



02 October 2018

Mr Simon Officer  
Acting Secretary  
Department of Planning and Environment  
GPO Box 39  
Sydney NSW 2001

Dear Simon

### Loreto Kirribilli School Redevelopment (SSD-7919)

1. Thank you for your Department's letter received on 21 August 2018, referring the above State Significant Development (**SSD**) application to the Independent Planning Commission NSW (the **Commission**) for determination. The Department of Planning and Environment (the **Department**) has referred the application to the Commission for determination because North Sydney Council objected to the development.
2. The Commission is the consent authority in respect of the development application (the application) under section 4.5(a) of the *Environmental Planning and Assessment Act 1979 (EP&A Act)* and clause 8A of the *State Environmental Planning Policy (State and Regional Development) 2011 (SEPP SRD)*.
3. North Sydney Council objected to the development outside the mandatory community participation period specified in Schedule 1 of the EP&A Act, and in response to the RtS, on 23 March 2018, and not in response to the Environmental Impact Statement (**EIS**) during the mandatory community participation period. Therefore, the Minister's delegations dated 14 September 2011 apply, which delegates that the Commission must determine the SSD application as Council has objected to the development.
4. According to the Department's Environmental Assessment Report (**Department's EAR**), the proposal is an SSD under section 4.36 (development declared SSD) of the EP&A Act as the development is for an educational facility, with a Capital Investment Value in excess of \$20 million, as defined under clause 15 of Schedule 1 of SEPP SRD.
5. Professor Mary O'Kane, Chair of Commission, nominated Ms Ilona Millar (Chair) and Soo-Tee Cheong, to constitute the Commission to determine the application.
6. According to the **Department's EAR**, the concept development application of Loreto Kirribilli (**the applicant**) is seeking approval for redevelopment of the Loreto Kirribilli School (**the development**), located at 85 Carabella Street, Kirribilli (**the site**). The concept development application seeks approval for its concept proposal to develop the site in three stages, that in summary involves:
  - partial demolition of existing buildings;
  - maximum building envelopes for new buildings;
  - upgrading of existing facilities;
  - removal of 11 trees; and
  - increasing the capacity of students.

7. The development application also includes Project approval for Stage 1 works comprising:
  - demolition of an existing building;
  - construction of a new seven-storey learning hub;
  - extension to the gymnasium;
  - refurbishment of the chapel;
  - construction of three vertical connector pods; and
  - landscaping works and stormwater works.
8. The description in paragraphs 6 and 7 above, are defined as the **development application**.
9. The development application was lodged by the applicant on 25 August 2016, and it was made publicly available on the Department's website from 19 October 2017 to 17 November 2017 (the **exhibition period**). According to the Department's EAR, the Department received submissions from seven public authorities, including the Environmental Protection Authority (**EPA**), Transport for NSW (**TfNSW**), Office of Environment and Heritage (**OEH**), Heritage Division - Office of Environment and Heritage (**Heritage OEH**), Roads and Maritime Services (**RMS**), Sydney Water (**SW**), and North Sydney Council (**Council**).
10. The Council objected to the development application. Other public authorities provided comments on mitigating or managing potential impacts of the development.
11. The Department also received 16 submissions from members of public and community organisations (14 objections, one support and one comment). One additional submission, objecting to the development, was received through Council after the exhibition period.
12. On February 2018, the applicant provided a response to submission (**RtS**) which included amendments to the design in response to the concerns raised in submissions from the public, Council and government agencies. The RtS satisfied the concerns of all government agencies except for Council, which maintained its objection on the grounds of traffic impacts.
13. The applicant later provided a supplementary response to submissions (**SRtS**) dated 15 May 2018, stating that it would amend its application to reduce its original request that involved increasing student numbers to 1,200, to only 30 students above its current approval of 1,100 (total of 1,130) students.
14. The Department's EAR, identified four key issues associated with this development application, consisting of:
  - traffic, transport and parking impacts;
  - building height and urban design;
  - environmental and residential amenity; and
  - heritage.
15. As part of its determination, the Commission met with the Department, Council, and carried out a site inspection with the applicant. These meetings and inspection occurred on 30 August 2018. The Commission met with the applicant on 11 September 2018. The transcripts from these meetings and notes from the site inspection have been available on the Commission's website since 30 August 2018 and 12 September 2018, respectively.
16. At the meeting with Council, Council stated that there was no fundamental objection to the development itself, and their objection was based on the potential adverse traffic, parking and transport impacts, as noted by the Department in its EAR.

