

31 May 2022

2220155

Mr Mick Cassell  
Secretary  
Department of Planning and Environment  
4 Parramatta Square, 12 Darcy Street  
PARRAMATTA NSW 2150

Attention: Aditi Coomar – Team Leader, Social Infrastructure Assessments

## Westmead Catholic Community Section 4.55(1A) Modification Application

This application has been prepared by Ethos Urban on behalf of the Catholic Education Diocese of Parramatta (CEDP) pursuant to section 4.55(1A) of the *Environmental Planning and Assessment Act 1979* (EP&A Act) to modify State Significant Development (SSD) 10383 relating to the redevelopment and upgrades of the existing Westmead Catholic Community (WCC) education campus at 2 Darcy Road, Westmead (the site).

The modification relates to alterations to the approved landscape design to provide more opportunities for active play. The application also seeks to modify various conditions of consent relating to public access over the site, and the preparation of management plans for student and community access to open space.

This application identifies the consent, describes the proposed modifications and provides an assessment of the relevant matters contained in section 4.55(1A) of the EP&A Act. This application is accompanied by:

- Revised Landscape Drawings prepared by Ground Ink (**Attachment A**); and
- Legal Advice prepared by Addisons (**Attachment B**).

### 1.0 Consent Proposed to be Modified

Development consent for SSD 10383 was granted by the Independent Planning Commission (IPC) on 14 February 2022. Consent was granted for the redevelopment and upgrades of the WCC, including alterations to the existing Mother Teresa Primary School, construction of a new multi-storey primary school building and a new Parish Church, as well as various pedestrian and vehicular access upgrades. Approval has been granted for a primary school population of 1,680 student, representing an increase of 1,260 students.

This application represents the first modification to the consent. Works have not yet commenced on the site.

#### 1.1 Background to Proposed Modifications

The site is split across two landholdings which are owned by the Trustees of the Roman Catholic Church of Parramatta and the Trustees of the Marist Brothers, respectively. CEDP is responsible for the delivery and operation of the schools.

Issues relating to pedestrian connectivity, as well as student and community access to open space, were key concerns during the assessment of the SSD DA. As a result, there are various conditions of consent pertaining to pedestrian access and access to open space.

The project team sought to amend these conditions during the review process to ensure that there was no obligation to provide public access over the site as part of the current proposal given safety and operational risks, however the conditions were ultimately imposed by the IPC without any significant changes. The conditions, as currently worded, are unacceptable to CEDP and the landowners and the project has been put on hold until these concerns are resolved.

We also note some apparent inconsistencies between the conditions of consent and the IPC's Statement of Reasons (SoR). In particular, the SoR makes it clear that public access through the site is not appropriate at this time (SoR, paragraph 175). It also notes that the future pedestrian connection to Bridge Road is not within the scope of the application, and that any easements can be considered in the future when such a link is designed (SoR, paragraph 178). Consistent with this, the IPC made the decision to delete draft Condition B1(c) which required details of a possible easement to establish a pedestrian link through the adjoining properties to the west.

However, Conditions E4(d) (which requires a positive covenant for future public pedestrian access across the site) and F1 (which requires implementation of the connection to Bridge Road, including any necessary easements) have been retained. Retaining these conditions appears to contradict the SoR and the IPC's decision to delete Condition B1(c). The proposed modifications seek to address these apparent anomalies and remove any suggestion of public access into or across the site.

Finally, in response to feedback from DPE and the IPC, the modification also proposes to amend the landscape design to provide more unincumbered open space for the primary school. Subsequently, it seeks to delete the requirement for a plan of management requiring the primary school to have access to the existing school ovals.

## **1.2 Campus Redevelopment and Future Opportunities for Public Access**

As DPE is aware, the proposal represents the first stage in the long-term redevelopment of the site. Any future stages of the site's redevelopment would be subject to a future, separate SSD DA(s).

It is anticipated that future applications would provide the opportunity to address concerns relating to pedestrian and vehicular access through the provision of new public roads and associated footpaths into and through the site. This includes potential north-south and east-west connections within the WCC campus, which would likely be dedicated back to authorities as part of any future development.

