COUNCIL ASSESSMENT REPORT

HUNTER AND CENTRAL COAST REGIONAL PLANNING PANEL

PANEL REFERENCE & DA NUMBER	PPSHCC-166 DA/2614/2022
PROPOSAL	Educational Establishment
ADDRESS	Lot 101 DP 804229, 6 Harrisons Lane, Cardiff Heights
APPLICANT	DFP Planning PTY Ltd
OWNER	Autism Spectrum Australia
DA LODGEMENT DATE	21 November 2022
APPLICATION TYPE	Development application (DA)
REGIONALLY SIGNIFICANT CRITERIA	Clause 5(b), Schedule 6 of *State Environmental Planning Policy (Planning Systems) 2021*: Private infrastructure and community facilities over 5 million. The development has a capital investment value of $6,927,198
CIV	$6,927,198 (excluding GST)
CLAUSE 4.6 REQUESTS	Clause 4.3 of Lake Macquarie Local Environmental Plan 2014 – Height of buildings (RU4 and R2 zones)
KEY SEPP/LEP	• *Environmental and Planning Assessment Act 1979* • *Environmental and Planning Assessment Regulation 2021* • *State Environmental Planning Policy (Resilience and Hazards) 2021* • *State Environmental Planning Policy (Transport and Infrastructure) 2021* • *State Environmental Planning Policy (Planning Systems) 2021* • *State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004* • *Lake Macquarie Local Environmental Plan 2014* • *Lake Macquarie Development Control Plan 2014*
TOTAL & UNIQUE SUBMISSIONS KEY	2 Outdoor play area design

ISSUES IN SUBMISSIONS	Loss of amenity and property value
DOCUMENTS SUBMITTED FOR CONSIDERATION	Architectural Plan Bulk Earthworks Plan Civil Engineering Plans Stormwater Drainage Plan Landscape Plan Statement of Environmental Effects Design Verification Statement Clause 4.6 Variation Request Traffic Impact Assessment Social Impact Assessment Access Report Arboricultural Impact Assessment Acoustic Report Bushfire Threat Assessment Flood Assessment Geotechnical Report Preliminary Site Investigation and Detailed Site Investigation Remediation Action Plan Waste Management plan Plan of Management
SPECIAL INFRASTRUCTURE CONTRIBUTIONS (S7.24)	Nil
RECOMMENDATION	Approval
DRAFT CONDITIONS TO APPLICANT	Yes
SCHEDULED MEETING DATE	8 November 2023
PLAN VERSION	19 October 2023, Revision R
PREPARED BY	Leena Sebastian
DATE OF REPORT	27 October 2023

EXECUTIVE SUMMARY

Consent is sought for an Educational Establishment at 6 Harrisons Lane Cardiff Heights. The development will provide specialised education for primary school aged children on the autism spectrum.

The school will be owned and operated by Autism Spectrum Australia and would cater for 80 children onsite along with facilities for distance education.

The site is zoned R2 Low Density Residential and RU4 Primary Production Small Lots where schools are not permitted under *Lake Macquarie Local Environmental Plan 2014.* The proposal relies on the provisions of *State Environmental Planning Policy (Transport and Infrastructure) 2021* for permissibility.

The application is being referred to the Hunter and Central Coast Regional Planning Panel for determination as it falls within the category of 'private infrastructure and community facilities' with capital investment value exceeding $5 million.

The application was exhibited on three occasions with the initial notification undertaken between 30 November 2022 and 13 January 2023, upon lodgement. Subsequent notifications were undertaken during the course of the assessment as the result amendments made to the plans, specifically the outdoor play area layout. Two submissions were received in the second round of notification from 18 April -10 May 2023, and none in the final public exhibition between 28 September 2023 and 19 October 2023.

A kick-off briefing was held with the Hunter and Central Coast Regional Planning Panel on 21 February 2023, followed by a briefing on 27 June 2023 to seek advice on outstanding matters relating to noise. All matters raised in these meetings and additional information requested by Council have been adequately addressed by the applicant.

The application was referred to NSW Rural Fire Services and Subsidence Advisory NSW for integrated development approval under the *Rural Fires Act 1997,* and *Coal Mines Subsidence Compensation Act 2017* respectively, and General Terms of Approval have been obtained.

The proposal with a capacity of 80 children is considered as a traffic generating development under *State Environmental Planning Policy (Transport and Infrastructure) 2021,* and as such advice was sought from Transport for NSW. No objections were raised by this agency and the advice provided has been considered in the assessment of this application.

The site lies in a quiet residential area interfacing rural and environmental lands. An overland flow path traverses the site forming a valley through the middle. The proposal is sympathetic to the site's topography and the building is designed to bridge across this gulley to minimise impacts.

While the development is not supported by the site's zoning, no inconsistency is noted with the zone objectives. The development is responsive to the site's context and facilitates a use that would support the residential developments in the immediate locality and broader catchment.

Due to the siting of the development within a valley, the part of the building above the gulley exceeds the height control in the Lake Macquarie Local Environmental Plan by a maximum of 46.9%. The application is supported by a clause 4.6 variation request to justify this variation.

The application is accompanied by a suite of specialist report studies to identify potential impacts. Appropriate design outcomes and mitigation measures have been included to enable the development to co-exist with other surrounding uses without adverse impacts.

Flood risk assessment undertaken for the development has demonstrated no additional risk to the occupant of the site or downstream properties from the development. The stormwater strategy includes provisions to safely convey the flows from the upstream catchment, and manage run-off from the proposed development through onsite detention systems.

The traffic generation from the development is within acceptable limits and the parking needs of the school will be met on site. The development demonstrates the capability to accommodate the required bushfire protection measures. Site remediation and validation are required to render the site suitable for the proposed use.

The play area design has been revised to maximise the separation to the residential development and suitable landscape treatment and fencing are proposed at the interface to ensure visual privacy and amenity. The development is capable of complying with relevant noise criteria with appropriate treatment to glazing, walls and roofing. Suitable measures have been included to ensure the safety and security of the premises.

In assessing the development against all relevant statutory and non-statutory planning instruments and policies, it is considered to have merits for approval, subject to conditions of consent contained in **Attachment A**.

1. THE SITE AND LOCALITY

1.1 The Site

The site is an irregular parcel of land with an area of 6500m^2 and approximate frontage of 71m to Harrisons Lane. An aged care facility operated on the site until recently. This building has now been demolished and the site remains vacant.

The property is split-zoned with R2 Low Density Zone towards the street frontage and RU4 Primary Production Small Lots Zone at the rear. Access to the site is provided by Harrisons Lane which services a small pocket of dwellings.

An overland flow path runs through the site in a north-south direction, eventually discharging into Tickhole Creek to the south. The landform falls steeply towards the gulley forming a valley through the centre of the site. Slopes on the eastern side of the gulley generally range between 6^0 and 18^0, while the eastern side fronting Harrisons Lane has steeper slopes up to 20^0.

The site vegetation is largely confined to the street frontage and the southern boundary. A number of trees on the neighbouring property are located close to the southern boundary. Figures 1-4 show the context and setting of the site.

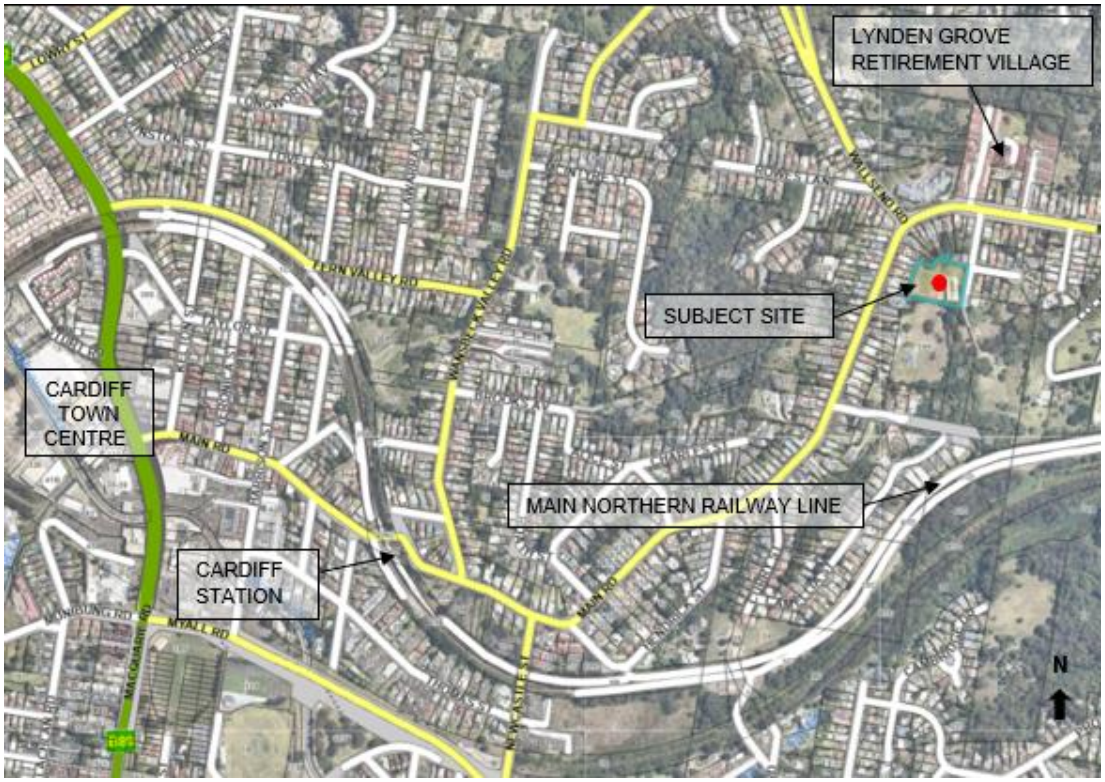

Figure 1 – Location Map

Figure 2 – Aerial Photo of the Site

Figure 3 – View from Harrisons Lane

Figure 4 – View from the rear towards Harrisons Lane (before demolition)

1.2 The Locality

The site lies in a quite residential area at the interface of rural and environmental lands. Surrounding uses and broader areas to the north, east and west are predominantly low-density residential. The southern boundary of the site adjoins a large spilt zoned property containing RU4 and C2 Environmental Conservation Lands. Broader areas to the south are largely environmental lands.

A retirement village is located to the north of the intersection of Harrison Lane with Main Road.

Cardiff town centre is located 1.8km to the southwest of the site. The Main Northern Railway line is located approximately 270m to the south.

The closest bus stop is located within 180m from the site, near the intersection of Main Road and Harrisons Lane.

2. THE PROPOSAL AND BACKGROUND

2.1 The Proposal

The proposal is for an educational establishment (school) offering specialised programs for children on the autism spectrum. The school will be owned and operated by Autism Spectrum (Aspect) Australia.

The development is in the form of a three-storey structure with the upper levels bridging across the overland flow path on the site. All the learning areas and associated facilities will be located on the ground and the upper levels. The lower ground level will contain the circulation core and 30 outdoor parking spaces for the staff and the waste storage area. A separate parking area containing 12 visitors parking spaces is proposed at the ground level.

The building is sited centrally within the valley to maximise the separation to the surrounding properties. The entire building footprint is located outside 1% Annual Exceedance Probability (AEP) flood extent and the finished floor levels comply with the Probable Maximum Flood (PMF) level.

The development generally complies with the building height standard of 8.5m. However, the part of the building bridging over the gulley exceeds the height limit by 3.985m (46.9%) with a maximum height of 12.485m above existing ground level. The application is accompanied by a request to vary this standard pursuant to clause 4.6 of Lake Macquarie Local Environmental Plan 2014.

A new entry ramp off Harrisons Lane will provide access to the development and the existing driveway will be upgraded to provide exit from the both the parking levels. There will also be a direct pedestrian access from Harrisons Lane to the ground level.

The outdoor play area is located on the western side with substantial landscaping along the periphery to maintain the amenity of the adjoining dwellings.

