

COUNCIL ASSESSMENT REPORT

HUNTER AND CENTRAL COAST REGIONAL PLANNING PANEL

PANEL REFERENCE & DA NUMBER	PPSHCC-184 – DA 16-2023-42-1
PROPOSAL	Alterations and additions to Educational Establishment – Irrawang High School
ADDRESS	LOT: 2 DP: 584122 80 Mount Hall Road RAYMOND TERRACE
APPLICANT	Barr Property and Planning Pty Ltd
OWNER	NSW Department of Education c/o School Infrastructure NSW
DA LODGEMENT DATE	8 February 2023
APPLICATION TYPE	Crown Development Application
REGIONALLY SIGNIFICANT CRITERIA	Clause 4, Schedule 6 of State Environmental Planning Policy (Planning Systems) 2021: Crown Development over \$5 million
CIV	\$17,468,302.00 (excluding GST)
CLAUSE 4.6 REQUESTS	Port Stephens Local Environmental Plan 2013, Clause 4.3 – Height of Buildings
KEY SEPP/LEP	<i>State Environmental Planning Policy (Biodiversity and Conservation) 2021</i> <i>State Environmental Planning Policy (Planning Systems) 2021</i> <i>State Environmental Planning Policy (Resilience and Hazards) 2021</i> <i>State Environmental Planning Policy (Transport and Infrastructure) 2021</i> <i>Port Stephens Local Environmental Plan 2013</i>
TOTAL & UNIQUE SUBMISSIONS ISSUES KEY IN SUBMISSIONS	1 unique submission
DOCUMENTS SUBMITTED FOR CONSIDERATION	Refer to attachments list
SPECIAL INFRASTRUCTURE CONTRIBUTIONS (\$7.24)	N/A

RECOMMENDATION	Approval
DRAFT CONDITIONS TO APPLICANT	Yes
SCHEDULED MEETING DATE	6 December 2023
PLAN VERSION	6 September 2023 Version No D
PREPARED BY	EJE Architecture
DATE OF REPORT	29 November 2023

EXECUTIVE SUMMARY

The proposal seeks consent for alterations and additions to an existing educational establishment (Irrawang High School) to upgrade existing facilities. Specifically, the proposal involves:

- Construction of two storey learning hub with 6 support rooms, 4 multi-purpose rooms, 4 common learning areas, 8 general learning areas and staff and student amenities);
- Demolition of existing 39 space carpark to be replaced with a new 40 space carpark in a similar location;
- Construction of new support drop off bay;
- Construction of new feature entry and covered walkway;
- Construction of extension and internal refurbishment to existing library;
- Erection of internal covered walkways;
- Upgrade existing student and staff amenities;
- Removal of 29 trees;
- Cut and fill including a net fill of 1,580m³;
- Landscaping; and
- Associated stormwater infrastructure.

The subject site comprises one allotment, legally identified as LOT: 2 DP: 584122 and measures 5.8 ha in size with a rectangular shape. The topography of the site slopes steeply from 30m AHD in the northwest to 20m AHD in the southeast. The site contains a school known as Irrawang High School.

The school was originally established in 1983 and currently has 1,006 students from years 7 – 12. Student school hours are 8am to 4pm Monday, Tuesday, Thursday and Friday and 3pm on Wednesdays. Staff hours are 7am to 5pm Monday to Friday. Occasional school functions and community uses occur outside of these times. The school catchment takes in the suburbs of Raymond Terrace, Medowie, Eagleton and Ferrodale.

The existing school includes a mix of attached and detached buildings, consolidated along the south eastern side of the site. There are 10 school buildings in total currently located on the site. A large open grassed play area is located at the rear of the site with a paved area in the centre of the main buildings and two paved basketball courts are located on the north east. The site contains mainly cleared land, with some remnant and planted vegetation located in the south and south east portions of the site. The vegetation in these areas is mapped as containing biodiversity values.

The sites primary frontage is to Mount Hall Road, where the primary vehicular and pedestrian access is located. A one-way clockwise loop road on Mount Hall Road, located at the south east of the site, grants access to the school and functions as a bus bay. Vehicular access on Mount Hall Road consists of a driveway leading to a gated carpark, as well as a visitor carpark to the west fronting Mount Hall Road. In addition, there is a parking area adjacent the Mount Hall Road frontage, and informal overflow parking provided on the lot immediately to the west of the subject site, which is owned by Transport for NSW. The site has a small 8m frontage to Benjamin Lee Drive, which is informally used for pedestrian access.

The site is located within an existing residential area, located approximately 3km from Raymond Terrace town centre. The site and surrounds are zoned R2 Low Density Residential, with the exception of a small portion of RE1 Public Recreation that borders the eastern boundary, and the SP2 zoned Pacific Highway on the south western boundary.

The principle planning controls relevant to the proposal include State Environmental Planning Policy (Biodiversity and Conservation) 2021, State Environmental Planning Policy (Resilience and Hazards) 2021, State Environmental Planning Policy (Transport and Infrastructure) 2021 the Port Stephens Local Environmental Plan 2013 and the Port Stephens Development Control Plan 2014 ('DCP'). The proposal is generally consistent with various provisions of the planning controls.

The application is not integrated development pursuant to Section 4.46 of the *Environmental Planning and Assessment Act 1979* ('EP&A Act'). A referral was sent to TfNSW pursuant to Environmental Planning Policy (Transport and Infrastructure) 2021 and the response raised no objection to the proposed development as it was considered there will be no significant impact on the nearby classified network. A referral to Ausgrid pursuant to SEPP (Transport and Infrastructure) 2021 was sent and Ausgrid raised no objections. Referral was also sent to the Department of Defence in accordance with Chapter B6 of the DCP as the site is located in a bird strike zone associated with Royal Australian Air force (RAAF) Base Williamtown. In response, Defence made no objection and recommended conditions relating to the storage of organic waste.

The proposal is a Crown DA, pursuant to Section 4.33 of the EP&A Act and a consent authority must not impose a condition without approval of the applicant or the Minister. The applicant was provided with a draft set of conditions and in response the applicant requested a number of minor miscellaneous changes to conditions. The conditions the applicant requested to be modified are documented at **Attachment B**. The requested changes to conditions are acceptable to Council and have been incorporated in the recommended conditions at **Attachment A** with the exception of a request to delete the condition for S.7.12 contributions and an engineering related condition. This is discussed in further detail in the key issues section.

Jurisdictional prerequisites to the grant of consent imposed by the following controls have been satisfied including:

- Section 3.5 of SEPP (Resilience and Hazards) 2021 for consideration of whether the land is contaminated.
- Section 2.48(2) of SEPP (Transport and Infrastructure) 2021 in relation to development near electrical infrastructure.
- Clause 4.6 of the Port Stephens Local Environmental Plan 2013 in relation to the proposed building height variation.
- Clause 7.6 of the Port Stephens Local Environmental Plan 2013 in relation to the provisions of essential services.

The application was initially placed on public exhibition from 22 February 2023 to 8 March 2023. Following an amendment to the application to include a new 40 space car park, the application was placed on public exhibition again from 25 September 2023 – 9 October 2023. During the combined exhibition periods, one (1) was received. The submission raised issues relating to stormwater, boundary fencing and noise. These issues are considered further in this report.

The application is referred to the Hunter and Central Coast Regional Planning Panel ('the HCCRPP') as the development is '*regionally significant development*', pursuant to Section 4, Schedule 6 of State Environmental Planning Policy (Planning Systems) 2021: Crown Development over \$5 million.

A briefing was held with the Panel on 8 February 2023 where key issues were discussed, including changes to school capacity, traffic and car parking, the proposed height variation, tree removal and offset planting.

The key issues associated with the proposal included:

1. *Disagreement on conditions* - The proposal is a Crown DA, pursuant to Section 4.33 of the EP&A Act and a consent authority must not impose a condition without approval of the applicant or the Minister. The applicant has not approved Council's recommended condition for S.7.12 contributions and an engineering related condition.
2. *Traffic and Car Parking* – Following an amendment to the DA, the proposal provides sufficient car parking in accordance with the DCP.
3. *Building Height Variation* – The proposed building height variation has been found to be acceptable as the objectives of the clause are achieved despite the non-compliance and sufficient environmental planning grounds have been identified.
4. *Noise and vibration Assessment* – The application includes a Noise and Vibration Impact Assessment (NVIA) that confirms the proposal would not cause any adverse noise impacts to neighbouring residences. In addition, the NVIA confirms that road noise generated by the adjoining Pacific Highway can be attenuated to an appropriate level in the proposed building.
5. *Biodiversity Impacts* – The proposed development includes a Biodiversity Assessment Report which confirms that the proposal is consistent with the requirements of the Biodiversity Conservation Act 2016 and the Port Stephens Comprehensive Koala Plan of Management. The proposal would not cause any unacceptable impacts to biodiversity, subject to offset planting for the proposed removal of 29 trees.

Following a detailed assessment of the proposal, pursuant to Section 4.16(1)(a) of the EP&A Act, DA 16-2023-42-1 is recommended for approval subject to the reasons contained at **Attachment A** of this report.

1. THE SITE AND LOCALITY

1.1 The Site

The subject site comprises one allotment, legally identified as LOT: 2 DP: 584122 and measures 5.8 ha in size with a rectangular shape (See **Figure 1**). The topography of the site slopes steeply from 30m AHD in the northwest to 20m AHD in the southeast. The site contains a school known as Irrawang High School.

The school was originally established in 1983 and currently has 1,006 students from years 7 – 12. Student school hours are 8am to 4pm Monday, Tuesday, Thursday and Friday and 3pm on Wednesdays. Staff hours are 7am to 5pm Monday to Friday. Occasional school functions and community uses occur outside of these times. The school catchment takes in the suburbs of Raymond Terrace, Medowie, Eagleton and Ferrodale.

The existing school includes a mix of attached and detached buildings, consolidated along the south eastern side of the site. There are 10 school buildings in total currently located on the site. A large open grassed play area is located at the rear of the site with a paved area in the centre of the main buildings and two paved basketball courts are located on the north east. The site contains mainly cleared land, with some remnant and planted vegetation located in the south and south east portions of the site. The vegetation in these areas is mapped as containing biodiversity values.

The sites primary frontage is to Mount Hall Road, where the primary vehicular and pedestrian access is located. A one-way clockwise loop road on Mount Hall Road, located at the south east of the site, grants access to the school and functions as a bus bay. Vehicular access on Mount Hall Road consists of a driveway leading to a gated carpark, as well as a visitor carpark to the west fronting Mount Hall Road. In addition, there is a parking area adjacent the Mount Hall Road frontage, and informal overflow parking provided on the lot immediately to the west of the subject site, which is owned by Transport for NSW. The site has a small 8m frontage to Benjamin Lee Drive, which is informally used for pedestrian access.



Figure 1: Aerial of subject site

The site is subject to a number of environmental constraints (as mapped on Councils' GIS system) including:

- Acid Sulfate Soils – Class 5;
- Koala Habitat Planning Map (2000) – Clear & Marginal;
- Endangered Ecological Communities – Lower Hunter Spotted Gum (Ironbark Forest);

- Biodiversity Values Map – Threatened Species or Communities with Potential for Serious and Irreversible Impacts;
- Height Trigger Map (15m) & Bird Strike – RAAF Base Williamstown – Group B; and
- Combined Corridor Map.

1.2 The Locality

The proposal is located within Port Stephens Local Government Area (LGA) within the suburb of Raymond Terrace, approximately 27.6km north of the Newcastle CBD. Raymond Terrace contains a mixture of land uses including residential and rural development, as well as business and industrial development in the town centre.

The site is located within an existing residential area, located approximately 3km from Raymond Terrace town centre. The site and surrounds are zoned R2 Low Density Residential, with the exception of a small portion of RE1 Public Recreation that borders the eastern boundary, known as 'Lakeside Reserve No. 1', and the SP2 zoned Pacific Highway on the south western boundary, as shown in **Figure 2** below. The western boundary of the site is shared with Council owned land known as 'Oxley Close Reserve' and a small parcel of land owned by Transport for NSW which contains informal car parking utilised by the school.



Figure 2. Aerial of overall site and zoning

2. THE PROPOSAL AND BACKGROUND

2.1 The Proposal

The proposal seeks consent for alterations and additions to an existing educational establishment (Irrawang High School) to upgrade existing facilities, as shown in **Figure 3** below. Specifically, the proposal involves:

- Construction of two storey learning hub with 6 support rooms, 4 multi-purpose rooms, 4 common learning areas, 8 general learning areas and staff and student amenities;

- Demolition of existing 39 space carpark to be replaced with a new 40 space car park in a similar location;
- Construction of new support drop off bay;
- Construction of new feature entry and covered walkway;
- Construction of extension and internal refurbishment to existing library;
- Erection of internal covered walkways;
- Upgrade existing student and staff amenities;
- Removal of 29 trees;
- Cut and fill works requiring net fill of 1,580m³;
- Landscaping; and
- Associated stormwater infrastructure.

