

COUNCIL ASSESSMENT REPORT

Panel Reference	PPSSNH-70
DA Number	MOD2019/0214
LGA	City of Ryde
Approved Development	Construction of a mixed use development comprising a part 6 / part 27 storey building to accommodate 216 residential apartments, retail tenancies, a child care centre and a multi storey car park for 242 vehicles.
Proposed Modification	Section 4.55(2) to realign stormwater drainage infrastructure and amend conditions of consent relating to bushfire planning.
Street Address	112 Talavera Road, Macquarie Park
Applicant/Owner	Owner: Karimbla Properties (No. 52) Pty Ltd / Macquarie University Applicant: Karimbla Constructions Services (NSW) Pty Ltd
Date of MOD lodgement	28 October 2019
Number of Submissions	No submissions received objecting to the development
Recommendation	Approval
Regional Development Criteria (Schedule 7 of the SEPP (State and Regional Development) 2011	Modification application for regionally significant development under Section 4.55(2) of the EP&A Act.
List of all relevant s4.15(1)(a) matters	<ul style="list-style-type: none"> • Environmental Planning and Assessment Act 1979; • Environmental Planning and Assessment Regulation 2000; • State Environmental Planning Policy (State and Regional Development) 2011; • State Environmental Planning Policy No. 55 – Remediation of Land; • State Environmental Planning Policy (Building Sustainability Index: BASIX); • State Environmental Planning Policy (Infrastructure) 2007; • Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005; • State Environmental Planning Policy No 65 – Design Quality of Residential Apartment Development; • Draft Remediation of Land State Environmental Planning Policy; • Draft Environment State Environmental Planning Policy; • Ryde Local Environmental Plan 2014; • City of Ryde Development Control Plan 2014; and • Section 7.11 Contribution Plan.

List all documents submitted with this report for the Panel's consideration	Attachment 1: Conditions for MOD2019/0214 (this modification) Attachment 2 : Plans
Report prepared by	Madeline Thomas – Senior Town Planner
Report date	2 March 2020

Summary of Section 4.15 matters

Have all recommendations in relation to relevant s4.15 matters been summarised in the Executive Summary of the assessment 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? **Yes**

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? **N/A**

Special Infrastructure Contributions

Does the DA require Special Infrastructure Contributions conditions (S7.24)? **No**

Conditions

Have draft conditions been provided to the applicant for comment? **Yes – applicant has agreed to draft conditions**

1. EXECUTIVE SUMMARY

This report considers a Section 4.55(2) application under the *Environmental Planning and Assessment Act, 1979* (EP&A Act) to modify the approved development at 112 Talavera Road, Macquarie Park.

On the 26 June 2019, consent was granted to Local Development Application No. LDA2018/0269 following consideration of the application by the Sydney North Planning Panel. Approval was granted for:

Construction of a mixed use development comprising a part 6 / part 27 storey building to accommodate 216 residential apartments, retail tenancies, a child care centre and a multi storey car park for 242 vehicles.

A subsequent Section 4.55 (1A) application MOD2019/0218 was approved by Council on 20 February 2020 for internal and external alterations to the approved development resulting in a change in dwelling mix. Therefore, the modified approval has the following description:

Construction of a mixed use development comprising a part 6 / part 27 storey building to accommodate 219 residential apartments, retail tenancies, a child care centre and a multi storey car park for 241 vehicles.

This modification application seeks to realign the stormwater drainage infrastructure and amend conditions of consent relating to bushfire planning. The modification of the stormwater infrastructure involves realigning the trunk drainage from the western boundary of the site to the eastern boundary of the site. The changes to the conditions of consent imposed by the Rural Fire Service (RFS) are a result of a revised Bushfire Assessment report prepared by the applicant, which had been previously discussed between the RFS and the applicant.

This application was advertised and notified in accordance with *Ryde Development Control Plan 2014* (Ryde DCP 2014) Part 2.1 and one (1) submission was received. This submission was provided by Macquarie University. The issues in the submission were resolved by the applicant, and Macquarie University has since provided landowner's consent for this application.

The proposed modifications are considered acceptable and will not give rise to significant additional impacts to the amenity of the area and can be supported.

2. APPLICATION DETAILS

Applicant: Karimbla Constructions Services (NSW) Pty Ltd

Owner: Karimbla Properties (No. 52) Pty Ltd

Owner of 192 Balaclava Road: Macquarie University

Estimated value of works: Not applicable.

Disclosures: No disclosures with respect to the Local Government and Planning Legislation Amendment (Political Donations) Act 2008 have been made by any persons.

3. SITE DESCRIPTION & CONTEXT

3.1 Broader Site

The subject site (“the site”) is known as 112 Talavera Road, Macquarie Park and the legal description of the land is Lot 422 in DP 1221081. The site is situated on the north-eastern side of Talavera Road, between Christie Road and ramps to the M2 Motorway. The site is irregular in shape with a 189m frontage to Talavera Road, a 128m alignment with the on-ramp to the M2 Motorway and has a total area of approximately 19,530m².

There are a number of trees within the broader site, located sporadically throughout the site. Within the portion of the site (i.e. Stage 1) that the approved development is located are seventeen trees. The approved development proposed to retain eleven (11) of these trees.

The site is currently under construction for the approved development under LDA2018/0269. Vehicular access for the site is currently provided from Talavera Road, Christie Road and the M2 on-ramp (Herring Road).

The site is flood-affected with low to high risk precincts occurring at and in the immediate vicinity of the site. An existing trunk drainage line with a 2400m, diameter pipe also traverses the site in an existing drainage easement across the western end of the site.

The site forms part of the Macquarie Park Corridor. **Figure 1** below shows an aerial view of the site (outlined in red). The section of the site this application applies to (i.e. ‘Stage 1’) is identified by red shading.



Figure 1: Aerial of the broader site (red outline) and Stage 1 development site (red shading)

3.2. Development Site (Stage 1)

The portion of the site that is the subject of this application relates to the western portion of the site, identified as Stage 1 in **Figure 1**, which has an area of 5,656m².

No approval has been granted or sought for the development of Stage 2. Any such development will be undertaken subject to a separate Development Application.

The construction of the approved development (under LDA2018/0269) is currently underway on the site.

3.3 Stormwater works

The development of Stage 1 also involves stormwater works on the neighbouring site at 192 Balaclava Road, Macquarie Park (Part Lot 191 DP 1157041) in the locations shown at **Figure 2**. This site is owned by Macquarie University.

