

13/08/19

Our Ref: 19-176

Iona Cameron

Department of Planning, Industry and Environment
320 Pitt Street
SYDNEY NSW 2000
iona.Cameron@planning.nsw.gov.au

Dear Iona,

**RE: S4.55(1A) MODIFICATION APPLICATION TO STATE SIGNIFICANT DEVELOPMENT 8832 IN
RELATION TO 130-160 JARDINE DRIVE, EDMONDSON PARK**

This report has been prepared for JDH Architects (JDH) by City Plan Strategy and Development Pty Ltd (City Plan) to accompany an application under Section 4.55(1A) of the Environmental Planning and Assessment Act 1979 (the Act).

1. THE APPROVED DEVELOPMENT

State Significant Development (SSD) Consent No 8832 was granted by the Department of Planning and Environment on 12 February 2019 for the "concept proposal for the development of St Francis College (K-Year 12) and Early Learning Centre on the development site for educational purposes, comprising:

- Educational establishment and early learning centre;
- Student capacity of up to 1,900 students and 80 childcare places;
- Building footprints, envelopes and heights; and
- Car and bicycle parking".

The consent applies to land in Lot(s) Lots 21-23 DP 29317 and Lot 192 of DP 1230800, known as 130-160 Jardine Drive, Edmondson Park.

2. PROPOSED MODIFICATION

2.1. Overview of Modifications

The application seeks to add two definitions to the consent to provide clarity to the scope of works which were intended to form part of the Concept DA approval. As such, these amendments would allow for a DA for landscaping to be approved before the commencement of Stage 1 of the Concept DA. This DA would have the effect of commencing the Concept DA consent, whilst also allowing for preliminary landscaping works to be undertaken on the subject site.

2.2. Conditions to be Modified

- This application seeks to modify the Definitions forming a part of SSD Consent 8832 on Page 2. The two definitions to be added are in the below table in the left column, whilst the justification for this specific addition is provided in the right column.

Condition	Justification for Proposed Modification
“New built form” means any new building described in this consent, but does not include minor structures (such as open fences, bollards, flag poles etc), minor retaining walls, landscaping works or the like.	This definition distinguishes between development of a larger scale which would require additional assessment in relation to landscaping, traffic, noise and the like and smaller scale development which would not require in depth assessment. As such, this would allow for a smaller scale DA (for items such as landscaping) to be submitted and be subject to assessment commensurate with their minor environmental profile.
“Stage” In Part A of this consent refers only to a stage of development, the application for which, includes new built form and/or additional car parking spaces.	This provides clarity over what constitutes a 'stage' in the consent. This would distinguish between the full 'Stages' approved as part of this consent as described in the Urban Design Package and minor, non-substantial works.

Reason for modification (general):

As the school is in its early stage of development, it is currently operating out of temporary facilities with minimal permanent landscaping located on the site. The proposal would allow for natural amenity to be provided within the school whilst ensuring consistency with the concept landscaping plan. The proposal would also assist with establishing the broader site area and building setbacks and establish the streetscape to Vinny Road, Guillemont Road and Guillemont Ridge Road whilst the school is still within the initial stages of construction.

The proposal would also provide natural shade and reduce urban heat island effects whilst the permanent school facilities are in their early phases, so that these benefits will be realised sooner for the school community.

As Consent 8832 is currently worded, there is some ambiguity around when some of its conditions are triggered. The intention is clearly to ensure that necessary external roadworks within the site are undertaken prior to substantive later stages of the school's development (as described in the Urban Design Package accompanying the original application) are approved and occupied.

Landscaping, whilst identified in that Consent, was not identified as a separate 'Stage'. However, its implementation nonetheless requires development consent. Clearly, landscaping, on its own, does not generate the impacts on traffic (and the like) that the condition in relation to roadworks etc were intended to address. As it currently stands, it is arguable that a 'staged DA' (in the terms of Section 4.22(2) of the Act) for landscaping (or other minor works that do not generate major impacts) cannot be approved unless all conditions relating to roadworks etc are satisfied. This is unnecessary and has the consequence of inhibiting

the ability of the school to realise the benefits that the early implementation of landscaping, as described above, bring.