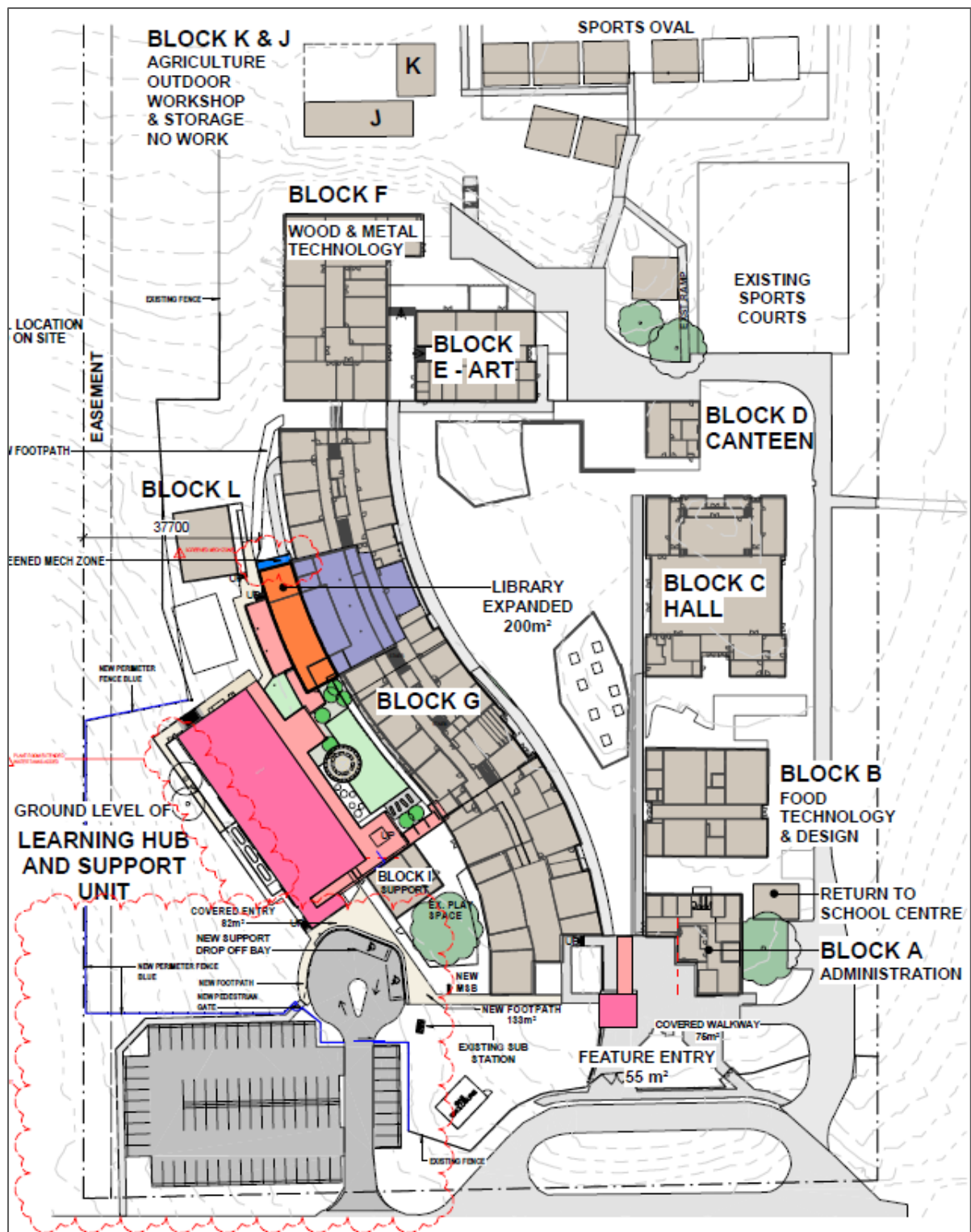


Figure 3: Proposed Site Plan

A detailed description of each of the key elements of the proposal is provided in the following section.

The key development data is provided in **Table 1**.

Table 1: Development Data

Control	Proposal
Existing Student Numbers	1,006
Proposed Student Numbers	No change proposed
Site area	6.7ha
GFA	1,892m ²
Clause 4.6 Requests	Yes - PSLEP 2013, Clause 4.3 – Height of Buildings. The maximum height of the building is 11.4m which is a 26.7% exceedance of the 9m building height limit
Max Height	11.4m
Landscaped area	26%
Car Parking spaces	109
Setbacks	North: 114m East: 115m West: 20m South: 53m

Two-storey Support Learning Hub

The proposed support learning hub is described in the Statement of Environmental Effects as incorporating “a dynamic learning environment in which students are provided the opportunity to pursue academic excellence”. The proposed learning hub comprises a two storey building with 6 learning support rooms, 8 general learning areas, 4 common learning areas, staff office and meeting rooms and student amenities, as shown in **Figure 5-6** below. As a result of the proposed development the number of classrooms will be reduced by 1 due to the concurrent removal of demountables as outlined in **Figure 7** below. However, it is noted that the demountable removal identified in **Figure 7** is not proposed under this DA.

The building has a maximum height of 11.4m above ground level. The building has an overall length measuring 50.1m and an overall width measuring 21m. The gross floor area measures 1,692m².

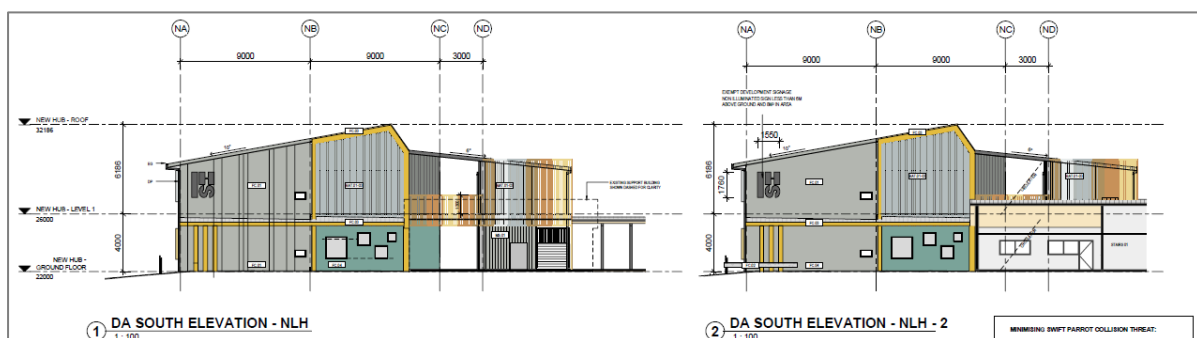
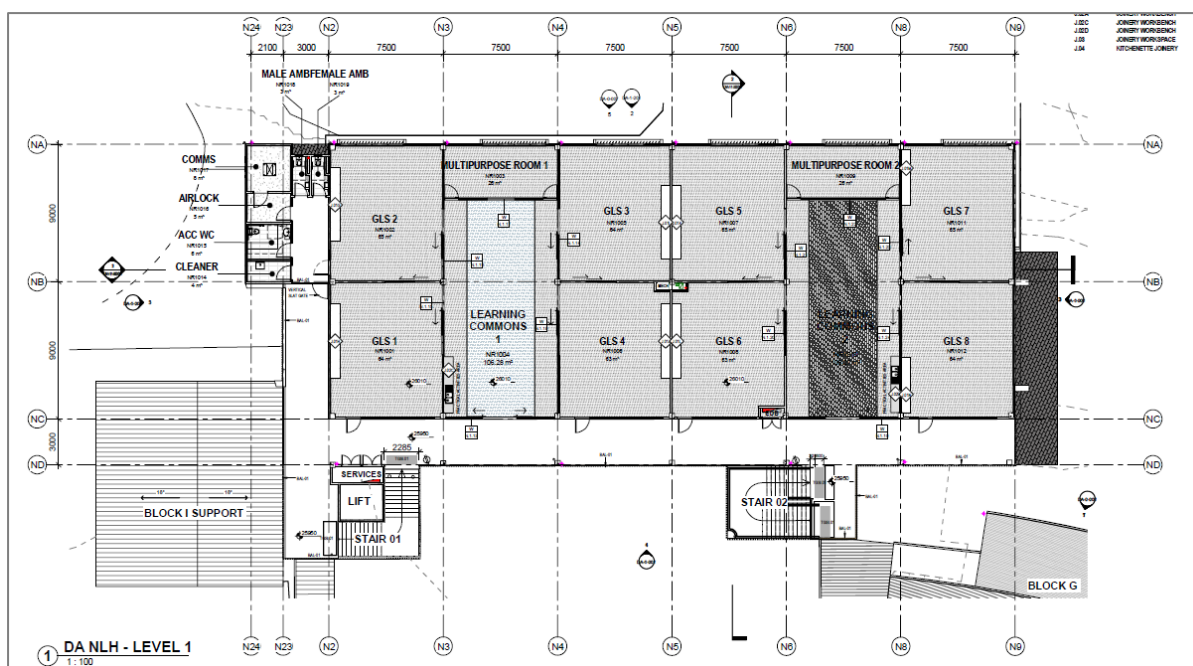
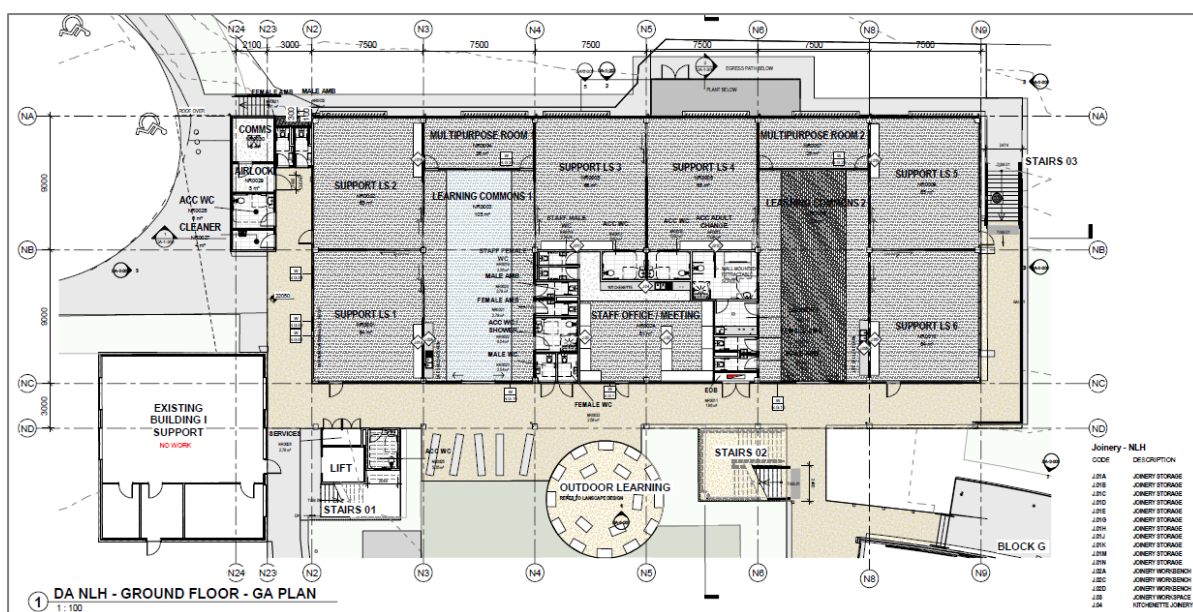


Figure 4: Proposed Elevation Plan



Current Capacity				Proposed Capacity		
	General Learning Space	Demountable Learning Space	Support Learning Space	General Learning Space	Demountable Learning Space	Support Learning Space
Number	42	9	6	50	0	12
Total	51		6	50		12

Extension and Refurbishment of Library

The proposal includes internal refurbishment and extension of the schools existing library building. The extension would create a new student learning and study area, additional computer room and dedicated senior study room. A covered outdoor area is proposed

adjacent the western elevation. The extension has a height of 4.5m above ground level. The overall gross floor area of the library is proposed to increase from 492m² to 692m². The proposed library and covered outdoor area are shown in **Figures 9-10** below.

