



New South Wales Government
Independent Planning Commission

Wahroonga Estate Concept Plan Mod 8 MP07_0166 Mod 8

Statement of Reasons for Decision

John Hann (Chair)
Wendy Lewin

13 January 2021

Wahroonga Estate Concept Plan Modification 8 (MP07_0166 MOD 8) Final Report ©
State of New South Wales through the Independent Planning Commission 2020

Independent Planning Commission NSW
Level 3, 201 Elizabeth St Sydney NSW Australia
Telephone: (02) 9383 2100
Email: ipcn@ipcn.nsw.gov.au
ABN: 38755709681

Disclaimer:

While every reasonable effort has been made to ensure that this document is correct at the time of publication, the State of New South Wales, its agencies and employees, disclaim all liability to any person in respect of anything or the consequences of anything done or omitted to be done in reliance upon the whole or any part of this document.

The Independent Planning Commission NSW advises that the maps included in the report are to give visual support to the discussion presented within the report. Hence information presented on the maps should be seen as indicative, rather than definite or accurate. The State of New South Wales will not accept responsibility for anything, or the consequences of anything, done or omitted to be done in reliance upon the mapped information.

EXECUTIVE SUMMARY

Capital Corporation Wahroonga applied to modify the planning consent for redevelopment of the Wahroonga Estate, in the Ku-ring-gai Local Government Area, on Sydney's Upper North Shore.

The Modification Request has been amended on multiple occasions by the Applicant, both before and after referral to the Independent Planning Commission. The Modification Request, as amended, includes changes to approved building envelopes, removing detail of building envelopes, deletion of an approved residential flat building, modification of car parking rates, clarifying parking and access arrangements, establishing a new Asset Protection Zone, and compensating for a portion of land zoned for environmental conservation which will be managed as an Asset Protection Zone, through replacement within the residential zoned land.

The Department of Planning, Industry and Environment initially recommended approval of the modification request in its Assessment Report (2019). The Modification Request was then amended by the Applicant and the Commission requested that the Department undertake further assessment and consultation with relevant government agencies. The Department's Addendum Assessment Report (2020) assessed multiple amendments to the Modification Request and recommended that the amended Modification Request could be approved subject to recommended Future Assessment Requirements.

As part of its consideration of the Modification Request, the Commission met with the Applicant, Department of Planning, Industry and Environment and Ku-ring-gai Council, and held a Public Meeting.

The views of the community were expressed in oral submissions to the Commission at that Public Meeting, as well as in written submissions. The Commission carefully considered all these views as part of making its decision.

Key issues identified and assessed by the Commission were bushfire risk, impacts to the Wahroonga Adventist School, built form and car parking.

Based on its consideration of the Material, the Commission has found that the Modification Request should be approved subject to the Department's recommended conditions. The reasons for the Decision are given in the Statement of Reasons for Decision dated 13 January 2021.

CONTENTS

EXECUTIVE SUMMARY	2
DEFINED TERMS.....	1
1 INTRODUCTION	2
2 THE MODIFICATION REQUEST.....	3
2.1 Site and Locality	3
2.2 Background to the Modification Request.....	4
2.3 Summary of the Modification Request.....	5
3 THE DEPARTMENT’S CONSIDERATION OF THE MODIFICATION REQUEST	6
3.1 Statutory Context	6
3.2 The Department’s Engagement	6
3.3 The Department’s Assessment and Recommendation	6
4 THE COMMISSION’S CONSIDERATION.....	7
4.1 The Department’s Assessment Report.....	7
4.2 The Commission’s Meetings	7
4.3 Material Considered by the Commission.....	8
4.4 Relevant considerations	8
4.5 Statutory Context	9
4.6 Bushfire	9
4.7 Impacts to the School.....	12
4.8 Built Form.....	13
4.9 Car Parking	15
4.10 Objects of the EP&A Act and Public Interest.....	17
5 CONCLUSION: THE COMMISSION’S FINDINGS AND DETERMINATION	19

DEFINED TERMS

ABBREVIATION	DEFINITION
APZ	Asset Protection Zone
Commission	Independent Planning Commission of NSW
Concept Approval	The Concept Plan Approval issued under MP07_0166
Council	Ku-ring-gai Council
DCP	Development Control Plan
Department	Department of Planning, Industry and Environment
Department's AR	Department's Assessment Report (September 2019)
Department's AR Addendum	Department's Addendum Report (October 2020)
EESG	Department's Environment Energy and Science Group
EP&A Act	<i>Environmental Planning and Assessment Act 1979</i>
EPI	Environmental Planning Instrument
ESD	Ecologically Sustainable Development
FAR	Future Assessment Requirement
LEP	Local Environmental Plan
LGA	Local Government Area
Material	The material set out in section 4.3
Modification Request	Wahroonga Estate Concept Plan Modification 8, as amended by the Proponent up to and including the amendment sought on 7 August 2020
PBP 2019	Planning for Bushfire Protection 2019
Project	The development permitted under the Concept Approval
Proponent	Capital Corporation Wahroonga (previously Capital Bluestone Pty Ltd)
Regulations	<i>Environmental Planning and Assessment Regulations 2000</i>
RFB	Residential Flat Building
RtS	Response to Submissions
SEPP	State Environmental Planning Policy
SEPP 65	<i>State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development</i>
SRD SEPP	<i>State Environmental Planning Policy (State and Regional Development) 2011</i>
Site	As described in Section 2.1 of this Statement of Reasons
SRtS	Supplementary Response to Submissions
SSD	State Significant Development
STOP Reg	<i>Environmental Planning and Assessment (Savings, Transitional and Other Provisions) Regulation 2017</i>

