

## NORTHERN REGION PLANNING PANEL COUNCIL ASSESSMENT REPORT

<b>Panel Reference</b>	2019NTH013
<b>DA Number</b>	0742/19DA
<b>LGA</b>	Coffs Harbour City Council
<b>Proposed Development</b>	Educational Facility (Demolition, Alterations and Additions to an Existing School).
<b>Street Address</b>	421 Hogbin Drive Coffs Harbour
<b>Applicant/Owner</b>	Geo Link / The Trustees of the Roman Catholic Church for the Diocese of Lismore
<b>Date of DA lodgement</b>	10 April 2019
<b>Number of Submissions</b>	Nil
<b>Recommendation</b>	Approval
<b>Regional Development Criteria (Schedule 7 of the SEPP (State and Regional Development) 2011</b>	Pursuant to Schedule 7 of the State Environmental Planning Policy (State and Regional Development) 2011, the application is referred to the NRPP as the proposed development is an educational establishment with a capital investment value of more than \$5 million
<b>List of all relevant s4.15(1)(a) matters</b>	<p><b>Environmental planning instruments:</b></p> <ul style="list-style-type: none"> <li>• State Environmental Planning Policy 44 – Koala Habitat Protection</li> <li>• State Environmental Planning Policy 55 – Remediation of Land</li> <li>• State Environmental Planning Policy (Coastal Management) 2018</li> <li>• State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017</li> <li>• State Environmental Planning Policy (Infrastructure) 2007</li> <li>• State Environmental Planning Policy (State and Regional Development) 2011</li> <li>• Coffs Harbour Local Environmental Plan 2013</li> </ul> <p><b>Development Control Plan:</b></p> <ul style="list-style-type: none"> <li>• Coffs Harbour Development Control Plan 2015</li> </ul> <p><b>The Environmental Planning and Assessment Regulation 2000:</b></p> <ul style="list-style-type: none"> <li>• Clause 92(b) the provision of AS 2601 (demolition)</li> </ul>
<b>List all documents submitted with this report for the Panel's consideration</b>	<ul style="list-style-type: none"> <li>• Assessment planning report</li> <li>• Conditions of consent</li> <li>• Plans</li> <li>• Clause 4.6 variation – Height of Building</li> </ul>
<b>Report prepared by</b>	Clayton Logan, Development Assessment Officer
<b>Report date</b>	30/10/2019

**Summary of s4.15 matters**

Have all recommendations in relation to relevant s4.15 matters been summarised in the Executive Summary of the assessment report? **Yes**

**Legislative clauses requiring consent authority satisfaction**

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?  
*e.g. Clause 7 of SEPP 55 - Remediation of Land, Clause 4.6(4) of the relevant LEP* **Yes**

**Clause 4.6 Exceptions to development standards**

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**

**Special Infrastructure Contributions**

Does the DA require Special Infrastructure Contributions conditions (S7.24)?  
*Note: Certain DAs in the Western Sydney Growth Areas Special Contributions Area may require specific Special Infrastructure Contributions (SIC) conditions* **Not Applicable**

**Conditions**

Have draft conditions been provided to the applicant for comment? **Yes**  
*Note: in order to reduce delays in determinations, the Panel prefer that draft conditions, notwithstanding Council's recommendation, be provided to the applicant to enable any comments to be considered as part of the assessment report*

**EXECUTIVE SUMMARY**

The application is required to be determined by the Northern Regional Planning Panel (NRPP) pursuant to Clause 4 of Schedule 7 of the State Environmental Planning Policy (State and Regional Development) 2011. Development applications for private infrastructure (educational facilities) with a capital investment value over \$5 million requires assessment by a regional panel exercising the consent authority functions of Councils. The capital investment value of the proposed development is \$8.13 million.

The proposal provides for alterations and additions to an educational establishment (Saint John Paul College) including demolition (agricultural block and gymnasium), tree removal, earthworks and construction of a two storey library with a rooftop terrace and two new school buildings and associated infrastructure works and upgrades (Blocks A to O).

The proposal is permissible under State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017, and is considered to result in a development, which is suitable in the context within the school grounds and character of the area. The development is consistent with the relevant provisions contained within the policy. An assessment of the application has determined that the proposal will be satisfactory and does not result in unreasonable impacts to adjoining and surrounding properties, subject to the satisfaction of recommended conditions of consent.

The proposed development generally complies with the Coffs Harbour Local Environmental Plan 2013 (CHLEP 2013). The site is zoned R2 Low Density Residential under the CHLEP 2013. The maximum permitted building height for the site is 8.5 metres and the proposal seeks a building height of 11 metres (to the top of the pitched roof above the rooftop terrace of the library area), which exceeds the maximum building height by up to 2.5 metres (29% variation to the height control). The applicant submitted a request to vary the maximum height of the buildings under Clause 4.6 of CHLEP 2013. The request is well founded for reasons including; site and context, minimal environmental impacts, location of the breach being towards the centre of the building footprint, no impact to overshadowing within the school site and minimises adverse impacts to the adjoining open space areas to the north and east.

The site contains acid sulfate soils. An acid sulfate soils management plan was submitted with the application that makes recommendations to mitigate the spread of any acid sulfate soils. The site also adjoins land that is mapped as Coastal Wetlands. Additionally, the vegetation on neighbouring land is classified as Koala habitat. The proposal is adequately sited to mitigate adverse impacts on the coastal zone or koala habitat.

The amenity impacts on surrounding properties are reasonable based on the proposed works being internally within the school grounds, setback from Hogbin Drive and adjoining open space and sporting fields. There will be no increase in traffic and the proposal would not compromise the efficient function of the local road network.

The proposal has been assessed in accordance with Section 4.15(1) of the Environmental Planning and Assessment Act 1979, taking into consideration all relevant State and local planning controls. The proposal demonstrates a satisfactory response to the objective and controls of the applicable planning framework. It is recommended that the Northern Regional Planning Panel approve the application subject to the conditions provided at Appendix C.

This report includes the following appended documents:

- Appendix A - Plans of the Proposed Development.
- Appendix B - Section 4.15 Evaluation Report.
- Appendix C - Schedule of Conditions.

### **THE PROPOSAL:**

Approval is sought for alterations and additions to an educational establishment (Saint John Paul College) including demolition (agricultural block and gymnasium), tree removal, earthworks and construction of a two (2) storey library with a rooftop terrace and two (2) new school buildings and associated infrastructure works and upgrades to Blocks A to O.

There will be no increase in students or traffic generated by the proposed development. The student and staff numbers will remain the same under this proposal.

The proposed works are indicated on the following Figure 1.