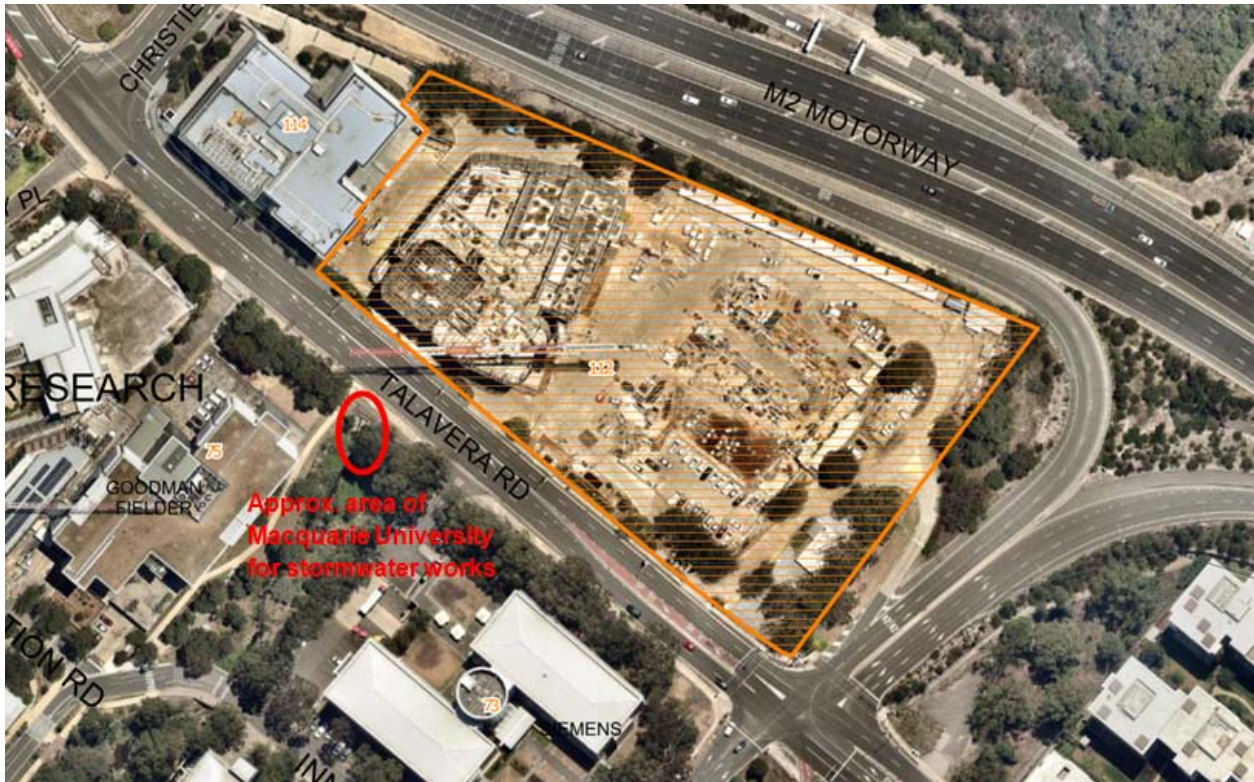


Figure 2: Area on adjacent site subject to stormwater works under this application

LDA2018/0269 included approval for stormwater works within the University site in the area shown in **Figure 2**. The approved stormwater infrastructure was also approved to run along the western side of the property in the alignment shown in **Figure 4**. This infrastructure has not yet been constructed.

The area within the University site where works are proposed contains a number of trees, predominantly Sydney Blue Gum trees. These trees do not form part of the Sydney Blue Endangered Ecological Community (EEC). The trees within proximity of the proposed stormwater works are shown in **Figure 3** below.



Figure 3: Photograph of trees within University site

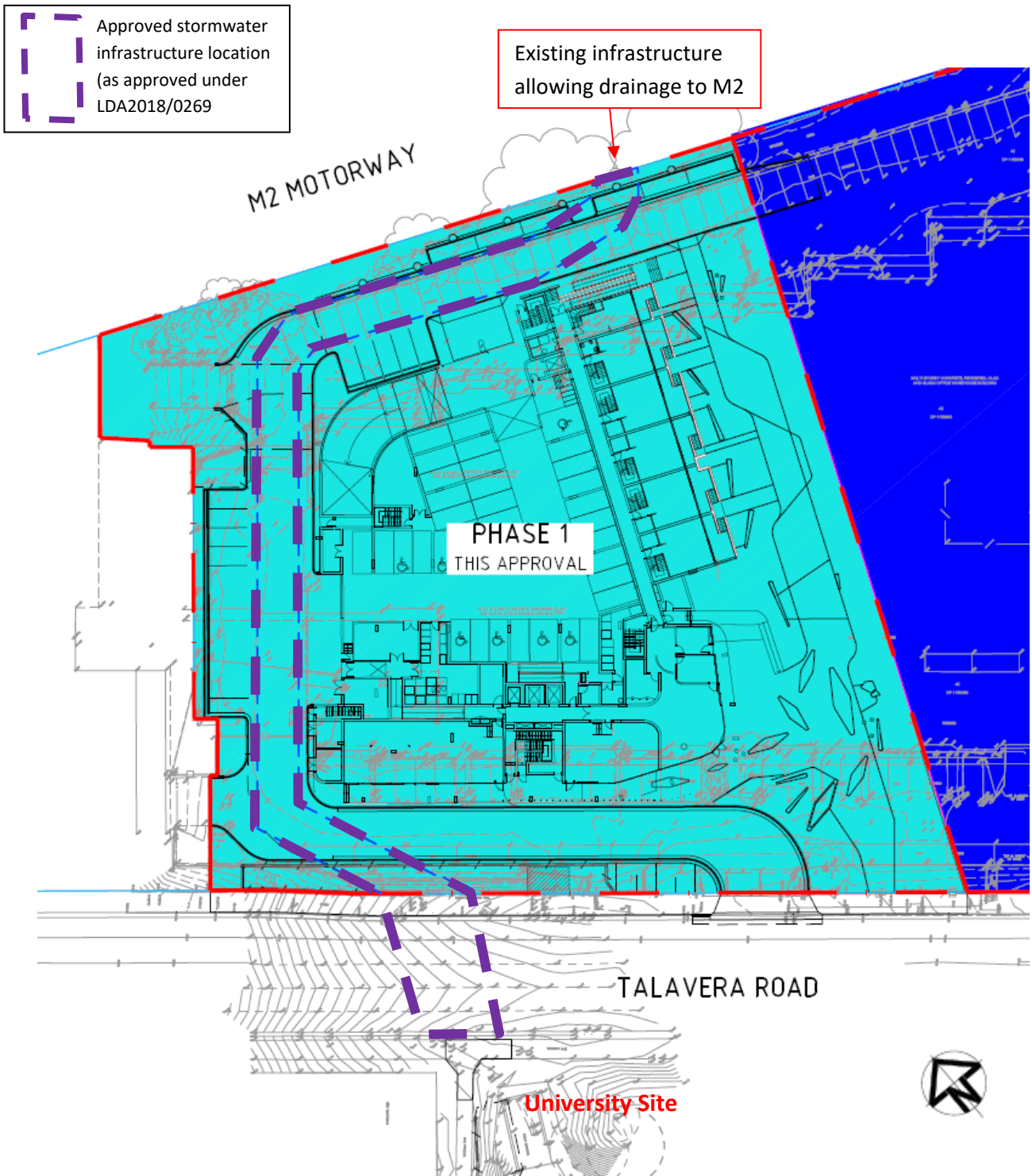


Figure 4: Approved location of stormwater infrastructure (under LDA2018/0269)

4. BACKGROUND

The following provides a background of the subject development application and previous modifications.

It is noted that there is an outstanding Planning Proposal which received Gateway approval on 7 March 2018 and was returned to the NSW Department of Planning, Industry and Environment for assessment and drafting of the LEP on 7 December

2018. The proposed LEP amendments under the Planning Proposal do not affect the subject development or modifications sought under this application.

Demolition Approval

On 7 September 2017, LDA2017/0273 was approved by Council for demolition of the existing commercial building and associated structures at the site.

This demolition has occurred at the site.

LDA2018/0269

On the 26 June 2019, consent was granted to LDA2018/0269 following consideration of the application by the Sydney North Planning Panel.

Approval was granted for the construction of a mixed use development comprising a part 6/part 27 storey building to accommodate 216 residential apartments, retail tenancies, a childcare centre and a multi storey car park for 242 vehicles.

As mentioned earlier in the report, the original approval involved the stormwater infrastructure being directed around the western side of the site. The location of the approved stormwater infrastructure is illustrated in **Figure 4** above.

MOD2019/0218

A Section 4.55(1A) application was lodged to Council on 31 October 2019 (MOD2019/0218) and sought approval to including the modification of the unit mix and other various internal alterations to the approved building.

The application was approved by Council on 20 February 2020, and resulted in the description of the approved development being amended to read as follows:

Construction of a mixed use development comprising a part 6 / part 27 storey building to accommodate 219 residential apartments, retail tenancies, a child care centre and a multi storey car park for 241 vehicles.

4. THE PROPOSAL

Proposed Modifications

The modifications under this application include the realignment of the stormwater infrastructure and modification of conditions of consent relating to bushfire planning. Further detail is provided below.

Realignment of stormwater infrastructure

The proposal seeks to realign the approved stormwater infrastructure from the western side of the site to the eastern side of the site. The modification to the approved drainage design is show in **Figure 5** below.

