



Cranbrook School Redevelopment Modification 3

State Significant Development Modification Assessment (SSD-8812-Mod-3)

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Cover image: 3D view of the Cranbrook School Redevelopment (Source: SSD 8812 Architectural plans)

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Glossary

Abbreviation	Definition
Applicant	Cranbrook School
Council	Woollahra Municipal Council
Department	Department of Planning and Environment
EP&A Act	<i>Environmental Planning and Assessment Act 1979</i>
EP&A Regulation	Environmental Planning and Assessment Regulation 2000
Minister	Minister for Planning
Planning Secretary	Secretary of the Department of Planning and Environment
Roads Act	<i>Roads Act 1993</i>
SSD	State Significant Development

Contents

1	Introduction	1
1.1	Background	1
1.2	Approval history.....	2
2	Proposed modification	4
2.1	Design amendments	4
2.2	Indemnity provisions	4
3	Strategic context	5
4	Statutory context	6
4.1	Scope of modifications	6
4.2	Consent authority	6
4.3	Mandatory matters for consideration	6
5	Engagement	8
5.1	Department’s engagement.....	8
5.2	Request for information.....	8
6	Assessment	10
6.1	Design amendments	10
6.2	Indemnity provisions	10
7	Evaluation	12
8	Recommendation	13
9	Determination	14
	Appendices	15
	Appendix A – List of Documents.....	15
	Appendix B – Instrument of Modification	15

1 Introduction

This report provides the NSW Department of Planning and Environment's (the Department's) assessment of an application to modify the State Significant Development (SSD) consent for the approved Cranbrook School Redevelopment Modification 3(SSD-8812-Mod-3).

The modification application proposes minor design amendments to the approved loading bay, pram ramp and boundary fence located adjacent to Rose Bay Avenue and seeks to remove the indemnity provisions required in the conditions of consent.

The modification application has been lodged by Urbis Pty Ltd on behalf of the Cranbrook School (the Applicant) pursuant to section 4.55(1A) of the *Environmental Planning and Assessment Act 1979* (EP&A Act).

1.1 Background

The Cranbrook School is located at 5 Victoria Road, Bellevue Hill (the site) in the Woollahra Local Government Area and is approximately 4 kilometres (km) east of the Sydney Central Business District (CBD).

The site is legally described as Lot 1 in DP 663630, Lots 9-18 in DP 9005 and Lots A-C in DP 186768 and has an area of approximately 4.3 hectares. The site in its regional context is shown in **Figure 1**.

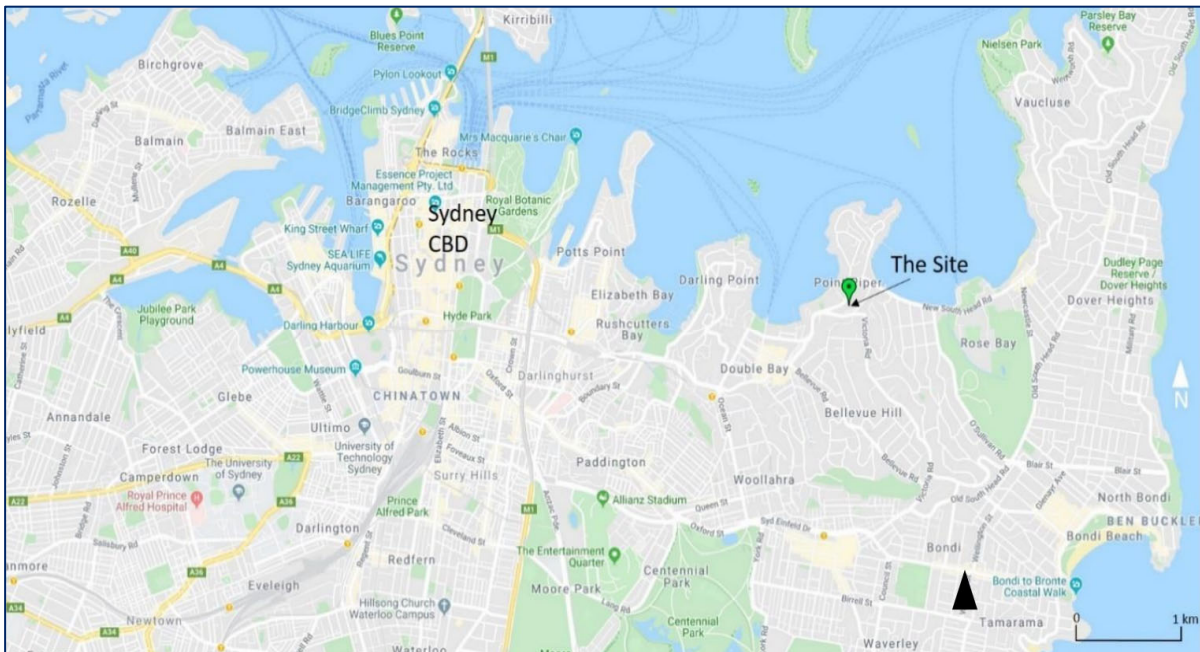


Figure 1 | Site location (Source: Google Maps 2020)

