

09/07/21

Our Ref: 21-171 (SK/ BB)]

Ms Therese Manns
Randwick City Council
30 Frances Street
RANDWICK NSW 2031
council@randwick.nsw.gov.au

Dear Ms Manns,

RE: S4.55(1A) MODIFICATION APPLICATION TO DA/40/2020 IN RELATION TO 18-20 STANLEY STREET, RANDWICK – THE EMANUEL SCHOOL

This letter has been prepared for The Emanuel School by City Plan Strategy and Development Pty Ltd (City Plan) to accompany an application under Section 4.55(1A) of the *Environmental Planning and Assessment Act 1979* (the Act).

1. THE APPROVED DEVELOPMENT

Consent No DA/40/2020 was granted by the Sydney Eastern City Planning Panel for Randwick Council on 29 October 2020 for:

“Integrated development for concept plan approval to redevelop the Emanuel School site including increase in students from 785 to 920, Stage 1 works including demolition of the Adler building and part demolition of other structures to facilitate new three storey building (educational establishment) including landscaping and associated works (State Heritage Item and Heritage Conservation Area).”

The consent applies to land in Lots 1 and 2, DP 709332, known as 18-20 Stanley Street, Randwick. The overall site contains The Emanuel School.

2. PROPOSED MODIFICATION**2.1. Overview of Modifications**

This modification proposes to amend condition relating to the prohibition of students from driving to school on weekdays as prescribed in Condition 24 (d).

For context, condition 22 of the development consent requires the applicant to prepare an Operational Transport Management Plan (OTMP). The full text of condition 24 is outlined below:

24. In formulating the OTMP, the following must also be prepared and undertaken:

a) A detailed Green Travel Plan is to be prepared in accordance with Transport for NSW Condition 17. The Green Travel Plan is to provide targets for the reduction of private car usage and shall determine the number of additional bicycle spaces required on site;

b) A Road Safety Evaluation is to be prepared in accordance with the Transport for NSW Condition No. 15. The recommendations of the RSE are to be implemented into the OTMP;

- c) Further analysis of the current traffic and parking situation of the existing surrounding areas, including additional surveys, is to be undertaken, the results of which are to be utilised to form the above.
- d) The OTMP is to require the school to have no students driving to school Monday to Friday.

2.2. Conditions to be Modified

The application seeks to modify 1 condition of the consent as shown in the table below.

- The details of and the justification for each proposed modification and an assessment of its impacts, if any, are discussed after the table.

Condition	Proposed Modification
<p>24. In formulating the OTMP (Operational Transport Management Plan), the following must also be prepared and undertaken:</p> <ul style="list-style-type: none"> a) A detailed Green Travel Plan is to be prepared in accordance with Transport for NSW Condition 17. The Green Travel Plan is to provide targets for the reduction of private car usage and shall determine the number of additional bicycle spaces required on site; b) A Road Safety Evaluation is to be prepared in accordance with the Transport for NSW Condition No. 15. The recommendations of the RSE are to be implemented into the OTMP; c) Further analysis of the current traffic and parking situation of the existing surrounding areas, including additional surveys, is to be undertaken, the results of which are to be utilised to form the above. d) The OTMP is to require the school to have no students driving to school Monday to Friday. 	<p>24. In formulating the OTMP (Operational Transport Management Plan), the following must also be prepared and undertaken:</p> <ul style="list-style-type: none"> a) A detailed Green Travel Plan is to be prepared in accordance with Transport for NSW Condition 17. The Green Travel Plan is to provide targets for the reduction of private car usage and shall determine the number of additional bicycle spaces required on site; b) A Road Safety Evaluation is to be prepared in accordance with the Transport for NSW Condition No. 15. The recommendations of the RSE are to be implemented into the OTMP; c) Further analysis of the current traffic and parking situation of the existing surrounding areas, including additional surveys, is to be undertaken, the results of which are to be utilised to form the above. d) The OTMP is to require the school to discourage students, as far as practical, from driving to school Monday to Friday.

Reason for modification:

The reasons for the proposed modification are discussed below, however, in summary they are:

- Inability to enforce the condition as presently written.
- The limited number of students who could potentially drive to school.
- Status of the Green Travel Plan deterring students from driving.
- The introduction of time restricted parking conditions around the school.

▪ **Inability to enforce the condition**

As it currently stands, this condition is not legally enforceable by the school, which is further explained in the legal advice obtained by the applicant (**Appendix A**). As outlined in this advice, the school has no jurisdiction over the students when they are outside the school grounds (unless involved with activities directly related to the school) and does not have any jurisdiction to dictate the means on how their students get to school. Further to this, the roads that the students would drive on legally are public roads, for which the school has no jurisdiction over. It is also noted that the surrounding streets are a mix of State government and local Council roads, with some of these roads being managed by the surrounding Councils.