1 INTRODUCTION

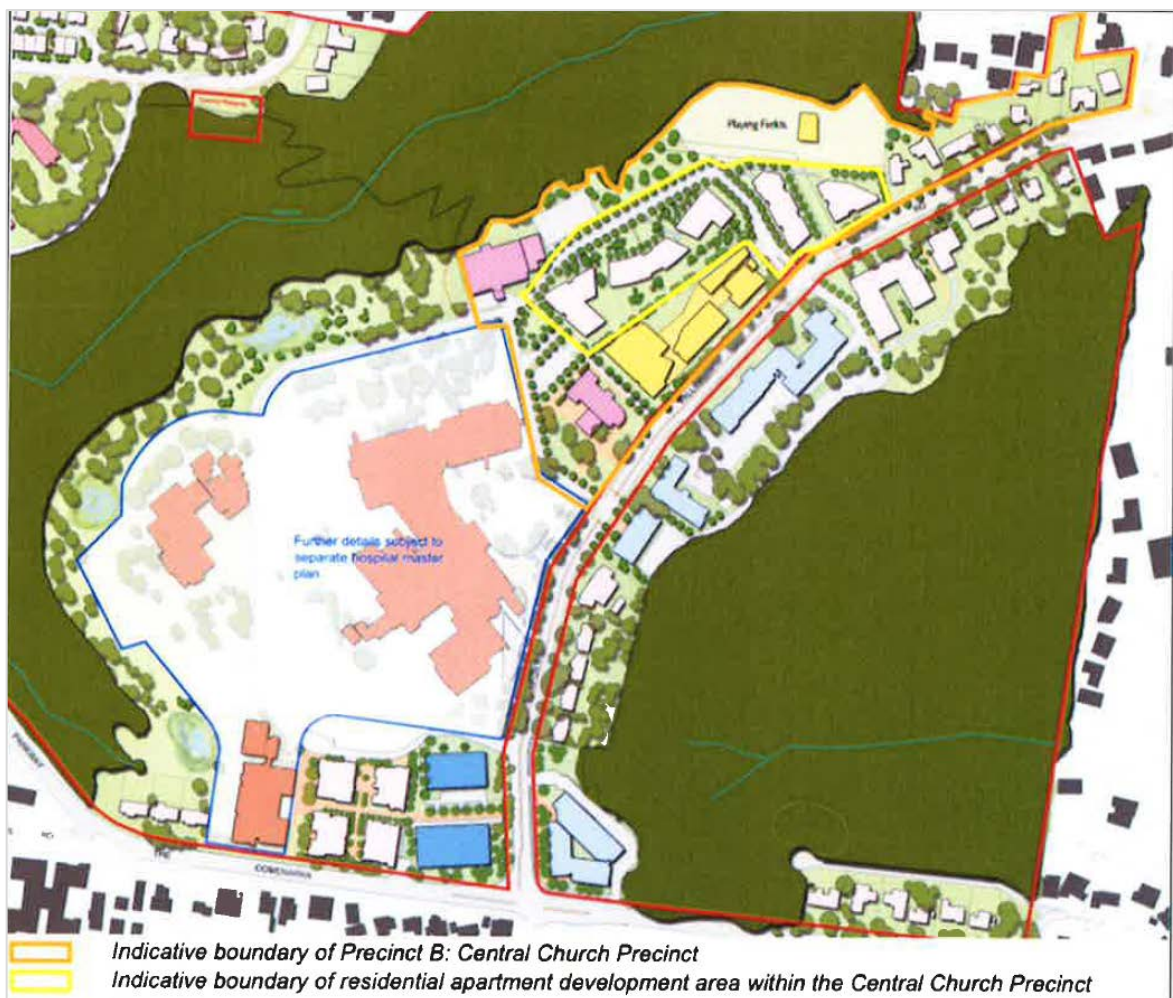
1. On 1 October 2019, the NSW Department of Planning, Industry and Environment (**Department**) referred the first iteration of a Part 3A modification request (MP 07_0166 MOD 8) (**Modification Request**) from Capital Corporation Wahroonga (formerly Capital Bluestone Pty Ltd) (**Proponent**) to the NSW Independent Planning Commission (**Commission**) for determination.
2. The Proponent requested numerous amendments to the Modification Request prior to its current and final iteration. These included requests preceding the referral of the Modification Request to the Commission and requests following the referral, the latter being requests made on:
 - a) 15 October 2019 (**Original Amendment Request**) – supplemented by additional information provided to the Department by the Proponent on 11 February and 2 April 2020; and
 - b) 7 August 2020 (**Revised Amendment Request**).
3. Those amendments were agreed to by the Department and the Commission and are set out in more detail below in **Table 1**. The present determination is in respect of the Modification Request as so amended by the Proponent up to and including the Revised Amendment Request of 7 August 2020.
4. The Modification Request seeks approval for Modification 8 regarding the concept plan for the redevelopment of the Wahroonga Estate located within the Ku-ring-gai Local Government Area (**LGA**).
5. The Modification Request proposes to reconfigure the approved building footprints, building heights and layout of the internal access road, and to change the driveway access, carparking rates, and Asset Protection Zones (**APZs**).
6. On 22 October 2019, the Commission met separately with the Department, Ku-ring-gai Council (**Council**) and the Proponent. On 7 November 2019, the Commission held a public meeting in relation to the Modification Request.
7. On 2 December 2019, the Commission wrote to the Department requesting that it undertake further consultation and assessment of the Modification Request.
8. On 13 October 2020, the Department referred an Assessment Report Addendum (**Department's AR Addendum**) to the Commission.
9. The Project is a transitional Part 3A project under clause 2 of Schedule 2 of the *Environmental Planning and Assessment (Savings, Transitional and Other Provisions) Regulation 2017* (**STOP Reg**), and therefore the Commission is the consent authority in respect of the Modification Request under the Minister for Planning and Public Space's instrument of delegation dated 14 September 2011.
10. Professor Mary O'Kane AC, Chair of the Commission, nominated John Hann (Chair) and Wendy Lewin to constitute the Commission determining the Modification Request.