**Figure 1** – Site plan showing the location of the proposed new works (highlighted in yellow) within the Saint John Paul College site. The proposed alterations within the existing school buildings (cross-hatched and highlighted red). Source: Annotated plans from Geo Link.

A more detailed summary of the proposal is provided as follows:

#### Demolition works

- Demolition of the existing agricultural block (Block M), containing:
  - o Animal pens, machinery room, tool room and storage rooms.
- Demolition of the existing gymnasium (Block O), containing:
  - o A gymnasium and storage building.

#### Library building

- Construction of a new two storey building comprising 750m<sup>2</sup> of gross floor area to include the following:
  - o Ground floor reception, office and staff room, study rooms, study booths, book collection, shelves, seminar rooms, staircase to the first floor, large internal void

creating an atrium style space in the northeast corner, a lift and conventional stairwell, rooftop terrace, including gardens and seating.



**Figure 2** – Photomontage of the proposed new library as viewed from within the school grounds looking north west. Source: Dra Architects.



**Figure 3** – Photomontage of the rooftop terrace looking southwest. Source: Dra Architects.

#### Personal development, health and physical education building

- Construction of two (2) new personal development, health and physical education (PDHPE) blocks. The proposed PDHPE blocks adjoin each other and comprise of approximately 210m<sup>2</sup> of gross floor area within each building including:
  - o Three (3) general purpose learning areas, separated by operable walls. The buildings will be single storey and will have a ceiling height of 3 metres.



**Figure 4** – Photomontage of proposed PDHE building 1 as viewed from within the school grounds looking southeast. Source: Dra Architects.



**Figure 5** – Indicative 3D view of proposed PDHE building 2 as viewed from within the school grounds looking southeast. Source: Dra Architects.

#### Alterations and additions to Blocks A to K

- Block A
  - Convert existing staff room into a general learning area.
- Block B
  - Convert staff room into two interview rooms,
  - Demolition including two water closets (WCs), internal walls,
  - Construction including new outdoor covered breakout area, new corridor, new outdoor covered locker storage area, new windows, new glazed sliding doors.
- Block C
  - Convert staff rooms into general learning areas,
  - Convert a general learning area into an indoor breakout area,
  - Demolish internal walls,
  - Install new glazed sliding doors,
  - Convert two WCs into one accessible WC.
- Block D
  - Demolish internal walls and doors,
  - Install sliding glass doors,
  - Convert staff room into an indoor breakout room.

- Block E (administration block)
  - o Expansion of administration block into Block F.
- Block F (existing library)
  - o Construction of larger office spaces, counselling rooms, interview rooms and new amenities. There will also be a new large staff workroom including meeting rooms and quiet spaces.
- Block G
  - o Convert staff room to storage.
- Block H
  - o Convert staff room to common area.
- Block I
  - o Convert staff room to a common area, corridor and a drop-in room.
- Block K
  - o Convert staff room, corridor and staff kitchen into a bulk storeroom,
  - o Convert existing staff room



**Figure 6** – Location of proposed alterations and additions and buildings to be demolished (Building M and O) (as indicated above in hatched and highlighted yellow). *Source: Dra Architects.*

### Carpark

- New sealed open carpark to accommodate 28 parking spaces to the south of the entrance to the school.

### Earthworks

- Depth of excavation for the PDHPE buildings is approximately 400 mm reduced level (RL) for footings and piers. Ground disturbance is not anticipated to extend beyond one metre depth for the carpark.

### Tree removal

- Removal of one (1) Eucalyptus sp. and one (1) Cadaghi (*Corymbia torelliana*), located east of the existing games courts (proposed PDHE building), and
- Removal of one (1) Swamp Mahogany (*Eucalyptus robusta*) adjacent to the proposed car park.

### **THE SITE:**

The subject site is known as 421 Hogbin Drive Coffs Harbour, legally known as Lot 12 in DP 709701.

The site is irregular in shape and has the following area and dimensions:

- Area = 7.65 hectares,
- Eastern boundary to Hogbin Drive of 286.9 metres,
- Northern boundary of 169.1 metres,
- Western boundary of 197.5 metres,
- Southwestern boundary of 77 metres, and
- Southern boundary of 269.2 metres.

The site contains the Saint John Paul College, a co-educational high school for Years 7 to 12. The site is accessed from Hogbin Drive. In 2018 the enrolment in years 7 to 12 was 1,004 students with over 30 staff. The college contains 15 classroom blocks, is serviced by 4 at grade car parking areas (192 spaces in total), a bus drop-off and pick-up bay, sporting fields and ancillary sheds.

To the rear of the site towards the southwestern boundary operates the Wheel–Skills Driver and Rider Training facility. The facility provides driver training for motorcyclist on weekends and School Holidays.

The development site is shown in the following Figure 7.



**Figure 7** – Aerial image of the subject site (Saint John Paul College). *Source:* Coffs Harbour City Council Internal Maps 2018.

The site is surrounded by open space and remnant vegetation. Under the Coffs Harbour Local Environmental Plan 2013 the surrounding land is zoned public recreation (RE1) to the north, special activities (SP1) to the east and south, and environmental conservation (E2) zone to the west. Adjoining the site to the north is Coffs Harbour Leagues Club and a number of sporting fields. Surrounding the site to the east, south and west is remnant vegetation containing mature trees species of Eucalyptus and Mahogany.

## **CONSULTATION:**

### **Advertising and Notification**

The development was advertised and notified in accordance with the requirements of Coffs Harbour Development Control Plan 2015 for a 14-day period between 15 May 2019 and 29 May 2019. In response, no submissions were received.

### **New South Wales Rural Fire Services**

The development requires a 'Bushfire Safety Authority' under the Rural Fires Act 1997 (NSW). The application was referred to the NSW Rural Fire Service as integrated development for a controlled activity approval. The general terms of approval have been incorporated in the recommended conditions of consent.

## **Essential Energy**

The application was referred to Essential Energy for advice in relation to Clause 45 of the State Environmental Planning Policy (Infrastructure) 2011 as the proposed works are within the vicinity of electricity infrastructure.

## **Council Departments**

The proposal was referred to the following internal Council departments:

- Compliance and Regulatory (Environmental Health – Contamination),
- Development Engineer,
- Financial Planning,
- Local Planning (Biodiversity),
- Local Planning (Coastal and Estuary), and
- Local Planning (Flooding).

Their recommended conditions/actions have been incorporated into the evaluation process.

Council's finance officer provided the following comments: *As the ancillary works will not increase student numbers/capacity for the school. Therefore, on this basis developer contribution would not be applicable/payable.*

No comments were provided that prevent approval of the application.

