

## ASSESSMENT REPORT

### Section 96(1A) Modification Arthur Philip High School and Parramatta Public School (SSD 7237 MOD 1)

#### 1. INTRODUCTION

This report is an assessment of an application to modify State Significant Development Approval (SSD 7237) for the redevelopment of Arthur Philip High School (APHS) and Parramatta Public School (PPS), Parramatta, in the Parramatta local government area (LGA). The request has been lodged by Mecone (on behalf of the NSW Department of Education) pursuant to section 96(1A) of the *Environmental Planning and Assessment Act 1979* (EP&A Act).

The application seeks approval to modify site contamination conditions B9 and B10 to facilitate a staged approach to remediation works to enable the archaeology investigation requirements of condition B5 to be satisfied.

#### 2. SUBJECT SITE

The APHS site is located on the northern side of Macquarie Street and the PPS site is located on the southern side of Macquarie Street, as shown in **Figure 1**.



**Figure 1:** Existing site layout (source: [www.nearmap.com](http://www.nearmap.com))

### 3. SITE HISTORY

On 15 December 2016, the Executive Director, Priority Projects Assessments, as delegate of the Minister for Planning, granted approval to SSD 7237 for the redevelopment of APHS and PPS campuses, involving:

- remediation, demolition of existing buildings and structures;
- retention and revitalisation of existing heritage items;
- construction of a new 17 storey 'vertical' school and two storey sports complex for the Arthur Phillip High School; and
- construction of a new four storey U-shaped building for Parramatta Public School.

### 4. PROPOSED MODIFICATION

On 3 February 2017, the Applicant submitted a section 96(1A) modification application seeking approval to amend conditions B9 and B10 to facilitate a staged approach to remediation works to enable the archaeology investigation requirements of condition B5 to be satisfied.

The conditions currently read as follows:

*B9.*

- a) Remediation approved as part of this development consent, and any further investigations required following the demolition of existing buildings and structures, shall be carried out in accordance with the Remediation Action Plan, Arthur Phillip High School and Parramatta Public School, Macquarie Street, Parramatta prepared by Douglas Partners and dated November 2016, except where required to be amended by the Auditor's Comments contained in the Interim Advice No.3 (page No.4), prepared by Zoic Environment Pty Ltd, dated 23 November 2016.*
- b) Where the preferred remedial method for friable asbestos involves a covering layer, a subsurface marking layer must be installed to highlight the existence of asbestos contaminated material, and a long-term Environmental Management Plan prepared for the development site to mitigate against risks in relation to any future intrusive maintenance work in the impacted area. The Applicant must ensure that Council is formally notified of the Environmental Management Plan for inclusion in its records and on certificates it may issue under section 149(5) of the EP&A Act.*

*B10 Upon completion of remedial works, the Applicant shall submit a Site Audit Report and Section A Site Audit Statement for the relevant part of the site, or staged where relevant, prepared by a NSW EPA accredited Site Auditor. The Site Audit Report and Section A Site Audit Statement shall verify the relevant part of the site is suitable for the education land use and be provided to the satisfaction of the Certifying Authority prior to the commencement of works (not including the demolition of existing buildings and structures).*

Conditions B9 and B10 are proposed to be amended by the deletion of the ~~struck-out~~ words and the inclusion of the **bold and underlined** words as follows:

*B9.*

- a) Remediation approved as part of this development consent, and any further investigations required following the demolition of existing buildings and structures, shall be carried out in accordance with the Remediation Action Plan, Arthur Phillip High School and Parramatta Public School, Macquarie Street, Parramatta prepared by Douglas Partners and dated November 2016, except where required to be amended by the Auditor's Comments contained in the Interim Advice No.3 (page No.4), prepared by Zoic Environment Pty Ltd, dated 23 November 2016. **To facilitate the implementation of the Remediation Action Plan and to protect Archaeology, a Method Statement (or similar) shall be prepared in accordance with condition B5, and approved by the Site Auditor by issuing of Interim Advice, prior to commencement of each stage of remediation.***
- b) Where the preferred remedial method for friable asbestos involves a covering layer, a subsurface marking layer must be installed to highlight the existence of asbestos*

contaminated material, and a long-term Environmental Management Plan prepared for the development site to mitigate against risks in relation to any future intrusive maintenance work in the impacted area. The Applicant must ensure that Council is formally notified of the Environmental Management Plan for inclusion in its records and on certificates it may issue under section 149(5) of the EP&A Act.

