

Submissions Report

SSD-10383 – Modification 1

2 Darcy Road, Westmead

Catholic Schools Parramatta Diocese

Ethos Urban acknowledges the Traditional Custodians of Country throughout Australia and recognises their continuing connection to land, waters and culture.

We acknowledge the Gadigal people, of the Eora Nation, the Traditional Custodians of the land where this document was prepared, and all peoples and nations from lands affected.

We pay our respects to their Elders past, present and emerging.



'Gura Bulga'

Liz Belanjee Cameron

'Gura Bulga' – translates to Warm Green Country.
Representing New South Wales.

By using the green and blue colours to represent NSW, this painting unites the contrasting landscapes. The use of green symbolises tranquillity and health. The colour cyan, a greenish-blue, sparks feelings of calmness and reminds us of the importance of nature, while various shades of blue hues denote emotions of new beginnings and growth. The use of emerald green in this image speaks of place as a fluid moving topography of rhythmical connection, echoed by densely layered patterning and symbolic shapes which project the hypnotic vibrations of the earth, waterways and skies.

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Executive Summary

The Catholic Education Diocese of Parramatta (CEDP) has lodged with the NSW Department of Planning and Environment (DPE) a Modification Application under Section 4.55(1A) of the *Environmental Planning and Assessment Act 1979* (EP&A Act) to modify State Significant Development consent SSD-10383 relating to the Westmead Catholic Community Education Campus at 2 Darcy Road, Westmead (the site). The site is owned by Trustees of the Roman Catholic Church of Parramatta (Lot 1 DP 1095407) and the Trustees of the Marist Brothers (Lot 1 DP1211982).

Following a name change, CEDP is now known as the Catholic Schools Parramatta Diocese (CSPD).

The Modification Application was publicly exhibited between 21 July and 3 August 2022. The submissions received during the exhibition of the Modification Application form the subject of this Submissions Report.

A total of four (4) submissions were received in response to the public exhibition of the Modification Application, as well as comments made by the DPE. Submissions were received from:

- City of Parramatta Council (objection);
- Cumberland City Council (comment only); and
- Transport for NSW (TfNSW) (comment only); and
- Mr Andrej Grobler (objection).

The key matters raised in the submissions were:

- The provision of pedestrian connections through the site, including for use by the general public;
- Open space and landscaping; and
- Community use of school facilities after hours.

Conditions relating to pedestrian access

The applicant has no objection to facilitating access to the site for students and staff of the schools on site, CELC and users of the parish church, as required and necessary. The applicant does not see the need or any reason for public access through the site or requirement for registration of any easements or positive covenants to secure future public access at this stage. Any public access through the site presents a significant student safety concern and a serious risk to the operation of the schools. It is also beyond the scope of this consent to provide public access through the site. Accordingly, the applicant now proposes to:

- Amend **Conditions B1(a) and E4(b)** so that the paved pedestrian connection from Farmhouse Road provides access to the primary school rather than to the western boundary of the site, and that such access is provided to the school community of the subject site and CELC only. These amendments are consistent with the intent of the pedestrian connection, which was to facilitate active access solutions from Farmhouse Road to the primary school, for the school community.
- Amend **Condition B1(b)** so that the schematic diagram provides for a possible future pedestrian connecting to the western boundary of the site, rather than to Bridge Road to the west. It is not the applicant's responsibility to commit to a pedestrian connection through a third party's land that it does not own. Extending the pedestrian access to the western boundary of the site is therefore beyond the scope of this development.
- Amend **Condition B2** so that the schematic diagrams prepared under Condition B1 are submitted to Council, rather than prepared in "consultation" with Council. Those diagrams must be submitted to the satisfaction of the Planning Secretary under Condition B1, therefore there is already an independent assessment and approval/endorsement process required by that condition and it is unnecessary for further input from Council, which could unnecessarily hold up the project. Further, in the applicant's experience, a requirement for "consultation" can be interpreted by certifiers as a requirement for agreement/acceptance/consent.
- Amend **Condition E4(c)** to remove the requirement for an easement and instead require a boundary adjustment between Lot 1 DP1095407 and DP1211982 so that the pedestrian link is located wholly within Lot 1 DP1095407 (the northern lot). This would ensure that students will continue to have access through the site, as the pedestrian link would not be located within the Marist land.

The applicant continues to request the deletion of **Conditions E4(d) and F1** which require the creation of easements and/or positive covenants to allow for an east-west link to be used for public pedestrian access to Bridge Road. As

acknowledged by the IPC in its Statement of Reasons at paragraph 178 that “it is not within the scope of this application” to provide future easement arrangements over adjoining properties to facilitate a pedestrian connection to Bridge Road, and that this “can be considered in the future when such a link is designed.” The applicant now also requests the deletion of **Condition F2** which is no longer required if Condition F1 is deleted.

Conditions relating to open space and community access to facilities

As a result of the submissions, the applicant no longer proposes to delete Conditions E5 and E43 of the consent. Instead, the applicant now proposes to:

- Amend **Condition E5** relating to the preparation of an Open Space Management Plan to ensure appropriate access by primary students to all “ground level open space”, not just the ovals. This will provide greater operational flexibility for the schools by making all open-air play spaces available to the primary school students, while ensuring that they have sufficient access to open space.
- Amend **Condition E43** relating to the preparation of a management plan to allow after-hours access to school facilities (not just ovals), on a commercial hire basis and subject to availability. This continues existing arrangements on the site whereby the schools hire their facilities to external groups on a commercial basis.

1.0 Introduction

The Catholic Education Diocese of Parramatta (CEDP) has lodged with the NSW Department of Planning and Environment (DPE) a Modification Application under Section 4.55(1A) of the *Environmental Planning and Assessment Act 1979* (EP&A Act) to modify State Significant Development consent SSD-10383 relating to the Westmead Catholic Community Education Campus at 2 Darcy Road, Westmead (the site). The site is owned by Trustees of the Roman Catholic Church of Parramatta (Lot 1 DP 1095407) and the Trustees of the Marist Brothers (Lot 1 DP1211982).

Following a name change, CEDP is now known as the Catholic Schools Parramatta Diocese (CSPD).

The Modification Application was publicly exhibited between 21 July and 3 August 2022. The submissions received during the exhibition of the Modification Application form the subject of this Submissions Report.

This response identifies and provides an assessment for each of the matters raised in the submissions received during the public exhibition period. It should be read in conjunction with the original Modification Application including all supporting information. This response has been prepared in accordance with the *State Significant Development Guidelines Appendix C: Preparing a Submissions Report Guideline*.

1.1 Purpose of this Report

The purpose of this Submissions Report is to respond to submissions from the community, organisations and government stakeholders during the exhibition of the Modification Application. This Submissions Report has been prepared to satisfy Clause 59 of the EP&A Regulation which states that the Secretary of the NSW Department of Planning and Environment (DPE) may require the applicant to give a written response to the issues raised in submissions. By letter dated 9 August 2022, DPE has required a written response to the issues raised in the submissions and Government agencies' advice, as well as the key issues of concern raised by the DPE itself. Each of the submissions received has been collated, analysed, and responded to in this report.

