



15 July 2022

Ref: WTJ22-024
Contact: Sophie Litherland

Department of Planning and Environment
GPO Box 39
Sydney NSW 2001

**SECTION 4.55(1A) MODIFICATION APPLICATION TO MODIFY SSD 10371
TRINITY GRAMMAR SCHOOL
119 PROSPECT ROAD AND 50-52 SEAVIEW STREET, SUMMER HILL**

1. INTRODUCTION

Dear Sir/Madam

This Section 4.55(1A) Modification Application is submitted to the Department of Planning, Industry and Environment (DPIE) on behalf of Trinity Grammar School (the School) in support of the amendments to **State Significant Development (SSD 10371)** for the redevelopment of Trinity Grammar School. In accordance with Section 4.55 (1A) of the *Environmental Planning and Assessment Act 1979* (EP&A Act), the proposed changes shall result in minor environmental impact for the reasons outlined throughout this report.

Approval for **SSD 10371** was granted 24 September 2021 for:

Alterations and additions to Trinity Grammar School in construction stages and changes to staff and student numbers comprising:

- *demolition of existing buildings including New School building, dwelling houses at 119 Prospect Road and 50 and 52 Seaview Street and part demolition of Music Building and Assembly Hall;*
- *construction of a:*
 - *new building with a basement known as the T&L Building;*
 - *new Multi-Purpose Pavilion; and*
 - *new Maintenance Building on Seaview Street;*
- *alterations and additions to existing buildings to create a Performing Arts Building;*
- *refurbishment of the Music Building, New Founders Building, the Assembly Hall and North Quad Building;*
- *extension and reconfiguration of the Jubilee carpark and the staff carpark to increase the car parking spaces from 312 to 324 and a new underground connection;*
- *associated landscaping, removal of 29 trees, road and public domain works, ancillary signage;*
- *staged increase in student numbers from 1,500 to 2,100 and increase in FTE staff from 277 to 321.*

This application represents the first modification to **SSD 10371** and is proposed in order to enhance the efficiency of the development and regularise the existing circumstances. The purpose of this modification is to amend conditions to ensure that the conditions are not prohibitive to the orderly and existing function of the School. Specifically, the purpose of this modification is to allow for the regularisation of the existing 1,655 students and 277 staff with the implementation of interim traffic measures. This will be achieved through a modification to the applicable conditions to ensure that



the conditions are not prohibitive to the orderly and logical operations of the School and are not worded to restrict the number of students currently enrolled.

This Section 4.55(1A) Modification Application is structured as follows:

- **Part A** Preliminary
- **Part B** Proposed Development
- **Part C** Legislative and Policy Framework
- **Part D** Key Matters for Consideration
- **Part E** Conclusion

Attached to this submission are the following specialist reports and plans:

- **Appendix 1** - Development Consent SSD 10371
- **Appendix 2** - Report Reviewing Appropriate Interim Traffic Measures prepared by Colston Budd Rogers & Kafes





PART A PRELIMINARY

1.1 INTRODUCTION

This application seeks consent for modifications to the approved **SSD 10371** pursuant to Section 4.55(1A) of the Environmental Planning & Assessment Act 1979. Specifically, the proposed modification seeks consent to respond to Condition B6 and B7 of the consent in regard to regularising student numbers of the School to reflect the existing 1,655 students and 277 staff.

The proposed development does not present any significant environmental impacts and the proposal will remain substantially the same as that approved under the original application. There will be no change to the use of the Site nor the approved built form. The proposal will prominently reflect the original consent.

Development Consent under Section 4.55(1A) of the *Environmental Planning and Assessment Act 1979* states:

(1A) *Modifications involving minimal environmental impact*

A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:

- (a) *it is satisfied that the proposed modification is of minimal environmental impact, and*
- (b) *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) under this section, and*
- (c) *it has notified the application in accordance with:*
 - (i) *the regulations, if the regulations so require, or*
 - (ii) *a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a*

This application represents the first modification to **SSD 10371** and is proposed in order to enhance the efficiency of the development and regularise the existing circumstances. The purpose of this modification is to amend conditions to ensure that the conditions are not prohibitive to the orderly and existing function of the School. Specifically, the purpose of this modification is to allow for the regularisation of the existing 1,655 students with the implementation of interim traffic measures. This will be achieved through a modification to the applicable conditions to ensure that the conditions are not prohibitive to the orderly and logical operations of the School and are not worded to restrict the number of students currently enrolled.