*B10. Upon completion of remedial works, the Applicant shall submit a Site Audit Report and Section A Site Audit Statement for the relevant part of the site, or staged where relevant, prepared by a NSW EPA accredited Site Auditor. The Site Audit Report and Section A Site Audit Statement shall verify the relevant part of the site is suitable for the education land use and be provided to the satisfaction of the Certifying Authority ~~prior to the commencement of works (not including the demolition of existing buildings and structures)~~ **following the completion of remediation works for the relevant part of the site, or stage.***

## 5. STATUTORY CONSIDERATION

### 5.1 Modification of Approval

Section 96(1A) of the EP&A Act requires the consent authority to be satisfied that the matters in **Table 1** are addressed in respect of all applications that seek modification approvals:

**Table 1: Section 96(1A) matters for consideration**

<b>Section 96(1A) matters for consideration</b>	<b>Comment</b>
That the proposed modification is of minimal environmental impact.	<b>Section 6</b> of this report provides an assessment of the impacts associated with the proposal. The Department is satisfied that the proposed modifications will have minimal environmental impacts.
That the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all).	The proposal does not seek to change the approved nature of remediation works, only to permit the works to be carried out in staged manner to allow the archaeology investigation requirements of condition B5 to be satisfied. On this basis, the proposal would result in development that is substantially the same as originally approved development.
The application has been notified in accordance with the regulations.	The modification application has been notified in accordance with the regulations. Details of the notification are provided in <b>Section 5.4</b> of this report.
Any submission made concerning the proposed modification has been considered.	The Department received submission from the Office of Environment and Heritage, the Heritage Council of NSW and the NSW Environment Protection Authority. Details of the consultation are provided in <b>Section 5.4</b> of this report.

### 5.2 Environmental Planning Instruments (EPIs)

The following EPIs are relevant to the application:

- *State Environmental Planning Policies (State and Regional Development) 2011;*
- *State Environmental Planning Policy No. 55 – Remediation of Land;*
- *State Environmental Planning Policies (Infrastructure) 2007; and*
- *Parramatta Local Environmental Plan 2011 (PLEP 2011).*

The Department undertook a comprehensive assessment of the redevelopment against the above mentioned EPIs in its original assessment. The Department has considered the above EPIs and is satisfied that the modification is generally consistent with the EPIs.

### 5.3 Approval Authority

The Minister for Planning is the approval authority for the application. However, under delegation dated 16 February 2015, the Director, Social and Other Infrastructure Assessments may determine the application as:

- the local council has not made an objection;

- a political disclosure statement has not been made; and
- there are no public submissions in the nature of objections.

#### 5.4 Consultation

The Department made the modification application publicly available on its website and referred the application to the City of Parramatta (Council), the Office of Environment and Heritage (OEH), the Heritage Council of NSW (Heritage Council) and the NSW Environment Protection Authority (EPA). Given the minor nature of the modification request, it was not advertised or notified to any other agencies.

No submission was received from **Council** raising objection to the modification application.

OEH has advised that it has no comment to make in regard to the proposal.

**Heritage Council** supports the proposed modification and provided the following comments:

- conditions B9 and B10 as currently worded do not permit sequencing of contamination and archaeological works. This would provide a negative heritage impact, with archaeological information being unsuccessfully investigated and protected, and would result in non-compliance with conditions B5 and B6;
- the proposed modification of these conditions is supported as it would facilitate the timely and clear provision of archaeological investigations in accordance with Condition B5 and continue to provide appropriate archaeological management of the site; and
- no other heritage impacts would occur as a consequence of the proposed modification.

**EPA** raised no objection to the modification application and provided the following comments:

- the EPA anticipates that the site auditor accredited under the *Contaminated Land Management Act 1997* that has been engaged for the project would comply with the requirements of section 3.6 of the *Guidelines for the NSW Auditor Scheme (2<sup>nd</sup> Edition)*;
- if the site auditor is commissioned to undertake a single site audit involving a lengthy, multi-stage review, the site auditor must issue a site audit statement only when the process is complete. The site auditor may however provide written interim advice in the lead-up to issuing the final site audit statement at the end of the entire audit;
- any such interim advice must specify that the interim advice does not constitute a site audit report or statement, ensure consistency with EPA guidelines and policy, not pre-empt the conclusion to be drawn at the end of the site audit process, and clarify that a site audit statement will be issued at the end of the audit process; and
- if the auditor is expressly commissioned to provide a series of site audits for certain discrete, designated stages of a project, the auditor should issue a separate site audit statement for each of those audits.