2.0 Analysis of Submissions

A total of four (4) submissions and letters of advice from Government agencies/local councils were received in response to the public exhibition of the Modification Application, as well as comments made by the DPE. Submissions were received from:

- City of Parramatta Council (objection);
- Cumberland City Council (comment only); and
- Transport for NSW (TfNSW) (comment only); and
- Mr Andrej Grobler (objection).

As Transport for NSW and Cumberland City Council raised no objection to the Modification Application and did not provide any comments that require a response, below we only provide a response to the comments received from DPE, City of Parramatta Council and Mr Grobler.

The key matters raised in the submissions were:

- The provision of pedestrian connections through the site, including for use by the general public;
- Open space and landscaping; and
- Community use of school facilities after hours.

3.0 Actions Taken Since Exhibition

Since exhibition, the applicant has:

- Considered the submissions received in detail and consulted extensively with the landowners and consultant team.
- Met with the DPE's Planning Delivery Unit on several occasions to assist in the resolution of the issues raised in submissions.
- Obtained additional legal advice from Addisons (**Appendix B**) in relation to the provision of public access within the site and to adjoining sites. That legal advice reiterates the original legal advice, a copy of which was provided to DPE.
- Prepared an indicative boundary adjustment plan (**Appendix C**) to illustrate an adjustment to the boundary between Lot 1 DP1095407 and DP1211982 so that the pedestrian link is located wholly within Lot 1 DP1095407 (the northern lot). This would ensure that students will continue to have access through the site as the pedestrian link would not be located within the Marist land.
- Prepared updated landscape plans (**Appendix D**) which increase the number of trees on the ground level of the primary school and clarify the quantum of unencumbered open space and passive area on each level.

4.0 Response to Submissions

The following section summarises and provides a response to the matters raised in the submissions lodged during the public exhibition of the Modification Application.

Below in **Sections 4.1 and 4.2** we provide a summary of our response to the submissions in relation to each key issue. Below in **Section 4.3** we provide a more detailed response to each of the matters raised in the submissions.

To assist DPE with its assessment of this Modification Application, **Appendix E** provides a comparison of the original and current proposed modifications to each condition, with a justification for each.

4.1 Conditions relating to pedestrian access

The applicant has no objection to facilitating access to the site for students and staff of the schools on site, CELC and users of the parish church, as required and necessary. The applicant does not see the need or any reason for public access through the site or requirement for registration of any easements or positive covenants to secure future public access at this stage. Any public access through the site presents a significant student safety concern and a serious risk to the operation of the schools. It is also beyond the scope of this consent to provide public access through the site. Accordingly, the applicant now proposes to:

- Amend **Conditions B1(a) and E4(b)** so that the paved pedestrian connection from Farmhouse Road provides access to the primary school rather than to the western boundary of the site, and that such access is provided to the school community of the subject site and CELC only. These amendments are consistent with the intent of the pedestrian connection, which was to facilitate active access solutions from Farmhouse Road to the primary school, for the school community.
- Amend **Condition B1(b)** so that the schematic diagram provides for a possible future pedestrian connecting to the western boundary of the site, rather than to Bridge Road to the west. It is not the applicant's responsibility to commit to a pedestrian connection through a third party's land that it does not own. Extending the pedestrian access to the western boundary of the site is therefore beyond the scope of this development.
- Amend **Condition B2** so that the schematic diagrams prepared under Condition B1 are submitted to Council, rather than prepared in "consultation" with Council. Those diagrams must be submitted to the satisfaction of the Planning Secretary under Condition B1, therefore there is already an independent assessment and approval/endorsement process required by that condition and it is unnecessary for further input from Council, which could unnecessarily hold up the project. Further, in the applicant's experience, a requirement for "consultation" can be interpreted by certifiers as a requirement for agreement/acceptance/consent.
- Amend **Condition E4(c)** to remove the requirement for an easement and instead require a boundary adjustment between Lot 1 DP1095407 and DP1211982 so that the pedestrian link is located wholly within Lot 1 DP1095407 (the northern lot). This would ensure that students will continue to have access through the site as the pedestrian link would not be located within the Marist land.

The applicant continues to request the deletion of **Conditions E4(d) and F1** which require the creation of easements and/or positive covenants to allow for an east-west link to be used for public pedestrian access to Bridge Road. As acknowledged by the IPC in its Statement of Reasons at paragraph 178 that "it is not within the scope of this application" to provide future easement arrangements over adjoining properties to facilitate a pedestrian connection to Bridge Road, and that this "can be considered in the future when such a link is designed." The applicant now also requests the deletion of **Condition F2** which is no longer required if Condition F1 is deleted.

4.2 Conditions relating to open space and community access to facilities

As a result of the submissions, the applicant no longer proposes to delete Conditions E5 and E43 of the consent. Instead, the applicant now proposes to:

- Amend **Condition E5** relating to the preparation of an Open Space Management Plan to ensure appropriate access by primary students to all "ground level open space", not just the ovals. This will provide greater operational flexibility for the schools by making all open-air play spaces available to the primary school students, while ensuring that they have sufficient access to open space.

- Amend **Condition E43** relating to the preparation of a management plan to allow after-hours access to school facilities (not just ovals), on a commercial hire basis and subject to availability. This continues existing arrangements on the site whereby the schools hire their facilities to external groups on a commercial basis.

4.3 Detailed response to submissions

Table 1 below provides a detailed response to each of the issues raised in submissions.

Table 1 *Detailed response to submissions*

Submission	Response
DPE	
Future Proofing a Pedestrian Link Through the Site	
<ul style="list-style-type: none"> The Department notes the request to delete condition B1(b) which requires the provision of a schematic pedestrian link within the adjoining property. The Department also notes that the Applicant consent to providing this link in the future in principle. Based on this, additional justification for the deletion of Condition B1(b) would be required, considering: <ul style="list-style-type: none"> Paragraph 176 and 177 of the Independent Planning Commission (IPC) Statement of Reasons finds it would be reasonable to require public access through the site as part of the stage delivery of the Master Plan for the site and to ensure the opportunity for a future connection to Bridge Road can be considered as part of site planning and landscape design. Condition B1(b) would not necessarily result in or compulsorily require public access to the site rather seeks to future proof a publicly accessible east-west link. 	<p>The applicant no longer requests the deletion of Condition B1(b), but instead requests that the diagram provides for a possible future connection linking the primary school to the western boundary of the site, rather than to Bridge Road. The approved development is for a primary school, so any new paths through the site should be for the purpose of the school, not for the purpose of connecting to potential future development that may or may not eventuate. Furthermore, it is not the applicant's responsibility to commit to a pedestrian connection through a third party's land that it does not own. Extending the pedestrian access to the western boundary of the site is therefore beyond the scope of this development.</p> <p>Therefore, the applicant's proposed wording of Condition B1(b) is now:</p> <p><i>(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.</i></p> <p>The applicant also requests amendments to Condition B1(a) to ensure that the paved pedestrian connection from Farmhouse Road is provided to the primary school to facilitate active access to the site by staff and students (and their carers) of the Catholic schools on the site and CELC. The proposed new wording on Condition B1(a) is as follows:</p> <p><i>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:</i></p> <p><i>(a) a schematic diagram of a through site direct and paved pedestrian connection from Farmhouse Road to the western boundary of the site primary school (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 by staff and students (and their carers) of the Catholic schools and CELC on Lot 1 DP 1095407 and Lot 1 DP 1211982, 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</i></p>