No substantial impact upon the environment or amenity of surrounding development is to result. The proposed development is considered to be substantially the same as required by Section 4.55(1A). Accordingly it is considered that Section 4.55(1A) is the most appropriate mechanism for the proposed modifications to the consent.





1.2 SITE DESCRIPTION

The subject of this modification is the Trinity Grammar School, Summer Hill Campus on land identified as 119 Prospect Road Summer Hill (Lot 11 DP 1171965, Lot 16 DP15765, Lot 17 DP 15765, Lot 5 DP 15765 and Lot 6 DP 15765).

The Summer Hill campus incorporates a junior, middle and senior schools, accommodating students from Kindergarten to Year 12. Existing facilities contained within the campus include, but are not limited to, the following:

- General learning facilities and specialised subject-specific facilities;
- Junior School;
- Assembly hall;
- Library;
- Administration facilities;
- Indoor sports centre;
- Centenary Aquatic Centre and swimming pools;
- Three (3) ovals and external basketball courts; and
- Underground carparking (located below Ovals Nos 2 and 3).

The primary vehicular access to the campus is facilitated via Victoria Street, with vehicular access to the underground staff, student and visitor carparks (which also incorporate drop-off/pick-up facilities) provided via two (2) separate access points on Victoria Street. Limited vehicular access is also available via Prospect Road. The main pedestrian access to the School is from Prospect Road, where bus zones are located. Restricted pedestrian access is also available from Victoria Street and Seaview Street at certain times.

The School offers of a broad range of sporting activities supported by its three playing fields. Oval 1 faces onto Prospect Road and Yeo Park, Ovals 2 and 3 contain car parking below which is accessed off Victoria Street.

The location of the Site and existing development are depicted in **Figures 1 and 2**.



Section 4.55(1A) Application (SSD 10371)
Proposed changes to operating hours
119 PROSPECT ROAD AND 50-52 SEAVIEW STREET, SUMMER HILL