17. At the meeting with the applicant on 11 September 2018, the applicant discussed with the Commission various conditions of approval proposed by the Department. Subsequently on 14 September 2018, the applicant provided comments on various conditions, and requested that some conditions be amended. The Commission forwarded this request to the Department on 18 September 2018.
18. In determining this development application, the Commission has carefully considered all of the material below:
- the applicant's EIS and Annexures A-Y, dated September 2017;
  - the applicant's RtS and annexures A-H, dated February 2018, the supplementary RtS, dated 15 May 2018;
  - the Department's Environmental Assessment Report, dated August 2018, and the proposed Development Consent SSD 7919;
  - the public comments from the exhibition period;
  - Council's comments, dated 23 and 27 November 2017;
  - TfNSW comments, dated 20 November 2017 and 12 March 2018;
  - EPA's comments, dated 13 November 2017;
  - OEH's comments, dated 23 October 2017;
  - Heritage OEH's comments, dated 07 March 2017;
  - SW comments, dated 4 December 2017;
  - RMS's comments, dated 16 November 2017;
  - NSW General Architects's comments, dated 9 November 2017, 12 March 2018 and 18 September 2018;
  - the applicant's request to amend a number of conditions, dated 14 September 2018; and
  - the Department's response, dated 24 September 2018. (the '**Material**')
19. In determining this development application, the Commission has taken into consideration the following relevant mandatory considerations, as provided in section 4.15 of the EP&A Act:
- the provisions of all:
    - environmental planning instruments (**EPIs**)(see paragraph 20 below);
    - proposed instruments that are or have been the subject of public consultation under the EP&A Act and that have been notified to the Commission (unless the Secretary has notified the Commission that the making of the proposed instrument has been deferred indefinitely or has not been approved);
    - development control plans;
    - planning agreements that have been entered into under section 7.4 of the EP&A Act, and draft planning agreements that a developer has offered to enter into under section 7.4; and
    - the Environmental Planning and Assessment Regulations 2000 (Regulations) to the extent that they prescribe matters for the purposes of section 4.15(1) of the EP&A Act; that apply to the land to which the application relates;
  - the likely impacts of the development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality;
  - the suitability of the site for development;
  - submissions made in accordance with the EP&A Act and Regulations; and
  - the public interest.

20. The Commission considered the following EPIs in determining this development application:
- *State Environmental Planning Policy (State and Regional Development) 2011* (SRD SEPP)
  - *State Environmental Planning Policy No. 55 – Remediation of Land* (SEPP 55)
  - *State Environmental Planning Policy (Infrastructure) 2007* (ISEPP)
  - *State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017* (Education SEPP)
  - Draft State Environmental Planning Policy (Remediation of Land)
  - Draft State Environmental Planning Policy (Environment)
  - *Sydney Regional Plan (Sydney Harbour Catchment) 2005* (SHC SREP)
  - *North Sydney Local Environmental Plan 2013* (NSLEP)

*Public and Council Submissions on traffic and parking impacts*

21. Public submissions to the Department during the exhibition period, and concerns raised by Council, including at the Commission's meeting on 30 August 2018 included:
- student increase will exacerbate overall traffic impacts on the traffic network;
  - further on-site parking should be provided to avoid adverse impact on the on-street parking facilities; and
  - in the absence of a provision for an internal drop-off and pick-up zone, *"the redevelopment of the site is unacceptable."*
22. At the meeting with Council held on 30 August 2018, Council officers said that there was no fundamental objection on the development, however in their opinion, the *"broad scope of the proposal"* would have *"flow-on cumulative impacts"* and more specifically on *"traffic, parking and transport."*

