

24117

30 May 2025

Kiersten Fishburn
Secretary
NSW Department of Planning, Housing and Infrastructure
4 Parramatta Square, 12 Darcy St
Parramatta NSW 2150

Attention: Ingrid Zhu

Dear Ms Fishburn,

Section 4.55(1A) Modification to SSD-10260 (Mod 6)
International Chinese School | 211 Pacific Highway, St Leonards NSW 2065

Beam Planning has prepared this application on behalf of Christian Providence Limited (formerly known as the Trustee for Anglo Australian Christian and Charitable Trust (AACCT)), pursuant to section 4.55(1A) of the *Environmental Planning and Assessment Act 1979 (EP&A Act)* to modify Development Consent SSD-10620 relating to the International Chinese School (ICS) at 211 Pacific Highway, St Leonards.

The proposed modification seeks to modify SSD-10260 consent condition F2A relating to the boundary adjustment and registration of the deceleration lane on the Pacific Highway. The changes to the condition include:

- making the dedication to Council's satisfaction not TfNSW, as Council is the owner of the Pacific Highway,
- extending the time for the transfer to occur reflecting Crown Lands processes, and
- incorporating additional flexibility for the Applicant to demonstrate it has undertaken best endeavours in relation to facilitating the process, in acknowledgement that the transfer of the land between two Government agencies is ultimately outside of its control.

This application addresses the applicable provisions of section 4.55(1A), including an assessment of its environmental impacts, whether the amended development is substantially the same and any consultation requirements.

1.0 Site Analysis

1.1 About the Site

	211 Pacific Highway, St Leonards
Address	
	Lot 101 DP 791327 (211 Pacific Highway)
	Lot 101 DP 11911604 (The Avenue)
	Lot 7083 DP93642 (Gore Hill Park public carpark) - for vehicular / pedestrian access and drop-off / pick-up zone only.
Legal Description	
	The site is Crown Land managed by Northern Metropolitan Cemeteries Trust.
Owner	