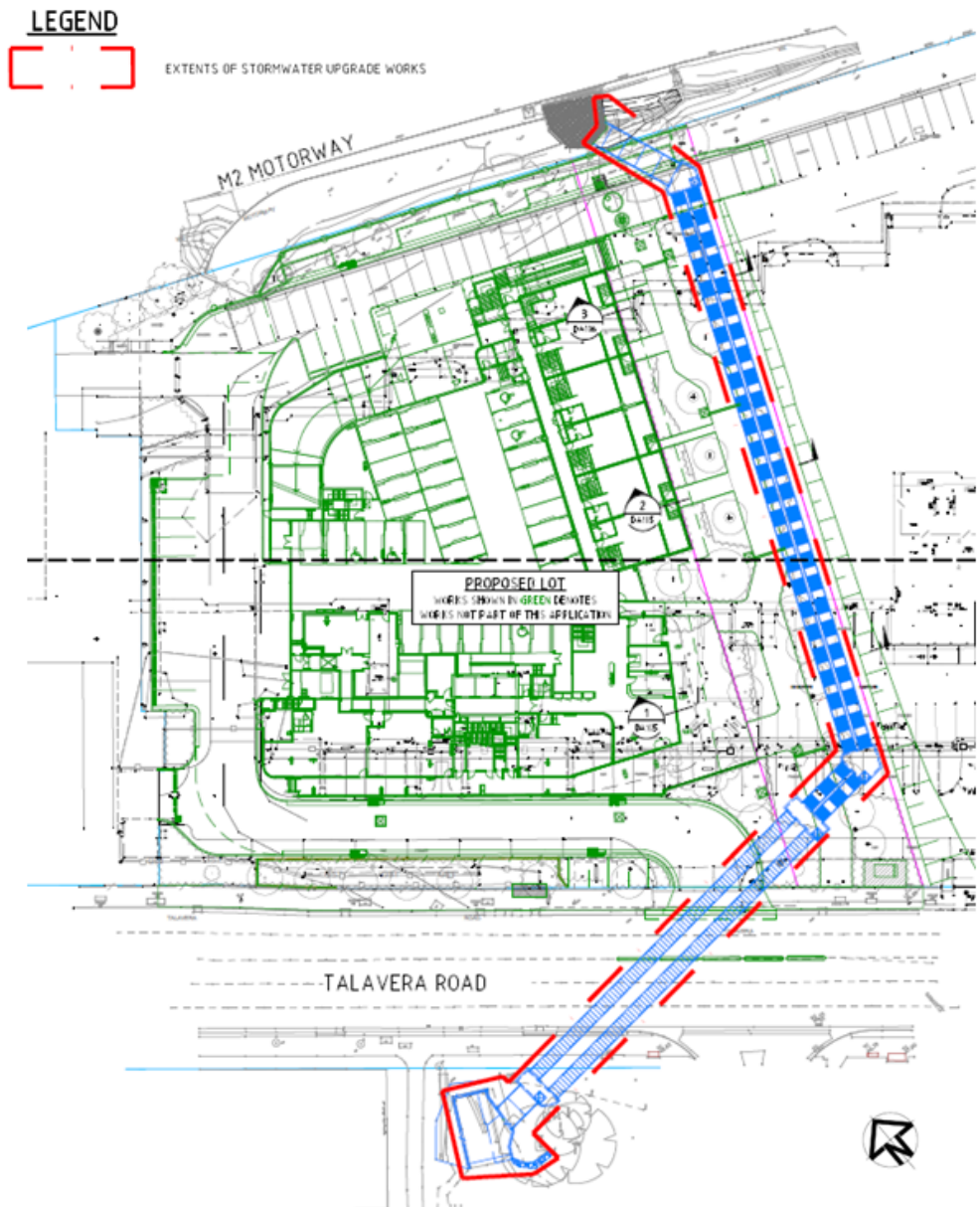


Figure 5: Proposed stormwater design showing realigned trunk drainage

The modification of the stormwater will involve realigning the culvert within the Macquarie University site and aligning the trunk drainage under Talavera Road and along the eastern boundary of the Stage 1 site.

The changes to the stormwater design and flood mitigation measures include the following:

- Trunk drainage system being realigned to the eastern end of the Stage 1 site beneath the new public right of way, in order to minimize any potential conflict with the basement or footings of the new development.
- Twin 1500mm pipes will convey stormwater flows from upstream of Talavera Road towards existing culverts within the M2 Motorway.
- A weir around the existing headwall south of Talavera Road within University site
- Debris screen upstream of the existing headwall within University site.

The approved development includes a pedestrian corridor along the eastern boundary. The realigned trunk drainage system will sit beneath the pedestrian corridor and will not change the functionality or general appearance of the pedestrian corridor.

The approved development utilised the site's existing easement and stormwater connection to the M2 Motorway. The proposed modification involves a new location to connect to the stormwater infrastructure within the M2 Motorway, although the culvert the pipe connects to remains the same within the M2 Motorway. As such, owner's consent from Transport for NSW (TfNSW) (formerly RMS) was required to grant approval to this application. This was provided by TfNSW on 17 February 2020.

Despite the revised stormwater plan (see **Figure 5** above) stating that there are no amendments to the plan with the exception of the trunk drainage alignment, the plans include an amendment to the fill required along the northern boundary. The applicant has identified that further enforcement is required for the parking spaces along the boundary adjoining the M2 Motorway, as shown in **Figures 6** and **7** below. As such, a retaining wall has been included in the stormwater plans.

The height of this retaining wall is approximately 2 metres, and the wall will essentially be located behind the barrier within the M2 land, preventing it from having an adverse visual impact as viewed from the M2 Motorway.

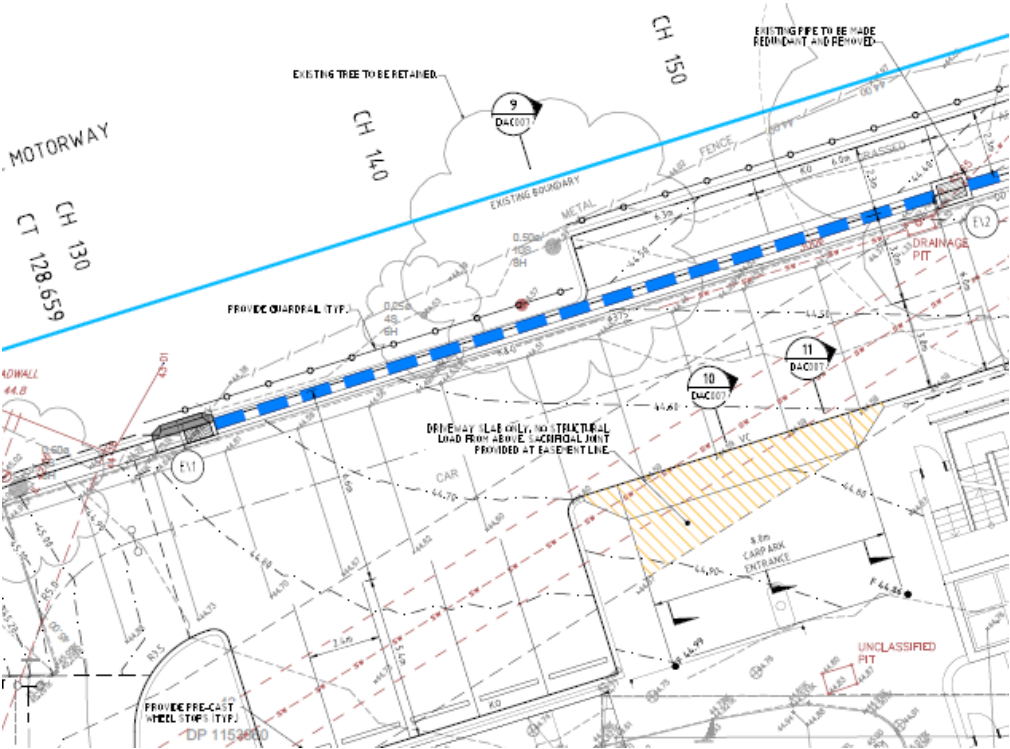


Figure 6: Extract from approved stormwater plan under LDA2018/0269 showing no retaining wall along northern boundary