2 THE MODIFICATION REQUEST

2.1 Site and Locality

11. The Wahroonga Estate is situated within a 62.4-hectare site on Fox Valley Road and the Comenarra Parkway at Wahroonga, in the Ku-ring-gai Council LGA. The Modification Request relates to Precinct B – Central Church Precinct (**Precinct B**) (the **Site**). The Site is described at Section 1.2 of the Department’s Assessment Report, dated 24 September 2019 (**Department’s AR**), and includes:
 - approved building envelopes for five residential flat buildings (**RFBs**) with a maximum yield of 200 RFB dwellings
 - the Wahroonga Adventist School and playing fields
 - the Wahroonga Seventh Day Adventist Church
 - the Fox Valley Community Centre and large at-grade carpark
 - dwelling houses fronting Fox Valley Road.
12. Figure 1 shows the Concept Plan layout with the boundary of Precinct B outlined in orange and the boundary of the residential development within Precinct B outlined in yellow

Figure 1: Concept Plan - Precinct B (source: Department's AR dated September 2019)



2.2 Background to the Modification Request

13. The history of the Modification Request is set out at Table 1, below.

Table 1 - History of the Modification Request (source: the material set out at Section 4.3 of this Statement of Reasons)

21 December 2017	Proponent lodged original section 75W modification request
16 August 2018, 10 December 2018, and 27 May 2019	Proponent amended proposal in RtS and SRtS to: <ul style="list-style-type: none"> delete Building D to provide more open space for the school simplify the remaining building envelopes and enlarge building footprints (Buildings A, B, C and E) clarify on-street parking locations are indicative only
2 December 2019	Proponent submitted an Amendment Request to the Commission to substitute the term "Concept Plan" in FAR B5(1) for "Biodiversity Management Plan"
7 August 2020	Revised Amendment Request to: <ul style="list-style-type: none"> establish a new APZ line; offset the E2 zoned land managed as APZ with an area of equal size within the R4 Residential Zone; establish a new APZ for the residential buildings; modify the proposed Building Envelope for Building E

14. The Concept Plan (MP 07_0166) was approved on 31 March 2012 under Part 3A of the EP&A Act. As described in paragraph 9, the Project is a transitional Part 3A project under Schedule 2 STOP Reg.
15. Section 1.3 of the Department's AR describes the development approved under the Wahroonga Estate Concept Plan, including:
- an additional 28,000 m² of floor space (providing a total of 94,000 m²) for the upgrade and expansion of the Sydney Adventist Hospital
 - up to 500 private residential dwellings across the site
 - 17,000 m² for seniors living in the Mount Pleasant Precinct
 - 16,000 m² of commercial floor space in the Fox Valley Road East and Central Hospital Precincts
 - 14,500 m² of floor space for Student Accommodation / Hostels / Group Homes / Boarding Houses in the Central Hospital Precinct
 - 9,000 m² of floor space for a K-12 school in the Central Church Precinct
 - 3,500 m² for expansion of the Faculty of Nursing in the Central Hospital Precinct
 - 3,200 m² of floor space for church uses in the Central Church Precinct
 - 2,000 m² of retail floor space in the Central Church Precinct
 - 31.4 hectares of environmental conservation lands.
16. The Concept Plan established:
- five development precincts
 - permissible land uses
 - maximum permissible floor space
 - maximum number of dwellings

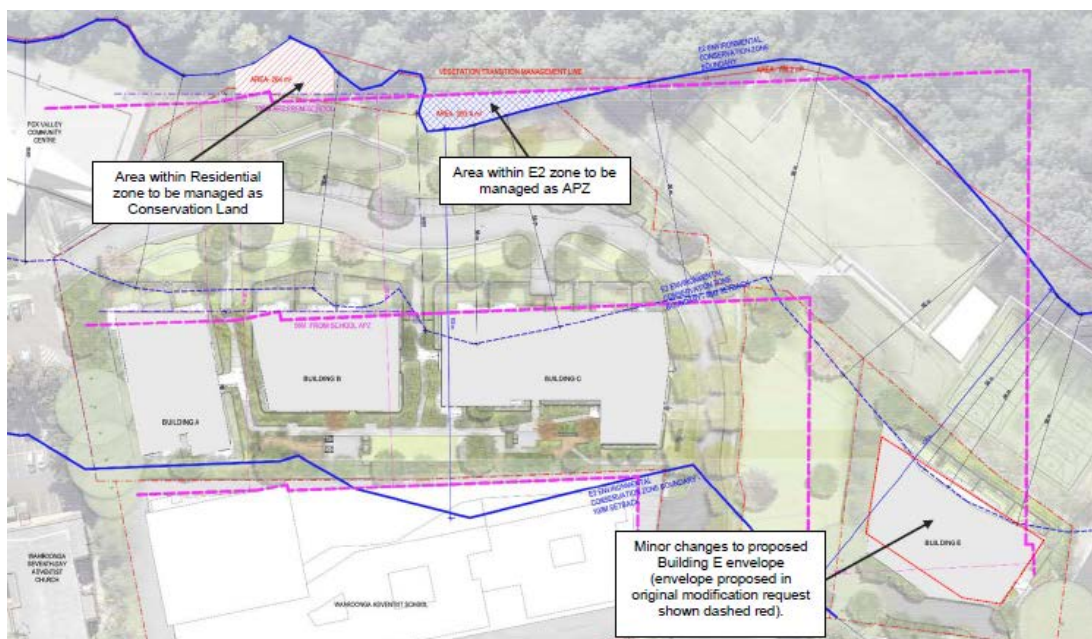
17. Table 1 of the Department's AR sets out the 7 previous modification requests submitted pursuant to the Concept Approval. The Commission notes that Mod 6 and Mod 7 were withdrawn.