## **STATUTORY MATTERS:**

### **Environmental Planning and Assessment Act 1979 (EP&A Act)**

Section 2.15 and Schedule 2 of the EP&A Act provides that the Northern Regional Planning Panel (NRPP) is the determining authority for regionally significant development. The NRPP is the determining authority for the subject application as the proposal is regionally significant development as identified under schedule 7 Clause 5 of State Environmental Planning Policy (State and Regional Development) 2011 ('SEPP State and Regional Development'), being private infrastructure (educational establishment) having a Capital Investment Value (CIV) over \$5 million. The development has a CIV of \$8.13 million.

### **Section 4.15 - Evaluation - Environmental Planning and Assessment Act 1979**

Section 4.15 of the Environmental Planning & Assessment Act 1979 (NSW) specifies the matters which a consent authority must consider when determining a development application. The consideration of matters is limited in so far as they must be of relevance to the particular application being examined. A Section 4.15 Evaluation Report is provided in Appendix B to this report.

### **Relevant Statutory Instruments**

The following environmental planning instruments are relevant to the assessment of this application.

- State Environmental Planning Policy (State & Regional Development) 2011.
- State Environmental Planning Policy No 44 - Koala Habitat Protection.
- State Environmental Planning Policy No 55 - Remediation of Land.
- State Environmental Planning Policy (Coastal Management) 2018.

- State Environmental Planning Policy - (Educational Establishment and Child Care facilities) 2017.
- State Environmental Planning Policy (Infrastructure) 2007.
- Coffs Harbour Local Environmental Plan 2013.

**SUMMARY:**

The proposed development represents a significant development for the Coffs Harbour local government area. The proposed development is consistent with all current planning controls that apply to the site and where a variation has been sought it has been determined satisfactorily. The application is considered suitable for approval subject to conditions.

**RECOMMENDATION:**

That Development Application 0742/19DA for Educational Establishment (Demolition, Alterations and Additions to an Existing School) be approved, subject to conditions as appended to this report.

**Section 4.15 Assessment  
Development Application No. 0742/19DA**

**SECTION 4.15 – MATTERS FOR CONSIDERATION – GENERAL**

**Provisions of Environmental Planning Instruments (Section 4.15(1)(a)(i))**

**State Environmental Planning Policy (State and Regional Development) 2011**

This application is captured by Part 4 of State Environmental Planning Policy (State and Regional Development) 2011 which provides that the NRPP is the consent authority for this application. Clauses 20 and 21 of this SEPP specifies that Council consent functions are to be exercised by regional panels for developments of a class or description included in Schedule 7 (Regionally significant development) of the policy.

In accordance with Schedule 7 Clause 5 (b) the proposal is for private infrastructure with a value of \$8.13 million. Accordingly, the determination of this application must be carried out by the Northern Regional Planning Panel.

**State Environmental Planning Policy No.44 – Koala Habitat Protection**

Coffs Harbour Local Government Area is listed within Schedule 1 of the SEPP, and the site is over 1ha in area pursuant to Clause 6. Accordingly, this policy applies.

The Coffs Harbour Koala Plan of Management (KPoM) 1999, as made under the Policy, applies to the land. Under the KPoM a small part of the land, located in the south-western section of the site is mapped as primary koala habitat. The land parcel also adjoins other lands mapped as primary koala habitat.

The proposed works are not located within that part of the site that is mapped. The works are also quite removed from adjoining lands that are mapped. The proposed development does not involve the removal of any koala feed trees and is not expected to result in impacts for koalas or their habitat.

The development is consistent with the requirements of the Policy.

**State Environmental Planning Policy No.55 – Remediation of Land**

Pursuant to Clause 7 of SEPP 55, contamination and remediation issues are required to be considered in determining any development application. These matters are addressed in the following table:

<b>Contamination and remediation to be considered in determining a development application</b>	<b>Comment</b>
<b>(1) A consent authority must not consent to the carrying out of any development on land unless:</b>	
(a) it has considered whether the land is contaminated, and	As the site is an existing educational establishment it is unlikely that the site is contaminated.
(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	The land is not contaminated and is considered to be suitable for the proposed development. Additionally, no orders have been given regarding contamination on the site.
(c) if the land requires remediation to be made suitable for the purpose for which the	Remediation of land is not necessary in this instance.

development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose.	
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Based on the above assessment, the proposal is considered to satisfy the relevant objectives and provisions of SEPP 55, therefore, it is considered that the subject site is suitable for the proposed development.

The development is consistent with the requirements of the Policy.

### **State Environmental Planning Policy (Coastal Management) 2018 (Coastal SEPP)**

The Policy applies to land located within the 'Coastal Zone'. It contains development controls that relate to the various lands that make up the 'Coastal Zone', being land identified on the: 'Coastal Wetlands and Littoral Rainforests Area Map'; 'Coastal Vulnerability Area Map'; 'Coastal Environment Area Map'; and the 'Coastal Use Area Map'.

The subject land is identified as being located within the 'Coastal Zone', as the land is identified by the 'Coastal Use Area Map' 'Coastal Wetlands Area Map (proximity to a wetland)' and 'Coastal Environment Area Map'. The following controls, therefore, apply to the development:

In relation to the 'Coastal Use Area':

- Division 4 – Coastal Use Area
  - Clause 14 – Development on land within the coastal use area.

It is considered that the development is unlikely to cause adverse impacts on the following: access to the foreshore; overshadowing, wind funnelling and loss of views from public places to foreshores; visual amenity and scenic qualities of the coast; Aboriginal cultural heritage practices and places; and cultural and built environmental heritage.

It is considered that the development has been designed and sited to avoid and manage impacts and is considered to be consistent with the surrounding coastal and built environment in terms of bulk, scale and size.

In relation to proximity to Coastal Wetlands:

- Division 1 – Coastal wetlands and littoral rainforests area
  - Clause 11 – Development on land in proximity to coastal wetlands or littoral rainforest.

It is considered that the development has been designed and sited to avoid and manage impacts and is consistent with the surrounding coastal and built environment.

In relation to the 'Coastal Environment Area':

- Division 3 – Coastal environment area
  - Clause 13 – Development on land within the coastal use area.

It is considered that the development is unlikely to cause adverse impacts on the following: the integrity and resilience of the biophysical, hydrological and ecological environment; the coastal environment and natural coastal processes; water quality of the marine state; marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms; existing public open space and safe access to an along the foreshore, beach, headland or rock platform for members of the public; and Aboriginal cultural heritage, practices and places; and use of the surf zone.

The development is consistent with the requirements of the Policy.