*Applicant's consideration*

23. In its EIS, the applicant included a Traffic Impact Assessment (**TIA**) prepared by McLaren Traffic Engineering 25 July 2017 that assessed existing operations, and transport and parking context, and the impacts resulting from the development. The TIA stated that *"there is no significant increase in intersection delays or approach queues as a result of the additional traffic related to the increase of 100 children and two staff."*
24. The TIA utilised an intersection modeling (SIDRA) and stated that *"As shown, the surrounding intersections are operating satisfactorily, with low average delays and queue lengths. It should be noted that SIDRA Intersection cannot model the impacts of a high turnover of on-street parking or of a pedestrian-dominant environment (as generally exists around schools). The SIDRA Intersection models demonstrate that there is ample capacity for the surrounding intersections to accept an increase in vehicles during the peak hours but cannot reflect other traffic conditions in the surrounds of the school."*
25. On 11 May 2018, the applicant's traffic consultant (McLaren Traffic Engineering) provided an amendment to its traffic impact assessment (**rTIA**) due to a change of the proposed student numbers from 1,200 to 1,130. This is an increase of 30 students for the senior school on the existing approved population of 1100 students. The rTIA concluded that *"Considering the proposal is for an increase of some 30 high school students, the pick-up and drop-off parking demand is not expected to change from the current operation. The current use of the pick-up / drop-off area is limited to only Primary School students, and any additional drop-off / pick-up up demand by the additional 30 high school students can be undertaken in the streets surrounding the site such that students can walk the short distance to the school entrance / vehicle"*.

26. The rTIA further concluded that *“Considering the proposal is for an increase of 30 high school students, which is approximately 12 additional private vehicles (based upon the existing surveys) arriving to the school is considered minor and will not have a detrimental impact upon the surrounding operation of nearby intersections. Further, with the implementation of the initiatives ..., the traffic flow along Carabella Street is expected to improve. It should be noted that the drop-off / pick-up facility provided along Carabella Street is restricted to primary school students only. Therefore there will be no additional vehicle trips at the existing pick-up / drop-off facility by the proposed increase in senior students.”*
27. In relation to parking impacts, the rTIA concluded that *“The current proposal is increasing by 30 students, of which there will be nil (0) additional staff for the operation of the school. Considering this, the additional parking impact is minor and is not expected to change over the existing operation. A detailed assessment in relation to unrestricted parking is unnecessary. It is also relevant to note that the school complies with the parking requirements set out within Council’s DCP.”*
28. At the meeting held on 11 September 2018, the applicant requested a series of changes to the proposed conditions of consent including in relation to construction traffic, which sought *“to separate ‘excavation vehicle movements’ from general ‘construction traffic’”* in condition C28 of Schedule 3. Subsequently, the applicant formally requested the Commission on 14 September 2018 to consider its proposed amendments to the Department's proposed conditions.

#### *Department’s considerations*

29. The Department’s EAR stated that the Department engaged Bitzios Consulting Ltd Pty who prepared the *Loreto Kirribilli School Concept and Stage 1 Redevelopment Traffic and Parking Peer Review Report (peer review)*, to *“determine if the Environmental Impact Statement documents related to traffic and transport adequately assesses the local traffic impacts, whether the SIDRA modelling assessment is appropriate and to specify any additional information required from the applicant or make recommendations where issues have not been adequately addressed.”* The peer review made a number of recommendations that the Department has included in the proposed conditions of consent.
30. One of the peer review’s recommendations, was to restrict all construction traffic (excavation vehicle movements and remaining general construction traffic) to operate between 7am to 2pm. Therefore, the Department included this recommendation in condition C28 of Schedule 3 Construction Environmental Management Plan (CEMP).
31. The Department’s EAR stated that in relation to construction traffic, including the above, that it was *“satisfied that subject to the implementation of the recommended conditions requiring preparation of: an updated Construction Environmental Management Plan (CEMP) including the details of management of all impacts due to construction works; a Construction Traffic and Pedestrian Management Plan (CTPMP) including details of the construction traffic management and the pedestrian access arrangements during construction works; the TCP; and an RSE, the construction traffic for Stage 1 can be appropriately managed with negligible impacts on the local traffic network.”*
32. The Department’s EAR stated that in relation to operational traffic that, *“the adverse operational traffic impacts are caused by the peak AM and PM drop-off and pick-up operations and high private vehicle usage of students and staff. Notwithstanding the student increase, the predicted volume of traffic on Carabella Street and Elamang Avenue would remain within the maximum capacity of the roads.”* The Department also stated in its EAR that it was satisfied that *“the impact of the school’s*