No **public** submissions were received in relation to the modification application.

#### 6. ASSESSMENT

The applicant submits that the current wording of conditions B9 and B10 does not allow for the archaeology investigation requirements of condition B5 to be satisfied.

Condition B5 provides:

*"Prior to the commencement of any works (not including demolition of existing buildings and structures and remedial action works performed to the extent of avoiding state significant archaeological deposits and substantially intact archaeological evidence), archaeological testing shall be undertaken across areas of proposed harm to inform the detailed design for this site. Avoidance of state significant archaeological deposits and substantially intact archaeological evidence should be employed by the works.*

*Archaeological investigation should be undertaken in accordance with the ARD (Historical Archaeological Research Design) (updated in accordance with condition*



*B4), an excavation methodology and be directed by a suitably qualified and experienced excavation director who fulfils the Heritage Council's Excavation Directors Criteria for the excavation of State significant archaeological sites. Areas of state significant archaeology and substantially intact archaeological evidence shall be appropriately managed and avoided wherever possible in the design."*

The applicant has identified the need for the implementation of staged remediation in order to accommodate for the ongoing archaeological investigation requirements of condition B5. However, the applicant submits that condition B9, which requires the remediation works to be carried out in accordance with the Remediation Action Plan (RAP), and condition B10, which precludes capping from forming part of remediation works, are too inflexible to permit the necessary staged remediation.

Accordingly, the applicant proposes to amend conditions B9 and B10 to facilitate a staged approach to remediation works to enable condition B5 to be satisfied.

### 6.1 Amendment to Condition B9

The applicant submits that the approved RAP permits remediation to be carried out in a single phase of operations. Accordingly, the modification application seeks to amend B9(a), which currently requires remediation works (and any further investigations following the demolition of buildings and structures) to be conducted in accordance with the approved RAP dated November 2016, as amended by the Auditors Comments at page 4 of the Interim Advice No 3 (Interim Advice No 3) dated 16 November 2016.

However, the Department notes that the RAP states at Section 10.3 that:

*"It is understood that remediation works will be staged, and will commence at the eastern portion of the APHS-N sub-site, and then progress to the western portion of the APHS-N sub-site. Remediation at the APHS-S and PPS sub-sites are currently scheduled to occur after those at the APHS-N sub-site."*

The sub-sites referenced in the RAP are illustrated in **Figure 2**.



**Figure 2: RAP Sub-sites (Source: RAP dated November 2016)**

Interim Advice No 3 does not amend the above section of the RAP. Accordingly, the Department is of the view that the approved RAP permits staged remediation.

Notwithstanding the above, the Applicant submits that condition B5 currently prevents the approved RAP, as amended by Interim Advice No 3, from being implemented in the manner intended. Accordingly, the modification application proposes to amend condition B9 to require that a Method Statement (or similar) be prepared in accordance with condition B5 and approved by the Site Auditor by the issuing of Interim Advice, prior to commencement of each stage of remediation.

The Department notes that Appendix 1 to the modification application proposes that Site Audit Reports and Section A Site Audit Statements would be prepared for discrete quadrants of the site. It is proposed that Site Audit Reports and Section A Site Audit Statements would be prepared in the following sequence:

- the eastern portion of the APHS North sub-site (Quadrant 2);
- the western portion of the APHS North sub-site (Quadrant 1);
- the PPS sub-site (Quadrant 3); and
- the APHS South sub-site (Quadrant 4).

The Department is satisfied that the proposed quadrants and remediation sequence generally conforms to the staged remediation detailed in the approved RAP.

It is also proposed to amend condition B9 to require that a Method Statement (or similar) for each stage of remediation be prepared in accordance with condition B5 and approved by the Site Auditor by issuing of Interim Advice prior to the commencement of each stage of remediation works. Condition B5 requires that archaeological investigations to be undertaken in accordance with, inter alia, an excavation methodology. The Heritage Council advised it supports the proposed modification, commenting that the proposal would facilitate archaeological investigations in accordance with condition B5 and appropriate archaeological management of the site. Furthermore, the EPA raised no objection to the proposed modification, commenting that a site auditor may provide written interim advice in the lead-up to issuing the final Site Audit Statement(s). Council has no comment to make in regard to the proposal.

