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**SECTION 4.55(1A) MODIFICATION APPLICATION TO MODIFY SSDA 8669
ST ALOYSIUS' COLLEGE, KIRRIBILLI
47 UPPER PITT STREET, KIRRIBILLI**

Dear Sir/Madam

This Section 4.55(1A) Modification Application is submitted to the Department of Planning, Industry and Environment (DPIE) on behalf of St Aloysius' College (the College) in support of the amendments to **State Significant Development Application 8669 (SSDA 8669)** for Concept Master Plan and Stage 1 Built Form Approval at St Aloysius' College Kirribilli. In accordance with Section 4.55 (1A) of the *Environmental Planning and Assessment Act 1979* (EP&A Act), the proposed changes shall result in minor environmental impact for the reasons outlined throughout this report.

Approval for **SSD 8669** was granted 20 September 2019 for:

Concept proposal and first stage of works for the redevelopment of St Aloysius' College including:

- *Concept proposal for the staged redevelopment of the Junior, Senior and Main campuses including partial demolition, refurbishment and alterations and additions to existing buildings to provide new teaching and learning spaces and new multi-purpose/sports facilities.*
- *Stage 1 works, comprising:*
 - *Alterations and a ground floor addition to the Wyalla building on the Senior Campus and internal refurbishment and upgrades to existing teaching and learning facilities.*
 - *The demolition and rebuild of the north-east wing building on the Main Campus, construction of a new infill building in the existing quadrangle, and associated refurbishment of north wing, south wing, great hall and chapel.*

This application represents the first modification to **SSDA 8669** and is proposed in order to enhance the efficiency of the development. The purpose of this modification is to capture a proposed change to the College's activities. The College seeks to reform its academic program for 'senior' students (that being those in Years 11 and 12) so that part of the academic program involves three (3) days per fortnight in remote/online learning from their home. This will be achieved through a modification to the applicable conditions to ensure that the conditions are not prohibitive to the orderly and logical operations of the school and are not worded to restrict the number of students enrolled as a whole, for the College as opposed to the number of students physically allowed on-site.

The amendments sought have been assessed against the relevant legislation and policies and Section 4.55(1A) of the *Environmental Planning and Assessment Act 1979*.

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

- **Part A** Preliminary

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

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

- **Appendix 1** - Consent SSD 8669
- **Appendix 2** - Revised Plan of Management
- **Appendix 3** - Legal Statement
- **Appendix 4** - Location of Surveillance Cameras

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PART A PRELIMINARY

1.1 INTRODUCTION

This application seeks consent for modifications to the approved **SSD 8669** pursuant to Section 4.55(1A) of the Environmental Planning & Assessment Act 1979. Specifically, the proposed modification seeks consent to amend conditions to ensure that the conditions are not prohibitive to the orderly and logical operation of the School.

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

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

(1A) Modifications involving minimal environmental impact

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

- (a) it is satisfied that the proposed modification is of minimal environmental impact, and*
- (b) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all) under this section, and*
- (c) it has notified the application in accordance with:*
 - (i) the regulations, if the regulations so require, or*
 - (ii) a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a*

This application represents the first modification to **SSDA 8669**, and is proposed in order to enhance the efficiency of the development. The purpose of this modification is to amend conditions to ensure that the conditions are not prohibitive to the orderly and logical function of the College. Specifically, the purpose of this modification is to capture a proposed change to the College's activities. The College seeks to reform its academic program for 'senior' students (that being those in Years 11 and 12) so that part of the academic program involves three (3) days per fortnight in remote/online learning from their home. This will be achieved through a modification to the applicable conditions to ensure that the conditions are not prohibitive to the orderly and logical operations of the school and are not worded to restrict the number of students enrolled as a whole, for the College as opposed to the number of students physically allowed on-site.

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

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1.2 SITE DESCRIPTION

St Aloysius' College is an independent, boys' day school that caters for Year 3 to Year 12 across three (3) campuses within Kirribilli. The staged development project, the subject of this application, relates to all three (3) campuses.

The proposal relates specifically to three (3) existing sites which form St Aloysius' College Junior Campus, Senior Campus and Main Campus. The subject sites are located within the North Sydney Local Government Area (LGA) and subject to the provisions of NSLEP 2013. The Site is within 1km drive of the North Sydney Commercial Core and 3km drive of Sydney Central Business District (CBD). Accordingly, the College is within reasonable proximity to a range of commercial premises, key office markets and retail centres.