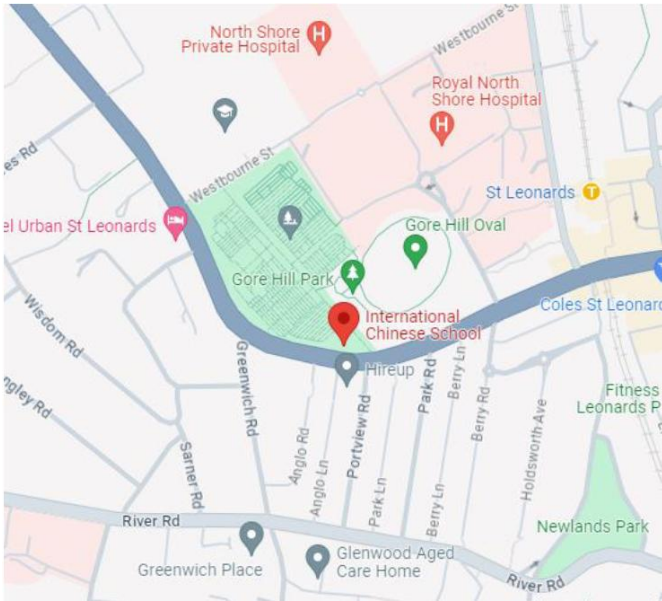


Figure 1 Location Plan

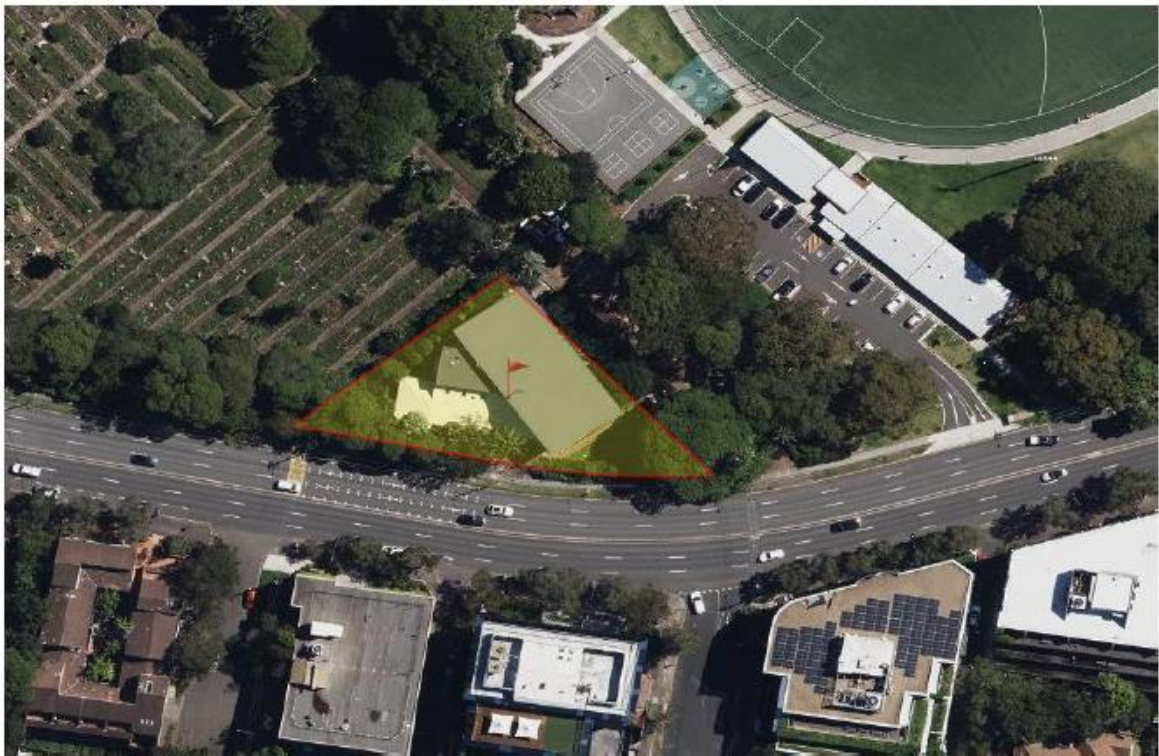


Figure 2 Site Aerial

2.0 Consent to be Modified and Relevant History

Development consent was granted by the Minister for Planning and Public Spaces on 16 July 2020 for the 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/exist 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.

Works in accordance with the consent have been completed including the construction of the deceleration lane.

The SSD Consent has been modified on 5 prior occasions as outlined in **Table 1**. Separate CDCs have also been issued for solar panels and flag poles.

Table 1 Modification History

Reference	Description	Status
SSD-10260-Mod-1	Increased school population from 63 to 74 students in the interim stages of the development.	Approved 21 July 21
SSD-10260-Mod-2	Increased school population from 74 to 88 students in the interim stages of the development to amend the approval timeframe to complete the infrastructure works required.	Approved 17 December 2021
SSD-10260-Mod-3	- Amend condition F2 to allow student numbers to exceed 88 enrolments, prior to dedication of the Pacific Highway declaration lane to Transport for NSW and completion and registration of the boundary readjustment. - Introduce new Condition F2A requiring dedication of the deceleration lane and registration of the boundary readjustment to be completed within 18 months of determination of SSD-10260-Mod-3.	Approved 8 September 2023
SSD-10260-Mod-4	Amend condition A13 to allow for an increase in the number of students attending the out-of-school hours (OOSH) program (up to 50), to be within the maximum 160 students permitted, and involving a maximum of 15 FTE staff on any given day, including out-of-school hours (OOSH) staff.	Approved 29 February 2024.
SSD-10260-Mod-5	- Extension of development consent by five years to ensure ICS' operation at 211 Pacific Highway St Leonards until 16 July 2030. - Amend condition A9 to allow for an agreement between Willoughby Council and ICS for vehicle access and drop-off/pick-up zones. - Amend condition F14 to reduce the frequency of Green Travel Plan reporting.	Approved 11 November 2024.

In November 2022 the Applicant had its registered surveyor undertake the required documentation for the land dedication required as part of its responsibilities under the TfNSW WAD. An application for Subdivision was also lodged with Willoughby Council. TfNSW has confirmed via their Certificate of Practical Completion and the return of the Bank Guarantees that ICS work under their WAD (including our work on the land dedication) has been completed. TfNSW and Crown Lands could not agree on the process to be undertake the dedication, noting Crown Lands requested a Compulsory Acquisition, whilst TfNSW requested the process to be dedicated public road through section 9 of the Roads Act. As it has since come to light, the Pacific Highway is owned by Willoughby Council, not TfNSW and therefore the transfer should in fact be to Council.

