

Item 8: Development

8.1 MA0007/2023 - Section 4.55(1A) Modification to DA0393/2022 - Education Facility at Kildallon - Lot 1 DP 739918 - 70-76 Court Street MUDGEE NSW 2850

REPORT BY THE TOWN PLANNER
 TO 21 JUNE 2023 ORDINARY MEETING
 GOV400103, DA0393/2022

RECOMMENDATION

That Council:

- A. receive the report by the Town Planner on the MA0007/2023 - Section 4.55(1A) Modification to DA0393/2022 - Education Facility at Kildallon - Lot 1 DP 739918 - 70-76 Court Street MUDGEE NSW 2850; and
- B. approve MA0007/2023 - Section 4.55(1A) Modification to DA0393/2022 - Education Facility at Kildallon - Lot 1 DP 739918 - 70-76 Court Street MUDGEE NSW 2850 subject to the amended conditions shown in **blue**, and **amended statement of reasons**:

CONDITIONS

- 1. The development is to be carried out in accordance with the following plans endorsed with Council’s Stamp as well as the documentation listed below, except as varied by the conditions listed herein and/or any plan notations. Any modification otherwise required to the approved plans will require the submission of a modification application under Section 4.55 of the *Environmental Planning and Assessment Act*.

Title / Name:	Drawing / Ref. No.:	Revision / Issue:	Date:	Prepared by:
Site Plan	3750-A01	G	OCT 2022	Giselle Denley Drafting Services
Floor Plan	3750-A02	F	JAN 2023	Giselle Denley Drafting Services
Elevations	3750-A03	E F	AUG 2023 MAR 2023	Giselle Denley Drafting Services
Section	3750-A04	D	AUG 2022	Giselle Denley Drafting Services
Hardscape Plan	LPDA 23 – 66, sheet 01	F	11.11.22	Conzept Landscape Architects
Landscape Plan 1	LPDA 23 – 66, sheet 02	F	11.11.22	Conzept Landscape Architects

Title / Name:	Drawing / Ref. No.:	Revision / Issue:	Date:	Prepared by:
Landscape Plan 2	LPDA 23 – 66, sheet 03	F	11.11.22	Conzept Landscape Architects
Design Intent Images	LPDA 23 – 66, sheet 04	F	11.11.22	Conzept Landscape Architects
Detail + Specification	LPDA 23 – 66, sheet 05	F	11.11.22	Conzept Landscape Architects
Statement of Environmental Effects	-	-	16 October 2022	Navigate Planning
Traffic & Parking Assessment	22025	B	August 2022	Transport and Traffic Planning Associates

[MODIFIED MA0007/2023]

GENERAL

2. For clarity, this development consent approves an educational establishment (Country University Building) and associated signage only.
3. All earthworks, filling, building, driveways or other works, are to be designed and constructed to ensure that at no time any ponding of stormwater occurs on the subject site or adjoining land as a result of this development. Design must also ensure that no diversion of runoff onto other adjacent properties occurs.
4. All stormwater runoff from roof and developed surfaces is to be controlled in such a manner so as not to flow or discharge over adjacent properties. Methods of disposal of excess stormwater including overflow from tank/s must also include adequate provision for prevention of erosion and scouring. All stormwater is to be discharge by connecting to the existing stormwater network system.
5. Costs associated with all development works including any necessary alteration, relocation of services, public utility mains or installations must be met by the developer. The developer is responsible to accurately locate all existing services before any development works commence to satisfy this condition.
6. Any damage which is caused to Council’s infrastructure as a result of the proposed development must be repaired immediately to Council’s satisfaction and at no cost to Council.
7. In accordance with Council’s Development Control Plan, Council does not permit the following types of development over an existing sewer main or easement for sewer/stormwater drainage;
 - a) Erection of permanent structures,
 - b) Cut or fill of land,
 - c) The planting of trees, or

d) Concrete structures

Footing design must ensure that footing extended below the zone of influence to ensure that no load is placed on existing infrastructure.