2.3 Summary of the Modification Request

18. Section 3.2 of the Department's AR Addendum describes the Modification Request as amended. In summary, the Modification Request encompasses:

- modifying the building envelopes of residential flat buildings A, B, C and E.
- deleting Building D
- modifying the car parking rates for the residential flat buildings in Precinct B: Central Church
- modifying Future Assessment Requirements (**FAR**) A2 (plans and documentation), A8 (Building height) and B9 (Car Parking)
- deleting detailed building envelopes for greater flexibility in the detailed design / DA stage
- clarifying that on-street parking is indicative only
- clarifying vehicle access arrangements
- establishing a new APZ that would:
 - predominantly follow the E2 Environmental Conservation Zone (**E2 Zone**) boundary as required by Condition B5
 - deviate from the E2 zone boundary to maintain a 100m APZ for the school buildings, creating a 263m² area within the E2 zone to be managed as an APZ (shown as blue cross-hatched on Figure 2)
- offsetting the 263m² E2 Zone land managed as an APZ with an area of equal size within the R4 Residential zone adjoining the E2 Zone land and with similar ecological values to the affected E2 Zone land (shown as red hatched in Figure 2)
- establishing a new APZ for the residential buildings of 56m as permitted by Planning for Bushfire Protection (PBP) 2019.
- modifying the proposed Building E envelope to ensure compliance with Condition B5 (Figure 2)

Figure 2: Revised scheme (source: Department's Addendum Assessment Report 20 October 020)



19. The Proponent's justification for the Modification Request is summarised at Section 2 of the Department's AR and paragraph 3.1.4 of the Department's AR Addendum.

3 THE DEPARTMENT'S CONSIDERATION OF THE MODIFICATION REQUEST

3.1 Statutory Context

20. As described in paragraph 9 of this Statement of Reasons, the Modification Request is sought under Schedule 2 of the STOP Reg.
21. The Department's AR Section 3.1 summarises the statutory context of the Modification Request and confirms that the Department is satisfied the Modification Request is within the scope of section 75W of the EP&A Act.

3.2 The Department's Engagement

22. The Department's engagement is described at Section 4 of the Department's AR. The Department placed the modification request on its website and notified adjoining landholders and relevant State and local government agencies in writing, between 28 February and 8 March 2018.

3.3 The Department's Assessment and Recommendation

23. Section 5 of the Department's AR states that key issues associated with the Modification Request are:
- *"impacts to the school*
 - *future built form and associated impacts to the school*
 - *traffic, parking and access*
 - *bushfire management"*
24. Section 5.5 of the Department's AR assesses other issues identified by the Department, including basements and landscaping, internal amenity, biodiversity, stormwater management, the proposed exhibition home and other impacts.
25. Section 6 of the Department's AR concludes:
- "the modification request is approvable, subject to the recommended FARs".*
26. Paragraph 5.2.1 of the Department's AR Addendum states:
- "The key issue for consideration is the biodiversity impacts of permitting the affected E2 zoned land to be managed as an APZ."*
27. Paragraph 6.1.4 of the Department's AR Addendum concludes:
- "the changes to the APZ requirements is [sic] approvable, subject to the recommended FARs."*

4 THE COMMISSION'S CONSIDERATION

4.1 The Department's Assessment Report

28. Under section 4.6 of the EP&A Act, certain functions of the Commission are to be exercised by the Planning Secretary on behalf of the Commission, including "undertaking assessments of the proposed development and providing them to the Commission (but without limiting the assessments that the Commission may undertake": section 4.6(b). The Planning Secretary's assessment of the Project is set out in the Department's AR and AR Addendum.

4.2 The Commission's Meetings

29. As part of its determination, the Commission met with various persons as set out in Table 2. All meeting notes were made available on the Commission's website.

Table 2: Commission's Meetings

Meeting	Date of Meeting	Transcript Available
Department	22 October 2019	3 November 2019
Proponent	22 October 2019	3 November 2019
Council	22 October 2019	3 November 2019
Public Meeting	7 November 2019	12 November 2019

4.2.1 Site Inspection

30. The Commission conducted a site inspection on 7 November 2019. The site inspection provided the opportunity to understand the physical attributes of the Site, and to view existing development within and surrounding Precinct B from Fox Valley Road. The site inspection notes were made available on the Commission's website on 25 November 2019.

4.2.2 Public Comments

31. The Commission heard from 12 members of the public during the Public Meeting and the key issues raised included impacts on Wahroonga Adventist School, traffic and parking, bushfire risk, local character, built form and amenity, lack of public benefit, and insufficient community consultation.
32. The Commission invited written comments after the Public Meeting. The Commission received a total of 135 submissions including one submission from the Fox Valley Resident Action Group and one submission from the Sovereign Grace Church. An online objection petition was also received with 1,630 signatures. All submissions received were objections.
33. Concerns raised in the written public submissions focussed on built form, bushfire risk, amenity, local character, traffic, parking, insufficient consultation, child safety, stormwater, and lack of public benefit.

