

## SYDNEY CENTRAL CITY PLANNING PANEL

<b>Panel Reference</b>	2017SWC089
<b>DA Number</b>	DA 72/2018/JP
<b>LGA</b>	THE HILLS SHIRE COUNCIL
<b>Proposed Development</b>	ALTERATIONS AND ADDITIONS TO MARIAN COLLEGE
<b>Street Address</b>	LOT 2 DP 709237, NOS. 24-28 ANNANGROVE ROAD, KENTHURST
<b>Applicant</b>	Catholic Education Diocese of Parramatta C/- DFP Planning
<b>Date of DA lodgement</b>	14 July 2017
<b>Number of Submissions</b>	One
<b>Recommendation</b>	Approval subject to conditions
<b>Regional Development Criteria (Schedule 4A of the EP&amp;A Act)</b>	Educational Establishment exceeding \$5 million
<b>List of all relevant s79C(1)(a) matters</b>	Section 79C (EP and A Act, 1979) SEPP Infrastructure 2007 SEPP 55 Remediation of Land SEPP Educational Establishments and Child Care Facilities 2017 SREP 20 – Hawkesbury Nepean River LEP 2012 DCP Part B Section 1 - Rural DCP Part C Section 1 - Parking
<b>List all documents submitted with this report for the Panel's consideration</b>	One submission
<b>Report prepared by</b>	PRINCIPAL EXECUTIVE PLANNER KRISTINE MCKENZIE
<b>Report date</b>	19 October 2017

<b>Summary of S.79C matters</b> Have all recommendations in relation to relevant s79C matters been summarised in the Executive Summary of the assessment report?	Yes
<b>Legislative clauses requiring consent authority satisfaction</b> Have relevant clauses in all applicable environmental planning instruments where the consent authority must be satisfied about a particular matter been listed, and relevant recommendations summarized, in the Executive Summary of the assessment report? <i>e.g. Clause 7 of SEPP 55 - Remediation of Land, Clause 4.6(4) of the relevant LEP</i>	Yes
<b>Clause 4.6 Exceptions to development standards</b> If a written request for a contravention to a development standard (clause 4.6 of the LEP) has been received, has it been attached to the assessment report?	Yes
<b>Special Infrastructure Contributions</b> Does the DA require Special Infrastructure Contributions conditions (S94EF)? <i>Note: Certain DAs in the Western Sydney Growth Areas Special Contributions Area may require specific Special Infrastructure Contributions (SIC) conditions</i>	N/A
<b>Conditions</b> Have draft conditions been provided to the applicant for comment?	Yes

## EXECUTIVE SUMMARY

The proposal is for alterations and additions to Marian College including the construction of a part two/part three storey school building. There is no increase to staff or student numbers.

The proposal includes a variation to the LEP 2012 height limit. The subject site has a 10 metre height limit under LEP 2012. The proposed maximum height of the building is 13.06 metres. This is a variation of 30.6%. The proposed height is considered satisfactory given the central location of the school building. The application was accompanied by a Clause 4.6 variation request. The proposal will result in a better planning outcome as the proposal allows for a purpose built facility which contains various learning spaces.

The proposal also includes a variation to DCP requirements regarding site coverage, cut and parking. The proposed site coverage, cut and parking are reasonable given the proposed use of the site for a school and associated works. There will be no unreasonable impact on rural character and adequate parking is provided on site to cater for staff and student/parent parking.

The proposal was notified to adjoining property owners and one submission was received. The concerns raised within the submission relate to height and noise impact. The proposed height is considered satisfactory given the central location of the proposed works. The noise impacts have been reviewed and are considered to be appropriate given the use of the site for an educational establishment.

The Development Application is recommended for approval subject to conditions.

**BACKGROUND****MANDATORY REQUIREMENTS**

Owner:	Roman Catholic Church	1.	<u>LEP 2012</u> – Satisfactory, variation to LEP height limit proposed.
Zoning:	RU6 Transition	2.	<u>SEPP Infrastructure 2007</u> – Satisfactory.
Area:	Lot 1 - 2.011 hectares (combined site 10.105 hectares)	3.	<u>SEPP 55 Remediation of Land</u> – Satisfactory.
Existing Development:	Marian Collage and St Madeline's Primary School, St and Madeline Sophie Barat Parish Church and Associated Works	4.	<u>SEPP Educational Establishments and Child Care Facilities 2017</u> – Satisfactory.
		5.	<u>SREP 20 – Hawkesbury Nepean River</u> – Satisfactory.
		6.	<u>Section 79C (EP&amp;A Act)</u> – Satisfactory.
		7.	<u>DCP Part B Section 1 Rural</u> – Variation required, see report.
		8.	<u>DCP Part C Section 1 – Parking</u> - Variation required, see report.
			<u>Section 94A Contribution</u> – Yes, \$105,034.38

**SUBMISSIONS  
SCCPP****REASON FOR REFERRAL TO**

1. Exhibition:	Not required.	1.	Educational Establishment which exceeds \$5 million
2. Notice Adj Owners:	Yes, 14 days.		
3. Number Advised:	27.		
4. Submissions Received:	One.		

**HISTORY**

- 14/07/2017** Subject Development Application lodged.
- 07/08/2017** Letter sent to the applicant requesting additional information regarding DCP compliance, landscape works and drainage.
- 05/09/2017 and 15/09/2017** Additional information submitted by the applicant.
- 20/09/2017** Email sent to the applicant requesting additional information regarding site coverage and parking.
- 22/09/2017** Additional information submitted by the applicant.

Note: on 06 July 2017 DA 20/2018/JP was lodged for a proposed place of worship on Lot 1 DP 709237, No. 20-22 Annangrove Road. Lot 2 is located immediately forward of the subject site and is under the same ownership. This application will be reported separately to the SCCPP.

## **PROPOSAL**

The Development Application is for alterations and additions to Marian Catholic College (high school) which is an educational establishment. The site also contains St Madeline's Catholic Primary School and St Madeline Sophie Barat Parish Church.

The proposal includes the following work:

- the removal of five demountable classrooms;
- construction of a three storey building containing general learning spaces, performing arts, visual arts and music spaces, seniors study areas, meeting rooms, coffee station, storage, and facilities;
- alterations to existing classrooms and the administration building to improve internal layout and use;
- covered walkways and associated landscaping works.

The proposal does not seek to increase student or staff numbers at Marian College.

It may be noted that the consolidation of Lot 1 DP 709237 (No. 20-22 Annangrove Road) and 2 DP 709237 (No. 24-28 Annangrove Road) associated with both the proposed place of worship and the existing schools is proposed under DA 20/2018/JP.

The proposal will require the loss of four parking spaces.

## **ISSUES FOR CONSIDERATION**

### **1. SEPP State and Regional Development 2011**

Clause 20 of SEPP (State and Regional Development) 2011 and the Schedule 4A of the Environmental Planning and Assessment Act, 1979 provides the following referral requirements to a Planning Panel:-

#### **6 Private infrastructure and community facilities over \$5 million**

*Development that has a capital investment value of more than \$5 million for any of the following purposes:*

*(a) air transport facilities, electricity generating works, port facilities, rail infrastructure facilities, road infrastructure facilities, sewerage systems, telecommunications facilities, waste or resource management facilities, water supply systems, or wharf or boating facilities,*

*(b) affordable housing, child care centres, community facilities, correctional centres, educational establishments, group homes, health services facilities or places of public worship.*

The proposed development has a Capital Investment Value of \$8,680,557 thereby requiring referral to, and determination by, a Planning Panel. In accordance with this requirement the application is referred to the SWCPP for determination.

## **2. SEPP 55 Remediation of Land**

Clause 7 (Contamination and remediation to be considered in determining development application) of SEPP 55 – Remediation of Land states:

- (1) *A consent authority must not consent to the carrying out of any development on land unless:*
- (a) *it has considered whether the land is contaminated, and*
  - (b) *if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out, and*
  - (c) *if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose.*

The applicant has advised that the site has been used for the purpose of a school and church for over 30 years and prior to that was undeveloped.

Council's Environmental Health Officer has raised no objection to the proposal.

The proposal is considered satisfactory in regard to the requirements of SEPP 55.

## **3. SEPP Infrastructure 2007**

Schedule 5 'Savings and Transitional Provisions' of SEPP Education Establishments and Child Care Centres states that:

*This Policy does not apply to or in respect of the determination of a development application made under Part 4 of the Act, but not finally determined before the commencement of this Policy.*

As such, the relevant provisions of SEPP Infrastructure 2007 which related to educational establishments continue to apply to the application.

Division 3, Clause 32 of SEPP Infrastructure 2007 states:

- (2) *Before determining a development application for development for the purposes of a school, the consent authority must take into consideration all relevant standards in the following State government publications (as in force on the commencement of this Policy):*
- (a) *School Facilities Standards—Landscape Standard—Version 22 (March 2002),*
  - (b) *Schools Facilities Standards—Design Standard (Version 1/09/2006),*
  - (c) *Schools Facilities Standards—Specification Standard (Version 01/11/2008).*
- (3) *If there is an inconsistency between a standard referred to in subclause (2) and a provision of a development control plan, the standard prevails to the extent of the inconsistency.*

The proposed development has taken into consideration the design and operational guidelines of the Schools Facilities Standards such that the proposal is considered

generally consistent, particularly in regard to the Landscape Standard and the Design Standard.

The proposal is considered satisfactory in regard to the requirements of SEPP Infrastructure.