However, these connections cannot be implemented until security/fence lines are changed, which cannot occur until the high schools are redeveloped and consolidated into the centre of the campus. Indicatively, this would occur as part of future stages of the site's redevelopment. Therefore, CEDP is not in a position to provide any public access as part of the current application, or any details of (or covenants or easements for) this future access at this stage.

As identified in the IPC's SoR, and as acknowledged during discussions with DPE, there is no expectation that CEDP should provide public access across the site as part of the current application. Further, it has been acknowledged that it is not appropriate to provide public access until future stages of the site's redevelopment are delivered. As part of any future application(s), DPE and Council would have the opportunity to assess the suitability of public access, and enforce its delivery through the assessment and determination of the future SSD DA(s).

## 2.0 Proposed Modifications to the Consent

The proposed modifications to the development are summarised below:

- Modify the Landscape Drawings to reflect ongoing design development and to provide more unencumbered open space for primary school active play and ball sports;
- Remove/modify Conditions B1, B2, E4 and F1 relating to the through site link and Bridge Road connection, including removal of the requirement for any covenants and easements for future public access;
- Remove Condition E5 relating to student open space provision and the requirement for an Operational Management Plan for access to the ovals; and
- Remove Condition E43 relating to community access to the ovals, and the requirement for an Operational Management Plan for community access to recreational facilities.

These changes are described in detail in the following sections of this report.

## 2.1 Modifications to the Landscape Design

The following modifications are proposed to the approved landscape design. Whilst design development has occurred across all open space areas, the key changes are proposed at Ground Level and Level 5. These are described below.

### Ground Level

The approved and proposed Ground Level landscape design is shown at **Figure 2** and at **Attachment A**.

The revised design seeks to maximise open play space for children to participate in active play and ball sports. To facilitate this, the more formal play structures located in the south-west of the site have been relocated to the weather protected undercroft, and have been replaced with level playing fields incorporating three (3) small synthetic soccer pitches. Similarly, the mounded landscape elements and mass plantings in the north-west of the site have been replaced with an open turf area to provide more space for active recreation. There are also some minor changes proposed to the approved footpath layout to allow for the provision of contiguous areas of turf.

It is noted that there are no changes to the quantum of open space provided (8.2sqm per student) at ground level, or the number of trees to be removed or replaced. However, the proposed design seeks to reposition a number of replacement trees to the perimeter of the playground to maximise unencumbered play space.



Approved



Proposed

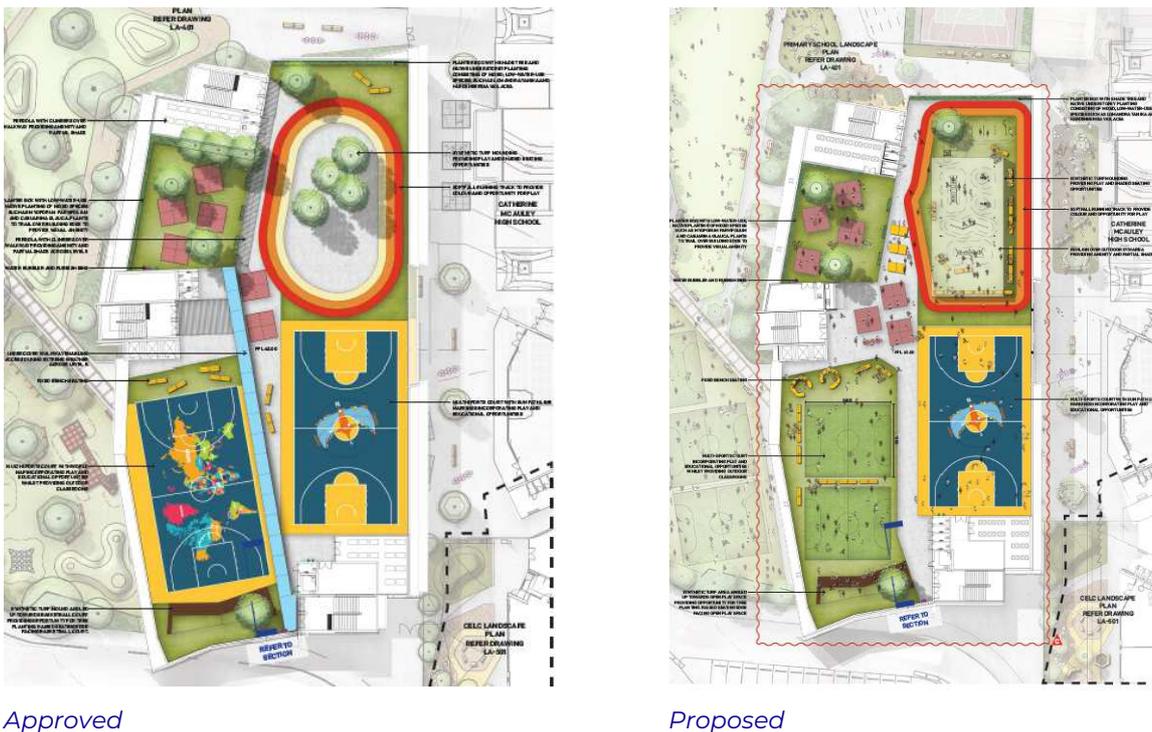
**Figure 2** Approved and Proposed Ground Level Landscape Design