In light of the above, the Department is satisfied that the proposed amendments to condition B9 would permit staged remediation in a manner that enables condition B5 to be satisfied and that the proposed modification would result in substantially the same final remediation and archaeology investigation outcomes for the site as the originally approved development.

## **6.2 Amendment to Condition B10**

The remediation method identified in the approved RAP permits the on-site containment of soils containing bonded asbestos by way of capping. The applicant considers the installation of remedial capping to be the commencement of works for the purposes of condition B10. As the installation, validation and surveying of remedial capping is required prior to a Site Audit Report and Section A Site Audit Statement being issued, the applicant submits that it is not possible to issue a Site Audit Report and Section A Site Audit Statement prior to the commencement of works.

Accordingly, the modification application proposes to amend condition B10 by replacing 'commencement of works (not including the demolition of existing buildings and structures)' with 'occupation of the development' to allow for the completion of staged remediation works (including capping) prior to the submission of separate Site Audit Reports and Section A Site Audit Statements for each discrete quadrant of the site.

The EPA has no objection to modifying the condition to allow staged remediation works, commenting that if an auditor is expressly commissioned to provide a series of Site Audit Reports for discrete quadrants of the site, the auditor should issue separate Site Audit Statements for each of those Site Audit Reports. As the applicant proposes that a Site Audit Report and Section A Site Audit Statement would be issued for each discrete quadrant of the site, the Department is satisfied that the proposal would be consistent with EPA's comments. Furthermore, the Department notes that the proposed modification would not amend the

section of condition B10 that permits the submission of a Site Audit Report and Section A Site Audit Statement upon completion of remediation the for the relevant part of the site, or staged where relevant.

The Heritage Council supports the proposed modification and Council and OEH had no comment to make in regard to this aspect of the modification application.

Whilst the Department is supportive of the intent of the proposed modification to Condition B10, the revised wording as expressed by the applicant requires refinement. The Department considers the replacement of 'prior to the commencement of works (not including the demolition of existing buildings and structures)' with 'following the completion of remediation works for the relevant part of the site, or stage' to be a more suitable wording that would allow for the staged installation, validation and surveying of remedial capping and for the subsequent submission of a Site Audit Report and Section A Site Audit Statement for each discrete quadrant of the site prior to the occupation of the development. Furthermore, the Department is satisfied that the proposed modification would result in substantially the same final remediation and archaeology investigation outcomes for the site as the originally approved development.

## 7. CONCLUSION

The Department has assessed the modification application and supporting information in accordance with the relevant requirements of the EP&A Act. The Department's assessment concludes that the proposed modification is acceptable as it would:

- allow for the re-development of the site for educational and related uses for the benefit of the broader community;
- facilitate a staged approach to remediation works to enable condition B5 to be satisfied; and
- be subject to suitable conditions of consent that would appropriately manage and mitigate the heritage and contamination impacts associated with the proposal.

Consequently, it is recommended that the modification application be approved subject to the recommended conditions.

## 8. RECOMMENDATION

It is RECOMMENDED that the Director, Social and Other Infrastructure Assessments as delegate of the Minister for Planning:

- considers the findings and recommendations of this report;
- approves the application under section 96(1A), subject to conditions; and
- signs the notice of modification (**Appendix A**).

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Endorsed by:

  
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## **APPENDIX A: NOTICE OF MODIFICATION**

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The Notice of Modification can be found on the Department of Planning and Environment's website at:

[http://majorprojects.planning.nsw.gov.au/index.pl?action=view\\_job&job\\_id=8230](http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=8230)



## **APPENDIX B: SUPPORTING INFORMATION**

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The following supporting documents and supporting information to this assessment report can be found on the Department of Planning and Environment's website as follows:

1. Modification Request

[http://majorprojects.planning.nsw.gov.au/index.pl?action=view\\_job&job\\_id=8230](http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=8230)

2. Submissions

[http://majorprojects.planning.nsw.gov.au/index.pl?action=view\\_job&job\\_id=8230](http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=8230)