

15 November 2021

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Mr Brent Devine  
Principal Planner  
NSW Department of Planning, Industry and Environment  
12 Darcy Street  
PARRAMATTA NSW 2150

Dear Brent,

## **SECTION 4.55(1A) MODIFICATION APPLICATION INTERNATIONAL CHINESE SCHOOL (10260)**

This application has been prepared by Ethos Urban on behalf of The Trustee for Anglo Australian Christian and Charitable Trust, pursuant to Section 4.55(1A) of the *Environmental Planning and Assessment Act 1979* (EP&A Act) to modify Development Consent SSD 10260 relating to the use of an existing building as a new school (International Chinese School) at 211 Pacific Highway, St Leonards (the site).

The modification involves:

- changes to relevant conditions to enable a minor increase in the school population from 74 to 90 in the interim stages of the development; and
- to delay the timing of stage 2 and 3 completion, as necessary to enable the project to be able to comply with the development consent.

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

### **1.0 Consent Proposed to be Modified**

Development Consent SSD 10260 was granted by the Minister for Planning and Public Spaces on 16 July 2020 for:

*Use of an existing building as a new school (International Chinese School), for up to 160 students (Kindergarten – Year 6) and associated works in three stages, including:*

- *construction of a one-way vehicular loop road within The Avenue to accommodate a drop-off / pick-up zone for five vehicles;*
- *construction of three car parking spaces and modifications to the entry/exit within the public carpark of Gore Hill Park;*
- *construction of a deceleration lane on the Pacific Highway and the entry to the public carpark adjoining Gore Hill Park;*
- *landscaping, planting, security fencing and pathways; and*
- *school building identification signage.*

The application was modified (SSD-10260-Mod-1) on 21 July 2021 for:

- *Increased school population from 63 to 74 students in the interim stages of the development.*

## 2.0 Background

The International Chinese School (ICS) began operation on 4 February 2021. The development consent requires operation of the ICS to be carried out in stages, subject to the completion of infrastructure works and landscaping, as follows:

- Stage 1 – use of the existing building with a maximum of 74 students, completion of landscaping, fencing and signage.
- Stage 2 – completion of the drop-off and pick-up zone (DOPU) within The Avenue and completion of all works within the public carpark (within six months of the commencement of Stage 1).
- Stage 3 – completion of a deceleration lane and associated works on the Pacific Highway (within nine months of the commencement of Stage 1 or prior to the student numbers exceeding 74).

SSD-10260-Mod-1 approved modification to the school population as a result of the delay from coordination with Council and TfNSW.

On 10 August 2021, the Department approved extension of time to complete Stage 2 to 1 October 2021 (see **Appendix C**).

Unfortunately, the project continues to be within Stage 1 as coordination for necessary details from Council and TfNSW continues.

Stage 2 works have been complete since June 2021, and issue of the Stage 2 occupation certificate is pending Council signing the completed right of way to access the kiss and drop via Council's car park. The right of way terms are agreed, and the school signed and forwarded the document to Council on 28 August 2021, however the Council process for signature has no clear resolution. Council advise they have a process, which is being followed.

Construction of the Pacific Highway deceleration lane and associated works (required to be completed to enable the commencement of Stage 3) are expected to begin once the approval from TfNSW is obtained. Unfortunately, the project continues to seek satisfaction of TfNSW who seek further changes with each submission of plans to address their evolving requirements. These ongoing and unexpected changes continue to delay the project moving forward, with regard to Stage 3. It is noted that this modification does not result in any additional vehicle movements that would require the deceleration lane to be constructed.

As noted, the school began operation on 4 February 2021 and Stage 2 and Stage 3 works will no longer remain in accordance with the conditions related to these stages being completed within 6 and 9 months after commencement of operation (respectively).

### 2.1 Consultation

The School and its consultant team have been actively engaging with Council and TfNSW to resolve relevant matters to enable the project to proceed. A summary of communication is provided at **Appendix A** for information.

### 2.2 School Population and Access

The International Chinese School (ICS) currently has an enrolment of 74 students.

In accordance with the Interim Access Plan, the ICS is required to bus students from Chatswood to the ICS. Up to 4 bus movements (22 seater mini bus) are permitted (88 seats overall). It is noted that this modification does not propose any change to these bus movements (see discussion at **Section 5.3.1**).

Kindergarten classes commence in the new year (2022), which will increase the school population to 90.

### 3.0 Modification

As a result of the ongoing delays and uncertainty with agency coordination, the ICS must prepare for the new school year in 2022, including additional kindergarten students which will increase the school population to 90 (16 additional students).

Further, this modification seeks amendments to delay the timing of stage 2 and 3 completion, as necessary to enable the project to be able to comply with the development consent, notwithstanding the delays being experienced from agency requirements.