Source: Ground Ink

**Level 5**

The approved and proposed Level 5 landscape design is shown at **Figure 3** and at **Attachment A**.

Similar to the approach adopted at Ground Level, the design has been amended to provide more opportunities for students to participate in active play and ball sports. One of the lined multi-sports courts has been replaced with two (2) small synthetic soccer pitches. Similarly, some passive play spaces have been removed and replaced with more active play spaces.



**Figure 3** Approved and Proposed Level 5 Landscape Design

Source: Ground Ink

**2.2 Modifications to Conditions**

The proposed modifications described above necessitate amendments to the consent conditions which are identified below. In addition, the application seeks to modify various conditions of consent relating to public access over the site, and the preparation of management plans for student and community access to open space.

Words proposed to be deleted are shown in **~~bold strike through~~** and words to be inserted are shown in ***bold italics***.

**Condition A2**

The development may only be carried out:

- (a) In accordance with the conditions of this consent
- (b) In accordance with all written directions by the Planning Secretary;
- (c) Generally in accordance with the EIS, except where superseded by the Response to Submissions (RtS) and Supplementary RTS (SRtS);

(d) In accordance with the approved plans in the table below:

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Landscape Drawings, Prepared by Ground Ink			
Dwg No	Rev	Name of Plan	Date
LA-101	<del>D</del> C	Landscape Master Plan	<del>06/09/2021</del> 30/05/2022
LA-102	<del>D</del> C	General Arrangement Plan	<del>06/09/2021</del> 30/05/2022
LA-201	B C	Existing Tree Plan	<del>24/08/2021</del> 30/05/2022
LA-301	<del>D</del> C	Parish Landscape Plan	<del>06/09/2021</del> 30/05/2022
LA-302	A C	Parish Landscape Section	<del>04/03/2020</del> 30/05/2022
LA-401	<del>D</del> C	Primary School Landscape Plan-Ground Level	<del>06/09/2021</del> 30/05/2022
LA-402	<del>D</del> C	Primary School Landscape Section	<del>06/09/2021</del> 30/05/2022
LA-403	A C	Primary School Landscape Plan- Level 1	<del>04/03/2020</del> 30/05/2022
LA-404	A C	Primary School Landscape Plan-Level 2	<del>04/03/2020</del> 30/05/2022
LA-405	A C	Primary School Landscape Plan-Level 3	<del>04/03/2020</del> 30/05/2022
LA-406	A C	Primary School Landscape Plan-Level 4	<del>04/03/2020</del> 30/05/2022
LA-407	A C	Primary School Landscape Plan-Level 5	<del>04/03/2020</del> 30/05/2022
LA-501	<del>D</del> C	CELC landscape Plan and Section	<del>06/09/2021</del> 30/05/2022
LA-601	<del>D</del> C	Indicative Planting Palette	<del>06/09/2021</del> 30/05/2022
LA-701	A C	External Finishing Palette	<del>04/03/2020</del> 30/05/2022
LA-801	B C	Landscape Rooftop Soil Depths-Level 5	<del>06/09/2021</del> 30/05/2022
LA-802	B C	Wayfinding Analysis	<del>06/09/2021</del> 30/05/2022
LA-802	B C	Tree Canopy Coverage	<del>06/09/2021</del> 30/05/2022