*operation on the existing local traffic network can be managed. The primary measure would include implementing appropriate mitigation measures at the drop-off and pick-up zone outlined in an Operational Traffic and Access Management Plan (OTAMP) ... The increase in student numbers can be supported subject to the implementation of the OTAMP."*

33. The Department's EAR stated that in regard to the peak AM and PM drop-off and pick-up operations, *"the Department's traffic consultant recommended that the Applicant must prepare and implement (within 3 months of the approval) an OTAMP for the site in consultation with Council and the local community. No increase in student enrolments or staff numbers would be permitted until the OTAMP is proven to be effective in reducing traffic congestion around drop-off and pick-up zone-off, especially during PM pick-up times."*
34. The Department's EAR stated that In response to Council's concern in paragraph 22, on the request for an internal drop-off and pick-up zone that, *"the site is highly constrained due to the existing buildings of heritage significance and the steep slope which would restrict a drop-off and pick-up area within the site."*
35. The Department's EAR stated that in relation to parking availability for Stage 1, the it was *"satisfied that the site includes sufficient car spaces to cater for the development and that it would be unreasonable to further reduce car parking on the site or modify the existing arrangement as no alterations to this section of the site is proposed."*
36. The Department's EAR stated that in relation to parking during the on-going community activities that occur within the site, that *"a long-term strategy for off-site parking for construction and special events at the school be developed,"* in support of the peer review's recommendation. The Department also stated that *"the occurrence of events would not have a significant adverse impact on the surrounding road network during the AM and PM peak periods."*
37. The Department's EAR has recommended a condition in Stage 1 of the development, for on-going community events, requiring *"on-site parking be made available for all events with over 100 attendees."*
38. The Department's EAR concluded that *"On balance, the Department is satisfied that that the Work Place Travel Plan (WTP) in conjunction with the OTAMP for the site, would provide satisfactory initiatives to encourage alternate transport modes and reduce the overall private vehicle usage over a period of five years, subject to implementation of the above recommended conditions and ongoing monitoring of the WTP."*
39. In its response to the Commission's request dated 18 September 2018, the Department remained silent in its response, dated 24 September 2018, on condition C28.

#### *Commission's consideration*

40. The Commission finds that the Department's recommended conditions, as discussed in paragraphs 31, 32, 33 and 37, have adequately addressed the Council's reasons for objection, in paragraph 22 because, the modelling indicates that *"there is ample capacity for the surrounding intersections to accept an increase in vehicles during the peak hours"* as concluded by the TIA in paragraph 24.
41. In relation to condition C28 of Schedule 3, the Commission has considered the applicant's comments in paragraph 28 and the Department's comments in paragraph 30-31, and has therefore decided to amend condition C28 to provide clarity in separation of excavation vehicle movements from general traffic.