#### **4. SEPP Educational Establishments and Child Care Facilities 2017**

SEPP Education Establishments and Child Care Centres came into force on 1 September 2017. As outlined above in the savings provision, the SEPP does not apply to the proposed development as it was lodged prior to the coming into force of the SEPP. Notwithstanding this, a review of the requirements of the SEPP has been undertaken.

The SEPP incorporates Commonwealth Laws regulating early childhood education and care into the State planning system, makes changes to exempt and complying development for education and child care facilities, bring the Department of Education into the planning process early, provides information for child care providers, streamlines the delivery of and upgrade to existing school facilities and assist TAFEs and universities to expand and adapt specialist facilities.

Clause 35(6)(a) of the SEPP states:

*(6) Before determining a development application for development of a kind referred to in subclause (1), (3) or (5), the consent authority must take into consideration:  
(a) the design quality of the development when evaluated in accordance with the design quality principles set out in Schedule 4,*

Schedule 4 contains seven design quality principles for schools as follows:

Principle 1—context, built form and landscape  
Principle 2—sustainable, efficient and durable  
Principle 3—accessible and inclusive  
Principle 4—health and safety  
Principle 5—amenity  
Principle 6—whole of life, flexible and adaptive  
Principle 7—aesthetics

The proposal is considered to satisfactory in regard to the principles for the following reasons:

- The proposal responds to the context of the site and the existing built form;
- The proposal will provide a purpose built facility which is specific to school needs;
- The proposal will be accessible, with a lift provided for disabled access to upper levels, and clear and direct access;
- The development will remain safe and secure for students, staff and visitors;
- The proposal has considered internal and external amenity and will provide an additional permanent learning space;
- The proposal allows various uses to be undertaken within the same space and as such allows flexibility of use; and

- The proposal is aesthetically pleasing and provides a modern building which responds to the existing use of the site.

In addition to the above, the Department of Planning issued Planning Circular 'Regulating Expansion of Schools' (PS 17-004 dated 20 September 2017). The Circular states:

*Development applications should clearly demonstrate that the proposed expansion and increase in staff/student numbers can be accommodated through measures such as (but not limited to):*

- *appropriate access and car parking arrangements, and consideration of any future roadworks that may be required if the capacity of a school is increased. Development applications should be supported by a traffic impact assessment, prepared by an appropriately qualified professional, addressing these issues;*
- *appropriate siting and design of buildings, facilities and play areas to minimise visual and amenity impacts (including noise) on surrounding areas. Where relevant, applications should be supported by a noise impact assessment, prepared by an appropriately qualified professional; and*
- *appropriate stormwater management and other environmental measures, supported by reports prepared by appropriately qualified professionals.*

*However, if the consent authority considers it necessary to impose a condition limiting student and staff numbers at the school site, the numerical cap imposed should be for a valid planning reason supported by a strong evidence base. The Department recommends applying the following principles when considering whether to place numeric caps for staff or students on school consents:*

- 1. Apply outcome based consent conditions*
- 2. Caps should be evidence-based*
- 3. Mitigate impacts directly*
- 4. Flexibility required for school developments*

It is appropriate to apply a cap on staff and student numbers for the following reasons:

- the proposed parking does not comply with the requirements of the DCP and any increase in staff and student numbers in the future (without the further provision of parking) will increase these impacts (see comments in Section 6 below);
- the environmental constraints of the land, including the bush fire prone nature of the land, limit future development and expansion on the site; and
- a limit on staff and student numbers will assist in managing traffic impacts associated with the schools and church.

As such the proposal is considered satisfactory in regard to SEPP Educational Establishments and Child Care Facilities.

## **5. Compliance with LEP 2012**

### **a. Permissibility and Objectives of the Zone**

The site is zoned RU6 Transition. The proposed use is defined as a place of worship as follows:

***educational establishment*** means a building or place used for education (including teaching), being:

- (a) a school, or
- (b) a tertiary institution, including a university or a TAFE establishment that provides formal education and is constituted by or under an Act.

The proposed use is permissible within the RU6 Transition zone.

The objectives of the RU6 Transition zone are:

- *To protect and maintain land that provides a transition between rural and other land uses of varying intensities or environmental sensitivities.*
- *To minimise conflict between land uses within this zone and land uses within adjoining zones.*
- *To encourage innovative and sustainable tourist development, sustainable agriculture and the provision of farm produce directly to the public.*

The proposed additions to Marian College are considered satisfactory in regard to the objectives of the zone in that the use is a transition between rural residential development and other land uses, the use complements the current uses of the site as a primary school and place of worship, and the proposal does not result in any conflict between land uses.

The proposal is considered satisfactory in regard to the provisions of LEP 2012.

#### **a. Height**

The subject site has a 10 metre height limit under LEP 2012. The proposed maximum height of the building is 13.06 metres. This is a variation of 30.6%.

The applicant has provided a detailed justification (See Attachment 9) and has concluded as follows:

*Strict compliance is considered to be unreasonable and unnecessary in the circumstances of this case as the proposal achieves and/or is not inconsistent with the relevant objectives of the development standard which are to ensure that the height of buildings is compatible with that of adjoining development and the overall streetscape, and to minimise the impact of overshadowing, visual impact, and loss of privacy on adjoining properties and open space areas.*

*Furthermore, strict compliance would limit the ability to provide high quality learning spaces and therefore result in an inefficient use of the land or alternatively, result in an inferior design outcome where additional smaller buildings would occupy more of the Site, limiting pervious areas and reducing outdoor play spaces. As discussed below, the variation is due to the fall of the site and the need to provide suitable floor levels at the lower and upper areas, and to provide appropriate floor-to-ceiling heights for the performing arts space. Strict compliance would prevent the achievement of these design outcomes.*

#### **Comment:**

The objectives of Clause 4.3 are as follows:

- (a) *to ensure the height of buildings is compatible with that of adjoining development and the overall streetscape.*



- (b) *to minimise the impact of overshadowing, visual impact, and loss of privacy on adjoining properties and open space areas.*

The objectives of Clause 4.6 of LEP 2012 are:

- (a) *to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
- (b) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

The objectives of the RU6 Transition zone are:

- *To protect and maintain land that provides a transition between rural and other land uses of varying intensities or environmental sensitivities.*
- *To minimise conflict between land uses within this zone and land uses within adjoining zones.*
- *To encourage innovative and sustainable tourist development, sustainable agriculture and the provision of farm produce directly to the public.*

The proposed height of the building is considered satisfactory given that the proposed works are centrally located within the site. As such the development is separated from adjoining sites in terms of its location and is also sited within a cluster of existing school buildings. The separation to adjoining development will reduce the potential for overlooking and privacy impacts.

The building form is considered to be appropriate for the area and the development of this nature. The proposal incorporates a variety of finishes and colours and will result in an appropriate rural outcome. The building has also been designed to include a maximum of 3.5 metres of cut in order to reduce the overall building height and to ensure accessibility between buildings.

The site is currently used as a school facility and accommodates both primary and secondary students. The proposed works are suitably located within the site and will be a purpose built facility which will add to the education of children.

The increase in height will result in a better planning outcome as the design allows for a purpose built facility which contains various learning spaces, including an increased floor to ceiling height within the performing arts area to increase flexibility of use within the building. The provision of the uses within one building allows for a decrease in site coverage and allows a greater landscape area at ground level and increased circulation areas for students and staff which is also considered to result in a better planning outcome.

Clause 4.6(3) of LEP 2012 states:

*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*

Comment: The height limit currently applied under LEP 2012 is considered to be unreasonable and unnecessary as outlined above. The proposal has been appropriately designed and has responded to the existing rural character of the area. The proposed built form outcome is considered to respond appropriately to the character of the area and will form an appropriate interface between rural and complementary land uses.

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

Comment: There are sufficient planning grounds to justify the proposed height. These planning grounds include the proposal to provide a purpose built facility on the site, the complementary nature of the existing and proposed uses on the site in relation to the local context and the relationship to adjoining rural uses.

Clause 4.6 (4) of LEP 2012 states:

*Development consent must not be granted for development that contravenes a development standard unless:*

- (a) *the consent authority is satisfied that:*

- (i) *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*

Comment: The applicant has adequately addressed the matters required to be addressed by subclause (3).

- (ii) *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*

Comment: As detailed above, the proposal is an appropriate outcome in regard to public interest and is consistent with the objectives of the RU6 Transition zone.

- (b) *the concurrence of the Director-General has been obtained.*

Comment: Council has assumed concurrence under the provisions of Circular PS 08-003 issued by the Department of Planning and Environment.

Specifically in relation to recent judgments of the Land and Environment Court, for the reasons identified above it is considered that:

- The applicant's request is well founded;
- The proposed variation results in a development that is consistent with the objectives of Clause 4.3 Height of Building and the RU6 Transition zone objectives;
- Compliance with the standard is unnecessary or unreasonable in this instance; and
- The proposal results in a better planning outcome.

Accordingly, the proposed height is considered satisfactory and can be supported in this instance.

