

4. SECTION 79C(1) ASSESSMENT

The following assessment has been structured in accordance with Section 79C(1) of the *Environmental Planning & Assessment Act 1979* (EP&A Act).

4.1. STATE ENVIRONMENTAL PLANNING POLICY 55 – REMEDIATION OF LAND

State Environmental Planning Policy No 55—Remediation of Land (SEPP 55) provides a state-wide planning approach to the remediation of contaminated land. SEPP 55 requires the consent authority to consider whether the subject land is contaminated. If the land requires remediation to ensure that it is made suitable for a proposed use or zoning, Council must be satisfied that the land can and will be remediated before the land is used for that purpose.

A contamination report was prepared by EIS and is provided at Appendix M. This report concluded that the site can be made suitable for the proposed development. A Stage 2 Environmental Site Assessment was recommended to address data gaps and to minimise the risk.

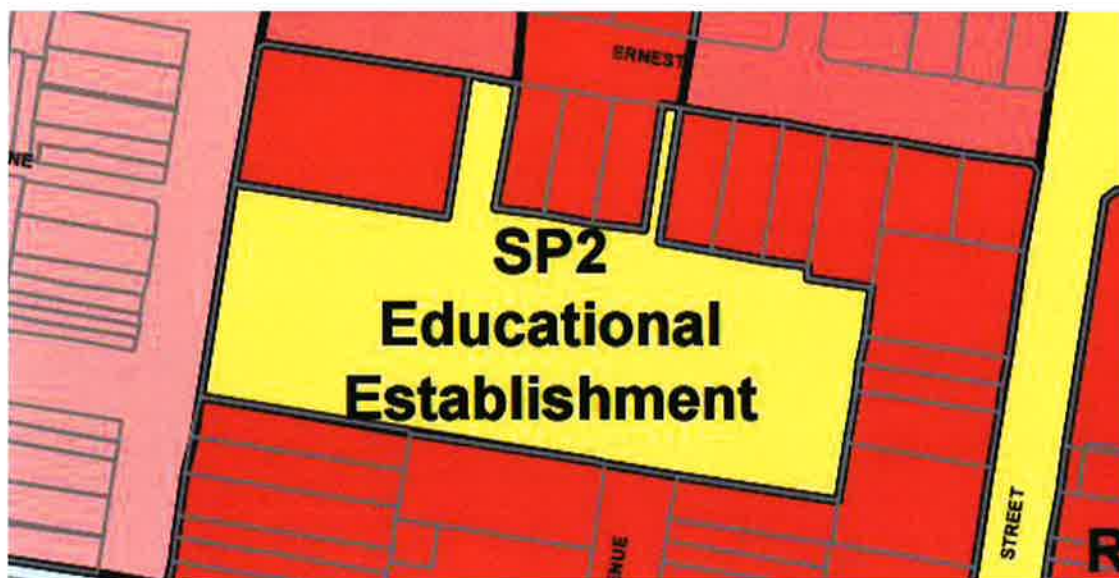
Accordingly, the site is considered suitable for the works proposed within this development application provided a Stage 2 ESA is undertaken to confirm the results of the EIS.

4.2. NORTH SYDNEY LOCAL ENVIRONMENTAL PLAN 2013 (LEP 2013)

4.2.1. Zoning and Permissibility

North Sydney Local Environmental Plan (NLEP 2013) is the primary planning instrument applying to the North Sydney Local Government Area (LGA). Under the LEP 2013 the site is zoned SP2 Educational Establishment. The proposed school is therefore permissible with consent.

Figure 6 – Land Use Zoning



Source: NSLEP 2013

The relevant objectives of the zone are:

- To provide for special land uses that are not provided for in other zones.
- To provide for sites with special natural characteristics that are not provided for in other zones.
- To facilitate development that is in keeping with the special characteristics of the site or its existing or intended special use, and that minimises any adverse impacts on surrounding land.

The proposed will provide important infrastructure, as the current school catchment does not have any co-educational public high schools. The school maintains the existing education use and will enhance the social infrastructure through building and services upgrades.