Other works include retaining walls, tree removal, one business identification sign and landscaping.

The school is expected to have approximately 80 students attending years K-6, along with distance learning. Approximately 35 staff (teaching and non-teaching) will be present on site at any given time. Proposed operating hours are between 8am and 6pm, Monday to Friday.

Table 1 shows the development data, and Figures 5 and 6 provide details of the proposed development.

Table 1: Development Data

Control	Proposal
Site area	6500m^2
GFA	1280 m^2
FSR (retail/residential)	N/A

Clause 4.6 Requests	Yes, the application seeks 3.985m variation to the maximum height standard of 8.5m
No of apartments	N/A
Max Height	12.485m (46.9% variation to 8.5m building height standard)
Landscaped area	Approximately 900m^2
Car Parking spaces	30 staff parking and 12 visitor parking spaces
Setbacks	East (Harrisons lane) – 19m West – 21.5m North – 4.7m South – 13.5m

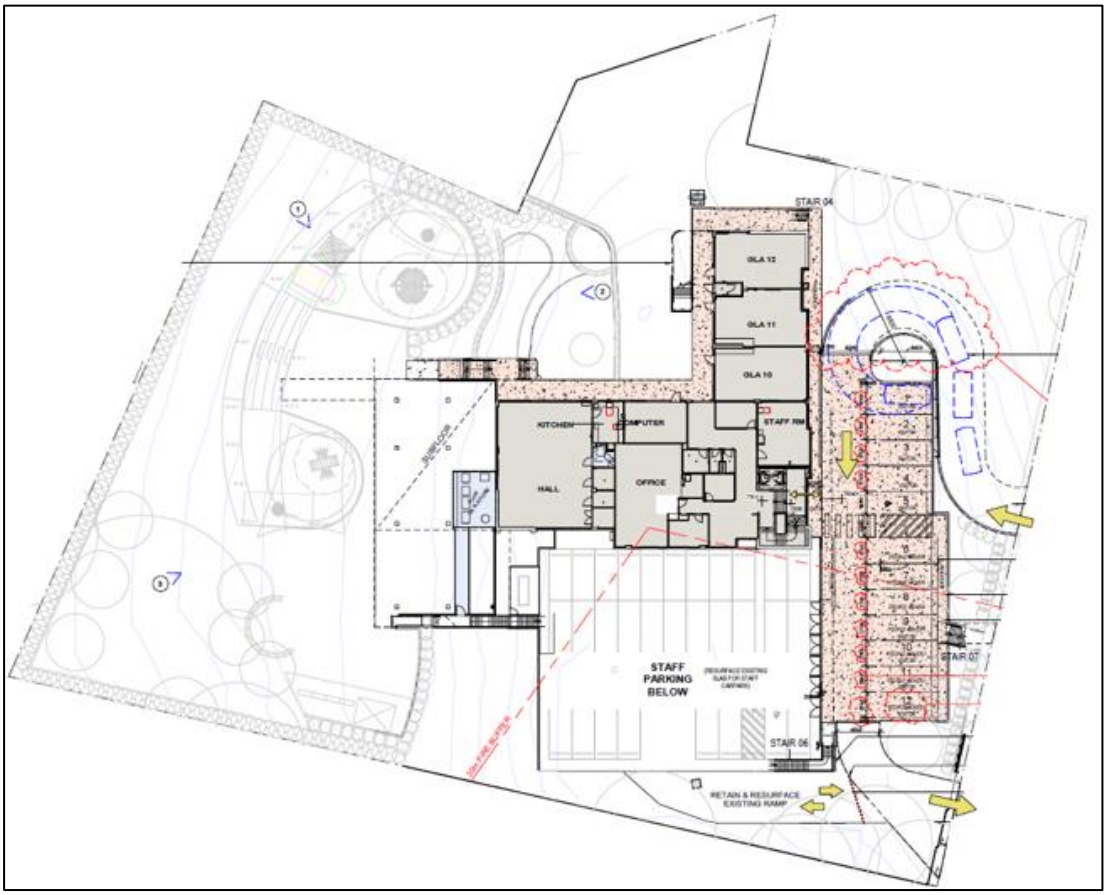

Figure 5 – Proposed Site Plan

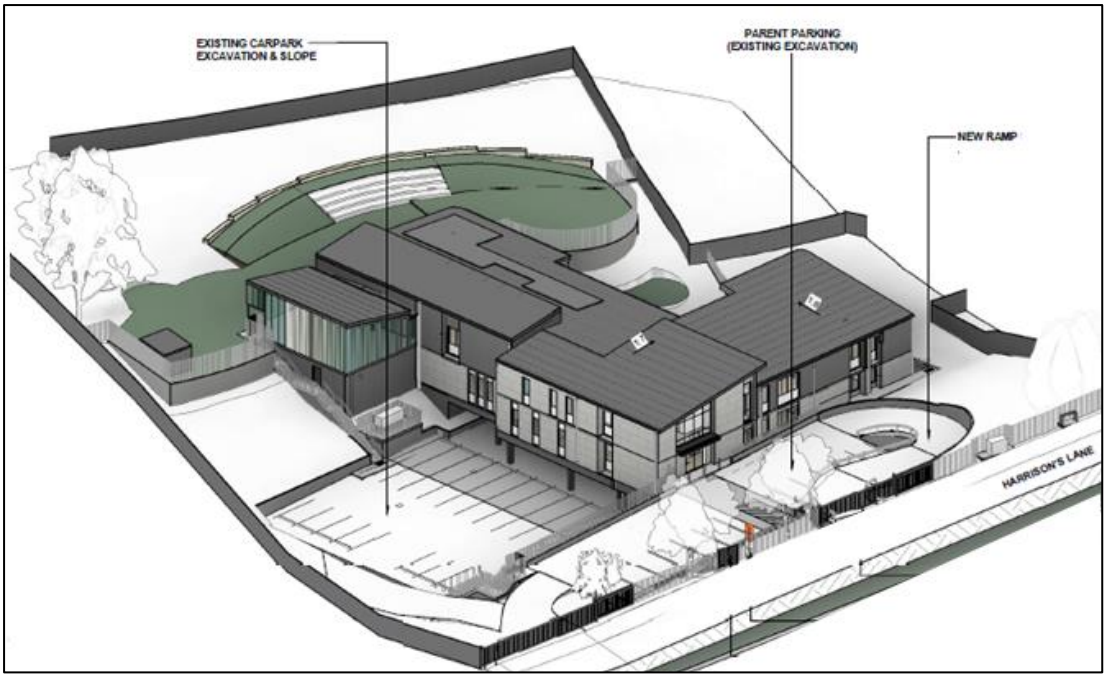

Figure 6 – 3D View of the development from South-West

2.2 Background

A pre-lodgement meeting (PL/48/2021) was first held with Council on 22 June 2021 to discuss the adaptive reuse of the existing building as an educational establishment.

Subsequent investigations by the proponent determined a new building was more viable and a further meeting with Council was undertaken on 27 July 2022 (PL/54/2022). The current proposal aligns with the concept plans presented at the pre-lodgement meeting. A summary of the key issues and how they have been addressed by the proposal is outlined below:

- Overland flow path – Constructing into the overland path and conveying flows beneath structures was not generally supported by Council. In order to address this issue, a structure bridging across the flow path, as advised by Council has been proposed. The stormwater infrastructure associated with the development capture 1% AEP flows and provisions have been made for a public drainage easement to convey upstream flows.
- Geotechnical assessment – A slope stability assessment in accordance with Council Geotechnical Guidelines has been submitted as requested by Council to demonstrate the site capability to support the development with minimal risks.
- Traffic impacts - A traffic impact assessment (TIA) to identify the impact on peak hour traffic, the functioning of the intersection and peak hour parking demand was requested in support of the application. Council also required all the parking needs for the development to be met on the site. The TIA accompanying the application does not identify any significant impact on the existing roads and intersection as a result of the proposal. Adequate parking spaces have been proposed to prevent offsite impacts.
- Waste management – Due to the steep driveway, the type of waste collection vehicle required consideration while determining turn circles into driveway and the manoeuvring areas within the site. The waste collection vehicles that previously serviced the site utilised the existing driveway to access the aged care facility. To

enable these arrangements to continue on the redeveloped site, waste storage areas are proposed at the lower ground level. Waste collection will be undertaken outside the normal operating hours of the school to facilitate access via the existing driveway and to avoid conflicts with parked vehicles at the lower level.

- Acoustic assessment – As the site is in close proximity to sensitive residential areas and noisy roads and railway, an acoustic assessment was requested. Impact of operational noise on the neighbouring uses, as well as the ability of the development to meet relevant noise criteria, including internal noise goals needed consideration. The revised acoustic report demonstrates compliance with the project specific noise levels at existing residences and includes construction requirements to meet internal noise comfort levels.

Table 2: Chronology of the DA

Date	Event
21 November 2022	DA lodged
30 November 2022 – 13 January 2023	Exhibition of the application
1 December 2022	DA referred to TfNSW and RFS
15 December 2022	Advice received from TfNSW
18 January 2023	General Terms of Approval and Bushfire Safety Authority issued by RFS
21 February 2023	Kick-off briefing with Panel
2 March 2023	Request for Information from Council to applicant
14 April 2023	Amended plans and documents submitted. Main changes included increased bin storage area, larger pot sizes for landscaping and changes to the bulk earthworks near the play area
18 April 2023 – 10 May 2023	Exhibition of amended plans 2 Submissions received
25 May 2023	A further request for information issued by Council mainly to address noise impacts.
13 June 2023	Amended noise modelling submitted by the application for discussion
27 June 2023	Briefing with RPP
29 June 2023	Information request issued by Council to address outstanding noise issues and the matters raised by the Panel

4 August 2023	Amended plans with minor changes to the landscaping near the outdoor play area, and revised acoustic assessment submitted.
17 August 2023	Further information request to address acoustic and traffic matters was issued by Council
25 September 2023	Amended plans with substantial changes to the outdoor play area and access arrangements was submitted
28 September 2023 – 19 October 2023	Exhibition of amended plans

2.3 Site History

The site is believed to have been used for small scale grazing from around 1944 until the construction of a 2/3 storey age care facility in the late 1960s. The existing car park was built almost a decade later and subsequent approvals were granted for the alterations to the age care building under DA/892/1981 and DA/72/1982.

A single storey dwelling was also constructed in the north-east corner of the site sometime between 1966 and 1974, and demolished in the period between 1987 and 1993.

The site operated as 'Amity Nursing Home' under Bupa since 2002 until its closure about two years ago.

Aspect took ownership of the site in 2021, and the aged care building has been recently demolished with approval from Council under DA/2410/2022.

3. STATUTORY CONSIDERATIONS

When determining a development application, the consent authority must take into consideration the matters outlined in Section 4.15(1) of the *Environmental Planning and Assessment Act 1979* ('EP&A Act'). These matters as are of relevance to the development application include the following:

(a) the provisions of any environmental planning instrument, proposed instrument, development control plan, planning agreement and the regulations

(i) any environmental planning instrument, and

(ii) 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 (unless the Planning Secretary has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and

(iii) any development control plan, and

(iiia) any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4, and

(iv) the regulations (to the extent that they prescribe matters for the purposes of this paragraph),

that apply to the land to which the development application relates,

(b) the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,

(c) the suitability of the site for the development,

(d) any submissions made in accordance with this Act or the regulations,

(e) the public interest.

These matters are further considered below.

- Integrated Development (s4.46)

  Integrated development requirements for the application are detailed below.

  The site is within a mine subsidence district. Section 22 of the *Coal Mines Subsidence Compensation Act 2017* requires an approval to alter or erect improvement or subdivide land within a Mine Subsidence District. The application was assessed by Subsidence Advisory NSW and an approval was granted on 12 April 2023, in accordance with section 4.47 of the EP&A Act.