A timeline of the consultation and efforts relating to the transfer of the land under F2A is documented in **Table 2.**

Table 2 Timeline of the efforts to satisfy Condition F2A
(note: Council=Willoughby Council; Cemeteries=Metropolitan Memorial Parks)

Date	Outcome
5 December 2022	ICS registered surveyor prepared land dedication documents, administration forms and plans.
Various dates throughout December 2022	ICS asked both Cemeteries and Council if they can sign the applications as owner (based on the fact that they manage the land), both have said they did not know if they could, so we thought it would be best to go to Crown Lands.
8 December 2022	TfNSW confirm to Willoughby Council that the slip lane can be opened for use.
12 December 2022	Construction Completion Certificate issued by TfNSW for the slip lane
13 December 2022	Certificate of satisfactory completion of civil works issued by Willoughby Council for works associated with the slip lane.
19 December 2022	Certificate of Practical Completion issued by the PCA for the slip lane project.
11 January 2023	Contacted Crown Lands (Cemeteries) for a progress update on the signing of the land dedication documents. No immediate response.
23 January 2023	The documentation for the registration of the land dedication sent to Crown Lands as the owners of the land.
Various dates throughout January 2023	ICS were working on the land dedication with Crown Lands since completion of the slip lane construction in December 2022. David Ham from the Cemeteries liaised with Council (council and cemeteries trust are the 2 managers of the land to be acquired) and Crown Lands (the owners of the land), to establish the correct process required. They advised that the process is not a land dedication, it will need to be a compulsory acquisition. Justin Savage from Crown Lands and Georgina Mason from Cemeteries have stated that: "We have consulted with Willoughby Council who recommend the best way forward is for TfNSW to acquire the slip lane. Crown Lands has no role in initiating compulsory acquisitions of its own land. An acquisition will need to be initiated by TfNSW by way of submission of a Proposed Acquisition Notice (PAN)."
6 February 2023	Informed TfNSW that Crown Lands stated that the process was not a Land Dedication but a compulsory acquisition. This has to be requested by TfNSW, not the applicant.
1 March 2023	Contacted TfNSW and Crown Lands for an update on progress, requesting if TfNSW property have made their decision on the Compulsory Land Acquisition for the slip lane requested by Crown Lands. The TfNSW Property team stated that the land acquisition would be required to be dedicated public road through section 9 of the Roads Act (not a Compulsory Land Acquisition).
9 March 2023	Contacted Cemeteries for an update on progress of the land dedication.
17 March 2023	Crown Land finally responded with "We are in the process of seeking internal legal advice on how this might be progressed using internal procedures that do not necessarily require an acquisition. This is likely to take several weeks to obtain, but I will let you know as soon as we have the advice back."
20 March 2023	TfNSW formally requested to provide Construction Completion and return the Bank Guarantee as there is no further involvement by developer (ICS)