The Cranbrook School is listed as a local heritage item (Item 44) under Schedule 5 of the Woollahra Local Environmental Plan 2014. The site is characterised by a range of buildings with heritage values and some modern and contemporary buildings. The school buildings are generally located in the southern portion of the site, with the Hordern Oval located at the northern extent.

The main vehicular and pedestrian access to the campus is via Victoria Road and the main exit point is via a driveway to Rose Bay Avenue. Pedestrian access points are also provided from Rose Bay Avenue and New South Head Road.

New South Head Road borders the site to the north and west, Victoria Road to the south and Rose Bay Avenue to the east. Development surrounding the site is mostly comprised of low density residential with various waterfront uses in close proximity, including marinas and public swimming pools at nearby Rose Bay and Seven Shillings Beach. An aerial view of the site and surrounding area is shown in **Figure 2**.



Figure 2 | Aerial view of site and surrounds (Source: Modification Application)

1.2 Approval history

On 13 September 2019, development consent was granted by the Executive Director, Infrastructure Assessments for the redevelopment of the Cranbrook School (SSD 8812). The development consent permits the following works:

- site preparation works involving demolition of buildings and structures including the War Memorial Hall and Mansfield buildings, tree removal and site remediation.
- construction of the New Centenary Building teaching facility and school chapel.
- excavation of Hordern Oval to facilitate the construction of a subsurface car park and new Aquatic and Fitness Centre (AFC).
- new access driveway to the proposed carpark from the northern arm of Rose Bay Avenue.
- use of the internal driveway between Victoria Road and Rose Bay Avenue to accommodate an on campus 'kiss and ride' facility to reduce traffic congestion around the school.

- reinstatement of the Hordern Oval as a playing field.
- public domain, landscaping and general site improvements.

The development has been subject to several previous modification applications (see **Table 1**).

Table 1 | Summary of modifications

Mod No.	Summary of Modifications	Determining Authority	Type	Date
MOD 1	Deletion of a condition levying development contributions.	Department	4.55(1A)	2 July 2020 (Refused)
MOD 2	Minor design amendments to the Aquatic and Fitness Centre and Centenary Building.	Department	4.55(1A)	30 November 2020 (Approved)
MOD 4	Extensions to the approved operating hours of the Aquatic and Fitness Centre, Centenary Building and Hordern Oval.	Department	4.55(1A)	Under assessment

2 Proposed modification

The modification application proposed minor design modifications and to remove the indemnity provisions set out in the conditions of consent, as discussed in detail below.

2.1 Design amendments

Minor design amendments are proposed to the approved development, including the location of the:

- loading bay and layback adjacent the new Centenary Building on Rose Bay Avenue.
- pram ramp located adjacent to the loading bay.
- boundary fence along the north-eastern extent of Hordern Oval adjacent to Rose Bay Avenue.

The location of the proposed amendments are shown in **Figure 3**.