## **6. Compliance with DCP Part B Section 1 – Rural**

The following table addresses the relevant provisions of the DCP:

<b>New Development</b>			
<b>DCP Provision</b>	<b>DCP Requirement</b>	<b>Provided</b>	<b>Complies</b>
Site Coverage	For lots greater than 10 hectares in size, 25% of the land area or 5000m <sup>2</sup> , whichever is the lesser.	The site has an area of 10.105 hectares (consolidated site) and as such the 5000m <sup>2</sup> criteria is applicable. The proposed site coverage is 37,990m <sup>2</sup> .	No – however the site coverage is considered appropriate for the use of the site.
Setbacks	Front Setback: 10 metres	The proposed works are set back in excess of 10m from the front boundary (consolidated site).	Yes
	Side and Rear Setback: 5 metres	The side and rear setback exceed 5 metres.	Yes
Front Fences	Front fences are to be a maximum 1.8m in height and be open style.	NA to the proposal.	Yes
Cut and Fill	Cut shall not exceed 1m and fill shall not exceed 600mm.	The proposal includes 3.49 metres of cut.	No – however the works are centrally located on the site.
Stormwater Management	Stormwater management arrangements are to demonstrate there are no impacts to adjoining lots, watercourses or existing native bushland.	The proposed stormwater management for the site will not adversely impact on adjoining property, watercourses or bushland.	Yes
Salinity	Development proposed in areas where there is a known salinity hazard must incorporate appropriate management responses.	The area is not mapped as one where there is a known salinity hazard.	NA
Wastewater and Effluent Disposal Areas	Proposals must demonstrate sufficient area is available for systems and disposal.	The existing system is a pump-to-sewer system which is adequate for the proposal.	Yes
Lighting	Any lighting must not cause a detrimental impact on the amenity of adjoining properties and shall comply with AS 4282 - Control of the obtrusive effects of outdoor lighting.	A condition has been recommended requiring compliance with the Australian Standard.	Yes

#### **a. Site Coverage**

The DCP requires that or lots greater than 10 hectares in size, 25% of the land area or 5000m<sup>2</sup>, whichever is the lesser. The site has an area of 10.105 hectares (consolidated

site) and as such the 5000m<sup>2</sup> criteria is applicable. The proposed site coverage is 37,990m<sup>2</sup>.

The applicant has submitted the following as justification:

*The combined site of Lots 1 and 2 has a total area of 10.2 ha. The DCP requires a maximum site coverage of 25% of the land area, or 5,000m<sup>2</sup>, whichever is the lesser. In this case, the 5,000m<sup>2</sup> control applies.*

*Alleanza Architecture and Stanton Dahl Architects have calculated the site coverage of each lot in accordance with the definition provided in the Rural Chapter of the DCP.*

*Lot 1 has a 'site coverage' of 7,995m<sup>2</sup> (including the new driveway works and sheltered pick on Lot 2), and Lot 2 has a 'site coverage' of 29,995m<sup>2</sup> (including driveway/car park circulation areas, hard stand playing fields and general pedestrian circulation areas). Therefore the combined sites will have a total 'site coverage' of 37,990m<sup>2</sup>.*

*The DCP provides the following Statement of Outcomes for new development in Rural zones:*

- The scale, siting and visual appearance of new development maintains the open rural feel of the landscape and preserves scenic and environmental qualities of the area.*
- The location of new rural/ residential development is to have regard to the potential impacts arising from existing adjacent rural business activities.*

*The nature of both the new place of public worship and the new school building will maintain the open rural feel of the landscape and Annangrove Road streetscape, as the site has an established character of a combined education and place of worship precinct within a bushland setting. The proposal will not alter the existing character and will provide an improved streetscape presentation to Annangrove Road.*

*The location of the new buildings has given regard to the potential impacts arising from adjacent activities, which are primarily residential in nature. The proposed works will not result in additional adverse impacts from the site beyond those already considered acceptable from the current site operations (Church and School included).*

*On these grounds, the variation to the maximum site coverage control is considered to be justified.*

#### **Comment:**

The DCP contains the following Statement of Outcomes:

- The scale, siting and visual appearance of new development maintains the open rural feel of the landscape and preserves scenic and environmental qualities of the area.*
- The location of new rural/ residential development is to have regard to the potential impacts arising from existing adjacent rural business activities.*

The site coverage requirements include all structures and hard paved areas on site including parking and driveway areas.

The proposed new building is located in close proximity to existing buildings on the site and will not unreasonably impact on the rural feel of the area. The proposed building is in keeping with the existing buildings on site in terms of design, although it is acknowledged that the building will be of a more modern external design.

The proposal includes landscape works which will assist in screening the development from views from external to site. In this regard the proposal will not unreasonably impact on the rural character of the area.

The proposed site coverage is considered to be satisfactory.

**b. Cut**

The DCP states that cut shall not exceed 1m and fill shall not exceed 600mm. The proposal includes cut up to 3.49 metres.

The applicant has submitted the following justification:

*The Rural chapter of the DCP identifies that "Cut shall not exceed 1m and fill shall not exceed 600mm". Due to the fall of the site, the proposed development involves only minor filling works but will require cut of up to approximately 3.49m.*

*The extent of cut proposed is guided by the need to match the lower ground floor level to the RL of the front vehicle circulation area, and the ground floor level to the RL of the courtyard.*

*Because the cut is facilitating building works at the ground floor and lower ground floor levels, it will not result in exposed earth or poor accessibility. To the contrary, the extent of cut allows the building to provide superior connectivity to both the ground and lower ground floor levels, and provides additional floor space for classrooms and ancillary storage spaces.*

*The extent of cut will not be visible from the public domain and so will not detract from the rural character setting of the site and the locality, and is considered to provide a superior educational design outcome. Therefore the proposed cut works are justified as they facilitate a better planning outcome than a scheme which would be required to comply with the development control.*

**Comment:**

The DCP contains the following Statement of Outcomes:

- *The scale, siting and visual appearance of new development maintains the open rural feel of the landscape and preserves scenic and environmental qualities of the area.*
- *The location of new rural/ residential development is to have regard to the potential impacts arising from existing adjacent rural business activities.*

The proposed cut works are centrally located within the site and will not result in an adverse impact to the adjoining property owners. The proposed cut will ensure that the building is readily accessed by staff and students from the central courtyard and the adjacent parking area.

The proposed cut also assists in reducing the overall height of the proposed building.

**7. Compliance with DCP Part C Section 1 – Parking**

The DCP requires the following parking to be provided:

Educational Establishment (School):

- 1 space per employee plus
- 1 space per 8 year 12 students, plus
- 1 space per 30 students enrolled for visitors and/or parent parking

Given that the site will be consolidated (Lots 1 and 2) and the site will also include a place of worship, the place of worship has also been assessed which has the following rate:

Place of Worship:

- 1 space per 5 seats

Note: whilst the Development Application for the place of worship has not yet been determined (which includes consolidation of the two lots), it is considered reasonable to assess parking based on both proposed uses. It is also relevant to note that the existing place of worship is undertaken within one of the existing school buildings (within St Madeline's primary school) and the currently shared parking arrangements occur. The shared parking arrangement will continue.

The proposal includes the loss of four parking spaces due to the proposed location of the building.

The following applies:

USE	RATE	REQUIRED
Educational Establishment (School):	1 space per employee (127 staff comprising 95 (Marian College) and 32 (St Madeline's))	127
	1 space per 8 year 12 students (150 x Year 12 students)	19 (18.75)
	1 space per 30 students enrolled for visitors and/or parent parking (1475 students total)	50 (49.1)
Place of Worship:	1 space per 5 seats (300 seat capacity)	60
Total Spaces Required:		256
Spaces Provided:	School: 106 sealed spaces and 66 unsealed spaces	
	Church: 116 sealed spaces	
Total:	Sealed spaces: 222 Unsealed spaces: 66 Total: 288 spaces	

Note: overflow parking is also available adjacent to the proposed church.

In regard to the above, while the total number of spaces exceed the DCP requirements, the number of sealed spaces is less than required. This is contrary to the DCP which requires that parking areas be sealed.

The use of the unsealed spaces is considered reasonable given that the spaces are existing, are located in convenient locations for users and do not contribute further to site coverage.

The proposed parking provision is considered satisfactory subject to a condition limiting staff and student numbers (See Condition 31).

## **8. Rural Fire Service Comments**

The proposal was referred to Rural Fire Service (RFS) as the proposal is defined as a 'special fire protection purpose'. The RFS have issued a Bush Fire safety Authority under Section 100B of the Rural Fire Act 1997 subject to the imposition of a condition relating to asset protection zones, water and utilities, evacuation and emergency management, design and construction and landscaping (See Condition 2 and Appendix 1).

## **9. Submissions**

The proposal was notified to adjoining property owners and one submission was received. The following issues were raised:

<b>ISSUE</b>	<b>COMMENT</b>
The proposed building exceeds the LEP 2012 height limit. The explanation in the Clause 4.6 variation is not satisfactory.	The proposed height is considered satisfactory and will not result in unreasonable impacts to adjoining properties. See Section 5 above.
The noise impact report is not satisfactory and does not adequately consider impacts to 16A and 18 Annangrove Road. There are currently noise impacts from loud speakers on almost all school days. The height of the buildings will amplify the noise further and louder which will impact on the acoustic amenity of the area and affected life and wellbeing.	The acoustic report has been reviewed and is considered satisfactory. In addition, further modelling has been undertaken by Council's Officer which indicates that the predicted noise levels will comply at all times at the nearest receivers. The noise currently generated from the school is considered to be reasonable and is typical of any school. A condition has been recommended which requires that the use of the premises not create offensive noise and that all doors and windows are kept closed when amplified music, live bands or performances are occurring (see Conditions 32 and 34). See comments below.
The proposal should be rejected and the applicant should revise the design to an acceptable reduced height.	The proposed works are considered appropriate and will not unreasonably impact on adjoining property owners. The design and end use of the works are considered satisfactory within the rural area.