The proposal will have no significant adverse impacts on surrounding residential land uses, as the proposal provides adequate landscape and setbacks to protect residential privacy and amenity.

4.2.2. Height

The maximum height limit applicable to the site is 12 metre. The existing TAFE building and proposed multipurpose hall will exceed this height limit at 12m, with a maximum building height of 16.5m. A clause 4.6 statement justifying the departure from the control is included below.

4.2.3. Floor Space Ratio (FSR)

The LEP 2013 does not prescribe a maximum FSR for the site.

4.2.4. Exception to Development Standards

Clause 4.6 provides flexibility to vary the development standards specified within the LEP where it can be demonstrated that the development standard is unreasonable or unnecessary in the circumstances of the case and where there are sufficient environmental grounds to justify the departure. Clause 4.6 states the following:

(2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.

(3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:

(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and

(b) that there are sufficient environmental planning grounds to justify contravening the development standard.

Accordingly, we set out below the justification for the departure to the building height control applicable under NSLEP 2013. The purpose of the information provided is to demonstrate that strict compliance with the standard is unreasonable or unnecessary in the circumstances of this particular case. It also provides justification for the departure from the control.

Proposed Variation

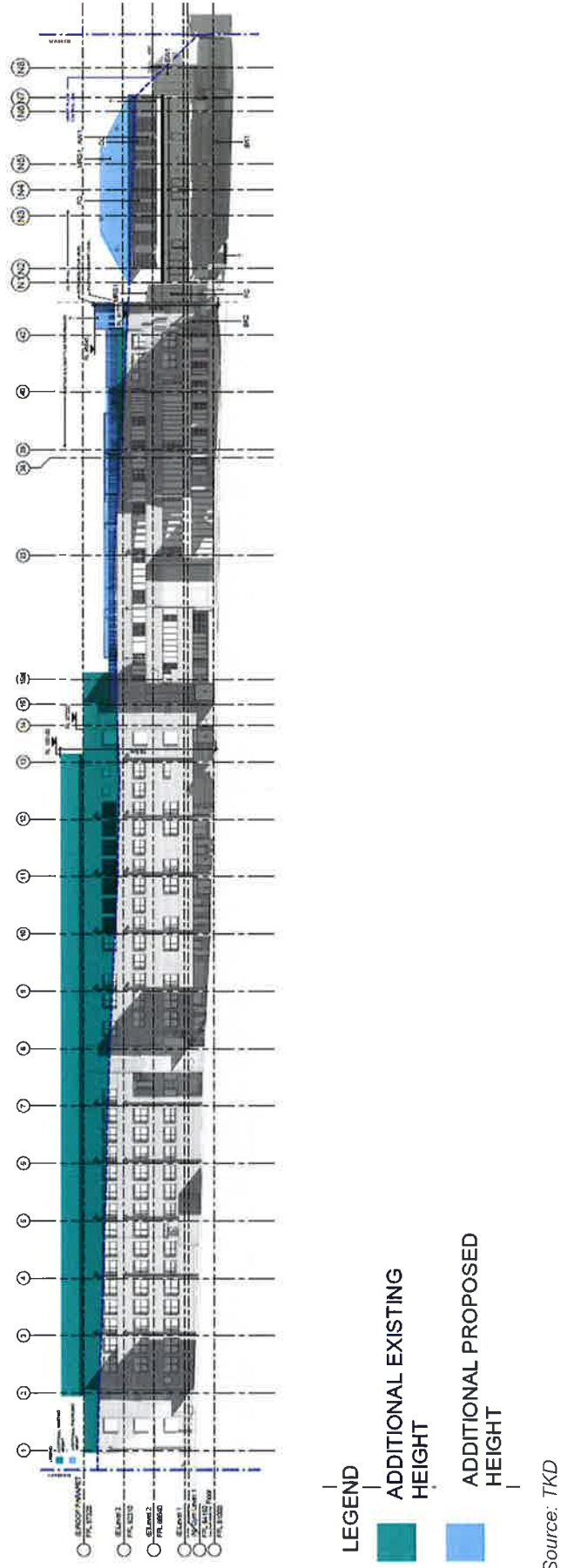
Pursuant to Clause 4.3 of the LEP, and the accompanying height map, a maximum height of 12m applies to the site. The proposal maintains the envelope of the existing building. The new multi-purpose hall is 16.5m (measured from natural ground level) and proposed trellis for plant climbing on the roof terraces is 14.1m