PRIOR TO THE ISSUE OF A CONSTRUCTION CERTIFICATE

8. Prior to release of the Construction Certificate, approval pursuant to Section 68 of the Local Government Act, 1993 to carry out water supply, stormwater and sewerage works is to be obtained from Mid-Western Regional Council.
9. All finished surface levels shall be shown on the plans submitted for the Construction Certificate.
10. Consent from Council must be obtained for all works within the road reserve pursuant to Section 138 of the *Roads Act 1993*, prior to the issue of a Construction Certificate. In this respect, the development must provide for a new accessible pedestrian pathway from the development to the existing Court Street footpath. Further, the new access crossover is to be designed and constructed in accordance with Council's Access to Properties Policy.
11. An Erosion and Sediment Control Plan is to be submitted to an approved by the Certifier (i.e. Council or a private Certifier) prior to the issue of a Construction Certificate. the Erosion and Sediment Control Plan for the development is to be prepared and implemented in accordance with the LANDCOM guidelines and requirements as outlined in the latest edition of "Soils and Construction – Managing Urban Stormwater". Points to be considered include, but are not limited to:
 - a) Saving available topsoil for reuse in the revegetation phase of the development;
 - b) Using erosion control measures to prevent on-site damage;
 - c) Rehabilitating disturbed areas quickly; and
 - d) Maintenance of erosion and sediment control structures.

PRIOR TO THE COMMENCEMENT OF WORKS – BUILDING

12. No work shall commence until a Construction Certificate has been issued and the applicant has notified Council of:
 - a) the appointment of a Principal Certifying Authority and
 - b) the date on which work will commence.Such notice shall include details of the Principal Certifying Authority and must be submitted to Council at least two (2) days before work commences
13. A registered Surveyor's Certificate showing the boundaries of the site and the proposed building plotted thereon being submitted to the Principal Certifier before construction is commenced.
14. The site shall be provided with a waste enclosure (minimum 1800mm X 1800mm X 1200mm) that has a lid or secure covering for the duration of the construction works to ensure that all wastes are contained on the site. The receptacle is to be emptied periodically to reduce the potential for rubbish to leave the site. Council encourages the separation and recycling of suitable materials.

NOTE: ALL WASTE GENERATED FROM THE CONSTRUCTION PROCESS IS TO BE CONTAINED ON-SITE

15. A sign must be erected in a prominent position on any work site on which the erection or demolition of a building is carried out:
- a) stating that unauthorised entry to the work site is prohibited;
 - b) showing the name of the person in charge of the work site and a telephone number at which that person may be contacted outside working hours;
 - c) the name, address and telephone number of the principal certifying authority for the work; and

the sign shall be removed when the erection or demolition of the building has been completed.

16. If the work involved in the erection/demolition of the building;
- a) is likely to cause pedestrian or vehicular traffic in a public place to be obstructed or rendered inconvenient; or
 - b) building involves the enclosure of a public place.

A hoarding or fence must be erected between the work site and the public place. If necessary, an awning is to be erected, sufficient to prevent any substance from, or in connection with, the work falling into the public place. Any such hoarding, fence or awning is to be removed when the work has been completed.

17. The development site is to be managed for the entirety of work in the following manner:
- a) Erosion and sediment controls are to be implemented to prevent sediment from leaving the site. The controls are to be maintained until the development is complete and the site stabilised with permanent vegetation;
 - b) Appropriate dust control measures;
 - c) Construction equipment and materials shall be contained wholly within the site and not impact on any residential property unless approval to use the road reserve has been obtained;
 - d) Toilet facilities are to be provided on the work site at the rate of one toilet for every 20 persons or part of 20 persons employed at the site.

18. Construction must not take place until appropriate erosion control, dust control and silt collection measures are in place. These controls must be within the satisfaction of Council and to relevant engineering standards. Such erosion control, dust control and silt collection measures must remain onsite and maintained to the satisfaction of Council for the duration of the construction period.

Any soil / water retention structures are to be constructed prior to the bulk stripping of topsoil to ensure sediment from the whole site is captured.

BUILDING CONSTRUCTION

19. All building work must be carried out in accordance with the provisions of the National Construction Code, the *Environmental Planning & Assessment Act 1979* and Regulations and all relevant Australian Standards.
20. All plumbing and drainage work must be carried out by a licensed plumber and drainer and must comply with the Plumbing Code of Australia.
21. Construction work noise that is audible at other premises is to be restricted to the following times:

- **Monday to Saturday - 7.00am to 5.00pm**

No construction work noise is permitted on Sundays or Public Holidays.