Submission	Response
	Full justification for these proposed amendments to Condition B1(a) is provided in Appendix E .
<ul style="list-style-type: none"> In a scenario where Condition E4(c) and (d) are also requested to be removed, please clarify how the future proofing of a pedestrian link for public use in and around the site can be assured. <p>Easement requirements E4(c)</p> <ul style="list-style-type: none"> With regard to condition E4(c), The Department's assessment of the original application notes that the site involves multiple owners. Consequently, the Department considers that a legal easement is required to be established to ensure that the students can access the site during the desired hours and that this is not compromised in the future due to multiple ownerships or changing operation of the schools within the site. The Department requests further information to demonstrate why no easements would be required within the site and how the student access through the proposed link within the site (between Farmhouse Road and the western boundary) would be ensured at all times (or during set times as needed) in the future. The Department also requests for: <ul style="list-style-type: none"> Further evidence (including legal advice if needed) that would demonstrate long-term, legally permissible and continued access for all school students and staff across the proposed pedestrian link within the site, noting the three schools within the site. Information demonstrating how a pedestrian connection would be established between Lot 1 DP 1095407 and Lot 1 DP 1211982, without the need for a legal easement or other legal access mechanisms. 	<p>Condition E4(c):</p> <p>The applicant no longer proposes to delete Condition E4(c), but instead proposes to delete the requirement for an easement. As an alternative to an easement, the boundary line between Lot 1 DP1095407 and DP1211982 could be adjusted so that the pedestrian link is located wholly within Lot 1 DP1095407 (i.e. the northern lot). This would ensure that students will continue to have access through the site as the pedestrian link would not be located within the Marist land. An indicative diagram indicating the potential boundary readjustment is attached to this Response to Submissions report at Appendix C. This is for illustrative purposes only and is subject to refinement. A boundary adjustment could be facilitated by registering a Plan of Identification at NSW Land Registry Services. Development consent is not required for such a boundary adjustment, because a 'Plan of Identification', which is defined to include a boundary adjustment under section 195 of the Conveyancing Act 1919, is expressly excluded from the definition of 'subdivision of land' under section 6.2 of the EP&A Act.</p> <p>Accordingly, the applicant proposes to amend Condition E4(c) as follows:</p> <p>(c) <u>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.</u></p> <p>Condition E4(d):</p> <p>The applicant continues to request the deletion of Condition E4(d) which requires a positive covenant to facilitate public access to the internal east-west pedestrian link through the site.</p> <p>It is very clear from the IPC's Statement of Reasons and meeting transcripts that the IPC never intended to require public access through the subject site at this time. For example the IPC's Statement of Reasons states at para 175: "While the Commission is of the view that additional connectivity through the Westmead precinct would be beneficial for the local community, it also acknowledges the Applicant's significant responsibility to ensure student safety. <u>The Commission finds the Applicant's objection to allowing public access through the Site is justified at the current time.</u>" (emphasis added)</p>

Submission	Response
	<p>In addition to the above, the applicant reiterates its previous arguments regarding the undesirability of having public access through the site at the current time. In summary:</p> <ul style="list-style-type: none"> Public access through the site 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. The applicant acknowledges the opinion of the IPC that <i>“it would be reasonable to require public access through the Site in the future as part of the staged delivery of the Master Plan for the Site”</i> (paragraph 176). As outlined in Addisons’ advice, providing public access or making provision for future public access across private land is not a matter that should be dealt with by way of a condition of consent for the current proposal. Public access through the site was not the subject of the original SSD DA. The consent should only apply to the development for which approval was sought, for the benefit of the applicant and subsequent owners of the site. A condition requiring public access may not fairly and reasonably relate to the development, which is one of three requirements for a valid condition of consent, as established in the Newbury case. The approved development does not generate a need for public pedestrian access to Bridge Road, and accordingly, it is not appropriate that any future access be identified or conditioned at this time. Although there is a broad “master plan” for the site, this does not have any legal status. If public pedestrian access is required to fulfil the master plan, any plans for such public access will be subject to separate DAs in the future.
<p>Play space and landscaping</p> <ul style="list-style-type: none"> The modification proposes to delete a condition which requires an open space management plan to be provided to demonstrate that the primary school children can have access to the existing ovals within the site. In this regard the Modification Report includes a statement that “students will not be precluded from accessing the ovals and they will have access to the ovals when required”. The Department requests you to: <ul style="list-style-type: none"> clarify the impediments in the future school operations if an open space management plan is in place, i.e specific reasons as to why this plan is not needed in this instance. 	<p>The applicant no longer proposes to delete Condition E5. Instead, it is proposed to amend this condition to ensure that primary school students will have sufficient and regular access to ground level “open space”, not just the ovals. This will ensure that all students have equitable access to facilities across the whole site and will provide greater operational flexibility for the schools by making all open-air play spaces available to the primary school students (including basketball courts, tennis courts, cricket nets, ovals etc). The Open Space Management Plan can address the access to and distribution of children across the different open spaces on the site and how organised sporting events would be conducted. The proposed condition is as follows:</p>

Submission	Response
<ul style="list-style-type: none"> - further clarify the above statement and provide information of instances where students at this school would be provided access to the ovals. - clarify how the statement regarding provision of access would be implemented in the future without an established open space management plan, noting that in the absence of a plan the access would be reliant on an informal procedure, where implementation on a regular basis cannot be ensured. - provide a comparison between the approved (SSD-10383) and proposed (under this modification application) unencumbered space provision for the primary school students and confirm any increase resulting from the redesign of the landscape amendments. - quantify how much passive space is proposed to be converted to active play space as a result of this modification. 	<p><i>"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 open space 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 this open space."</i></p> <p>In addition, the attached diagrams from Ground Ink demonstrate that:</p> <ul style="list-style-type: none"> • The number of trees overall will remain at 128 consistent with the original design. This is a result of decreasing the number of trees on Level 5 from 11 to 4, and offsetting this by increasing the number of trees on the ground level of the primary school from 43 to 49 and providing one additional tree on the CELC land (increase from 19 to 20). • As a result of the above, this has increased the ground level unencumbered open space from 4,985.8sqm (approved) to 5,392.8sqm – an increase of 407sqm (Drawing LA401). • Ground level passive area will increase from 468sqm (approved) to 797.7sqm (proposed) – an increase of 329.7sqm. This increase is mainly due to the simplification of the turfed areas to create more informal seating areas and the turfed areas becoming wider and more open. This modification provides further opportunities for physical activities such as outdoor sports, learning & gathering events. This will result in a greater circulation of space whilst providing generous passive areas for students to enjoy. • The number of trees on Level 5 will decrease from 11 (approved) to 4 (proposed). This has been offset by an increase in the number of ground level trees from 120 to 128, therefore there is no net reduction in the number of trees overall. The reduction in trees on Level 5 is justified as planting the trees on the ground in deep soil affords them a greater opportunity for successful establishment. The volume of soil that is capable of instating on the rooftop will reduce usable play space and will also be more prone to drying out. It would be difficult to achieve the necessary volume of soil to support the healthy establishment of trees on the rooftop. • While the Level 5 unencumbered open space provision would marginally decrease from 2,736sqm (approved) to 2,730sqm (proposed), this is very marginal and is still a net increase overall of 401sqm.
<ul style="list-style-type: none"> • The Department requests that you clarify whether there is a reduction in the proposed tree planting and canopy cover. The modification application advises there is no reduction in proposed trees however the Department has noted an inconsistency between number of trees on the approved and proposed plans. 	<p>For clarity, below we provide a comparison of the approved and now proposed quantum of trees, unencumbered open space and passive space.</p>