The existing 4-storey TAFE building already breaches the height limit with an existing building height of 19.5m. The multi-purpose hall will also breach the height limit, by 4.5m. The balustrade and trellis on the roof terrace will breach the height limit by 1.9m and 2.4m respectively.

The height limited has been breached for the following reasons:

- This site is extremely constrained and space within the site is limited. To achieve the floor space requirements necessary for the School's operations it has been necessary to exceed the height limit.
- Development on the site is subject to a height control of 12m. This does not reflect existing building heights on the site with the existing TAFE building exceeding the limit.
- The proposal makes use of void space on Level 03, turning the void into a functional terrace with a new balustrade for safety and plant trellis to improve the amenity of the terrace and provide additional green space within the school.

Figure 7 – Elevations



Clause 4.3 Objectives

Clause 4.3 sets out the objectives of the maximum building height development standard. The consistency of the proposed development with these objectives is set out below.

Table 2 – Clause 4.3 Objectives

Objectives	Proposed Development
<i>(a) to promote development that conforms to and reflects natural landforms, by stepping development on sloping land to follow the natural gradient,</i>	The proposed includes minimal cut and fill, to accommodate additional undercover passive recreation area under the undercroft hall.
<i>(b) to promote the retention and, if appropriate, sharing of existing views,</i>	There are no key views identified affecting the subject site.
<i>(c) to maintain solar access to existing dwellings, public reserves and streets, and to promote solar access for future development,</i>	The proposed development will result in some additional overshadowing impacts, particularly to 11 Rodborough Street. This is unavoidable noting the heavily built up nature of the site and surrounding land. Reasonable levels of solar access are nonetheless maintained to neighbouring properties, achieved through the provision of adequate setbacks.
<i>(d) to maintain privacy for residents of existing dwellings and to promote privacy for residents of new buildings,</i>	The privacy of residents in surrounding residential properties will be maintained through landscaping, setbacks and building articulation. Windows of the new multipurpose hall are not orientated directly towards neighbouring properties and are set high to avoid overlooking.
<i>(e) to ensure compatibility between development, particularly at zone boundaries,</i>	The proposed hall response to the existing building height currently on site. The building height proposed for the hall is appropriate in respect to the dense urban environment in which the site is located. The site is situated within an urban context being surrounded by land zoned R4 high density residential. This includes land to the south east, which is currently occupied by single storey dwelling houses but which is zoned R4. Given the zoning of this site it is reasonable to assume that these properties will be developed to accommodate taller building forms.
<i>(f) to encourage an appropriate scale and density of development that is in accordance with, and promotes the character of, an area.</i>	The existing TAFE building is four-storeys, and the hall is consistent with this scale. Crows Nest includes several tall buildings; around the Pacific Highway, Willoughby Road and Ernest Street. Higher density development is envisaged in this area.

Objectives

Proposed Development

The prevailing planning controls applicable to land surrounding the site support intensive development, land is zoned R4 High Density Residential.

The proposal is consistent with the objectives of Clause 4.3 of the LEP.

Justification for the Variation

In view of the particular circumstances of this case, strict compliance with Clause 4.3 of the LEP is considered to be both unnecessary and unreasonable. The proposal is consistent with the intent of Clause 4.3 which is to maintain existing views, to safeguard the amenity of existing dwellings and to maintain the visual character of the area. The proposal achieves this outcome, notwithstanding the proposed numeric variation.