21 March 2023	Crown Lands (Cemetries) noted "while NMCLM is supportive in principle of the land transfer, we want to see What the final details are before we sign of on this. Also I am hoping we have the authority to approve the transfer as the Crown land manager, but it's possible it will need approval by the Minister or their delegate."
22 March 2023	TfNSW issue theie Certificate of Practical Completion for the Slip Lane.
Various dates throughout May 2023	Discussions held with TfNSW regarding return of the bank guarantees associated with the WAD. Even though the Land dedication was part of the WAD, TfNSW agreed that we had no role in the Land Dedication and the Bank Guarantee would be returned to the applicant (without the completion of the land dedication).
7 June 2023	Bank Guarantee returned by TfNSW
18 August 2023	TfNSW requested 18 months be added to Clause F2A for the finalisation of the Land dedication as part of Modification 3.
8 September 2023	Modification 3 approved by DPIE introducing the new Condition F2A requiring the dedication of the deceleration lane and registration of the boundary readjustment to be completed within 18 months of determination of SSD-10260-Mod-3.
12 September 2023	TfNSW and Crown Lands (including Cemetries) informed that modification 3 had been approved, as it is up to both those parties to undertake the land dedication. ICS requested "As we now only have 18 months to satisfy this condition we would like to request an update on where both Crown Lands and TfNSW are with this dedication/transfer. It is important to make sure this happens as soon as possible."
25 September 2023	TfNSW and Crown Lands (including Cemetries) contacted for an update on progress. Response : "The Metro District Office is progressing the road dedication and will advise on a timeframe for completion when known."
9 October 2023	Crown Lands contacted for an update on progress. No response.
31 October 2023	Cemetries confirmed that the land dedication process was "out of their hands". It is solely between TfNSW and Crown lands
13 December 2023	Second Bank Guarantee released by TfNSW confirming that our responsibilities under their WAD (including the land dedication) have been completed.
15 December 2023	Contacted Cemetries to inquire on the progress, they contacted Crown Lands and there had been no progress.
4 July 2024	TfNSW responded to our enquiries stating that they will conclude the land dedication in "the next couple of months".
June 2024 – December 2024	No contact initiated with either TfNSW or Crown Lands as no responses to our enquires were ever received.
10 January 2025	TfNSW contacted ICS stating that for the last number of months they had been trying to finalise the land dedication with Crown Lands but "ended up going around in circles" TfNSW sent an email confirming our conversation stating that "As discussed I will be looking to organise a letter to clear the obligation of dedication and move it back to TfNSW to conclude with Crown Lands. I will organise for that letter to reference that TfNSW is satisfied with the information provided and that we find the steps taken fulfill clause F.2A of the SSD." No letter was received.
6 March 2025	Notification sent to DPIE notifying them that according to TfNSW we have fulfilled our obligations under clause F2A as the 18 months TfNSW requested to finalise the land dedication was expiring..
7 March 2025	DPHI reject the information provided for the satisfaction of clause F2A, and advised that a Modification should be submitted.
13 May 2025	Modification 6 lodged with DPIE.
16 May 2025	DPHI responded to Modification 6 notifying that they have rejected the pre-modification application to amend Condition F2A, which proposed removing the requirement to provide evidence of the boundary adjustment and registration of the deceleration lane.
29 May 2025	The Applicant met with DPHI to discuss the necessary amendments to Condition F2A to address the Department's concerns which are reflected in this Modification.

3.0 Description of the Modifications

3.1 Modified Conditions

The proposed modification only relates to amending the conditions of consent and will not result in any physical changes to the development. Deleted words are shown in ~~strike through~~ and proposed words to be inserted are shown in **bold**.

Completion of roadworks/deceleration land and dedication of land

F2A. Within 18 months from date of determination of SSD-10260-Mod-~~36~~, the Applicant must provide following evidence to the satisfaction of the Planning Secretary and a copy submitted to ~~Council~~ **TfNSW** and the Certifier for information:

- (a) matters in relation to the dedication / **transfer of title** of the deceleration lane to **Council's TfNSW satisfaction**; and
- (b) the relevant boundary adjustment is completed and registered.

Should the boundary adjustment not be completed and registered in the time nominated under this condition, the Applicant must demonstrate to the Secretary's satisfaction that it has undertaken best endeavours to facilitate the process.

Reason: Whilst the Pacific Highway is a classified road, it is owned by Willoughby Council but maintained by TfNSW. Therefore this condition should require the transfer of title / dedication of the land (noting there are different mechanisms that might be used) to Council's satisfaction and not TfNSW. The time has been extended to 18 months from the date of this modification based on the time advised by Crown Lands that it will take for the process to be completed.

The dedication and registration of the deceleration lane between two Government agencies is ultimately outside the control of the Applicant, which it has fulfilled its broader obligations under the consent to deliver the deceleration lane. Notwithstanding this, it is acknowledged that the transfer is still important to the Department and the Applicant is committed to facilitating the process. Accordingly the proposed condition incorporates additional flexibility regarding Christian Providence Ltd's responsibility under this condition to demonstrate to the Secretary's satisfaction that it has undertaken best endeavours to facilitate the process.

3.2 Substantially the Same Development

Section 4.55(1A)(b) requires the consent authority to be satisfied that the development as proposed to be modified remains 'substantially the same' as the development for which the consent was originally granted, prior to any previous modification.

The development as proposed to be modified is "substantially the same development" as it does not change any aspect of the approved development or its operation. Therefore, the consent authority may be satisfied that the modified proposal represents substantially the same development for which consent was originally granted.

3.3 Modification Category

This modification application is made under section 4.55(1A) of the EP&A Act. The application is consistent with the criteria of section 4.55(1A) of the EP&A Act for the following reasons:

- The modification is of minimal environmental impact (see **Section 6.1**).

- The modification is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all) (see **Section 4.0**).

4.0 Statutory Context

4.1 Power to Grant Consent

The project was declared State Significant Development under the now repealed State Environmental Planning Policy (State and Regional Development) 2011, as it was development for the purpose of a new school (regardless of the capital investment value).

