

Notice of decision

Section 2.22 and clause 20 of Schedule 1 of the *Environmental Planning and Assessment Act 1979*

Application type	State significant development modification
Application number and project name	SSD-9343-Mod-4 Meadowbank Education and Employment Precinct Schools Project Modification 4
Applicant	Department of Education
Consent Authority	Minister for Planning

Decision

The Executive Director, Infrastructure Assessments, under delegation from the Minister for Planning and Public Spaces has, under 4.55(1A) of the *Environmental Planning and Assessment Act 1979* (**the Act**) modified the consent subject to conditions.

A copy of the instrument of modification and conditions is available [here](#).

A copy of the Department of Planning and Environment's assessment report is available at [here](#).

Date of decision

12 April 2022

Reasons for decision

The following matters were taken into consideration in making this decision:

- the relevant matters listed in section 4.15 of the Act and the additional matters listed in the statutory context section of the Department's Assessment Report;
- the prescribed matters under the *Environmental Planning and Assessment Regulation 2000*;
- the reasons given by the consent authority for the grant of the original consent;
- the objects of the Act;
- all information submitted with the modification application during the assessment and information considered in the Department's Assessment Report;
- the findings and recommendations in the Department's Assessment Report;
- the submissions made concerning the modification; and
- the views of the community about the project (see Attachment 1).

The findings and recommendations set out in the Department's Assessment Report were accepted and adopted as the reasons for making this decision.

The decision maker was satisfied that the modification is of minimal environmental impact and that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted.

The key reasons for granting the modification are as follows:

- it would allow the school to open as planned which is in the public interest;
- pedestrian safety would be adequately managed through the implementation of a Pedestrian Safety Management Strategy while the outstanding pedestrian infrastructure works are being completed the modification is permissible with consent, and is consistent with NSW Government policies including:
 - The Greater Sydney Region Plan, A Metropolis of Three Cities;
 - State Infrastructure Strategy 2018-2038;
 - New Future Transport Strategy 2056;
 - Central City District Plan;
- the impacts on the community and the environment can be appropriately minimised, managed or offset to an acceptable level, in accordance with applicable NSW Government policies and standards, as identified in the Department's Assessment Report; and
- the issues raised by the community including Council during consultation and in submissions have been considered and adequately addressed through changes to the modification and the conditions of consent.
- weighing all relevant considerations, the modification is in the public interest.

Attachment 1 – Consideration of Community Views

The Department exhibited the modification from 3 December 2021 to 15 January 2022 (43 days) and received 40 submissions including one from the City of Ryde (Council), of which 37 were objections and three were comments. The Department staff also visited the site and surrounding area.

The key issues raised by the community (including in submissions) and considered in the Department's Assessment Report and by the decision maker include pedestrian and cyclist safety, amenity impacts, errors in Applicant's submission, lack of consultation and the ability to modify Development Consent. Other issues are addressed in detail in the Department's Assessment Report.