The proposal is justified on the following environmental planning grounds:

- It represents a logical and co-ordinated development of the site for school use.
- It will improve the physical appearance of the site through a carefully designed building that is responsive to site context and its intended function.
- The architectural design of the new multi-purpose hall provides a good quality architectural design outcome for the site.
- New development will not result in overlooking, overshadowing or privacy issues. The hall will have a one-storey interface with the residential flat buildings to the north and east, adequate setbacks and landscaping will further protect residential privacy and amenity.
- The proposal makes use of void space on Level 03, turning the void into a functional terrace with a new balustrade for safety and plant trellis to improve the amenity of the terrace and provide additional green space within the school
- Development will be consistent in height with existing buildings and the desired future character of the area.

Community Benefits

The principle aim of the proposal is to provide improved infrastructure to service the education needs of the community within a high-density environment. The proposed variation to the height control of the LEP does not result in the loss of amenity to the adjoining properties as a result of overshadowing or loss of privacy. The proposed height is considered to be acceptable particularly when balanced against the benefits of the project which area:

- Improved education facilities on land zoned for this purpose.
- Cammeraygal High School will be the only public high school in the catchment and will provide accessible public education for residents within Crows Nest and surrounding suburbs. Reducing students travel distance and time to school.
- Provide high-quality recreation space for the school community on a highly constrained site.
- Filling the need for a public high school in the school catchment.
- Improve operations of school, providing a junior and senior campus to future prove the school for the predicted population growth.
- Enhance the students overall school experience by providing improved facilities and outdoor and indoor recreational opportunities.
- The proposed hall also has the opportunity to be a community asset, providing additional performance, sport and gathering spaces for community uses in the local area.

Four2Five Pty Ltd V Ashfield Council [2015] NSW LEC

Four2Five Pty Ltd v Ashfield Council [2015] NSW LEC, initially heard by Justice Pain, upheld on appeal by Commissioner Pearson, it was found that an application under clause 4.6 to vary a development standard must go beyond the five (5) part test of *Wehbe V Pittwater* [2007] NSW LEC 827 and demonstrate the following:

- *Compliance with the particular requirements of Clause 4.6 of the LEP; and*
- *That there are sufficient environment planning grounds, particular to the circumstances of the proposed development (as opposed to general planning grounds that may apply to any similar development occurring on the site or within its vicinity);*
- *That maintenance of the development standard is unreasonable and unnecessary on the basis of planning merit that goes beyond the consideration of consistency with the objectives of the development standard and/or the land use zone in which the site occurs.*

Comment:

Environmental Grounds:

There are sufficient environmental planning grounds to justify the contravening development. These include:

- The variation does not result in unreasonable adverse amenity impact on adjacent land;
- The variation does not diminish the development potential of adjacent land;
- The development provides all necessary supporting facilities and infrastructure within the site;
- The hall will be consistent with the height of the existing building on site;
- The proposed built form does not result in any adverse environmental effects, such as loss of views, privacy or sunlight from any surrounding residential property or public places.

Unreasonable and unnecessary:

Compliance with the development standard is considered unreasonable and unnecessary in the circumstances based on the following:

- The development is consistent with the objectives of the development standard as provided in Clause 4.3 (1) of the NSLEP 2013. Refer to discussion above;
- The scale and mass of the building is consistent with the established built form on site and is aligned with the desired future character of the Anzac Neighbourhood;
- The proposal satisfies the objectives of the SP2 Zone;
- The additional height allows a fully functional recreation facility for the school, which could potentially benefit the community; and
- The potential environmental impacts of the variation have been detailed in Section 5 of this SEE. The additional height does not cause significant overshadowing to adjacent residential properties or visually dominant existing building form.

Strict numerical compliance is therefore considered unreasonable and unnecessary in the circumstances.

Summary

The proposal is considered appropriate and consistent with the objectives and intent of Clause 4.3 of the LEP. Strict compliance with the LEP in this case is considered to be unreasonable and unnecessary because:

- Strict compliance with the height limit would unreasonably restrict the potential to develop the facilities required by the School.
- The proposed development will take place within an established urban context where taller building forms are a common feature.