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## Condition B1

### Proposed Modification to Condition B1

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:

- (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 Transport & Accessibility Impact Assessment prepared by Transport Planning Partnership dated 25 August 2021; ~~and~~
- (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.**

### Justification for Proposed Modification

CEDP is committed to providing an east-west link within the campus for students as required by Condition B1(a), however it is considered unnecessary to reference the Lot and DP numbers when the 'site' is separately defined at Schedule 1 of the consent. Similarly, reference to the GTP in this condition is considered unnecessary.

However, CEDP and the landowners cannot accept a condition which requires, or alludes to, future public access across the site at this stage. On this basis, it is proposed to delete Condition B1(b) as it presents a significant student safety concern and a risk to the operation of the schools. Further, and as acknowledged by the IPC in their SoR, it is beyond the scope of the application to provide a connection through to Bridge Road. Delivery of such a link has no nexus to the current proposal and is outside of CEDP's control, particularly given the uncertainty around the redevelopment of the neighbouring property. It is proposed to delete Condition B1(b) to remove any ambiguity around public access and delivery of the pedestrian link to Bridge Road.

Finally, as outlined in Addisons' advice at **Attachment B**, Condition B1(b) fails to provide sufficient certainty as required by *The Owners – Strata Plan No 4983 v Canny [2018] NSWCA 275; (2018) 233 LGERA 432* at [71], which provides that "development consents should be framed in clear terms and any conditions specified with certainty". In this regard, it is not clear what the "possible future pedestrian connection" would look like as it not referenced in any plan which is incorporated into the development consent, and it is not clear what the purpose of the "possible future pedestrian link" is intended to be. Further, the condition may not fairly and reasonably relate to the development, which is one of three requirements for a valid condition of consent, as established in *Newbury District Council v Secretary of State for the Environment [1981] AC 578* (Newbury). The approved development does not generate a need for pedestrian access to Bridge Road, and accordingly, it is not appropriate that any future access be identified or conditioned at this time.

### Condition B2

#### Proposed Modification to Condition B2

*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.*

### Justification for Proposed Modification

The modification to Condition B2 seeks to reflect the proposed changes to Condition B1 by making 'diagram' singular, rather than plural.

### Condition E4

#### Proposed Modification to Condition E4

*At least 2 months prior to the issue of the first occupation certificate for the school, the Applicant must:*

- (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;
- (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;**
- ~~(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~~
- ~~(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.~~

#### Justification for Proposed Modification

CEDP is committed to providing an internal site link from the multi-storey car park to the school and CELC, as well as an east-west link within the campus for the school/CELC. However, it is proposed to amend Condition E4(b) and delete Conditions E4(c) and E4(d) for the following reasons:

- Condition E4(b) – as noted, CEDP is committed to providing an east-west link within the campus for the school and CELC, however it is proposed to delete reference to the parish church users, as they would be impossible to distinguish from members of the public, presenting a safety concern for the landowners. It is noted that parish users are likely to arrive at the site by car, and so will not be adversely affected by the proposed change. Similarly, large parish gatherings generally occur outside of school hours and on the weekend, when the link would be closed for security purposes.
- Condition E4(c) – no easements are required for the internal student link. Whilst it is acknowledged that the condition says ‘if any’ to provide a degree of flexibility, the condition is unnecessary and should be deleted.
- Condition E4(d) - the requirement to provide public access (when the Bridge Road link is available in the future) is a significant concern for the project stakeholders. Whilst CEDP is committed to considering public access as part of future stages of the site’s redevelopment, it cannot be provided until that time (refer to **Section 1.2**).
- Any requirement to provide public access should be linked to future stages of the site’s redevelopment, rather than delivery of the Bridge Road link which could potentially occur before the broader redevelopment is realised (i.e before the site is capable of accommodating public access).
- Providing public access across the site is not possible until future stages of the site’s redevelopment for the following reasons:
  - Based on the design and location of the pedestrian connection (as required under Condition B1(a)) there would be no way of separating the public from the school grounds. This raises significant safety and child protection issues both during and after school hours.
  - It is not possible to provide public access into or across the site until such time as appropriate security/fence lines are in place. Introducing security/fence lines is not feasible given the current configuration of the campus.
  - Appropriate security lines will not be in place until the high schools are redeveloped under a future application, at which point a formal road/pedestrian footpath network will be created.