The three (3) College Campus, and their proximity to one another can be seen in **Figure 1** below.



Figure 1. Aerial of St Aloysius' College Campuses

The local context surrounding St Aloysius' College in Kirribilli is predominantly residential and retail. The surrounding locality of each of the three (3) campus locations is comprised predominately of residential

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developments, ranging in scale from low to high density and typology of single and two (2) storey terraces, to residential flat buildings, as well as shop top housing. Kirribilli is characterised by its proximity to Sydney Harbour and high heritage significance within a leafy locality.

The College is located within close proximity to Milsons Point Train Station which is surrounded by local shops, shop top housing and public recreational areas. The locality slopes towards the waterfront which falls to the south and overlooks Sydney Harbour. Jeffreys Street Ferry Wharf provides connectivity to Circular Quay, Luna Park, Lane Cove, Darling Harbour, Manly and Parramatta.

Milsons Point Train Station provides public transport connectivity to areas along the T1 North Shore Line, and the greater Metropolitan Train Network. In addition, the College is sited adjacent to main arterial roads including the Pacific Highway and M1 which also feature several bus routes and contribute to the sites central connectivity throughout Sydney.

The existing campus, like many school campus developments, is characterised by a collection of buildings and facilities. A range of built form and building heights exists across the College, which is typical of an Educational Establishment.

1.3 DEVELOPMENT HISTORY

Approval for **SSD 8669** was granted 20 September 2019 for:

Concept proposal and first stage of works for the redevelopment of St Aloysius' College including:

- *Concept proposal for the staged redevelopment of the Junior, Senior and Main campuses including partial demolition, refurbishment and alterations and additions to existing buildings to provide new teaching and learning spaces and new multi-purpose/sports facilities.*
- *Stage 1 works, comprising:*
 - *Alterations and a ground floor addition to the Wyalla building on the Senior Campus and internal refurbishment and upgrades to existing teaching and learning facilities.*
 - *The demolition and rebuild of the north-east wing building on the Main Campus, construction of a new infill building in the existing quadrangle, and associated refurbishment of north wing, south wing, great hall and chapel.*

Review of **SSDA 8669** indicates that there is nothing which prevents the proposed modification from proceeding.

PART B PROPOSED DEVELOPMENT

2.1 PROPOSED MODIFICATIONS & JUSTIFICATION

We understand that St Aloysius' College seeks to amend the Development Consent **SSD 8669** to accommodate, amongst other things, increased student enrolment for the College. The increased enrolment will not result in additional students attending the School Site, which will continue to have an on-site student limit in accordance with Condition A8 and Condition A9 of **SSD 8669**, but rather, the School proposes to educate these additional students remotely, via audio-visual link or other suitable internet mechanisms (particularly during and after the COVID-19 pandemic).

Conditions A8 and A9 state:

Student and Staff Numbers

- A8 The student population and associated full time equivalent staff numbers of the site must not exceed 1244 and 176 respectively*
- A9 Notwithstanding condition A8, the maximum student population may exceed 1244 by up to a maximum 20 additional students from time to time, to allow for unanticipated fluctuations on a temporary basis.*

In accordance with the legal advice prepared by Addisons (**Appendix 3**), Condition A8 and A9 were only intended to operate to restrict the number of students and staff physically on the School Site at any one time, not the number of students that can be enrolled at St Aloysius' College.

As such, the DPIE can be comfortable that an amendment to Conditions A8 and A9 of the Consent which makes it clear that those conditions do not intend to restrict overall enrolment at the School, but rather only intend to restrict the number of students physically attending the School, would not undermine or wind back the intention of those conditions as currently imposed.

The number of students entering and exiting the Site will be monitored through a controlled technology solution that uses specialised cameras to count in and out student and staff numbers at various locations around the College. These count numbers would be aggregated up to a single dashboard displaying the total count of individuals across the three campuses at any one time. **Appendix 4** identifies the proposed locations of the cameras across the three (3) campuses. It should be noted that the cameras perform facial detection on people that cross over the gate boundary. This technology is not facial recognition so would not correlate to a person. No data on facial detection is to be kept, and the technology would not impact on any public that walk past the gated areas (only those entering through the gates).

An updated Plan of Management accompanies this application as **Appendix 2**, to address the reformed academic program. Specifically, the PoM notes the following in relation to remote/online learning:

- Over the course of one timetabled cycle (10 days) each 'senior' school student (Year 11 and 12) would spend 3 days in a remote/online learning environment.
- This would equate to 100 students across both year groups on any one-day.
- In addition, teaching and support staff would also be provided with more flexible working arrangements to allow for approximately (on average) 10 additional staff members per day working from home.