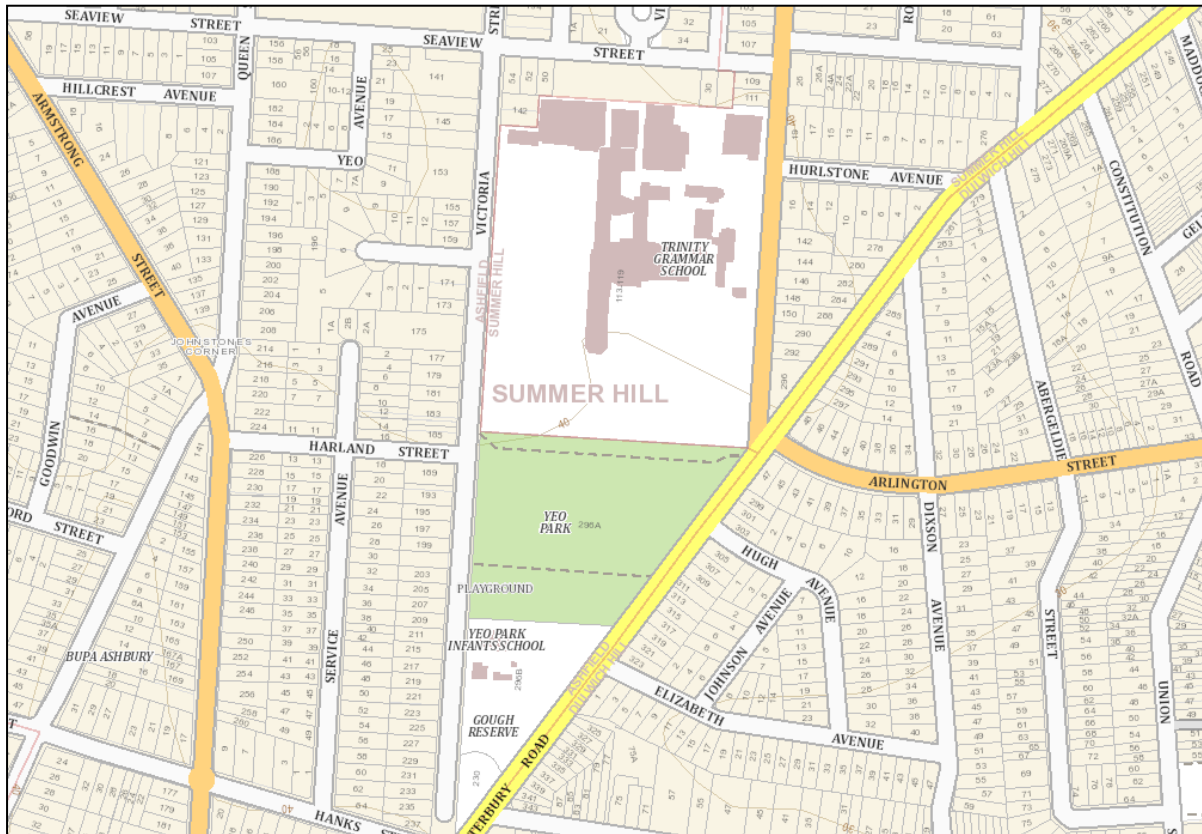


Figure 1. Cadastral Map (Source: SIX Maps, 2020)