Further, as detailed in Addison’s advice at **Attachment B**, arguably Condition E4 does not satisfy the Newbury test as it does not fairly and reasonably relate to the development. Whilst Council is eager to

obtain public access through the WCC to improve connectivity to other developments (existing and future) in the general vicinity of the WCC, the Land and Environment Court has previously found that it is not reasonable for a consent authority to attempt to achieve its own objectives via imposing a condition of consent on a development that does not in and of itself generate the need for the works or access being required by the condition. Condition E4 puts an unreasonable burden on CEDP to effectively secure public access over the site by way of registered instruments on title, when such public access is not currently needed or required by the development the subject of the Consent, as acknowledged by DPE and the IPC.

## Condition E5

### Proposed Modification to Condition E5

***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.***

### Justification for Proposed Modification

CEDP maintains that the open space provided within and surrounding the new primary school building is appropriate to meet the recreational needs of the students, and that there is no lack of ‘appropriate access to uncovered and open to air play space’.

In response to concerns raised by DPE and the IPC, the landscape design has been amended to include more unencumbered play space at Ground Level and Level 5, providing more opportunities for active recreation such as running and kicking balls for all primary cohorts. This is in addition to the purpose designed, age-appropriate play spaces within the building, which research has shown promote more active play from a larger number of students than traditional oval style play spaces.

Within and surrounding the primary school building there is nearly 14,000sqm of play space, which is comparable to the area of one of the ovals (one oval is approx. 19,000sqm). Whilst the proposed open space provision (at 8.2sqm per child) represents a nominal reduction to the EFSG, the EFSG is not a development control or standard, and nor is it applicable to independent schools. Further, when the ovals are included in the open space calculations, the total open space area per child (primary and high schools) is approximately 17sqm.

It is important to note that primary school students will not be precluded from accessing the ovals and that they will have access to the ovals when required. However, the ovals are not proposed or designed as their main play space, and primary school access to the ovals should be an operational matter that is managed between the schools, rather than being mandated by a condition of consent.

Similarly, whilst open space areas have been nominated for each year group, students will not be prevented from accessing other levels within the building, including the Ground Level open space, during recess and lunch breaks.

Based on the above and considering the improvements that have been made to the open space design to provide more opportunities for active recreation, it is considered that Condition E5 should be deleted.

## Condition E43

### Proposed Modification to Condition E43

~~**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:**~~

~~**(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;**~~

**OR**

~~**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**~~

### Justification for Proposed Modification

As noted, the landowners are opposed to any condition which requires public access onto the school grounds. The requirement to provide public access to the ovals would place undue stress and demand on the school campus and school leadership.

The campus is for school use only and appropriate security and access arrangements are not yet in place to facilitate this condition. Further, it would create unnecessary financial and liability risks and ongoing operational and maintenance issues for the landowners. In addition, and as identified in the submitted shared use schedule for the ovals, the schools use the ovals after hours. The OOSH will also have access to the ovals after hours, if required and when available. It is not feasible to share these spaces with the public.

However, and as detailed as part of the original application, the development will continue to provide community access to the Parish Church and the open space surrounding the Parish.

Finally, as outlined in Addisons' advice (**Attachment B**), arguably Condition E43 does not satisfy the Newbury test as it is not reasonable for a consent authority to try to achieve its objectives of providing additional open space to the community on privately held land.