Submission	Response		
		Approved	Proposed
	Number of trees		
	• Ground level	117	124
	• Level 1	0	0
	• Level 2	0	0
	• Level 3	0	0
	• Level 4	0	0
	• Level 5	11	4
	TOTAL	128	128
	Unencumbered open space		
	• Ground level	4,985.8sqm	5,392.8sqm
	• Level 1	1,160.2sqm	1,160.2sqm
	• Level 2	1,181.1sqm	1,181.1sqm
	• Level 3	2,788.1sqm	2,788.1sqm
	• Level 4	1,135.6sqm	1,135.6sqm
	• Level 5	2,736sqm	2,730sqm
	Passive area		
	• Ground level	468sqm	797.7sqm
	• Level 1	207.9sqm	155sqm
	• Level 2	259sqm	354.8sqm
	• Level 3	647sqm	630sqm
	• Level 4	500sqm	460.8sqm
	• Level 5	156.5sqm	416.6sqm
<ul style="list-style-type: none">In the modification report, you have stated that all children would have unrestricted access to open-aired outdoor areas at recess including ground and open roof spaces. Children are not limited to using the upper-level covered play spaces within the building. This is not consistent with the original application which indicated that the different year groups would access separate open spaces distributed in the building, roof top and on the ground. If the modification proposes that the students would access all open spaces at all times, then:<ul style="list-style-type: none">Please describe the measures have been put into place to prevent children from overcrowding one of the spaces and how would these measures be implemented.The useability of the under-cover open spaces on different floors when opportunities for accessing the open spaces at the ground floor and roof top.	<p>This modification application does not propose any changes to the existing approval in relation to access to open space.</p> <p>Unstructured play</p> <p>To clarify, this modification application does not propose to change the way that children will access and use the open spaces throughout the site for unstructured play (i.e., recess and lunchtime play) from the original approval. It is still the intent that different year groups will access separate open spaces distributed throughout the building, roof top and on the ground for unstructured play – as per the approved SSDA. The language used in the original modification report was based on the proposal at that time to delete Condition E5 and should be disregarded.</p> <p>Structured play and learning</p> <p>For structured play and learning (i.e., school sports, PDHPE classes, etc), all year groups will have access to all areas of open space. Since this only relates to timetabled structured play, the open spaces will not be used at the same time by multiple groups, thereby avoiding potential conflicts and displacement of students. This will be managed via the Open Space</p>		

Submission	Response
<ul style="list-style-type: none"> - How organised sporting events would be conducted (weekly sports days) when all students, at the minimum years 3 – 6 age groups, in various schools generally need access to an oval. 	<p>Management Plan prepared under Condition E5 which the applicant no longer proposes to delete.</p> <p>Therefore, as can be seen above, <i>no changes are proposed to the existing approval in relation to access to open space</i>. Unstructured play arrangements remain unchanged, and structured play arrangements will continue to be managed via the existing approved Condition E5 which is no longer proposed to be deleted.</p>
Community access	
<ul style="list-style-type: none"> • You are requested to provide additional justification for the deletion of Condition E43 • In this regard the Department notes that the IPC had amended Condition E43 to remove the requirement for unrestricted public access to all recreation facilities. Condition E43, in its current form provides flexibility to allow and to limit the access to specific groups at the school's discretion and based on availability and/or hire basis. • Noting the above the Department considers that the reason that community access to the ovals would impact on the security of the school is not satisfactory. Operational Management Plans for various schools allow limited community access within school sites and this complies with the intention of the State Environmental Planning Policy (Educational Establishments and Child Care Centres) 2017, as was applicable to SSD-10383 	<p>The applicant no longer proposes to delete Condition E43 as it is committed to providing external stakeholder access to the site after hours, subject to availability and on a hire basis. The school is already accessible to external users after hours, through written hire agreements between the school and those users. However, there is no overall management plan which the applicant and landowners are willing to prepare pursuant to this condition.</p> <p>It is now proposed to amend this condition as follows:</p> <ul style="list-style-type: none"> • Replacement of “sports ovals” with “facilities within the site” to provide access to a range of facilities within the site and not just the ovals, including open space and internal spaces. For example, external stakeholders may wish to occupy school classrooms to provide after-hours tutoring, adult learning and the like. This continues existing arrangements on the site whereby the schools hire their facilities to external groups on a commercial basis. • Replacement of “local schools and/or local community groups” with “others” to broaden the range of external users who can have access to facilities after hours. Again, this reflects existing arrangements whereby external groups (not just local schools and community groups) can hire the schools’ facilities on a commercial basis. • Addition of the words “subject to availability and on a hire basis” to provide the landowners and applicant with greater operational flexibility to provide access to the site only when this is feasible for the schools. <p>Accordingly, the proposed wording is now as follows:</p> <p><i>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:</i></p> <p>(a) <i>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 others <u>local schools and/or local community groups</u></i></p>

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	<p>outside the school hours, subject to availability and on a hire basis, and a copy of the management plan has been approved by the Certifier and provided to Council for information;</p> <p>OR</p> <p>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>
Comments from Transport for NSW (TfNSW)	
<ul style="list-style-type: none"> The comments from TfNSW have been uploaded on to the portal. However, the Department is waiting on addendum advice from the agency. This would be provided to you under separate cover, once received. A response to any addendum advice would be required in the RtS. 	TfNSW's letter dated 15 July 2022 raises no objection, including to modifications to conditions about public access over the site.
Parramatta Council	
Condition B1 – Future access arrangement	
<p>B1(a) – Council officers do not support the proposed removal of the lot and DP numbers; the need for this removal is not well justified in the modification report. Retaining the lot numbers ensures the location of the easement is adequately defined within the condition.</p>	<p>The applicant no longer proposes to delete the lot and DP references in Condition B1(a) but proposes to amend the wording of the condition as set out in Appendix E.</p>
<p>B1(b) – Council notes the legal advice provided from Addisons which states that the proposed future pedestrian link cannot legally be secured as it fails to provide sufficient certainty. However, it is disputed that the condition does not meet the Newbury test as follows:</p> <p>a. The conditions planning purpose is to ensure that the school's redevelopment is considered wholly in the context of the entire block which currently only has access via Darcy St. This was considered an acceptable solution by the IPC to ensure that the redevelopment does not exacerbate the existing traffic on Darcy Rd by promoting active and easy pedestrian links from Bridge Rd, which was a key component of Councils objection to the original SSD.</p> <p>b. The easement provision serves a clear purpose to serve the students and staff of the school who may live to the west of Bridge Rd, which is a residential area, and provide them with easy pedestrian access and reduce the pedestrian traffic on Darcy Rd.</p>	<p>As stated above, the applicant no longer requests the deletion of Condition B1(b), but instead requests that the diagram provides for a possible future connection linking the primary school to the western boundary of the site, rather than to Bridge Road.</p> <p>The approved development is for a primary school, so any new paths through the site should be for the purpose of the school, not for the purpose of connecting to potential future development that may or may not eventuate. Furthermore, it is not the applicant's responsibility to commit to a pedestrian connection through a third party's land that it does not own. Extending the pedestrian access to the western boundary of the site is therefore beyond the scope of this development.</p> <p>Further, the Westmead Place Strategy 2036 does not propose any "potential pedestrian links" through the subject site unlike for other sites in the Health and Innovation Sub-Precinct 2 (see below). Big Move 3 of the Strategy is "Activate and connect our community with vibrant, diverse and well connected public spaces and places" (emphasis added). The</p>