As outlined at **Section 5.3.1** the school does not require any changes to the interim access arrangements (4 bus movements) and therefore does not require the Stage 3 deceleration lane to be in place, despite the additional 16 students.

SSD 10260 approves a student population of 160 overall. No change is sought to the overall population.

#### 3.1 Modifications to Conditions

The proposed modification described above necessitates an amendment to the consent conditions which are identified below. Words proposed to be deleted are shown in ~~bold strike through~~ and words to be inserted are shown in **bold italics**.

##### Student and Staff Numbers

**A11.** Prior to the student numbers at ICS exceeding ~~74 90~~ students or within ~~9 15~~ months of commencement of operation, unless otherwise agreed by the Planning Secretary, a deceleration lane, removal of driveway crossing, and associated pedestrian fencing and footpath, as identified in the plans listed in condition A2, must be constructed with appropriate approvals obtained from Transport for NSW (TfNSW) and Council (where applicable) and be operational.

##### Staging

**A18.** The commencement of construction works and operation of the Site as ICS must be undertaken in accordance with the following stages:

- (a) Stage 1 – use of the existing building as ICS with a maximum of ~~74 90~~ students, completion of landscaping, fencing and signage within 211 Pacific Highway, St Leonards;
- (b) Stage 2 – Within ~~6 12~~ months of commencement of Stage 1 completion of drop-off / pick-up zone within The Avenue and operation of this area including completion of all works within the public carpark, unless an alternate timing is agreed by the Planning Secretary; and
- (c) Stage 3 – Within ~~9 15~~ months of Stage 1 or prior to student numbers exceeding ~~74 90~~, completion of the deceleration lane and associated works, unless an alternate timing is agreed by the Planning Secretary

**A35.** Table 1 of the Independent Audit Post Approval Requirements, is amended so that the Independent Audit Schedule frequency of Independent Audits required in the operational phase is:

- (a) An initial operational Independent Audit must be undertaken within three months of the notified commencement date of operation; and
- (b) A subsequent operational Independent Audit must be undertaken no later 3 months of student numbers exceeding ~~74 90~~.

### **Green Travel Plan**

**E33.** Prior to the student numbers exceeding **74 90**, a final Green Travel Plan (GTP), must be submitted to the satisfaction of the Certifier and a copy submitted to Council for information, to promote the use of active and sustainable transport modes. The plan must:

...

**E35.** The OMP must be submitted to the Certifier for approval and a copy submitted to Council after approval. The OMP must be updated prior to:

- (a) Completion of the drop-off / pick-up zone within The Avenue; and
- (b) Prior to increase in student numbers beyond **74 90**.

### **Completion of roadworks /deceleration lane and dedication of land**

**F2.** Prior to the student numbers exceeding **74 90**, the following evidence must be submitted to the satisfaction of the Certifier and a copy submitted to Council for information:

...

### **Reason**

The above amendments will give effect to the changes sought under this Modification Application.

The delay to stage timing has sought to provide sufficient time to enable resolution of requirements for Stage 2 and Stage 3. These timeframes account for the December and January holiday periods where further delays can be encountered and are considered reasonable.

## **4.0 Substantially the Same Development**

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

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

- continues to provide for the use of the existing building for the new ICS;
- does not alter the approved development's level of compliance with the applicable environmental planning instruments and policies;
- does not change or increase the approved traffic movements, meaning there is no additional traffic impacts from the additional 16 students;
- does not result in any additional environmental impacts beyond those considered and determined to be acceptable by granting Development Consent to SSD 10260; and
- is consistent with the mitigation measures established in the Development Consent to protect the environment from potentially adverse effects of the development.

The consent authority may therefore be satisfied that the development consent, as proposed to be modified, will remain substantially the same as the original development consent. The proposed modification of Development Consent SSD 10260 may therefore be lawfully approved under Section 4.55(1A) of the EP&A Act.

## 5.0 Environmental Assessment

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

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

### 5.1 Reasons Given for Granting Consent

**Table 1** details how the proposed modification is consistent with the reasons given by the (then) Minister for Planning in granting Development Consent 10260.