### **State Environmental Planning Policy (Educational Establishments and Child Care**

## **Facilities) 2017 (SEPP (EECCF) 2017)**

The proposal involves works to an education establishment (school), therefore, State Environmental Planning Policy (Education Establishment and Child Care Facilities) 2017 is applicable to this development. The aim of this Policy is to facilitate the effective delivery of educational establishments and early education and care facilities across the State.

As the development required to be referred to Rural Fire Services (RFS) under 100B of the Rural Fires Act 1997, the development cannot be considered complying development. Further, the proposed works do not satisfy the exempt development criteria. Therefore, a development application to Council is required for approval pursuant to the Educational Establishment and Child Care Facilities SEPP.

The provisions of the SEPP (EECCF) 2017 have been considered in the assessment of the development application.

The following issues are relevant to determine compliance of the proposal with the objectives of the SEPP (EECCF) 2017:

### *Part 4 Schools – specific development controls*

#### *Clause 33 Definition of “prescribed zone”*

The site is zoned R2 Low Density Residential, which is identified as a prescribed zone within the definition and complies with this Clause.

#### *Clause 34 Development for the purpose of student accommodation*

No student accommodation is proposed and schools are permissible with consent in any prescribed zone (including R2).

#### *Clause 35 – development permitted with consent*

In accordance with Clause 35(6) of SEPP (EECCF) 2017, the consent authority must take into consideration the following:

- (a) the design quality of the development when evaluated in accordance with the design quality principles set out in Schedule 4, and*
- (b) whether the development enables the use of school facilities (including recreational facilities) to be shared with the community.*

An assessment of the design principles is addressed below:

### **Principle 1: Context, built form and landscape**

The design of the proposed development responds to the qualities and identity of the site and respects its relationship to existing buildings, adjoining sites, streetscape and neighbourhood.

The development contributes to the context of the area, in particular, the desired future character of the school. The bulk and scale of the development is suitable for the context of the area. The proposed new buildings are setback towards the rear of the site and are not considered to result in an undue negative impact of the surrounding areas but rather will appear as a part of an extension to the existing buildings on the site.

## **Principle 2: Sustainable, efficient and durable**

The new buildings are designed to maximise natural ventilation and sunlight.

The buildings are constructed of durable materials that are low maintenance and minimise on-going maintenance costs. The internal planning of the PDHPE and library buildings ensures that they are adaptable and contains openable walls between rooms, and opportunities to for break out spaces and group learning rather than only incorporating traditional classrooms. Operable walls throughout the building will allow teachers and students to manually adapt classrooms to suit their needs.

The proposed alterations and associated works have been designed to enable the use of the existing buildings and upgrade of older facilities to enable greater environmental efficiency at the site.

## **Principle 3: Accessible and inclusive**

The proposed buildings will aim to promote equitable access and be welcoming for the school community by including ramps and a lift within the library building.

The proposed senior school building is integrated with the rest of the school site. Level access from surrounding paved pathways and a new lift will provide inclusive access to all levels of the building, with all internal areas being wheelchair friendly. Conditions of consent will ensure compliance with Australian Standards for access compliance.

The development will incorporate appropriate wayfinding signage to assist visitors and first time users with identifying key areas within the site. Safe access has been maintained within the existing development, the new building will be accessed from within the school grounds and existing access from Hogbin Drive.

## **Principle 4: Health and Safety**

The proposal will facilitate more open space for students. Additionally, the school is already secured. It is considered that the new buildings and works will create a welcoming environment for students and staff, providing modern buildings that have open spaces for study and classes, which offers students differing learning options compared to a traditional classroom style. The proposed senior school building will improve passive surveillance of the sports fields and surrounding areas.

## **Principle 5: Amenity**

It is considered that a range of flexible and pleasant learning spaces in a modern context will be provided for students which is likely to benefit their learning.

The new buildings are located towards the rear of the site away from Hogbin Drive. Noise impacts will be the same for the existing school buildings and the new buildings are appropriately setback from boundaries to reduce excessive noise. Amenity for students would not be changed.

The proposed new buildings and works provide for appropriate indoor and outdoor spaces. The design promotes access to natural sunlight and ventilation, and provides a connection to surrounding areas within the school.

## **Principle 6: Whole of life, flexible and adaptive**

The design of the building considers the future needs of the school and the new learning centre has been designed to incorporate both formal learning areas and informal learning spaces. These spaces allow for combined educational opportunities that will assist in the establishment of adaptable spaces to cater to the changing educational needs of students.

## **Principle 7: Aesthetics**

The proposed built form is appropriate with regard to the composition of building elements, textures, materials and colours which reflect the use, internal design and structure of the building. The proposed building responds aesthetically to the environment and context. The aesthesis of the buildings is considered to be acceptable.

*Clause 36 Schools – Development permitted without consent*  
Development consent is required.

*Clause 37 Notification of carrying out of certain development without consent*  
The proposal requires development consent.

*Clause 38 Existing schools – exempt development*  
The proposal is not considered to be exempt development.

*Clause 39 Existing schools—complying development*  
The proposal is not considered to be complying development.

*Clause 40 School-based child care – complying development*  
As above.

*Clause 41 Complying development certificates—additional conditions*  
As above.

*Clause 42 State significant development for the purpose of schools—application of development standards in environmental planning instruments*  
The development is not State significant.

The development is consistent with the requirements of the Policy.

### **State Environmental Planning Policy (Infrastructure) 2007 (ISEPP)**

The provisions of ISEPP have been considered in the assessment of the development application.

*Clause 45 Determination of development applications – other development*

The application is subject to clause 45 of the SEPP as the development proposes works within the vicinity of electricity infrastructure that triggers a written referral to the energy authority.

The application was referred to Essential Energy who had no concerns with the proposal. The following comments were received in response:

*Strictly based on the documents submitted and provided that access is maintained to the powerline and suitable arrangements are made to avoid accidental damage by vehicles to Essential Energy's power pole, Essential Energy has no comments to make as to potential safety risks arising from the proposed development.*

*Clause 101 Development with frontage to a classified road*

The application is not subject to clause 101 of the ISEPP as the site does not have frontage to a classified road.

*Clause 102 Impact of road noise or vibration on non-road development*

The application is not subject to clause 102 of the ISEPP as the average daily traffic volume of Hogbin Drive is less than 40,000 vehicles.

#### *Clause 104 Traffic-generating development*

The proposed development does not increase student numbers.

The proposal is satisfactory with respect to the requirements of the ISEPP.

#### **Coffs Harbour Local Environmental Plan 2013**

##### Clause 2.3 – Zone objectives and Land Use Table:

The site is zoned R2 Low Density Residential under the provisions of the Coffs Harbour Local Environmental Plan 2013. Under the Coffs Harbour Local Environmental Plan 2013 (CHLEP 2013), an *educational establishment* is permissible in an R2 Zone.