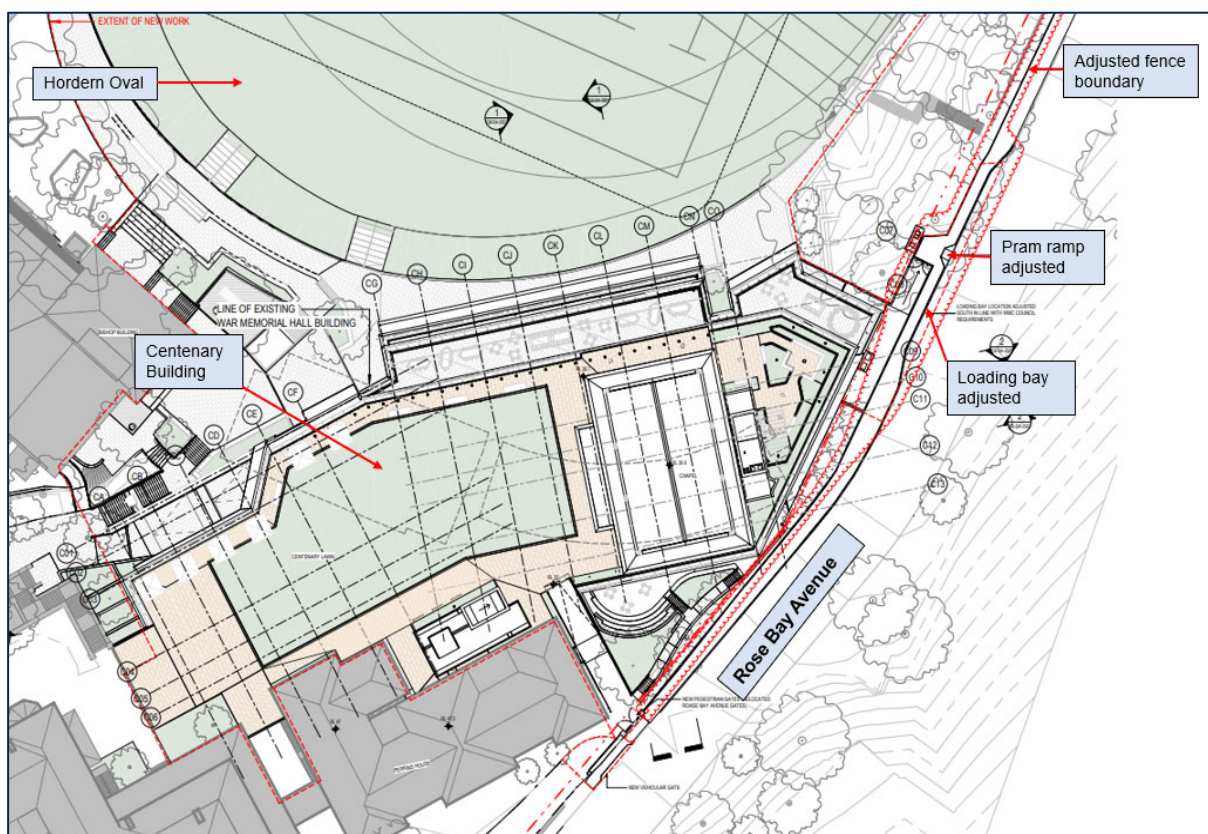


Figure 3 | Proposed design amendments, Cranbrook School (Source: Applicant's Modification Report 2021)

2.2 Indemnity provisions

Conditions E36 to E40 of the development consent require the Applicant to indemnify Woollahra Municipal Council (Council) against any claims associated with the works and/or areas that would be subject to positive covenants and easements.

The modification application seeks to amend the relevant conditions to remove the requirement to indemnify Council against any claims or actions relating to private structures and encroachments on Council-owned land and on-site stormwater detention systems.

3 Strategic context

The development, as modified, remains consistent with the assessment of the strategic context in the original application and would not alter the key components or outcomes of the proposal.

The Department considers the development, as modified, would remain consistent with the relevant provisions of the:

- Greater Sydney Region Plan, A Metropolis of Three Cities, as it would continue to provide improved school facilities to meet the growing needs of Sydney.
- NSW Future Transport Strategy 2056, as it would continue to provide a new educational facility close to existing public transport.
- The Eastern City District Plan, as it would continue to support the provision of services and social infrastructure to meet the changing needs of the school.

4 Statutory context

4.1 Scope of modifications

The Department has reviewed the scope of the modification application and considers that the application can be characterised as a modification involving minimal environmental impacts as the proposal:

- would not significantly increase the environmental impacts of the project as approved.
- is substantially the same development as originally approved.
- would not involve any significant disturbance outside the already approved disturbance areas for the project.

Therefore, the Department is satisfied the proposed modification is within the scope of section 4.55(1A) of the EP&A Act and does not constitute a new development application.

Accordingly, the Department considers that the application should be assessed and determined under section 4.55(1A) of the EP&A Act rather than requiring a new development application to be lodged.

4.2 Consent authority

Minster's delegate as consent authority

The Minister for Planning (the Minister) is the consent authority for the application under section 4.5(a) of the EP&A Act. However, under the Minister's delegation dated 9 March 2022, the Team Leader, School Infrastructure Assessments, may determine the application as:

- the relevant local Council has not made an objection.
- a political disclosure statement has not been made.
- there were no public submissions by way of objection.

4.3 Mandatory matters for consideration

Section 4.55(1A) of the EP&A Act requires the matters listed in **Table 2** to be considered for a modification application involving minimal environmental impact.