34. The Department's AR Addendum was published on the Commission's website on 20 October 2020 and the Commission invited written comments within seven days of its publication. The Commission received a total of 29 written comments, including 27 individual public submissions, one from the Fox Valley Region Action Group and one from the NSW Department of Primary Industries Biosecurity and Food Safety division. All public submissions were objections. The public submissions reiterated issues in previous submissions and raised concerns with the recommended car-share parking rate, the APZ, non-compliance with the Ku-ring-gai DCP, and the brevity of the exhibition of the AR Addendum.
35. The Department of Primary Industries (Biosecurity and Food Safety) recommended that the Biodiversity Management Plan be amended to refer to and be consistent with the *Biosecurity Act 2015*, the Greater Sydney Regional Strategic Weed Management Plan and the Greater Sydney Regional Strategic Pest Management Plan.

4.3 Material Considered by the Commission

36. In this determination, the Commission has carefully considered the following material (**Material**):
 - the Proponent's section 75W Modification Request, dated 1 February 2018 and all associated documents;
 - all submissions made to the Department in respect of the Modification Request during the public notification period of 28 February 2018 to 8 March 2018;
 - the Proponent's RtS, dated 16 August 2018 and 10 December 2018, and all associated documents;
 - all submissions made to the Department in respect of the RtS during the public notification period of 22 August 2018 to 7 September 2018;
 - the Proponent's SRtS, dated 27 May 2019, and all associated documents;
 - all submissions made to the Department in respect of the SRtS during the public notification period of 5 June 2019 to 19 June 2019;
 - the Department's AR, dated September 2019;
 - the additional information provided by the Proponent dated 15 October 2019, 2 April 2020 and 7 August 2020, and all associated documents;
 - the Department's additional correspondence to the Commission, received on 25 October 2019 and 8 November 2019;
 - Council's correspondence to the Commission, received on 30 October 2019;
 - all submissions made to the Commission in respect of the Modification Request during the public notification period of 24 October 2019 to 14 November 2019;
 - the Department's AR Addendum and modification instrument, dated October 2020; and
 - all submissions made to the Commission in response to the publication of the Department's Assessment Report Addendum and modification instrument made from 20 October 2020 to 30 October 2020.

4.4 Relevant considerations

37. In determining this Modification Request, the Commission has taken into account:
 - relevant environmental planning instruments;
 - submissions made in accordance with the EP&A Act and Regulations; and
 - the public interest, informed by the subject matter, scope and purpose of the EP&A Act.

4.4.1 Relevant Environmental Planning Instruments

38. The Commission has taken into consideration the following EPIs which apply to the Site:
- *State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development (SEPP 65)*
 - *Ku-ring-gai Council Local Environmental Plan 2015*
39. The Commission has considered the Environmental Planning Instruments relevant to the Modification Request and considers that the Modification Request accords with these instruments.

4.5 Statutory Context

40. The Commission agrees with the Department's finding at Section 3.1 of the Department's AR that the Modification Request is within the scope of section 75W of the EP&A Act.

4.6 Bushfire

Public Comments

41. Public submissions raised concern with bushfire risk, including inadequate proposed APZs. Public submissions also included the suggestion that the Site should be rezoned to be used for evacuation purposes.
42. Following exhibition of the Department's AR Addendum and Addendum Modification Instrument on the Commission's website on 20 October 2020, public submissions were received raising concern with the measurement of the APZ in relation to the school and non-compliance with the APZ requirements for Building C under PBP 2019.

Council Comments

43. Council's response to the Department on 27 May 2020, stated:

"Whilst is it unfortunate that approvals for the school did not include APZs calculated on the E2 Environmental Conservation Zone boundary, the existing nature of the development places an ongoing requirement to thin vegetation within the E2 zone for the life of the school development. As this requirement already exists, we have no objection to the proposed bushfire modification (subject to approval by the RFS)"

RFS Comments

44. The RFS response to the Department, dated 19 May 2020, raised no objections to the Modification Request, subject to the development complying with PBP2019.

Proponent's Consideration

Figure 3: Discrepancy between VTML and E2 Zone (source: Ethos Urban letter to Commission dated 15 October 2019)



45. The Proponent’s correspondence to the Department, dated 7 August 2020, states:

Buildings A and B

The required 56 metre APZ1 required for Buildings A and B continue to be located wholly outside of the E2 Zone.

Building C

The required APZ for Building C relies on a small area of land within the E2 Zone (and within the VTML) that is currently managed as APZ for the Wahroonga Adventist School (marked in blue hatch in Attachment A). Building C does not require any additional land within the E2 Zone to be managed as APZ, and therefore there is no effect on the E2 Zone other than that already approved and created under the approval for the Wahroonga Adventist School.

Notwithstanding the above, the Proponent considers that the delivery of the residential component of the Central Church Precinct could contribute to an improved environmental outcome. Whilst the ongoing use of the Wahroonga Adventist School precludes any further revegetation of the area in blue hatch, there is an opportunity to provide new ecological planting on land contiguous with the E2 zoned land (shown in red hatch in Attachment A) of an equivalent size. This is considered to be a significant positive benefit provided by the project. The reliance on this area by Building C would have no ecological impact given its required use for the Wahroonga Adventist School, and therefore the proposed additional ecological planting would be a net public benefit.