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Condition B1(b) is therefore fair and ensures that the connection to the east relates directly to the orderly development of the entire block to ensure the site has adequate pedestrian access which is consistent with the Draft Westmead Place Strategy 2036 for their own students and staff. Its removal is not supported.

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subject site is not a public place, it is private land, therefore there is no reason why the site needs to provide public pedestrian connectivity in order to respond to this Strategy. In any event, the applicant agrees to indicating a future pedestrian connection to the western boundary of the site which would enable connectivity with the “potential new pedestrian creek crossing” west of the site as shown in the diagram below.



Therefore, the applicant's proposed wording of Condition B1(b) is now:

- (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.**

Condition B2

This amendment is not supported as the pedestrian link to the west should not be removed from condition B1(b) for the reasons stated above.

The applicant accepts the preparation of both diagrams required by Condition B1, but proposes amendments to this condition as follows:

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	<p><i>The schematic pedestrian link diagrams must be prepared in consultation with-submitted to Council and evidence of such consultation submission provided to the Planning Secretary along with details in Condition B1.</i></p> <p>The applicant requests the term “schematic” to reflect the wording in Condition B1.</p> <p>It is also requested that the applicant submit the diagrams to Council without formal “consultation”. In the applicant’s experience, a requirement for “consultation” can be interpreted by certifiers as a requirement for agreement/acceptance/consent. This could unnecessarily hold up the project. It is noted that these diagrams must be submitted to the satisfaction of the Planning Secretary under Condition B1, therefore there is already an independent assessment and approval/endorsement process required by that condition and it is unnecessary for further input from Council.</p> <p>Further, as the schematic diagrams required by Condition B1 pertain to future pedestrian links, it is not necessary for such consultation to occur with Council at this stage of the site’s redevelopment. The applicants are willing and open to consulting with Council as part of the future stages of the site’s redevelopment.</p>
Condition E4	
<p>E4(b) – The removal of this condition is not supported. The reasoning that the Church users will be too hard to distinguish from general public is insufficient, and that Church users will only use vehicles to access the Church services completely defeats the purpose that the access easement is trying to achieve by encouraging active transport links and reduce the traffic impacts on Darcy St.</p>	<p>The applicant does not propose to remove Condition E4(b). Rather, it is proposed to amend this condition so that:</p> <ul style="list-style-type: none"> • The paved pedestrian link connects Farmhouse Road to the primary school, rather than to the western boundary of the site. The purpose of the pedestrian connection as we understand it, is to provide alternative access solutions for students of the site (in addition to access from Darcy Road), thus it is unnecessary that the connection be extended to the western boundary of the site, beyond the actual school, at this time. It is worth reiterating that the approved development is for a primary school, so any new paths through the site should be for the purpose of the school, not for the purpose of connecting to potential future development that may or may not eventuate. Extending the pedestrian access to the western boundary of the site is beyond The scope of this development. • The paved pedestrian link is for use by the school/CELC and not parish church users. In a meeting between the IPC and Council on 16 December 2021, it was clear from the conversation between the IPC and Council that the pedestrian link provided through the site from Farmhouse Road was intended to facilitate active access solutions for the school community, including students and their carers. This was never intended to facilitate access by the general public, which includes parish church users who are not part of the school community. For example, one of the Commissioners acknowledged the applicant’s safety and security concerns of allowing the non-school community to

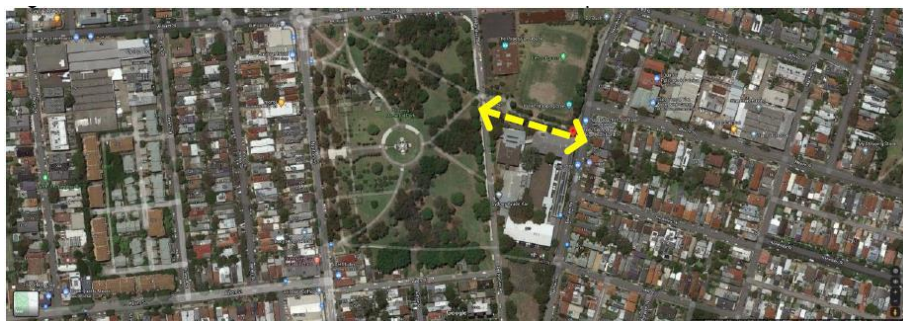
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	<p>walk through the subject site: The meeting transcript states: “I can’t think of any where a school would have a stream of people walking through a school being sort of a sensitive use, that wasn’t – that aren’t related to the actual school community? Just in terms of, I guess, the security and operation.” Council officers in the same meeting acknowledged that the paved pedestrian link required by Condition B1(a) was intended to facilitate active access solutions by the school community, including students and their carers. Transcript excerpts are provided in Appendix E in response to Condition B1(a). The same reasoning applies to the proposed deletion of “parish church users” from Condition E4(b).</p> <p>Accordingly, the proposed modification to Condition E4(b) is as follows:</p> <p>(b) <i>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;</i></p>
<p>E4(c) - This condition should not be deleted as without the provision of an easement or positive covenant there is no way of ensuring that the access will be maintained via the pedestrian link in the future.</p>	<p>As stated above, the applicant no longer proposes to delete Condition E4(c), but instead proposes to delete the requirement for an easement. As an alternative to an easement, the boundary line between Lot 1 DP1095407 and DP1211982 could be adjusted so that the pedestrian link is located wholly within Lot 1 DP1095407 (i.e. the northern lot). This would ensure that students will continue to have access through the site as the pedestrian link would not be located within the Marist land. A diagram indicating the potential boundary readjustment is attached to this Response to Submissions report at Appendix C. This boundary adjustment could be facilitated by registering a Plan of Identification at NSW Land Registry Services. Development consent is not required for such a boundary adjustment, because a ‘Plan of Identification’, which is defined to include a boundary adjustment under section 195 of the Conveyancing Act 1919, is expressly excluded from the definition of ‘subdivision of land’ under section 6.2 of the EP&A Act.</p> <p>Accordingly, the applicant proposes to amend Condition E4(c) as follows:</p> <p>(c) <i>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</i></p>

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registration of a Plan of Identification or similar at NSW Land Registry Services.

E4(d) – This condition is required as it allows for the orderly development of the site as detailed above in Council's objection to B1(b). Providing Public Access can be provided safely and has been demonstrated in similarly large campus schools such as Leichhardt Secondary School, see below aerial map, which like the Westmead Catholic Campus is a large property which separates two parts of the suburb.