The applicant acknowledges that the school does have the ability to discourage, as far as practical, senior students from driving to school and hence this is reflected in the condition as proposed to be modified.

▪ **Status of the Green Travel Plan and Operational Transport Management Plan**

The original concept DA was approved based on a future Operational Transport Management Plan (OTMP) (**Appendix B**) and Green Travel Plan (GTP) (**Appendix C**) being submitted and endorsed under the DA.

The OTMP has been submitted separately to Council for formal approval in accordance with condition 22 of the development consent. The GTP is pending review and input from the Community Liaison Committee and does not require further approval by the Council or others. They are both submitted for reference and to support this application.

The school is committed to reducing its impact on the local traffic network, which is demonstrated by the targets set in the GTP.

A summary of the key targets the school has set in draft form is provided in the following table:

Travel mode	Target	Reference	5 year Target	10 year target
Car (as driver)	Staff	85.7%	80.7%	75.7%
Public Transport	Staff	5.3%	6.3%	7.3%
By car (passenger)	K-6 student	73.9%	69.9%	65.9%
School bus	K-6 student	17.1%	18.6%	20.1%
Active travel	K-6 student	4.1%	5.1%	6.1%
By car (passenger)	7-12 student	38%	33%	28%
School bus	7-12 student	31.6%	33.6%	35.6%
Active travel	7-12 student	10%	14%	18%
Car (as driver)	7-12 student	4.4%	3.4%	2.4%
Public transport	7-12 student	13.2%	14.2%	15.2%

As per Section 4.3.1 of the draft OTMP, “the school will discourage students from driving to school and will promote the use of public transport and active transport” which will work towards these targets.

▪ Number of students driving to school

The Emanuel School operates from Kindergarten to Year 12, with a pre-school attached. To be able to drive to school legally, a student must be at least 17 years old and hold a valid provisional driver's licence. As such, this condition in practical terms restricts itself to Year 11 and 12 students only.

The draft GTP included the results of surveys undertaken for staff and students at the school. The GTP indicates that only 4.4% of students drive to school, which is 20 out of the 920 students permitted on site under the development consent. It is also noted that a further 11 students carpool with another student driving, which increases the efficiency of students attending school.

As such, there is no significant impact in terms of the number of students driving in removing this part of the condition.

▪ Time-restricted parking

Since the determination of the concept Development Application, a resident parking scheme has been implemented in the local street network around the school. This has resulted in the installation of 2-hour parking restrictions in key locations in Avoca Street, Stanley Street and Chepstow Street, among others, for persons other than those with resident parking permits. The resident parking scheme ensures that adequate on-street car parking is available for local residents and effectively prevents students and staff from the school (and other workers in the local area) from parking in these locations.



Figure 1 - Time restricted parking has been introduced other than for holders of resident parking permits.

The resident parking scheme effectively makes condition 24(d) obsolete, however, in the modified form proposed, it is considered appropriate to retain and is in keeping with the aims of the GTP.

3. MATTERS FOR CONSIDERATION UNDER SECTION 4.55

3.1. Overview

Section 4.55 of the *Environmental Planning and Assessment Act, 1979* (the Act) confers on a consent authority the power and discretion to modify a consent granted under the Act.

The relevant provisions of the Act state:

“Modification of consents

(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 under section 72 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.*

Subsections 4.55 (3) states as follows:

“(3) In determining an application for modification of a consent under this section, the consent authority must take into consideration such of the matters referred to in section 4.15 (1) as are of relevance to the development the subject of the application.”

The matters prescribed under Section 4.55 are addressed below.

3.2. Minimal Environmental Impact (Section 4.55(1A)(a))

The subject Section 4.55 application is considered to be of a minimal environmental impact and meet the requirements of a Section 4.55(1A) application.

While it is not guaranteed that all students who can legally drive to school will, as per the GTP, only 20 of the 920 students (4.4%) currently drive to school. This is a small number in terms of the student numbers on site and therefore minimal impact on the surrounding road network.

There are no changes proposed to the number of students on site or the number of staff as per the current approval.

There is and remains a strong commitment from the Emanuel School to reduce the numbers of private vehicles accessing the school. The amendment of Condition 24(d) doesn't change this intent.