## Condition F1

### Proposed Modification to Condition F1

~~**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.~~

#### Justification for Proposed Modification

Consistent with the response to Conditions B1 and E4, it is proposed to delete this condition. It is considered unreasonable to impose this condition for the following reasons:

- As detailed elsewhere, public access cannot be provided across the site until future stages of the site's redevelopment are delivered. Any requirement to provide public access should be linked to future applications, rather than delivery of the Bridge Road link which could potentially occur before the broader redevelopment is realised (i.e. before the site is capable of accommodating public access).
- As acknowledged by the IPC in their SoR, it is beyond the scope of the application to provide a connection through to Bridge Road. Delivery of such a link is outside of CEDP's control, particularly given the uncertainty around the redevelopment of the neighbouring property.
- Finally, whilst the condition has been written with a degree of flexibility, it is open ended and ambiguous. As currently worded, if CEDP cannot provide satisfactory information to the Planning Secretary under Condition F1(c), then CEDP would likely need to comply with Conditions F1(a) and F1(b), meaning that the External Link would need to be established and public access be provided via the Internal Link. Having public access across the site is not possible, and so the ambiguity of this condition presents an unacceptable risk to CEDP and the landowners.

## 3.0 Substantially the Same Development

Section 4.55(1A) of the EP&A Act states that a consent authority may modify a development consent if *“it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all)”*.

The development, as proposed to be modified, is substantially the same development as that originally approved in that:

- The physical changes to the approved landscape design are minor, and do not alter key aspects of the approved development;
- The proposed amendments to the landscape design seek to respond to concerns raised by DPE and the IPC during the assessment and determination of the SSD DA;
- Fundamental aspects of the proposal relating to student numbers, vehicular access and parking arrangements remain unchanged;
- The development, as proposed to be modified, does not alter the ability to provide public access across the site as part of future stages of the site’s redevelopment; and
- The development will continue to provide public access to the Parish Church and the open space surrounding the Parish, as originally proposed.

## 4.0 Environmental Assessment

Section 4.55(1A) of the EP&A Act states that a consent authority may modify a development consent if *“it is satisfied that the proposed modification is of minimal environmental impact”*. Under section 4.55(3) the consent Authority must also take into consideration the relevant matters to the application referred to in section 4.15(1) of the EP&A Act and the reasons given by the consent authority for the grant of the original consent.

The following assessment considers the relevant matters under section 4.15(1) and demonstrates that the development, as proposed to be modified, will be of minimal environmental impact.

### 4.1 Compliance with Environmental Planning Instruments

Consistency with the following legislation, environmental planning instruments, policies and guidelines was considered as part of the original EIS for SSD 10383:

- *Biodiversity Conservation Act 2016*
- *State Environmental Planning Policy (State & Regional Development) 2011*
- *State Environmental Planning Policy (Infrastructure 2007)*
- *State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017*
- *State Environmental Planning Policy No. 64 – Advertising and Signage*
- *State Environmental Planning Policy No.55 – Remediation of Land*
- *Draft State Environmental Planning Policy (Remediation of Land)*
- *Draft State Environmental Planning Policy (Environment)*
- *Parramatta Local Environmental Plan 2011.*

As part of the consolidation of State Environmental Planning Policies (SEPPs) in March 2022, many of the above SEPPs were consolidated. Of relevance to this application, *State Environmental Planning Policy (Infrastructure 2007)* and *State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017* now form part of *State Environmental Planning Policy (Transport and Infrastructure) 2021* (TI SEPP). An assessment against the TI SEPP is provided below.

The proposed modifications do not change the original assessment against any of the remaining planning instruments and policies.

#### **4.1.1 State Environmental Planning Policy (Transport and Infrastructure) 2021**

The development, as proposed to be modified, remains consistent with the new TI SEPP. In particular, section 3.36(6)(b) which requires the consent authority to consider whether the development enables the use of school facilities (including recreational facilities) to be shared with the community. In this regard, and as detailed as part of the original application, the development will continue to provide community access to the Parish Church and the open space surrounding the Parish.

Similarly, the development remains consistent with the design quality principles contained at Schedule 8 of the TI SEPP.

## **4.2 Minimal Environmental Impact**

### **4.2.1 Open Space Quantity and Design**

The proposal seeks to respond to concerns raised by DPE and the IPC around the lack of appropriate open space for primary school students to participate in active play, including ball sports. In responding to these comments, CEDP has sought to provide more unencumbered open space for the primary school, both at Ground Level and Level 5. This has been achieved by relocating more formal/sculptural landscape elements and scattered tree plantings, and replacing them with open lawn areas and small soccer pitches.