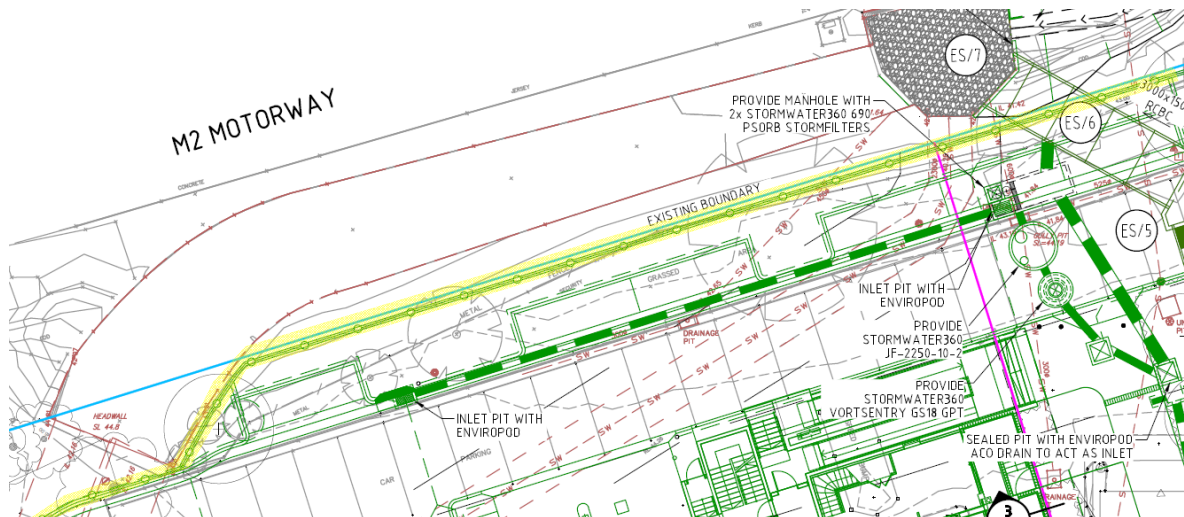


Figure 7: Extract of amended stormwater plans with new retaining wall highlighted in yellow

The applicant has also sought modification of Condition 236 and 238 to read as follows:

236. Works-As-Executed Drawings – Trunk Drainage Works – Prior to the issue of an Occupation Certificate, Works-As-Executed Drawings prepared by a registered surveyor for all new drainage works shall be submitted to and approved by Council’s Stormwater Engineer. All departures from the Council approved details shall be marked red with proper notations. Any rectifications required by Council shall be completed by the Developer prior to the issue of any **the relevant** Occupation Certificate.

238. Compliance Certificate – Trunk Drainage Works – Prior to the issue of any **the relevant** Occupation Certificate, a compliance certificate shall be obtained from Council’s City Works Directorate confirming that all trunk drainage and associated restoration works have been completed to Council’s satisfaction and in accordance with the Council approved drawings. The applicant shall be liable for the payment of the fee associated with the issuing of this Certificate in accordance with Council’s Schedule of Fees and Charges at the time of issue of the Certificate.

The applicant has stated that the purpose of amending Condition 236 and 238 is to provide flexibility in the timing of the completion of the drainage works and allowing for the phased occupation of the development.

Removal of trees

The proposed modifications to the drainage design and new retaining wall will result in the removal of a number of trees that were previously proposed to be retained.

The trees that were previously proposed to be retained that will now require removal as a result of the modification are listed in **Table 1** and illustrated in **Figure 8** below:

Table 1: Trees to be removed as a result of subject modification

Tree No	Tree name	Comment
7a	<i>Casuarina glauca</i> (Swamp She-Oak)	Trees 7a, 7b, 7c, 8, 9 and 10 were proposed to be retained in the original application. Since the time of approval, it has become apparent that a retaining wall is required to facilitate the parking areas approved along the northern boundary. The required retaining wall and associated excavation/fill will result in encroachments into the Tree Protection Zones (TPZs) of these trees, and as such, they are required to be removed.
7b	<i>Casuarina glauca</i> (Swamp She-Oak)	
7c	<i>Casuarina glauca</i> (Swamp She-Oak)	
8	<i>Casuarina glauca</i> (Swamp She-Oak)	
9	<i>Casuarina glauca</i> (Swamp She-Oak)	
10	<i>Casuarina cunninghamiana</i> (River Oak)	
12	<i>Eucalyptus microcorys</i> (Tallowood)	A condition of consent (see Condition 100c) of the LDA2018/0269 specified that one parking space along the northern boundary was to be deleted and Tree 12 was to be retained. Despite the deletion of this parking space, the new alignment of the stormwater infrastructure will not allow the retention of this tree, and as such, it will require removal.
16	<i>Phoenix canariensis</i> (Canary Island Date Palm)	The realignment of the stormwater infrastructure will encroach in the structural root zone (SRZ) of Tree 16, requiring it to be removed.
C	<i>Eucalyptus saligna</i> (Sydney Blue Gum)	These two trees are located within the University site (192 Balaclava Road) and will have significant incursions in their respective TPZs as a result of the realignment of the stormwater culvert within the University site.
E	<i>Eucalyptus saligna</i> (Sydney Blue Gum)	



Figure 8: Location of trees to be removed subject to this modification application

Modification to Bushfire Planning Conditions

The approved development was assessed, and concurrence provided, by the RFS. **Condition 53** was imposed in accordance with the RFS General Terms of Approval to read as below:

53. NSW RFS - Design and Construction. *New construction shall comply with section 3 and section 7 (BAL 29) Australian Standard AS3959-2009 'Construction of buildings in bush fire-prone areas' or NASH Standard (1.7.14 updated) 'National Standard Steel Framed Construction in Bushfire Areas - 2014' as appropriate and section A3.7 Addendum Appendix 3 of 'Planning for Bush Fire Protection 2006'.*

The applicant provided a revised Bushfire Assessment Report for consideration by the RFS for the reduction in the Bushfire Attack Level (BAL) from BAL-29 to BAL-12.5 (Terraces and Childcare Centre) and BAL-LOW for the tower section. This was a

result of ongoing consultation between the RFS and the applicant, and a reconsideration of the level of separation between the development and the bushfire threat on the northern side of the M2 Motorway.

Application Background

The application was originally lodged on 28 October 2019 as a Section 4.55 (2) application.

A letter was sent to the applicant on 6 November 2019 requesting that the following information be provided to facilitate the assessment of the proposed development:

- TUFLOW flood model
- DRAINS stormwater model
- MUSIC water quality model
- Revised Stormwater report to reflect amendment to stormwater design

The applicant provided revised flood modelling and an updated Stormwater report and package on 12 November 2019.

An additional letter requesting the applicant provide landowner's consent for 192 Balaclava Road (i.e. Macquarie University) was sent on 18 November 2019. This was required as the amendment to the stormwater design extended to the approved infrastructure within 192 Balaclava Road.

On 23 January 2020, a letter requesting additional information was sent to the applicant, raising the following issues with the amended stormwater design and documentation provided by the applicant:

- Insufficient flood modelling
- Inconsistencies between modelling and plans provided
- Insufficient information provided on the amended Stormwater plans

A meeting was attended on 29 January 2020 by the applicant and the applicant's drainage engineers with Council officers to discuss the information requested by Council. This predominately involved discussing the required detail for the flood modelling.

A letter was also sent to the applicant on the 29 January 2020 requesting a revised Arborist Report be provided that assesses all the trees within proximity of the modified stormwater infrastructure, including trees within the Macquarie University site.

The applicant provided an amended Arborist Report on 4 February 2020 that assessed the additional trees.

The applicant also provided an amended Flood Impact Assessment and amended Stormwater Plans that addressed Council's concerns on 11 February 2020.

Conditions to be amended

The application proposes to change the following conditions:

- Amend Condition 1 – relating to the approved plans;
- Addition of Condition 8a – TfNSW condition
- Amend Condition 53 relating to RFS General Terms of Approval;
- Amend Condition 82 to reflect changes in stormwater design;
- Delete Condition 100(c) in relation to the retention of Tree 12;
- Addition of Condition 100(e) to reflect new retaining wall on northern boundary;
- Addition of Condition 100(f) to require replacement planting for the removal of Tree 10 and Tree 12;
- Amend Condition 117 to reflect changes in stormwater design;
- Amend Condition 120 in relation to trunk drainage bond;
- Amend Condition 121 to reflect new flood report;
- Amend Condition 126 in regard to tree retention;
- Amend Condition 131 in regard to revised Arborist Report;
- Amend Condition 156 in regard to tree removal;
- Amend Condition 170 to reflect changes in stormwater design;
- Amend Condition 224 to reflect changes in stormwater design;
- Amend Condition 226 to reflect changes in stormwater design;
- Amend Condition 232 in regard to amended flood report; and
- Amend Condition 233 in regard to amended flood report;

5. APPLICABLE PLANNING CONTROLS

The following planning policies and controls are of relevance to the development:

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2000;
- State Environmental Planning Policy (State and Regional Development) 2011;
- State Environmental Planning Policy No. 55 – Remediation of Land;
- State Environmental Planning Policy (Building Sustainability Index: BASIX);
- State Environmental Planning Policy (Infrastructure) 2007;
- Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005;
- State Environmental Planning Policy No 65 – Design Quality of Residential Apartment Development;
- Draft Remediation of Land State Environmental Planning Policy;
- Draft Environment State Environmental Planning Policy;
- Ryde Local Environmental Plan 2014;
- City of Ryde Development Control Plan 2014; and

6. PLANNING ASSESSMENT

6.1 Environmental Planning & Assessment Act 1979

- (a) Matters for consideration pursuant to Section 4.55(2) EP&A Act

The provisions of Section 4.55(2) of the EP&A Act allow a consent authority to modify the consent where the application meets the following criteria:

- “a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and*
- (b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 4.8) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, 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 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 the period prescribed by the regulations or provided by the development control plan, as the case may be.*

Section 4.55(2)(a)

Under Section 4.55(2)(a) the consent authority must be satisfied that the development as modified is substantially the same as was approved in the original consent.