Table 2 | Consideration of the proposal against the objects of the EP&A Act

Matter	Consideration
Whether the proposed modification is of minimal environmental impact	The proposed modification is considered to be of minimal environmental impact and would not involve any significant impacts outside of the approved disturbance areas.
Whether the development to which the consent as modified related is substantially the same development	The development, as proposed to be modified, is considered to be substantially the same

Matter	Consideration
	development for which the consent was originally granted.
Whether notification has occurred, and any submissions have been considered	<p>In accordance with the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation) (applicable at the time of lodgement), the notification requirements for an application under section 4.55(1A) of the EP&A Act do not apply if the application is in respect of SSD. Accordingly, the application was not formally notified or advertised.</p> <p>However, the modification application was referred to Council for comment and was made publicly available on the Department's website.</p> <p>The Department's engagement is discussed further in Section 5.</p>
Any submission made concerning the proposed modification has been considered	A submission was received Council and has been considered by the Department as part of its assessment of the modification application in Section 6 .
Any relevant provisions of section 4.15(1) of the EP&A Act	<p>The Department conducted a comprehensive assessment of the project against the mandatory matters for consideration as part of the original assessment of SSD-8812.</p> <p>The Department considers that the modification application does not result in any significant changes that would alter the conclusions made as part of that assessment.</p>
Consideration of the reasons for the granting of the consent that is sought to be modified	The Department has considered the findings and recommendations of the Department's Assessment Report for SSD-8812. The Department is satisfied that the key reasons for granting consent continue to apply to the development, as proposed to be modified.

5 Engagement

5.1 Department's engagement

Clause 117(3B) of the EP&A Regulation specifies that the notification requirements for an application under section 4.55(1A) of the EP&A Act do not apply if the application is in respect of SSD. The modification application was, therefore, not formally notified or advertised.

However, it was made publicly available on the Department's website and was referred to Council for comment. No submissions were received from the public.

The Department has considered the comments raised by Council as part of its assessment of the modification application (**Section 6**) and by way of recommended conditions in the instrument of modification (**Appendix B**). The comments received from Council are summarised below.

Council

Council reviewed the modification report and confirmed that it had no objection to the proposed design changes to the loading bay and layback on Rose Bay Avenue, the adjustments to the pram ramp and relocation of boundary fencing.

Department undertook extensive consultation with Council regarding the requirement of the indemnity provisions. Following the consultation, Council accepted the proposed amendments to Conditions E36 to E40 of the development consent.

During the consultation, Council advised that additional requirements should be incorporated in the conditions to create easements and make allowances for monetary compensations. However, following meetings with the Department, Council agreed to remove these additional requirements.

5.2 Request for information

On 13 December 2021, the Department requested further information from the Applicant, including clarifications on the amended plans that were referenced in the Applicant's Modification Report.

On 21 December 2021, the Applicant provided a response to the Department's request for information (**Appendix A**) which included the submission of an amended Modification Report with amended plan references.

As discussed in **Section 5.1**, in December 2021, Department sought further comments from Council regarding the wording of the modified conditions. In response, Council requested that the word 'reasonable expenses' be removed and replaced by 'Council's expenses' to allow Council to claim the applicable costs in the future. Additionally, Council also include some additional requests requiring the Applicant to:

- create an easement burdening the site and benefitting Council, in relation to encroachment of private structures on Council-owned land.
- provide monetary compensation to Council for the easement.

Council advised that the above requirements would ensure that the conditions aligned with ongoing negotiations (outside of the scope of the modification application) between Council and the Applicant in relation to monetary compensations and easements under the *Roads Act 1993* (Roads Act).

In February 2021, the Applicant did not agree to Council's requests and advised that the original intent of the modification would not be maintained if these additional requirements were included. The Applicant also advised that the creation of easements was unnecessary. The Applicant requested that the amendments to the conditions be retained, as originally proposed.

Following comments from the Applicant, the Department arranged a meeting with Council on 4 March 2022. At this meeting, Council agreed that the easement creation and/or monetary compensation was a separate matter and could be addressed under the Roads Act or other legislative provisions.

The Department received Council's amended comments on the modification application, in March 2022.

The Department undertook further consultation with Applicant regarding the proposed modifications and the Applicant agreed to the suggested amendments from the Department on 21 March 2022.

6 Assessment

The Department has considered the modification application in the context of the approved development (SSD-8812) in its assessment. Consideration of the proposed amendments are discussed below.

6.1 Design amendments

The modification application proposed minor amendments to the design of the loading bay, pram ramp and boundary fence adjacent to Rose Bay Avenue.

