

21 August 2020
Our Ref: 20265D.2PS_s4.55



Department of Planning, Industry and Environment
Locked Bag 5022
Parramatta NSW 2124

planning consultants

Attention: Dimitri Gotsis

Dear Dimitri,

**RE: SECTION 4.55(1A) APPLICATION TO MODIFY
DEVELOPMENT CONSENT SSD-8926 – MOD 1
2 PERCY STREET, AUBURN**

1.0 Introduction

DFP has been commissioned by the Australian Turkish Maarif Foundation Limited to prepare an application under section 4.55(1A) of the *Environmental Planning and Assessment Act 1979* (EP&A Act) to modify conditions of development consent SSD-8926 (as modified) for the staged construction and operation of a new Kindergarten to Year 12 school (referred to herein as “Mod 1”).

The section 4.55(1A) application seeks to modify conditions relating to student and staff numbers in Stage 1 to allow for +39 additional students (while maintaining the student and staff numbers for subsequent stages) and include State Agency conditions not previously incorporated into the consent.

This letter has been prepared in support of the section 4.55(1A) application and includes the information necessary for Council to assess and determine the application including:

- A background outlining the approved development;
- Details and reasons for the proposed modifications;
- An environmental assessment; and
- Our conclusion and recommendations.

We have concluded that the proposed modification will not substantially alter the approved development and accordingly are considered to satisfy the requirements to enable these modifications to be approved by Council pursuant to section 4.55 of the EP&A Act.

The proposed modifications are unlikely to result in any adverse environmental impact and accordingly, we are of the view that the proposed modifications are acceptable in this particular instance.

2.0 Background

On 9 March 2020, the Department of Planning, Industry and Environment (DPIE) granted development consent to State Significant Development Application No. 8926 at 2 Percy Street, Auburn (the site) for:

Staged construction and operation of a new Kindergarten to Year 12 school, including:

- *Stage 1 comprising minor establishment works to facilitate occupation of part of an existing building as a primary school for 115 students and 12 full-time equivalent staff;*
- *Stage 2 comprising the construction and operation of a new primary school building to accommodate a maximum of 392 students and 28 full-time-equivalent staff;*
- *Stage 3A comprising alterations and additions to an existing building to facilitate operation of a high school to accommodate a maximum of 336 secondary students (accommodating a total of 728 primary and secondary students and 58 full-time equivalent staff on site in combination with Stage 2); and*
- *Stage 3B comprising redevelopment and operation of a new administration / office building associated works.*

Following the commencement of Stage 1, the school has experienced significant community interest in enrolments, and has also made arrangements to have access to outdoor play and school sport facilities at the neighbouring Wyatt Park and PCYC.

As the availability of play space to students has significantly improved and as the Stage 1 building is capable of accommodating additional students, the school now proposes to update the terms of the consent to enable Stage 1 to accommodate +39 students. This triggers a number of minor modifications to the consent.

Section 3.0 of this submission outlines the proposed modifications to the consent.

3.0 Proposed Modification

Under Mod 1, the school is seeking to modify the consent to:

- Include State Agency conditions not previously incorporated in the consent; and
- Amend student numbers to increase students at Stage 1 within the existing accommodation but maintain the existing maximum of 728 students for the development, as reflected in the updated Staging Report (**Attachment 1**).

The limitation of on-site play space was the primary influence for limiting student numbers during Stage 1. However, IMSA has arranged for agreements to utilise facilities at the neighbouring PCYC and Wyatt Park courts for school sport and outdoor play space, and so it is now sought to occupy the Stage 1 building to its fullest capacity in response to the strong community interest in enrolments.

The proposed modified conditions are as follows (~~omit~~ and ~~add~~):

Development Description: *Staged construction and operation of a new Kindergarten to Year 12 school, including:*

- *Stage 1 comprising minor establishment works to facilitate occupation of part of an existing building as a primary school for ~~115~~ 154 students and 12 full-time equivalent staff;*
- *Stage 2 comprising the construction and operation of a new primary school building to accommodate a maximum of 392 students and 28 full-time-equivalent staff;*
- *Stage 3A comprising alterations and additions to an existing building to facilitate operation of a high school to accommodate a maximum of 336 secondary students (accommodating a total of 728 primary and secondary students and 58 full-time equivalent staff on site in combination with Stage 2); and*

- *Stage 3B comprising redevelopment and operation of a new administration / office building associated works.*

Definitions:

- Stage 1** *Minor establishment works to facilitate occupation of part of an existing building and temporary operation as a primary school for a maximum of ~~115~~ 154 students and 12 full time equivalent staff and associated works as detailed in the Staging Report detailed by dfp consultants dated ~~14 February 2020~~ 20 August 2020.*
- Stage 2** *Construction and operation of a new primary school building to accommodate a maximum of 392 students and 28 full-time-equivalent staff and associated works as detailed in the Staging Report prepared by dfp consultants dated ~~14 February 2020~~ 20 August 2020.*
- Stage 3A** *Alterations and additions to an existing building to facilitate operation of a high school to accommodate a maximum of 336 secondary students (accommodating a total 728 primary and secondary students and 58 full-time equivalent staff on site in combination with Stage 2) and associated works as detailed in the Staging Report prepared by dfp consultants dated ~~14 February 2020~~ 20 August 2020.*
- Stage 3B** *Redevelopment and operation of a new administration / office building in conjunction with Stages 2 and 3A as detailed in the Staging Report prepared by dfp consultants dated ~~14 February 2020~~ 20 August 2020.*

A6. *The student population and associated full time equivalent staff numbers must not exceed:*

- (a) ~~115~~ 154 and 12 respectively during Stage 1;
- (b) 392 and 28 respectively for Stage 2; and
- (c) 728 and 48 respectively for Stage 3 and thereafter.