  A small area in the south-eastern corner of the site is identified as a bushfire buffer. Schools are identified as Special Fire Protection Purpose Developments requiring Bush Fire Safety Authority under section 100B of the *Rural Fires Act 1997*. General Terms of approval and Bushfire Safety Authority were issued by NSW Rural Fire Service on 18 January 2023.

  All relevant approvals required under Section 4.46 of EP&A Act have been obtained for the application, and the general terms of approval issued by the authorities have been included in the conditions of consent.

3.1 Environmental Planning Instruments, proposed instrument, development control plan, planning agreement and the regulations

The relevant environmental planning instruments, proposed instruments, development control plans, planning agreements and the matters for consideration under the Regulation are considered below.

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

The following Environmental Planning Instruments are relevant to this application:

- *State Environmental Planning Policy (Planning Systems) 2021*
- *State Environmental Planning Policy (Resilience and Hazards) 2021*
- *State Environmental Planning Policy (Transport and Infrastructure) 2021*
- *State Environmental Planning Policy (Industry and Employment) 2021*
- *Lake Macquarie Local Environmental Plan 2014*
- *Lake Macquarie Development Control Plan 2014*

A summary of the key matters for consideration arising from these State Environmental Planning Policies are outlined in **Table 3** and considered in more detail below.

Table 3: Summary of Applicable Environmental Planning Instruments

EPI	Matters for Consideration	Comply (Y/N)
State Environmental Planning Policy (Industry and Employment) 2021	Chapter 3: Advertising and Signage • Section 3.6 – granting consent to signage	Y
State Environmental Planning Policy (Planning Systems) 2021	Chapter 2: State and Regional Development Section 2.19(1) declares the proposal regionally significant development pursuant to Clause 5 (b) of Schedule 6 as it comprises an educational establishment with a capital investment value of $6,927,198 million.	Y
SEPP (Resilience & Hazards) 2021	Chapter 4: Remediation of Land • Section 4.6 **-** Contamination and remediation has been considered in the specialist's reports and the proposal is satisfactory subject to conditions for remediation.	Y
State Environmental Planning Policy (Transport and Infrastructure) 2021	Chapter 3**:** Educational Establishments • Section 3.36 Schools – development permitted with consent. • Section 3.58 - Traffic-generating development • Schedule 8 – Design quality principles	Y
Lake Macquarie Local Environmental Plan 2014	• Clause 2.3 – Permissibility and zone objectives • Clause 4.3 – Height of buildings • Clause 4.6 – Exceptions to development standards The development is not permissible; however, it is not inconsistent with the zone objectives.	N
Lake Macquarie Development Control Plan 2014	Part 2 Development in Rural Zones Part 3 Development in Residential Zones Part 9.17 Signage	Y

Consideration of the relevant SEPPs is outlined below:

State Environmental Planning Policy (Industry and Employment) 2021 ('Industry and Employment SEPP')

Chapter 3 of the Industry and Employment SEPP aims to regulate the quality of the signage and ensure effective communication in suitable locations consistent with the character of the area. Section 3.6 of this policy requires the consent authority to ensure the signage is consistent with the objectives of this chapter and the assessment criteria provided in Schedule 5, prior to granting an approval.

The proposal includes business identification in the form of a pylon sign measuring 3800mm high x 750mm wide, near the pedestrian entry from Harrisons Lane. An assessment of the proposed signage against Schedule 5 is provided in **Table 4**.

Table 4: Assessment against Schedule 5 Criteria

Assessment Criteria	Comment	Comply
1. **Character of the area** Is the proposal compatible with the existing or desired future character of the area or locality in which it is proposed to be located?	While the site is at the interface of residential and rural/conservation lands, it has long been used for non-residential purposes which involved a business identification sign at the frontage. Replacement of the existing sign with a pylon sign does not cause any undesirable impacts on the surroundings and therefore considered compatible with the existing and future context.	Y
Is the proposal consistent with a particular theme for outdoor advertising in the area or locality?	There is no particular theme for outdoor signage in the locality. The proposed scale and form of the signage is not overly intrusive to present any inconsistency in the local character.	Y
2. Special areas Does the proposal detract from the amenity or visual quality of any environmentally sensitive areas, heritage areas, natural or other conservation areas, open space areas, waterways, rural landscapes or residential areas?	The site is not in a significant view corridor or environmentally sensitive area. The proposed pylon sign fits the context of the proposed use and it does not have any visually intrusive elements to detract from the amenity of the area.	Y
3. Views and vistas Does the proposal obscure or compromise important views?	The site is not in visually sensitive location with significant view corridors. The pylon sign is not located directly in front of the dwellings facing Harrisons Lane. Therefore, the proposal will not obscure of compromise views.	Y
Does the proposal dominate the skyline and reduce the quality of vistas?	The proposed signage will be set against the background o of the proposed building without dominating the skyline or protruding higher than the roofline of the development	Y

Does the proposal respect the viewing rights of other advertisers?	Being an isolated signage, the viewing rights of other advertisers will not be affected.	Y
4. Streetscape, setting or landscape Is the scale, proportion and form of the proposal appropriate for the streetscape, setting or landscape?	The proposed scale and form of the signage is justified by its location, the streetscape and the intended use.	Y
Does the proposal contribute to the visual interest of the streetscape, setting or landscape?	The southern end of Harrisons Lane has very limited visual catchment. Installation of a pylon sign in this location will not significantly affect the streetscape amenity.	Y
Does the proposal reduce clutter by rationalising and simplifying existing advertising?	No other signages exist in the proposed location of the pylon sign to result in visual clutter.	Y
Does the proposal screen unsightliness?	The site or the proposed development does not have any undesirable elements that require screening	Y
Does the proposal protrude above buildings, structures or tree canopies in the area or locality?	The proposed signage does not protrude above the proposed development in the background.	Y
Does the proposal require ongoing vegetation management?	No additional tree clearing or vegetation management is required specifically for the proposed signage.	Y
5. Site and building Is the proposal compatible with the scale, proportion and other characteristics of the site or building, or both, on which the proposed signage is to be located?	The proposed signage is compatible with the scale of the proposed development. It will be located at the site's frontage amongst new plantings to meld into the bult environment and surrounds.	Y
Does the proposal respect important features of the site or building, or both?	There are no significant features on the site or the proposed building.	Y
Does the proposal show innovation and imagination in its relationship to the site or building, or both?	The proposed signage design is compatible with the building design and fits into the context without causing any undesirable impacts.	Y
6. Associated devices and logos with advertisements and advertising structures Have any safety devices, platforms, lighting devices or logos been designed	The signage is for the purpose of business identification. There are no safety devices, platforms or lighting devices associated with the proposed freestanding signage.	N/A

as an integral part of the signage or structure on which it is to be displayed?		
7. Illumination Would illumination result in unacceptable glare?	No illumination is proposed. Therefore this criterion is not relevant to the proposal.	Y
8. Safety Would the proposal reduce the safety for any public road?	No, the proposed pylon signage will be positioned within the site without affecting the sightlines of the road users.	Y
Would the proposal reduce the safety for pedestrians or bicyclists?	No, the proposed signage is located within the site without interfering with the activities in the road reserve.	Y
Would the proposal reduce the safety for pedestrians, particularly children, by obscuring sightlines from public areas?	The pylon sign will not impede the sightlines from Harrisons Lane.	Y

State Environmental Planning Policy (Planning Systems) 2021 ('the Planning Systems SEPP')

Chapter 2 of the Planning Systems SEPP sets the criteria for State significant developments and infrastructure, and regionally significant developments.

The proposal is for an educational establishment with a capital investment value of $6,927,198 million and therefore considered *regionally significant development* pursuant to Section 2.19(1) of this policy as it satisfies the criteria in Clause 5(b) of Schedule 6. Accordingly, the Regional Planning Panel is the consent authority for the application. The proposal is consistent with this Policy.

State Environmental Planning Policy (Resilience and Hazards) 2021 ('the Resilience and Hazards SEPP')

Chapter 4 of the Resilience and Hazards SEPP provides a Statewide planning approach to remediation of contaminated land. Section 4.6 of this policy requires the consent authority to be satisfied the land is either suitable in its existing state, or can be appropriately remediated and made suitable, for the proposed use before granting of consent for a development.

Contamination investigation has been undertaken by Douglas Partners and the application is accompanied by a Preliminary Site Investigation (PSI), a Detailed Site Investigation (DSI) and a Remediation Action Plan to demonstrate the site can be made suitable for the proposed use.

The site inspection and a Conceptual Site Model undertaken as part of the PSI identified the following potential sources of contamination and contaminants of potential concern (COPC) on the site:

- The gulley formation across the site carrying runoff with potential sediments and residual chemicals from the residential uses and roadways upstream.
- Debris of hazardous building materials from former structures
- The aged care building with asbestos containing materials

- Sewage pump out system
- Potential fuel spill from the sewer pump and asbestos from the pump house
- Imported fill and former agricultural use
- Black slag materials in the southern part of the site

Soil samples were taken from 20 test pits across the site for detailed investigation. Additionally, the results from a previous investigation comprising of ten bore holes covering the area to the south and west of the aged care building were also used in the DSI.

The laboratory test results indicated the general absence of gross contamination at the test locations and depths. Near-surface heavy metal contamination was identified near the black slag materials on the southern boundary; however, the test results did not indicate their widespread occurrence.

Some asbestos containing materials (ACM) were identified in the location of the former dwelling in the north-eastern part of the site and in the western portion of the site.

The screening tests did not identify significant volatile organic compounds in the samples and no significant contamination was observed in the groundwater encountered during the excavation. Apart from the small areas affected by black slag, the contamination concentrations on the site were considered to be generally within the adopted human health and ecological site assessment criteria for residential use. The assessment concluded the site is considered suitable for the proposed use as a school, subject to further investigation to delineated contaminated soils and appropriate remediation.

The remediation action plan (RAP) submitted with the application proposes off-site disposal of heavy metal contaminated soils and containment of asbestos contaminated soils on site or their excavation and removal off site if necessary.

The proposal is considered to be consistent with this policy, subject to imposition of relevant conditions of consent in relation to remediation works during construction on any consent granted.

State Environmental Planning Policy (Transport and Infrastructure) 2021 ('the Transport and Infrastructure SEPP')

Amongst other provisions, Chapter 3 of the Transport and Infrastructure SEPP standardises the approval pathways and assessment considerations for educational establishments and early education and care facilities across the state. Relevant sections under this policy are discussed below.

Subject site contains R2 and RU4 zones which are identified as prescribed zones for schools in Section 3.34.

Section 3.36(1) permits development for the purpose of a school to be undertaken by any person with development consent on land in a prescribed zone. The proposed school gains permissibility through these provisions, as schools are not permissible in R2 and RU4 zones under Lake Macquarie Local Environmental Plan (LEP) 2014.

Section 3.36(6) requires the consent authority to evaluate the design quality of the proposed school against the design quality principles in Schedule 8 of this policy, and to consider whether the development enables the sharing of school facilities with the community.

The proponent has advised that the school not likely to be shared with the community owing to the specialised nature of the operations.

An assessment of the proposed school design against Schedule 8 is provided in **Table 5**.