Building E

...a small portion of Building E would be affected by a requirement to provide a 56 metre APZ wholly outside of the E2 Zone, if the VTML established under the approved BMP was to be ignored (notwithstanding the previous reliance upon the VTML by the Australian Government Department of Agriculture, Water and the Environment and by the Department in the Wairoonga Adventist School SSD DA). In response to this issue, an alternative Urban Form Control Diagram has been prepared (Attachment B) which demonstrates how this very small area of the building envelope could be redistributed to the northern and southern portions of the western building edge, to accommodate the 56 metre APZ wholly on land zoned R4 High Density Residential. The Proponent would accept the approval of this revised building envelope for Building E, as an alternative to the previously submitted Urban Form Control Diagrams. The proposed amendment to the building envelope is very minor, would not result in any change to the previously assessed environmental impacts, has no interface with the public domain or adjoining private land, and is in direct response to a perceived need to provide the APZ on land zoned R4 High Density Residential. Accordingly it is our view that the Department is able to recommend the adoption of the revised Urban Control Diagram by the IPC without the need for further referrals or notification.

Department's Assessment

46. Paragraph 5.2.10 of the Department's AR Addendum states that the Department's Environment Energy and Science Group (**EESG**) is supportive of the proposed provision of vegetated land within the Site to replace the E2 Zone land managed as an APZ. EESG recommended that the proposed changes be incorporated into the Biodiversity Management Plan, and the provision of appropriate signage and/or fencing be placed on the boundary to ensure protection of this area.
47. The Department's recommended Instrument of Modification, as amended, included amendments to FAR B4, with the following requirements added:

Prior to approval of development applications for Residential Buildings A, B or C in Precinct B, the Biodiversity Management Plan is to be updated, in consultation with the Department of Agriculture Water and the Environment, to:

(a) remove all APZs in the E2 Environmental Conservation zone adjacent to the proposed residential flat buildings in Precinct B with the exception of the minimum APZ required for the school. In this regard APZs for the school are limited to a distance of 100 metres from the approved school buildings in all directions. Areas within the E2 Environmental Conservation zone located more than 100 metres from the school buildings may not be managed as APZs.

(b) adjust the associated vegetation management transition line adjacent to the residential flat buildings in Precinct B to be consistent with the E2 Conservation Zone boundary, but excluding the APZ for the school and including a new offset area in the residential zone adjacent to the conservation zone that is equivalent in size to the APZ in the E2 Conservation zone that can be revegetated with STIF and will not be required to be managed as an APZ

(c) include active regeneration and weed management of the new offset area, in the residential zone adjacent to the conservation zone that is equivalent in size to the APZ in the E2 Conservation zone, to ensure regeneration to a natural habitat

(d) include provisions for fencing and / or signage as appropriate on the boundary of the new offset area in the residential zone adjacent to the conservation zone that is equivalent in size to the APZ in the E2 Conservation zone. The updated plan is to be approved by the Department of Agriculture Water and the Environment

48. Section 5.2.14 of the Department's AR Addendum found that:

"Subject to these requirements, the Department considers that the encroachment of APZs into the E2 zoned land would be minimised as far as possible, would be appropriately offset, and overall biodiversity outcomes for the E2 zoned land would be improved in line with objectives for the E2 zoned land and the objectives of the Concept Plan Approval."

Commission's Findings

49. The Commission agrees with the Department's conclusion that the changes to APZ requirements are acceptable, subject to the recommended FARs. The Commission finds that the Department's recommendation to offset the APZ in the residential zone is an appropriate solution in this circumstance. The Commission also finds that the Department's recommendations accord with the provisions of PBP2019.
50. The Commission notes the NSW Department of Primary Industries recommendation that the BMP should be consistent with the *Biosecurity Act 2015*, the Greater Sydney Regional Strategic Weed Management Plan and the Greater Sydney Regional Strategic Pest Management Plan. The Commission has imposed this requirement through the revised FAR B4.

4.7 Impacts to the School

Public Comments

51. Section 5.1 of the Department's AR notes that public submissions raised concerns with:

"the impacts of the proposal on the adjoining Wahroonga Adventist School. In particular, concern was raised about the lack of room for school expansion / provision of sufficient recreational space, the lack of a physical or visual link between the main school area and the playing fields and concerns about student safety when moving between the sites."

Proponent's Consideration

52. The Proponent's RtS dated 27 May 2019 revised the Modification Request to delete Building D to provide additional open space and connectivity for the school.

Department's Assessment

53. Section 5.1 of the Department's AR states:

"The Department is satisfied the proposal would not result in any significant impacts to the school compared to the original approval. Rather, the Department considers the deletion of Building D would result in a net benefit to the school by increasing the size of the school grounds, improving connections between the main school area and the existing recreational areas, and improving outlook and solar access to the north-eastern corner of the school".

Commission's Findings

54. The Commission notes that potential impacts on the Wahroonga Adventist School were raised by members of the public at the public meeting held on 7 November 2019 and include limiting future opportunities for the expansion of the school.
55. The Commission notes the RFBs have always been a component of the Concept Approval and the benefits in terms of carparking and open space that the school currently enjoys in the RFB locations was never intended to be maintained. The Commission notes that Building D is deleted from the Modification Request as described in Section 5.1 of the Departments AR, and that this provides an opportunity for additional available open space for the school's use.
56. The Commission agrees with the Department's conclusion that:
- "the proposal would not result in any significant impacts to the school compared to the original approval"*

4.8 Built Form

Public Comments

57. Section 5.2 of the Department's AR states that the key concerns in relation to the impacts of the Modification Request on built form related to:
- *"level of detail in the plans and how that would affect the built form in future DAs*
 - *building height, including non-compliance with Ku-ring-gai LEP 2015 and associated impacts to the school*
 - *building footprints and setbacks and associated impacts to the school."*