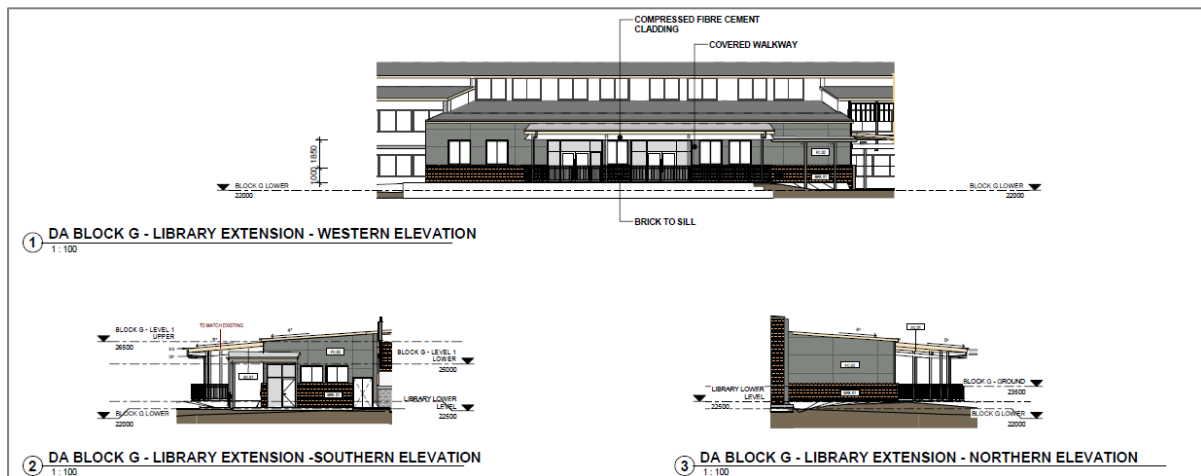


Figure 8: Proposed Library Elevations

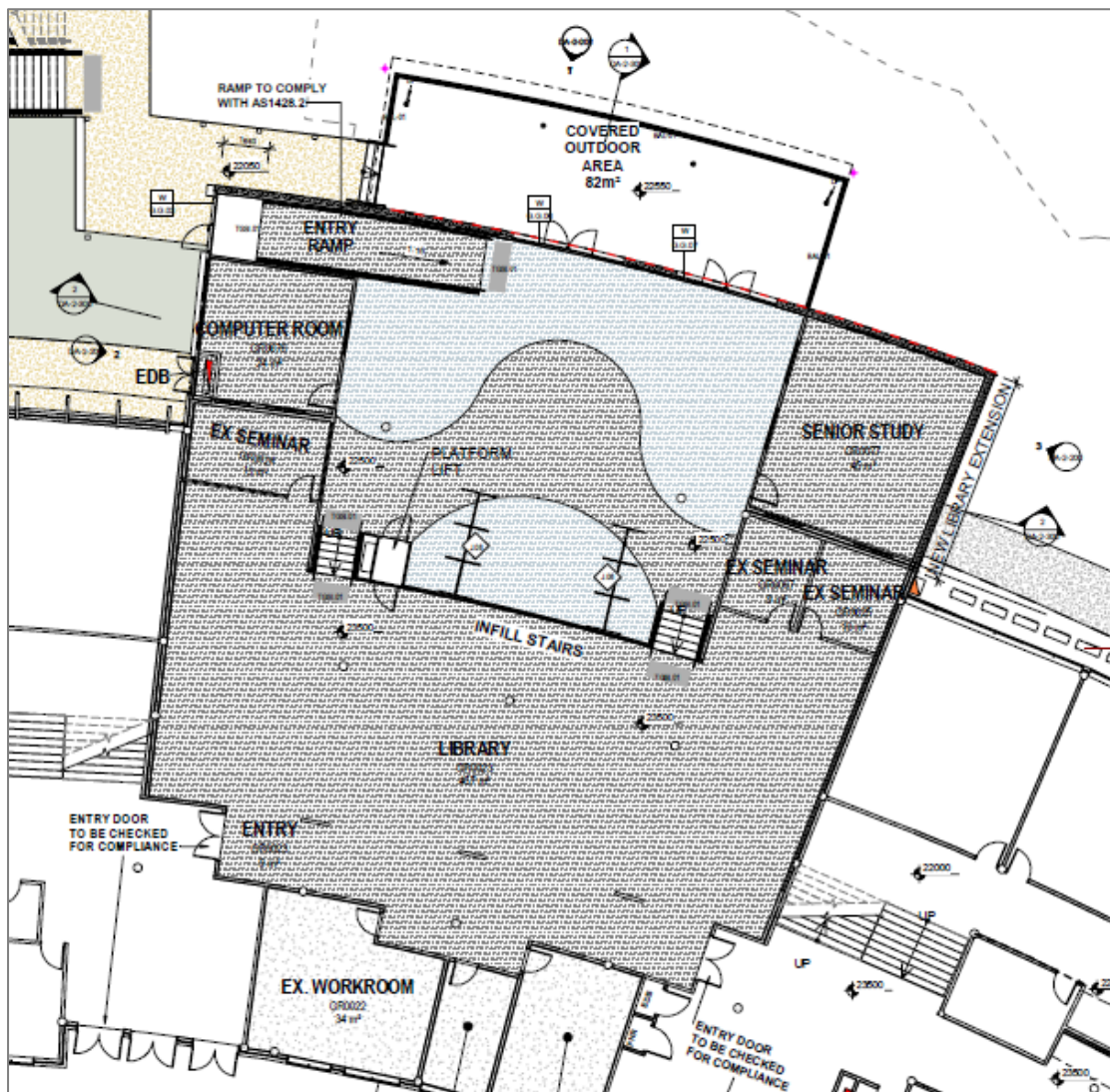


Figure 9: Proposed Library and Covered Outdoor Area Floor Plan

Demolition and Reconfiguration of car parking

The proposal includes the demolition of 39 car spaces to facilitate the proposed learning hub. To offset the removal of parking spaces, a larger consolidated 40 space car park in a similar location is proposed. The proposal also includes a new dedicated drop-off and pick-up point for mobility impaired students. The new car park and drop-off/pick-up points are shown in **Figure 3** above.

Minor demolition works are proposed to the existing library, including removal of an external wall and removal of an internal staircase. These works are required to facilitate the proposed refurbishment and extension of the library. The proposed demolition works are shown in **Figure 10** below.

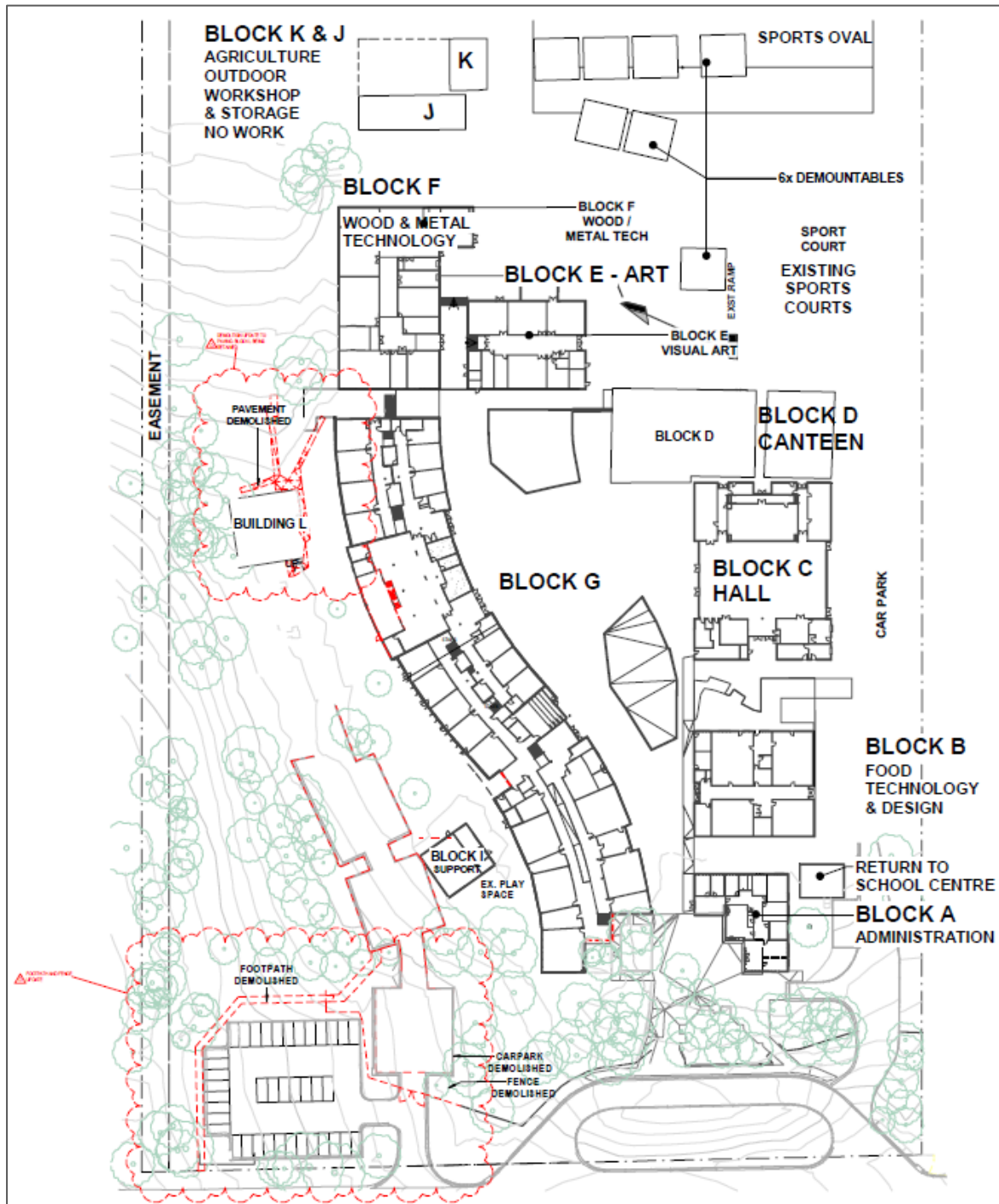


Figure 10: Proposed Demolition Plan

School Entry Feature

A new school entry feature and undercover walkway is proposed at the primary pedestrian entrance to the site which is to the north of the existing circular drop-off driveway. The entry feature has a width of 8m and depth of 7m equating to an area of 55m². The undercover walkway extends 12m from this location to the southern elevation of Block A and Block G. The entry feature and walkway has a maximum height of 4m above existing ground level.

The entry feature includes a sign which the applicant has identified is exempt development and therefore does not form part of this application. The proposed entry structure and walkway is shown in **Figures 11-12** below.

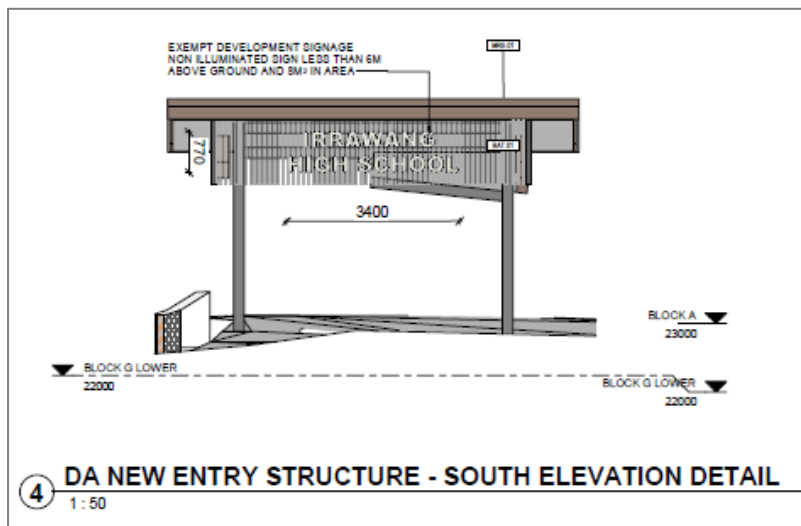


Figure 11: Proposed Entry Feature Elevation

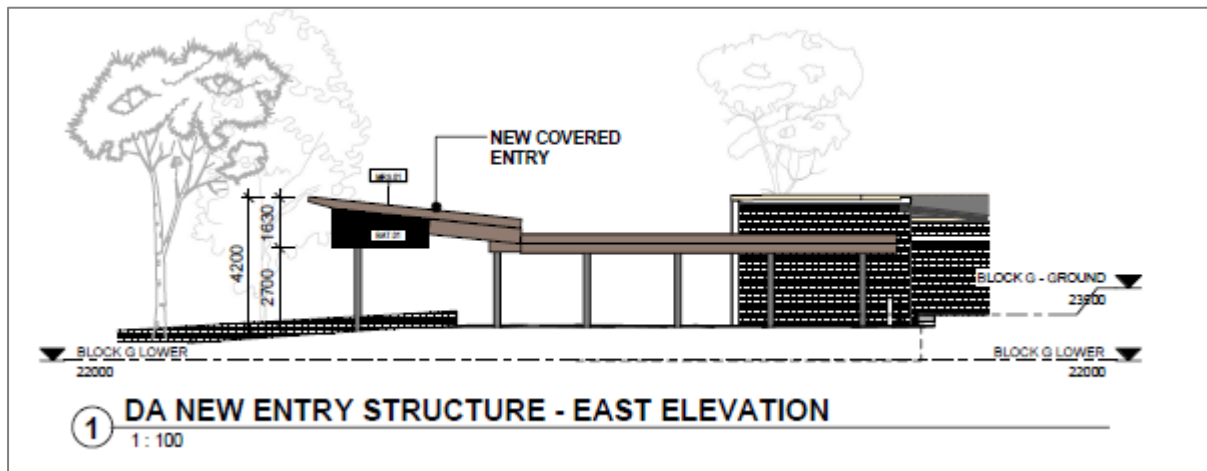


Figure 12: Proposed Covered Walkway Elevation

Access and Parking

The site has two existing vehicular access points. The first access is a circular driveway that facilitates bus drop-off and pick-ups and a 30 space car park on the eastern side of the site. A second driveway is located to the west, which provides access to the proposed 40 space car park.