42. The Commission accepts the Department's conclusions on parking and traffic impacts during the construction and operational phases of the development, discussed in paragraphs 29-38, because:
- construction traffic for Stage 1 can be appropriately managed on the local traffic network subject to the implementation of an updated CEMP, a CTPMP, a TCP; and a RSE, required in the proposed conditions of consent (A18, amended C28; and C34-C36, of Schedule 3), as discussed in paragraph 31;
  - traffic resulting from the school's operation would remain within the maximum capacity of the roads and would be managed subject to the effective implementation of appropriate drop-off and pick-up zone mitigation measures, that would be done in consultation with Council and the local community, and outlined in an OTAMP and in a WTP, required in the proposed conditions of consent (A19-A27, E3, F3, and F4; of Schedule 3), as discussed in paragraph 32, 33 and 38;
  - the site includes sufficient car spaces to cater for the development, as discussed in paragraphs 27 and 35; and that for on-going community events an on-site parking be made available for all events with over 100 attendees, required in the conditions of consent (condition E25 of Schedule 3), as discussed in paragraphs 37; and
  - the site is constrained due to *"the existing buildings of heritage significance and the steep slope"*. The Commission has carried out its own site inspection and accepts the Department's conclusion in paragraph 34. Therefore, the Commission finds that this constraint would *"restrict a drop-off and pick-up area within the site."*
43. Therefore, the Commission finds that in terms of traffic and parking impacts, the development:
- would not exacerbate existing overall traffic impacts as there is capacity in the traffic network;
  - would not significantly impact the on-street parking facilities as the site includes sufficient car spaces;
  - proposed conditions of consent would ameliorate any traffic impacts, subject to appropriate implementation; and
  - is constrained in terms of its site, restricting an on-site parking for internal drop-off and pick-up.

#### *Public and Council Submissions on built form, height exceedance and view loss*

44. Public submissions to the Department during the exhibition period, and concerns raised by Council, including at the Commission's meeting on 30 August 2018 included:
- the proposed envelopes and the Stage 1 learning hub exceed height restrictions and are an overdevelopment of the site that would result in adverse impacts on the surrounding built environment and view loss to adjacent properties.

#### *Applicant's considerations*

45. In its EIS, the applicant provided a justification for a variation of Clause 4.3 of North Sydney LEP 2013 (NSLEP), relating to height of buildings in response to its development exceeding NSLEP 2013, applying the tests and considerations identified by the Land and Environment Court. The applicant cited the legal case where the Land and Environment Court *"established questions to be addressed in variations to development standards lodged under State Environmental Planning Policy 1 – Development Standards (SEPP 1) through the judgment of Justice Lloyd, in Winten Property Group Ltd v North Sydney Council [2001] 130 LGERA 79 at 89. The test was later rephrased by Chief Justice Preston, in the decision of Wehbe v Pittwater Council [2007] NSW LEC 827 (Wehbe). An additional principle was established in the recent decision by Commissioner Pearson in Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 1009 (Four2Five) which was upheld by Pain J on appeal.*

*These tests and considerations can also be applied to the assessment of variations under Clause 4.6 of the LEP and other standard LEP instruments.”*

46. The applicant claimed compliance with the height limit was unreasonable or unnecessary because, *“On the basis that most buildings on the site already exceed the LEP height standard, and that the Concept Proposal and Stage 1 works are within the height of the existing tallest building on the campus.”*
47. The applicant’s full justification is found in section 8.0 of its EIS.
48. In terms of view loss, the applicant provided View Impact Analysis (**VIA**), prepared by FJMT Pty Ltd dated 25 July 2017 that assessed *“the impact of the development on views from surrounding buildings which currently have views over the site.”* The VIA found that the building at 111 Carabella Street would be the most affected by the development, specifically by the Stage 1 works of the development application.
49. The EIS concluded that *“the proposed development would cause some view loss to some apartments on the uppermost levels of the residential building at 111 Carabella Street... Views from the north of 111 Carabella Street are considered a scenic view in Tenacity terms, with water and land-water interface. However, the extent of view loss is limited to partial, oblique views from bedrooms, it is considered that the proposed impact is reasonable in regards to view impacts.”*
50. In its RtS, the applicant provided an amended design of the development which reduced the height of the roof level and subsequently reduced the view loss impacts on 111 Carabella Street, however it still exceeds the NSLEP height control.
51. At the meeting held on 11 September 2018, the applicant requested a series of changes to the proposed conditions of consent, which included the deletion of aspects of condition B5; condition E17, F8 and F9, which were recommended by the Department which sought to delete the roof garden on the roof level. Subsequently, the applicant formally requested the Commission on 14 September 2018 consider its proposed amendments to the Department's proposed conditions.
52. In its request, the applicant stated that *“the intended use of the rooftop terrace has been limited to enable connectivity between the Learning Hub and the Marian Centre and to allow intermittent staff and student access to the rooftop garden for maintenance. The roof garden would not be used as a play space...Even if the roof was not accessible to students, the lift (including the opening on the northern side) would be required for plant access.”*