As per the original Traffic Impact Assessment (TIA) submitted with the original DA, the school currently provides 19 off-street carparking spaces including 11 spaces under the science block and 8 spaces adjacent to the Kormehl Centre (pre-school). The parking spaces are unallocated and on-site observations at the time revealed that the current parking arrangements operated satisfactorily.

As highlighted in the TIA:

- The concept DA didn't propose the increase staff numbers above what was currently operating on site and therefore didn't change the existing parking or traffic conditions.
- The majority of staff (77%) leave the school between the hours of 3pm and 5pm which is outside of the critical evening parking demand period. This suggests that the availability of on-street carparking will steadily increase over that period, freeing up parking for residents returning home from work.
- The existing on-site parking supply is more than is generally provided for public schools of a similar size throughout the Randwick LGA and more broadly within Sydney.

It is noted that the student arrival and departure times are similar to those for staff (if not slightly shorter) as 60.4% of Year 7-12 students arrive between 8:00am-8:15am and 87.2% leave between 3:00pm-3:45pm. This also avoids peak hour and again opens up the capacity for on street carparking for residents before 5pm.

The proposed deleted condition will not affect any pick up/ drop off arrangements around the site.

3.3. Substantially the Same Development (Section 4.55(1A)(b))

As stated, the proposed modifications do not seek to change the nature and substance of the approved development in any way.

There are no changes proposed to the number of students on site nor the number of staff. There are no changes to the current traffic demand associated with the school.

We therefore consider that the development (as modified) will remain substantially the same as the development that was originally approved.

3.4. Section 4.15(1) Considerations (Section 4.55(3))

The environmental assessment matters relevant to the proposed modified development under Section 4.15(1) (a), (b), (c), (d) and (e) of the Act are addressed below:

- Environmental planning controls

The principal planning controls applying to the development are contained in:

- *State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017*
- *Randwick Local Environmental Plan 2012*
- *Randwick Development Control Plan 2013*

Since there are no substantive changes to the development proposed, the modified proposal remains consistent with the relevant provisions of those controls as detailed in the original application and as subsequently assessed by Council in granting the consent.

In terms of the DCP controls, the original DA was assessed with a variation to the required statutory parking rate.

As highlighted in the Executive Summary of the officer report for DA/40/2020,

The subject site is highly constrained by the location of existing buildings on site and limited landscaped area, and the heritage significance of the site. As such the ability to provide additional on street parking is restricted and would be problematic. Furthermore, the provision of on-site carparking would require extensive excavation, or result in a reduction to integral landscaping on the site or outdoor recreation space which would adversely impact upon the amenity of the school.

It is also noted that the Randwick DCP controls do not prescribe parking rates for students at a secondary school (only tertiary institutions). As such, there is no formal requirement to provide for on-site carparking for students under this control.

- Environmental impacts and site suitability

There is nothing with respect to the modifications that would result in any environmental impact or affect the suitability of the site for the development as approved or as proposed to be modified.

It is noted that the proposed modification to the consent doesn't affect other conditions, such as Condition 21 relating to Community Engagement. The school remains committed to this obligation and had a Community Liaison Committee (CLC) booked for the first week in July. The inputs from the CLC will help inform the provisions of the GTP and the OTMP.

- The public interest

No public interest issues arise as a consequence of the proposed modifications. Council's intentions in imposing conditions to preserve the public interest are not affected, since the proposed modifications continue to give effect to those general intentions, simply in a more practical and achievable way.

The proposed modification merely removes a part of the condition which cannot be practically enforced, with minimal impact on the surrounding locality.

We note that under Council's Community Participation Plan, in Table 6, Section 4.55(1A) modifications require no notification.

4. CONCLUSION

The conditions proposed to be modified relate principally to administrative or procedural matters that do not have any implications for the physical form or operation of the building. We therefore consider that the proposed modified development is substantially the same as that approved in DA/40/ 2020.

The impacts of the modifications are negligible and the development will remain consistent with the approved application. The combined changes, being amendments which maintain the integrity of the approved development and the intent of the conditions, will have no identifiable environmental impacts. Accordingly, the modifications are within the ambit of Section 4.55(1A) of the Act.

Further, the assessment of the modified proposal pursuant to the relevant Section 4.15(1) evaluation criteria does not alter the assessment undertaken in the SEE and Council's assessment of the original development application. We see no reason therefore why the modifications should not be approved.

Should you require any further clarification or information in respect to this application, please contact the undersigned on (02) 8270 3500.

Yours Sincerely,



Stephen Kerr
Executive Director

APPENDIX 1

Legal Advice

APPENDIX 2

Draft GTP

APPENDIX 3

Draft OTMP