Table 5: Assessment against Schedule 8 Principles

Design Quality Principles	Comment	Comply
Principle 1 – context, built form and landscape		Y
Schools should be designed to respond to and enhance the positive qualities of their setting, landscape and heritage, including Aboriginal cultural heritage. The design and spatial organisation of buildings and the spaces between them should be informed by site conditions such as topography, orientation and climate.	The proposed design is responsive to the site's topography, and constraints. The development is sited centrally without affecting the overland flow path while maximising the separation to the adjoining properties. The site and immediate surrounds do not have any specific heritage or cultural values. Hues of green and natural finishes are used for the exterior to create a strong link between the development and rural/environmental land to the south.	
Landscape should be integrated into the design of school developments to enhance on-site amenity, contribute to the streetscape and mitigate negative impacts on neighbouring sites	Landscaping has been integrated into the design to provide onsite amenity and visual separation to the adjoining dwellings. A variety of trees, shrubs and plantings are proposed on the western side to create a landscape buffer between the play area the dwellings to the west. Plantings are also proposed at the frontage for streetscape amenity and along parts of the northern and southern boundaries to provide screening to adjoining properties.	
School buildings and their grounds on land that is identified in or under a local environmental plan as a scenic protection area should be designed to recognise and protect the special visual qualities and natural environment of the area and located and designed to minimise the development's visual impact	The site is not identified within a scenic protection area. Notwithstanding, the three-storey structure is located in a valley across the site, at a lower level than the street, and presents as a modest built form in the streetscape. The building is well articulated and will be treated with natural shades to blend into the greenery of the rural lands to the south.	

on those qualities and that natural environment.		
Principle 2 – sustainable, efficient and durable Good design combines positive environmental, social and economic outcomes. Schools and school buildings should be designed to minimise the consumption of energy, water and natural resources and reduce waste and encourage recycling. Schools should be designed to be durable, resilient and adaptable, enabling them to evolve over time to meet future requirements.	The L-shape layout enhances natural lighting and ventilation into the building. Northerly or easterly aspect is available to the majority of the classrooms, with many of them having dual aspects. The architectural statement submitted by the applicant proposes energy and water efficient fittings and appliances in the building. Provisions have been made for recycling of waste. The landscaping near the play area provides opportunities for kitchen gardens and compost areas for onsite food waste cycling. Durable, prefinished cladding materials in neutral colours will be used as cladding. The battens and other panelling on the façade are easily replaceable if any upgrade is required in the future.	Y
Principle 3 – accessible and inclusive School buildings and their grounds should provide good wayfinding and be welcoming, accessible and inclusive to people with differing needs and capabilities. Schools should actively seek opportunities for their facilities to be shared with the community and cater for activities outside of school hours.	A pylon sign is proposed at the entry for identification of the premises. The access report submitted with the applications demonstrates the capability of the development to comply with accessibility requirements. Due to the specialised nature of the operations, the school facilities are not likely to be shared with the community. Given the site's location in a quiet residential area, sharing of facilities with the community is not preferred to minimise impacts on adjoining dwellings.	Y N, however justified by the specialised operation and location.
Principle 4 – health and safety		Y

Good school development optimises health, safety and security within its boundaries and the surrounding public domain, and balances this with the need to create a welcoming and accessible environment.	The development includes a number of measures to ensure safety. Permeable fencing will be provided at the site's frontage to provide security while maintaining a connection to the public realm. Landscaping is proposed at the interface to Harrisons Lane to enhance the streetscape and create a welcoming environment.	
Principle 5 – **amenity** Schools should provide pleasant and engaging spaces that are accessible for a wide range of educational, informal and community activities, while also considering the amenity of adjacent development and the local neighbourhood.	The design creates a strong connection between the interior and exterior spaces. The classrooms are generally orientated towards the landscaped play area for better engagement with outdoor spaces. While the layout of the building allows the kitchen, covered outdoor learning area (COLA) and outdoor spaces to be used for other informal and community activities, it is preferred to restrict the use to the school, which in itself is a significant community benefit, to maintain the amenity of the adjoining uses. The proponent has advised that the school is not likely to be used for other uses, due to the specialised nature of operations.	Y
Schools located near busy roads or near rail corridors should incorporate appropriate noise mitigation measures to ensure a high level of amenity for occupants.	The site is in a quiet area, away from busy roads. Construction requirements for appropriate noise insulation to the structure are included in the acoustic report.	
Schools should include appropriate, efficient, stage and age appropriate indoor and outdoor learning and play spaces, access to sunlight, natural ventilation, outlook, visual and acoustic privacy, storage and service areas.	The classrooms and associated spaces have been designed to suit the operations of Aspect Schools. Appropriate outdoor play areas and level of amenity is available to the development.	
Principle 6 – whole of life, flexible and adaptive	The school incorporates the following features to deliver high environmental	Y

School design should consider future needs and take a whole-of-life-cycle approach underpinned by site wide strategic and spatial planning. Good design for schools should deliver high environmental performance, ease of adaptation and maximise multi-use facilities.	performance, adaptability and cross-use of facilities: • robust and prefabricated cladding materials to maximise their durability • L-shaped layout maximising cross ventilation and natural lighting • ample landscaping for onsite amenity and screening to the adjoining properties • flexible learning spaces suitable for a range of age groups • double storey footprint to maximise the open space.	
Principle 7 – aesthetics School buildings and their landscape setting should be aesthetically pleasing by achieving a built form that has good proportions and a balanced composition of elements. Schools should respond to positive elements from the site and surrounding neighbourhood and have a positive impact on the quality and character of a neighbourhood. The built form should respond to the existing or desired future context, particularly, positive elements from the site and surrounding neighbourhood, and have a positive impact on the quality and sense of identity of the neighbourhood.	The proposed built form comprises three main forms; one for each wing of the classrooms and the central block containing the administrative and circulation spaces. The fourth element being the COLA, is designed as protruding light weight structure linking the play area with the development. The proposed massing and interconnection of various spaces creates a high quality built form. The entire development is sited within a valley to minimise the visual bulk. A landscaped buffer is provided to the sensitive residential areas to the west to the maintain the amenity of the neighbourhood. All aspects of the proposal including the overall layout, built-form massing and the choice of finishes are responsive to the site's attributes and sympathetic to residential context and the rural/environmental lands at the site's interface. The development fits within the streetscape and demonstrates the ability to operate with minimal impacts on the existing and future uses.	

Section 3.58 of the Transport and Infrastructure SEPP nominates schools with a capacity of 50 or more students and direct vehicle or pedestrian access to any road, as traffic generating developments. As per Secton 3.58(2), the consent authority is required to notify such

development to Transport for NSW (TfNSW) and take into consideration the following matters in subsection (3), prior to the determination of the application:

Section 3.58(3) *The consent authority must take into consideration—*

(*a*) *any submission that TfNSW provides in response to that notice within 21 days after the notice was given (unless, before the 21 days have passed, TfNSW advises that it will not be making a submission), and*

(b) the accessibility of the site concerned, including—

(i) the efficiency of movement of people and freight to and from the site and the extent of multi-purpose trips, and

(ii) the potential to minimise the need for travel by car, and

(c) any potential traffic safety, road congestion or parking implications of the development.

The application was notified to TfNSW and no objections or additional requirements were raised. The advice received has been considered in the assessment of the application. Details relating to traffic impacts, parking and pedestrian management, any road treatments required, and traffic management during construction are provided under 'Key Matters' in Section 5 of this report.

Lake Macquarie Local Environmental Plan 2014

The relevant local environmental plan applying to the site is the *Lake Macquarie Local Environmental Plan 2014* ('the LEP').

The LEP aims to protect and promote the development of land and provisioning of infrastructure, while recognising the importance of Lake Macquarie and its waterways and applying the principles of ecological sustainable development.

The proposal is consistent with these aims as it represents an orderly development sympathetic to the site's attributes and context and demonstrates the ability to operate with no adverse impact on the environment or surrounding uses.

Zoning and Permissibility

The site is split zoned with the eastern part fronting Harrisons Lane within R2 Low Density Residential zone, and the western part to the rear in RU4 Primary Production Small Lots zone. The gulley across the site is an approximate indication of the zone boundary. **Figure 7** shows the zoning context of the site.

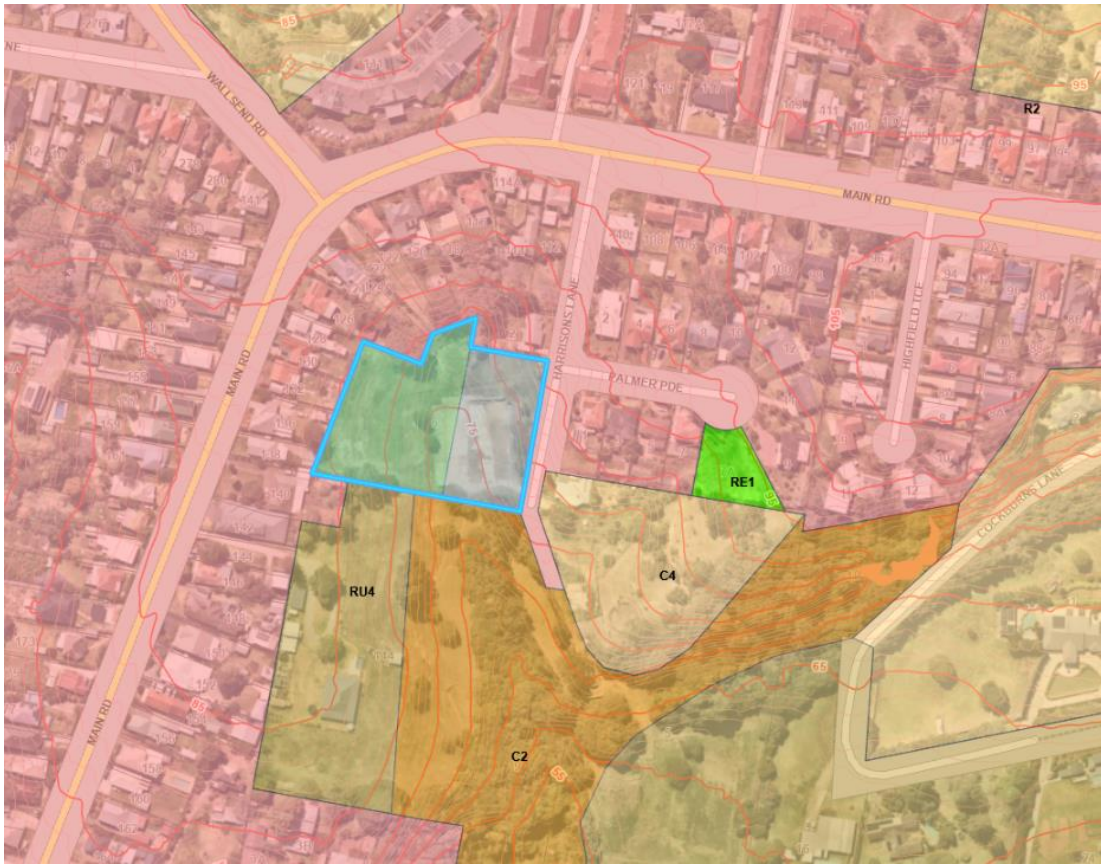

Figure 7 – Zoning Map

According to the Dictionary in the LEP, the proposal satisfies the definition of Educational Establishment which is prohibited in R2 and RU4 zones.

The application gains permissibility through the provisions in Section 3.36(1) of the Transport and Infrastructure SEPP, as detailed earlier on in this report. Notwithstanding, the objectives of R2 and RU4 zones (pursuant to the Land Use Table in Clause 2.3) have been considered in determining this application, as detailed below.

R2 Low Density Residential Zone - Objectives

- *To provide for the housing needs of the community within a low density residential environment.*
- *To enable other lands uses that provide facilities or services to meet the day to day needs of residents.*
- *To encourage development that is sympathetic to the scenic, aesthetic and cultural heritage qualities of the built and natural environment.*

The proposed educational establishment for children with special needs, services the residential use in the locality and broader areas without compromising the qualities of the built and natural environment and therefore considered consistent with the objectives of R2 zone.

RU4 Primary Production Small Lots – Objectives

- *To enable sustainable primary industry and other compatible uses*
- *To encourage and promote diversity and employment opportunities in relation to primary industry enterprises, particularly those that require smaller lots or that are more intensive in nature.*

- *To minimise conflict between land uses within this zone and land uses within adjoining zones.*
- *To provide for a rural lifestyle and other compatible activities*
- *To maintain or improve the quality of the environment.*

The existing site has limited potential for primary industry. The RU4 zoned part of the site serves as a buffer to the residential area to the west, which will be largely maintained by the proposed development to minimise conflicts. The proposal is considered consistent with the RU4 zone as it supports a compatible land use while maintaining the general amenity of the area and the quality of the built environment.