- 22. All mandatory inspections required by the *Environmental Planning & Assessment Act 1979* and any other inspections deemed necessary by the Principal Certifying Authority being carried out during the relevant stage of construction.**
- 23. All stormwater is to discharge to the street gutter with the use of non-flexible kerb adaptors. Alternatively, stormwater is to be connected to the approved inter-allotment drainage system.**
- 24. Metal roof/wall cladding shall be provided in a non-reflective colour scheme such as "Colorbond" steel sheeting.**
- 25. The strength of the concrete used for the reinforced concrete must be a minimum 25Mpa.**
- 26. This approval does not provide any indemnity to the owner or applicant under the Disability Discrimination Act 1992 with respect to the provision of access and facilities for people with disabilities.**
- 27. All building work is to comply with the requirements of the Access to Premises Standard.**
- 28. The list of measures contained in the schedule attached to the Construction Certificate are required to be installed in the building or on the land to ensure the safety of persons in the event of fire in accordance with Section 78 of the Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021.**

PRIOR TO THE ISSUE OF THE OCCUPATION CERTIFICATE

- 29. Prior to the occupation of a new building, or occupation or use of an altered portion of, or an extension to an existing building, an Occupation Certificate is to be obtained from the Principal Certifying Authority appointed for the erection of the building.**
- 30. Prior to occupation or the issue of the Occupation Certificate the owner of the building must cause the Principal Certifier to be given a fire safety certificate (or interim fire safety certificate in the case of a building or part of a building occupied before completion) in accordance with Section 41 of the Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021 for each measure listed in the schedule. The certificate must only be in the form specified by Section 86 of the Regulation. A copy of the certificate is to be given to the Commissioner of the New South Wales Fire Brigade and a copy is to be prominently displayed in the building.**
- 31. All stormwater, road, driveway and car parking works must be completed prior to issue of the Occupation Certificate for the development.**

ONGOING

- 32. For every 12-month period after the issue of the Final Fire Safety Certificate the owner/agent of the building must provide the Council and the Commissioner of NSW Fire Brigades with a copy of an Annual Fire Safety Statement Certifying that each specified fire safety measure is capable of performing to its specification.**

33. Where any essential services are installed in the building a copy of the final Fire Safety Certificate (together with a copy of the current fire safety schedule) is to be given to the Commissioner of NSW Fire Brigades and Council. A further copy of the Certificate (together with a copy of the current fire safety schedule) is to be prominently displayed in the building.
34. There is to be no interference with the amenity of the neighbourhood by reason of the emission of any “offensive noise”, vibration, smell, fumes, smoke, vapour, steam, soot, ash or dust, or otherwise as a result of the proposed development.
35. All vehicles are required to enter and leave the site in a forward direction at all times.
36. All loading and unloading in connection with the premises shall be carried out wholly within the site.
37. All car parking areas, loading and unloading areas, vehicle manoeuvring and driveway areas must not be used for the storage of any goods or materials and must be available for their intended use at all times.
38. All waste generated by the development is to be disposed of to a Council approved waste facility. All fees and charges for disposal are to be borne by the developer.
39. All exterior lighting associated with the development shall be designed and installed so that no obtrusive light will be cast onto adjoining property or roadways, in accordance with Australian Standard 4282 “Control of the Obtrusive Effects of Outdoor Lighting”.
40. Measures, such as raised kerb edges, bollards and/or fencing, are to be installed and maintained around all approved landscaped areas in order to prevent vehicles driving over them.
41. The development is to be kept in a clean and tidy condition at all times.
42. All signage is to be maintained in good condition at all times.
43. The signage is to be securely affixed and is not to flash, move or be objectionably glaring.
44. Any further signage proposed on the site is subject to a separate Development Application.
45. The air conditioning unit/s must be operated in accordance with the requirements of the Protection of the Environmental Operations Act (Noise Control) Regulations 2000.
46. The hours of operation of the development are limited to the following:
 - 7 am to 12 midnight, daily.