A11. *The project may be constructed and operated in stages in accordance with the terms/conditions of this consent and the Staging Report prepared by dfp consultants dated ~~14 February 2020~~ 20 August 2020 unless otherwise approved in writing by the Planning Secretary:*

Add State Agency Conditions not previously incorporated in the consent.

4.0 Statutory Provisions

Section 4.55 of the EP&A Act contains the provisions that must be considered by Council in determining an application to modify a Notice of Determination. In this regard, the relevant provision is section 4.55(1A) of the EP&A Act.

This application is lodged under section 4.55(1A) as the amendment proposed is considered to be minor in nature and will have only minimal environmental impact.

In addition to the EP&A Act, Clause 115 of the *Environmental Planning and Assessment Regulation 2000* (EP&A Regulation) contains the information that must be submitted with an application to modify a consent. The requirements under the EP&A Act and EP&A Regulation are detailed below.

4.1 Section 4.55(1A) of the Act

Section 4.55(1A) of the Act applies to modifications where a minimal environmental impact may occur. Specifically, section 4.55(1A) provides that a number of matters be addressed, as discussed 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”***

The proposed modification adjusts the staging of enrolments at the school, specifically for Stage 1. It will not result in any change to the total number of students approved (728). The limitation of on-site play space was the primary factor for limiting student numbers during Stage 1. However, IMSA has arranged for agreements to utilise facilities at the neighbouring PCYC and Wyatt Park courts for school sport and outdoor play space, and so it is now sought to occupy the Stage 1 building to its fullest capacity in response to the strong community interest in enrolments. Details of the proposed changes are discussed in more detail in the updated Staging Report at **Attachment 1**.

A traffic and parking statement has been prepared at **Attachment 2** which confirms that as there is no increase in staffing, no additional car or bicycle parking is required as a result of this amendment. The impact on the road network is also considered to be minor. (See further discussion at **Section 5.0**). Accordingly, the proposed modification is of minimal environmental impact.

- “(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)”***

The proposed modification seeks to include State Agency conditions not previously included in the consent and amend the staging of enrolments at the school. The increase in student numbers at Stage 1 will result in a redistribution of student numbers across Stage 1 and 2 but will not result in an increase to the total number of enrolments beyond Stage 2. Accordingly, the proposed modifications will result in a development that is substantially the same as the development for which consent was originally granted.

- “(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 modifications of a development consent,”

Notification is not required under the EP&A Regulation, but is at DPIE’s discretion.

- “(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”***

Should DPIE notify the subject application in accordance with section 4.55(1A)(c), it must consider any submissions made during a notification period.

Subsections (1), (2) and (5) of section 4.55 do not apply to the proposed modification. Subsection (3) is addressed in Section 5.0 of this submission.

4.2 Clause 115 of the EP&A Regulation 2000

Subclause 115(1) of the Regulation details the information required to be submitted with an application to modify a Development Consent under section 4.55. These details are contained in this letter and the accompanying application form.

5.0 Environmental Planning Assessment

Section 4.55(3) of the EP&A Act requires that such of the matters referred to in section 4.15(1) as are of relevance to the proposed modification must be taken into consideration in determining the application for modification. Accordingly, the following subsections provide an assessment of any such relevant matters.

The consent authority must also take into consideration the reasons given by the consent authority for the grant of the consent that is sought to be modified.

In evaluating the original development application, DPIE concluded:

The impacts of the development are acceptable and can be appropriately mitigated through the implementation of the recommended conditions of consent. Consequently, the Department considers the development is in the public interest and should be approved subject to conditions.

The proposed modification will have minimal environmental impacts and accordingly should not impact DPIE's conclusion.

5.1 Section 4.15(1)(a) – Planning Controls

5.1.1 Auburn Local Environmental Plan 2010

Table 1 Assessment against relevant provisions of Auburn LEP 2010

Provision	Assessment
Clause 2.3 Zone objectives and Land Use Table Objectives of zone <ul style="list-style-type: none"> To provide for infrastructure and related uses. To prevent development that is not compatible with or that may detract from the provision of infrastructure. 	The site is zoned IN2 – Light Industrial and educational establishments are prohibited. However, <i>Clause 4, Schedule 1 Additional Permitted Uses</i> of Auburn LEP states that development for the purpose of educational establishments is permitted with consent. Accordingly, the development is permissible and the modification does not rely on existing use rights.