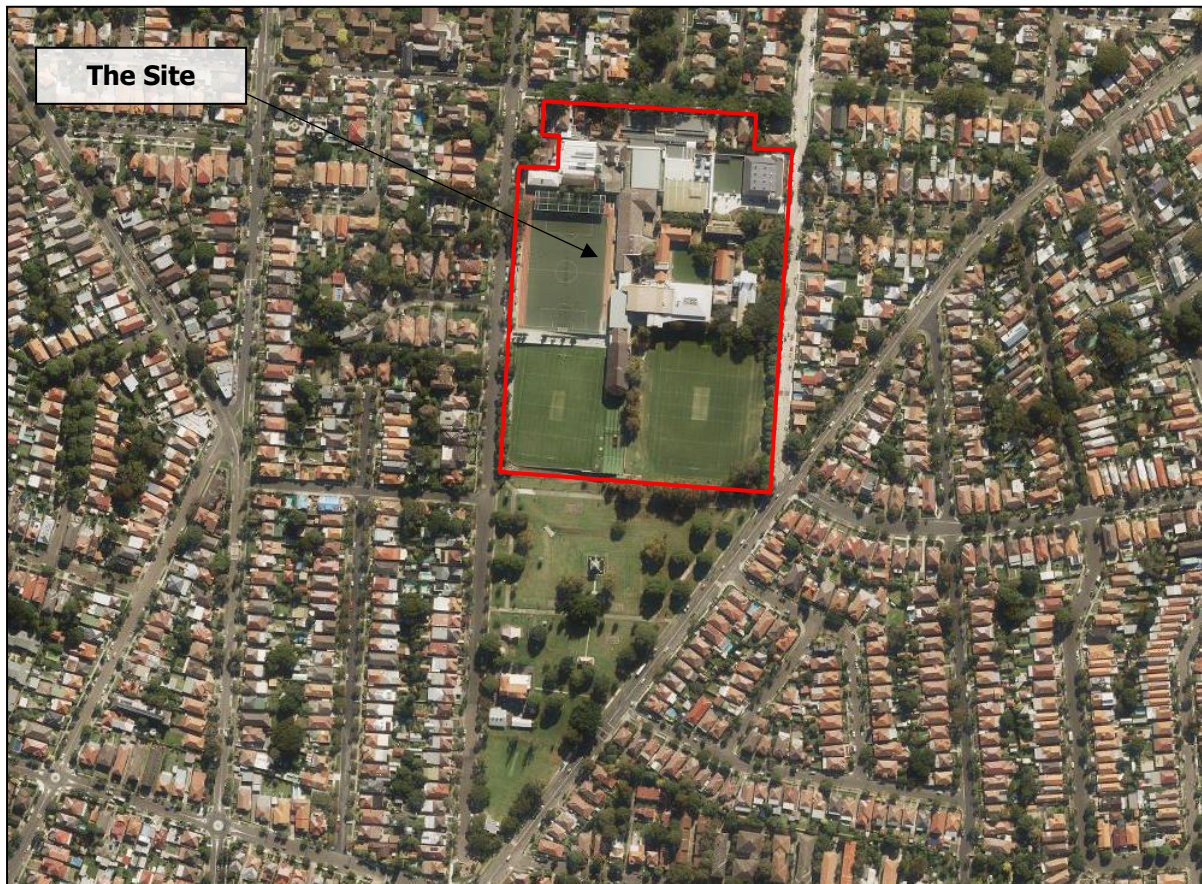


Figure 2. Aerial of the Site (Source: Six Maps, 2020)





1.3 DEVELOPMENT HISTORY

Approval for **SSD 10371** was granted 24 September 2021 for:

Alterations and additions to Trinity Grammar School in construction stages and changes to staff and student numbers comprising:

- *demolition of existing buildings including New School building, dwelling houses at 119 Prospect Road and 50 and 52 Seaview Street and part demolition of Music Building and Assembly Hall;*
- *construction of a:*
 - *new building with a basement known as the T&L Building;*
 - *new Multi-Purpose Pavilion; and*
 - *new Maintenance Building on Seaview Street;*
- *alterations and additions to existing buildings to create a Performing Arts Building;*
- *refurbishment of the Music Building, New Founders Building, the Assembly Hall and North Quad Building;*
- *extension and reconfiguration of the Jubilee carpark and the staff carpark to increase the car parking spaces from 312 to 324 and a new underground connection;*
- *associated landscaping, removal of 29 trees, road and public domain works, ancillary signage;*
- *staged increase in student numbers from 1,500 to 2,100 and increase in FTE staff from 277 to 321.*

Review of **SSDA 10371** indicates that there is nothing which prevents the proposed modification from proceeding.





PART B PROPOSED DEVELOPMENT

2.1 PROPOSED MODIFICATIONS & JUSTIFICATION

We understand that Trinity Grammar School seeks to amend the Development Consent **SSD 10371** to accommodate the existing student numbers currently enrolled at the School being 1,655 and total full-time staff of 277. This will essentially regularise the existing circumstances in terms of enrolled students whilst also implementing interim traffic mitigation methods.

Conditions B6 and B7 (Terms of Consent) of the development consent state:

Student Numbers

*B6. This development consent does not permit an increase in student and full time equivalent (FTE) staff numbers in attendance at any one time at Trinity Grammar School - Summer Hill campus (the site as identified in **Schedule 1**) until evidence of the following is provided to the satisfaction of the Planning Secretary:*

- (a) the results of an independent audit, as described in condition B7;*
- (b) the Jubilee carpark and drop-off / pick-up facilities have been completed;*
- (c) all relevant approvals have been obtained in accordance with the plans approved by condition B2 and the conditions of this development consent; and*
- (d) all required external roadworks and public domain works detailed in the approved Supplementary Traffic Impact Assessment have been undertaken to the satisfaction of the appropriate roads authority as per conditions C14, F11 and F12.*

B7. Prior to each staged increase in student and staff numbers as described in the Staging Report in condition B12, the Applicant must submit to the satisfaction of the Planning Secretary the results of an independent audit to verify the performance of the Jubilee car park and the drop-off/ pick-up facilities. The independent audit must:

- (a) be prepared by a suitably qualified independent auditor, in consultation with an independent traffic consultant, as agreed by the Planning Secretary;*
- (b) conduct traffic surveys and compare the results against the traffic reports in the EIS to verify that the following operational outcomes have been achieved:*
 - (i) the capacity of the Jubilee car park drop-off/ pick-up facilities can accommodate the pick-up/drop-off demand within the site during peak AM and PM periods;*
 - (ii) the demand for queuing spaces at the Jubilee car park is accommodated within the site;*
 - (iii) off-site impacts including but not limited to queuing on Victoria Street is minimised as far as practicable;*
 - (iv) there is adequate capacity in the car park to accommodate an increase in vehicle movements as a result of the proposed staged increase in student numbers;*
- (c) be completed on three consecutive school days for the duration of the day when all grades (K-12) and students are planned to be on site and must state the student and staff numbers present on the data collection dates;*

The Traffic Impact Assessment Report provided for **SSD 10371** was based on student number of 1655 and included modelling of such a population. It was concluded that as a result of the minor increases in traffic flows there would be no noticeable impacts on the surrounding road network.