#### *Department’s Considerations*

53. In relation to the height controls, the Department’s EAR stated that, *“The Department has assessed the proposed height variation and has considered the Clause 4.6 variation submitted by the Applicant, in conjunction with the established principle in the case of Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 1009, by the Land and Environment Court.”*
54. The Department’s EAR stated that *“the site is unique as it is a steep sloping site, located near a major transport hub and has accommodated a school for over a century. The buildings on the site are heritage listed under the North Sydney Local Environmental Plan (NSLEP). The site is also located in a residential area with significant views of the Harbour, the residences being built after the establishment of the school.”*

55. The Department supported the applicant's arguments, contained in the applicant's EIS, discussed in paragraph 46 above; and stated that *"In this context, the Department considers the Applicant's arguments to be well founded for the following reasons: the need for greater height to accommodate equitable access for the students and provide state-of-the-art learning facilities for future students; the retention of the Harbour views for majority of the adjoining properties including heritage listed items; the retention and refurbishment of the locally listed heritage items rather than their demolition; the successful interface transitions with the adjoining properties to the east and west; and traffic impacts that can be managed. Alternative options of reducing the height would result in bulkier buildings and further loss of deep soil zones which are not considered to be better design outcomes for the site."*
56. The Department stated in its EAR that *"the bulk and scale of the proposal is appropriate in the context of the site location and the constraints. The Department acknowledges the substantial benefits are associated with the proposed upgrade to the school facilities and considers the proposed height exceedances have been well justified in terms of the objectives of the development standard and can be supported."*
57. In relation to visual privacy, the Department stated in its EAR that *"given the proposed roof features and the provisions for access, the roof is likely to be used regularly and may adversely impact on the privacy of the resident on the uppermost level of No. 111 Carabella Street, facing the roof (Unit No. 9)."* Consequently, to protect the amenity unit No. 9/111 Carabella Street, the Department's EAR recommended, through conditions of consent, the deletion of the roof garden, its use and accessibility. Nevertheless, the Department concluded that *"the impact of the development on the amenity of the adjoining residents due to visual privacy and overshadowing is acceptable, subject to the above recommended conditions."*
58. In terms of the Stage 1 private view impacts on adjoining properties, the Department concluded in its EAR that *"given the scale of the development and the existing site constraints, the proposal was considered reasonable having regard to view impacts on the adjoining properties."*
59. The Department's EAR stated that in relation to the design and built form of Stage 1 that, *"On balance, the Department is satisfied that the proposed Stage 1 built form is a reasonable development outcome for the site subject to the implementation of the recommended mitigation measures to limit any impact on the adjoining residents due to privacy or view loss."*
60. On 11 September 2018, the Department provided to the Commission the Government Architect's (GA) advice dated 9 November 2017, and response to the RtS, dated 12 March 2018, on the proposed design of the development. The GA advice dated 9 November 2017 stated that *"In general we support the proposal for the Concept Plan and Stage 1 Development and commend the approaches adopted to support improved accessibility and wayfinding throughout the site,"* and made various recommendations for the applicant to provide further information on privacy issues, design and LEP compliance.
61. On 18 September 2018 the Department provided to the Commission the final advice from the GA, dated 18 September 2018, stating that, *"the proponent has worked towards resolving issues of height and view loss and has significantly improved the proposal."*
62. In its response to the Commission's request 18 September 2018, the Department stated in its response dated 24 September 2018, the following in relation to conditions B5, E17, F8 and F9: *"Condition B5(a) and (c) - ...The Applicant states that the usage of the roof would be restricted to occasional quiet activities. The nature and extent of such activities is unclear... use of the roof-top by the students may result in potential amenity impacts on the occupants of No. 9/111 Carabella Street in terms of visual and acoustic privacy (due to roof usage) and therefore would not comply with*