3. MATTERS FOR CONSIDERATION UNDER SECTION 4.55

3.1. Overview

Section 4.55 of the Environmental Planning and Assessment Act, 1979 (the Act) confers on a consent authority the power and discretion to modify a consent granted under the Act.

The relevant provisions of the Act state:

“Modification of consents

(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 under section 72 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.*

Subsections 4.55 (3) states as follows:

“(3) In determining an application for modification of a consent under this section, the consent authority must take into consideration such of the matters referred to in section 4.15 (1) as are of relevance to the development the subject of the application.”

The matters prescribed under Section 4.55 are addressed below.

3.2. Minimal Environmental Impact (Section 4.55(1A)(a))

The subject Section 4.55 application is of a minimal environmental impact as the two additional definitions only serve to clarify the operation of the existing Consent as it relates to future Staged DAs. This amendment does not involve any new or different works outside the scope of the original Concept DA 8832.

This amendment will allow for a separate landscape DA proposal which is of a small scale and will not involve any built form. Any impacts from the landscape works will be assessed in the separate DA for those works, but are likely to be positive in nature.

3.3. Substantially the Same Development (Section 4.55(1A)(b))

As stated, the proposed modifications do not seek to change the nature and substance of the approved development in any way.

The proposal merely seeks to clarify the operation of the Concept consent as they relate to future staged DAs. In relation to the proposed landscape works, the proposed works will be the subject of a separate DA and will be required to remain consistent with what was proposed in the concept landscape plan approved as part of the original SSDA. The only modification relates to the sequence in which these works will be undertaken.

We therefore consider that the development (as modified) will remain substantially the same as the development that was originally approved.

3.4. Section 4.15(1) Considerations (Section 4.55(3))

The environmental assessment matters relevant to the proposed modified development under Section 4.15(1) (a), (b), (c), (d) and (e) of the Act are addressed below:

- Environmental planning controls

The principal planning controls applying to the development are contained in:

- State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017
- State Environmental Planning Policy (State and Regional Development) 2011
- Liverpool Local Environmental Plan 2008
- Liverpool Development Control Plan 2008

Since there are no substantive changes to the development proposed, the modified proposal remains consistent with the relevant provisions of those controls as detailed in the original application and as subsequently assessed by Council in granting the consent.

- Environmental impacts and site suitability

This application involves only administrative modifications to the consent and there is nothing with respect to the modifications that would result in any environmental impact, or affect the suitability of the site for the development as approved or as proposed to be modified. The environmental impacts associated with the original DA remain the same.

Further detail in relation to environmental impact will be provided at DA stage for the future landscaping DA.

- The public interest

Public interest issues arising as a consequence of the proposed modifications will be neutral to positive. Council's intentions in imposing conditions to preserve the public interest are not affected, since the proposed modifications continue to give effect to those general intentions, simply in a more practical and achievable way. The proposal aims to provide additional natural amenity to the site, which was previously cleared to accommodate the existing school.

4. CONCLUSION

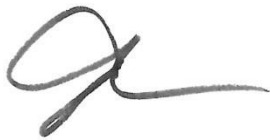
The conditions proposed to be modified relate principally to administrative or procedural matters that do not have any implications for the physical form or operation of the school. This is because the proposed landscaping (which is facilitated by this modified application but is subject to a separate DA) remains the same as what was proposed in the initial concept landscape plan and has merely been restaged. We therefore consider that the proposed modified development is substantially the same as that approved in SSDA 8832.

The impacts of the modifications are minor and the development will remain consistent with the approved application. The combined changes, being two additional definitions which clarify the development intent of the existing consent, will serve to maintain the integrity of the approved development concept and the intent of the conditions, will have minimal identifiable environmental impacts. A more detailed assessment of environmental impact will be undertaken as part of the request for SEARs and EIS associated with the future landscaping Stage 1 DA. Accordingly, the modifications are within the ambit of Section 4.55(1A) of the Act.

Further, the assessment of the modified proposal pursuant to the relevant Section 4.15(1) evaluation criteria does not alter the assessment undertaken in the SEE and DPIE's assessment of the original development application. We see no reason therefore why the modifications should not be approved.

Should you require any further clarification or information in respect to this application, please contact the undersigned on (02) 8270 3500.

Yours Sincerely,



David Ryan
Executive Director