The proposed development includes the construction of a dedicated drop-off and pick-up accessed via the western driveway for mobility impaired students. A new concrete footpath and covered walkway is proposed to connect the drop off point with the proposed learning hub, to ensure accessibility requirements are met.

Landscaping

The proposal includes new landscaping to be co-located with the proposed buildings and outdoor space. The courtyard proposed between the new support learning hub and the library will include new landscaping and student seating. The new support drop-off bay is proposed to be framed by feature trees and shrubs. Landscaping is also proposed to compliment the entry feature.

The landscape plantings comprise a mix of predominately native trees and shrubs which enhance amenity and provide shade coverage.

Stormwater

The application includes a stormwater management plan that would convey stormwater through a pit and pipe network to an underground on-site detention tank adjacent to the proposed support drop-off bay. Ultimate discharge of stormwater is to the public stormwater system at Mount Hall Road.

2.2 Background

A pre-lodgement meeting was held prior to the lodgement of the applicant on 5 December 2022. A summary of the key issues and how they have been addressed by the proposal is outlined below:

- Biodiversity including avoidance of Swift Parrot habitat
- The proposed car parking shortfall
- Traffic
- The proposed building height exceedance
- Acoustics
- Overshadowing
- Building design and landscaping
- Construction management to avoid disruption to students
- Waste management
- Stormwater
- Contamination
- Aboriginal Heritage
- Infrastructure contributions

The development application was lodged on **8 February 2023**. A chronology of the development application since lodgement is outlined below including the Panel's involvement (briefings, deferrals etc) with the application:

Table 2: Chronology of the DA

Date	Event
8 February 2023	DA lodged
14 February 2023	DA referred to external agencies
22 February 2023 – 8 March 2023	Exhibition of the application
4 April 2023	Kick-off briefing

12 April 2023	Request for Information from Council to applicant
26 May 2023	Response to request for information from applicant
3 July 2023	Second request for Information from Council to applicant
18 October 2023	Amended plans with new car park lodged and accepted by Council under Cl 38(1) of the <i>Environmental Planning and Assessment Regulation 2021</i> ('2021 EP&A Regulation').
29 November 2023	Report completed.

A site inspection was carried out on 13 October 2023. The site can be seen in **Images 1-4** below.



Image 1: Location of proposed building



Image 2: Location of proposed building from car park



Image 3: Car Parking to be demolished and replaced with turning head



Image 4: Existing Car Park to be expanded

2.3 Site History

The high school was established in 1983 and a number of development records are registered on the site since its opening. The development records registered in Council's records are outlined in **Table 3** below.

Table 3: Record of Development Applications

Application Number	Approval Type	Description	Determination
7-1985-2819-1	Part 4	High School	Approved with conditions – October 1985
7-1994-20495	Part 4	Extension to shade shelter at canteen	Approved May 1994 however has now lapsed
16-2004-1831-1	Part 4	Shade Cover	Withdrawn – August 2005
16-2011-178-1	Part 4	Advertising Sign	Approved with conditions May 2011
25-2011-4-1	Part 5	Language Centre and walkway	Approved with conditions October 2009

A BMX track was approved on the Transport for NSW (TfNSW) and Council owned lots (Lot 3104 DP 786401 & Lot 3104 DP 786401) immediately to the west of the site in 2002. This lot is now informally used as parking for the school and the BMX track.

There are no other records of significant development applications on adjoining sites.

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.

It is noted that the proposal is not considered to be (which are considered further in this report):

- Integrated Development (s4.46)
- Designated Development (s4.10)
- Requiring concurrence/referral (s4.13)

The proposal is a Crown DA, pursuant to Section 4.33 and written agreement from the Crown to the proposed conditions of consent must be provided.

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 (Biodiversity and Conservation) 2021*
- *State Environmental Planning Policy (Planning Systems) 2021*

- *State Environmental Planning Policy (Primary Production) 2021*
- *State Environmental Planning Policy (Resilience and Hazards) 2021*
- *State Environmental Planning Policy (Transport and Infrastructure) 2021*
- *Port Stephens Local Environmental Plan 2013*

A summary of the key matters for consideration arising from these State Environmental Planning Policies are outlined in **Table 4** and considered in more detail below.

Table 4: Summary of Applicable Environmental Planning Instruments

EPI	Matters for Consideration	Comply (Y/N)
State Environmental Planning Policy (Biodiversity & Conservation) 2021	<u>Chapter 2: Vegetation in non-rural areas</u> Section 2.6 provides that a person must not clear vegetation in a non-rural area of the State to which Part 3 applies. Section 2.10 provides that Council may issue a permit for tree removal. The proposal includes the removal of 29 trees which are proposed to be offset with compensatory planting, generally in accordance with the Port Stephens Council Tree technical Specification. <u>Chapter 4: Koala Habitat Protection 2021</u> Section 4.8 requires that the application must be consistent with the approved koala plan of management that applies to the site. The application included a Biodiversity Assessment Report, prepared by MJD Environment, dated 22 May 2023 and an addendum dated 6th October 2023 that confirms 29 koala feed trees will be removed as part of the proposal. The biodiversity value of the trees to koalas is minimal given there is no koala population in the locality, the site does not form part of a koala corridor and is fenced with palisade fencing. Notwithstanding, compensatory planting is proposed within the site boundaries which is consistent with the requirements of the CKPoM. The biodiversity value of the trees to koalas is minimal given there is no koala population in the locality, the site does not form part of a koala corridor and is fenced with palisade fencing. Notwithstanding, compensatory planting of 38 trees is proposed within the site boundaries which is appropriate given the sites limited capacity to support koalas. Accordingly, the proposed development complies with the performance criteria listed in Appendix 4 of the Port Stephens CKPOM and the proposal is consistent with the requirements of Chapter 4.	Y

State Environmental Planning Policy (Planning Systems) 2021	<u>Chapter 2: State and Regional Development</u> Section 2.19(1) declares the proposal regionally significant development pursuant to Clause 4, Schedule 6 of State Environmental Planning Policy (Planning Systems) 2021: Crown Development over \$5 million.	Y
SEPP (Resilience & Hazards)	<u>Chapter 4: Remediation of Land</u> Section 4.6 - Contamination and remediation has been considered in the Contamination Report and the proposal is satisfactory subject to conditions.	Y
State Environmental Planning Policy (Transport and Infrastructure) 2021	<u>Chapter 2: Infrastructure</u> Section 2.48(2) (Determination of development applications—other development) – electricity transmission requires consultation with relevant electricity authority. Referral correspondence with Ausgrid confirms the proposal can be safely undertaken with respect to nearby electricity assets. Section 2.119 - Development with frontage to classified road applies to the development. The proposal does not include direct access to the classified road and noise and vehicle emissions from the road can be suitably mitigated. The proposal is consistent with the requirements of this clause. Section 2.120 - Impact of road noise or vibration on non-road development applies to the development. This clause applies as the proposal is for an educational establishment that may be affected by road noise or vibration. The acoustic report submitted with the application confirms that road noise can be attenuated within the proposed classrooms to the target levels identified in the NSW DECCW, Road Noise Policy (RNP) 2011 and NSW Road Maritime Service (RMS), Construction Noise and Vibration Guideline 2016), subject to conditions relating to the thickness of window glazing. <u>Chapter 3: Educational Establishments</u> Chapter 3 provides development standards relating to centre based childcare facilities and educational establishments. In accordance with Section 3.58 the proposal is Traffic-generating development. The proposal is generally consistent with the requirements of this chapter.	Y
Proposed Instruments	N/A	N/A
LEP	The following LEP clauses are relevant to the proposal: • Zone objectives and Land Use Table (Cl. 2.3) • Demolition requires development consent (Cl. 2.7) • Height of buildings (Cl. 4.3(2)) • Exceptions to Development Standards (Cl. 4.6) • Heritage (Cl. 5.10) • Acid sulphate soils (Cl. 7.1) • Earthworks (Cl. 7.2)	Y

	• Essential Services (Cl. 7.6) The proposal is generally consistent with the LEP.	
DCP	The following DCP provisions are relevant to the proposal, however it is noted that Section 3.36(9) of the SEPP (Transport and Infrastructure) 2021 provides that a <i>provision of a development control plan that specifies a requirement, standard or control in relation to development of a kind referred to in subsection (1), (2), (3) or (5) is of no effect, regardless of when the development control plan was made.</i> • B1 – Tree Management • B2 – Natural Resources • B3 – Environmental Management • B4 – Drainage and Water Quality • B7 – Heritage • B8 – Road Network and Parking The proposal is generally consistent with the DCP.	Y

Consideration of the relevant SEPPs is outlined below.

State Environmental Planning Policy (Biodiversity and Conservation) 2021

Chapter 2 Vegetation in Non-Rural Areas

State Environmental Planning Policy (Biodiversity and Conservation) 2021 – Chapter 2 Vegetation in Non-Rural Areas, aims to protect the biodiversity values and preserve the amenity and other vegetation in non-rural areas of the State. The SEPP works in conjunction with the Biodiversity Conservation Act 2016 and the Local Land Services Amendment Act 2016 to create a framework for the regulation of clearing of native vegetation in NSW.

Part 2.3 of the Vegetation SEPP provides that Council's Development Control Plan can make declarations with regards to certain matters. The Vegetation SEPP further provides that Council may issue a permit for tree removal.

The proposal includes the removal of 29 trees to facilitate the proposed works. The tree species proposed to be removed include Tallowood (*Eucalyptus microcorys*), Forest Red Gum (*Eucalyptus tereticornis*), Swamp Mahogany (*Eucalyptus robusta*), Spotted Gum (*Corymbia maculata*), Brushbox (*Lophostemon confertus*). A range of other native and non-native trees also occur in clusters or as individual trees scattered around the site. None of the trees are listed on State or Local heritage registers. The trees proposed to be removed are shown on **Figure 13** below.



Figure 13: Tree Removal and Retention Plan

The Port Stephens Council Tree Technical Specification 2014 stipulates the compensatory planting requirements, which are shown in **Figure 14** below.

TABLE 4: COMPENSATORY PLANTINGS RATES	
RETENTION VALUE (AS PER TABLE 3)	COMPENSATORY PLANTING
High Retention Value	5 TREES
Moderate Retention Value	3 TREES
Low Retention Value	1 TREE
Very Low Retention Value	No Replacement Tree Required

Figure 14: Compensatory Planting Rates

The total compensatory planting requirement in accordance with the Tree Technical specification is 55.

The proposed landscaping includes the planting of 38 replacement trees consisting of predominately the same native species as those being removed, which also hold ecological value. Other species include feature tree plantings including *Tristania laurina* luscious (native) and *Pistacia Chinensis* (exotic). Despite the 38 replacement trees being less than the 55 compensatory planting required by the Tree Technical Specification, taking into consideration the applicants proposed use of mature tree plantings, the limited availability of space on site to plant the trees and the ongoing maintenance and safety issues associated

with dropping limbs, the proposed tree removal was supported by Council's Vegetation Management Officer.

Chapter 4 Koala Habitat Protection 2021:

This chapter aims to encourage the conservation and management of areas of natural vegetation that provide habitat for koalas to support a permanent free-living population over their present range and reverse the current trend of koala population decline. This SEPP replaces the previous State Environmental Planning Policy No 44 - Koala Habitat Protection.

The development control provisions of the SEPP apply to development applications relating to land within Port Stephens Council and:

1. Where there is an approved Koala Plan of Management for the land, the development application must be consistent with the approved koala plan of management that applies to the land.
2. Where there is no approved Koala Plan of Management for the land,
 - a. if the land is identified on the Koala Development Application Map, and
 - b. has an area of more than 1 hectare, or
 - c. has, together with any adjoining land in the same ownership, an area of more than 1 hectare, whether or not the development application applies to the whole, or only part, of the land.