Issue	Consideration
<p><i>Pedestrian and cyclist safety</i></p> <ul style="list-style-type: none"> Deletion of the public domain upgrade requirements presents an unacceptable safety risk. Existing path on Hermitage Road is not wide enough, unsafe and difficult to access. Existing traffic and driver behaviour in the area exacerbates the safety issue. Existing lighting is insufficient, and removal of the streetlight upgrade requirements exacerbates the safety issue. Physical barriers need to be constructed on Victoria Road to ensure school students utilise the correct pedestrian crossings and paths. Traffic light timing is too short on Victoria Road causing dangerous driving further exacerbating the safety issue. 	<p><i>Assessment</i></p> <ul style="list-style-type: none"> The Applicant revised the application in its Response to Submissions (RtS) to withdraw the request to delete conditions requiring pedestrian crossings and a path along the western side of Hermitage Road. The pedestrian crossings and Hermitage Road path to the western side of road will be provided which will ensure the safe and convenient passage of pedestrians. The original development consent also includes the implementation of a School Travel Plan that aims to reduce car trips and increase active transport including walking and cycling. Its implementation will assist in reducing traffic. The Applicant in its RtS revised the application to retain the condition relating to streetlighting upgrades where the development impacts existing streetlights. Any existing streetlights not impacted by the development fall outside of the scope of this modification application and the original conditions of consent. Changes to Victoria Road in terms of traffic light timing or physical barriers along the paths do not form part of this modification application and are outside the scope of the Department's assessment under Section 4.55 of the Act. <p><i>Conditions</i></p> <p>Prior to commencement of operation, a Pedestrian Safety Management Strategy must be prepared by a level 3 accredited Road Safety Auditor in consultation with Council and implemented to manage pedestrian safety until all outstanding pedestrian infrastructure upgrades are completed.</p>
<p><i>Amenity impacts</i></p> <ul style="list-style-type: none"> Further relaxation to the permitted hours of construction would adversely impact the resident's amenity 	<p><i>Assessment</i></p> <ul style="list-style-type: none"> The proposed modification to condition C5 would allow for the construction hours to be varied by the Planning Secretary if sufficient justification is provided, or to align with other legislation such as a Section 138 approval issued by Council under the Roads Act 1993. The purpose of the request to modify condition C5 is to include a mechanism in the consent to be used in the event that out of hours works are required, such as night works to complete works that cannot reasonably be undertaken during normal working hours. An example of this is construction work to the public domain that cannot be completed during the day as the disruption to local traffic and businesses would not be acceptable. The Department notes that the majority of the construction works have been completed. Any outstanding work required to be completed outside the approved construction hours would be limited and short term. The Department notes that the outstanding works with the longest construction program is the Hermitage Road footpath. There are no residential properties adjacent to the Hermitage Road footpath. Consequently, the Department considers the proposed modification is unlikely to unreasonably impact on the amenity of the surrounding area, subject to conditions. <p><i>Conditions</i></p> <p>If a variation to the construction hours is sought under proposed part (d) of condition C5, the Applicant is required to update the Construction Noise and Vibration Management Sub-Plan required by condition B14. The Construction Noise and Vibration Management Sub-Plan must be prepared by a qualified noise expert and include a number of mitigation measures.</p>

<p><i>Lack of consultation</i></p> <ul style="list-style-type: none"> Concerns of an inadequate means of obtaining community opinions as the Department of Education's project reference group (PRG) has non-disclosure agreement requirements. The process to make a submission on the Department's website is lengthy and difficult. Consequently, concerns raised that the number of submissions is not a true reflection of the community concerns. 	<p><i>Assessment</i></p> <ul style="list-style-type: none"> The PRG is an external process and does not form part of the SSD process and consultation requirements under the Act. The Applicant provided a Social Impact Assessment with the original SSD application which detailed pre-SSD consultation with the community and stakeholders including school employees, parents and the surrounding community. The Department publicly exhibited the proposal from 3 December 2021 to 15 January 2022 (43 days). Nearby and adjoining property owners and occupiers were notified as part of the public exhibition. The application was published on the Department's website and the Department accepts hard copy submissions as well as online submissions. The Department considers applications on their merits and issues raised in the submission details, not the number of submissions received. The Department exhibited the modification application in accordance with the requirements of Schedule 1 of the Act.
<p><i>Error in the Applicant's Submission</i></p> <ul style="list-style-type: none"> Concerns were raised that the Hermitage Road Active Transport Assessment is not a true reflection of the patronage that will utilise Hermitage Road. Concerns that services to be relocated are in fact simple and standard procedure and not complex as stated by the Applicant. 	<p><i>Assessment</i></p> <ul style="list-style-type: none"> The Hermitage Road Active Transport Assessment was prepared by a qualified and experienced Traffic Engineer with data used from student enrolments. The Applicant in the RtS provided the list of services required to be moved: three water pipes, five lots of cables/conduits and various telecommunication pits. The Department considers the documentation submitted with the modification application to be acceptable and that the works to relocate the services are considered extensive.
<p><i>Ability to modify Consent</i></p> <ul style="list-style-type: none"> Concerns regarding the ability of the Applicant and/or the Department to modify the Consent stating that the original conditions were required for a reason. 	<p><i>Assessment</i></p> <ul style="list-style-type: none"> Section 4.55 of the Act allows for modifications to development consents in certain instances. The modification application has been made and assessed in accordance with the provisions of 4.55(1A) of the EP&A Act. The Department is satisfied that the statutory considerations for the modification application have been met in accordance with the Act.