General Controls and Development Standards (Part 2, 4, 5 and 7)

The LEP also contains controls relating to development standards, miscellaneous provisions and local provisions. The controls relevant to the proposal are considered in **Table 6** below. The proposal does not comply with the building height development standard in Part 4 of the LEP and accordingly, a Clause 4.6 request has been provided with the application.

Table 6: Consideration of the LEP Controls

Control	Requirement	Proposal	Comply
Height of buildings (Cl 4.3(2))	8.5 metres	The part of the building over the gulley exceeds the height standard by 3.985m	No
Exceptions to development standards (Cl 4.6(3))	Written request to justify the contravention of development standards	The application is supported by a written request to vary the height standard by 46.9%. Refer to discussion under 'Key Matters'.	Yes
Earthworks (Cl 7.2)	Consideration must be given to: • impacts on drainage patterns, soil stability or environmentally sensitive areas • the effect of the development on the likely future use of land, and impact on the amenity of adjoining properties.	The development involves cut and fill to a maximum of 3m largely for the works around the outdoor play area and the access and parking areas. No filling will occur within the overland flow path and the building is elevated over the gulley to maintain the existing drainage pattern. The proposed earthworks are generally associated with the construction of the outdoor play area, the COLA at the rear, and the visitor parking level at the frontage. These are well below the height limit and therefore no adverse impact is anticipated on the amenity of adjoining properties from the proposed earthworks.	Yes

	• the source and quality of the fill to be excavated. • the likelihood of disturbing relics • impact on adjoining waterway, drinking water catchment or environmentally sensitive area • measures proposed to avoid, mitigate and minimise the impact of the development	Any excavated material containing contaminants will be appropriately treated or disposed of by licensed contractors as indicated in the DSI. The site is not within a sensitive Aboriginal landscape area and an AHIMS search conducted within a buffer of 200m around the site did not identify any sites or places of Aboriginal significance. The proposal is not likely to cause any disturbance to relics. The proposal includes adequate stormwater detention and water quality control measures to attenuate and control the quantity and quality of post development flows from the site. Refer to discussion under 'Key Matters'. The building avoids the overland flow path to minimise impact on the drainage regime. Areas of fill are generally outside the footprint of the building and will have no impact on the overall height. Landscape screening is provided to ensure a visual buffer between the filled-up areas on the site and the neighbouring properties.	
Essential Services (Cl 7.21)	Supply of water, electricity, sewage management, stormwater drainage and suitable vehicle access.	The site has access to electricity and reticulated water and sewer. The developer will be required to abandon the existing non-standard sewer connection to Main Road, and provide a new non-standard connection to the existing sewer main crossing Harrisons Lane. This will form part of requirements from Hunter Water Corporation. Suitable access and stormwater drainage are included in the proposal. These are discussed in detail in the 'Key Matters' section.	Yes

The proposal is considered to be generally consistent with the LEP.

(b) Section 4.15 (1)(a)(ii) - Provisions of any Proposed Instruments

There are no proposed instruments which have been the subject of public consultation under the EP&A Act, that are relevant to the proposal.

(c) Section 4.15(1)(a)(iii) - Provisions of any Development Control Plan

The following Development Control Plan is relevant to this application:

- *Lake Macquarie Development Control Plan 2014* ('the DCP')

In particular, Part 2 Development in Rural Zones, Part 3 Development in Residential Zones and Part 9.17 Signage are applicable to the subject development. A consolidated assessment of relevant sections in these is provided in **Table 7**.

Table 7: Consideration of the LEP Controls

Control	Discussion	Comply
Part 2 Development in Rural Zones and Part 3 Development in Residential Zones		
Geotechnical (S2.3 - Parts 2 and 3))	Due to the steep slopes on the site, a geotechnical investigation and slope stability assessment prepared by JK Geotechnics has been submitted with the application. The assessment concluded risks to property during and following the construction of the development is 'acceptable' in accordance with the Australian Geomechanics Society (2007c) risk classification system. Conditions have been imposed to ensure compliance with the recommendations in the geotechnical report.	Y
Mine Subsidence (S2.4, Parts 2 and 3)	The site is within a Mine Subsidence Area. Integrated development approval has been issued by Subsidence Advisory NSW. The development will be subject to 'Guidelines 8' which applies to properties assessed as being not at risk from subsidence.	Y
Contaminated Land (S2.5, Parts 2 and 3)	Site investigations undertaken by Douglas Partners identified asbestos in two locations, likely to be associated with the removal of former structures; and an area of black slag near the southern boundary where heavy metal concentration was found to be above the health and environmental investigation levels. The RAP prepared for the site includes a further delineation of contaminated soils and remediation through excavation and removal of heavy metal contaminated soils, and on-site containment of asbestos contaminated soils. If necessary, the excavation and removal of asbestos contaminated soils is also proposed as an alternative in the RAP.	Y

Control	Discussion	Comply
Part 2 Development in Rural Zones and Part 3 Development in Residential Zones		
	Conditions have been imposed to ensure the site is appropriately remediated and made suitable for the proposed use. A long-term environmental management plan will be required if asbestos containing materials are capped on site.	
Stormwater management (S2.7, Parts 2 and 3)	The stormwater management strategy for the site involves two aspects: • capture and convey of overland flows through site • management of stormwater from the proposed development The proposed stormwater management plan prepared by Adams Consulting Engineers satisfactorily conveys overland flows, proposes adequate detention systems and water quality measures to manage and attenuate post development flows in accordance with Council's standards. This has been addressed in detail under 'Key Matters' in Section 5.	Y
Catchment flood management (S2.8, Parts 2 and 3)	Impact of flooding from the overland flow path has been considered. The Flood Assessment undertaken by Engeny identifies the flood depths, velocities and extents in 1% AEP and PMF events, and the potential impact to the site and surrounding properties. The building footprint is located outside the 1% AEP and the proposed floor levels comply with the PMF level. All flows up to 1% AEP will be piped under the subfloor space. The application demonstrates the development has been sited and designed to minimise adverse impacts of flooding on the site and adjoining properties. No risk to life or property is anticipated as a result of the development. These have been addressed in detail in the 'Key Matters' section.	Y
Bushfire (S2.11, Parts 2 and 3)	The application is accompanied by a Bushfire Threat Assessment prepared by Coolburn Fire and Ecology which satisfactorily addresses the bushfire risks associated with the development and includes recommendations for bushfire management on the site. The proposal has been supported by NSW RFS who have issued a bushfire safety authority. Details are provided under 'Key Matters'	Y

Control	Discussion	Comply
Part 2 Development in Rural Zones and Part 3 Development in Residential Zones		
Flora and Fauna (S2.12, Parts 2 and 3)	The site vegetation is largely confined to some mature trees and shrubs at the lane frontage and along the southern boundary. While the building footprint generally occupies the disturbed areas on the site, the proposed visitors parking area and the access ramp require the removal of 15 trees generally at the site's frontage. None of these trees are identified as native vegetation nor is the site within a Biodiversity Value area to trigger the considerations under *Biodiversity Conservation Act 2016*. The clearing is proposed within largely disturbed areas, and no significant impact is anticipated on the biodiversity value of the locality or the area.	Y
Preservation of trees and vegetation (S2.13, Parts 2 and 3)	An Aboricultural Impact Assessment has been undertaken by 'Hugh the Arborist' to identify the impact of the development on trees on the site and adjoining lands. A total of 15 trees including six in Category A trees (retention potential exceeding 10 years) and nine Category Z trees (poor retention value) are proposed for removal. Impact of tree removal is discussed in 'Key Matters'.	Y
Social Impact (S2.17, Parts 2 and 3)	The Social Impact Assessment (SIA) accompanying the application investigates the potential impacts, both positive and negative, of the proposal. The potential negative impacts associated with the proposal are likely to be those related to noise and traffic which have been assessed in detail and considered to be within acceptable limits. The development meets the design quality principles for schools prescribed in the Transport and Infrastructure SEPP and facilitates an environment that maximises educational and learning outcomes for the students with specialised needs. Council is supportive of the findings of the SIA in that the proposal will have positive social impacts providing tailored learning / education opportunities for primary school aged children with autism.	Y
Economic Impact	The proposed development will generate additional employment opportunities during the constructional and operational stages,	Y

Control	Discussion	Comply
Part 2 Development in Rural Zones and Part 3 Development in Residential Zones		
(S2.18, Parts 2 and 3)	contributing positively to the local economy. No adverse economic impacts are anticipated from the development.	
Utilities (S2.20, Part 3)	The site has access to electricity and reticulated water and sewer. The developer will be required to provide a new non-standard connection to the existing sewer main crossing Harrisons Lane. This forms part of Hunter Water Corporation's Section 50 certificate requirements which will be imposed as a condition of consent.	Y
Streetscape (S3.1, Part 3)	While the ground level of the development sits below the street level, it establishes a connection to the streetscape through windows and openings on the upper level. A pedestrian connection is provided to Harrisons Lane and the proposed palisade fencing along the front boundary maintains the sightlines into the site for passive surveillance. The visitors parking is located at the frontage; however, it is significantly lower than the street level with minimal exposure to the streetscape to result in visual impacts.	Y
Street setback (S 3.2, Part3 and 3.1, Part 2)	The building will maintain a minimum front setback of 19m which exceeds that of the former building on the site. The western side of Harrisons Lane is sparsely developed with no defined setback pattern. The proposed setback compliments the existing character.	Y
Side setback (S 3.3, Part 3 and 3.2, Part 2)	A minimum side setback of 900mm is required for buildings up to 4.5m in R2 zone. Where the building height exceeds 4.5m but less than three storey, the minimum setback of 1.5m should be provided. The minimum side setback requirement for RU4 zone is 5m. The development is essentially a two-storey development with an access core at the lower ground level. The closest part of the building to the northern boundary is located in R2 zone and maintains a minimum setback of 4.7m. The minimum setback to the southern boundary is 13.5m. The proposed setbacks comply with this section and provides adequate separation to the neighbouring developments to ensure privacy, solar access and natural ventilation.	Y
Rear setback (S3.4, Part 3, S3.2, part 2)	The minimum rear setback requirement is 6m and 5m for R2 and RU4 zones respectively. The proposed building will maintain a generous rear setback of 21.5m to the western boundary. Landscaping is accommodated within the rear	Y

Control	Discussion	Comply
Part 2 Development in Rural Zones and Part 3 Development in Residential Zones		
	setback to screen off the development from the adjoining dwellings.	
Site coverage (S3.5, Part 3)	The proposed development has a coverage of 19.5% which is below the prescribed maximum of 50%. The proposed density is consistent with the local character and sufficient space is available around the development for outdoor activities and landscaping.	Y
Building bulk (S3.6, Part 3 and S3.3, Part 2)	The building design is responsive to the site's constraints and attributes. The development is sited within a valley below the street level to reduce the visual bulk. The L-shaped building is broken up into three main forms; one for each wing of the classrooms and the central block containing the administrative and circulation spaces. The fourth element being the COLA, is designed as protruding light weight structure connecting to the outdoor play area. The roof design is proportional to the overall bulk and does not dominate the built form. Natural shades will be used for the finishes to blend the built form with the greenery on adjoining lands. The bulk and scale of the development is consistent with the residential character of the area.	Y
Solar access and orientation (S3.10 Part 3, S3.4, Part 2)	The solar diagrams submitted with the application demonstrate minimal offsite shadowing impacts due to the siting of the development in a valley. No dwellings on adjoining lands will be affected by the shadows from the development. Shading from the development will mainly affect the car park to the south and visitors parking at the frontage. The L-shaped layout facilitates good solar access to all classrooms except GLA 4.	Y
Visual privacy (S4.0, Part 3)	The building and outdoor play areas have been designed and sited to maximise visual privacy of the adjoining properties as detailed below: • A generous setback of 21.5m is proposed on the western side to maximise the separation between the building and the dwellings overlooking the site. • The upper level of the building sits at least 3m below the ground level along the western boundary which further reduces the exposure of the development to the adjoining dwellings.	Y

