

JOHNSON WINTER & SLATTERY

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Our Ref: C3102
DocID: 47.5

17 March 2020

Mr Greg Morris
Business Manager
Oxford Falls Grammar School Ltd
1078 Oxford Falls Road
OXFORD FALLS NSW 2100

BY EMAIL

Dear Greg

Proposed library/administration building and carpark at Oxford Falls Grammar School

We refer to the library/ administration building and carpark (**Development**) proposed to be constructed within the boundaries of Oxford Falls Grammar School located at 1078 Oxford Falls Road, Oxford Falls, and being legally described as Lot 100 in DP 1240806 (**School**).

1 Background and request for advice

The Development is proposed to be carried out as 'development without consent' under clause 36 of the *State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017 (ESEPP)*.

We have been provided with a number of plans depicting the proposed Development which are intended to be included in the Review of Environmental Factors (**REF**) for the Development to be prepared in accordance with the *NSW Code of Practice for Part 5 Activities for registered non-government schools*, August 2017 (**Code**) and the *Environmental Planning & Assessment Act 1979* (NSW). Specifically, we have been provided with the following plans of the Development dated 11 March 2020 and marked as 'Revision 5':

- Site plan;
- Ground level plan;
- Level 1 plan;
- Roof plan;
- Elevations (Sheets 1 and 2);
- Sections;
- Shadow Diagrams; and
- Perspectives

collectively referred to in this advice as the **Plans**.

You have asked us to confirm whether the Development meets the criteria for 'development without consent' under clause 36 of the ESEPP on the basis of the Plans provided to us.

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2 Summary of advice

The proposed Development satisfies the criteria in clause 36 of the ESEPP, subject to confirmation by the School that the Development will not contravene any relevant conditions of the most recent development applying to any part of the School (as required under clause 36(3) of the ESEPP). We understand that this will be confirmed in the REF.

3 Advice

Clause 36(1)(a) of the ESEPP provides that:

'(1) Development for any of the following purposes may be carried out by or on behalf of a public authority without development consent on land within the boundaries of an existing school:

(a) construction, operation or maintenance, more than 5 metres from any property boundary with land in a residential zone and more than 1 metre from any property boundary with land in any other zone, of:

(i) a library or an administration building that is not more than 1 storey high, or

...

(v) a car park that is not more than 1 storey high,

Further, clauses 36(2) and (3) of the ESEPP provide:

(2) However, subclause (1) applies only to development that—

(a) does not require an alteration of traffic arrangements (for example, a new vehicular access point to the school or a change in location of an existing vehicular access point to the school), or

(b) in the case of development referred to in subclause (1)(a)—does not allow for an increase in—

(i) the number of students the school can accommodate, or

(ii) the number of staff employed at the school,

that is greater than 10% (compared with the average of each of those numbers for the 12-month period immediately before the commencement of the development).

(3) Nothing in this clause authorises the carrying out of development in contravention of any existing condition of the most recent development consent (other than a complying development certificate) that applies to any part of the school, relating to hours of operation, noise, car parking, vehicular movement, traffic generation, loading, waste management, landscaping or student or staff numbers.

Therefore for the Development to be carried out as development without consent pursuant to clause 36 it needs to satisfy the following requirements:

- (a) It must be within the boundaries of the existing School;
- (b) It must be carried out by or on behalf of a public authority;
- (c) It must fall within a category or categories of development identified in clause 36(1)(a);
- (d) It must satisfy the setback and height requirements in clause 36(1)(a);
- (e) It must not result in an alteration of existing traffic arrangements;

- (f) It must not allow for an increase in student or staff numbers of more than 10% over the previous year's levels; and
- (g) It must not contravene certain existing conditions of the most recent development consent that applies to any part of the School.

The Development is proposed to be carried out within the boundaries of the existing School.

We have previously given advice that the Development will be carried out by a 'public authority' for the purposes of clause 36 of the ESEPP and understand that this is addressed in detail in the REF.

The Development consists of a library and administration building, and an ancillary carpark. The Ground Floor consists of a one storey administration building and an ancillary carpark. Above the administration building and ancillary carpark is a library. The library also includes a proposed pedestrian walkway to connect the library to the Existing K-Block Building. Therefore the Development clearly meets identified purposes as listed in clause 36(1)(a), being a library and administration building and an ancillary carpark (noting that a one storey carpark is also identified as a form of development permissible without consent in its own right so would be permissible without consent irrespective of whether or not it is ancillary to another purpose).

The Development is located at least 5m from the southern boundary (although we note the zoning of the southern boundary is a "Deferred Matter" under the *Warringah Local Environmental Plan 2011* so it is not clear as to whether the residential zoning requirements apply to the Development).

Clause 36(1)(a) provides that a development carried out for a purpose identified in cl 36(1)(a) must not be more than one storey high. The Development consists of two separate components and purposes, being an administration building, with an ancillary carpark, and a library. The administration building and ancillary carpark are located on the ground level, and the library is located above the administration building/ carpark. The administration building and ancillary carpark is not greater than one storey high. The library is also not greater than one storey high. This is explained further below.

Clause 5 of the ESEPP provides that '*A word or expression used in this Policy has the same meaning as it has in the Standard Instrument unless it is otherwise defined in this Policy.*' The word 'storey' is not defined in the ESEPP and therefore the Standard Instrument definition applies.

In the Dictionary in the Standard Instrument, 'storey' is defined as:

'storey means a space within a building that is situated between one floor level and the floor level next above, or if there is no floor above, the ceiling or roof above, but does not include:

(a) a space that contains only a lift shaft, stairway or meter room, or

(b) a mezzanine, or

(c) an attic.'

The term 'high' is not defined in the ESEPP. The term 'building height' is referred to in the Standard Instrument however refers to RL levels or height in metres, and therefore does not apply to a reference to height in storeys. Therefore in our view clause 36 is to be interpreted as requiring a development carried out for a purpose in clause 36(1)(a) to have a height that does not exceed one storey, being a space within a building that it situated between one floor level and the floor level or ceiling or roof above.

The administration building/ carpark and the library are each one storey high based on the above definition.

The Plans show that the entrance and exist to the carpark utilise an existing driveway crossing, and therefore no alteration of traffic arrangements is required. The Development therefore satisfies clause 36(2)(a).

We are instructed that the Development will not result in any increase in staff or student numbers and therefore will consistent with clause 36(2)(b).

We understand that the relevant conditions of the most recent development consent applying to any part of the School relating to the matters listed in clause 36(3) are being reviewed as part of the REF to ensure that the Development will not contravene any relevant conditions.

Based on the above analysis, in our view the proposed Development is capable of being carried out as development without consent, subject to completion of a REF and compliance with any conditions applying to the carrying out of the activity as identified in the REF.

Yours Sincerely,

A handwritten signature in blue ink that reads "Johnson Winter & Slattery". The signature is written in a cursive style with a long, sweeping tail that extends to the right.