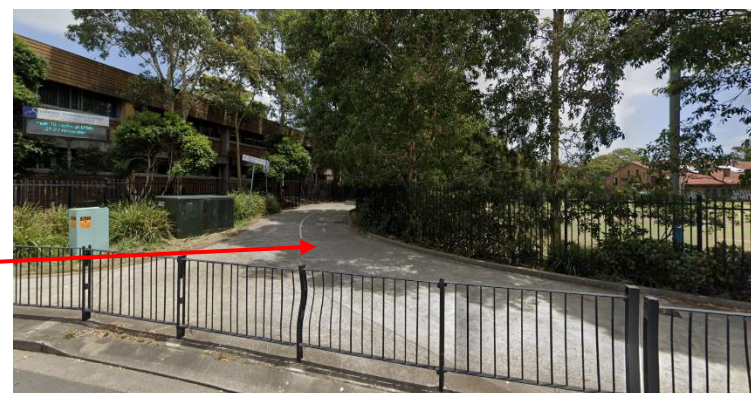
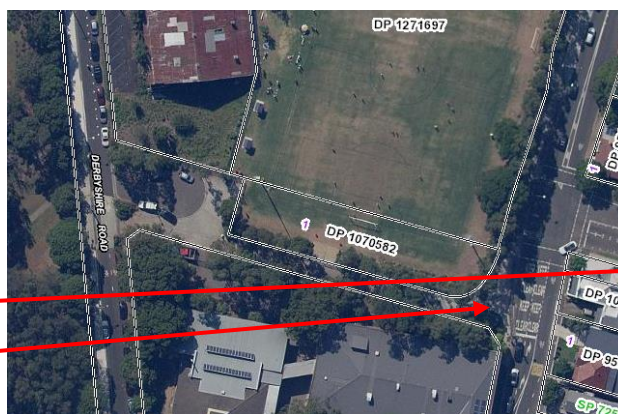


The provision of public access through the Leichhardt campus of the Sydney Secondary College is not relevant to this Modification Application. The land ownership and planning history of that school site are not known and are likely to be completely different to the current circumstances.

The public access referred to in the aerial map is a cycleway that appears to be located on public land (with no lot and DP reference) and is therefore technically outside the boundaries of the school. This is very different to the circumstances of the subject site which is all privately owned land.

Furthermore, the cycleway is separated from the school grounds by secure fencing that would prevent access by the general public to school grounds. As stated in the Modification Application, security/fence lines within the subject site 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, the applicant is not in a position to provide any public access as part of the current application, and a comparison to the Sydney Secondary College in this regard is totally inappropriate.

Moore Street Cycleway – public land physically separated from school campus



Condition E5

Council recommends that this condition of consent be maintained. The delivery of a vertical school and increasing density at the site should not compromise the quality of open space provided for students.

As stated above, the applicant no longer proposes to delete Condition E5. Instead, it is proposed to amend this condition to ensure that primary school students will have sufficient and regular access to ground level "open space", not just the ovals. This will

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<p>The school site should provide a minimum of 10sqm of open space per student. However, we note that the current proposal will provide 8.2sqm per child and this should be maintained via the existing condition.</p> <p>Play is essential for the development of children, including healthy physical and emotional growth, intellectual and educational development, and for acquiring social and behavioural skills. Therefore, the provision of high-quality open space is essential for promoting social and health outcomes for children.</p>	<p>ensure that all students have equitable access to facilities across the whole site and will provide greater operational flexibility for the schools by making all open-air play spaces available to the primary school students (including basketball courts, tennis courts, cricket nets, ovals etc).</p>
Condition E43	
<p>Council does not support the removal of this condition and recommends that the applicant consider opportunities for shared use in this proposal</p> <p>Council's Community Infrastructure Strategy 2020 identifies the intention to investigate and pursue joint and shared use arrangements with schools. Whilst there is no MOU between City of Parramatta Council and Catholic Education, the principle remains that it is of benefit to the community to be able to access school assets when they are not being used for formal education purposes. The intention of joint use arrangements is primarily focused on access to open space.</p>	<p>As stated above, the applicant no longer proposes to delete Condition E43. as it is committed to providing external stakeholder access to the site after hours, subject to availability and on a hire basis. The school is already accessible to external users after hours, through written hire agreements between the school and those users. However, there is no overall management plan which the applicant and landowners are willing to prepare pursuant to this condition.</p> <p>It is now proposed to amend this condition as follows:</p> <ul style="list-style-type: none"> • Replacement of "sports ovals" with "facilities within the site" to provide access to a range of facilities within the site and not just the ovals, including open space and internal spaces. For example, external stakeholders may wish to occupy school classrooms to provide after-hours tutoring, adult learning and the like. This continues existing arrangements on the site whereby the schools hire their facilities to external groups on a commercial basis. • Replacement of "local schools and/or local community groups" with "others" to broaden the range of external users who can have access to facilities after hours. Again, this reflects existing arrangements whereby external groups (not just local schools and community groups) can hire the schools' facilities on a commercial basis. • Addition of the words "subject to availability and on a hire basis" to provide the landowners and applicant with greater operational flexibility to provide access to the site only when this is feasible for the schools.
<p>A shared use arrangement would benefit students, who are likely to be members of the local community that would be utilising the site outside of school hours.</p>	
<p>Accordingly, the proposed wording is now as follows:</p> <p><i>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:</i></p> <p>(d) <i>a management plan has been developed in conjunction with the other existing schools within the site to allow access to the sports ovals facilities</i></p>	

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	<p><i>within the site to others local schools and/or local community groups outside the school hours, subject to availability and on a hire basis, and a copy of the management plan has been approved by the Certifier and provided to Council for information;</i></p> <p>OR</p> <p><i>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</i></p>
<p>Condition F1</p> <p>Similar to condition B1 and E4 the deletion of this condition is not supported and must be retained to ensure the orderly development of the site. It is related to the development proposed and does not infringe on the ability of the applicant to develop their site to its full potential in a reasonable timeframe.</p>	<p>The applicant continues to object to any condition that requires the construction of an access point from the subject site to the west across to Bridge Road. As acknowledged by the IPC in its Statement of Reasons at paragraph 178 that “it is not within the scope of this application” to provide future easement arrangements over adjoining properties to facilitate a pedestrian connection to Bridge Road, and that this “can be considered in the future when such a link is designed.” For this reason, the IPC did not impose a condition that was proposed by the Department (condition B1(c)). Retaining this condition 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.</p>
<p>Transport for NSW</p> <p>TfNSW has reviewed the proposed modification and has no objections to the modification of consent conditions relating to public access over the site and the preparation of management plans for student and community access to open space.</p>	<p>Noted.</p>
<p>Cumberland City Council</p> <p>No comments are made to this application by Council.</p>	<p>Noted.</p>
<p>Andrej Grobler (Public)</p> <p>I object to the proposed modification to condition B1 or removal of condition 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. Many students are coming to the campus from the western side. Bridge Road connection would provide them with safer and quicker access, reducing the need for vehicle drop-offs.</p>	<p>Refer to responses above in relation to Conditions B1 and F1.</p>

Appendix A – Submissions Register

Group	Name	Section where issues are addressed in submissions report
Public authorities	Department of Planning and Environment	Section 4.3
	Transport for NSW	Section 4.3
Councils	City of Parramatta	Section 4.3
	Cumberland City Council	Section 4.3
Individuals	Andrej Grobler	Section 4.3

Appendix B – Legal Submission from Addisons

Please see attached.