The land is greater than 1 hectare and is mapped as "Marginal" and "Mainly Cleared" in the Koala Habitat Planning Map the Port Stephens Koala Plan of Management. Nonetheless, the Comprehensive Koala Plan of Management (CKPoM) applies to the land and therefore, the proposal must be consistent with the CKPoM.

The application included a Biodiversity Assessment Report, prepared by MJD Environment, dated 22 May 2023 and an addendum dated 6th October 2023 which confirms that 29 preferred koala feed trees will be removed as part of the proposal. The proposal demonstrates avoidance of koala feed trees where possible, however, avoidance of all trees is not practical due to the layout of existing infrastructure.

The biodiversity value of the trees to koalas is minimal given there is no koala population in the locality, the site does not form part of a koala corridor and is fenced with palisade fencing. Notwithstanding, compensatory planting of 38 trees is proposed within the site boundaries which is an appropriate offset planting undertaking given the sites limited capacity to support koalas.

Accordingly, the proposed development complies with the performance criteria listed in Appendix 4 of the Port Stephens CKPOM and the proposal is considered to be consistent with the requirements of Chapter 4.

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

Chapter 2: State and Regional Development

The proposal is *regionally significant development* pursuant to Section 2.19(1) as it satisfies the criteria in Clause 4 of Schedule 6 of the Planning Systems SEPP as the proposal is development for Crown development. Accordingly, the Hunter and Central Coast Regional Planning Panel is the consent authority for the application. The proposal is consistent with this Policy.

Chapter 4: Remediation of Land

Section 4.6 of Chapter 4 of the Resilience and Hazards SEPP provides that a consent authority must not grant consent unless:

- (a) it has considered whether the land is contaminated, and*
- (b) if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out, and*
- (c) if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose.*

The NSW list of contaminated sites and list of notified sites published by the EPA does not identify the site as being contaminated, nor has previous record of contamination in Council's system. The land is not within an investigation area, there are no records of potentially contaminating activities occurring on the site, and the proposed use is not listed as a possible contaminating use, per Table 1 of the Guidelines.

However, given the sensitive nature of the proposed land-use a Targeted Environmental Site Assessment (Site Assessment), prepared by WSP, Revision B and dated 8 November 2022 was submitted with the application.

The Site Assessment included sub-surface testing across 21 test pits. The results from the sub surface testing did not identify the presence of any contamination at the location of the proposed works as follows:

- No visual or olfactory evidence of contamination was identified during the intrusive investigations. No visual evidence of potential asbestos containing materials were identified during the investigations.
- All analytical results for the samples collected were below the adopted site criteria. No friable or ACM asbestos was reported to be present in any of the soil samples analysed from the site.
- An in-situ waste classification was undertaken based on the laboratory results of soil samples collected from the site. The fill material at the site is considered to be classified as General Solid Waste.

Based on the test results, the Site Assessment concludes that the site is suitable for the proposed development, subject to the implementation of an unexpected finds protocol.

Given the proposal involves the demolition of existing structures, including partial demolition of the existing library building, there is a risk that hazardous building materials could be encountered during works. To address this, a condition has been recommended requiring a Hazardous Building Material Assessment (HBMA) be prepared prior to the commencement of works. A further condition is recommended requiring that all site personnel are protected from risk of exposure to hazardous materials in accordance with relevant SafeWork NSW and NSW Demolition Guidelines during works.'

Based on the findings of the Site Assessment, the area of the proposed development is not contaminated and subject to conditions regarding an unexpected finds procedure, hazardous building materials management and offsite waste disposal, the proposal satisfies the requirements of Chapter 4 of this SEPP.

State Environmental Planning Policy (Transport and Infrastructure) 2021

Chapter 2 infrastructure

The aim of this Policy is to facilitate the effective delivery of infrastructure across the State.

Section 2.48(2) (Determination of development applications—other development) – electricity transmission applies as the proposal involves works in proximity to existing electricity infrastructure. A referral was sent to Ausgrid as per Clause 2.48 of the policy, as the development is being carried out adjacent to overhead power lines. Ausgrid recommended several conditions relating to the works being carried out in accordance with the Ausgrid specifications. The conditions recommended by Ausgrid have been included at **Attachment A**.

Section 2.119 of SEPP (Transport and Infrastructure) 2021 (SEPP Transport and Infrastructure) provides that the consent authority must not grant consent to development on land that has a frontage to a classified road unless it is satisfied that the matters listed under Section 2.119(2) have been satisfactorily addressed as follows:

- (a) where practicable and safe, vehicular access to the land is provided by a road other than the classified road, and*
- (b) the safety, efficiency and ongoing operation of the classified road will not be adversely affected by the development as a result of—*
 - (i) the design of the vehicular access to the land, or*
 - (ii) the emission of smoke or dust from the development, or*
 - (iii) the nature, volume or frequency of vehicles using the classified road to gain access to the land, and*
- (c) the development is of a type that is not sensitive to traffic noise or vehicle emissions, or is appropriately located and designed, or includes measures, to ameliorate potential traffic noise or vehicle emissions within the site of the development arising from the adjacent classified road.*

The site has a small frontage to the Pacific Highway to the east, however the entrance to the school including vehicular access is from Mount Hall Road. As a result, the proposal will not adversely impact the safety, efficiency or ongoing operation of the classified road. An educational premises is not a land use that emits smoke or dust, however, it is a land use that is sensitive to traffic noise and emissions from vehicles. Regarding traffic noise, this has been assessed in an acoustic report provided with the application which is discussed in detail against Section 2.120 below. Regarding vehicle emissions the proposal incorporates a 120m vegetated buffer between the Pacific Highway and the proposed building. The separation distance and vegetation combined appropriately mitigate the impact of vehicle emissions.

Section 2.120 - Impact of road noise or vibration on non-road development applies to the development as the proposal is for an educational establishment that may be affected by road noise or vibration associated with the Pacific Highway, which adjoins the site to the east.

An Acoustic Report was submitted with the application, prepared by JHA Services, Revision A and dated 22 December 2022, which assesses the effect of road noise on the proposed development. The NSW DECCW, Road Noise Policy (RNP) 2011 and NSW Road Maritime Service (RMS), Construction Noise and Vibration Guideline 2016) specifies an internal noise level of 40dB(A) for open plan teaching spaces. To achieve this internal noise level, the acoustic report recommends the proposed buildings include external glazing to provide a minimum sound reduction index of RW32. A 6.38mm laminated fixed single glazing system

achieves the nominated sound reduction index. The Acoustic Report makes a further recommendation that the acoustic performance of the glazing and building façade be reviewed during the detailed design of the project once glazing and façade areas will be defined. Subject to conditions, in line with the Acoustic Report recommendations, the proposal complies with the NSW DECCW, Road Noise Policy (RNP) 2011 and NSW Road Maritime Service (RMS), Construction Noise and Vibration Guideline 2016) and therefore the requirements of this section are satisfied.

Chapter 3 Educational Establishments and Childcare Centres

The aim of this Policy is to facilitate the effective delivery of educational establishments and early education and care facilities across the State. The application is for alterations and additions to an educational establishment (Part 3.3 of this policy).

Part 3.4 - Schools—specific development controls

In accordance with Part 3.4, Section 3.36(1), the proposed educational establishment is permissible as it is being carried out within a prescribed zone (R2 – Low Density Residential zone). Section 3.36(6) provides that before determining a development application for an educational establishment in a prescribed zone, the consent authority must take into consideration—

- (a) the design quality of the development when evaluated in accordance with the design quality principles set out in Schedule 8, and
- (b) whether the development enables the use of school facilities (including recreational facilities) to be shared with the community.

The school currently offers some shared use of school facilities with the community for miscellaneous sport programs and other community events. This would not be impacted as part of the proposal and is in compliance with the requirements of Section 3.36(6)(b).

Schedule 8 – Design quality principles in schools of the SEPP applies to the development, as per Section 3.36(6)(a). An assessment of the design quality principles of Schedule 8 has been provided in **Table 5** below.

Table 5: Schedule 8 Design quality principles

Principle	Comment
Principle 1—context, built form and landscape	The proposed development is considered appropriate with regard to the surrounding context, built form and landscape for the following reasons: • The proposed entry feature and high quality design of buildings provides a sense of place, clear entry and a positive contribution to the public realm. • The proposed buildings are responsive to the topography of the site. • The proposed buildings are sited appropriately to avoid overshadowing and visual, privacy and acoustic impacts to surrounding residential areas.

Principle	Comment
	- The proposed buildings are reflective of the predominant scale, materials and colours of existing buildings in the school. - The proposal incorporates a high standard of landscaping. The landscaping of the courtyards and curtilage of the buildings provides functional circulation space, a sense of entry as well as enhancing the public realm of Mount Hall Road. The proposal improves the functional relationships of the buildings and spaces, and improves accessibility within the site. The proposal responds to the local topography and setting of the site. Landscape buffering and building design reduces the visual impact of the school on the neighbouring area, while providing a more functional educational environment.
Principle 2—sustainable, efficient and durable	The proposal includes a Sustainable Development Plan, prepared by JHA Consulting Engineers dated 24 August 2022 which includes strategies for the development to achieve compliance with Educational Facilities Standard Guidelines (EFSG) DG02 requirements and 4 Star Green Star Design & As-Built (GS DAB) v1.3 certification. The report outlines that the proposal includes energy efficient materials and devices wherever possible to meet or exceed Australian standards. The school already has waste minimisation and recycling strategies in place, which would be applied at an operational level in the completed development. The proposal intends to update the school learning spaces to provide a more contemporary and flexible learning environment, and to deliver a coherent school campus.
Principle 3—accessible and inclusive	The new feature entry walkway to the Mount Hall Road frontage will provide a clear formal entry to the school. The landscaping, courtyards and pathways will provide strong visual cues for wayfinding. The buildings will include simple signage to identify their function. The proposal includes works to improve the accessibility of the school for those with mobility disabilities. There will be some out of hours usage by school related users, as per existing arrangements. The facilities will be available for out of hours use by others, consistent with the school's existing policies.
Principle 4—health and safety	The existing school includes fencing along all external boundaries to ensure children are kept

Principle	Comment
	within the grounds and keep unauthorised persons outside of the school. The proposal is designed to be welcoming, and provide a pleasant and positive sense of place. The aim of the development is to provide improved classrooms, and outdoor spaces as well as improved administration and staff facilities, consistent with contemporary standards. In addition, a Crime Prevention Through Environmental Design statement was submitted with the application, confirming that the proposal is generally consistent with the principles of the Crime Prevention Through Environmental Design (CPTED) guidelines prepared by the NSW Police.
Principle 5—amenity	Externally, there are a range of thoughtfully designed spaces to provide opportunities for engagement and learning for children, including a new courtyard space between the existing and proposed buildings. Impacts from road noise on teaching spaces has been considered in accordance with SEPP (Transport and Infrastructure) 2021 elsewhere in this report and found to be acceptable, subject to the use of appropriate window glazing, which is incorporated as a condition of consent.
Principle 6—whole of life, flexible and adaptive	The design of buildings internally allows for flexibility of spaces for future purposes. The external areas provide wide walkways and landscaped areas, which will cater for potential student increases or if there are school events.
Principle 7—aesthetics	The overall design of the building and landscaping is attractive and a positive addition to Raymond Terrace. The design delivers a positive visual statement along the street and improves the current school presence.

Considering the above, the alterations and additions to the educational establishment are considered consistent with the design quality principles within Schedule 8.

Section 3.36(9) of the SEPP (Transport and Infrastructure) 2021 provides that:

A provision of a development control plan that specifies a requirement, standard or control in relation to development of a kind referred to in subsection (1), (2), (3) or (5) is of no effect, regardless of when the development control plan was made.

The effect of this provision is that the Port Stephens Development Control Plan 2014 does not apply. Notwithstanding, a merit assessment has been undertaken against the DCP has been undertaken elsewhere in this report.

Section 3.58 of the T&I SEPP nominates school development that is defined as traffic generating. Section 3.58 (3) requires the consent authority to take into consideration the following:

- Any TfNSW comments;
- The efficiency of movements to and from the site and extent of multi-purpose trips;
- The accessibility of the site; and
- Any potential traffic safety, road congestion or parking implications of the development.

A referral was sent to TfNSW requesting comment on the proposal. In response TfNSW made no objection to the proposed development as it was considered there will be no significant impact on the nearby classified network. TfNSW offered advice comments relating to the loss of onsite car parking, management of construction traffic, internal management of traffic/pedestrian movements during operational phases and disability access.