##### Clause 2.6 Subdivision – consent requirements:

No subdivision is proposed.

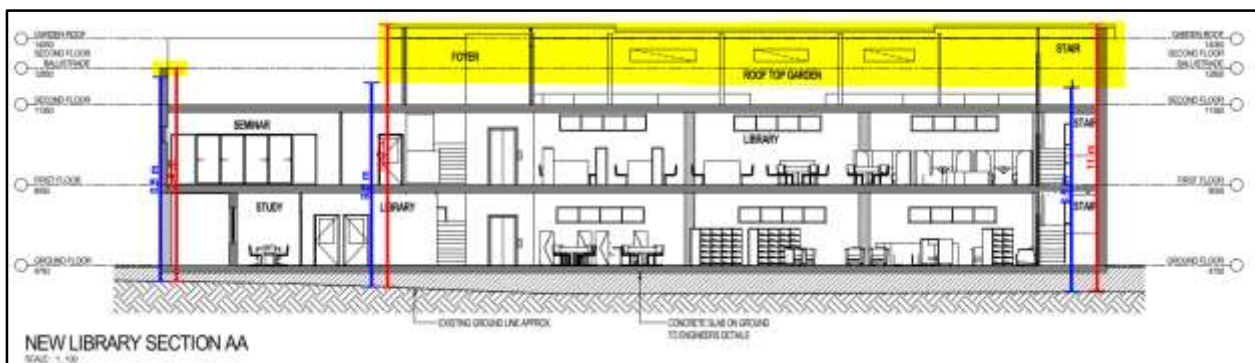
##### Clause 2.7 Demolition requires development consent:

Clause 2.7 of CHLEP 2013 states that the demolition of a building or work may be carried out only with development consent. The application seeks consent for demolition works. Council's standard conditions relating to demolition works are included in the recommendation.

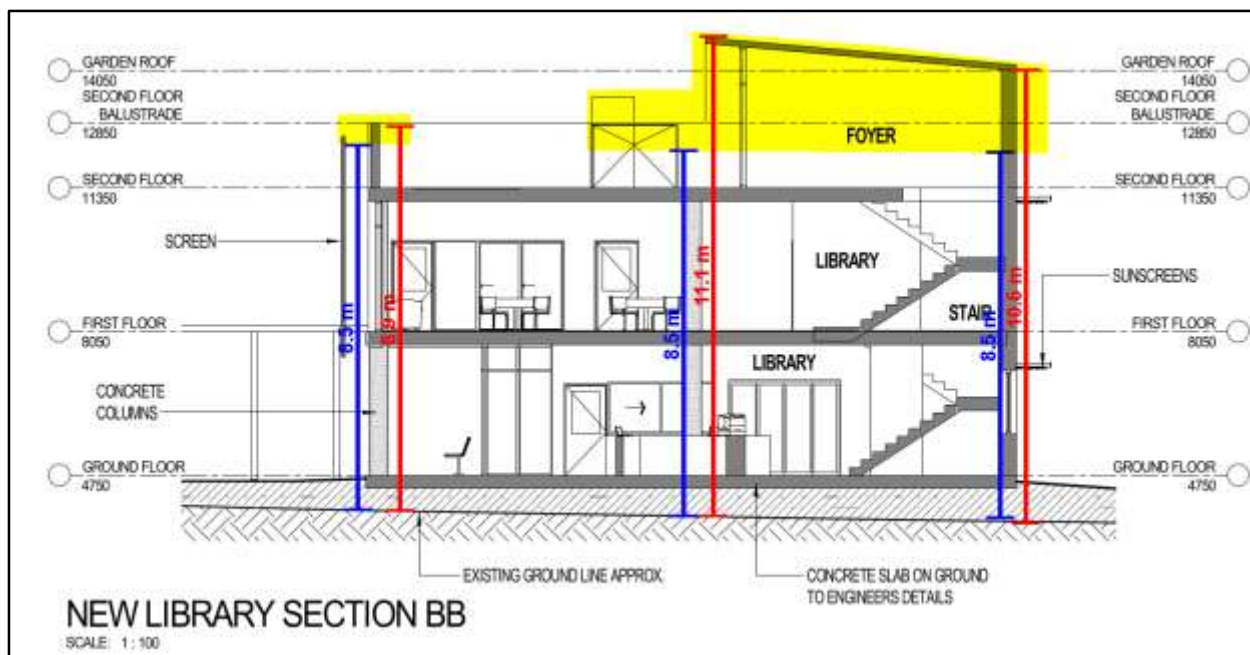
##### Clause 4.3 Height of Buildings:

The maximum building height limit of 8.5 metres applies to the site.

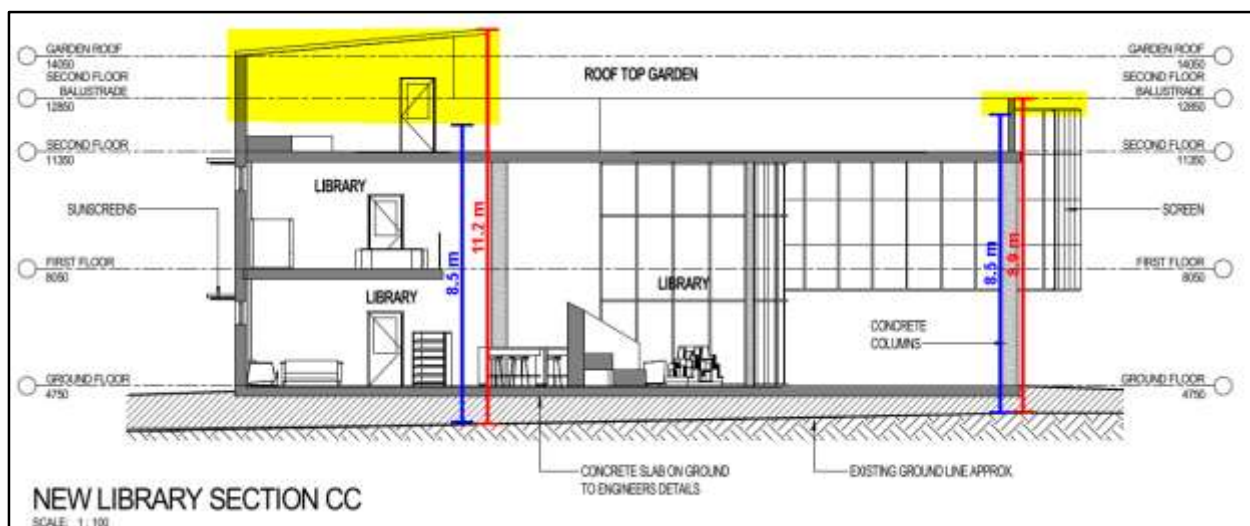
The proposed breach to the new school building height is as follows (see Figures 8, 9 and 10): 11m (2.5m breach) to the top of the 5-degree pitch roof above the level 3 rooftop garden seating area (approximate RL 14804 – existing ground level RL 3768) - 29% over the maximum height control.