ADVISORY NOTES

1. The removal of trees within any road reserve requires the separate approval of Council in accordance with the policy "Tree Removal and Pruning - Public Places".
2. The land upon which the subject building is to be constructed may be affected by restrictive covenants. This approval is issued without enquiry by Council as to whether any restrictive covenant affecting the land would be breached by the

construction of the building, the subject of this approval. Persons to whom this approval is issued must rely on their own enquiries as to whether or not the building breaches any such covenant.

3. Division 8.2 of the Environmental Planning and Assessment Act 1979 (EP&A Act) gives you the ability to seek a review of the determination. This request is made to Council and must be made within 12 months after the date on which you receive this notice. The request must be made in writing and lodged with the required fee; please contact Council's Development Department for more information or advice.
4. If you are dissatisfied with this decision section 8.7 of the EP&A Act gives you the right to appeal to the Land and Environment Court within 12 months after the date on which you receive this notice, pursuant to section 8.10(1)(b).
5. To ascertain the extent to which the consent is liable to lapse, refer to Section 4.53 of the EP&A Act.

STATEMENT OF REASONS

The determination decision was reached for the following reasons:

1. The proposed development is considered satisfactory in terms of the matters identified in Section 4.55(1A) of the *Environmental Planning and Assessment Act 1979*.
2. The proposed development is considered to be satisfactory in terms of the matters identified in Section 4.15 of the Environmental Planning & Assessment Act 1979.
3. The matters raised within the submission have been assessed and addressed, with Councils Heritage Advisor having reviewed and supported the amendment to the colour schedule.

Executive summary

OWNER/S	Mid-Western Regional Council
APPLICANT:	Mid-Western Regional Council
PROPERTY DESCRIPTION	70-76 Court Street MUDGEES NSW 2850, Lot 1 DP 739918
PROPOSED DEVELOPMENT	Education Facility
ESTIMATED COST OF DEVELOPMENT:	\$1,117,550.00
REASON FOR REPORTING TO COUNCIL:	Council approved the original development application.
PUBLIC SUBMISSIONS:	1

Council is in receipt of a Section 4.55(1A) modification application to DA0393/2022, lodged 28 March 2023. The modification proposes to alter condition 1 of the consent.

Specifically, the following changes are sought under this application:

- Amendment to the external Colorbond sheeting and external rendering from Mocha Grey to Ironstone.
- Amendment the front setback from 4.5m to 3.0m to Court Street.

The original Development Application exceeded staff Delegation of Authority, in that Council is the owner or manager of the land and the development exceeds a construction value of more than \$150,000 for staff signing and \$1,000,000 for General Manager signing. In this regard the original

Development Application was to be determined at a Council meeting. In accordance with the delegations handed down by Council at the time, the application was determined by the General Manager on 30 January 2023. Consequently, the S4.55(1A) modification to the consent shall be determined at a full Council meeting.

The scope of works remains unchanged from the original Development Application.

The application was notified in accordance with the Mid-Western Regional Community Participation Plan 2019. During the notification period of the application, one (1) objection was received.

The proposed development has been assessed in accordance with Council's Development Control Plan 2013 (DCP 2013) and the Mid-Western Regional Local Environmental Plan 2012 (MWRLEP 2012). The proposed development is considered generally consistent with Council's planning controls.

The proposed modification to the colour schedule is recommended for approval subject to the amendment of condition 1 to include new stamped plans. The change in colour schedule aligns with the comments received by Council's Heritage Advisor.

The proposed modification to the front setback from 4.5m to 3m is not recommended for approval as this aspect of the development was not supported by Councils Heritage Advisor.

Disclosure of Interest

Nil

Detailed report

BACKGROUND HISTORY

Council granted consent to DA0393/2022 on 30 January 2023 for the construction of an Education Facility (Country University Building) and associated signage. The approved development layout by Council is included as Figure 1 below.