In arriving at this determination there should be no consideration of the merits of the proposal but rather a straight before and after comparison of the original approval against the proposed modified development. If it is determined to be substantially the same, then the proposed modifications need to be assessed on their merits having regard to submissions received and any relevant council planning controls.

The proposed amendments will not result in any changes to the built form of the mixed use building, with the application relating to the change in the Bushfire Attack Level and realignment of stormwater infrastructure only.

These amendments are in keeping with the amenity of the development and do not adversely impact the adjoining properties or streetscape.

No changes to the apartment mix or layout of the buildings are proposed in this application. It is considered that the modified development is essentially the same as the original approved development.

It is also noted that the applicant for modification bears the onus of showing that the modified development is substantially the same.

In this regard the applicant has stated that:

- *The proposed modifications will not have any impact on the nature, scale, location or form of the approved buildings.*
- *The change will not alter the physical appearance of the approved development in any way.*
- *The nature of the uses contained within the building remains entirely consistent with LDA2018/0269.*
- *The development's compliance with Council's policies and controls does not change as a result of the proposal.*

It is the opinion of Council's Assessing Officer that the points raised by the applicant in this regard are of merit and it is agreed that the modified development is substantially the same as the original and therefore the application can be considered on its merits.

Section 4.55(2)(b)

The original application was referred to the Department of Primary Industry (DPI) under the provisions of the *Water Management Act 2000*. Concurrence of the DPI was given on 14 June 2019 to the original development.

The DPI advised on 25 November 2019 that no changes to the General Terms of Approval were required as a result of the proposed modification.

The original application was referred to the RMS (now Transport for NSW) in accordance with Schedule 3 of the *State Environmental Planning Policy (Infrastructure) 2007*, and no objections were raised by the RMS.

The amended development was required to be referred to Transport for NSW (TfNSW), as the revised stormwater design proposes new stormwater infrastructure within the M2 Motorway. TfNSW have provided additional conditions in relation to the requirements for construction of the stormwater infrastructure within the M2 Motorway (see **Condition 8a**).

The original application was also referred to the RFS given the site is identified as being bushfire prone, and the development contains a use, being a childcare centre, identified as a 'special fire protection purpose' (SFPP) under Clause 100B of the *Rural Fires Act 1997*.

The RFS provided revised General Terms of Approval on 14 February 2020, requiring the modification of Condition 53 to read as follows:

53. NSW RFS - Design and Construction. *New construction **for the Terraces and Child Care Centre** must comply with section 3 and section 7 (BAL ~~29~~ **12.5**) Australian Standard AS3959-2009 'Construction of buildings in bush fire-prone areas' or NASH Standard (1.7.14 updated) 'National Standard Steel Framed Construction in Bushfire Areas - 2014' as appropriate and section A3.7 Addendum Appendix 3 of 'Planning for Bush Fire Protection 2006'.*

Section 4.55(2)(c) and (d)

The Section 4.55(2) application was advertised and notified in accordance with *Ryde Development Control Plan 2014* (RDCP 2014) Part 2.1, Notification of Development Applications.

The application was advertised on 6 November 2019 in *The Weekly Times* and notified to adjoining and nearby properties from 31 October 2019 to 20 November 2019. The notification area is the same as the original DA application (LDA 2018/0269).

In response, one (1) submission was received from Macquarie University, the owners of 192 Balaclava Road, identifying that they had not provided landowner's consent for the application. This is discussed later in this report in Section 11 under Public Notification and Submissions.

(b) Section 4.55(3)

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.

The reasons for the original decision by the Sydney North Planning Panel are below:

"The majority of the Panel accepts the assessment report's recommendation to approve the application. The proposal complies with the relevant development standards and council controls.

The Panel noted that certain areas within the proposed units had excluded GFA not consistent with the definition of GFA. Including these areas results in the development having a total GFA of 22,904sqm (where 25,231sqm is permissible in this Stage). Other than noting this change, there are no merit considerations which flow from it.

The concern regarding contamination and the ability of the site to be appropriately remediated to be fit for its purpose is addressed by the Phase 2, Detailed Site Investigation Report by ADE Consulting Group dated 21 June 2019 which was presented to the Panel by Council at the meeting. Council has confirmed that this addresses the provisions of SEPP 55 and that conditions be amended to address this.

Issues were raised about the internal amenity of several units and the Panel has resolved to introduce a condition to ensure that the study to unit 609 have no door and that the wall between the study and the kitchen be deleted."

The proposed modifications will not affect any of the reasons for the original determination as the proposal only involves the reconfiguration of the stormwater design and changes to bushfire planning conditions.

6.2 State Environmental Planning Policy (State and Regional Development) 2011

This proposal is a Section 4.55(2) of a development consent previously granted by the Sydney North Planning Panel, in accordance with Part 4 of the Act (now Section 4.7). Consequently the Sydney North Planning Panel is the consent authority for this application.

6.3 State Environmental Planning Policy No. 55 – Remediation of Land

The requirements of SEPP 55 apply to the subject site.

In accordance with Clause 7 of the SEPP, the consent authority must consider if the land is contaminated and, if so, whether it is suitable, or can be made suitable, for the proposed use.

The original application was submitted with a Phase 2 Detailed Site Investigation report prepared by ADE Consulting Group dated 21 June 2019, which included investigations as to the conditions of the soils at the site. This report satisfactorily addressed the provisions of SEPP 55.

The subject modification will not affect the compliance of the proposal for the purpose of the SEPP.

6.4 State Environmental Planning Policy (Building Sustainability Index: BASIX)

The Policy seeks to ensure that new dwellings are designed to use less water and be responsible for fewer greenhouse gas emissions by setting energy and water reduction targets, which are based on the NSW average benchmark. The Policy also sets minimum performance levels for the thermal comfort of a dwelling.

The subject modification will not affect the compliance of the proposal for the purpose of the SEPP, and the approved BASIX Certificate is not required to be amended as a result of this application.

6.5 State Environmental Planning Policy (Infrastructure) 2007

State Environmental Planning Policy (Infrastructure) 2007 was applicable to the original development application (LDA2018/0269), due to noise impact on residential units from the M2 Motorway and its relevant size and traffic generating capability.

The subject modification will not affect the compliance of the proposal for the purpose of the SEPP, as the location, design and number of residential units will not change as a result of the modification.

6.6 State Environmental Planning Policy No. 65 – Design Quality of Residential Flat Development

State Environmental Planning Policy No. 65 – Design Quality of Residential Flat Development (SEPP 65) was considered during the assessment of the original development application (LDA2018/0269) and considered satisfactory subject to conditions of consent.

The proposed modifications will not affect the development's compliance with the relevant matters within SEPP 65 and the NSW Apartment Design Guide (ADG).

6.7 State Environmental Planning Policy Educational Establishments and Child Care Facilities 2017

The NSW State Government has introduced the State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017 to encourage the development of new childcare centres. The Child Care Planning Guideline was introduced as part of this new SEPP. Clause 26 of the Childcare SEPP relates to development control plans and provides that the Childcare Planning Guideline overrides the local development control plan provisions.

The subject modification does not result in any changes to the approved Child Care Centre, and as such, further assessment of the provisions within this SEPP is not required.

6.8 Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005

This Plan, now a deemed State Environmental Planning Policy, applies to the whole of the Ryde local government area.