## **10. Draft West Central District Plan**

The Draft West Central District Plan seeks to ensure that a full range of services are provided from 'birth to the end of life'. This includes schools and other similar services such as child care, hospitals, health centres, aged care, cemeteries and crematoria. The proposed development meets the priorities of the Draft Plan as follows:

- The proposal will meet the demand for improved school services within the existing school site;
- The proposal reduces reliance on temporary/demountable structures and provides an improved built form outcome;

- The proposal consolidates buildings into a central area and does not reduce formal play areas within the school;
- The primary school and high school area located on the same site which consolidates school activities from kindergarten to Year 12.

The proposal is considered satisfactory in regard to the Draft Plan.

### **SUBDIVISION ENGINEERING COMMENTS**

No objection raised to the proposal. Appropriate conditions are included in the recommendation.

### **TRAFFIC MANAGEMENT COMMENTS**

As the proposal does not intend to increase both student and staff numbers the traffic generation of the school should remain unaltered. There are currently traffic management measures in place on Annangrove Road, fronting the school which, over a period of time have proven effective in managing the existing turning movements into and out of the school property.

No objection raised to the proposal. Appropriate conditions are included in the recommendation.

### **TREE MANAGEMENT COMMENTS**

No objection raised to the proposal. Appropriate conditions are included in the recommendation.

### **HEALTH & ENVIRONMENTAL PROTECTION COMMENTS**

The proposal has been reviewed by Council's Environmental Health Co-ordinator who has advised as follows:

The noise from proposed use has been modelled. Under the NSW Industrial Noise Policy, the noise level criteria is  $L_{Aeq}$  42 dB(A) during the day period,  $L_{Aeq, 15 \text{ min}}$  40 dB(A) during the evening period and  $L_{Aeq}$  35 dB(A) during the night period. The day time period is most relevant given that the school will largely be operating during the day time period, however some night time activities may occur.

The loudest noise source is predicted to be amplified music at 107 dB(A). This would occur inside the proposed building shown as Z11 on the Precinct Plan & Site Analysis.

From the modelling, the predicted noise level at the nearest receivers are:

<b>Location</b>	<b>Predicted noise level</b>	<b>Complies</b>
18 Annangrove Road	33.6 dB(A)	Yes for all time periods
32 Annangrove Road	28.6 dB(A)	Yes for all time periods
6 Denham Road	23.5 dB(A)	Yes for all time periods
6 Spurwood Close	33.8 dB(A)	Yes for all time periods

The acoustic report has also been reviewed and the findings are agreed. The submitted acoustic report assessed the noise at the nearest affected residence which is standard practice. Noise assessment is determined at the property boundary or if the dwelling is more than 30 metres from the property boundary, 30 metres from the dwelling.

In response to the concerns raised regarding the current loud speaker impacts, the noise sources identified are part of the existing school environment and not part of the current proposal. The NSW Industrial Noise Policy (NSW INP) assesses noise impacts based upon



a 15 minute time period where noise levels are averaged over that period. The noise sources identified are typically of a short duration and therefore the impact over a 15 minute time period is negligible. The noise criteria used in the NSW INP is designed to protect 90% of people, 90% of the time. It is not designed for noises to be inaudible. The Protection of the Environment Operations Act definition of 'offensive noise' includes '*unreasonably interfere with the comfort...*'. The noise generated is typical of a school and is not considered to be unreasonable.

Further, in response to issues raised regarding the height of the building amplifying noise further, whilst buildings may act to reflect noise sources, they will not amplify noise but rather absorb noise energy thereby reducing the noise levels.

No objection raised to the proposal. Appropriate conditions are included in the recommendation.

### **WASTE MANAGEMENT COMMENTS**

No objection raised to the proposal. Appropriate conditions are included in the recommendation.

### **CONCLUSION**

The proposal has been assessed having regard to the requirements of Section 79C of the Environmental Planning and Assessment Act, SEPP Infrastructure 2007, SEPP 55 Remediation of Land, SEPP Educational Establishments and Child Care Facilities 2017, SREP 20 – Hawkesbury Nepean River, LEP 2012 and DCP Part B Section 1 – Rural and Part C Section 1 – Parking and is considered satisfactory. The proposed variation to the LEP 2012 height limit and the DCP variations to site coverage and parking have been assessed and are considered reasonable.

The proposal is recommended for approval subject to conditions.

### **IMPACTS:**

#### **Financial**

This matter has no direct financial impact upon Council's adopted budget or forward estimates.

#### **The Hills Future - Community Strategic Plan**

The Hills Future Community Strategic Plan outlines the aspirations of community residents for The Hills Shire region. Desired community outcomes include balanced urban growth, vibrant communities and a protected environment. The social and environmental impacts have been addressed in the report and are consistent with the outcomes of The Hills Future Community Strategic Plan.

### **RECOMMENDATION**

The Development Application be approved subject to the following conditions.

### **GENERAL MATTERS**

#### **1. Development in Accordance with Submitted Plans**

The development being carried out in accordance with the following approved plans and details, stamped and returned with this consent except where amended by other conditions of consent.

## REFERENCED PLANS AND DOCUMENTS

DRAWING NO.	DESCRIPTION	DATE
DA 100	Precinct Plan & Site Analysis	16.08.17 Rev. 2
DA 101	Site Plan – Existing & Demolition	13/07/17 Rev. 1
DA 102	Site Plan - Proposed	13/07/17 Rev. 1
DA 103	Tree Removal Plan 1	13/07/17 Rev. 1
DA 104	Tree Removal Plan 2	13/07/17 Rev. 1
DA 200	Lower Ground Floor Plan - Proposed	13/07/17 Rev. 1
DA 201	Ground Floor Plan – Proposed	13/07/17 Rev. 1
DA 202	Level 1 Floor Plan – Proposed	13/07/17 Rev. 1
DA 203	Roof Plan – Lower Level	13/07/17 Rev. 1
DA 204	Roof Plan – Upper Level	13/07/17 Rev. 1
DA 205	Block I Floor Plans – Existing and Proposed	13/07/17 Rev. 1
DA 206	Block H Floor Plans – Existing and Proposed	13/07/17 Rev. 1
DA 207	Block F Floor Plans – Existing and Proposed	13/07/17 Rev. 1
DA 208	Courtyard Proposed & Block G Elevation	13/07/17 Rev. 1
DA 300	Elevations – North and West of Proposed New	13/07/17 Rev. 1
DA 301	Elevations – South & East Proposed New Building	13/07/17 Rev. 1
DA 302	Sections 1 and 2	13/07/17 Rev. 1
DA 303	Sections 3 and 4	13/07/17 Rev. 1
DA 908	Finishes and Colour Schedule	13/07/17 Rev. 1
L01	Landscape Plan – First Floor	14.08.17 Rev. 2
L02	Landscape Plan – Ground Floor	14.08.17 Rev. 2
L03	Landscape Details and Specification	14.08.17 Rev. 2
0728-9-REV A	Plan of Detail Survey & Contours	8 <sup>th</sup> November 2013
0728-11-REV B	Plan of Detail Survey & Contours	25 January 2017
0728-12	Plan of Survey of Trees	30 May 2017
0728-3	Plan of Detail Survey & Contours	20 June 2007

No work (including excavation, land fill or earth reshaping) shall be undertaken prior to the issue of the Construction Certificate, where a Construction Certificate is required.

### **2. Compliance with NSW Rural Fire Service Requirements**

Compliance with the requirements of the NSW Rural Fire Service attached as Appendix 1 to this consent and dated 10 August 2017.

### **3. Provision of Parking Spaces**

The development is required to be provided with 172 off-street car parking spaces, comprising 106 sealed spaces and 66 unsealed spaces. These car parking spaces shall be available for off street parking at all times.

#### **4. Construction Certificate**

Prior to construction of the approved development, it is necessary to obtain a Construction Certificate. A Construction Certificate may be issued by Council or an Accredited Certifier. Plans submitted with the Construction Certificate are to be amended to incorporate the conditions of the Development Consent.

#### **5. Building Work to be in Accordance with BCA**

All building work must be carried out in accordance with the provisions of the Building Code of Australia.

#### **6. Clause 94 Considerations**

Under clause 94 of the Environmental Planning & Assessment Regulation, the following fire safety/Building Code of Australia (BCA) works are to be undertaken with the construction certificate works and are to be completed prior to the issue of the occupation certificate:

- i. The existing hydrant system serving the premises is to be upgraded to comply with E1.3 of the BCA 2016 & AS 2419.1-2005. The upgrade is to include all external hydrant risers and the provision of Storz fittings to all landing valves.

#### **7. Use of performing arts centre**

The performing arts centre building is not to be used as an 'entertainment venue' as defined in the Building Code of Australia, this being for theatrical or concert purposes, except with the prior consent of The Hills Shire Council.

#### **8. Tree Removal**

Approval is granted for the removal of 49 trees and pruning of Trees 34 and 37 as per Tree Removal Works Plan Report prepared by Mark Bury Consulting dated 9 May 2017 and in accordance with Bushfire Hazard Assessment Report prepared by Building Code & Bushfire Hazard Solutions Pty Ltd dated 26 June 2017.

All other trees are to remain and are to be protected during all works.

#### **9. Planting Requirements**

All trees planted as part of the approved landscape plan are to be minimum 75 litre pot size. All shrubs planted as part of the approved landscape plan are to be minimum 200mm pot size. Groundcovers are to be planted at 5/m<sup>2</sup>.

For all planting on slab and planter boxes allow the following minimum soil depths:

- 1.2m for large trees or 800mm for small trees;
- 650mm for shrubs;
- 300-450mm for groundcover; and
- 200mm for turf.

Note: this is the soil depth alone and *not* the overall depth of the planter.