Council Comments

58. Council responded to the Department regarding the SRtS, and:
- advised that the amended building envelopes addressed its earlier concern about excessive detail in the concept plan which was seen to be more appropriately addressed through future development applications
 - recommended that a condition be included to ensure the top level is limited to plant and roof top terraces only
 - considered any variation to the Local Environmental Plan (LEP) height controls should be a matter for Council to assess as part of future development applications

Proponent's Consideration

59. The Proponent's SRtS proposed the following changes to built form:

The application as amended seeks approval for:

- *Deletion of the building envelope for building D;*
- *Amendments to the heights, plant zones and building footprints of building A, B, C and E envelopes to allow for assessment of detailed designs forming future Development Applications by Council;*

- *Modification to Condition B9 Car Parking (1) Residential car parking to allow for additional residential car parking and reduced visitor car parking on the site;*
- *Indicative vehicle access arrangements to the consolidated basement for buildings A, B and C and vehicle access to building E; and*
- *Deletion of Condition B9 Car Parking (2) Residential car parking to allow for future detailed designs to provide a single consolidated car park for buildings A,B and C and a separate basement to accommodate the residential car parking spaces.*

60. The Proponent's SRtS provides the following justification for the proposed changes:

Whilst modifications are proposed to the building envelopes, this does not alter the previous assessment that the site has the capacity to accommodate up to 200 apartments with regard to transport and access, built form and other factors. Future detailed Development Applications will be required to demonstrate that detailed apartment configurations and layouts within the building envelope are consistent with the relevant planning policies including the Apartment Design Guide.

...

The proposed building envelopes are seeking minor changes to the proposed building footprint and reconfiguration of the roof to accommodate indicative plant zones and rooftop terraces for the four residential flat buildings.

Department's Assessment

61. Section 5.2 of the Department's AR notes that the proposed modifications to the approved building envelopes are the result of detailed design and are intended to improve building form and to reduce impacts to the school. This included the deletion of Building D and reducing the height of the south-west wing of Building C to reduce potential amenity impacts to the school.

62. Section 5.2 of the Department's AR finds that:

- *"The level of detail in the revised building envelope plans is appropriate for a Concept Plan. The envelopes will still allow Council to require further modulation, articulation and detailed design of the buildings. To ensure that there is no ambiguity in future DAs, a FAR has been recommended specifying that the top level is not to include residential floor space and is limited to plant and roof top terraces only."*
- *"...the proposed building heights are acceptable, as the variation to the Council's height controls are minor, the proposal would not result in any significant amenity or visual impacts compared to the original approval and deletion of Building D would result in a net benefit to the school."*
- *"...the proposed changes to building footprints and setbacks are appropriate and would not result in any unacceptable impacts within the site or to the adjoining school."*

Commission's Findings

63. The Commission notes the recommended instrument prepared by the Department includes a limit on the maximum height of residential flat buildings within Precinct B (FAR A8), and clarification that the final design and location of the basements will be determined at the DA stage (FAR B1).
64. The Commission finds that on balance, the proposed built form is acceptable and would not result in significant amenity impacts to the Wahroonga Adventist School compared to the approved building envelopes. The Commission is satisfied that the proposed building height would not result in significant overshadowing or overlooking impacts on the school.
65. The Commission is satisfied that the revised building envelopes and building heights are acceptable. The Commission agrees with and has imposed the Department's recommended FARs A8 and B1. The Commission also agrees with the Department's finding that the deletion of Building D would deliver a net benefit to the School.

4.9 Car Parking

Public Comments

66. Public submissions raised the following concerns regarding car parking:
 - the lack of available car parking spaces across the Wahroonga Estate
 - the proposed reduction in visitor car parking spaces
 - the future RFBs would be constructed on an existing temporary car park and development of the site should not proceed until access to the school basement parking and drop-off zone is provided
67. Public submissions in response to the exhibition of the Department's AR Addendum noted a potential discrepancy between FAR B9(1)(e), which requires a minimum of one car share space per 90 dwellings, and Council's recommendation in 2019 for car parking rates of one space per six dwellings.

Council, RMS and TfNSW Comments

68. Council's submission on the Modification Request did not object to the Proponent's rationale behind amending the approved car parking rates by aligning the Concept Plan approval with the car parking requirements in the Ku-ring-gai DCP. However, Council was concerned with proposed car parking spaces exceeding DCP requirements and the removal of the car share spaces.
69. Council's submission on the RtS stated that the:

“proposal to utilise visitor parking on the SAN Hospital site by way of reducing onsite parking within this residential flat development is strongly opposed. The SAN Hospital visitor parking was provided to accommodate the visitors to that facility, no extra parking or consideration of proximity of parking was provided to accommodate this residential flat development and its visitor or other parking requirement”.
70. Council's submission on the SRtS reiterated concerns in relation to the removal of car share spaces and stated that:

“Abandoning the introduction of a car share scheme would send the wrong message about private vehicle use and leave fewer options for those residents that do not want to own a vehicle or need occasional access to additional vehicles”.

71. RMS and TfNSW advised that the car parking rates should be determined in consultation with Council.

Proponent's Consideration

72. The Proponent proposed to amend the residential car parking rates under the Concept Plan approval to provide additional on-site residential car parking spaces, reduced visitor car parking spaces and the removal of all car share spaces in Precinct B.
73. The reduction of the visitor car parking rate was justified by the Proponent in its Modification Request, dated 1 February 2018, which noted the *"proximity of the site to additional visitor car parking capacity within the public car park associated with the SAN"*.

Department's Assessment

74. Section 5.3 of the Department's AR states:

- *"to assist with preserving the original objectives of the Concept Plan to reduce reliance on private vehicles and encourage alternative forms of transport where possible, the Department agrees with Council that DCP resident rates should be applied as a maximum in this case. This would result in a slightly reduced rate of parking compared to that sought for two-bedroom apartments in Buildings A to C, but all other proposed rates would be consistent with this approach"*.
- *"applying the DCP car parking rates as a maximum would strike the right balance between ensuring residents have sufficient access to private vehicles to meet their needs"*.