Specifically, the original development was approved as follows:

- A single storey building positioned in a grassed area of the site near the Court Street frontage.
- The building has a footprint of 449.05m² and will contain a range of rooms for learning purposes, plus a kitchen, bathroom, social area and an office.
- The new building will have a 4.5m setback to Court Street, a 1.8m setback to the northern side boundary and a 1.747m setback to the nearest existing building on site.
- Five parking spaces will be provided adjacent to the development, including one disabled space.
- The existing car park access driveway on Court Street will be retained as the entry to the site and an internal driveway will be utilised to provide access to the new disabled parking space, leading to an exit to Court Street at an existing, but currently unused driveway crossing.
- The building will be connected to water, sewer, electricity and telecommunications services. Stormwater from roofed areas will be connected into an existing system that will be diverted around the proposed building and discharged at an existing outlet in Court Street.

- Two building identification signs are proposed, as shown in the architectural drawings. These signs are located on the front façade facing Court Street and on the building's southern elevation. A Country University crest will also be provided on the southern elevation above the entry doors.
- Landscaping of the site will also be undertaken to better address the Court Street frontage and provide informal seating areas for student and staff.
- The core hours of operation are sought between 8.30am and 5pm, Monday to Friday. University students will however have after hours swipe card access from 7am to 12 midnight, 7 days a week.

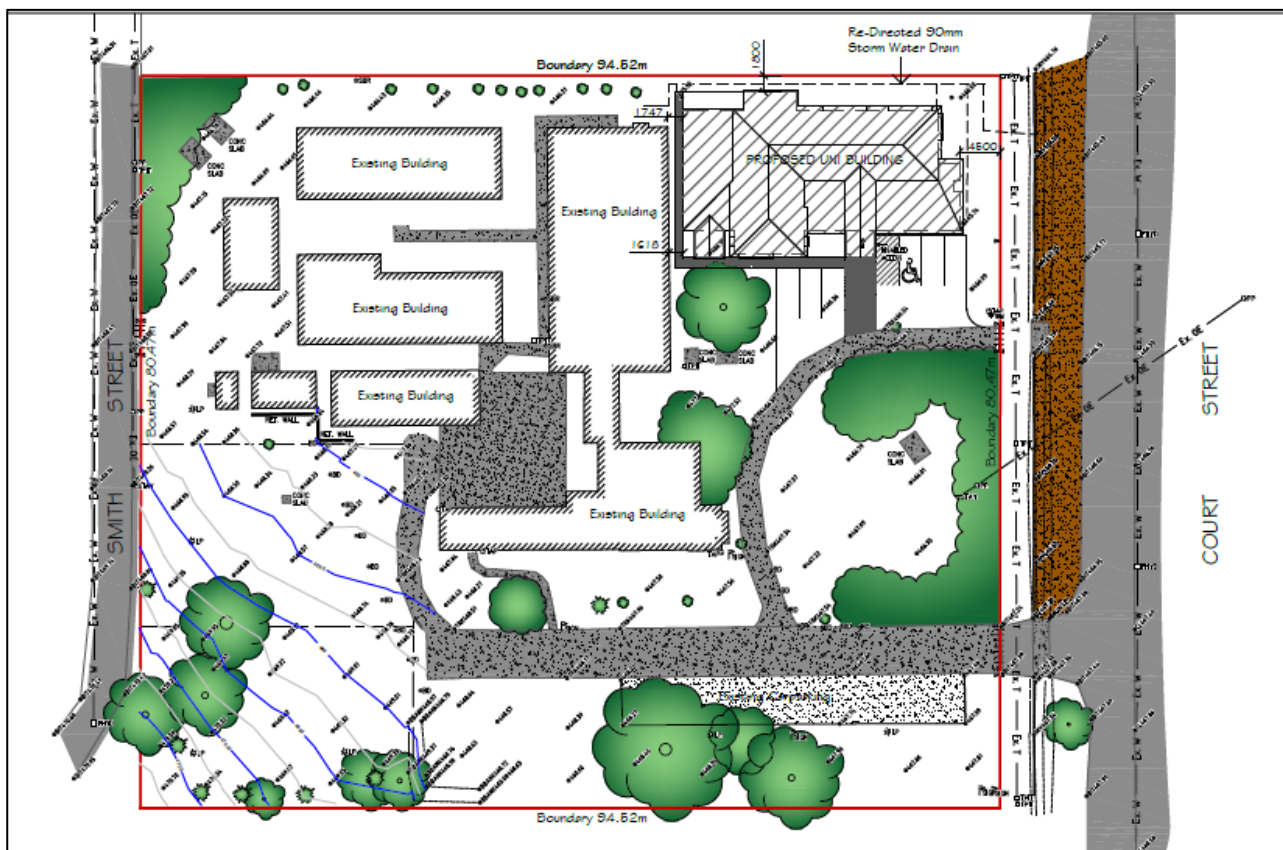


Figure 1: Site Plan

PROPOSED MODIFICATION

The modification application seeks approval for the following changes:

- Amendment to the external Colorbond sheeting & external rendering from Mocha Grey to Ironstone.
- Amendment to the front setback of 4.5m to 3.0m to Court Street.

The applicant has sought to amend the external colour schedule of the building from Mocha Grey to Ironstone. It is understood that this has been amended to suit the Country University Centre logo.

The applicant also sought to shift the building footprint forward and amend the front setback from 4.5m to 3m.

Upon receiving the application, a referral was made to Councils Heritage Advisor. The comments provided advised that the change to the colour schedule was supported. However, the request to

amend the front setback was not supported. In this regard, only partial consent pursuant to the *Environmental Planning and Assessment Act 1979* is recommended for the amendment to the colour schedule only.

The proposed development remains consistent with Council's LEP and DCP and is considered generally consistent with Council's planning controls.

LEGISLATIVE REQUIREMENTS

Environmental Planning and Assessment Act 1979

4.55(1A) Modifications involving minimal environmental impact

(1A) Modifications involving minimal environmental impact

A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:

(a) it is satisfied that the proposed modification is of minimal environmental impact, and

Comment The proposed modification will have 'minimal environmental impact' and will have no significant environmental impacts compared to the approved development for the following reasons:

- The proposed change to the external colour schedule is considered to be generally minor in nature. Council's Heritage advisor has supported the change as it is not considered to result in any significant adverse impact to the site or surrounding land.

(b) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all), and

Comment The proposed modification to amend the colour schedule is considered to be substantially the same as the original development. The approved building and use of the site for an 'Education Facility' is retained and the scope of works remains unchanged from the original Development Application. Therefore, the development and land use is considered to be substantially the same.

(c) it has notified the application in accordance with:
(i) the regulations, if the regulations so require, and
(ii) a development control plan,

Comment The Section 4.55(1A) application was notified in accordance with the Mid-Western Regional Community Participation Plan 2019.

(d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.

Comment One (1) submission was received which have been considered within this report.

- (3) *In determining an application for modification of a consent under this section, the consent authority must take into consideration such of the matters referred to in section 4.15 (1) as are of relevance to the development the subject of the application. 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.*

Comment All matters under Section 4.15(1) of relevance to the modification have been addressed throughout this report.

- (4) *The modification of a development consent in accordance with this section is taken not to be the granting of development consent under this Part, but a reference in this or any other Act to a development consent includes a reference to a development consent as so modified.*

Comment Noted.

4.15(1)(a) Evaluation – Matters for consideration

- (i) *Do any environmental planning instruments (SEPP, REP or LEP) apply to the land to which the Application relates?*

The proposed modification does not alter the proposal's compliance with the relevant State Environmental Planning Policies, considered as part of the original Development Application. No new considerations were required to be addressed as a result of the proposed modification.

MID-WESTERN REGIONAL LOCAL ENVIRONMENTAL PLAN 2012 (MWRLEP 2012)

The original development was considered against the Mid-Western Regional Local Environmental Plan 2012. An assessment is made of the relevant chapters and sections of this DCP that are specifically applicable to the modification sought.

Clause 5.10 Heritage Conservation

As the proposal includes works involving a site within the Mudgee Heritage Conservation Area and an item of environmental heritage, consideration must be given to the relevant heritage significance in accordance with Clause 5.10(4). The applicant has sought to amend the external colour schedule of the building from Mocha Grey to Ironstone. It is understood that the Country University Centre to better suit the Country University Centre logo.

In this regard, advice was sought from Councils Heritage Advisor who was supportive of the proposed change.

As previously discussed throughout the body of this report, the applicant also sought to shift the building forward and reduce the front setback from 4.5m to 3m. However, this was not supported by Councils Heritage Advisor noting that the impact on the significance of both the Conservation Area and the listed item will be adverse and that this aspect of the s4.55 application is not supported.