#### **10. Adherence to Demolition Waste Management Plan**

All requirements of the Waste Management Plan submitted as part of the Development Application must be implemented during the demolition phase of the development, except where contrary to other conditions of consent. The information submitted can change provided that the same or a greater level of reuse and recycling is achieved as detailed in the plan. Any material moved offsite is to be transported in accordance with the requirements of the Protection of the Environment Operations Act 1997 and only to a place that can lawfully be used as a waste facility. Receipts of all waste/recycling tipping must be kept onsite at all times and produced in a legible form to any authorised officer of the Council who asks to see them.

Transporters of asbestos waste (of any load over 100kg of asbestos waste or 10 square metres or more of asbestos sheeting) must provide information to the NSW EPA regarding the movement of waste using their WasteLocate online reporting tool [www.wastelocate.epa.nsw.gov.au](http://www.wastelocate.epa.nsw.gov.au).

#### **11. Management of Construction and Demolition Waste**

Waste materials must be appropriately stored and secured within a designated waste area onsite at all times, prior to its reuse onsite or being sent offsite. This includes waste materials such as paper and containers which must not litter the site or leave the site onto neighbouring public or private property. A separate dedicated bin must be provided onsite by the builder for the disposal of waste materials such as paper, containers and food scraps generated by all workers. Building waste containers are not permitted to be placed on public property at any time unless a separate application is approved by Council to locate a building waste container in a public place.

Any material moved offsite is to be transported in accordance with the requirements of the Protection of the Environment Operations Act 1997 and only to a place that can lawfully be used as a waste facility. The separation and recycling of the following waste materials is required: metals, timber, masonry products and clean waste plasterboard. This can be achieved by source separation onsite, that is, a bin for metal waste, a bin for timber, a bin for bricks and so on. Alternatively, mixed waste may be stored in one or more bins and sent to a waste contractor or transfer/sorting station that will sort the waste on their premises for recycling. Receipts of all waste/recycling tipping must be kept onsite at all times and produced in a legible form to any authorised officer of the Council who asks to see them.

Transporters of asbestos waste (of any load over 100kg of asbestos waste or 10 square metres or more of asbestos sheeting) must provide information to the NSW EPA regarding the movement of waste using their WasteLocate online reporting tool [www.wastelocate.epa.nsw.gov.au](http://www.wastelocate.epa.nsw.gov.au).

## **12. Outdoor Lighting**

Any lighting must not cause a detrimental impact on the amenity of adjoining properties and shall comply with AS 4282 - Control of the obtrusive effects of outdoor lighting.

## **PRIOR TO THE ISSUE OF A CONSTRUCTION CERTIFICATE**

### **13. Section 94A Contribution**

Pursuant to section 80A (1) of the Environmental Planning and Assessment Act 1979, and The Hills Section 94A Contributions Plan, a contribution of **\$105,034.38** shall be paid to Council. This amount is to be adjusted at the time of the actual payment in accordance with the provisions of the Hills Section 94A Contributions Plan.

The contribution is to be paid prior to the issue of the Construction Certificate.

You are advised that the maximum percentage of the levy for development under section 94A of the Act having a proposed construction cost is within the range specified in the table below;

<b>Proposed cost of the development</b>	<b>Maximum percentage of the levy</b>
Up to \$100,000	Nil
\$100,001 - \$200,000	0.5 %
More than \$200,000	1%

### **14. Onsite Stormwater Detention – Hawkesbury River Catchment Area (Rural)**

Onsite Stormwater Detention (OSD) is required in accordance with Council's adopted policy for the rural portion of the Hawkesbury River catchment area, the Upper Parramatta River Catchment Trust OSD Handbook, with amended parameters to ensure the pre-development and post development discharge rates are the same for all storms up to and including the 1 in 100 year design storm event.

The stormwater concept plan prepared by Neville Brown & Associates Pty Ltd Drawing H-4 Revision B (which has been amended in red by Niven Donnelly & Partners Pty Ltd)

submitted to Council on 05/09/2017 is for development application purposes only and is not to be used for construction.

The detailed design must reflect the approved concept plan.

The design and construction of the OSD system must be approved by either Council or an accredited certifier. A Design Compliance Certificate (DCC) certifying the detailed design of the OSD system can be issued by Council. The following must be included with the documentation approved as part of any Construction Certificate:

- Design/ construction plans prepared by an accredited OSD designer.
- A completed OSD Drainage Design Summary Sheet.
- Drainage calculations and details, including those for all weirs, overland flow paths and diversion (catch) drains, catchment areas, times of concentration and estimated peak run-off volumes.
- A completed OSD Detailed Design Checklist.
- A maintenance schedule.

#### **15. Mechanical plant selection**

Prior to the issue of the construction certificate, an appropriately qualified acoustic consultant shall review the mechanical plant selected for the development and verify by way of signed notation on the Construction Certificate plans that the location of the selected plant shall not cause offensive noise.

#### **16. Glazing**

All glazing for new structures is to be a minimum of 6.38mm laminated.

### **PRIOR TO WORK COMMENCING ON THE SITE**

#### **17. Protection of Existing Trees**

The trees that are to be retained are to be protected during all works strictly in accordance with AS4970- 2009 Protection of Trees on Development Sites.

At a minimum a 1.8m high chain-wire fence is to be erected at least three (3) metres from the base of each tree or group of trees within the proposed construction/works zone and is to be in place prior to works commencing to restrict the following occurring:

- Stockpiling of materials within the root protection zone,
- Placement of fill within the root protection zone,
- Parking of vehicles within the root protection zone,
- Compaction of soil within the root protection zone.

All areas within the root protection zone are to be mulched with composted leaf mulch to a depth of not less than 100mm.

A sign is to be erected indicating the trees are protected.

The installation of services within the root protection zone is not to be undertaken without prior consent from Council.

#### **18. Trenching within Tree Protection Zone**

Any trenching for installation of drainage, sewerage, irrigation or any other services shall not occur within the Tree Protection Zone of trees identified for retention without prior notification to Council (72 hours notice) or under supervision of a project arborist.

If supervision by a project arborist is selected, certification of supervision must be provided to the Certifying Authority within 14 days of completion of trenching works.

### **19. Demolition Works and Asbestos Management**

The demolition of any structure is to be carried out in accordance with the Work Health and Safety Act 2011. All vehicles transporting demolition materials from the site are to have covered loads and are not to track any soil or waste materials on the road. Should demolition works obstruct or inconvenience pedestrian or vehicular traffic on adjoining public road or reserve, a separate application is to be made to Council to enclose the public place with a hoard or fence. All demolition works involving the removal and disposal of asbestos (of an area more than 10 square metres) must only be undertaken by a licenced asbestos removalist who is licenced to carry out the work. Transporters of asbestos waste (of any load over 100kg of asbestos waste or 10 square metres or more of asbestos sheeting) must provide information to the NSW EPA regarding the movement of waste using their WasteLocate online reporting tool [www.wastelocate.epa.nsw.gov.au](http://www.wastelocate.epa.nsw.gov.au). Asbestos removal must be carried out in accordance with the WorkCover, Environment Protection Authority and Office of Environment and Heritage requirements. Asbestos to be disposed of must only be transported to waste facilities licenced to accept asbestos. No asbestos products are to be reused on the site.

### **20. Construction Waste Management Plan Required**

Prior to the commencement of works, a Waste Management Plan for the construction of the development must be submitted to and approved by the Principal Certifying Authority. The plan should be prepared in accordance with The Hills Development Control Plan 2012 Appendix A. The plan must comply with the waste minimisation requirements in the relevant Development Control Plan. All requirements of the approved plan must be implemented during construction of the development.

### **21. Principal Certifying Authority**

A sign is to be erected in accordance with Clause 98 A (2) of the Environmental Planning and Assessment Regulations 2000.

### **22. Builder and PCA Details Required**

Notification in writing of the builder's name, address, telephone and fax numbers to be submitted to the Principal Certifying Authority prior to work commencing.

Two days before work commences, Council shall be notified of the Principal Certifying Authority in accordance with the Regulations.

### **23. Management of Building Sites – Builder's Details**

The erection of suitable fencing or other measures to restrict public access to the site and building works, materials or equipment when the building work is not in progress or the site is otherwise unoccupied.

The erection of a sign, in a prominent position, stating that unauthorised entry to the site is not permitted and giving an after hours contact name and telephone number. In the case of a privately certified development, the name and contact number of the Principal Certifying Authority.

### **24. Consultation with Service Authorities**

Applicants are advised to consult with Telstra, NBN Co and Australia Post regarding the installation of telephone conduits, broadband connections and letterboxes as required.

Unimpeded access must be available to the electricity supply authority, during and after building, to the electricity meters and metering equipment.

## **DURING CONSTRUCTION**

### **25. Hours of Work**

Work on the project to be limited to the following hours: -

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

No work to be carried out on Sunday or Public Holidays.

The builder/contractor shall be responsible to instruct and control sub-contractors regarding the hours of work.

#### **26. Roof Water Drainage**

Gutter and downpipes to be provided and connected to an approved drainage system upon installation of the roof covering.

#### **27. Compliance with Critical Stage Inspections and Other Inspections Nominated by the Principal Certifying Authority**

Section 109E(3)(d) of the Act requires certain specific inspections (prescribed by Clause 162A of the Regulations) and known as "Critical Stage Inspections" to be carried out for building work. Prior to permitting commencement of the work, your Principal Certifying Authority is required to give notice of these inspections pursuant to Clause 103A of the Regulations.

N.B. An Occupation Certificate cannot be issued and the building may not be able to be used or occupied where any mandatory critical stage inspections or other inspections required by the Principal Certifying Authority are not carried out.