The advisory matters raised by TfNSW have been satisfactorily addressed, as outlined throughout this report.

Port Stephens Local Environmental Plan 2014
Section 1.3 – Land to which Plan applies

Port Stephens Local Environmental Plan 2013 (PSLEP 2013) applies to land identified upon the 'Land Application Map'. The subject development occurs within this area.

Section 2.3 Zone objectives and Land Use Table

The development application has been lodged for the purposes of alterations and additions to an educational establishment.

The relevant definitions are outlined below:

Educational establishment means:

A building or place used for education (including teaching), being—

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

The proposal includes alterations and additions to an educational establishment (school), which is permissible with consent in the R2 zone by virtue of Section 3.36 of State Environmental Planning Policy (Transport and Infrastructure) 2021.

The zone objectives include the following:

- *To provide for the housing needs of the community within a low density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To protect and enhance the existing residential amenity and character of the area.*
- *To ensure that development is carried out in a way that is compatible with the flood risk of the area.*

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

- The school also represents an important facility to meet the day to day needs of local residents.
- The proposed building is sited appropriately to avoid overshadowing and visual, privacy and acoustic impacts to surrounding residential areas.
- The proposed building design and landscaping are of a high quality that contributes to the character of the area.
- The proposal has been sited outside of the areas of the site that are subject to flood inundation.

Section 2.7 – Demolition requires development consent

Section 2.7 provides that the demolition of a building or work may be carried out only with development consent.

The proposed development includes minor demolition activities, associated with the refurbishment of existing school buildings. This demolition cannot be carried out as exempt or complying development and requires development consent.

The applicant provided a demolition plan and conditions of consent has been recommended to manage demolition works.

Section 4.3 Height of buildings

The objectives of this clause are as follows—

- (a) *to ensure the height of buildings is appropriate for the context and character of the area,*
- (b) *to ensure building heights reflect the hierarchy of centres and land use structure*

Section 4.3(2) provides that the height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.

The subject site has a maximum building height of 9m under the PSLEP 2013.

The maximum height of the new building is 11.4m which is a 26.7% exceedance of the 9m building height limit. Accordingly, the applicant has submitted a clause 4.6 request which is considered against, Section 4.6 below.

Section 4.4 – Floor space ratio

There is no floor space ratio applying to the site under the PSLEP 2013.

Section 4.6 – Exceptions to Development Standards

The maximum height of the building is 11.4m which is a 26.7% exceedance of the 9m building height limit, as shown in **Figure 15** below.

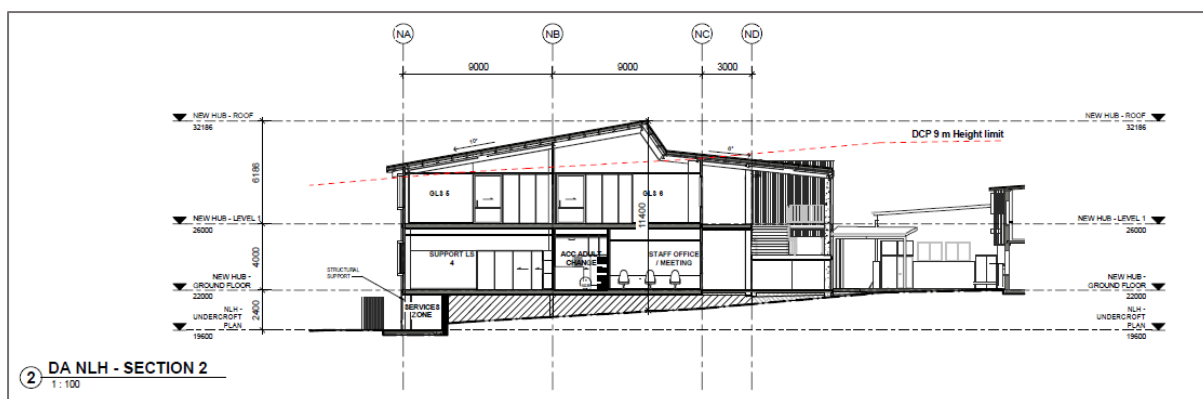


Figure 15: Section Plan Showing Proposed Height Exceedance

Preconditions to be satisfied

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 subject to preconditions.

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.

These matters are considered in detail at **Attachment C** which confirms that the preconditions to the grant of consent have been satisfied having regard to the applicant's Clause 4.6 request.

The applicant's justification relies on the following key points:

- The height exceedance is primarily associated with the sites topography and establishing a level foundation for equitable access. In the alternative, a stepped building foundation in response with the topography will restrict access to some users.
- The percentage of the roof area that exceeds the height limit is restricted to a small portion of the total roof area, which is modest in relation to the scale of the building.
- The height exceedance is restricted to the central section of the architectural roof feature and decreases in height exceedance with the pitch of the roof structure.
- The building location is significantly setback from the road and surrounding properties, thereby avoiding amenity impacts such as overshadowing or excessive bulk and scale.
- Whilst the scale of the building is taller than the existing buildings located on the school site, the style and format of the building is considered to compliment the educational use of the site.
- The LEP building height of 9m is presumed to be based on the maximum typical building height of a two-storey residential dwelling. It is noted that school buildings are more akin to commercial buildings in their construction, requiring a greater floor to ceiling height.

- Schedule 6 of the Transport and Infrastructure (T&I) SEPP 2021 allows complying development for the purpose of schools to be built to a height of four storeys and a maximum of 22 metres. This provision provides guidance from the Department of Planning as to development of acceptable impact having regard for the provisions of complying development and indicates that the proposed height exceedance of the development can be supported and is not unreasonable.
- Educational premises are permissible within the R2 Low Density Residential Zone by virtue of the T&I SEPP. Therefore, school buildings which are typically taller than residential buildings can be expected in this zone and are reflective of the land use structure and hierarchy.

Overall, the proposed development is considered to be consistent with the objectives of Clause 4.6 given it will achieve a better outcome in these particular circumstances as the objectives of the development standard are achieved notwithstanding non-compliance.

It is noted in September 2023, the NSW Government published amendments to Clause 4.6 of the Standard Instrument which changes the operation of the clause across all Local Environmental Plans. The amendment includes savings provisions that allow for development applications made on or before 1 November 2023 to be determined as if the changes had not commenced. Given the application was lodged before 1 November 2023, the Clause 4.6 has been assessed against the former Clause 4.6 provisions.

Section 5.10 Heritage conservation

The objectives of this clause are to conserve environmental heritage, heritage items and conservation areas, archaeological sites and Aboriginal sites and objects of heritage significance.

The site is not listed as being locally significant under Schedule 5 of the *PSLEP 2013* or on the State Heritage register. With regard to Aboriginal Heritage, the applicant submitted an Aboriginal and Historical Heritage Due Diligence Assessment, prepared by Tocomwall dated 20 July 2022. The Due Diligence Assessment confirms there are no recorded Aboriginal sites within the study area and no Aboriginal objects were identified during the archaeological survey. Parts of the study area have been subjected to significant disturbance from the development associated with the original school construction. The subject area is considered to have a 'low probability' of retaining subsurface Aboriginal objects of conservation value, as defined in section 3.1 Archaeological Test Excavation, from the Code of Practice for Archaeological Investigation of Aboriginal Objects in New South Wales (DECCW 2010). For this reason, the report does not recommend further investigation is required.

Notwithstanding, an advice note has been recommended in the conditions, noting that in the event of any Aboriginal artefact, object or structure being unearthed, all work must cease immediately in the affected area, and the Heritage NSW (HNSW) shall be informed of the discovery. Work must not recommence until the material has been inspected and permission has been given by HNSW to proceed.

Subject to conditions relating to unexpected finds procedures, the proposal is consistent with the requirements of this section.

Section 7.1 – Acid Sulfate Soils

The objective of this clause is to ensure that development does not disturb, expose, or drain acid sulfate soils and cause environmental damage.

The site is mapped as Class 5 Acid Sulfate Soils and as such works within 500m of adjacent Class 1, 2, 3 or 4 land likely to be below 5m Australian Height Datum (AHD) is considered a

potential environmental risk. The site is located within 500m of adjacent Class 1, 2, 3 or 4 land, however, there are no works proposed below 5m AHD, therefore it is unlikely that ASS would be encountered during works and an ASS Management Plan is not required to accompany the application.

On this basis, the proposal complies with the requirements of this section.

Section 7.2 Earthworks

The objectives of clause 7.2 are to ensure that earthworks for which development consent is required will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land. The proposed earthworks are not exempt development under this plan or any other applicable environmental planning instrument and therefore require consent from Council.

The application includes a Bulk Earthworks Plan, Prepared by Stantec, Revision B and dated 8 August 2022 and a Report on Geotechnical Investigation, prepared by Douglas Partners, Project 216008.00, Revision 0 and dated 24 August 2022. The bulk earthworks plan indicates that a total of 550m³ of cut and 2130m³ of fill is required to support the proposed development.

Under Clause 7.2(3) before granting development consent for earthworks (or for development involving ancillary earthworks), the consent authority must consider the following matters:

- (a) the likely disruption of, or any detrimental effect on, drainage patterns and soil stability in the locality of the development,*

The proposed development involves balanced cut and fill to level the area of proposed construction, with a maximum cut of approximately 1.6m and fill of 1.8m. This relatively modest extent of cut and fill is not expected to cause any detrimental effect on drainage patterns and soil stability in the locality of the development. The proposed earthworks are located outside of flood prone areas, thereby ensuring no flooding impacts occur. In addition, the proposal includes a stormwater drainage strategy which adequately caters for the water generated by proposed hardstand areas.

Conditions of consent relating to erosion and sediment controls have been included to manage impacts during construction.

- (b) the effect of the development on the likely future use or redevelopment of the land,*

The proposal involves earthworks relating primarily to balanced cut and fill for level building platforms and service installation. The balanced cut and fill works would enhance the potential for redevelopment of the site in the future.

- (c) the quality of the fill or the soil to be excavated, or both,*

A Targeted Environmental Site Assessment (Site Assessment), prepared by WSP, Revision B and dated 8 November 2022 was submitted with the application.

The Site Assessment included sub-surface testing across 21 test pits. The results from the sub surface testing did not identify the presence of any contamination at the location of the proposed works.

Based on the test results, the Site Assessment concludes that the site is suitable for the proposed development, subject to the implementation of an unexpected finds protocol.

- (d) *the effect of the development on the existing and likely amenity of adjoining properties,*

The development is located within a residential area, with dwellings located to the north, south and west of the site. The proposed earthworks which are a minimum of 60m from the nearest dwelling could be undertaken without adverse dust impacts to the dwellings, subject to standard conditions relating to sediment and erosion control. The minor extent of earthworks proposed at this location, involving cut of 1m would cause negligible short term visual impacts to neighbouring dwellings.

- (e) *the source of any fill material and the destination of any excavated material,*

No fill material is proposed to be brought on to site as part of the development.

- (f) *the likelihood of disturbing relics,*

The site is not listed as being locally significant under Schedule 5 of the PSLEP 2013 or on the State Heritage register. With regard to Aboriginal Heritage, the applicant submitted an Aboriginal and Historical Heritage Due Diligence Assessment, prepared by Tocomwall dated 20 July 2022. The Due Diligence Assessment confirms there are no recorded Aboriginal sites within the study area and no Aboriginal objects were identified during the archaeological survey.

- (g) *the proximity to, and potential for adverse impacts on, any waterway, drinking water catchment or environmentally sensitive area,*

The site is not located in proximity to any waterways or a drinking water catchment. The proposal would not result in any adverse flood impacts to the surrounding area or cause environmental degradation to waterways. Conditions of consent relating to erosion and sediment controls have been included to manage impacts during construction.

- (h) *any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.*

Conditions of consent have been included for the implementation of sediment and erosion controls, to mitigate the impact of earthworks on the sloped site.

Clause 7.6 Essential services

This clause provides that consent must not be granted unless the consent authority is satisfied that services that are essential for the development are available or that adequate arrangements have been made to make them available.

A copy of the proposed plans have been reviewed and stamped by Hunter Water Corporation (HWC) confirming that water and sewer are available for connection to the site. Electricity is available for connection and suitable drainage and vehicular access arrangements have been detailed within the civil engineering plans submitted with the application. Conditions can be included to require that essential services are available prior to the issue of an Occupation Certificate. Accordingly, it is considered the proposed development satisfies this clause as adequate arrangements have been made to service the site.

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

Remediation of Land State Environmental Planning Policy

The proposed Remediation of Land SEPP is intended to repeal and replace Chapter 4 of SEPP Resilience and Hazards 2021. The draft SEPP, which was exhibited from 25 January to 13 April 2018, and is currently under consideration.