It is important to note that the quantum of open space and the intent of the open space design, being to provide age-appropriate open space to meet the recreational needs of primary school students, remains unchanged.

Within and surrounding the primary school building there is nearly 14,000sqm of play space, which is comparable to the area of one of the ovals (one oval is approx. 19,000sqm). This includes uncovered/open to air sports courts and open turf areas at Level 5 and at Ground Level. These areas have been specifically designed to provide zones that are suitable for both structured sports and active recreation including multi-purpose sports courts, small soccer pitches, open turf areas and running tracks.

The dedicated open space provided for the primary school is considered suitable to meet the needs of the primary school students, without the need for mandated access to the school ovals.

In summary:

- CEDP maintains that the open space provided within and surrounding the new primary school building (8.2sqm per child) is appropriate to meet the recreational needs of the students, and that there is no lack of open space on the site. The design amendments address the concerns raised by DPE and the IPC by providing opportunities for uncovered and open to air active play and ball sports.
- The primary school open space is purpose designed to promote age-appropriate active play from a larger number of students than traditional oval style play space. CEDP has research to support that the proposed play space design encourages more active use by a larger number of students compared to an open/oval style play space (refer to Appendix E of the September 2020 RTS).

- CEDP will ensure that all students on the campus (including the primary school students) have adequate access to play space to meet their needs. This will include access to the Ground Level open space, and the ovals, as appropriate. This is an operational matter that is managed between the schools, and should not be mandated by way of condition of consent.

#### 4.2.2 Tree Removal and Replacement

As noted above, there are no changes proposed to the number of trees to be removed or retained. With respect to replacement tree planting, some of the replacement trees have been relocated to the perimeter of the open space to provide more unencumbered space for active play. However, the proposed tree canopy coverage (26%) remains consistent with the approved tree canopy coverage.

#### 4.2.3 Access and Connectivity

The proposal continues to provide a student link across the site to improve access and connectivity, and to support the principles of the GTP. Similarly, the proposal does not seek to change the approved vehicular access arrangements. Rather, this modification seeks to amend the conditions of consent to make it clear that public access across the site will not be provided until future stages of the site's redevelopment, consistent with the IPC's SoR.

Public access was never proposed as part of the current development. As noted throughout the assessment of the SSD (and as described in **Section 1.2**) it is not safe to provide public access until future stages of the redevelopment are delivered. As part of future applications, the high schools will be consolidated, and security lines will be established to separate school uses from the public. Until this time, any public access onto the site presents a significant safety and liability risk.

Public access can be assessed and conditioned as part of any future separate SSD DA(s).

### 4.3 Reasons Given for Granting Consent

In accordance with section 4.55(3) of the EP&A Act, in determining an application to modify a consent, the consent authority must take into consideration the reasons given by the consent authority for the grant of the consent that is sought to be modified. The proposed modifications are consistent with the reasons given by the IPC in that:

- The proposal continues to be permissible with consent under PLEP 2011 and the former Education SEPP (now the TI SEPP);
- The application continues to be consistent with the strategic directions outlined in State and local planning policies;
- The site continues to be well located to support future demand for increased student enrolments in the non-government school sector;
- The application continues to represent the orderly and economic use of the land, and will provide new, expanded primary school infrastructure to cater for increased demand;
- The development, as proposed to be modified, will not result in any additional impacts on surrounding land uses;
- The application continues to be consistent with the Objects of the EP&A Act; and
- The application continues to be in the public interest.

## 5.0 Conclusion

The proposed modifications relate to minor design amendments to provide more unencumbered open space for active play, as well as modifications to the conditions of consent to remove concerns around public access over the site and access to open space, which currently present a risk to the project and have caused the project to be placed on hold.

In accordance with section 4.55(1A) of the EP&A Act, DPE may modify the consent as:

- The proposed modification is of minimal environmental impact; and
- The development, as proposed to be modified, is substantially the same development as development for which the consent was granted.

We trust that this information is sufficient to enable a prompt assessment of the proposed modification request.

Yours sincerely,



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