Where Council is nominated as Principal Certifying Authority, notification of all inspections required is provided with the Construction Certificate approval.

**NOTE: You are advised that inspections may only be carried out by the PCA unless by prior agreement of the PCA and subject to that person being an accredited certifier.**

#### **28. Fitout of coffee station**

The coffee station located on the ground floor (as seen in Drawing DA 201) shall have the following:

- Dedicated hand wash basin with a supply of warm potable water through a single spout;
- Floor and walls that are smooth, impervious and capable of being easily cleaned;
- The junction between the floor and wall or joinery shall be coved;
- The ceiling shall be smooth, impervious and capable of being easily cleaned and not drop-in panels; and
- Any joinery is to be smooth, impervious and capable of being easily cleaned.

#### **PRIOR TO ISSUE OF AN OCCUPATION CERTIFICATE**

#### **29. Landscaping Prior to Issue of Occupation Certificate**

Landscaping of the site shall be carried out prior to issue of the Final Occupation Certificate in accordance with the approved plan. All landscaping is to be maintained at all times in accordance with DCP Part C Section 3 – Landscaping and the approved landscape plan.

#### **30. OSD System Certification**

The Onsite Stormwater Detention (OSD) system must be completed to the satisfaction of the Principal Certifying Authority (PCA) prior to the issuing of an Occupation Certificate. The following documentation is required to be submitted upon completion of the OSD system and prior to a final inspection:

- Works as executed plans prepared on a copy of the approved plans;
- A certificate of hydraulic compliance (Form B.11) from a suitably qualified engineer or surveyor verifying that the constructed OSD system will function hydraulically;
- A certificate of structural adequacy from a suitably qualified structural engineer verifying that the structures associated with the constructed OSD system are

structurally adequate and capable of withstanding all loads likely to be imposed on them during their lifetime.

Where Council is not the PCA a copy of the above documentation must be submitted to Council.

## **THE USE OF THE SITE**

### **31. Maximum Staff and Student Numbers**

The site is limited to the following:

127 staff; and

1475 students (which includes 150 Year 12 students).

The above limit includes both Marian College and St Madeline's Primary School.

### **32. Offensive Noise**

The use of the premises, building services, equipment, machinery and ancillary fittings shall not give rise to "offensive noise" as defined under the provisions of the *Protection of the Environment Operation Act 1997*.

### **33. Waste and Recycling Management**

To ensure the adequate storage and collection of waste from the use of the new building, all garbage and recyclable materials emanating from the building must be stored in the School's existing waste storage area, which must include provision for the storage of all waste generated on the premises between collections. Arrangement must be in place in all areas of the new building for the separation of recyclable materials from garbage.

### **34. Doors and windows to be kept closed**

All doors and windows in music rooms and performing areas are to be kept closed when amplified music, live bands or performances are occurring.



**ATTACHMENTS**

1. Locality Plan
2. Aerial Photograph
3. Site Plan
4. Part Site Plan showing Existing Works
5. Part Site plan showing Proposed Works
6. Elevations (North and West)
7. Elevations (South and East)
8. Perspective
9. Clause 4.6 Variation Request
10. Appendix 1 – Rural Fire Service General Terms of Approval

## ATTACHMENT 1 – LOCALITY PLAN



- ☐ SUBJECT SITE
- ✓ PROPERTIES NOTIFIED
- SUBMISSIONS RECEIVED

**THE HILLS**  
Sydney's Garden Shire

### THE HILLS SHIRE COUNCIL

THE HILLS SHIRE COUNCIL DOES NOT GIVE ANY GUARANTEES CONCERNING THE ACCURACY, COMPLETENESS OR CURRENCY OF THE TEXTUAL INFORMATION HELD IN OR GENERATED FROM ITS DATABASE

BASE CADASTRE COPYRIGHT LAND & PROPERTY INFORMATION NSW (LP1). CADASTRE UPDATE INCLUDING COUNCIL GENERATED DATA IS SUBJECT TO THSC COPYRIGHT.

## ATTACHMENT 2 – AERIAL PHOTOGRAPH





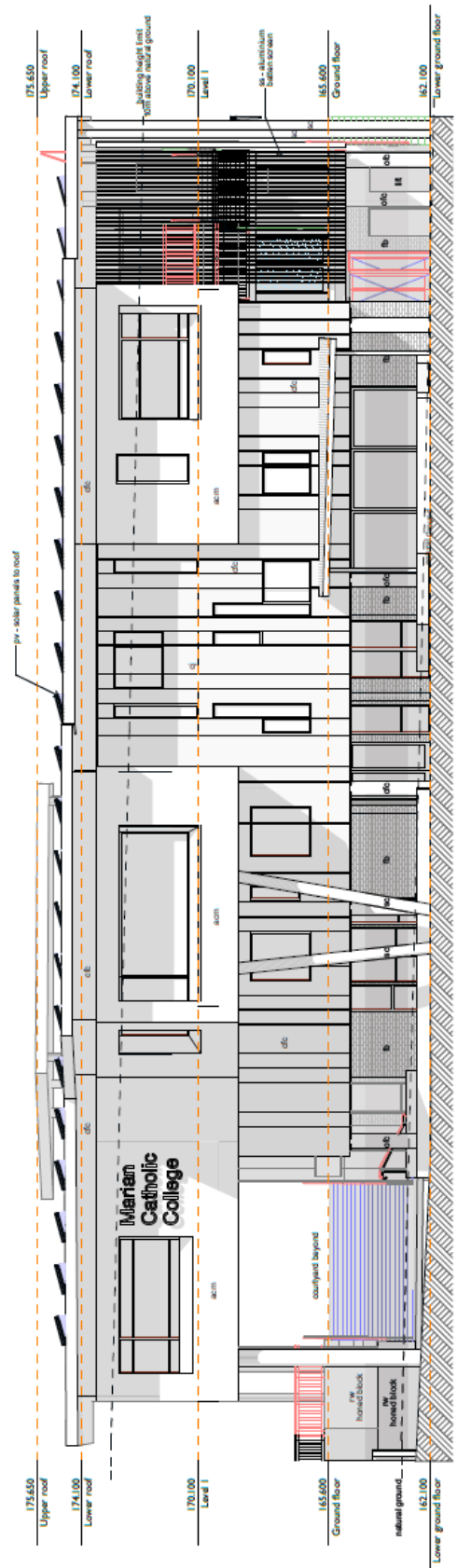
# ATTACHMENT 3 – SITE PLAN



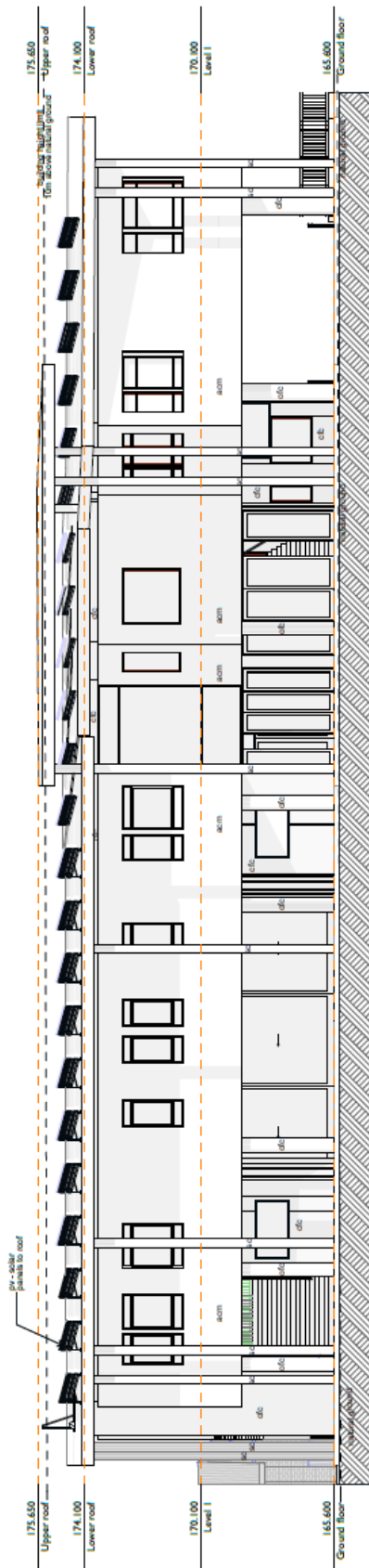
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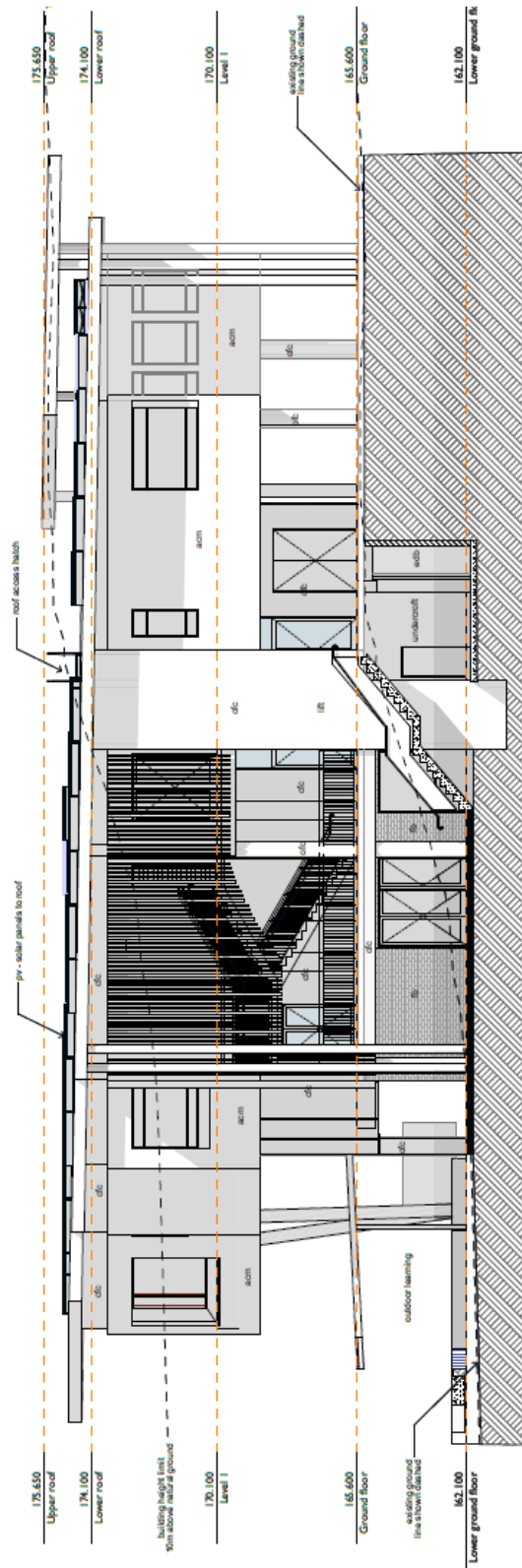