**Table 1 Consideration of consistency of Modification Application with reasons for granting original consent**

Reason for Granting Consent	Consistency of the Proposed Modification
<ul style="list-style-type: none"> <li>The project would provide a range of benefits for the region and the State as a whole, including the continuing operation of an existing school on a new site with improved facilities, \$180,105, up to 13 construction jobs and retention of the existing operational jobs.</li> </ul>	The proposed modification will not diminish the benefits provided by the ICS which will create additional construction jobs and retain existing operational jobs.
<ul style="list-style-type: none"> <li>The project is permissible with development consent, and is consistent with NSW Government policies including:               <ul style="list-style-type: none"> <li>– NSW State Priorities.</li> <li>– the Greater Sydney Commission’s North District Plan.</li> <li>– Infrastructure NSW’s State Infrastructure Strategy 2018 – 2038 Building the Momentum.</li> </ul> </li> </ul>	The development, as proposed to be modified, will not alter the consistency of the development with the relevant strategic documents.
<ul style="list-style-type: none"> <li>The impacts on the community and the environment can be appropriately minimised, managed or offset to an acceptable level, in accordance with applicable NSW Government policies and standards. Conditions of consent are recommended to address key impacts associated with site suitability, traffic, access and parking and heritage.</li> </ul>	The proposed modification will not result in any additional adverse impacts on the community or the environment which cannot be appropriately managed and mitigated to an acceptable level.
<ul style="list-style-type: none"> <li>The issues raised by the community during consultation and in submissions have been considered and adequately addressed through changes to the project and the recommended conditions of consent.</li> </ul>	The proposed modification does not change this statement.
<ul style="list-style-type: none"> <li>Weighing all relevant considerations, the project is in the public interest, subject to the development consent being limited for a period of five years.</li> </ul>	The modification will ensure the ICS can remain viable and can meet its operational requirements and the project continues to be in the public interest.

### 5.2 Compliance with Environmental Planning Instruments

**Table 2** below outlines the consistency of the development, as proposed to be modified, with the relevant legislation and environmental planning instruments.

**Table 2 Modification Application’s consistency with applicable legislation and planning instruments**

Legislation/Instrument	Comment
<b>Environmental Planning Instruments</b>	
SEPP (State & Regional Development) 2011	The proposed modification does not alter the approved development’s consistency with this instrument as outlined in the EIS.
SEPP (Infrastructure) 2007	The proposed modification does not alter the approved development’s consistency with this instrument as outlined in the EIS.

Legislation/Instrument	Comment
SEPP (Educational Establishments and Childcare Facilities) 2017	The proposed modification does not alter the approved development's consistency with this instrument as outlined in the EIS.
SEPP No. 55 – Remediation of Land	The proposed modification does not alter the approved development's consistency with this instrument as outlined in the EIS.
SEPP No. 64 – Advertising Structures and Signage	There is no signage involved in this modification.
Willoughby Local Environmental Plan 2012	The proposed modification does not alter the approved development's consistency with this instrument as outlined in the EIS.

### 5.3 Environmental Impacts

The proposed modifications to the approved development do not give rise to any material alteration to the assessment of the potential impacts that were considered and determined to be acceptable in the granting of Development Consent SSD 10260.

Supplementary assessment is undertaken for key environmental issues relevant to the proposed amendments to increase the interim student population by 16 students (to 90 students), which are discussed in further detail below.

#### 5.3.1 Traffic Impacts

The key concern with increasing the student population will be the associated impacts of students accessing the school until the infrastructure required by Stage 2 and Stage 3 are in place (i.e vehicle movements and pick up and drop off).

In accordance with the Interim Access Plan, until the Infrastructure works are complete the ICS is required to bus students from Chatswood to the ICS. Up to 4 bus movements (22 seater mini bus) every 15 minutes are permitted (88 seat capacity overall). This arrangement will ensure traffic impacts are minimal and do not require the installation of the deceleration lane to be delivered under Stage 3.

This modification does not seek to change the existing interim arrangements or increase the bus movements. For completeness, an updated Interim Access Plan is provided at **Appendix B** to amend the student numbers from 74 to 88 to reflect the potential seat capacity of the 4 bus movements.

It is noted that a number of students are children of school staff that accompany them via existing means for the school day and accordingly do not require access to the school bus. Further, several students live locally and walk to the school. Accordingly, the 88-seat bus capacity would not be reached even with the school population being 90 students.

To confirm, this modification does not result in any associated traffic impacts that would require the infrastructure of Stage 2 or Stage 3 to be in place as a result of the additional 16 students. Accordingly, the Department can be satisfied that notwithstanding the minor increase in population, there are no material impacts that will trigger the requirement for the deceleration lane to be completed.

### 5.4 Suitability of the Site

The site remains suitable for the ICS, as proposed to be modified, for the reasons outlined in the EIS lodged with the original SSDA.

### 5.5 The Public Interest

The proposed modifications to the approved development are in the public interest as the modification will enable enrolment of additional students seeking education at the ICS while approvals from TfNSW and Council continue to be obtained.

## 6.0 Conclusion

The proposed modifications seek a minor increase in student enrolment from 74 to 90 students during the interim stages with associated changes to stage timings. In accordance with Section 4.55(1A) of the EP&A Act, the Department may modify the consent as:

- the proposed modification is of minimal environmental impact;
- will not generate any new or additional vehicle movements that would require the implementation of the deceleration lane;
- substantially the same development as development for which the consent was granted; and
- the proposed modification is in the public interest.

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

Yours sincerely,



**Chris McGillick**  
Associate Director, Planning