In this regard, only partial consent pursuant to the *Environmental Planning and Assessment Act 1979* is recommended for the amendment to the colour schedule only.

- (ii) *Do any draft environmental planning instruments (EPI) apply to the land to which the Application relates?*

No draft environmental planning instruments apply to the land to which the Development Application relates.

(iii) Do any development control plans apply to the land to which the Application relates?

MID-WESTERN REGIONAL DCP 2013

The previous application submitted has been assessed in accordance with the DCP. An assessment is made of the relevant chapters and sections of this DCP. Those chapters or sections not discussed here were considered not specifically applicable to this application or are discussed elsewhere in this report.

Part 4.5 Commercial Development	Compliance	
Setbacks	<ul style="list-style-type: none"> • Building setback from the street – no minimum • Side and rear setbacks must comply with the BCA 	<ul style="list-style-type: none"> • There is no minimum front setback to Court Street. Notwithstanding, the applicants request to amend the front setback from 4.5m to 3m has not been supported from a heritage perspective, as it inconsistent with typical suburban setbacks in the Mudgee Heritage Conservation Area. A 3m building setback would be unduly prominent and will further obscure diagonal views of the listed house “Kildallon.” The impacts on the significance of both the Conservation Area and the listed item will be adverse. In this regard, the request to amend the setback has not been supported. • The side and rear setbacks are unchanged as part of this modification.
Design	<ul style="list-style-type: none"> • Buildings Interact with the Street. • Building facades are articulated by use of colour, arrangement of elements, or varying materials • Heritage inclusions 	<ul style="list-style-type: none"> • Yes, the building design and form is unchanged. • The amended colour schedule does not adversely impact upon the visual interest of the building. It remains to be a well-designed façade. • The amended colour schedule has been supported by Councils Heritage Advisor.
Articulation and Façade Composition	<ul style="list-style-type: none"> • Breaks visual bulk with fenestration or change in materials etc. • No excessive blank walls in front facade 	<ul style="list-style-type: none"> • The variations in the building remain unchanged. • The amended colour schedule will not result in the appearance of blank walls.

MID-WESTERN REGIONAL DEVELOPMENT CONTRIBUTIONS PLAN 2019

The original application was not required to be levied with Section 7.12 contributions pursuant to section 2.7 of the Contributions Plan. The modification sought does not result in any change to this exemption.

(iii.a) Do any planning agreement or any draft planning agreement apply?

No Planning Agreements are applicable.

(iv) The regulations

ENVIRONMENTAL PLANNING AND ASSESSMENT REGULATION 2021

No matters prescribed by the Regulations impact determination of the Application. No new matters of consideration arise because of the modification.

4.15(1)(b) Likely impacts of the development

¹ Including environmental impacts on both the natural and built environments, and social and economic impacts in the locality

The proposed modification will not result in any new impacts as a result of the proposed modification.

As highlighted within this report, the proposed modification to the front setback from 4.5m to 3m is not supported by staff as it is likely to result in an environmental impact.

4.15(1)(c) Suitability of Site for the Development

The scope of works remains unchanged from the original Development Application. The proposed modification does not alter the suitability of the site for the approved development.

4.15(1)(d) Any submissions made in accordance with Act or Regulations

(A) PUBLIC SUBMISSIONS

The proposed modification was notified for a period of 14 days in accordance with the Mid-Western Regional Community Participation Plan 2019.

One (1) submission was received during the notification period. A summary of the issues raised by the objectors are provided below and a copy of the submissions are included in **Attachment 1**.

Concern raised	Comment
<i>The proposed colour is very dark which we aren't happy with as it presents a very dark and imposing view out our windows.</i>	The colour schedule has been reviewed by Councils Heritage Advisor who is supportive of the change from Mocha Grey to Ironstone. The colour selected is considered to be relatively capable of blending with the surrounding built form and Heritage Conservation Area.
<i>The development has been moved even closer to the boundary than originally proposed and is inside the 3m limit being only 1.8m from the fence.</i> <i>The windows on my side of the building impact on the bedrooms on that side of the house. Is it possible to add privacy screens to these windows? Is the fence going to be replaced down the boundary line?</i> <i>There is a tree which doesn't show up on any</i>	The matters raised in this submission do not directly relate to the changes sought under this modification. The submitter has been advised that Council can only consider comments on changes that are proposed under the modification and Council is unable to re-visit issues which relate to the original application approved on 30 January 2023. Notwithstanding, the proposed development has not been moved closer to the boundary.