The proposed SEPP seeks to provide a state-wide planning framework to guide the remediation of land, including outlining provisions that require consent authorities to consider the potential for land to be contaminated when determining development applications; clearly lists remediation works that require development consent; and introducing certification and operational requirements for remediation works that may be carried out without development consent.

Consideration has been given to the suitability of the site with respect to potential land contamination under SEPP Resilience and Hazards 2021 – Chapter 4 elsewhere within this report. The subject site has been identified as suitable for the proposed development and further investigation in respect to contamination is not warranted in this instance.

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

Section 3.36(9) of the SEPP (Transport and Infrastructure) 2021 provides that:

A provision of a development control plan that specifies a requirement, standard or control in relation to development of a kind referred to in subsection (1), (2), (3) or (5) is of no effect, regardless of when the development control plan was made.

Notwithstanding, the following Development Control Plan is relevant to this application:

- *Port Stephens Development Control Plan 2014* ('the DCP')

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):

Section B1 – Tree Management

This chapter applies to the removal or pruning of trees or other vegetation within non-rural areas and gives effect to SEPP (Biodiversity and Conservation) 2021 by listing those trees or other vegetation that require approval.

The proposal is identified as a non-rural area as defined by State Environmental Planning Policy (Biodiversity and Conservation) 2021 – Chapter 2 Vegetation in Non-Rural Areas (formerly *SEPP (Vegetation in non-rural areas) 2017*) and therefore the provisions of this chapter apply.

The proposal includes the removal of 29 trees to facilitate the proposed works. The tree species proposed to be removed include Tallowood (*Eucalyptus microcorys*), Forest Red Gum (*Eucalyptus tereticornis*), Swamp Mahogany (*Eucalyptus robusta*), Spotted Gum (*Corymbia maculata*), Brushbox (*Lophostemon confertus*). A range of other native and non-native trees also occur in clusters or as individual trees scattered around the site. None of the trees are listed on State or Local heritage registers. The trees proposed to be removed are shown on **Figure 12** above.

The total compensatory planting requirement in accordance with the Tree Technical specification is 55.

The proposed landscaping includes the planting of 38 replacement trees consisting of predominately the same native species as those being removed, which also hold ecological value. Other species include feature tree plantings including *Tristania laurina* (native) and *Pistacia chinensis* (exotic). Despite the 35 replacement trees being less than the 55 compensatory planting required by the Tree Technical Specification, taking into consideration the applicants proposed use of mature tree plantings, the limited availability of space on site to plant the trees and the ongoing maintenance and safety issues associated with dropping limbs, the proposed tree removal was supported by Council's Vegetation Management Officer.

Section B2 – Natural Resources

This chapter applies to development located within 500m of environmentally sensitive areas, development that contains koala habitat, noxious weeds or development that is seeking to use biodiversity credits.

The site is mapped as containing Koala Habitat (Clear & Marginal), an Endangered Ecological Community (Lower Hunter Spotted Gum (Ironbark Forest)) and a Threatened Species or Community with Potential for Serious and Irreversible Impacts (Swift Parrot) which is listed on the biodiversity values map. As a result, the provisions of the chapter apply.

The application included a Biodiversity Assessment Report, prepared by MJD Environment, dated 22 May 2023 and an addendum dated 6th October 2023 which identifies the removal of 0.24ha of vegetation (0.20 native and 0.04 exotic) as part of the proposal.

The site is mapped on the NSW Biodiversity Values Map, however the site is zoned R2 – Low Density Residential. As the proposed development is being carried out on land that was subdivided prior to commencement of the BC Act, the development is exempt from requiring a BDAR in accordance with Section 7.3 (4) of the BC Regulation.

The proposed development involves the removal of 0.20ha of Swift Parrot (*Lathamus discolor*) habitat, which is a Threatened Species with Potential for Serious and Irreversible Impacts. The Flora and Fauna Assessment, includes a test of significance which found that the proposed tree removal is unlikely to have a significant impact on the species, subject to compensatory plantings totalling 38 trees.

In addition, the application includes a 'Review of WWF Document : Swift Parrot Collision threat' prepared by EJE Architecture which outlines how the proposed building design responds to the WWF Australia document published April 2008 'Minimising the Swift Parrot collision threat, Guidelines and recommendations for Parrot-safe Building design'. The review confirms that the proposed building generally accords with the WWF Guidelines.

The proposal involves the removal of 29 preferred koala feed trees and therefore the Port Stephens Comprehensive Koala Plan of Management (CKPoM) applies. The land is greater than 1 hectare and is mapped as "Marginal" and "Mainly Cleared" in the Koala Habitat Planning Map the Port Stephens Koala Plan of Management.

The proposal demonstrates avoidance of koala feed trees where possible, however, avoidance of all trees is not practical due to the layout of existing infrastructure.

The biodiversity value of the trees to koalas is minimal given there is no koala population in the locality, the site does not form part of a koala corridor and is fenced with palisade fencing. Notwithstanding, compensatory planting of 38 trees is proposed within the site boundaries which is appropriate given the sites limited capacity to support koalas. Accordingly, the

proposed development complies with the performance criteria listed in Appendix 4 of the Port Stephens CKPOM.

Chapter B3 – Environmental Management

Chapter B3 contains provisions relating to ASS and earthworks and have been assessed below.

Acid Sulfate Soils

The site is mapped as Class 5 Acid Sulfate Soils (ASS) and as such works within 500m of adjacent Class 1, 2, 3 or 4 land likely to be below 5m Australian Height Datum (AHD) is considered a potential environmental risk. The site is located within 500m of adjacent Class 1, 2, 3 or 4 land, however, there are no works proposed below 5m AHD, therefore it is unlikely that ASS would be encountered and an ASS Management Plan is not necessary to accompany the application.

Air Quality

The proposed development is not a development type anticipated to produce adverse impacts to air quality or require specific odour control measures. Accordingly, an air quality report was not deemed necessary for the proposed development. Dust generated during construction is expected to be minimal, subject to conditions of consent requiring erosion and sediment control be carried out in accordance with the guidelines set out in the NSW Department of Housing manual 'Managing Urban Stormwater: Soils and Construction Certificate' (the Blue Book) and the 'Do it Right On-Site, Soil and Water Management for the Construction Industry' (Southern Sydney Regional Organisation of Councils and the Natural Heritage Trust).

Earthworks

A Bulk Earthworks Plan is supplied with the application. Earthworks involving cut and fill are required for levelling of the building footprint, car parking and stormwater drainage. A condition has been included that fill will consist of Virgin Excavated Natural Material (VENM) or Excavated natural material (ENM) as defined under the *Protection of Environment Operations Act 1997*. Conditions have also been recommended requiring erosion and sediment control measures to be installed prior to the commencement of works.

Noise

The proposal presents the potential for noise generation from the proposed buildings and car park and associated operational changes.

A Noise and Vibration Impact Assessment, prepared by JHA Engineers Project no. 220265, Revision C and dated 14 April 2023 was provided with the application which modelled the potential noise generation for the school, including sleep disturbance noise emissions. The Noise Assessment quantifies the potential operational noise emissions pertaining to vehicles, school bells, the public address (PA) system, mechanical plant associated with the proposed buildings and construction activities. In addition, the assessment quantifies the noise intrusion from the classified Road (Pacific Highway, in accordance with the requirements of SEPP (Transport and Infrastructure) 2021.

The NVIA recommends that the Public Address and School Bell Systems, although not selected at this time, would have a negligible noise impact to the nearest sensitive receivers if the following measures are implemented:

- Low-powered horn-type speakers shall be located and orientated to provide a good coverage of the school areas whilst being directly away from residences and near sensitive receivers. System coverage shall be reviewed during the detailed design phase.
- Speakers shall be mounted with a downward angle and as close to the floor as possible.
- The noise level of the systems shall be adjusted on site so they will be clearly audible on the school site without being excessive. The systems shall initially be set so that the noise at nearby residences and sensitive receivers do not exceed noise level criteria.
- Once the appropriate noise level has been determined on site, the systems shall be limited to these noise levels so that staff cannot increase the noise levels.
- The systems shall be set so that it only occurs on school days.

A condition of consent has been recommended to reflect the recommendations made in the NVIA

The NVIA also identifies that final mechanical plant selections have not been made; therefore, it is not possible to undertake a detailed assessment of the mechanical plant noise emissions. To address this, a condition of consent has been recommended requiring that further acoustic testing be undertaken prior to the issue of a construction certificate to ensure that the cumulative noise levels from the plant to the nearest noise sensitive receivers meets the NSW NPI noise level criteria.

The NVIA concludes that noise associated with additional traffic during both construction and operational phases is expected to be less than the maximum allowable increase of 2.0dB(A) specified under the NSW Road Noise Policy.

Overall, the NVIA demonstrates that the cumulative emissions from the proposed development would satisfy the relevant criteria at all receivers subject to the implementation of the noise attenuation measures recommended in the NVIA.

On this basis, the proposal is considered consistent with the requirements of Chapter B3.

Chapter B4 – Drainage and water quality

This section applies to development that:

- Increases impervious surfaces; or
- Drains to the public drainage system; or
- Involves a controlled activity within 40m of waterfront land.

A stormwater management plan was submitted with the application to cater for major flows up to the 1% AEP through a pit and pipe network that discharges to a detention basin before discharging to the Mount Hall Road reserve.

The stormwater drainage plan has been assessed as being consistent with Council's Infrastructure Specification and the water quality requirements of this section by Council's engineers. A condition of consent has been recommended requiring the provision of detailed engineering plans, prior to the issue of a Construction Certificate. Subject to the recommended conditions, the proposal is consistent with the requirements of this chapter.

Chapter B6 – Williamstown RAAF Base – Aircraft Noise and Safety

This section applies to development that is situated within the 2025 Australian Noise Exposure Forecast (ANEF), bird strike zone, extraneous lighting area or the Royal Australian Air Force (RAAF) Base Williamtown Obstacle Limitation map.

The site is located in the Williamtown RAAF Base bird strike control area – Group B where certain development types are restricted or alternatively require specific management measures relating to the storage of organic waste materials. All proposed land uses within the Group B control area require mitigation measures to reduce the risk of bird strike. In this regard, the application was referred to the Department of Defence (Defence) for comment. In response, Defence recommended a condition of consent relating to the storage of organic waste and storage of commercial bins to ensure that they are covered/enclosed at all times. This condition is included in the recommended conditions of consent.

The site is also located in a height trigger area associated with RAAF Base Williamtown which requires structures higher than 15m to be referred to Defence. The proposed development has a maximum height of 11.4m and therefore does not require referral to Defence in this regard.

Based on the Defence referral advice and recommended conditions, the proposed development satisfies the requirements of this chapter.

Chapter B7 - Heritage

This section applies to development that is situated on land that contains a heritage item or within a heritage conservation area. The objectives of this section is to conserve environmental heritage, heritage items and conservation areas, archaeological sites and Aboriginal sites and objects of heritage significance.

The site is not listed as being locally significant under Schedule 5 of the *PSLEP 2013* or on the State Heritage register. With regard to Aboriginal Heritage, the applicant submitted an Aboriginal and Historical Heritage Due Diligence Assessment, prepared by Tocomwall dated 20 July 2022. The Due Diligence Assessment confirms there are no recorded Aboriginal sites within the study area and no Aboriginal objects were identified during the archaeological survey. Parts of the study area have been subjected to significant disturbance from the development associated with the original school construction. The subject area is considered to have a 'low probability' of retaining subsurface Aboriginal objects of conservation value, as defined in section 3.1 Archaeological Test Excavation, from the Code of Practice for Archaeological Investigation of Aboriginal Objects in New South Wales (DECCW 2010). For this reason, the report does not recommend further investigation is required.

Notwithstanding, an advice note has been recommended in the conditions, noting that in the event of any Aboriginal artefact, object or structure being unearthed, all work must cease immediately in the affected area, and the Heritage NSW (HNSW) shall be informed of the discovery. Work must not recommence until the material has been inspected and permission has been given by HNSW to proceed.

Subject to conditions relating to unexpected finds procedures, the proposal is consistent with the requirements of this chapter.

Chapter B8 – Road network and parking

This section applies to development with the potential to impact on the existing road network or create demand for on-site parking.

The application includes a Traffic Impact Assessment (TIA) prepared by Stantec, Revision F, dated 24 January 2023, which assesses, access, traffic and car parking related impacts of the development. These key areas of impact are assessed in the following section.

Access

The main access to the school is located on Mount Hall Road, which accommodates walking, cycling, bus passengers and vehicles. Mount Hall Road is a local collector Road with two lanes of traffic and unrestricted parking on both sides. A one-way loop in the clockwise direction for vehicles is provided on Mount Hall Road, and this is used for school bus pick-up and drop-off as well as staff vehicle entries and exits. A second vehicular access to the western car park is located 12m further west from the bus bay.

