 and F2 are deleted.
<i>Deletion of condition E4(b) has not been justified</i>	<p><i>Assessment</i></p> <ul style="list-style-type: none"> • 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. <p><i>Conditions</i></p> <ul style="list-style-type: none"> • Condition E4(b) is amended. Per Applicant's request.
<i>Condition E4(c) should be retained</i>	<p><i>Assessment</i></p> <ul style="list-style-type: none"> • 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. <p><i>Conditions</i></p> <ul style="list-style-type: none"> • Condition E4(c) is amended requiring the Applicant to: <ul style="list-style-type: none"> ○ provide evidence of creation of satisfactory easement; or ○ provide evidence that an easement is not required.
<i>Condition E5 should be retained</i>	<p><i>Assessment</i></p> <ul style="list-style-type: none"> • 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. <p><i>Conditions</i></p> <ul style="list-style-type: none"> • Condition E5 is amended.
<i>Condition E43 should be retained</i>	<p><i>Assessment</i></p> <ul style="list-style-type: none"> • 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'.

	<ul style="list-style-type: none"> 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'. <p><i>Conditions</i></p> <ul style="list-style-type: none"> 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'.
<p><i>Not enough weigh given to Westmead Place Strategy 2036</i></p>	<p><i>Assessment</i></p> <ul style="list-style-type: none"> 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. <p><i>Conditions</i></p> <ul style="list-style-type: none"> No conditions required.