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## ATTACHMENT 7 – ELEVATIONS (SOUTH AND EAST)



02 East elevation  
1:100



01 South elevation  
1:100



## ATTACHMENT 8 – PERSPECTIVE



02 Perspective new building from courtyard  
not to scale

## ATTACHMENT 9 – CLAUSE 4.6 VARIATION REQUEST

14 July 2017  
Our Ref: 9881A.PS - Cl4.6 - Height



planning consultants

### Clause 4.6 Variation Request

#### Clause 4.3 – Height of Buildings Development Standard The Hills Shire Council Local Environment Plan 2012

#### Proposed Alterations and Additions to Marian Catholic College 24-28 Annangrove Road, Kenthurst

### 1.0 Introduction

This Variation Request relates to the proposed alterations and additions at Marian Catholic College, located at 24-28 Annangrove Road, Kenthurst (the Site).

More specifically, the Variation Request relates to clause 4.3 of *The Hills Shire Local Environment Plan 2012* (The Hills LEP) which requires that any building must be not more than 10 metres in height.

The Variation Request has been prepared pursuant to Clause 4.6 of The Hills LEP as Clause 1.9(2) of The Hills LEP provides that *State Environmental Planning Policy No. 1 – Development Standards* (SEPP 1) does not apply to land to which The Hills LEP applies (which includes the Site).

### 2.0 Requirements of Clause 4.6

Subclause 4.6(1) of The Hills LEP states the objectives of the clause as follows:

- (a) *to provide an appropriate degree of flexibility in applying certain development standards to particular development, and*
- (b) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances."*

A response to these provisions is contained within this submission.

Subclause 4.6(2) of The Hills LEP provides that:

- (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."*

The Height of Buildings development standard at Clause 4.3 of The Hills LEP is not expressly excluded from the operation of Clause 4.6 and accordingly, consent may be granted to the variation.

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Subclause 4.6(3) of The Hills LEP relates to the making of a written request to justify an exception to a development standard and states:

- “(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.”*

As discussed in **Section 3.0** below, the proposed development does not comply with the development standard relating to building height pursuant to Clause 4.3 of The Hills LEP.

Strict compliance is considered to be unreasonable and unnecessary in the circumstances of this case as the proposal achieves and/or is not inconsistent with the relevant objectives of the development standard which are to ensure that the height of buildings is compatible with that of adjoining development and the overall streetscape, and to minimise the impact of overshadowing, visual impact, and loss of privacy on adjoining properties and open space areas.

Furthermore, strict compliance would limit the ability to provide high quality learning spaces and therefore result in an inefficient use of the land or alternatively, result in an inferior design outcome where additional smaller buildings would occupy more of the Site, limiting pervious areas and reducing outdoor play spaces. As discussed below, the variation is due to the fall of the site and the need to provide suitable floor levels at the lower and upper areas, and to provide appropriate floor-to-ceiling heights for the performing arts space. Strict compliance would prevent the achievement of these design outcomes.

Subclause 4.6(4) of the LEP provides that consent must not be granted for development that contravenes a development standard unless:

- “(a) the consent authority is satisfied that:*
- (i) the applicant’s written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
  - (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
- (b) the concurrence of the Director-General [Secretary] has been obtained.”*

The remainder of this written request to vary the development standard addresses the matters required under subclauses 4.6(4) of the LEP.

Subclause 4.6(5) provides that in deciding whether to grant concurrence, the Secretary must consider:

- “(a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
- (b) the public benefit of maintaining the development standard, and*
  - (c) any other matters required to be taken into consideration by the Director-General [Secretary] before granting concurrence.”*

The proposed non-compliance does not of itself raise any matter of significance for State or regional environmental planning and it is considered that there would be no significant public benefit of maintaining the development standard in this instance.



It is considered that there are no other matters of relevance that need to be taken into consideration by the Secretary.

### 3.0 The Nature of the Variation

Subclause 4.3(2) of The Hills LEP sets out the Height of Buildings as follows:

*"The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map."*

The Height of Buildings Map designates a maximum Height of Buildings for the Site of 10 metres.

The Hills LEP defines building height (or height of building) as:

*"... the vertical distance between ground level (existing) at any point to the highest point of the building...including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like."*

The proposed development comprises a built form up to three (3) storeys in height which responds both to ground level change and the requirement for a high floor-to-ceiling space for the performing arts area, resulting in a building which exceeds the maximum building height control of 10 metres as shown on the height plans prepared by Stanton Dahl Architects (**Figure 1**) with the highest point at 13.06m - a maximum variation of 3.06m or 30.6%.

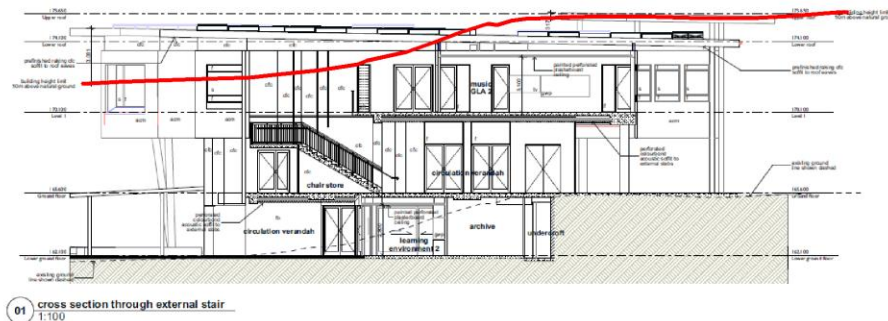


Figure 1 Extract of Cross Section (prepared by Stanton Dahl Architects)

### 4.0 Justification for the Variation ('5-Part Test')

The proposed variation to the development standard has been considered in light of the abovementioned objectives, potential environmental impacts and the 5-part test established by the NSW Land & Environment Court and strict compliance is considered to be unreasonable and unnecessary for the reasons expressed hereunder.

The Land and Environment Court of NSW, through the Judgment in *Winten Developments Pty Ltd v North Sydney Council* [2001], has established a '5-part test' for considering whether strict compliance with a development standard is unreasonable or unnecessary in a particular case. This 5-part test was later supplemented by the Judgment in *Wehbe v Pittwater Council* [2007] where Chief Justice Preston expressed the view that there are 5 different ways in which an objection to a development standard may be assessed as being well founded and that approval of the objection may be consistent with the aims of the policy. The full extent of the judgement



in Whebe has not been copied out in this submission, but is referenced to make clear the methodology of assessment.

Whilst these Judgments related to variation requests under SEPP 1, the methodology and reasoning expressed in those Judgments continues to be the accepted basis upon which to assess variation requests pursuant to clause 4.6 and accordingly, we have applied this methodology to the assessment below.

#### 1. **Is the planning control a development standard?**

Yes, the control requiring a maximum height of buildings of 10 metres in Clause 4.3 of The Hills LEP is a development standard, defined in section 4 of the EP&A Act as follows:

*"development standards means provisions of an environmental planning instrument or the regulations in relation to the carrying out of development, being provisions by or under which requirements are specified or standards are fixed in respect of any aspect of that development, including, but without limiting the generality of the foregoing, requirements or standards in respect of:*

- (c) *the character, location, siting, bulk, scale, shape, size, height, density, design or external appearance of a building or work".*

#### 2. **What is the underlying object or purpose of the standard?**

The stated objectives of Clause 4.3 of The Hills LEP are as follows:

- (a) *to ensure the height of buildings is compatible with that of adjoining development and the overall streetscape,*
- (b) *to minimise the impact of overshadowing, visual impact, and loss of privacy on adjoining properties and open space areas."*

The proposal is consistent with the relevant objectives of the development standard under clause 4.3 for the following reasons:

- **Objective (a)** – The proposed school building will be located amongst other two storey school buildings towards the rear of the site. It will be located behind the proposed Sophie Madeleine Barat Catholic Church building and the St Madeleine's Primary School. It is not located along the streetscape, nor is will it be located near a neighbouring residential boundary. The building will not be visible from the public domain or adjoining residential properties and is compatible with existing and proposed development within the Site.
- **Objective (b)** – The proposed school building will not result in any overshadowing of surrounding dwellings or private open spaces due to the location of the building within the centre of the site, and the separation (greater than 140m) from adjoining residential development.