Appendix C – Boundary Adjustment Plan

Please see attached.

Appendix D – Landscape Plans

Please see attached.

Appendix E – Revised Amendments to Conditions

For clarity, below we set out the applicant's revised proposed amendments to the relevant conditions of consent following consideration of the submissions, and compare the revised amendments to the original Modification Application.

Table 2 *Proposed amendments to conditions*

Condition	Original Modification Application	Revised Modification Application	Justification
Condition A2	The original modification application amended the revision number and date of the landscape drawings listed in Condition A2 to Revision C and 30/05/2022 .	The revised modification application now seeks to further update the landscape drawings to Revision D and 26/04/2023 .	The changes to the landscape drawings since the original modification application (Revision C) are as follows: <ul style="list-style-type: none"> Increased the number of trees on the ground level of the primary school from 120 to 128, consistent with the original design (Drawing LA401); Increased the ground level unencumbered open space from 4,985.8sqm (approved) to 5,392.8sqm – an increase of 407sqm (Drawing LA401); and Drawings LA 401 and 403-407 now also note the quantum of unencumbered open space and passive area on each plan.
Condition B1	<p><i>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:</i></p> <p>(a) <i>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</i></p>	<p><i>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:</i></p> <p>(a) <i>a schematic diagram of a through site direct and paved pedestrian connection from Farmhouse Road to the western boundary of the site primary school (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 by staff and students (and their carers) of the Catholic schools and CELC on Lot 1 DP 1095407 and Lot 1 DP 1211982, in addition to the existing Darcy Road entry points, consistent</i></p>	<p>The applicant requests the following additional amendments to Condition B1:</p> <p>1) First, it is requested that there be an additional qualifier that the pedestrian connection from Farmhouse Road would be available only to staff and students (and their carers) of the Catholic schools on the site and the CELC, to ensure that it is not used by students of other schools (including the new primary school and selective high school on the adjoining site recently announced by the NSW Government), the parish church or the general public. In a meeting between the IPC and Council on 16 December 2021, one of the Commissioners raised safety and security concerns of allowing students from other schools on the adjoining site walking through the subject site: The meeting transcript states:</p> <p>“MS GRANT: Can I – sorry. Can I just ask are you aware of any other examples where schools or – have opened up access? Like, if you say in future proofing it, for use by the future development to the west, are you aware of any other sites where that has happened? And I was – because I can't think of any where a school would have a stream of people walking through a school being sort of a sensitive use, that wasn't – that aren't related to</p>

Condition	Original Modification Application	Revised Modification Application	Justification
	Partnership dated 25 August 2021; and	with Figure 6.6 of Transport & Accessibility Impact Assessment prepared by Transport Planning Partnership dated 25 August 2021; and	<p>the actual school community? Just in terms of, I guess, the security and operation.”</p> <p>In the same meeting, the Council clarified that the “general public” was intended to refer to the school community. The meeting transcript states:</p> <p><i>“MS McNALLY: Yes. Not putting words into Richard’s mouth and he will correct me if I’m wrong, but, in terms of broader public, we’re seeing really the people associated with school drop offs and pickups as being the broader public. So we can’t just limit it to students because, obviously, we’ve got mums, dads, carers, that are coming. So we mean that by “broader public” and limiting it to the hours, we’re really only the school population still. So we’re not seeing a broad – we understand the concerns with members of the public walking through all day. We’re really trying to seek that school community.”</i></p> <p>Council also stated:</p> <p><i>“MR LEOTTA: ...[A]s far as just general public access coming across. We understand that and I think the intent here... is really to capture all those persons associated with the school, students and their care givers. So, if a definition of “student use” means and their associated carers who may come with them, then that’s fine...”.</i></p> <p>Finally, in its Statement of Reasons at paragraph 175, the IPC stated: <i>“While the Commission is of the view that additional connectivity through the Westmead precinct would be beneficial for the local community, it also acknowledges the Applicant’s significant responsibility to ensure student safety. The Commission finds the Applicant’s objection to allowing public access through the Site is justified at the current time.”</i></p> <p>The current wording of the condition to allow for alternate “student access” is too broad and would allow access by any students (and their parents/carers) of any school. This is equivalent to the general public. Therefore, consistent with the IPC’s shared concerns about student safety and security, and the Council’s apparent intent with regard to access by the school community, it is appropriate to expressly limit access to the internal pedestrian link to students and staff and CELC of the subject site only.</p> <p>2) Secondly, it is proposed that the pedestrian connection from Farmhouse Road provide access to the primary school only,</p>

Condition	Original Modification Application	Revised Modification Application	Justification
			<p>rather than to the western boundary of the site. The purpose of the pedestrian connection as we understand it, is to provide alternative access solutions for students of the site (in addition to access from Darcy Road), thus it is unnecessary that the connection be extended to the western boundary of the site, beyond the actual school, at this time. It is worth reiterating that the approved development is for a primary school, so any new paths through the site should be for the purpose of the school, not for the purpose of connecting to potential future development that may or may not eventuate. Extending the pedestrian access to the western boundary of the site is beyond the scope of this development.</p> <p>3) Thirdly, it is proposed to delete the reference to Figure 6.6 of the Transport & Accessibility Impact Assessment. That figure specifies the location of the pedestrian link from Farmhouse Road to the western boundary of the site. While the applicant does not object to students traversing through the site, it needs flexibility in the precise location of this pedestrian link as this may slightly change during design development. As such, it is not appropriate to lock this in at this stage. In any event, the schematic diagram must be submitted to the Planning Secretary's satisfaction prior to the issue of a Construction Certificate, thereby ensuring independent verification.</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>(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.</p>	<p>The applicant no longer requests the deletion of Condition B1(b), but instead requests that the diagram provides for a possible future connection linking the primary school to the western boundary of the site, rather than to Bridge Road. Again, the approved development is for a primary school, so any new paths through the site should be for the purpose of the school, not for the purpose of connecting to potential future development that may or may not eventuate. Furthermore, it is not the applicant's responsibility to commit to a pedestrian connection through a third party's land that it does not own. Extending the pedestrian access to the western boundary of the site is therefore beyond the scope of this development.</p>
Condition B2	<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 schematic pedestrian link diagrams must be prepared in consultation with submitted to Council and evidence of such consultation submission provided to the Planning Secretary along with details in Condition B1.</p>	<p>The applicant requests the term "schematic" to reflect the wording in Condition B1.</p> <p>It is also requested that the applicant submit the diagrams to Council without formal "consultation". In the applicant's experience, a requirement for "consultation" can be interpreted by certifiers as a requirement for agreement/acceptance/consent. This could unnecessarily hold up the project. It is noted that these diagrams must be submitted to the satisfaction of the Planning Secretary under Condition B1, therefore there is already an independent</p>