The aims of the Plan are to establish a balance between promoting a prosperous working harbour, maintaining a healthy and sustainable waterway environment and promoting recreational access to the foreshore and waterways by establishing planning principles and controls for the catchment as a whole.

This application does not impact upon the assessment of the SREP undertaken in LDA2018/0269.

6.9 Ryde Local Environmental Plan 2014

The following is an assessment of the proposed development against the applicable provisions from the Ryde LEP 2014.

Clause 2.3 - Zone Objectives

The land is zoned B4 Mixed Use under Ryde LEP 2014.

The consent authority must have regard to the objectives for development in a zone when determining a development application in respect of land within the zone.

The objectives for the B4 Mixed Use are as follows:

- *To provide a mixture of compatible uses.*

- *To integrate suitable business, office, residential, retail and other development in accessible location so as to maximise public transport patronage and encourage walking and cycling.*
- *To ensure employment and educational activities within the Macquarie University campus are integrated with other businesses and activities.*
- *To promote strong links between Macquarie University and research institutions and businesses within the Macquarie Park corridor.*

The proposed modifications do not change the approved land use.

The development as modified is a permissible form of development and remains consistent with the zone objectives.

Part 4 – Principle Development Standards

Clause 4.3 - Height of Buildings

The maximum height of building control for any building on the site is 45m and 90m split across the site.

The approved development has a maximum building height of up to 21.7m and 88.4m which was compliant with this development standard.

The proposed modification will not alter the approved height.

Clause 4.4 - Floor Space Ratio

The maximum allowable Floor Space Ratio (FSR) applicable to the site is 4.5:1. The approved development (LDA2018/0269 and subsequent MOD2019/0218) has a GFA of 22,938m² which results in an FSR of 4.15:1 for the Stage 1 portion of the site, and an FSR of 1.18:1 when considered across the entire site. This complies with the maximum FSR for the site under Clause 4.4(A). It is noted that the GFA was increased slightly as a result of the approval of MOD2019/0218.

The subject modification will not alter the approved FSR.

Other Relevant Clauses

Clause 6.3 - Flood Planning

This clause applies to land identified as “Flood Planning Area” on the Flood Planning Map, and other land at or below the flood planning level.

The site is subject to an overland flow path, as illustrated in **Figure 9** below. This flow path travels from upstream properties at Macquarie Park, across the site and the M2, discharging in the Lane Cove National Park. Stormwater flows are ultimately directed into Lane Cove River to the north-west.

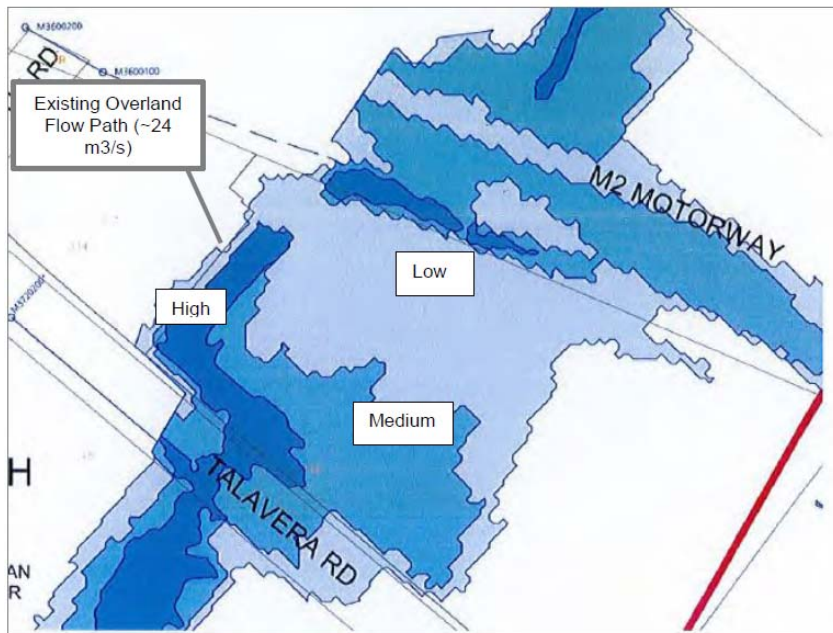


Figure 9: Flood Risk Map (City of Ryde 2017)

The approved application involved drainage upgrades to the stormwater infrastructure on the site to accommodate the approved building.

The applicant has provided a Flood Impact Assessment with the subject modification application explaining that the previously approved Flood Impact Report did not consider that flood mitigation works that had already been completed along University Creek by Macquarie University. As a consequence, the revised flood assessment has been updated to include these works, and has led to a new stormwater drainage system, whereby the alignment of the stormwater culvert on the western portion of the site in the approved development is to be diverted to the eastern portion of the site to better orient the drainage system with the footprint of the approved buildings and associated infrastructure.

Subject to the modification of a number of conditions, Council's City Works (Drainage) section have found the revised proposal to be satisfactory (see amended **Conditions 82, 117, 120, 121, 170, 224, 226, 232 and 233**).

Clause 6.4 Stormwater Management

Development consent must not be granted to development on land within residential, business and industrial zones unless the consent authority is satisfied that the development:

- *is designed to maximise the use of water permeable surfaces on the land having regard to the soil characteristics affecting on-site infiltration of water, and*
- *includes, if practicable, on-site stormwater retention for use as an alternative supply to mains water, groundwater or river water, and*
- *avoids any significant adverse impacts of stormwater runoff on adjoining properties, native bushland and receiving waters, or if that impact cannot be reasonably avoided, minimises and mitigates the impact.*

Council's Development Engineer has advised that the proposed modifications to the stormwater management system involve the following:

- Twin 1500mm pipes will convey stormwater flows from upstream of Talavera Road towards the existing M2 culverts.
- The trunk drainage system will be realigned to the eastern end of the Stage 1 site beneath the new public right of way, thereby minimising any potential conflict with the basement or footings of the new development.
- The design aims to minimise disturbances to existing services.
- The existing on-site drainage method remains unchanged.

No objection has been raised in this regard subject to a modification of conditions of consent (see amended **Conditions 82, 117, 120, 121, 170 and 224**).

6.10 Ryde Development Control Plan 2014

The following sections of the Ryde DCP 2014 are of relevance to the proposal:

- Part 3.2 – Child Care Centres
- Part 4.5 – Macquarie Park Corridor.
- Part 7.1 - Energy Smart, Water Wise.
- Part 7.2 - Waste Minimisation and Management.
- Part 8.1 - Construction Activities.
- Part 8.2 - Stormwater Management.
- Part 8.3 – Driveways.
- Part 9.2 - Access for People with Disabilities.
- Part 9.5 – Tree Preservation

Parts 3.2, 4.5, 7.1, 7.2, 8.1, 8.3 and 9.2 are not relevant to the subject modification. The relevant sections of the RDCP 2014 are discussed below.

Part 8.2– Stormwater Management

The revised stormwater management system proposed under the subject modification has been reviewed by Council's Senior Development Engineer, and is compliant with Part 8.2 of the RDCP 2014 subject to conditions of consent imposed under the original approval (LDA2018/0269) and modified conditions of consent (see **Conditions 82, 117, 120, 121, 170 and 224**).

It is noted that Council's Senior Development Engineer does not support the modification of Condition 236 and 238 to amend the timing of the stormwater and flood mitigation strategies is not supported, as the stormwater drainage and flood mitigation measures needs to be constructed and certified prior to any occupation of the building.

Part 9.5 – Tree Preservation

The approved development application involved the retention of eleven (11) trees and removal of five (5) trees across the Stage 1 site.

The proposed modifications to the stormwater infrastructure will result in the requirement to remove additional trees from the site (including within 192 Balaclava Road). **Table 2** below identifies the change in tree retention. The additional trees to be removed are in bold below.