*Design Principle 5 of the Education SEPP... The roof garden would provide minimal additional amenity to the neighbours, given its distance from the affected unit (No.9). However, if the roof garden is removed, then the finished floor level of the roof would be reduced by 500 – 600mm. This would partially restore the sky view available to the occupants of Unit 9/111 Carabella Street.*

*The Department agrees that Condition B5(d) can be reworded to reduce the height of the balustrade to be the minimum required by Building Code of Australia and the balustrade material to be transparent.*

*Condition B5(e) and (f) - The lift opening on the northern side is not required if access to roof top is restricted. The submitted plans indicate that alternate equitable access between the Marian Centre and the proposed learning hub are available on other floors. An equitable access is not required for maintenance purpose and the fire stairs provide emergency access in accordance with the Building Code of Australia requirements.*

*The adjoining neighbour has objected to this development on the basis of adverse impacts on visual privacy and this condition would partially address this submission.”*

#### *Commission’s Considerations*

63. The Commission notes that Clause 4.6(3) of the (Exceptions to Development Standards) of the NSLEP, requires the following:

*“(3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*

- (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
- (b) that there are sufficient environmental planning grounds to justify contravening the development standard.*

*(4) Development consent must not be granted for development that contravenes a development standard unless:*

- (a) the consent authority is satisfied that:*
  - (i) the applicant’s written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
  - (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
- (b) the concurrence of the Secretary has been obtained.”*

64. The Commission notes that the applicant has provided a justification to the above, in section 8 of its EIS, as discussed in paragraph 45-47; and that the Department supports the justification, as discussed in paragraph 55.

65. For the reason set out by the applicant in section 8 of its EIS and the Department in section 5.2.2 of its EAR; the Commission accepts the Department’s conclusion in paragraph 59, and finds that the development’s built form is reasonable for the site because:

- the applicant has adequately demonstrated that compliance with the development standard is unreasonable or unnecessary for the particularity of this development; and
- that there are sufficient environmental planning grounds to justify contravening the development standard.

66. In relation to visual privacy, the Commission does not agree with the Department's reasons, discussed in paragraph 62, namely that *"use of the roof-top by the students may result in potential amenity impacts on the occupants of No. 9/111 Carabella Street in terms of visual and acoustic privacy (due to roof usage)."* The Commission notes the applicant's comments in paragraph 52 that the roof garden *"would not be used as a play space;"* and that its intended use is to *"enable student and staff connectivity between the Learning Hub and the Marian Centre."* Therefore, the Commission finds that the roof garden should be retained because:

- student and staff connectivity between the Learning Hub and the Marian Centre would result in minor amenity impacts to 9/111 Carabella Street. The proposed conditions of consent F8-F15, and F21 of Schedule 3, provide restriction on usage of the roof-top to avoid adverse amenity impact on the surrounding residents;
- the lift overrun, stair and plant do not contribute to the loss of harbour views from 9/111 Carabella Street. The proposed condition of consent B5 of Schedule 3, restricts the height of the floor level of the roof garden to FFL 34.9; and
- removal of the roof garden would not improve the views for 9/111 Carabella Street.

#### *Applicant's request to amend the proposed conditions*

67. At the meeting held on 11 September 2018, the applicant requested a series of changes to the proposed conditions of consent, and the relocation of its bicycle parking area through a revised plan. Subsequently, the applicant formally requested the Commission on 14 September 2018 consider its proposed amendments to the Department's proposed conditions.

68. Apart from the Commission's consideration discussed in paragraphs 41 and 66, the Commission finds that these changes are mostly of an administrative nature and accepts the applicant's amendments to the conditions except the request to:

- delete conditions A3 and A5 of Schedule 2;
- part amendment of condition A17 of Schedule 3,
- amend condition F1 of Schedule 3,
- delete condition F2 of Schedule 3, and
- part deletion of condition E25 of Schedule 3.

69. The retention of the conditions above, as proposed by the Department, is to mitigate and manage the impacts of the development.