The Applicant's modification report stated that the proposed changes are required to reflect the ongoing design development and ensure alignment with the works recently approved by Council under Section 138 of the Roads Act. The location of the design amendments, shown in context to the approved development, are indicated in **Figure 3** above.

Council advised that it had no objection to the proposed design amendments.

Department's consideration

The Department has reviewed the design amendments and considers that the proposed modification is consistent with the works approved by Council under Section 138 of the Roads Act in July 2021. The amendments are considered minor in nature and no environmental impacts are anticipated as a result of the modification. The Department therefore supports the proposed minor design amendments to the approved development.

6.2 Indemnity provisions

Conditions E36 to E40 of the development consent requires the Applicant to indemnify Council against claims associated with the works/areas that would be subject to registered positive covenants and easements. The modification application proposes to remove the indemnity requirements required by the conditions as well as modify the requirements to pay all of Council's expenses with 'reasonable' expenses.

The Applicant provided legal advice prepared by Colin, Biggers and Paisley Lawyers as part of the modification application. The legal advice stated that the Applicant had no concerns in registering the covenants and easements required by the conditions of consent. However, the requirement for an indemnity as part of these encumbrances on title precluded the Applicant from obtaining insurance to cover the risk imposed through such indemnities. The imposition of such indemnities imposed by the conditions of consent was therefore considered to be unreasonable.

As discussed in **Section 5**, following extensive consultation, Council agreed to the requested amendment. However, Council advised that the word 'reasonable' should be removed and that all costs should be paid.

Department's consideration

The Department has considered the Applicant's justification for the proposed amendments to Conditions E36 to E40, including the supporting legal advice and Council's comments on the modification application.

The Department accepts that the indemnity provisions imposed through the conditions of consent may unreasonably preclude the Applicant from obtaining insurance to protect against claims or actions associated with any private structures and encroachments on Council's public road reserve, and in association with the on-site stormwater drainage systems.

The Department notes that the Applicant's obligations to enter into a legal agreement with Council and to register the relevant covenants and easements in favour of Council would be retained as part of the conditions of consent. Accordingly, the Department supports the proposed amendments to Conditions E36 to E40.

The Department also notes Council's request regarding the payment of expenses. However, the Department supports the Applicant's request that 'reasonable' expense should be claimed, and the conditions are recommended to be modified to this effect.

The Department has also recommended further amendments to Conditions E36 to E40 to simplify the Applicant's obligations in response to the timing of registration of the positive covenants and easements. Both the Applicant and Council have agreed to the proposed amendments to the wording of the conditions.

7 Evaluation

The Department has reviewed the Applicant's Modification Report, the response to the Department's request for information and assessed the merits of the modified proposal. The Department is satisfied that all environmental issues associated with the proposal have been thoroughly addressed.

The approved development would not significantly change as a result of the proposed modification. The proposed modification would not impact upon the environmental amenity of the surrounding area and the development would remain consistent with the original development consent. Further, the Department's existing conditions of consent and the recommended conditions of consent would ensure the ongoing environmental management of the development.

The Department considers that the application is consistent with the objects of the EP&A Act and continues to be consistent with strategic directions for the State.

The Department concludes the impacts of the proposed modification are acceptable. Consequently, the Department considers the development is in the public interest and the modification application should be approved.

8 Recommendation

It is recommended that the Team Leader, School Infrastructure Assessments, as delegate of the Minister for Planning:

- **considers** the findings and recommendations of this report.
- **determines** that the application SSD-8812-Mod-3 falls within the scope of section 4.55(1A) of the EP&A Act.
- **accepts and adopts** all of the findings and recommendations in this report as the reasons for making the decision to approve the modification.
- **modify** the consent SSD-8812.
- **signs** the attached instrument of approval of the modification (**Appendix B**).

Prepared by:



Nima Salek
Planning Officer
School Infrastructure Assessments

Recommended by:



Brent Devine
Principal Planner
School Infrastructure Assessments

9 Determination

The recommendation is **adopted** by:

A handwritten signature in black ink that reads "A. Coomar". The signature is written in a cursive style with a large initial 'A'.

Aditi Coomar

Team Leader

School Infrastructure Assessments

as delegate of the Minister for Planning

Appendices

Appendix A – List of Documents

1. Applicant's Modification Report

<http://mpweb.planningportal.nsw.gov.au/major-projects/project/42646>

2. Applicant's Response to Request for Information

<http://mpweb.planningportal.nsw.gov.au/major-projects/project/42646>

Appendix B – Instrument of Modification

<http://mpweb.planningportal.nsw.gov.au/major-projects/project/42646>