Table 2: Change in tree retention

Original DA (LDA2018/0269)			Section 4.55 (MOD2019/0214)		
Tree No	Tree name	Retain/Remove	Retain/Remove	Supported (Yes/No)	Comment
1	<i>Eucalyptus botryoides</i> (Bangalay)	Retain	Retain	Yes	No change
2	<i>Callistemon viminalis</i> (Weeping Bottlebrush)	Retain	Retain	Yes	No change
3	<i>Callistemon viminalis</i> (Weeping Bottlebrush)	Retain	Retain	Yes	No change
4	Dead Tree	Remove	Remove	Yes	No change
5	<i>Eucalyptus botryoides</i> (Bangalay)	Retain	Retain	Yes	No change
6	<i>Callistemon viminalis</i> (Weeping Bottlebrush)	Retain	Retain	Yes	No change
7	<i>Casuarina glauca</i> (Swamp She-Oak)	Remove	Remove	Yes	No change
7a	<i>Casuarina glauca</i> (Swamp She-Oak)	Retain	Remove	Yes	The proposed retaining wall along the northern boundary is required to provide support, and will result in the removal of these trees.
7b	<i>Casuarina glauca</i> (Swamp She-Oak)	Retain	Remove	Yes	
7c	<i>Casuarina glauca</i> (Swamp She-Oak)	Retain	Remove	Yes	
8	<i>Casuarina glauca</i> (Swamp She-Oak)	Retain	Remove	Yes	
9	<i>Casuarina glauca</i> (Swamp She-Oak)	Retain	Remove	Yes	
10	<i>Casuarina cunninghamiana</i> (River Oak)	Retain	Remove	Yes	
11	<i>Corymbia aculate</i> (Spotted Gum)	Retain	Retain	Yes	No change
12	<i>Eucalyptus microcorys</i> (Tallowood)	Retain	Remove	Yes	The realignment of the stormwater infrastructure requires the removal of Tree 12
13	<i>Cupaniopsis anacardioides</i> (Tuckeroo)	Remove	Remove	Yes	No change
14	<i>Cupaniopsis anacardioides</i> (Tuckeroo)	Remove	Remove	Yes	No change

15	<i>Cupaniopsis anacardioides</i> (Tuckeroo)	Remove	Remove	Yes	No change
16	<i>Phoenix canariensis</i> (Canary Island Date Palm)	Retain	Remove	Yes	The realignment of the stormwater infrastructure requires the removal of Tree 6
A	<i>Eucalyptus saligna</i> (Sydney Blue Gum)	Retain	Retain	Yes	No change
B	<i>Eucalyptus saligna</i> (Sydney Blue Gum)	Retain	Retain	Yes	No change
C	<i>Eucalyptus saligna</i> (Sydney Blue Gum)	Retain	Remove	Yes	This tree is within the University site, and is required to be removed due to the realignment of the stormwater culvert
D	<i>Eucalyptus saligna</i> (Sydney Blue Gum)	Retain	Retain	Yes	No change
E	<i>Eucalyptus saligna</i> (Sydney Blue Gum)	Retain	Remove	Yes	This tree is within the University site, and is required to be removed due to the realignment of the stormwater culvert

Trees C and E do not form part of the Sydney Blue Gum Ecologically Endangered Community (EEC) and therefore, do not require assessment under the *Biodiversity Conservation Act 2016*. Furthermore, a condition of consent (see **Condition 131(b)**) has been included that requires compensatory planting within 192 Balaclava Road of four (4) Sydney Blue Gum trees.

Trees 7a, 7b, 7c, 8 and 9 are shown in **Figure 10** below. These trees are not considered to be significant given their size and contribution to the landscape setting. The removal of these trees will be supplemented by the approved landscape scheme under LDA2018/0269.

The Arborist Report submitted with this application has identified the damage sustained to Tree 10 in a recent storm event, in that half of the canopy failed (see **Figure 11**). As a consequence, there is unequal distribution throughout the remaining canopy, which places greater stress at the junction of the tree at the 6m height and increases risk of the tree failing in the future. As such, the removal of this tree is supported subject to replacement planting (see **Condition 100 (f)**).

Tree 12 has been identified as being in good health and provides amenity to the site. The removal of this tree is considered acceptable given **Condition 100(f)** with respect to replacement planting for both Tree 12 and Tree 10 (being four (4) *Syncarpia glomulifera* (Turpentine) trees). The additional four (4) trees are acceptable in compensating for the loss of Tree 10 and 12.



Figure 10: Photograph of Trees 7a, 7b, 7c, 8 and 9



Figure 11: Photograph of Tree 10

The removal of Tree 16, which is a Canary Island Date Palm (see **Figure 12** below) is considered acceptable as it is an exotic species which does not provide screening from Talavera Road, nor is it typical of the planting within the broader Macquarie Park area. The approved landscape scheme provides sufficient planting to compensate for the loss of Tree 16.

Furthermore, *Phoenix canariensis* (Canary Island Date Palm) is an invasive weed into bushland areas, the leaves have spikes 100mm long which are dangerous to handle and which can cause infections.



Figure 12: Photograph of Tree 16

Figures 13 and **14** below show the location of the trees subject to the proposed development.



Figure 13: Location of trees being retained (in blue) and removed (in red) on the subject site

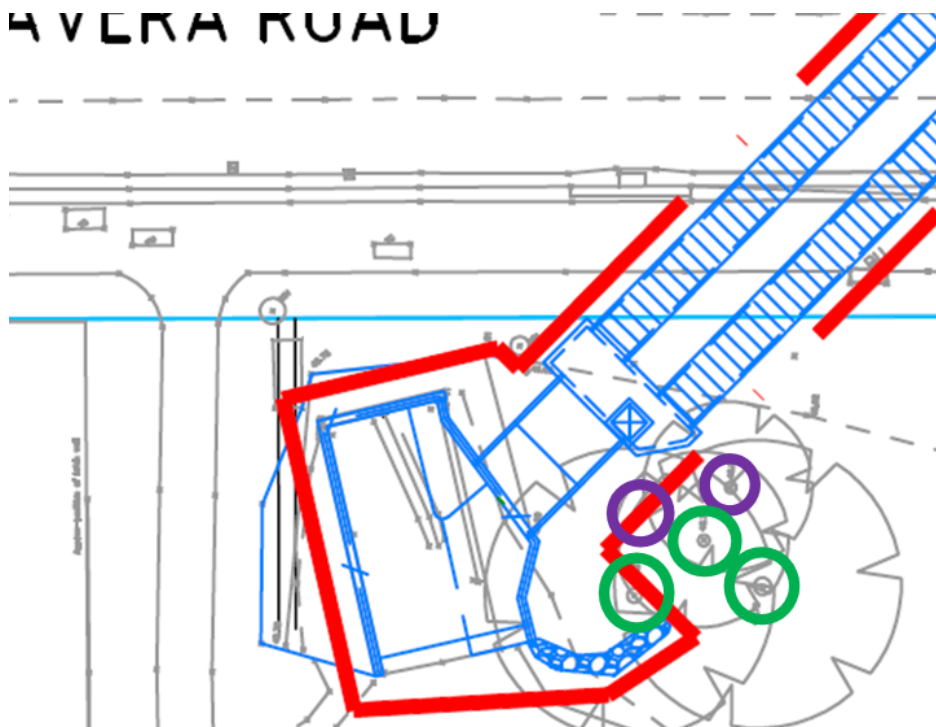


Figure 14: Location of trees being retained (in green) and removed (in purple) on University Site

Conditions of consent 126, 131 and 156 have been amended to reflect the additional trees being removed as a result of this application.

7. LIKELY IMPACTS OF THE DEVELOPMENT

7.1 Built Environment

The original application (LDA2018/0269) provided an assessment of the likely impacts of the development.

The proposed amendments under this application largely relate to the realignment of the stormwater infrastructure for the development, as well as amending **Condition 53** in relation to the Rural Fire Service requirements.

The built form of the approved development will therefore remain generally unchanged as a result of this application.

Accordingly it is not considered that the proposal will give rise to any additional impacts which were previously considered acceptable under the original consent, and is consistent with the built form objectives envisaged for the redevelopment of the Macquarie Park Corridor.

7.2 Natural Environment

The proposed modification will result in the removal of ten (10) additional trees than approved under LDA2018/0269. The removal of the additional trees will not result in an unacceptable impact on the natural environment for the following reasons:

- The two trees (Tree C and E) on the University Site do not form part of the Sydney Blue Gum Endangered Ecological Community, and a condition of consent has been imposed (see **Condition 131(b)**) that four (4) compensatory Sydney Blue Gum trees are to be planted in this area.
- The approved landscape plan provides sufficient planting within the subject site to allow for the removal of the eight (8) additional trees being removed within the subject site.

The development is therefore considered satisfactory in this regard.