75. Section 5.3 of the Department's AR states:

"A FAR is therefore recommended which applies the DCP residential parking rates as a maximum, visitor parking to be provided at a rate of one space per four dwellings and one car share space to be provided per 90 dwellings. Subject to this FAR, the Department considers the modification would ensure adequate parking is provided to meet residential demand, while also providing alternative options that will assist with reducing overall reliance on private vehicles, consistent with the intention of the original Concept Plan... Finally, in terms of the impact of the proposal on the temporary school carpark, the Department notes the Concept Plan approved the use of the site for a residential development rather than a temporary carpark. Further, the proposed modification does not seek to make any changes to the approved use on the site. The provision of carparking for the school during the construction phase is therefore a matter for the school and the proponent."

76. The Department recommended car parking rates are as follows:

- 1 bed – maximum 1 space per dwelling
- 2 bed – maximum 1.25 spaces per dwelling
- 3 bed – maximum 2 spaces per dwelling
- Visitors – 1 space per 4 dwellings
- Car Share – 1 space per 90 dwellings

Table 3: Comparison of car parking requirements (Source: Ethos Urban)

Type	Concept Plan Approval MP07_0166	Ku-ring-gai DCP 2015	MOD 8 Proposed	DPE Recommendation	Proponent's Response
1-bed	0.5 space per dwelling	Minimum of 1 space per dwelling	Minimum of 1 space per dwelling	Maximum of 1 space per dwelling	Accept DPIE recommendation
2-bed	1 space per dwelling	Minimum of 1.25 spaces per dwelling	Minimum of 1.5 spaces per dwelling in Buildings A-C, and 1 space per dwelling in Building E	Maximum of 1.25 spaces per dwelling	Maximum 1.5 spaces per dwelling
3-bed	1 space per dwelling	Minimum of 2 space per dwelling	Minimum of 1 space per dwelling	Maximum of 2 spaces per dwelling	Accept DPIE recommendation
Visitors	1 space per 4 dwellings	Minimum of 1 space per 4 dwellings	1 space per 6 dwellings	1 space per 4 dwellings	1 space per 5 dwellings
Car Share	1 space per 6 dwellings	No requirement	No requirement	1 space per 90 dwellings	Accept DPIE recommendation

Commission's Findings

77. The Commission agrees with and has imposed the Department's recommended FAR B9 and the specified maximum car parking rates at the Site.
78. The Commission agrees with the Department's finding that, subject to the imposed FAR B9, the modification ensures adequate parking is provided to meet residential demand, while providing alternatives that assist with reducing reliance on private vehicles, consistent with the intention of the original Concept Plan

4.10 Objects of the EP&A Act and Public Interest

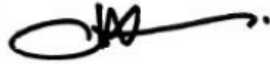
Commission's Findings

79. In considering the merits of the Modification Request, the Commission has had regard to the objects of the EP&A Act.
80. Under section 1.3 of the EP&A Act, the relevant objects applicable to the Modification Request are:
 - a) *to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,*
 - b) *to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,*
 - c) *to promote the orderly and economic use and development of land,*
 - d) *to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,*
 - e) *to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State, and*
 - f) *to provide increased opportunity for community participation in environmental planning and assessment.*

81. A key relevant object of the EP&A Act to the Modification Request, as set out in paragraph 145, is the facilitation of Ecologically Sustainable Development (ESD). The Commission notes that section 6(2) of the Protection of the Environment Administration Act 1991 states that ESD requires the effective integration of social, economic and environmental considerations in its decision-making, and that ESD can be achieved through the implementation of:
- a) *the precautionary principle;*
 - b) *inter-generational equity;*
 - c) *conservation of biological diversity and ecological integrity; and*
 - d) *improved valuation, pricing and incentive mechanisms.*
82. The Commission finds that the Modification Request is generally consistent with the ESD principles and the objects of EP&A Act, and is in the public interest, because the Modification Request:
- promotes the orderly and economic use and development of the land as it involves modifications generally within the approved footprint and the extent of the development is reduced by the deletion of Building D;
 - protects the environment and integrates economic, environmental and social considerations for the decision-making about environmental planning and assessment, as it:
 - would have an acceptable impact on visual amenity;
 - would not have significant impacts on the road network;
 - promotes the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State, as government agencies provided comment and recommendations on the Modification Request; and
 - provides opportunity for community participation in environmental planning and assessment, as the Department made the Modification Request available on the Major Projects website.

5 CONCLUSION: THE COMMISSION'S FINDINGS AND DETERMINATION

83. The views of the community were expressed through public submissions and comments received (as part of exhibition and as part of the Commission's determination process), as well as in oral presentations to the Commission at the public meeting. The Commission carefully considered all these views as part of making its decision. The way in which these concerns were taken into account by the Commission is set out in section 4 above.
84. The Commission has carefully considered the Material before it (section 4.3 above).
85. Based on its consideration of the Material, the Commission finds that the Modification Request should be approved subject to the Department's recommended conditions. These conditions are designed to:
- prevent, minimise and/or offset adverse environmental impacts;
 - set standards and performance measures for acceptable environmental performance
 - require regular monitoring and reporting; and
 - provide for the on-going environmental management of the development.
86. The reasons for the Decision are given in this Statement of Reasons for Decision dated 13 January 2021.



John Hann (Chair)
Member of the Commission



Wendy Lewin
Member of the Commission