

COUNCIL ASSESSMENT SUPPLEMENTARY REPORT

Panel Reference	2018SNH047
DA Number	MOD2018/0412
LGA	Northern Beaches Council
Proposed Development	Modification of consent (condition No.3) for DA2011/0446 granted for alterations and additions to a school (St Luke's Grammar School)
Street Address	210 Headland Road Dee Why
Applicant/Owner	Midson Group Pty Ltd (Applicant) St Luke's Anglican School Limited Anglican Schools Corporation
Date of DA lodgement	8 August 2018
Number of Submissions	33
Recommendation	REFUSAL
Regional Development Criteria (Schedule 7 of the SEPP (State and Regional Development) 2011	Section 4.55(2) Modification of a Development Consent, originally granted by the <i>Joint Regional Planning Panel</i> as DA2011/0446 for "Alterations and additions to a School".
List of all relevant s4.15(1)(a) matters	<ul style="list-style-type: none"> • <i>Environmental Planning and Assessment Act 1979 (as amended)</i> • <i>Environmental Planning and Assessment Regulation 2000</i> • <i>State Environmental Planning Policy (State and Regional Planning)</i> • <i>State Environmental Planning Policy (Infrastructure 2007)</i> • <i>State Environmental Planning Policy No. 55 – Remediation of Land</i> • <i>Warringah Local Environmental Plan 2011</i> • <i>Warringah Development Control Plan 2011</i>
List all documents submitted with this report for the Panel's consideration	<ul style="list-style-type: none"> • Attachment 1: Legal advice prepared by Hunt & Hunt Lawyers • Attachment 2 SNPP Minutes of record of deferral for Item 2018SNH047 • Attachment 3: SNPP Assessment Report for Item 2018SNH047
Report by	David Kerr– General Manager Planning, Place & Community
Report prepared by	Alex Keller, Principal Planner
Report date	30 January 2019 (Previous consideration of this item)

Summary of s4.15 matters

Have all recommendations in relation to relevant s4.15 matters been summarised in the Executive Summary of the assessment report? (see original report)

Yes

Legislative clauses requiring consent authority satisfaction

Have relevant clauses in all applicable environmental planning instruments where the consent authority must be satisfied about a particular matter been listed, and relevant recommendations summarized, in the Executive Summary of the assessment report? (see original report)

Yes

e.g. Clause 7 of SEPP 55 - Remediation of Land, Clause 4.6(4) of the relevant LEP

Clause 4.6 Exceptions to development standards

If a written request for a contravention to a development standard (clause 4.6 of the LEP) has been received, has it been attached to the assessment report?

**Not
Applicable**

Special Infrastructure Contributions

Does the DA require Special Infrastructure Contributions conditions (S7.24)?

Note: Certain DAs in the Western Sydney Growth Areas Special Contributions Area may require specific Special Infrastructure Contributions (SIC) conditions

**Not
Applicable**

Conditions

Have draft conditions been provided to the applicant for comment? (see reasons for Refusal)

N/A

Note: in order to reduce delays in determinations, the Panel prefer that draft conditions, notwithstanding Council's recommendation, be provided to the applicant to enable any comments to be considered as part of the assessment report.

2018SNH047 - 210 Headland Road Dee Why - St Luke's Grammar School – Northern
Beaches Council - Mod2018/0412

210 Headland Road, Dee Why

Modification of Consent No. Mod2018/0412 to modify DA2011/0446

SUPPLEMENTARY REPORT

APPLICATION SUBMITTED ON:	8 August 2018
APPLICANT/OWNER	Midson Group Pty Ltd (Applicant) St Luke's Anglican School Limited Anglican Schools Corporation
COST OF WORKS:	\$ Nil
NOTIFICATION PERIOD:	22/8/2018 to 16/9/2018
NO. OF SUBMISSIONS:	33
SUMMARY	Section 4.55(2) Modification of a Development Consent, originally granted by the <i>Joint Regional Planning Panel</i> as DA2011/0446 for "Alterations and additions to a School".



Figure 1: Subject site shaded red consists of 4 lots (Aerial Imagery- Sinclair Knight March 2014)

BACKGROUND

An application to increase student numbers by amending a condition of consent as follows to a student population of 1092.

3. Maximum Number of Students

The maximum number of students to be enrolled at the school is 992 at any time and is subject to traffic management and parking requirements detailed in the St Luke's Grammar School Traffic Management Plan dated 12 February 2018, as amended by any conditions of consent.

Reason: Traffic, parking and pedestrian safety.

An assessment report was presented to the Sydney North Planning Panel on 30 January 2019 recommending refusal to the proposed increase.

A question was raised by the Panel relating to the power to amend a condition which appeared on a consent condition which related to only 1 lot (Lot 2112 DP 752038) of the 4 lots on which the school occupies. The amended condition will apply to all 4 lots (Lot 2112 DP 752038, Lot 1 DP 749109, Lot 3 and Lot 4 in DP8139).

MINUTES OF SNPP MEETING 30 JANUARY 2019

"The panel agreed to defer the determination of the matter to resolve legal questions in relation to whether the MOD2018/0412 (the Modification) can amend the original consent (DA2011/0446) which applied to land being Lot 2112 DP752038 (210 Headland Road Dee Why). Whereas the Modification applies to 210 Headland Road Dee Why described in the Statement of Environmental Effects as land being Lot 2112 in DP 752038, Lot 1 in DP749109 and Lots 3 and 4 in DP 8139, and all supporting documentation refers to all four lots. The applicant is requested to provide any response by 6 February 2019.

When this advice has been received, the panel will consider the application by electronic means unless the panel chair feels a further public meeting is warranted."

RESPONSE

Council's Legal Counsel provided that in case law *Scrap Realty Pty Ltd v Botany Bay City Council*, Preston CJ found at [21] that there is power under s 96(2) of the EPAA to modify a development consent to add land (in that case, a lot) to the land to which the consent applies. He also indicated at [19] that there will be questions of fact and degree in ascertaining whether the development is substantially the same.

Legal advice, dated 6 February 2019, prepared by Hunt & Hunt Lawyers, see Attachment 1 cited the same case law, indicating that there is power to modify the condition of consent and to add additional land to the consent being modified.

Attached documents

- *Attachment 1: Legal advice prepared by Hunt & Hunt Lawyers*
- *Attachment 2 SNPP Minutes of record of deferral for Item 2018SNH047*
- *Attachment 3: SNPP Assessment Report for Item 2018SNH047*

CONCLUSION

The case law provided by the applicant from *Hunt & Hunt Lawyers* comes to the same conclusion as Council's legal advice that the Panel have the power to amend the condition so that it applies to all 4 lots on which the school exists.

Notwithstanding the advice which provides the power to the Panel to consider the current modification, Council maintains its recommendation for refusal as outlined in the original report.