8. SUITABILITY OF THE SITE

The proposed modifications relate to the realignment of the stormwater infrastructure. This realignment will allow for minimal disturbances to services, and will allow for discharge of water into existing culverts within the M2 Motorway. The proposed stormwater system facilitates orderly development of the site.

Similarly, the modification to the bushfire planning condition is a result of more detailed assessment of the bushfire threat to the proposed development. The RFS have assessed that the proposed changes to the Bushfire Attack Level are satisfactory.

As such, the site is considered to be suitable for the development as amended.

9. THE PUBLIC INTEREST

The proposed amendments largely relate to the realignment of the stormwater infrastructure for the development.

The use, being residential, retail and a child care centre, has not changed as a result of this application. The floor space ratio, building height and overall density of the approved development has not been affected by the subject modification.

The modified development will not result in any significant environmental impacts and having regard to the assessment contained in this report, it is considered that approval of the development is in the public interest.

10. REFERRALS

The following provides a summary of internal and external referrals undertaken for this application.

External

Rural Fire Service (RFS)

The application was initially referred to the RFS for concurrence, given the site is identified as Bushfire Prone land and proposed construction of a child care centre which is a SFPP development. Given the subject modification proposed to amend a condition imposed by the RFS, this application was referred to the RFS.

The RFS raised no objections to the proposed modifications subject to the amended to **Condition 53**. Amended General Terms of Approval were granted by the RFS on 14 February 2020.

Natural Resources Access Regulator (NRAR)

Integrated development approval was required under Clause 91 of the EP&A Act.

NRAR provided a response to Council on 25 November 2019 stating that no amendments to the existing General Terms of Approval (see Condition 4 in original consent) are required as a result of the subject modification.

Transport for NSW (TfNSW) – formerly Roads and Maritime Services (RMS)

A referral was sent to the RMS for the original development application.

The subject modification was required to be referred to TfNSW given the modifications to the stormwater infrastructure involved alterations to infrastructure within the M2 Motorway, which is operated by The Hills Motorway Limited.

TfNSW have raised no issues with the proposed modifications subject to the inclusion of additional conditions relating to works on the M2 Motorway (see **Condition 8a**).

Internal

Development Engineer

Council's Senior Development Engineer has raised no objections to the proposed modifications, and has provided the following comments:

Stormwater Management

The proposed modification seeks to redirect the drainage system. The amended stormwater plans, completed by AT&L Pty Ltd, project number 16-428, drawing number DAC101 (H), DAC102 (H), DAC103 (H), DAC105 (G), DAC106 (G), DAC110 (J), DAC111 (H), DAC120 (H), DAC121 (G), DAC122 (B), DAC130 (J), DAC131 (D), DAC132 (D), DAC140 (C), DAC141 (C), DAC145 (C), dated 11th February 2020, have been reviewed where the following is noted;

- *Twin 1500mm pipes will convey stormwater flows from upstream of Talavera Road towards the existing M2 culverts.*
- *The trunk drainage system will be realigned to the eastern end of the Stage 1 site beneath the new public right of way, thereby minimising any potential conflict with the basement or footings of the new development.*
- *The design aims to minimise disturbances to existing services*
- *The existing on-site drainage method remains unchanged.*
- *The new design has been reviewed by City Works who are satisfied with the new arrangement of Council's public infrastructure.*

Vehicle Access and Parking

The modification does not seek to vary the parking arrangement. Council's assessing officer and landscape architect have highlighted that the stormwater plan DAC111 appears to depict a retaining wall adjacent to the M2 motorway boundary. It appears the purpose of the retaining wall is to support the designated parking bays within this area. The ramifications of these works may result in the loss of the trees within the vicinity of this area and thus a modified landscaping condition may be required to replace these trees.

Flooding and Overland Flow

The alternative trunk drainage system raised a number of concerns. The Applicant has addressed the concerns previously raised by Council's City Works team through the revised Flood Impact Assessment, completed by Taylor Thomson Whitting (NSW) Pty Ltd, project number 191693, dated 10th February 2020.

Council's City Works team and appointed consultant, Advisian Pty Ltd are satisfied with the proposal subject to the following conditions;

- A amended/updated Flood Emergency Response Management plan (see **Condition 232 and 233**)
- Civil Infrastructure Design Report (see **Condition 117**)

Both these items can be dealt with via reasonable modified/new conditions of consent.

Assessing officer comment:

The removal of Trees 7a, 7b, 7c, 8, 9 and 10 as a result of the new retaining wall has been assessed by Council's Landscape Architect and considered to be acceptable.

City Works

Drainage

Council's Senior Coordinator Infrastructure Services has raised no issues with the proposed modifications subject to the modification of Conditions **82, 117, 120, 121, 170, 224, 226, 232 and 233**.

Landscape Architect

The following comments have been provided by Council's Landscape Architect:

An amended Arborist Report has been submitted with the application prepared by Jacksons Nature Works dated 2/02/2020.

In the amended Arborist Report the Arborist has recommended the removal of Trees 7a, 7b, 7c, 8, 9 and 10.

Trees 7a, 7b and 7c were not considered in the original Arborist Report dated 7/06/2018 as they were less than 5 metres high. These trees have since grown and are now protected trees.

Trees 8, 9 and 10 were required to be retained as part of the Conditions of Consent.

The Modification requests that the above trees be removed to allow for the construction of a retaining wall and platform along the M2. I agree with the removal of these trees as these works will encroach into the Structural Root Zone of the trees.

Compensatory planting has been conditioned to allow for the removal of Tree 10 and 12.

Tree 16 was originally proposed to be removed. This tree is a Canary Island Date Palm, which is an exotic species identified as an invasive weed in

bushland areas, with the leaves have spikes 100mm long which are dangerous to handle and which can cause in infections.

Trees A, B, C, D and E are Eucalyptus saligna (Sydney Blue Gum) and are located on the southern side of Talavera Road in Macquarie University land and impacted by the proposed new drainage works. Trees A, B and D can be retained, trees C and E will need to be removed. I agree with these recommendations subject to replacement planting.

Conditions 100, 126, 131 and 156 have been modified to reflect the proposed modifications.

11. PUBLIC NOTIFICATION AND SUBMISSIONS

The Section 4.55(2) application was advertised on 6 November 2019 in *The Weekly Times* and notified to neighbours in accordance with Ryde DCP 2014 from 31 October 2019 to 20 November 2019.

Council received one (1) submission from Macquarie University on 15 November 2019, raising the issue that Macquarie University had not yet given their landowner's consent for the works being undertaken within 192 Balaclava Road.

Owner's consent from Macquarie University was provided to Council on 4 February 2020, and as such, the submission received on 15 November 2019 is no longer of relevance.

No other submissions were received in response to this application.

12. CONCLUSION

This report considers a Section 4.55(2) application under the EP&A Act to modify the approved development at 112 Talavera Road, Macquarie Park.

The original approval under LDA2018/0269 (and subsequent Section 4.55 application being MOD2019/0218) granted consent for the construction of a mixed use residential and commercial building containing a total of 219 residential units, a child care centre and 243m² of retail floor space.

The proposed amendments relate to amendment of the Rural Fire Service (RFS) General Terms of Approval as a result of a revised Bushfire Assessment provided by the applicant, as well as the realignment of the stormwater infrastructure to facilitate the development of the site.

The application has demonstrated that the development is consistent with the relevant provisions of Ryde DCP 2014.

Furthermore, the modified development has been assessed as being substantially the same development as the development approved under LDA2018/0269.

The proposed modification of the approved development will not give rise to significant or unreasonable additional impacts on the amenity of the adjoining properties, and the modified proposal is consistent with the emerging character of Macquarie Park.

It is therefore recommended that the Section 4.55(2) application be approved subject to conditions.

13. RECOMMENDATION

Pursuant to Section 4.16 of the *Environmental Planning and Assessment Act 1979*, the following is recommended:

- A. That the Sydney North Planning Panel grant consent to the Section 4.55 application No. MOD2019/0214 to modify Local Development Application No. LDA2018/0269 at 112 Talavera Road, Macquarie Park, subject to the conditions of consent in Attachment 1 of this report;
- B. That those persons making a submission be advised of the decision; and
- C. That Natural Resources Access Regulator (NRAR), Transport for NSW (TfNSW) and the Rural Fire Service (RFS) are advised of the decision.

Report prepared by:

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Senior Town Planner

Report approved by:

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