#### *Objects of the Act and Public Interest*

70. The Department's EAR provided an assessment on the objects of the EP&A Act and concluded that *"The proposal is consistent with the objects of the EP&A Act (including ESD principles);"* and states that the proposal:

- *"would not impact on the State's natural or other resources and would promote a better environment for the users;"*
- *"would facilitate redevelopment of the site for the continued use as an educational establishment and associated ancillary uses;"*
- *"includes replacement landscaping, which would provide for new habitat opportunities;"*
- *"responds appropriately to the heritage significance of the site and surroundings;"*
- *"would not impact on Aboriginal Cultural Heritage associated with the area;"*
- *"promotes good design that is consistent with the design principles associated with an educational establishment;"*
- *"would promote proper construction and maintenance of buildings subject to recommended conditions of consent;"*

- was publicly exhibited, which included “consultation with Council and other public authorities and consideration of their responses;” and “notifying adjoining landowners, placing a notice in newspapers and displaying the proposal on the Department’s website and at Council during the exhibition period.”

71. In relation to the principles of ecologically sustainable development (ESD, object (b)). The Department’s EAR stated that “The Department has considered the proposed development in relation to the ESD principles. The Precautionary and Inter-Generational Equity Principles have been applied in the decision making process by a thorough and rigorous assessment of the environmental impacts of the proposed development. The proposed development is located on a previously developed and disturbed site and would not result in the loss of any threatened or vulnerable species, populations, communities or significant habitats.

*Overall, the proposal is consistent with ESD principles and the Department considers the proposed sustainability initiatives would encourage ESD in accordance with the objects of the EP&A Act”*

72. In relation to the ‘public interest’, the Department concluded in its EAR that “the proposed development is in the public interest and no further action is required on this matter,” as it would “provide benefit for the future users of the site and the community by delivering state of the art contemporary teaching and learning facilities with more adaptable and collaborative learning spaces to improve educational outcomes.”

73. The Commission notes that the applicant is silent in its EIS, in how its development meets the objects of the EP&A Act, however the Commission notes that the Department has included a section in its EAR, in relation to the objects of the EP&A Act, including the ESD principle, as discussed in paragraphs 70 and 71.

74. The Commission finds that the proposal is consistent with the objects of the EP&A Act (including ESD principles), for the reasons discussed in paragraph 70 and 71.

75. The Commission accepts the Department’s assessment of the public interest as set out in paragraph 72, for the reasons given by the Department in paragraph 72; as it would “deliver state of the art contemporary teaching and learning facilities with more adaptable and collaborative learning spaces to improve educational outcomes.” The Commission therefore finds the development is in the public interest.

#### *Commission’s Determination*

76. The Commission has carefully considered the Material before it.

77. The Commission has determined to approve the development application, subject to the attached conditions of consent, for the following reasons:

- the development’s construction traffic impacts, parking impacts and operational traffic impacts are acceptable because of the reasons set out in paragraph 42;
- the Commission is satisfied with the applicant’s justification to vary the development standard meets Clause 4.6 of LEP 2013, as discussed in paragraphs 63-65;
- the development’s built form is reasonable for the site, as discussed in paragraph 65;
- the development would not result in the loss of any threatened or vulnerable species, populations, communities or significant habitats, and “would provide for new habitat opportunities” as outlined in paragraph 70; and
- the development meets the objects of the EP&A Act, as outlined in paragraph 70, 71, 73 and

- 74; and
- the development is in the public interest, as outlined in paragraph 75.

78. As noted above at paragraph 77, setting out decision, the Commission has determined that the consent should be approved subject to conditions. These conditions are designed to:

- prevent, minimise, and/or offset adverse environmental impacts including economic and social impacts;
- set standards and performance measures for acceptable environmental performance;
- require regular monitoring and reporting; and
- provide for the ongoing environmental management of the development.

79. The reasons for the Decision are given in this Statement of Reasons for Decision dated 02 October 2018.



Ilona Millar (Chair)  
**Member of the Commission**



Soo-Tee Cheong  
**Member of the Commission**

cc. The Hon. Anthony Roberts, MP  
Minister for Planning  
GPO Box 5341  
Sydney NSW 2001