

Notice of decision

SSD-10340-MOD-2

Redevelopment of Fort Street Public School

Modification 2

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-10340-Mod-2 Fort Street Public School-Mod-2
Applicant	NSW Department of Education
Consent Authority	Minister for Planning and Public Spaces

Decision

The Executive Director under delegation from the Minister for Planning and Public Spaces has, under 4.55(2) of the *Environmental Planning and Assessment Act 1979* (**the Act**) modified the consent subject to the recommended conditions.

A copy of the instrument of modification and conditions is available at <https://www.planningportal.nsw.gov.au/major-projects/projects/fort-street-public-school-modification-2-design-changes>.

A copy of the Department of Planning and Environment's assessment report is available at <https://www.planningportal.nsw.gov.au/major-projects/projects/fort-street-public-school-modification-2-design-changes>.

Date of decision

16 June 2023

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 2021;
- 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 development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted was modified.

The key reasons for granting the modification are as follows:

- the modification would provide a range of benefits for the region and the State as a whole, including provision of an improved educational establishment and a total capital investment in excess of \$50 million;
- the modification is permissible with consent, and is consistent with NSW Government policies including the *State Infrastructure Strategy 2018 – 2038 Building the Momentum*;

- 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;
- the issues raised by the community during consultation and in submissions have been considered and adequately addressed. Engagement on the project is considered to be in line with the *Undertaking Engagement Guidelines for State Significant Projects*, including the community participation objectives outlined in these guidelines; and
- 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 2022 until 15 January 2023 (44 days) and received 50 submissions, including 36 objections, primarily from residents living within close proximity to the project site. Additional comments were received outside the exhibition period.

The key issues raised by the community (including in submissions) and considered in the Department’s assessment report and by the decision maker include heritage, bulk and scale, and visual impacts. Other issues are addressed in detail in the Department’s assessment report.

<i>Issue</i>	<i>Consideration</i>
<p><i>Visual impact</i></p> <ul style="list-style-type: none"> • Loss of views from the public domain. • Loss of views from private property. • Methodology used by the Applicant in preparing analysis of private view impacts was inadequate. • Inconsistency with the recommendations of the Select Committee on Barangaroo sight lines. 	<p><i>Assessment</i></p> <ul style="list-style-type: none"> • An assessment of view impacts on the public domain was undertaken having regard to the planning principle established in <i>Rose Bay Marina Pty Limited v Woollahra Municipal Council and anor</i> [2013] NSWLEC 1046. The impacts were determined to be minor and acceptable. • An assessment of view impacts from private properties was undertaken having regard to the planning principles established in <i>Tenacity Consulting v Warringah</i> [2004] NSWLEC 140. The degree of impact was found to be minor, and the proposed development was considered to meet the reasonable test. On this basis the impacts are considered acceptable. • The Department acknowledges the concerns raised in relation to the Applicant’s methodology. However, given the scale of the proposed modification, the modelled view impacts combined with analysis from within nine separate apartments was considered sufficient for the Department to undertake an assessment in accordance with the view sharing principle. • The recommendations of the Select Committee on Barangaroo sight lines do not directly relate to the proposed modification and a view management strategy for the Millers Point and Dawes Point precincts has not yet been established. Even so, the Department’s assessment of the modification found the view impacts from the public domain and private properties to be minor. <p><i>Conditions</i></p> <ul style="list-style-type: none"> • Nil required.
<p><i>Heritage</i></p> <ul style="list-style-type: none"> • Impacts on the heritage significance of the site. • Inconsistency with the Conservation Management Plan (CMP). • Building J would be higher than the Met Building and visually dominant. 	<p><i>Assessment</i></p> <ul style="list-style-type: none"> • The proposed modification is required to meet the needs of the school and to protect the heritage fabric of the Met Building. • The height increase is limited to a small section of Building J and it is not considered it will appear visually dominant next to the Met Building. • The proposed modification remains consistent with the objectives of the CMP and is acceptable. <p><i>Conditions</i></p> <ul style="list-style-type: none"> • Nil required.
<p><i>Overshadowing</i></p> <ul style="list-style-type: none"> • The increased height of Building J would overshadow the Met Building and National Trust Centre. 	<p><i>Assessment</i></p> <ul style="list-style-type: none"> • The increased height would result in marginal overshadowing of the National Trust Centre carpark between 9am and 10am mid-winter. After this time the increase in shadow only affects the roof of Building J itself. <p><i>Conditions</i></p> <ul style="list-style-type: none"> • Nil required.
<p><i>Cost of works</i></p> <ul style="list-style-type: none"> • Concerns in relation to the increased costs of the development as a result of the proposed changes. 	<p><i>Assessment</i></p> <ul style="list-style-type: none"> • The Department is satisfied the development meets the CIV threshold to meet the requirements for State significant development. • Additional cost of works is not a matter for the Department. <p><i>Conditions</i></p> <p>Nil required.</p>
<p><i>Vegetation</i></p> <ul style="list-style-type: none"> • Objections to tree loss 	<p><i>Assessment</i></p> <ul style="list-style-type: none"> • The modification did not include any additional tree removal. <p><i>Conditions</i></p> <ul style="list-style-type: none"> • Nil required.