Furthermore, it should be noted that in 2021, the School, in consultation with Council, has implemented a number of measures as part its Stay Covid Safe Measures. These measures include increased staggering and separation of student drop off and pick up within the main (Jubilee) car park and provision of a temporary drop off zone on the northern side of Old Canterbury Road (either side of Prospect Road).

These measures are shown in Attachment A of Report Reviewing Appropriate Interim Traffic Measures prepared by Colston Budd Rogers & Kafes (**Appendix 2**).

As detailed in the **Appendix 2**, appropriate interim traffic measures for the School population of 1655 students as proposed include:

- Covid Safe Measure - staggered drop off and pick up and provision of a temporary drop off zoned on the northern side of Old Canterbury Road;
- Prohibiting right run egress from Jubilee Car Park during peak periods (8am-9am and 2.30pm-5.30pm).
- Interim Traffic Management Plan for Student Set Down/Pick Up as further detailed in **Section D**.

2.2 MODIFICATIONS TO CONDITIONS OF CONSENT

The proposed modifications described above necessitate amendments to the consent conditions which are identified below. The purpose of this modification is to amend the conditions appropriately to ensure that the conditions are not prohibitive to the orderly and logical development of the Site.

To reflect the proposed modifications to the relevant conditions, text proposed to be deleted is indicated by '~~strikethrough~~' text and text proposed to be added is indicated by **red bold** text as follows:

The desired development outcome as outlined above requires the following modifications to development consent **SSD 10371**:

Students and Numbers

New Condition B6a

B6a. *The mitigation measures outlined in the Report Reviewing Appropriate Interim Traffic Measures prepared by Colston Budd Rogers & Kafes dated January 2022 are to be implemented immediately and not cease until evidence of Condition B6b and B7 being satisfied. The maximum student numbers are to be 1655 and full time equivalent staff are to be 277 until this time.*

Amend Condition B6b.

B6b. *This development consent does not permit an increase in student numbers **from the existing 1,655** and full time equivalent (FTE) staff numbers **from the existing 277** in attendance at any one time at Trinity Grammar School - Summer Hill campus (the site as identified in **Schedule 1**) until evidence of the following is provided to the satisfaction of the Planning Secretary:*

- the results of an independent audit, as described in condition [B7](#);*
- the Jubilee carpark and drop-off / pick-up facilities have been completed;*
- all relevant approvals have been obtained in accordance with the plans approved by condition [B2](#) and the conditions of this development consent; and*





- (d) all required external roadworks and public domain works detailed in the approved Supplementary Traffic Impact Assessment have been undertaken to the satisfaction of the appropriate roads authority as per conditions [C14](#), [F11](#) and [F12](#).

Condition B7

Prior to each staged increase in student and staff numbers (**from the base number of 1,655 students and 277 staff (FTE)**) as described in the Staging Report in condition [B12](#), the Applicant must submit to the satisfaction of the Planning Secretary the results of an independent audit to verify the performance of the Jubilee car park and the drop-off/ pick- up facilities. The independent audit must:

- (a) be prepared by a suitably qualified independent auditor, in consultation with an independent traffic consultant, as agreed by the Planning Secretary;
- (b) conduct traffic surveys and compare the results against the traffic reports in the EIS to verify that the following operational outcomes have been achieved:
 - (i) the capacity of the Jubilee car park drop-off/ pick-up facilities can accommodate the pick-up/drop-off demand within the site during peak AM and PM periods;
 - (ii) the demand for queuing spaces at the Jubilee car park is accommodated within the site;
 - (iii) off-site impacts including but not limited to queuing on Victoria Street is minimised as far as practicable;
 - (iv) there is adequate capacity in the car park to accommodate an increase in vehicle movements as a result of the proposed staged increase in student numbers;
- (c) be completed on three consecutive school days for the duration of the day when all grades (K-12) and students are planned to be on site and must state the student and staff numbers present on the data collection dates;





PART C LEGISLATIVE AND POLICY FRAMEWORK

3.1 ENVIRONMENTAL PLANNING & ASSESSMENT ACT 1979

Section 4.55(1A) of the EP&A Act makes provision to modify a Development Application (DA) that has been made pursuant to Part 4 of the EP&A Act.