**Figure 8:** Section AA, the blue lines indicating the maximum building height and the red lines and yellow highlighted areas indicating areas of non-compliance. Source:



**Figure 9:** Section BB, the blue lines indicating the maximum building height and the red lines and yellow highlighted areas indicating areas of non-compliance. Source



**Figure 10:** Section CC, the blue lines indicating the maximum building height and the red lines and yellow highlighted areas indicating areas of non-compliance. Source

#### Clause 4.6 Exceptions to Development Standards:

Clause 4.6 of CHLEP 2013 allows the consent authority to provide an appropriate degree of flexibility in applying certain development standards, where flexibility would achieve better outcomes.

The objectives of this clause 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”*

A written request pursuant to this clause has been received from the applicant to vary the height of buildings development standard.

Planning Circular “PS 18-003” dated 21 February 2018 issued by the NSW Department Planning and Environment allows regional planning panels to assume the Director-General’s concurrence in respect to an exception to the standard specified by clause 4.3.

Clause 4.6(3) requires that the applicant provide a written request seeking to justify contravention of the development standard. The request must demonstrate that:

- compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and
- there are sufficient environmental planning grounds to justify contravening the development standard.

The applicant has submitted a written request justifying the variation to the height of building development standard. In the justification the applicant states:

- *It would be both unreasonable and unnecessary to pursue strict compliance with the building height standard for the proposed development. It has been determined that in order to provide the best possible library for students and staff, given the limitations of the space available for the building within the school grounds, a variation to the development standard would be necessary. Complying with the height limitation would result in a lost opportunity for a roof-top terrace and given that the variation will not have any adverse impact on visual amenity, strict compliance is considered unnecessary.*
- *The proposed maximum building height of 10 m (along the northern side of the building) exceeds the 8.5m height control that applies to the site, as shown on the Coffs Harbour LEP 2013 Height of Buildings Map. Such a variation would have no unreasonable or adverse impact on the surrounding area or adjoining properties, and the objective of Clause 4.3 of the Coffs Harbour LEP 2013 would still be achieved.*
- *The proposed library is located at the rear of the site and will only be visible to users of the adjoining sports fields to the north (Geoff King Motors Oval).*
- *The proposal will have socio-economic benefits, with minimal environmental impact.*
- *The proposal will significantly enhance the amenity of the school, maximising the use of the already disturbed portion of the grounds.*
- *The library will be modern in design, highly functional and have a high level of visual amenity for students and staff. The proposed rooftop terrace will have landscaped gardens and seating, offering an important breakout space.*
- *The design has taken into account the relevant matters to be addressed and sought to resolve them in the most effective and suitable manner, which results in the proposed building height. Whilst the height exceeds a development standard of the Coffs Harbour LEP 2013, this is not significant. The height has been restrained as much as practical and as discussed, the proposed variation will not result in any adverse impacts.*

Clause 4.6(4): In assessing a request for a clause 4.6 variation, Council must be satisfied that the written request adequately addresses the above matters (4.6(3)) and that is satisfied that

- the applicant’s written request has adequately addressed the matters required to be demonstrated by clause 4.6(3), and
- 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.

In accordance with the above, the applicant has provided the following justification for the development being in the public interest and the particular objectives for the development within the zone:

- *The objectives of the building height development standard include ensuring that building height relates to the land's capability to provide and maintain an appropriate urban character and level of amenity and to limit the impact of the height of a building on the existing natural and built environment. Strict compliance with the 8.5 m standard is not necessary to achieve the objective, and the proposed maximum height is not a significant departure from the standard and this element is toward the rear of the site. No unreasonable amenity impacts, such as overshadowing of private open space or visual bulk, would result.*
- *There are sufficient environmental planning grounds to justify contravening the height development standard for this Proposal. Approval of a variation to the building height standard is integral to its success and the functional design needs of the building. In this instance, a variation is justified as the objectives of the standard would still be achieved notwithstanding noncompliance with the standard. The standard's primary objective relates to ensuring building height preserves the character and amenity of the area. The development would revitalise the site, and appropriately integrates into the school grounds in terms of height, massing and character as assessed within the SEE.*
- *There would be no significant environmental, heritage, visual or off-site amenity impacts. The objective of the building height standard would be upheld by the Proposal. The development will achieve positive outcomes for the school community and locality in terms of economic investment.*

#### **ASSESSMENT OF THE EXCEPTION UNDER CLAUSE 4.6:**

In assessing an exception to vary a development standard, the following needs to be considered:

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

Yes – Clause 4.3 Height of Buildings of CHLEP 2013 is a development standard.

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

The intent of the development standard (Clause 4.3 height of buildings) is to ensure that development relates to the land's capability to provide and maintain an appropriate urban character and level of amenity. In addition, Clause 4.3 is to limit the impact of the height of a building on the existing natural and built environment.

##### **3. Is compliance with the development standard consistent with the aims of the Policy, and in particular does compliance with the development standard tend to hinder the attainment of the objects specified in Section 5(a)(i) and (ii) of the EPA Act?**

Objects specified in section 5(a)(i) and (ii) of the EP&A Act 1979 include:

*(a) to encourage:*

*(i) 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,*

*(ii) the promotion and co-ordination of the orderly and economic use and development of land,*

It is considered that strict compliance with the development standard would be inconsistent with the objectives of the Act which aims to promote the orderly and economic use and development of land; and to facilitate ecologically sustainable development by integrating relevant economic,

environmental and social considerations in decision-making about environmental planning and assessment.

Contravention of the maximum building height is considered to be acceptable in this instance. The proposed height variation would not unduly impact on adjoining properties or have unacceptable impacts within the urban area. The design of the library does not have unacceptable impacts on amenity in the area. The proposal is located on a level site that is surrounded by vegetation with no sensitive receivers close by. The development is appropriately setback to common boundaries ensuring that the development appears appropriate within the site. The proposed development maintains compliance with the majority of controls within CHLEP 2013, demonstrating suitable consideration of the site constraints.

The proposal has adequately demonstrated that the variation sought to the maximum building height does not, in this case, hinder compliance with the provisions of the CHLEP 2013 Clause 4.3. The proposed development has been designed to respond to the topography of the site, and context of the locality, without unduly compromising the amenity of adjoining properties, despite the non-compliance sought to the maximum building height.