Condition	Original Modification Application	Revised Modification Application	Justification
			<p>assessment and approval/endorsement process required by that condition and it is unnecessary for further input from Council.</p> <p>Further, as the schematic diagrams required by Condition B1 pertain to <i>future</i> pedestrian links, it is not necessary for such consultation to occur with Council at this stage of the site's redevelopment. The applicants are willing and open to consulting with Council as part of the future stages of the site's redevelopment.</p>
Condition E4	<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>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 <u>western boundary of the site 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>	<p>Condition E4(b):</p> <p>The applicant proposes to amend Condition E4(b) so that the paved pedestrian link connects Farmhouse Road to the primary school, rather than to the western boundary of the site. Justification for this modification n is consistent with the proposed modification for B1(a), as discussed above.</p>
	<p>(c) <u>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</u></p>	<p>(c) <u>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</u></p>	<p>Condition E4(c):</p> <p>The applicant no longer proposes to delete Condition E4(c), but instead proposes to delete the requirement for an easement. As an alternative to an easement, the boundary line between Lot 1 DP1095407 and DP1211982 could be adjusted so that the pedestrian link is located wholly within Lot 1 DP1095407. This would ensure that students will continue to have access through the site, as the pedestrian link would not be located within the Marist land. An indicative diagram indicating the potential boundary readjustment is attached to this Response to Submissions report at Appendix C. This is for illustrative purposes only and is subject to refinement. A boundary adjustment could be facilitated by registering a Plan of Identification at NSW Land Registry Services. Development consent is not required for such a boundary adjustment, because a 'Plan of Identification', which is defined to include a boundary adjustment under section 195 of the <i>Conveyancing Act 1919</i>, is expressly excluded</p>

Condition	Original Modification Application	Revised Modification Application	Justification
		<u>of Identification or similar at NSW Land Registry Services.</u>	from the definition of 'subdivision of land' under section 6.2 of the EP&A Act, plan of ident
	(d) <i>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.</i>	(d) <i>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.</i>	<p>Condition E4(d): The applicant continues to request the deletion of Condition E4(d) which requires a positive covenant to facilitate public access to the internal east-west pedestrian link through the site.</p> <p>It is very clear from the IPC's Statement of Reasons and meeting transcripts that the IPC never intended to require public access through the subject site at this time. For example the IPC's Statement of Reasons states at para 175: "While the Commission is of the view that additional connectivity through the Westmead precinct would be beneficial for the local community, it also acknowledges the Applicant's significant responsibility to ensure student safety. The Commission finds the Applicant's objection to allowing public access through the Site is justified at the current time."</p> <p>In addition to the above, the applicant reiterates its previous arguments regarding the undesirability of having public access through the site at the current time. In summary:</p> <ul style="list-style-type: none"> Public access through the site 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. The applicant acknowledges the opinion of the IPC that "it would be reasonable to require public access through the Site in the future as part of the staged delivery of the Master Plan for the Site" (paragraph 176). As outlined in Addisons' advice, providing public access or making provision for future public access across private land is not a matter that should be dealt with by way of a condition of consent for the current proposal. Public access through the site was not the subject of the original SSD DA. The consent should only apply to the development for which approval was sought, for the benefit of the applicant and subsequent owners of the site. A condition requiring public access may not fairly and reasonably relate to the development, which is one of three requirements for a valid condition of consent, as established in the Newbury case. The

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			<p>approved development does not generate a need for public pedestrian access to Bridge Road, and accordingly, it is not appropriate that any future access be identified or conditioned at this time.</p> <ul style="list-style-type: none"> Although there is a broad “master plan” for the site, this does not have any legal status. If public pedestrian access is required to fulfil the master plan, any plans for such public access will be subject to separate DAs in the future.
Condition E5	<p><i>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.</i></p>	<p><i>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 open space 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 this open space.</i></p>	<p>The applicant no longer proposes to delete this condition. Instead, it is proposed to amend this condition to ensure that primary school students will have sufficient and regular access to ground level “open space”, not just the ovals. This will ensure that all students have equitable access to facilities across the whole site and will provide greater operational flexibility for the schools by making all open-air play spaces available to the primary school students (including basketball courts, tennis courts, cricket nets, ovals etc).</p>
Condition E43	<p><i>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:</i></p> <p><i>(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;</i></p>	<p><i>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:</i></p> <p><i>(a) a management plan has been developed in conjunction with the other existing schools within the site to allow access to the sports ovals facilities within the site to <u>others</u> local schools and/or local community groups outside the school hours, subject to availability and on a hire basis, and a copy of the management plan has been</i></p>	<p>The applicant no longer proposes to delete this condition as it is committed to providing external stakeholder access to the site after hours, subject to availability and on a hire basis. The school is already accessible to external users after hours, through written hire agreements between the school and those users. However, there is no overall management plan which the applicant and landowners are willing to prepare pursuant to this condition.</p> <p>It is now proposed to amend this condition as follows:</p> <ol style="list-style-type: none"> 1) Replacement of “sports ovals” with “facilities within the site” to provide access to a range of facilities within the site and not just the ovals, including open space and internal spaces. For example, external stakeholders may wish to occupy school classrooms to provide after-hours tutoring, adult learning and the like. This continues existing arrangements on the site whereby the schools hire their facilities to external groups on a commercial basis.

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	<p>OR</p> <p><i>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</i></p>	<p><i>approved by the Certifier and provided to Council for information;</i></p> <p>OR</p> <p><i>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</i></p>	<p>2) Replacement of “local schools and/or local community groups” with “others” to broaden the range of external users who can have access to facilities after hours. Again, this reflects existing arrangements whereby external groups (not just local schools and community groups) can hire the schools’ facilities on a commercial basis.</p> <p>3) Addition of the words “subject to availability and on a hire basis” to provide the landowners and applicant with greater operational flexibility to provide access to the site only when this is feasible for the schools.</p>
Condition F1	<p><i>Within 12 months of commencement of operation of the school, the Applicant must provide the following to the satisfaction of the Planning Secretary:</i></p> <p><i>(a) evidence that:</i></p> <p><i>(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</i></p> <p><i>(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</i></p>	<p><i>Within 12 months of commencement of operation of the school, the Applicant must provide the following to the satisfaction of the Planning Secretary:</i></p> <p><i>(a) evidence that:</i></p> <p><i>(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</i></p> <p><i>(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</i></p>	<p>The applicant continues to object to any condition that requires the construction of an access point from the subject site to the west across to Bridge Road. As acknowledged by the IPC in its Statement of Reasons at paragraph 178 that “it is not within the scope of this application” to provide future easement arrangements over adjoining properties to facilitate a pedestrian connection to Bridge Road, and that this “can be considered in the future when such a link is designed.” For this reason, the IPC did not impose a condition that was proposed by the Department (condition B1(c)). Retaining this condition 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.</p>

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	<i>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;</i>	<i>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;</i>	
	OR	OR	
	<i>(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.</i>	<i>(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.</i>	
	OR	OR	
	<i>(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 FI(b);</i>	<i>(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 FI(b);</i>	

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	<i>(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.</i>	<i>(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.</i>	
Condition F2	<i>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.</i>	<i>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.</i>	This condition is no longer required as it directly relates to Condition F1 which is proposed to be deleted.