Once again the number of students permitted on-site will not exceed the provisions prescribed in Conditions in A8 and A9 of **SSD 8669**.

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2.2 MODIFICATIONS TO CONDITIONS OF CONSENT

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

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

The desired development outcome as outlined above requires the following modifications to development consent **SSD 8669**:

Students and Numbers

Condition A8.

*The student population and associated full time equivalent staff numbers **physically attending** ~~of~~ the Site must not exceed 1244 and 176 respectively.*

Condition A9.

*Notwithstanding condition A8, the maximum student population **physically attending the Site** may exceed 1244 by up to a maximum 20 additional students from time to time, to allow for unanticipated fluctuations on a temporary basis.*

PART C LEGISLATIVE AND POLICY FRAMEWORK

3.1 ENVIRONMENTAL PLANNING & ASSESSMENT ACT 1979

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

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

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

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

The purpose of this modification is to capture a proposed change to the College's activities. The College seeks to reform its academic program for 'senior' students (that being those in Years 11 and 12) so that part of the academic program involves three (3) days per fortnight in remote/online learning from their home. This will be achieved through a modification to the applicable conditions to ensure that the conditions are not prohibitive to the orderly and logical operations of the school. Overall, the ultimate use, function and general appearance of the Site is consistent with that approved under **SSD 8669**.

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

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

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

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3.2 NORTH SYDNEY LOCAL ENVIRONMENTAL PLAN 2013

The Site is subject to the provisions of *North Sydney Local Environmental Plan 2013* (NSLEP 2013).

The proposed development relates to the existing and approved educational establishment on the Site, which is permitted with consent in the *SP2 Infrastructure (Educational Establishments)* and *R2 Low Density Residential* zone.

The proposal does not contravene any other objectives or provisions of NSLEP 2013. No further consideration is required.

3.3 NORTH SYDNEY DEVELOPMENT CONTROL PLAN 2013

The proposed modifications to the approval are considered to comply with the requirements of North Sydney Development Control Plan 2013 (NSDCP 2013) where relevant. No further consideration is required.

PART D KEY MATTERS FOR CONSIDERATION

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

4.1 LAND USE

The proposed will preserve the continued use of the Site as an educational establishment, consistent with **SSD 8669**.

As aforementioned, the increased enrolment will not result in additional students attending the School Site, which will continue to have an on-site student limit in accordance with Condition A8 and Condition A9 of **SSD 8669**, but rather, the School proposes to educate these additional students remotely, via audio-visual link or other suitable internet mechanisms (particularly during and after the COVID-19 pandemic).

The number of students entering and exiting the Site will be monitored through a controlled technology solution that uses specialised cameras to count in and out student and staff numbers at various locations around the College. These count numbers would be aggregated up to a single dashboard displaying the total count of individuals across the three campuses at any one time.

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

4.2 DESIGN AND APPEARANCE

The proposal remains consistent with the urban design principles established as part of **SSD 8669**.

4.3 OTHER MATTERS FOR CONSIDERATION

All other matters for consideration have been previously assessed as part of **SSD 8669** and remain unaffected by the proposed modifications.

4.4 LIKELY IMPACTS OF DEVELOPMENT

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

4.5 SUITABILITY OF SITE FOR DEVELOPMENT

The Site is considered suitable for development as established by the previous approval **SSD 8669**.

4.6 CONSISTENCY WITH REASONS FOR THE GRANT OF THE ORIGINAL CONSENT

In accordance with Section 4.55(3) of the EP&A Act, in determining an application for modification of a consent, the consent authority must take into consideration the reasons given by the consent authority for the grant of the consent that is sought to be modified. The proposed modifications are consistent with the reasons given by the Department of Planning in that:

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

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PART E CONCLUSION

In accordance with Section 4.55(1A) of the EP&A Act, the modified development will be substantially the same as the originally approved **SSD 8669**. This Section 4.55(1A) seeks to facilitate amendments in order to improve the functionality and operation of the College. The proposed modifications will not alter the environmental impacts assessed and approved as part of the original development consent, nor will they give rise to any additional adverse amenity impacts.

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

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

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

We trust that this information is sufficient to enable a prompt assessment of the proposed modification. Should you have any queries, please do not hesitate to contact the undersigned on 0499 888 691 or asmith@willowtp.com.au.

Yours faithfully,



Ashleigh Smith
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