Control	Discussion	Comply
Part 2 Development in Rural Zones and Part 3 Development in Residential Zones		
	• The northern wing of the layout is orientated at an angle eliminating any opportunity for direct views into the neighbouring dwelling from the north facing windows. • The entire outdoor area on the western side is surrounded by landscaped screening to screen the development from neighbouring properties to the north, south and west. Additional landscaping is also proposed along the northern boundary between the dwelling at 2 Harrisons Lane and the subject site. The development ensures privacy of the adjoining development through appropriate siting, design and landscaping.	
Acoustic privacy (S4.1, Part 3)	An acoustic assessment has been undertaken to identify potential noise impacts of the development on the adjoining residential uses and to ensure the building is designed to mitigate the effect of external noise on the occupants. The assessment demonstrates an acceptable level of acoustic amenity to the adjoining uses and includes appropriate construction requirements to achieve internal noise comfort for the occupants. Detailed assessment of the noise impacts is provided under 'Key Matters'.	Y
Landscape design (S4.3, Part 3)	The Landscape Plan includes a range of plantings to complement the scale of the development and to enhance amenity, as detailed below: • Interface treatment – A variety of shrubs and feature trees along the western boundary and parts of the northern boundary near existing dwelling. Shrubs are also proposed along the southern boundary adjoining the play area. • Landscaped buffer – A landscaped buffer containing trees, feature plantings and variety of ground covers is provided between the outer edge of the outdoor play area and the western boundary. Besides enhancing the site amenity, this landscape treatment also creates a barrier between the active play area and the boundary. • Frontage treatment – The area between the two driveways is treated with a ground covers, shrubs and feature plants. Trees are proposed throughout the front boundary for streetscape amenity. No street trees have been included due to the narrow road reserve.	Y

Control	Discussion	Comply
Part 2 Development in Rural Zones and Part 3 Development in Residential Zones		
Fencing (S4.5, 4.6 part 3)	1.8m high black palisade fencing is proposed along the front boundary. While this is a variation to the 1.2m height limit in the DCP, the extra height is considered necessary to enhance the security on the premises, given its isolated location. The variation is therefore justified.	N
Traffic and Transport (S4.7. part 3)	Matters relating to traffic and transport, access driveway, servicing vehicles, and parking provisions as required in Sections 4.7- 4.9, and 4.11 are discussed under the 'Key Matters'. The development demonstrates the ability to operate with an acceptable level of impact.	Y
Non-discriminatory access (S4.12, part 30	The Access Report Prepared by Lindsay Perry Access demonstrates the development's capability to achieve the fundamental aims of accessibility legislation. Details of the finishes, door controls, switches and tactile indicators will be required at the Construction Certificate stage. Conditions to this effect have been imposed.	Y
Safety and security (S4.13, Part 3)	The design incorporates the principles of Crime Prevention Through Building Design (CPTED) to minimise opportunities for crime, as detailed below: • Ample windows and glazed sections on the façades, and permeable fencing at the frontage to provide casual surveillance. • Perimeter fencing and gated access to prevent unauthorised entry. • All spaces on the premises are clearly defined and the proposed fencing and landscape provides a clear delineation between the private and public domain. • Regular maintenance and repairs including immediate removal of any graffiti. The design and crime prevention strategy have been reviewed and supported by Council's Community Planner (CPTED), with additional conditions recommended to ensure appropriate lighting, CCTV installation for the car park and entry areas, and graffiti resistance finishes to the building and signage.	Y
Cut and fill (S4.14)	Cut and fill has been minimised by bridging the building over the gulley. While the building footprint does not involve significant earthworks, substantial filling up to 3-3.5m is required for the construction of the parking level and the outdoor play area.	Y

Control	Discussion	Comply
Part 2 Development in Rural Zones and Part 3 Development in Residential Zones		
	Apart from the works associated with the driveway, the areas of cut and fill are located away from the property boundary to minimise impacts. No filling is proposed in the 1% AEP extent and the proposed earthworks will not concentrate flows on adjoining properties. The outdoor play design has been amended to provide a minimum setback of 6.8m to the western boundary and 3m to the northern boundary ensure no privacy or amenity impact from the filling required to create the terraced play area.	
Waste management (S5.1, 5.2, Part 3)	A waste storage area with sufficient capacity for 15 bins is proposed at the lower ground level. The existing driveway was utilised by waste collection vehicle servicing the former aged care facility and similar arrangements through private contractors will be made for proposed development. The manoeuvring of waste collection vehicles interferes with the parking spaces at the lower level. These vehicles use the existing access for both entry and exit, which would otherwise serve only as an exit. In order to avoid conflict with parked vehicles and other vehicles exiting the site, waste collection will need to be arranged outside the normal operating hours. This has been addressed in the Plan of Management submitted with the application. The construction and demolition waste management plan submitted with the application proposes appropriate storage, sorting and disposal of waste during construction, to maximise recycling and reuse of materials.	Y
Erosion and sediment control (S5.5, Part 3)	Erosion and sediment control during construction will be ensured through conditions of consent.	Y

Control	Discussion	Comply
Part 9.17 Signage		
Design (S17.1)	The design and configuration of the signage complements the building and contributes positively to the streetscape.	Y
Positioning (S17.2)	The signage will be positioned entirely within the site without impacting the existing services or causing any hazardous conditions.	Y
Specific sign dimensions (17.3)	The proposed pylon sign is 3.8m high x 0.75m wide which complies with the maximum height and width requirement of 6m and 3.75m. The proposed clearance of 750mm above the ground deviates from minimum requirement of 2.6m. It is not feasible for a 3.6m high pylon sign to maintain such a large clearance. The proposed clearance is proportional to the height of the signage and more appealing, and therefore supported on merits.	Y

The following contributions plans are relevant pursuant to Section 7.18 of the EP&A Act and have been considered in the recommended conditions (notwithstanding Contributions plans are not DCPs they are required to be considered):

- Lake Macquarie City Council Section 7.12 Development Contributions Plan

(d) Section 4.15(1)(a)(iiia) – Planning agreements under Section 7.4 of the EP&A Act

There have been no planning agreements entered into and there are no draft planning agreements being proposed for the site.

(e) Section 4.15(1)(a)(iv) - Provisions of Regulations

Section 61 of the 2021 EP&A Regulation contains matters that must be taken into consideration by a consent authority in determining a development application, there are no matters of relevance to this proposal.

3.2 Section 4.15(1)(b) - Likely Impacts of Development

The likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts have been detailed throughout the assessment report. Key matters are detailed in Section 5 of this report.

3.3 Section 4.15(1)(c) - Suitability of the site

The development is consistent with the existing and desired character of the locality. All constraints associated with the development have been adequately addressed and appropriate mitigation measures have been included in the proposal. The proposed built form is considered to be responsive to the site attributes and its context and setting.

3.4 Section 4.15(1)(d) - Public Submissions

Two public submissions were received for the application, and these are considered in Section 4 of this report.

3.5 Section 4.15(1)(e) - Public interest

The development is considered to achieve balanced and orderly outcomes and is in the public interest. The development has demonstrated no significant amenity impacts will arise now or in the future, subject to the imposition and compliance with recommended conditions of consent.

4. REFERRALS AND SUBMISSIONS

4.1 Agency Referrals and Concurrence

The development application has been referred to various agencies for comment/concurrence/referral as required by the EP&A Act and outlined below in **Table 8**.

There are no outstanding issues arising from these concurrence and referral requirements subject to the imposition of the recommended conditions of consent.

Table 8: Concurrence and Referrals to agencies

Agency	Concurrence / referral trigger	Comments	Resolved
Concurrence Requirements (s4.13 of EP&A Act)			
N/A			
Referral/consultation agencies			
Transport for NSW (TfNSW)	Clause 3.58- Traffic-generating development	TfNSW has provided a response with recommendations dated 15 December 2022	Yes

Hunter Water Corporation (HWC)	Section 51 of Hunter Water Act 1991	HWC's requirements was obtained on 19 December 2022.	Yes
Integrated Development (S 4.46 of the EP&A Act)			
The subject s4.55(2) modification application was referred to approval bodies as per Clause 109 of the EP&A Regulation 2021.			
NSW Rural Fire Service (NSW RFS)	*NSW Rural Fire Service – Rural Fires Act 1997, Section 100B -SPFF*	General Terms of Approval obtained on 18 January 2023	Yes
Subsidence Advisory NSW (SA NSW)	*Coal Mine Subsidence Compensation Act 2017* s.22 – Alter or erect improvements within a mine subsidence district	General Terms of Approval obtained on 23 April 2023	Yes

4.2 Council Officer Referrals

The development application has been referred to various Council officers for technical review as outlined **Table 9.**

Table 9: Consideration of Council Referrals

Officer	Comments	Resolved
Engineering	Further clarification/ details were requested on driveway profiles, vehicle manoeuvring, stormwater management and flooding. These issues have been resolved through the various amendments and proposal has been deemed satisfactory.	Y
Traffic	The traffic impact assessment and management plan were considered acceptable. Footpath and parking restrictions on Harrisons Lane were recommended. The officer was generally supportive of the development.	Y, refer to Key Matters
Building Surveyor	The application was supported with recommended conditions.	Y
Recycling and waste	The amended plan with increased waste storage area was supported and conditions were recommended.	Y
Arborist	The Arboricultural Impact Assessment submitted in response to the information request was deemed satisfactory. The proposal was supported with conditions.	Y

Landscape	The amended plans included larger pot size and provided clarity on interface treatment and fence details. The proposal was supported with conditions.	Y
Environmental management	Acoustics - Concerns were raised regarding the outdoor play area, impact of noise from the backup generator and further clarification was required on the noise levels adopted in the assessment. The play area was redesigned and the backup generator relocated to the subfloor to comply with the noise criteria. The final amendments and acoustic assessment were supported with conditions. Contamination – The submitted RAP was supported with conditions recommended for site remediation and validation, and a long term environmental management plan.	Y
Non-discriminatory access	The Access Audit submitted in response to information request was supported. Other details such as floor finishes, tactile surfaces etc will need to be confirmed through the Construction Certificate and conditions of consent.	Y
CPTED	The officer supported the crime prevention measures proposed for the development and provided conditions for determination.	Y
Social Planner	The proposal was supported with no further requirements or conditions.	Y

4.3 Community Consultation

The proposal was notified in accordance with Councils' Community Engagement Strategy from on three occasions:

- Upon lodgement from 30 November 2022 to 13 January 2023. No submissions were received.
- Amended plans and documents received in response to Council's first request for information (RFI) were notified from 18 April 2023 to 10 May 2023. Two submissions were received.
- Amended plans and documents in response to the last RFI issued by Council in August 2023 were notified from 28 September 2023 to 19 October 2023. No submissions were received.

A summary of submissions and response is provide in **Table 10**.

Table 10: Community Submissions

Issue	No of submissions	Council Comments
Play area design The revised play area layout is located too close to the boundary of the adjoining dwelling. Concerns are raised on the acoustic amenity and privacy of the adjoining double storey dwelling. While no objections are raised on the school being developed on the site, it is concerning that the acoustic assessment does not make any attempt to mitigate the noise impacts.	1	Further changes have been made to the play area layout. Larger setback distances, varying between 6.8m and 15.1m, have been provided. All play area equipment has been moved away from the boundary. The amended design includes substantial landscape treatment to create a barrier between the active play area and the boundary. The entire open space and outdoor play area on the western side will be enclosed by shrub plantings to screen the development from the neighbouring properties. The proposal has satisfactorily addressed the privacy and noise issues. The development will be required to comply with the project specific noise criteria to minimise noise impact, through conditions of consent. **Outcome**: This issue has been satisfactorily addressed through the amendments made to the design.
Amenity loss and property devaluation The proposed two storey building will affect the views of the valley from the adjoining property. This along with noise generated from the school will negatively impact the property value. These impacts can be minimised trees are planted on the northern side of the building.	1	The proposed building is located in lower part of the site to reduce the impact on views. It is also noted that the primary views of the dwelling to the north are not towards the subject site. The acoustic assessment demonstrates compliance with the noise criteria and therefore no adverse amenity impacts are likely from the development. Landscaping proposal for the development includes trees and shrubs on the northern side to soften the development. **Outcome**: This issue has been satisfactorily addressed by the proposal.