The proposal as submitted to DPIE is considered to satisfy the provisions of Section 4.55(1A) of the Act in that the changes proposed will result in minimal environmental impact and will result in the development being substantially the same as that for which consent was originally granted. The key provisions of Section 4.55(1A) of the EP&A Act have been considered below:

A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:

- (a) it is satisfied that the proposed modification is of minimal environmental impact, and*
- (b) 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),*
- (c) it has notified the application in accordance with:*
 - (i) the regulations, if the regulations so require, or*
 - (ii) a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and*
- (d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.*

The purpose of this modification is to regularise the existing student numbers of the School to reflect the currently enrolled number of 1,655. This will essentially allow the School to continue operating with an increase in student numbers from 1,500 to 1,655 whilst implementing traffic management mitigation measures until the final works as approved by **SSD 10371** are completed. Overall, the ultimate use, function and general appearance of the Site is consistent with that approved under **SSD 10371**.

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

- It retains the same use of the approved development in that it provides an educational establishment;
- The proposed modifications do not seek to modify the type of educational facilities provided by the development;
- The proposed modifications does not alter the approved bulk, mass and scale of the approved built form;
- The fundamental benefits delivered by the development, including the proposal's relationship to the existing built form, will continue to be provided; and
- The environmental impacts are generally consistent with, or less than, the approved development.





The proposal is considered to be substantially the same development and satisfies the provisions of Section 4.55(1A) of the EP&A Act. The modification of the SSD can therefore be lawfully made under section 4.55 (1A) of the EP&A Act.

Section 4.55 Modification Case Law

In *Ku-ring-gai Council v Buyozo Pty Ltd* [2021] NSWCA 177, the Court of Appeal had to consider whether there was power to approve a modification application which sought to amend a condition of consent requiring payment of a contribution, in circumstances where the contribution had already been paid.

The Court of Appeal decision found that a condition of consent cannot be modified once it has been satisfied and a proposal to modify a consent must involve a change to the approved development for it to be a modification application under sections 4.55(1A), 4.55(2) or 4.56(1) of the EP&A Act.

The above case law is directly related to monetary contributions and modification of conditions relating to such. The proposed modifications are in relation to student numbers and have no association with monetary contributions. We have reviewed the case law in detail as well as relevant legal opinions on the case and have formed the opinion that the above case law is not applicable.

3.2 ASHFIELD LOCAL ENVIRONMENTAL PLAN 2013

The Site is subject to the provisions of *Ashfield Local Environmental Plan 2013* (ALEP 2013).

The proposed development relates to the existing and approved educational establishment on the Site, which is permitted with consent in the *SP2 Infrastructure (Educational Establishments) Zone*.

The proposal does not contravene any other objectives or provisions of ALEP2013. No further consideration is required.

3.3 INNER WEST COMPREHENSIVE DEVELOPMENT CONTROL PLAN 2016

It is noted that Clause 11 of *State Environmental Planning Policy (State and Regional Development) 2011* states:

11 Exclusion of application of development control plans

Development control plans (whether made before or after the commencement of this Policy) do not apply to:

- (a) State significant development*

Additionally, Clause 35(9) of the Education SEPP, which relates to schools that are permitted with consent, provides that:

A provision of a development control plan that specifies a requirement, standard or control in relation to development of a kind referred to in subclause (1), (2), (3) or (5) is of no effect, regardless of when the development control plan was made.

Therefore, the provisions of a DCP are not applicable.

Despite this and as per the requirements of the original SEARS for SSD 10371, the proposed modifications to the approval are considered to comply with the requirements of Inner West Comprehensive Development Control Plan 2016 (IWDCP 2016) where relevant.





PART D KEY MATTERS FOR CONSIDERATION

The key matters for consideration are addressed in the ensuing subsections.

4.1 LAND USE

The proposed will preserve the continued use of the Site as an educational establishment, consistent with **SSD 10371**.