5.1.2 Auburn Development Control Plan 2010

It is noted that Clause 11 of the State and Regional Development SEPP excludes the application of Development Control Plans to SSD DAs. Notwithstanding, **Table 2** provides a summary assessment of the proposed development against the provisions of Auburn DCP 2010 that may otherwise be deemed relevant.

Table 2 Assessment against Relevant Provisions of Auburn DCP 2010

Provision	Assessment	Consistent
Industrial Areas		
Access and car parking <ul style="list-style-type: none"> Ensure that the provision of off-street parking facilities does not detract from 	Off-street car parking is being provided in the existing car park on site during Stage 1 (only). No additional carparking is required as a result of this modification.	Yes

Table 2 Assessment against Relevant Provisions of Auburn DCP 2010

Provision	Assessment	Consistent
the visual character, particularly the streetscape		
Operational restrictions <ul style="list-style-type: none"> Manage operational hours to ensure residential amenity is protected; Provide an acoustic assessment of development 	<p>ATMF has prepared an updated Operational Management Plan (see Attachment 3). The school will operate from 8.00am till 4pm Monday-Friday, with administrative staff working from 7.00am till 6pm. Extra-curricular tutoring will be held on Saturdays between 9.00am and 5.00pm. Some school activities such as performances, presentation or parent/ teacher meetings will take place in the evenings.</p> <p>The acoustic assessment provided with the original application remains unchanged as a result of the proposed amendments to Stage 1.</p>	Yes
Other relevant sections		
Parking and Loading <ul style="list-style-type: none"> Primary Schools 1 space per 2 staff Secondary schools 1 space per 20 year 12 students + 1 space per 2 staff Parking areas shall comply with AS 2890 – Parking Facilities 	There is no change in staffing numbers, accordingly no additional car parking is required as a result of this proposal.	Yes
Waste <ul style="list-style-type: none"> Prepare a demolition and construction waste management plan; and Prepare an operational waste management plan 	An updated Waste Management Plan for Stage 1 has been provided at Attachment 4 , which confirms the existing waste storage is adequate.	Yes

5.2 Section 4.15(1)(b) – Natural and Built Environmental Impacts

5.2.1 Student Amenity

The proposed modification to increase student numbers will not impact on student amenity with regard to the availability of outdoor playspace as IMSA has arranged for agreements to utilise facilities at the neighbouring PCYC any Wyatt Park courts for school sport and outdoor play space. These spaces will be utilised by the school by splitting between on-site play space and off-site play spaces according to year groups, as reflected in the updated Operational Management Plan (**Attachment 3**).

In addition, the use of Wyatt Park netball courts for play space means that there will no longer be a requirement for split recess and lunch breaks, which improves acoustic amenity for students and neighbours as there is a single recess break and a single lunch break proposed.

5.2.2 Traffic and Parking

The traffic and parking assessment (**Attachment 2**) confirms that the modification will not require any additional car or bicycle parking during Stage 1 than already provided. Based on the travel mode share modelling done for the SSD, the increase in students will result in an additional 14 vehicle trips during the AM peak and the PM peak, a total of 28 additional vehicle movements per day. The traffic assessment concluded:

This increase is considered minor and is not expected to compromise the function of the surrounding road network.

5.3 Section 4.15(1)(b) – Social and Economic Impacts

The proposed modification seeks to bring forward the provision of school places based on current waiting lists. Accordingly, the modification will have positive social impacts.

5.4 Section 4.15(1)(c) – Suitability of the Site for Development

The site has existing approval for use as an educational establishment and has therefore been assessed as suitable.

5.5 Section 4.15(1)(d) – Submissions

Should DPIE notify the modification, it must consider any submissions.

5.6 Section 4.15(1)(e) – Public Interest

The proposed modification is considered to be in the public interest as it has positive social outcomes, maintains student amenity and has minimal environmental impacts.

6.0 Conclusion and Recommendations

This Mod 1 submission, accompanies an application under section 4.55(1A) of the EP&A Act to modify the development description, definitions, Condition A6 and include State Agency conditions previously omitted in SSD-8926. The proposal involves a minor modification to student numbers in Stage 1 to allow for +39 additional students to be accommodated on the site.

The modification will not substantially alter the approved development and accordingly, is considered to satisfy the requirements pursuant to section 4.55(1A) of the EP&A Act.

The proposed modifications are considered to have acceptable environmental impacts with regard to student amenity, school operations, traffic and parking.

Accordingly, we are of the view that the proposed modification is acceptable in this particular instance and can be approved under section 4.55(1A).

We would be pleased to discuss this application further with DPIE should that be required and if you have any queries, please do not hesitate to contact Penny Smith or Stephen Earp from our office.

Yours faithfully

DFP PLANNING PTY LTD



PENNY SMITH
PRINCIPAL PLANNER

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Reviewed:



Attachments:	1	Updated Staging Report
	2	Traffic and Parking Statement
	3	Revised Operational Management Plan
	4	Revised Waste Management Plan