5. KEY MATTERS

The following key issues are relevant to the assessment of this application having considered the relevant planning controls and the proposal in detail:

5.1 Stormwater management

The overland flow path through the site captures all the upstream catchment flows from Main Road and Harrisons Lane, and eventually drains into Tickhole Creek via properties to the south.

The existing stormwater infrastructure on the site consists of a 450mmØ reinforced concrete (RC) pipe along the gully to convey upstream flows, and two 90mmØ PVC pipes to capture run off from the car park.

The proposed stormwater strategy maintains this drainage regime by bridging the building across the overland flow path. The existing RC pipe will be replaced by two new 675mmØ pipes to convey up to 1%AEP flows. These pipes will drain into a new surcharge pit (2m length x1.2m width x 2.4m depth) near the southern boundary which will be connected to the existing pipe on the adjoining property to maintain the flow conditions at the boundary. **Figure 8** shows the proposed drainage plan.

The existing levels within the car park and subfloor area will be maintained to allow sheet flows through the undercroft in events exceeding the design storm event (1%AEP). The proposed stormwater strategy ensures the existing overland flows are conveyed safely without increasing the existing discharge volumes or requiring any works on adjoining property.

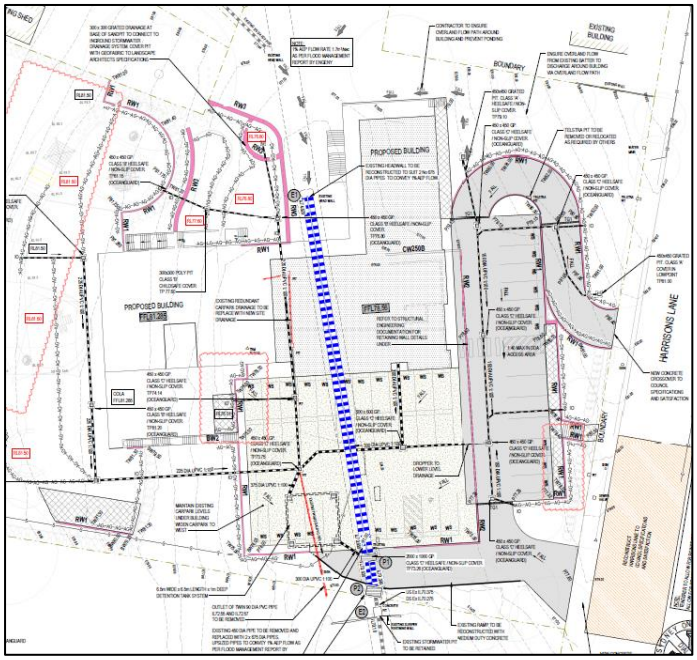

Figure 8 – Proposed Site Drainage Plan

The stormwater from the proposed development will be managed through onsite detention system which includes a 6.5m length 6.5m width x 1m deep detention tank in the south-western corner of the car park, and two 22.5KL rainwater tanks. Detailed calculations of the stormwater detention and Site Drainage Index (SDI) have been provided by Adams

Consulting Engineers to demonstrate compliance with the stormwater management requirements in this section.

A 3m wide drainage easement over the new pipeline and 88B instrument requiring the owner to be responsible for the maintenance and upkeep of the pipeline will be required and these have been imposed as a condition of consent.

5.2 Catchment flooding

A Flood Assessment has been undertaken by Engeny to identify the flood depths, velocities and extents in 1% AEP and Probable Maximum Flood (PMF) events, and the potential impact to the site and surrounding properties. The assessment considers a range of storm durations from 10 minutes to 3 hours, for the 1% AEP and PMF events, to determine the flood impacts before and after the proposed development.

The building footprint is located outside the 1% AEP surface flow extent and the proposed floor levels comply with the PMF level. All external catchment flows up to 1% AEP will be piped under the sub-floor space. Flows exceeding this design storm event will be conveyed through the sub-floor space with a blockage factor of 50% conservatively applied to assess whether the PMF could flow beneath the building. The results indicated that the sub-floor space of the proposed development is adequate to convey the PMF flows.

Flood depths have decreased by up to 0.18m in the trafficable areas and flood velocities are at least 0.5m/s less than the existing condition. This is mainly due to the wider overall flow path created by the proposed development which was previously impeded by the existing building.

Apart from the headwall inlet area and downstream outlet for the piped external flows, the flood depths and velocities during peak flows are within acceptable limits for children. The headwall inlet area will need to be fenced off from the users of the school. A condition has been imposed to provide safety fencing to restrict access into this area within the site.

The impact of the development on downstream properties has been considered in the flood assessment. The flood modelling demonstrated that peak flows at the downstream boundary will be slightly less than the pre-developed rates. Some minor increases in depth (up to 0.3m) were observed at the headwall outlet on the adjoining property, however, these were localised and deemed negligible with no adverse impacts.

The application demonstrates the development has been sited and designed to minimise potentially adverse impacts of flooding on the site and adjoining properties. No risk to life or property is anticipated as a result of the development.

5.3 Bushfire

The south-eastern corner of the site is identified as a bushfire buffer due to its proximity to the vegetation along the drainage corridor to the south, as shown in **Figure 9**.

Figure 9 – Bushfire mapping for the site

Schools are considered as Special Fire Protection Purpose Developments (SFPP) requiring an appropriate asset protection zone (APZ) to achieve a radiant heat threshold of 10kw/m^2 or lower, at the building. According to Table A.1.12.1 in Appendix 1 of PBP 2019, the building will require an APZ of 57m to the south which is less than the proposed separation distance of 29m to the bushfire vegetation to the south.

As the bushfire risk to the site is caused by a narrow and fragmented corridor of vegetation, the Bushfire Threat Assessment prepared by Coolburn Fire and Ecology proposes an alternate solution by undertaking a fire modelling to accurately determine the fuel loads and hence the APZ. Based on this modelling it was confirmed that the proposed separation of 29m was sufficient to achieve compliance with the radiant heat exposure of 10kw/m^2 at the building. The proposed alternate solution for APZ was supported by NSW RFS and a Bushfire Safety Authority has been issued, subject to the following requirements:

- The entire property to be maintained as an inner protection area in accordance with Appendix 4 of Planning for Bushfire Protection (PBP) 2019
- Compliance with BAL 12.5 construction requirements
- Water and utility services to comply with PBP 2019
- Landscaping to comply with Appendix 4 of PBP
- Preparation of a Bushfire Emergency Management and Evacuation Plan

The application demonstrates the capability to comply with the above requirements, and the GTAs issued by RFS have been included in the consent.

5.4 Traffic and transport

Access to the site is via Harrisons Lane, a narrow two-way street with a posted speed limit of 50km/hr. Harrisons Lane connects to Main Road, a classified regional road linking Macquarie Road/Cardiff to the west and Lookout Road to the east. While the road reserve of Harrisons Lane extends beyond the subject site by approximately 35m, the paved carriage way terminates at the site's front with no formal turning provisions.

A TIA has been undertaken by SECA Solution to identity the impact of additional vehicles associated with the development on the local traffic and road condition. The operational characteristics of Aspects School has been an important consideration in the assessment as they vary significantly from mainstream schools. Approximately 60% of the students use assisted transport which carry 2-4 children per vehicle. The students do not walk to school or use the public transport. All students are dropped off and picked up, and they are accompanied by staff or parents/carers while transferring between the car park and the school building. Based on these operations, the traffic generation and parking demand from the development has been assessed as follows:

Proposed access

A right-in, left-out arrangement via a new entry ramp off Harrisons Lane for access, and exit through the existing driveway is proposed for all usual vehicles (B85 vehicles) accessing the development.

The access ramp into the site provides sufficient length for the queueing of 3-4 vehicles. The existing driveway leading to the staff car park will be resurfaced. Minor adjustment (in the order of 15-30mm) will be required to the gradient of this driveway at the lower end to ensure the vertical alignment is in accordance with AS2890. Suitable conditions have been imposed to ensure this is undertaken at detailed design stage.

Sight distances available at both the entry and exit points are satisfactory. The proposed access arrangement ensures smooth flow of traffic in and out of the site without conflicts or queuing on Harrisons Lane.

Parking provisions

Minor extension to the existing parking at the lower level with be undertaken to provide 30 spaces for the staff. A new parking lot with 12 spaces for visitors and people movers is proposed at the ground level access. Due to the high reliance on assisted transport, 7 of these spaces are dedicated for people movers although they could be used by other vehicles outside their slots for drop off and pick up.

The DCP requires one space per 1.5 full-time equivalent staff, plus 1 space per 50 students for primary schools. As per this requirement, 24 car parking spaces are required for 35 staff; and 2 parking spaces are required for the students. The proposed car parking spaces are well above the requirement and therefore the parking needs of the development will be contained entirely within the subject site.

Assessment of traffic and parking impacts

The traffic generation from the development has been determined from the operational characteristics of the school and data from other Aspect schools where typical school occupancy is 90% or less. Other specific details include:

- 60% of the total students (80) use people movers (at an average of 3 children per vehicle).
- Proposed hours of operation are between 8 am and 6pm, with all staff arriving on site prior to student drop off.
- Drop off time in the morning is scheduled between 8:15am and 9:00am, with the first 15 minutes of this slot dedicated for the people movers, and the remaining 30 minutes dedicated for the parents/carers.
- Afternoon pick up is scheduled between 3:00pm and 3:45pm with similar slots of 15 and 30 minutes for people movers and parent/carers respectively.
- A traffic marshal will be positioned at the base of the entry ramp to manage vehicles in the car park.
- Staff will accompany children from the car park to the building and vice versa.

Based on the above, the overall traffic flows associated with the development is expected to be 118 vehicle movement in the morning and in the afternoon, equating to a total of 236 two-way vehicle movements per day. The RTA *Guide for Traffic Generating Developments* provides a threshold of 900 vehicles per hour per lane for urban road. From the traffic survey undertaken by SECA on 13 October 22 and the above trip calculations, the peak directional flows on Main Road was estimated to increase to 607 and 736 vehicles (eastbound and westbound respectively) as a result of the development. These values are well below the desirable limit of 900 vehicles per hour and therefore no unacceptable level of impact is anticipated on the local road network.

Upgrade of Harrisons Lane to 8m wide carriageway is currently being planned as part of Council's capital works; however, the stretch of Harrisons Lane between the proposed entry and the southern boundary will require upgrade in the interim to facilitate the development. Conditions to this effect have been imposed.

A SIDRA modelling was undertaken to identify the impact on the level of service of the intersection at Harrisons Lane and Main Road. The modelling results indicate intersection controls are adequate for the proposed development despite a small increase in delays for the traffic.

The TIA concluded the traffic generation from the operation of the school will be within acceptable limits. The site has sufficient space for parking and manoeuvring of construction vehicles and the impacts of construction traffic will be managed through a traffic management plan.

Service vehicles

Waste vehicles will access the site via the existing driveway which will be planned outside the normal operating hours to allow manoeuvring over the parking spaces.

Other deliveries will use small vans such as Toyota Hi-Ace which are capable of accessing the visitors parking level. Deliveries will be planned to occur outside the pick-up and drop off hours. A Plan of Management including these have been submitted with the application.

Pedestrian infrastructure

Harrisons Lane does not have a footpath connection to Main Road. Given the development's minimal reliance on public transport, footpath is not required for the development.