<p><i>of the drawings which I assume you are removing although there is no mention of that happening.</i></p>	<p>The original DA approved a 1.8m side setback to the northern boundary. No change to the side setback is proposed under this application.</p> <p>In addition, the previous application considered privacy. Privacy screens were not considered necessary. However, it was confirmed that no trees were to be removed between the northern boundary and the building footprint. The fencing is existing and additional 'screen planting' was included to the northern boundary.</p>
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(B) SUBMISSIONS FROM PUBLIC AUTHORITIES

No submissions were sought or received from public authorities.

4.15(1)(e) The Public Interest

(A) FEDERAL, STATE AND LOCAL GOVERNMENT INTERESTS AND COMMUNITY INTERESTS

No significant issues in the interests of the public are expected as a result of the proposed development, subject to compliance with the recommended amended conditions of consent. Submissions from the community have been considered.

CONSULTATIONS

(A) HERITAGE ADVISOR

Council's Heritage Advisor has reviewed the proposed modification and is supportive of the change in building colour. However, Councils Heritage Advisor did not support the request to shift the building forward to have a setback change from 4.5m to 3m. The referral comments on the proposed setback have been provided below:

I consider the proposed 3m setback to be insufficient in this suburban part of the Mudgee Heritage Conservation Area. The approved setback is considerably less than typical suburban setbacks. With a 3m setback the new building will be unduly prominent and will further obscure diagonal views of the listed house "Kildallon." The impacts on the significance of both the Conservation Area and the listed item will be adverse. This aspect of the s4.55 application is not supported.

The recommendation made by Councils Heritage Advisor has been adopted and the proposed setback change has not been supported.

Community Plan implications

Theme	Looking After Our Community
Goal	Effective and efficient delivery of infrastructure
Strategy	Provide infrastructure and services to cater for the current and future needs of our community

Strategic implications

Council Strategies

Nil

Council Policies

Mid-Western Regional Development Control Plan 2013
Mid-Western Regional Community Participation Plan 2019

Legislation

Environmental Planning and Assessment Act 1979
Environmental Planning and Assessment Regulation 2021
Mid-Western Regional Local Environmental Plan 2012

Financial implications

Nil

Associated Risks

Should Council refuse the application, the applicant may seek a further review of this decision or appeal through the Land & Environment Court.

HANNAH DRAPER
TOWN PLANNER

ALINA AZAR
DIRECTOR DEVELOPMENT

1 June 2023

Attachments: 1. Submission 1 - MA0007/2023 - Modification to DA0393/2022 Educational facility at Kildallon 70-76 Court Street MUDGEES.

APPROVED FOR SUBMISSION:

BRAD CAM
GENERAL MANAGER

From: [REDACTED]
To: [Council](#)
Subject: Development application EH:DA0393/2022
Date: Tuesday, 18 April 2023 1:24:24 PM

Dear Hannah,

Unfortunately I only arrived back from holidays yesterday to receive your letter regarding the above application and a written response would not arrive by tomorrow hence this email.

I am the owner of [REDACTED] so this development is having a big impact on my property as it has been moved even closer to the boundary than originally proposed and is inside the 3m limit being only 1.8m from the fence. The windows on my side of the building impact on the bedrooms on that side of the house. Is it possible to add privacy screens to these windows? Is the fence going to be replaced down the boundary line?

There is a tree which doesn't show up on any of the drawings which I assume you are removing although there is no mention of that happening. According to the consent letter this tree can't be removed. I can forward a photo if necessary.

The proposed colour is very dark which we aren't happy with as it presents a very dark and imposing view out our windows.

We raised some of these objections to the original proposal but our concerns were basically ignored given the building is even closer now.

Kind Regards,

[REDACTED]

Sent from my iPad