It is therefore considered on balance, that there are sufficient planning grounds particular to this development have been provided to justify that the development standard is unreasonable or unnecessary for the purposes of an objection under Clause 4.6, (and 4.6(3)(a) in particular) and as such, the proposed variation and development in its entirety is supported.

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

For the reasons provided above, particularly those that relate to the built form, context and setting, it is considered that compliance with the development standard would be unreasonable given the circumstances relating to this development proposal and the site.

It is therefore considered that the non-compliance with the development standard will not compromise the public interest. There are sufficient planning grounds warranting support for a variation to the development standard. In this regard, full compliance with the development standard is considered to be unreasonable and unnecessary in this instance.

#### **5. Is the exception well founded?**

In *Webbe v Pittwater Council* [2007] NSW LEC 827 Chief Justice Preston of the NSW Land and Environment Court provided further guidance to consent authorities as to how variations to the standards should be approached. Justice Preston expressed the view that there are five (5) different circumstances in which an objection may be well founded:

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

**Comment:** The objectives of Clause 4.3 building height are as follows:

- (a) *to ensure that building height relates to the land's capability to provide and maintain an appropriate urban character and level of amenity,*
- (b) *to ensure that taller development is located in more structured urbanised areas that are serviced by urban support facilities,*
- (c) *to ensure that the height of future buildings has regard to heritage sites and their settings and their visual interconnections,*
- (d) *to enable a transition in building heights between urban areas having different characteristics,*
- (e) *to limit the impact of the height of a building on the existing natural and built environment,*
- (f) *to encourage walking and decreased dependency on motor vehicles by promoting greater population density in urban areas.*

The above objectives relate to the height of a building in relation to its surroundings and the urban character. The departure to the development standard will not, in this instance, result in adverse impacts on adjoining properties, urban character, and unacceptable amenity impacts having regard to acoustic, visual privacy or overshadowing.

2. *The underlying objective or purpose of the standard is not relevant to the development, and therefore compliance is unnecessary;*

**Comment:** The underlying objective is relevant, however in this case the location of the breach to the building height across the centre of the new building footprint allows for a practice space to be used by the community. In relation to the objectives, it is considered that the underlying objectives of the development standards are not relevant to the development, and therefore, compliance is unnecessary.

3. *The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;*

**Comment:** The applicant does not suggest that the objective would be thwarted if compliance was required; rather that the objective is achieved despite the breach of the height of buildings development standard. The proposal is not considered to unduly compromise the height objectives because they are not strictly relevant. The proposal will not impact on the natural environment given its internal location within the existing school grounds. The development is on land zoned R2 and there are no residential developments directly adjoining the proposal. Given this, the proposed development appropriately responds to the site and does so without adversely compromising relationships with adjoining developments.

4. *The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable;*

**Comment:** It is considered that the standard has not been abandoned within the site itself or within the Coffs Harbour area. It is considered that compliance with the standard in this case is unreasonable and unnecessary as the proposed development:

- It would be unreasonable to require the development to comply with the maximum building height as the proposal does not compromise the objectives of the height control,
- The proposed variation does not result in unreasonable amenity impacts on the adjacent public domain or adjoin and surrounding dwellings,
- The proposal is considered appropriate without setting an undesirable precedent in the low-density residential character of within the Coffs Harbour area,
- The configuration, layout and design of the school building, including the overall size and spaces are practical and will allow future users to utilise the new school building in a variety of ways,'
- The non-compliant height will not adversely impact the public domain,
- The additional building height will not result in unreasonable overshadowing impacts on surrounding properties; and
- The proposal complies with the objectives of the R2 zone objectives.

Compliance with the development standard in this instance is unreasonable and unnecessary given the above.

5. *The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable and unnecessary. That is, the particular parcel of land should not have been included in the particular zone.*

**Comment:** The applicant does not challenge that the zoning is inappropriate or that the standard is unreasonable or unnecessary.

The overarching principle of the standard is to protect amenity by preventing inappropriate development. The proposal has low amenity impacts, and sufficient planning merit, to warrant its proceeding. Strict compliance is considered unnecessary.

As all requirements of Clause 4.6 have occurred and are satisfied, development consent may be granted notwithstanding contravention to the height of buildings, development standard. As such, the request to vary the height standard is supported.

In conclusion, the applicant has provided a written request that seeks to justify the height of buildings development standard of CHLEP 2013 (Clause 4.3). The written request satisfactorily demonstrates site-specific reasons that the proposal would be a better environmental outcome than a complying scheme and that there are sufficient environmental planning grounds to justify contravening the development standard. The proposed development is considered to be in the public interest.

#### Clause 5.10 Heritage:

There are no heritage items identified in the vicinity of the site. The site is cleared and has been used for industrial type uses in the past. There are no known aboriginal items registered on the Aboriginal Heritage Management Information system.

#### Clause 7.2 Earthworks:

The impacts of the proposed earthworks have been considered in the assessment of this proposal. The proposal involves excavation within the site to accommodate on-site car parking, the PDHPE building and the library.

The earthworks proposed as part of the application will not have an adverse impact on the neighbouring uses or on environmental functions or processes. A detailed geotechnical report was submitted with the application and no concerns were raised in regards to the impacts of ancillary earthworks associated with the development.

Subject to relevant conditions of consent the proposal will result in minimal impacts on the amenity of surrounding properties, drainage patterns and soil stability. The proposal therefore meets the objective of this Clause.

#### Clause 7.3 Flood Planning:

The southern proportion of the site is affected by flooding and is within the flood planning area of Coffs Harbour. The site includes existing buildings, parking, open space areas. The proposed works are located well away from these land reservations.

The application has been referred to Council's floodplain engineers and the application is considered to be suitable subject to conditions of consent relating to finished floor levels being above the 1 in 100 flood level and that a flood risk management plan been provided prior to the issue of a construction certificate.

#### Clause 7.4 Terrestrial biodiversity:

The land is not affected by terrestrial biodiversity.

Clause 7.5 Drinking water catchment:

The land is not mapped as being within a drinking water catchment.

Clause 7.6 Riparian land and watercourses:

The land is not identified as having a watercourse traversing through the site.

Clause 7.8 Koala habitat:

Clause 7.8 of the LEP requires that development consent not be granted unless the development is in accordance with the *Coffs Harbour City Koala Plan of Management (KPoM) 1999*.

Under the KPoM a small part of the land, located in the south-western section of the site is mapped as primary koala habitat. The land parcel also adjoins other lands mapped as primary koala habitat.