5.5 Noise impacts

The Acoustic Assessment undertaken by Pulse White Noise Acoustics investigates the potential noise intrusion impacts on the development from external noise sources, and also assesses the impact of noise emissions from the operation of the facility on nearby receivers. An unattended noise survey was conducted on the site between Friday 21 October 2022 and Saturday 29 October 2022, to establish the background noise levels for the assessment. **Figure 10** shows the sensitive developments identified around the site.

Figure 10 – Sensitive receptors around the site

Assessment of external noise from the traffic and other environmental sources on the occupants of the building was based on the criteria in *Australian Standard AS2107:2016 Acoustics- Recommended design sound levels and reverberation times for building interiors.* The following is a summary of acoustic treatments required for compliance to mitigate external noise:

- External glazing - 6.38mm laminated glazing to the windows of all learning areas, and 6mm float to the windows of all administrative areas
- Light weight external cladding - Minimum 90mm studwork along with 75mm thick glass wool insulation and 13mm standard plasterboard or 9mm Fibre Cement Sheeting
- Ceilings – Acoustic insulation and 13mm plasterboard ceiling

The external noise level at the outdoor play area complied with relevant criteria in NSW EPA Road Noise Policy (RNP) 2011 without any specific treatments.

Sources of operational noise from the development included mechanical plant used in the building, noise from the car park and the outdoor play area. Assessment of each of these against relevant criteria is detailed as follows:

- Plant noise– A backup generator is proposed in the subfloor space near the staff parking area. The impact of noise from the backup generator was assessed against the project trigger noise level (Background + 5dBA) determined using *the NSW EPA Noise Polic for Industry 2017.* The results indicated compliance at all the sensitive receptors adjoining the site. As details of mechanical plant and equipment are not known at this time, the assessment outlines some general acoustic treatment for exhaust fans and condenser units, with specific details and certification to be provided at Construction Certificate stage to demonstrate compliance.
- Noise from additional traffic – Impact of additional traffic noise was assessed in accordance with NSW EPA (RNP) 2011. The assessment concluded the increased traffic movements on Harrisons Lane did not exceed the typical targets for local roads. Noise from the use of visitor's car park was determined using the peak hour traffic data from the Traffic Impact Assessment prepared by SECA solutions. The noise generating scenario was modelled for a worst case 15-minute period, and the predicted results complied with the criteria.
- Noise from outdoor play area – Outdoor play area noise has been an important consideration in the assessment due to its proximity to the adjoining dwellings to the west. The assessment adopts a noise criterion of 48dBA (Existing Background + 10dBA) for the play area based on the Guideline for Child Care Centre Acoustic Assessment by Association of Australasian Acoustical Consultants (AAAC). The original assessment predicted a significant exceedance (up to 10dBA) at the receivers during lunch and recess, when the outdoor play area was in use. The design has been amended to provide a larger separation between the active play area and the western boundary. The noise modelling for the amended design assumes an everyday scenario of 50% of the students in active play in two designated areas, as opposed to a worst-case scenario of 100% in active play adopted in the original assessment. The remaining 50% students are considered to be in passive play and evenly spread throughout the play area. The predicted noise levels on the adjoining properties to the west, at 1.5m above the ground and the at the façade of existing dwellings complied with the noise criteria.

  As the dwellings to the west have substantial rear setback in the order of 15m, the noise assessment also considered a potential scenario of future redevelopment of a dwelling at 6m from the western boundary, at Council's request. The modelling results predicted exceedance up to 8dB at nine receivers which could be improved through the installation of a 2m high acoustic barrier on top of the retaining wall around the play area, or by a 3m high fence along the western boundary. However, this would result in significant amenity loss to the proposed development and therefore could not be justified as it relates to likely future scenario where other methods of noise mitigation could be adopted if required.

  In summary the noise impact from the development is considered to be within acceptable limits and the proposal includes adequate construction requirements to ensure internal noise comfort to the occupants. Conditions have been imposed to ensure compliance with the recommendations and project specific noise criteria in the acoustic report.

5.6 Tree removal

An Aboricultural Impact Assessment has been undertaken by ‘Hugh the Arborist’ to identify the impact of the development on trees on the site and adjoining lands.

A total of 15 trees including six in Category A trees (retention potential exceeding 10 years) and nine Category Z trees (poor retention value) are proposed for removal.

Most of these trees are located within a confined space at the frontage, between an existing retaining wall and the front boundary. Further excavation into this area is required for the construction of the car park, the access ramp and the pedestrian entry from Harrisons Lane. As the root systems of these trees are likely to be heavily packed within the restrained area, the proposed works will involve major encroachment and severing of roots affecting their health and stability. Therefore, clearing is inevitable in this location. Impact of clearing on the amenity value of the streetscape and locality has been considered. Given the isolated location of the site and the limited visual catchment, the proposed clearing is not considered to have significant impact on streetscape amenity and therefore supported on merits. The landscape plan includes compensatory plantings at the frontage to offset this loss.

The remaining trees requiring removal are located away from the frontage and have low retention and amenity value.

Impact of the development on trees to be retained on the site and on adjoining lands has been considered. The Aboricultural Impact Assessment includes sensitive construction methods to protect the trees in close proximity to the proposed works where significant encroachment is anticipated. Written confirmation has been obtained from the project engineers to ensure the development can be designed and constructed in accordance with these recommendations.

5.7 Building height variation

The site is subject to a maximum building height of 8.5m. The part of the building above the gully exceeds this height, with variation up to a maximum of 3.985m or 46.9%. The extent of variation is indicated by the red shaded area in **Figure 11**. The application is accompanied by a clause 4.6 variation request in support of the height exceedance.

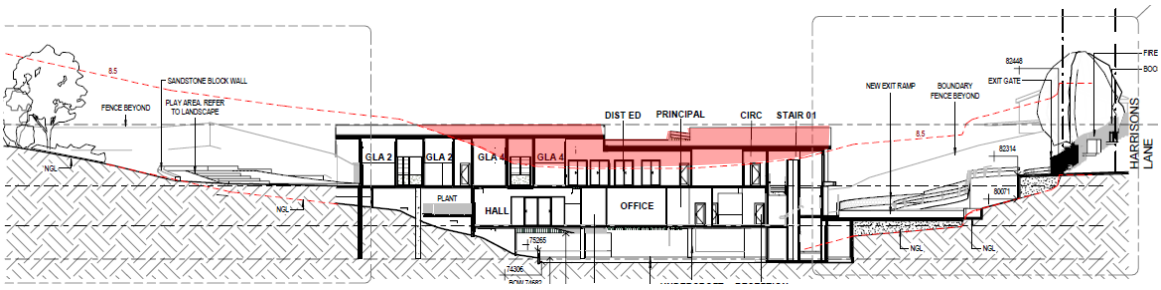

Figure 11 – East-west section showing the height exceedance

Clause 4.6(4) of the LEP establishes preconditions that must be satisfied before a consent authority can exercise the power to grant development consent for development that contravenes a development standard. Clause 4.6(2) provides this permissive power to grant

development consent for a development that contravenes the development standard is subject to conditions.

The two preconditions include:

1. Tests to be satisfied pursuant to Cl 4.6(4)(a) – this includes matters under Cl 4.6(3)(a) and (b) in relation to whether the proposal is unreasonable and unnecessary in the circumstances of the case and whether there are sufficient environmental planning grounds to justify contravening the development standard and whether the proposal is in the public interest (Cl 4.6(a)(ii)); and

2. Tests to be satisfied pursuant to Cl 4.6(b) – concurrence of the Planning Secretary.

The submitted clause 4.6 variation request draws on the judgement of *Randwick City Council v Micaul Holdings Pty Ltd [2016] NSWLEC 7* to demonstrate the development standard is unnecessary and unreasonable (precondition 1) by establishing that the development will not cause environmental harm and is consistent with the development standard. The impacts associated with the development are avoided, mitigated or minimised as detailed below:

- The development is substantially set back from the boundaries to minimise the impacts of overshadowing on the adjoining properties and play areas.

- The noncompliant height is the result of bridging the building across the overland flow path to minimise earthworks. It is necessary to elevate the building to provide the required clearance above the gulley, which causes an exceedance in height in the central part of the site.

- The building has been centrally placed at the lowest point on the site, within a valley, (at the low point of the site) to maximise the visual and acoustic privacy for adjoining dwellings.

Despite the variation to the development standard in clause 4.3 of the LEP, the proposal is consistent with the objectives of the standard as it involves a high-quality built form with interconnected building modules creating an efficient and visually appealing development. The overall height of the proposed school does not exceed that of the former aged care building when viewed from the road and adjoining properties, as demonstrated in **Figure 11**. The building is well articulated to provide a predominantly double storey outlook to the development consistent with the residential context and setting of the locality.

Strict compliance with the development standard is unreasonable and unnecessary as no adverse impacts are caused by the proposed height variation and development complies with the objectives of the height standard.

The development is in the public interest as it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development will be carried out. The applicant's written request has adequately addressed the requirements in clause 4.6 of the LEP and is therefore supported.

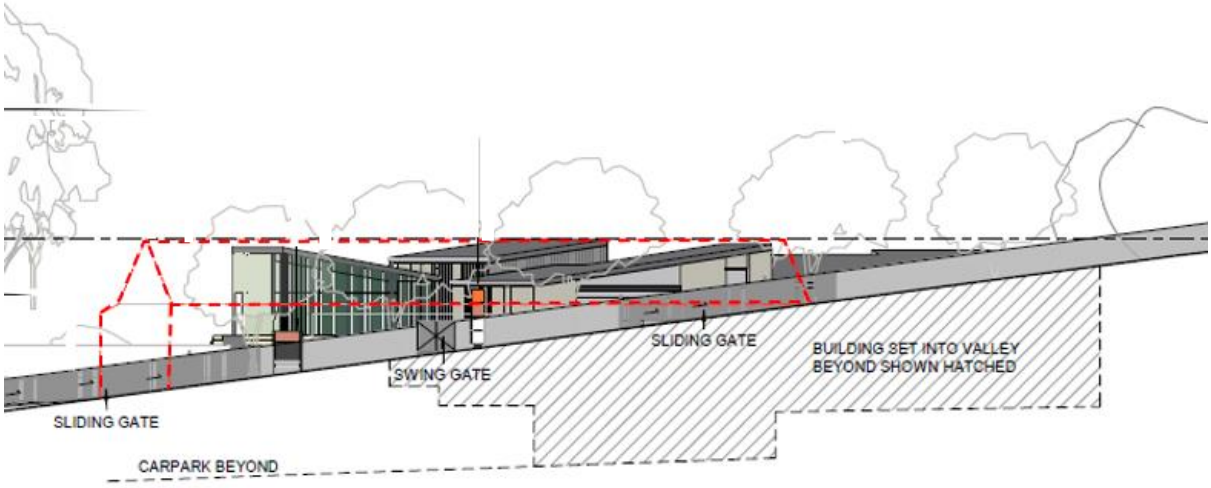

Figure 11 – View from Harrisons Lane (red dotted line shows the profile of the former building)

6. CONCLUSION

This development application has been considered in accordance with the requirements of the EP&A Act and the Regulations as outlined in this report.

The proposal is in keeping with the character of the area and demonstrates the ability to operate with an acceptable level of impact. All site constraints have been addressed and appropriate mitigation measures have been included to maintain the amenity of the area and to ensure no adverse impacts or risks to surrounding properties.

Specialised education for autistic children is an important infrastructure with significant benefits to the community. Approval of this development will enable Aspect to extend their service to Lake Macquarie LGA and the wider region.

Following a thorough assessment of the relevant planning controls, issues raised in submissions and the key issues identified in this report, it is considered that the application be supported.

7. RECOMMENDATION

It is recommended Development Application DA/2614/2022 for an Educational Establishment at 6 Harrisons Lane, Cardiff Heights be approved, subject to the draft conditions of consent attached to this report at **Attachment A**.

The following attachments are provided:

- **Attachment A**: Draft Conditions of consent