As demonstrated in **Section 3.2**, the development, as proposed to be modified, is substantially the same development as that originally approved. Therefore, the consent authority has the power to grant consent to the modification application.

4.2 Permissibility

The site is zoned SP1 Special Activities: Cemetery under the Willoughby Local Environmental Plan (LEP) 2012. Educational establishments (including schools) are prohibited within the SP1 Zone under the Willoughby LEP 2012. However, the development is permissible in the zone pursuant to clause 3.36(1) of State Environmental Planning Policy (Transport and Infrastructure) 2021 (TI SEPP) as Zone SP1 Special Activities is a prescribed zone under clause 3.24(1) of the TI SEPP, which overrides the Willoughby LEP 2012.

4.3 Other Approvals

Legislation/Instrument	Comment
Mandatory Consideration for Consideration	
Environmental Planning & Assessment Act 1979	The modified development, as proposed, aligns with the objects of the EP&A Act, specifically the Modification promotes the orderly use of land as it enables the continuation of the approved land use within a building constructed for that purpose.
Planning Systems SEPP	The Modification does not alter the approved development's consistency with this instrument.
Transport and Infrastructure SEPP – Chapter 2 Infrastructure	The Modification does not alter the approved development's consistency with this instrument.
Transport and Infrastructure SEPP – Chapter 3 Educational Establishments and Childcare Facilities	The Modification does not alter the approved development's consistency with this instrument.
Industry and Employment SEPP – Chapter 3 Advertising Structures and Signage	There is no signage involved in this Modification.
Willoughby Local Environmental Plan 2012	The Modification does not alter the approved development's consistency with this instrument.
Pre-conditions to exercising the power to grant consent	
Resilience and Hazards SEPP – Chapter 4 Remediation of Land	The Modification does not alter the approved development's consistency with this instrument.

5.0 Engagement

As noted previously, Christian Providence Ltd has been engaging with various government agencies including Willoughby Council, DPHI, TfNSW and Crown Lands to resolve this matter.

The proposed modification does not alter the development or impacts in a way that would necessitate further engagement beyond what has already been completed as part of the SSD process. Therefore, given the nature of the modification and its minimal impact on the surrounding community, additional community engagement was not considered necessary.

6.0 Assessment of Impacts

6.1 Evaluation

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 proposed modification will have no environmental impacts. The construction of the deceleration lane has been completed, and the matter of contention pertains to the dedication and registration of the lane. It is understood the intent of condition F2A was to ensure that the slip lane forms part of the on-going maintenance responsibility of the landowner of the Pacific Highway. The proposed modification to ensure it occurs to the satisfaction of Council as the landowner and not TfNSW does not change the intent of the original condition and will enable the transfer to occur as intended.

6.2 Reasons for Granting Consent

Section 4.55(3) of the EP&A Act requires a consent authority to take into consideration the reasons for approval of the original application. The original application was determined by the Minister for Planning and Public Spaces and the following table addresses the Statement of Reasons which accompanied the consent.

Table 2 – Assessment against Statement of Reasons

Description	Assessment
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, up to 13 construction jobs and retention of the existing operational jobs.	The Modification will not impact the range of benefits the development provides.
The project is permissible with development consent, and is consistent with NSW Government policies including: • NSW State Priorities • The Greater Sydney Commission's North District Plan • Infrastructure NSW's State Infrastructure Strategy 2018 – 2038 Building the Momentum	The Modification will not alter the consistency of the development with the relevant strategic documents.
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.	The Modification will not result in any additional adverse impacts on the community or the environment.
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.	The Modification does not change this statement.

Weighing all relevant considerations, the project is in the public interest, subject to the development consent being limited for a period of five years.

The Modification does not change this statement.

7.0 Justification of the Modified Project

The Modification will alter condition F2A will facilitate the completion of the relevant boundary adjustment and registration as originally intended under the Condition.

Pursuant to 4.55(1A) of the EP&A Act, and as outlined in this application, the Department may modify the consent as the proposal:

- Is of minimal environmental impact;
- Remains substantially the same as the development originally approved;
- Has adequately addressed the matters for consideration at section 4.15 and the original reasons for granting consent in the first place.

The assessment of the prescribed matters has determined that no unacceptable impacts will result from the amended development. Accordingly, we have no hesitation in recommending DPHI approve this s4.55 modification application as submitted.

Should you have any queries regarding this matter, please do not hesitate to contact me on the details below.

Kind regards



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Director

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