The proposed works are not located within that part of the site that is mapped. The works are also quite removed from adjoining lands that are mapped. The proposed development does not involve the removal of any koala feed trees and is not expected to result in impacts for koalas or their habitat.

The development is consistent with the requirements of the Clause.

Clause 7.9 Airspace operations:

The location of the proposal is indicated on the limitation or operations surface map as having a limitation surface of 48.06m.

The approximate existing ground level is RL 3769m AHD.

The proposed facility has a total height of RL 14804m AHD.

As such, the overall height of the structure will sit at 11.03m above the existing ground level.

The proposal is 37.03m below the limitation surface.

The development is consistent with the requirements of the Clause.

Clause 7.11 Essential services:

Essential services are available to the site including water, electricity, sewage, drainage and vehicular access. Recommended conditions will be included requiring the new buildings and works be connected to all relevant essential services prior to the issue of an occupation certificate

#### Clause 7.12 Design excellence:

In considering whether the development exhibits design excellence, the consent authority must have regard to the following matters:

- (a) *whether a high standard of architectural design, materials and detailing appropriate to the building type and location will be achieved,*

**Comment:** The proposal is modern and designed to a high architectural standard which responds to and enhances the characteristics of the school.

- (b) *whether the form and external appearance of the development will improve the quality and amenity of the public domain,*

**Comment:** The form and external appearance of the proposed PDHPE and library are typical of new school buildings. The impacts to the public domain of the new buildings will be low due to the location being internally within the school grounds.

- (c) *whether the development detrimentally impacts on view corridors,*

**Comment:** The site is not identified as having views and vistas neither identified as being significant.

- (d) *the requirements of the Coffs Harbour DCP,*

**Comment:** As noted above, Section 35 subclause (9) of the SEPP (Educational Establishments and Child Care Facilities) 2007, states that any requirement, standard or control included in a DCP is of no effect when related to a school.

- (e) *how the development addresses the following matters:*

- (i) *the suitability of the land for development,*
- (ii) *existing and proposed uses and use mix,*
- (iii) *heritage issues and streetscape constraints,*
- (iv) *the relationship of the development with other development (existing or proposed) on the same site or on neighbouring sites in terms of separation, setbacks, amenity and urban form,*
- (v) *bulk, massing and modulation of buildings,*
- (vi) *street frontage heights,*
- (vii) *environmental impacts such as sustainable design, overshadowing, solar access, wind and reflectivity,*
- (viii) *the achievement of the principles of ecologically sustainable development,*
- (ix) *pedestrian, cycle, vehicular and service access, circulation and requirements,*
- (x) *the impact on, and any proposed improvements to, the public domain.*

**Comment:** In consideration of this application it is noted that the application is a well prepared and presented scheme for the whole of the site. The proposed new school facilities would sit within its existing urban context and long term plans for the future of Saint John Paul College redevelopment. The height and scale of the development proposed appears to be cohesive with the existing buildings on site and not being visually intrusive from neighbouring sites. Resulting in acceptable impacts both within and around the neighbouring properties.

The development has been complemented by a design that is articulated which lessens the bulk and scale of the development. Architectural features have been incorporated into the design, as well as a variety of materials to the façade of the new buildings (library and PDHPE) to add articulation and depth and visual interest. In this regard, the bulk, massing and modulation of the buildings is reduced through the contemporary design and not necessarily detracting from the emerging character or the streetscape

The design of the proposed development responds to the qualities and identity of the area with respect to its relationship to adjoining sites, streetscape and neighbourhood. The development contributes to the context of the area, in particular, the desired future character of the school. The bulk and scale of the development is suitable for the context of the school and surrounding area.

The proposed new buildings are consistent with the existing buildings within the school and are not considered to result in an undue negative impact of the surrounding but rather will appear as a three storey building in a garden setting.

**Provisions of any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (Section 4.15(1)(a)(ii))**

There are no draft Environmental Planning Instruments applying to this proposal.

**Provisions of Development Control Plans (Section 4.15(1)(a)(iii))**

**Coffs Harbour Development Control Plan 2015 (CHDCP 2015)**

As noted above, Section 35 subclause (9) of the SEPP (Educational Establishments and Child Care Facilities) 2007, states that any requirement, standard or control included in a DCP is of no effect when related to a school.

**Any planning agreement that has been entered into under section 7.12, or any draft planning agreement that a developer has offered to enter into under section 7.12 (Section 4.15(1)(a)(iiia))**

The proposal does not include any Voluntary Planning Agreements (VPAs) and section 7.12 does not apply to the application.

**Provisions of Regulations (Section 4.15(1)(a)(iv))**

All relevant provisions of the Regulations have been considered in the assessment of this proposal.

**Impacts of the Development (Section 4.15(1)(b))**

*Character / streetscape*

The proposed development has a built form, height scale and context consistent with the nature of the existing buildings and the future desired character of the area anticipated within the school. As noted above the proposal provides sufficient modulation and articulation so that it provides a suitable series of elevations that have a positive relationship with the surrounding environment.

*Safety and Security*

The safety and security of the proposal has been considered. The development is considered to be consistent with the principles of Crime Prevention through Environmental Design as appropriate measures are in place for casual surveillance, access control, territorial reinforcement and space management.

*Overshadowing/solar access*

There are no unacceptable overshadowing impacts anticipated from the proposal to the school site and to any adjoining properties.

**Suitability of the Site (Section 4.15(1)(c))**

The relevant matters pertaining to the suitability of the site for the proposed development have been considered in the assessment of the proposal. Additional conditions of consent are proposed to further minimise any impacts on neighbouring properties and the environment. There are no known major physical constraints, environmental impacts, natural hazards or exceptional circumstances that would hinder the suitability of the site for the proposed development.

**Public submissions (Section 4.15(1)(d))**

In accordance with the CHDCP 2015 notification procedures, owners and occupiers of adjoining and surrounding properties were given notice of the application for a 14-day period between 15 May 2019 and 29 May 2019. In response, no submissions were received.

**Public Interest (Section 4.15(1)(e))**

The proposal has been assessed against the relevant planning policies applying to the site having regard to the objectives of the controls. As demonstrated in the assessment of the proposal, the proposal will allow further development of the community and students of Saint John Paul College in accordance with its environmental capacity and future vision for the school. The building form is generally supported and the proposal will add visual interest to the existing site and internally within the area of the school. Approval of the application is considered to be in the public interest as it will provide additional school facilities that enhance and support community development.

The proposed development does not raise any significant general public interest issues beyond matters already addressed in this report. Overall, the proposed development will have an acceptable impact on the surrounding natural and built environment and has positive social and economic impacts. Approval of the application is considered to be in the public interest as it will provide additional school facilities that enhance and support community development.