As aforementioned, the change in the student and staff numbers is to be in line with what is current and existing at the School, albeit with increased traffic mitigation measure. The requirements of Condition B6 and Condition B7 of **SSD 10371** in terms of upgrades to the Jubilee Carpark and external roadworks are still intended to occur as part of the staggered increased in numbers. However, the base rate in which the stage increase will occur is proposed to be 1655 students rather than the historical cap of 1,500.

The proposed traffic mitigation measures as outline in the Traffic Report (Appendix 2) and summarised below will ensure that the impacts of the current student and staff number of the School are effectively managed with minimal impact to the external road network.

The proposed modification does not alter the development and is proposed to improve the operations and function of the School. As a result, the proposal remains consistent with the existing land use across the Site.

4.2 TRAFFIC MANAGEMENT

We understand a key consideration of the assessment of **SSD 10371** in terms of student number increases was the upgrade to the Jubilee Car Park/ pick up and drop off facilities. It is understood queuing from the car park was caused by vehicles using the drop off zone being held up by vehicles accessing parking spaces resulting in the parking vehicles temporarily blocking access to the drop off zone.

To mitigate the impacts of the current increase from 1,500 to 1,655 students, The following interim traffic measures are proposed to support a school population of 1,655 students and 277 staff:

Covid Safe Measure - staggered drop off and pick up and provision of a temporary drop off zone on the northern side of Old Canterbury Road

- These measures have resulted in reduced delays and queuing associated with student set down/pick up in the Jubilee car park.

Prohibiting right turn egress from Jubilee Car Park during peak periods (8am-9am and 2.30pm-5.30pm)

- The banning of the right-turn out of the Jubilee car park in the morning (8.00am to 9.00am) and afternoon (2.30pm to 5.30pm) peak periods that was introduced in 2021 to be retained. This measure has reduced delays and queuing for vehicles exiting the Jubilee car park. It also directs traffic away from Prospect Road which has been identified for two upgrade works (new raised crossing and modifications to the intersection of Prospect Road/Old Canterbury Road).

Interim Traffic Management Plan for Student Set Down/Pick Up

- As detailed in the below extract (Figure 3) a interim plan has been implemented by the School which includes set pick up and drop off areas for different year groups as well as staggered start and finish times as outline in Table 1 below:





TABLE 1 START AND FINISH TIMES	
Year Group	Times
Years K-2	8:45am - 3:00pm
Years 3-4	8:30am - 3:00pm
Years 5-6	8:30am - 3:15pm
Years 7-9	8:15am - 3:30pm
Years 10-12	8:15 - 3:40pm