- The height control does not reflect existing development on the site, with the existing building already exceeding the 12m height control which applies.
- The proposed consistent with the intent of Clause 4.3 of the LEP which is to minimise adverse amenity impacts on neighbouring residential properties and to maintain the desired future character of the area.
- The proposal will not result in the loss of views as a result of the heights proposed.

4.2.5. Preservation of Trees or Vegetation

Clause 5.9 Preservation of Trees or Vegetation seeks to preserve existing trees and vegetation. The school campus has largely been cleared of vegetation but does include a number of mature trees within its existing landscaped areas and adjacent to the site boundaries. In developing the concept proposal opportunities to retain site vegetation have been explored. Space is at a premium within the site and the removal of 13 trees is unavoidable. However:

- A comprehensive landscape strategy has been developed for the site and will be progressively implemented. New trees and landscaped spaces will be planted to compensate for the loss of vegetation.
- Reducing the footprint of new development is not considered an option as this would not allow the floor space needed for the School's sports needs to be fully met.

On balance, the loss of vegetation is considered acceptable given the substantial benefits associated with the project and the extent of new planting proposed.

The application is accompanied by an Arborist Report which provides an assessment of the trees near the proposed works. Construction works will be undertaken in accordance with the recommendations of the Arborist report to ensure that the trees to be retained within the site are suitably protected.

4.3. NORTH SYDNEY DEVELOPMENT CONTROL PLAN

North Sydney Development Control Plan 2013 (DCP 2013) provides the design guidelines for future development. The DCP does not contain specific provisions relating to education establishments. An assessment against the key relevant provisions of the DCP has been undertaken in the table below. The table demonstrates compliance with the key provisions of the DCP.

The site is in the Anzac Neighbourhood within the Cammeray Planning Area. Crows Nest TAFE is identified as an identity/iconic building. The neighbourhood is identified as being predominantly residential accommodation with education and community facilities. The desired future character is to be predominately medium to high density residential development, which increase in density focused primarily on sites situation on Miller Street, Falcon Street and West Street which have good access to public transport.

The proposal is consistent with the desired future character and built form, of medium to high density. The district views towards Middle Harbour will not be altered because of the proposal.

Table 3 – DCP Compliance

Provisions	Requirement	Proposal	Comment
Section 3: Non-Residential Development in Residential Zones			
3.2.9 Solar Access	Minimum of 3 hours between the hours of 9.00am and 3.00pm to private open space and main internal living areas.	The new hall will result in some additional overshadowing to 11 Rodborough Avenue. The northern elevation and rear private open space will be impacted in the morning and noon hours. We have assumed living areas are at the rear of the building	Generally complies. Refer to Section 5.1 of this SEE.

Provisions	Requirement	Proposal	Comment
		opening on to open space. Rooms at the front of the dwelling are likely to be bedrooms. The proposal will not impact east and west elevations so living rooms and bedrooms will receive sun from those directions. The hall will result in additional overshadowing at 3pm to 346, 350 & 352 Miller Street; we have assumed these rooms at the rear of the property are likely to be bedrooms, and that living areas are orientated north to capture adequate solar access.	
3.2.12 Visual Privacy	Ensure that adjoining residents are provided with a reasonable level of visual privacy.	Privacy will be maintained through landscaping along the northern and eastern boundary adjacent to the proposed hall and retention of numerous mature trees as well as fencing. The hall will maintain a one-storey interface to residential uses to protect resident's amenity and privacy. Nearby residents will not be unfairly impacted in terms of visual privacy. The number of staff and students when compared to the TAFE is less.	Complies
3.3.6 Setbacks	Front setback – to match alignment of building on adjoining properties. Side setbacks - set back a minimum of 3m from the property boundary, where the adjoining site has balconies or windows to main living areas of dwellings or serviced apartments located at the same level.	The existing front setback is unchanged. The proposed hall setbacks are: • 17.16m to the southern boundary; • 2.785m to the northern boundary; and	Non-compliant – side setback Refer to Section 4.3.1.