There will be minimal visual impact caused by the new building, particularly as the new building will not be seen from the public domain. Consistency with the building height control would result in a direct impact upon teaching spaces through a reduction in floor space and requiring a decrease in outdoor play area and increasing the site coverage in order to provide the facilities elsewhere. This is not considered to be a superior planning outcome, given the negligible impacts that will arise from the proposal.

It is also relevant to consider the objectives of the RU6 Rural Transition Zone (within which the Site is located) expressed in the Land Use Table to Clause 2.3 of The Hills LEP as follows:

#### **"Zone RU6 Rural Transition**



- *To protect and maintain land that provides a transition between rural and other land uses of varying intensities or environmental sensitivities.*
- *To minimise conflict between land uses within this zone and land uses within adjoining zones.*
- *To encourage innovative and sustainable tourist development, sustainable agriculture and the provision of farm produce directly to the public."*

The proposal is consistent with the zone objectives for the following reasons:

- The use of the site as an educational establishment is permissible under the Infrastructure SEPP. This use provides a transition between rural and urban built form through the development of schools which manage but include the bushland setting of the site and locality;
- The use of the Site as an educational establishment does not conflict with other land uses and is complementary with sustainable tourism and agricultural uses as well as urban land uses; and
- The proposal will not result in any adverse overshadowing, loss of views or bulk and scale amenity impacts.

Accordingly, notwithstanding the non-compliance with the 10 metre building height limit, the proposal is consistent with the objectives of the development standard and the relevant objectives of the RU6 Transition Zone within which the Site is located.

**3. *Is compliance with the standard consistent with the aims of the policy, and in particular, does compliance with the standard tend to hinder the attainment of the objects specified in s 5(a)(i) and (ii) of the Environmental Planning & Assessment Act 1979?***

The non-compliance with the height of buildings development standard allows for the orderly use of the land, which has the capacity to accommodate an educational facility in the high quality built form proposed. The proposed educational facility building has been designed to respond to the constraints of the site, including the requirement to meet lower and upper floor levels, as well as to provide a greater floor-to-ceiling height for the performing arts area. This is considered to be a good planning outcome.

The provisions of the draft *State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017* (draft Education SEPP) permits new educational establishment structures up to a height of 22 metres (4 storeys). While this proposal is for alterations and additions to an existing educational structure, and therefore the height control in the draft Education SEPP would not strictly be a consideration, it does provide an indication of the acceptable built form for educational establishments into the future, notwithstanding other constraints of the Site.

Accordingly, requiring strict compliance with the development standard would be inconsistent with the objectives of Clause 4.6 which are to provide flexibility in the application of the standard and to achieve better outcomes for and from development through such flexibility.

Furthermore, it is considered that the relevant Objects of the Act are satisfied as the proposed non-compliance with the development standard:

- will have no negative consequences in terms of the proper management, development and conservation of natural and artificial resources, including agricultural land, natural





areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment; and

- will promote the orderly and economic use and development of the Site in a manner which achieves the objectives of the relevant planning controls.

Accordingly, strict compliance with the development standard is considered to hinder the promotion and co-ordination of the orderly and economic use and development of land comprising the Site.

**4. *Is compliance with the development standard unnecessary or unreasonable in the circumstances of the case?***

For the reasons expressed in this clause 4.6 variation request, strict compliance with the development standard is considered to be both unnecessary and unreasonable in the circumstances of this particular case.

**5. *Is the objection well founded?***

This variation request relies upon the first 'way' expressed by Chief Justice Preston in *Wehbe v Pittwater Council [2007]* as follows:

- "1. *The objectives of the standard are achieved notwithstanding non-compliance with the standard.*"

As discussed above, notwithstanding the non-compliance the proposed development achieves the objectives or "purpose" of the development standard under clause 4.3 and will not adversely impact on the natural or built environment and therefore, the objection is considered to be well founded.

Yours faithfully  
**DFP PLANNING PTY LTD**

A handwritten signature in black ink that reads 'Penny Smith'.

**PENNY SMITH  
PROJECT PLANNER**

psmith@dfpplanning.com.au

Reviewed: \_\_\_\_\_

A handwritten signature in black ink that appears to read 'Stephen King'.

## APPENDIX 1 – RURAL FIRE SERVICE GENERAL TERMS OF APPROVAL

*All communications to be addressed to:*

Headquarters  
15 Carter Street  
Lidcombe NSW 2141

Telephone: 1300 NSW RFS  
e-mail: [pes@rfs.nsw.gov.au](mailto:pes@rfs.nsw.gov.au)

Headquarters  
Locked Bag 17  
Granville NSW 2142

Facsimile: 8741 5433



The General Manager  
The Hills Shire Council  
PO Box 7064  
BAULKHAM HILLS BC NSW 2153

Your Ref: 72/2018/JP  
Our Ref: D17/2428  
DA17072408395 BB

**ATTENTION:** Kristine McKenzie

10 August 2017

Dear Sir/Madam

### **Integrated Development for 2//709237 Marian College & St Madeleine'S Primary School, 24-28 Annangrove Road Kenthurst NSW 2156**

I refer to your letter dated 18 July 2017 seeking general terms of approval for the above Integrated Development in accordance with Section 91 of the 'Environmental Planning and Assessment Act 1979'.

This response is to be deemed a bush fire safety authority as required under section 100B of the 'Rural Fires Act 1997' and is issued subject to the following numbered conditions:

#### **Asset Protection Zones**

The intent of measures is to provide sufficient space and maintain reduced fuel loads so as to ensure radiant heat levels of buildings are below critical limits and to prevent direct flame contact with a building. To achieve this, the following conditions shall apply:

1. At the commencement of building works, and in perpetuity, the entire property shall be managed as an Inner Protection Area (IPA) as outlined within section 4.1.3 and Appendix 5 of 'Planning for Bush Fire Protection 2006' and the NSW Rural Fire Service's document 'Standards for asset protection zones'.

#### **Water and Utilities**

The intent of measures is to provide adequate services of water for the protection of buildings during and after the passage of a bush fire, and to locate gas and electricity so as not to contribute to the risk of fire to a building. To achieve this, the following conditions shall apply:



2. The provision of all new water, electricity and gas services shall comply with section 4.1.3 of 'Planning for Bush Fire Protection 2006'.
3. In recognition that an unreliable water supply exists, a 20,000 litre water supply shall be provided on the site in accordance with 'Planning for Bush Fire Protection 2006' and the following:
  - Aboveground tanks shall be constructed of noncombustible material. A 65mm metal storz fitting and ball or gate valve shall be installed in any tank.
  - The gate or ball valve, pipes and tank penetration shall be adequate for full 50mm inner diameter water flow through the Storz fitting and shall be metal rather than plastic.
  - A standard Static Water Supply (SWS) marker shall be obtained from the District NSW Rural Fire Service as part of the Static Water Supply Program once the tank water supply has been installed. The marker once issued is to be: (a) fixed in a suitable location so as to be highly visible; (b) positioned adjacent to most appropriate access for the static water supply; (c) fixed facing the roadway on a gatepost, fence or dedicated post, at the right hand side of the entranceway to the Static Water Supply; (d) fixed no less than 600mm from the ground surface to the base of the sign and not higher than 1200mm from the ground surface to the base of the sign; and, (e) fixed with suitable screws or nails.

#### **Evacuation and Emergency Management**

The intent of measures is to provide suitable emergency and evacuation (and relocation) arrangements for occupants of special fire protection purpose developments. To achieve this, the following conditions shall apply:

4. A Bush Fire Emergency Management and Evacuation Plan shall be prepared consistent with 'Development Planning- A Guide to Developing a Bush Fire Emergency Management and Evacuation Plan December 2014'.

#### **Design and Construction**

The intent of measures is that buildings are designed and constructed to withstand the potential impacts of bush fire attack. To achieve this, the following conditions shall apply:

5. All new construction associated with new three storey learning building (stage 1a) shall comply with Sections 3 and 5 (BAL 12.5) Australian Standard AS3959-2009 'Construction of buildings in bush fire-prone areas' or NASH Standard (1.7.14 updated) 'National Standard Steel Framed Construction in Bushfire Areas – 2014' as appropriate and section A3.7 Addendum Appendix 3 of 'Planning for Bush Fire Protection 2006'.
6. All other new construction associated with the development applications shall be constructed from non-combustible materials or comply with section 3 and section 7 (BAL 29) Australian Standard AS3959-2009 'Construction of buildings in bush fire-prone areas' or NASH Standard (1.7.14 updated) 'National Standard Steel Framed Construction in Bushfire Areas – 2014' as appropriate and section A3.7 Addendum Appendix 3 of 'Planning for Bush Fire Protection' 2006'.

#### **Landscaping**

7. Landscaping to the site is to comply with the principles of Appendix 5 of 'Planning for Bush Fire Protection 2006'.

For any queries regarding this correspondence please contact Bradley Bourke on 1300 NSW RFS.

Yours sincerely

A handwritten signature in black ink, appearing to read 'J. Maslen'.

Jason Maslen  
**Team Leader, Planning and Environment Services (East)**

The RFS has made getting information easier. For general information on 'Planning for Bush Fire Protection, 2006', visit the RFS web page at [www.rfs.nsw.gov.au](http://www.rfs.nsw.gov.au) and search under 'Planning for Bush Fire Protection, 2006'.