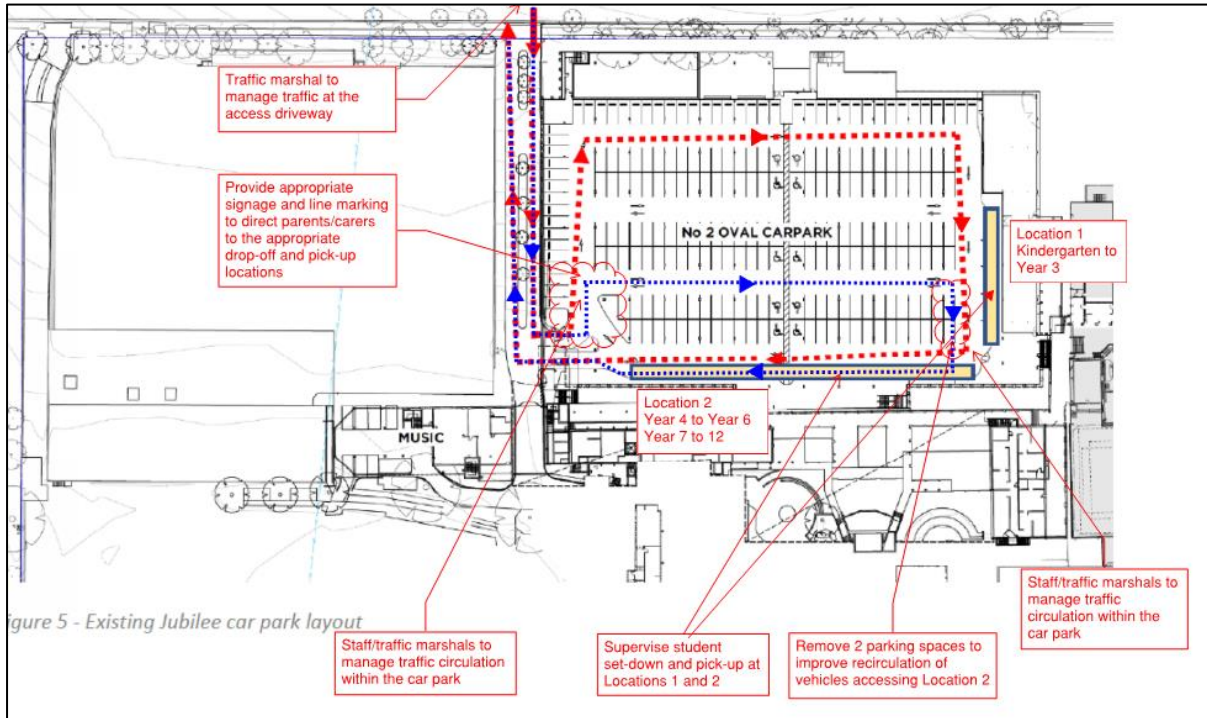


Figure 3. Extract of Traffic Management Plan – Student Set Down and Pick Up (Colston Budd Rogers & Kafes 2022)

- The provision of the reconfigured student set-down and pick-up operation within the Jubilee car park, provides an increase for on-site queuing which in turn has resulted in reduced traffic queues within the Site and adequately caters for the existing student population at the School being 1,655 students.

Increased Subsidy of School Operated Bus Travel

- The School currently runs a private bus network which services the Inner West, southern and eastern suburbs. The School is increasing the funds allocated to the provision of this network, including the subsidisation, modification and addition of routes, in order to increase use of this service.

4.3 ENGAGEMENT

It should be noted that the School is in constant consultation with the Council. The implemented covid safe measures including staggered drop off and pick up and provision of a temporary drop off zoned on the northern side of Old Canterbury Road implemented following consultation with Council. In addition, the School has been in contact with and the NSW Police Local Highway Patrol who are supporting the School in providing additional drop off points and safety education to the School.





4.4 OTHER MATTERS FOR CONSIDERATION

All other matters for consideration have been previously assessed as part of **SSD 10371** and remain unaffected by the proposed modifications.

4.5 LIKELY IMPACTS OF DEVELOPMENT

The likely impacts of development in accordance with Section 4.15 have been considered above.

4.6 SUITABILITY OF SITE FOR DEVELOPMENT

The Site is considered suitable for development as established by the previous approval **SSD 10371**.

4.7 CONSISTENCY WITH REASONS FOR THE GRANT OF THE ORIGINAL CONSENT

In accordance with Section 4.55(3) of the EP&A Act, in determining an application for modification of 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 Department of Planning in that:

- The built form remains reasonable for the Site;
- The development continues to be in the public interest; and
- The development continues to meet the objects of the EP&A Act.





PART E CONCLUSION

In accordance with Section 4.55(1A) of the EP&A Act, the modified development will be substantially the same as the originally approved **SSD 10371**. This Section 4.55(1A) seeks to facilitate amendments in order to respond to conditions of the consent and improve overall design outcomes on the Site. The proposed modifications will not alter the environmental impacts assessed and approved as part of the original development consent, nor will they give rise to any additional adverse amenity impacts.

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

- The consent, as proposed to be modified, is substantially the same development as that originally approved;
- The modifications will improve amenity offered by the approved educational facilities;
- The modifications are as a result of ongoing design development and will improve the aesthetic appearance of the development and the functionality; and
- The proposal will not result in any unacceptable adverse environmental, social or economic impacts.

In light of the above, we therefore recommend the proposed modification is supported by the Minister.

We trust that this information is sufficient to enable a prompt assessment of the proposed modification. Should you have any queries, please do not hesitate to contact the undersigned on 0419 335 488 or Richard Seward 0497 621 310.

Yours faithfully,

Sophie Litherland
Associate
Willowtree Planning Pty Ltd
ACN 146 035 707