The proposal does not include any changes to the sites existing driveway accesses. Deliveries and waste management would continue in line with existing operations within the eastern most car park where delivery bays and waste collection points already exist.

A dedicated bus zone provides space for up to four school buses directly outside the main entrance, two further bus stops are on Mount Hall Road, mainly serviced by public bus services.

Formalised student drop-off and pick-up occurs on Mount Hall Road to the west of the school, in a dedicated no parking zone during pick up and drop off times. Drop-off and pick-up also occurs in the bus bay, the informal parking area on TfNSW land to the west, and on Furracabad Close and Robert Campbell Drive to the east.

The TIA identifies that the school is generally well connected by the pedestrian network, noting that a number of shared paths run between residential properties in surrounding streets, as shown in **Figure 15** below. Formal pedestrian footpaths are provided along both sides of Mount Hall Road and a pedestrian refuge is located approximately 10m south-east of the school to facilitate pedestrian crossing of Mount Hall Road.



Figure 15: Existing Pedestrian network - extract from TIA

Traffic Impacts

The proposed alterations and additions would not increase the total number of students able to be accommodated at the school, subject to a number of demountables being removed, as identified in Figure 8 above. As a result the proposal does not generate additional traffic.

On-site Parking Provisions

The school currently utilises four car parking areas with a total of 108 spaces. As shown in **Figure 16** below, the four car parking areas are:

- Car Park A: 39 spaces used by visitors and staff;
- Car Park B: 40 spaces used by staff only;
- Car Park C: Approximately 30 spaces used for staff, deliveries and waste collection; and
- Car Park D: No defined spaces informally used over TfNSW land for drop-off/pick-up, staff and visitors.



Figure 16: Overview of Car Parking - extract from TIA

The existing school has a total supply of 108 car spaces which satisfies the car parking requirements of Figure BT of the DCP, based on a total of 69 employees, and 1,006 students, 232 of which are senior high school students (year 11 and 12). However, there is a shortfall of accessible car spaces and bike spaces, as outlined in **Table 5** below.

Table 5: Existing Car Parking Demand

DCP Requirement	Calculated demand	DCP	Existing Spaces	Shortfall/oversupply
1 Car space per employee	69 spaces	108 spaces	108 spaces	Oversupply of 10 spaces
1 Car space per 8 senior high school students	29 spaces			
2 bike spaces per 20 employees and students	101 bike spaces		40 spaces	Shortfall of 68 spaces
1 accessible car space per 20 car spaces	5 spaces		0 spaces	5 spaces

The proposed alterations and additions would not increase the total number of students able to be accommodated at the school, subject to a number of demountables being removed, as identified in Figure 8 above. As a result the proposal does not generate car parking demand.

However, the proposal includes the reconfiguration of car parking, which when the DA was originally lodged, resulted in the loss of 39 spaces by removing Car Park B, leaving 69 spaces to service the school.

Following a request for information, the car parking plan was amended to reinstate 40 spaces in a new location, resulting in 109 spaces to service the school, which exceeds the DCP car parking demand of 98 spaces identified in **Table 5** above. The reconfigured car park plan is shown in **Figure 17** below. Two (2) accessible spaces are proposed consistent with the recommendations of the BCA report provided with application. This is less than the 5 required

for the entire school, due to an existing shortfall, however it is sufficient to cater for the proposed buildings.

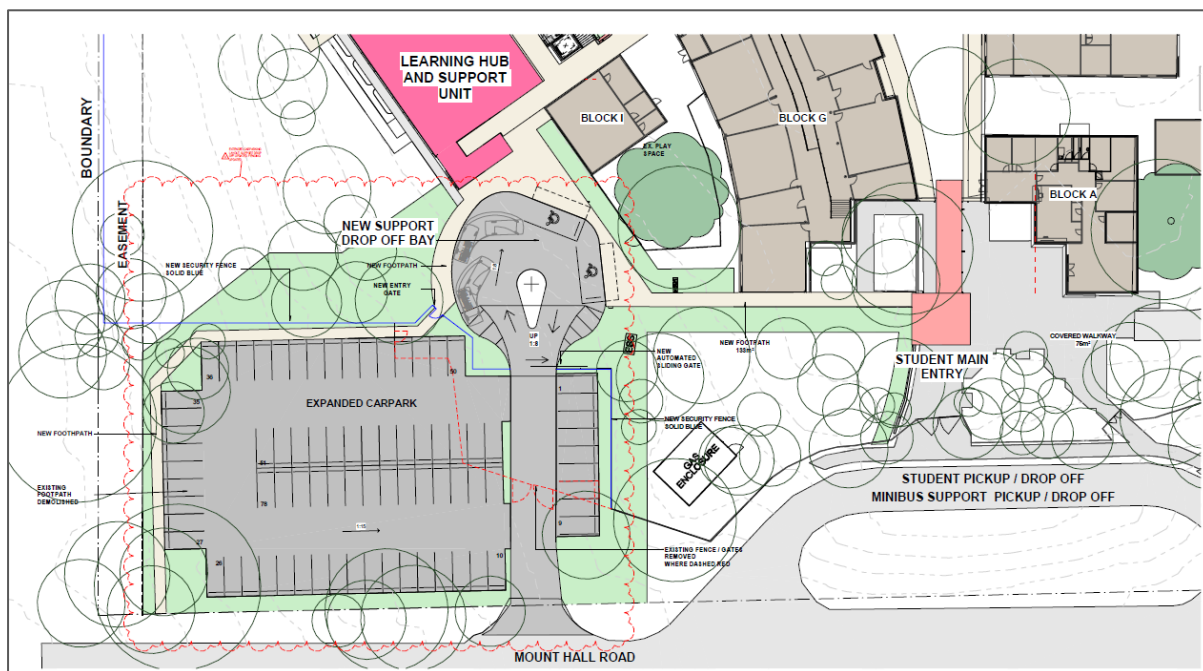


Figure 17: Proposed Car Parking Re-configuration

In regard to the bike space shortfall, it is noted that the school has operated satisfactorily with the existing 40 spaces and therefore the provision of further spaces in accordance with the DCP is not considered necessary.

On this basis, the traffic, access and car parking provisions of Chapter B8 are satisfied.

- *Port Stephens Local Infrastructure Contributions Plan 2020*

Fixed development contributions apply to the proposal, in accordance with Section 7.12 and the Port Stephens Local Infrastructure Contributions Plan 2020 (the LIC). A condition requiring the payment of this contribution has been included in the recommended draft consent conditions.

The applicant has requested an exemption from paying this fee. However, as no exemption exists in the LIC and this request is not supported.

(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, with the following matters being relevant to the proposal:

- Australian Standard AS 2601—2001: The Demolition of Structures.

These provisions of the 2021 EP&A Regulation have been considered and are addressed in the recommended draft conditions.

Section 64 includes provisions relating to fire safety, which may be imposed for certain proposals involving alterations and additions to an existing building if the existing measures contained within the building are inadequate. A site inspection of the building was undertaken on 24 October 2023 was carried out by Council's Fire Safety Officer, which determined that no upgrade to the existing building is required in accordance with Section 64.

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 in the locality must be considered. In this regard, potential impacts related to the proposal have been considered in response to SEPPs, LEP and DCP controls outlined above and the Key Issues section below.

The consideration of impacts on the natural and built environments includes the following:

- Context and setting – The proposal is considered to be generally consistent with the context of the site, in that the proposed alterations and additions to the school, despite the proposed height variation are of a low scale nature and sufficiently setback within the site to ensure that the building would cause no adverse impact to neighbouring residences and is a compatible bulk, scale and form for the surrounding low density residential setting.
- Access and traffic – The proposed development would not generate additional traffic or car parking demand as the proposal does not involve an increase to the number of students or teachers.
- Public Domain – The proposed building is setback a significant distance within the site, reducing its visibility from the public domain. Visual montages provided with the application show that the building is of a compatible bulk, scale and aesthetic with the surrounding residential environment when viewed from the key public vantage points including Mount Hall Road and other surrounding streets.

The proposed car park is located on the sites frontage to Mount Hall Road, with a sufficiently sized landscaped setback area between the car park and the public domain. The proposed landscaping includes hedging and small trees which appropriately screen the development from the street.

The proposed building is largely obscured from view from Mount Hall Road due to existing structures and vegetation.

- Utilities – The application includes a servicing strategy which demonstrates all essential services are available or can be made available for connection.
- Heritage – The site does not contain or adjoin any local or state listed heritage items and is not in a conservation area. The application includes an Aboriginal and Historical Heritage Due Diligence Assessment, prepared by Tocomwall dated 20 July 2022. The Due Diligence Assessment confirms there are no recorded Aboriginal sites within the study area and no Aboriginal objects were identified during the archaeological survey.

- Other land resources –The rear of the site contains small agricultural lots owned by the school and the Hunter River flood plain is located further to the west. The proposed stormwater system includes water sensitive design that ensures no adverse water quality impacts would occur to these resources. The land does not contain any other natural resources of significant value.
- Water/air/soils impacts – a Targeted Environmental Site Assessment (Site Assessment), prepared by WSP, Revision B and dated 8 November 2022 was submitted with the application. The Site Assessment included sub-surface testing across 21 test pits. The results from the sub surface testing did not identify the presence of any contamination at the location of the proposed works. Based on the test results, the Site Assessment concludes that the site is suitable for the proposed development, subject to the implementation of an unexpected finds protocol.
- Flora and fauna impacts - The application includes a Biodiversity Assessment Report which found no threatened flora or fauna species listed under the BC Act 2016 and EPBC Act 1999 in the study area. An assessment of significance determined the proposal is unlikely to have a significant impact to threatened species, populations or ecological communities assessed. The application was reviewed by Council's Natural Systems section who concurred with the findings of the Biodiversity Assessment Report.
- Natural environment – The application includes a Bulk Earthworks Plan and a Geotechnical Report. The proposed development involves balanced cut and fill to level the area of proposed construction, with a maximum cut of approximately 1.6m and fill of 1.8m. This relatively modest extent of cut and fill is not expected to cause any detrimental effect on drainage patterns and soil stability in the locality of the development.

The proposed cut and fill is not expected to result in any adverse environmental impacts, subject to conditions relating to sediment and erosion control.

- Noise and vibration – A Noise and Vibration Impact Assessment was submitted with the application. The assessment demonstrates that the cumulative emissions from the proposed development would satisfy the relevant criteria at all receivers. Construction noise and vibration can be managed through the recommended conditions of consent.
- Natural hazards – The site is not mapped as containing flood prone and bushfire prone land.
- Safety, security and crime prevention – a Crime Prevention Through Environmental Design statement was submitted with the application, confirming that the proposal is generally consistent with the principles of the Crime Prevention Through Environmental Design guidelines prepared by the NSW Police.
- Social impact – The development will promote the social welfare of the community through the provision of enhanced educational facilities for local students.
- Economic impact – The construction phase of the development will support construction jobs and have flow on multiplier benefits for material suppliers.
- Site design and internal design – The proposed building has been suitably located within the site to avoid amenity impacts to neighbouring residences in terms of

overshadowing, privacy, noise and visual impact. Similarly, the proposal has been sited to avoid the adverse effects natural constraints, including flooding and bushfire.

- Construction – Potential impacts from construction can be adequately mitigated through conditions of consent relating to construction hours and standard construction environmental management procedures to be added to the Preliminary Construction Environmental Management Plan submitted with the application.

Conditions of consent have been included, requiring works be undertaken, where possible, at times that minimise disruption to student learning, such as during school holidays.

Accordingly, it is considered that the proposal will not result in any significant adverse impacts in the locality as outlined above.

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

The proposed building has been suitably located within the site to avoid amenity impacts to neighbouring residences in terms of overshadowing, privacy, noise and visual impact. A Noise and Vibration Impact Assessment was submitted with the application. The assessment demonstrates that the cumulative emissions from the proposed development would satisfy the relevant criteria at all receivers.

Vegetation on the site primarily consists of planted trees, both native and non-native, as a result the biodiversity value of the site is low. The application includes a Biodiversity Assessment Report which found no threatened flora or fauna species listed under the BC Act 2016 and EPBC Act 1999 in the study area. An assessment of significance determined the proposal is unlikely to have a significant impact to threatened species, populations or ecological communities assessed. The application was reviewed by Council's Natural Systems section who concurred with the findings of the Biodiversity Assessment Report.

The proposed development does not include an increase to the school population and therefore no traffic impacts would occur.

Overall, there are no site constraints that would prohibit the proposed development.

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

These submissions are considered in Section 4 of this report.

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

The development does not have any significant adverse impacts on the built or natural environment, and has positive social and economic impacts.

The assessment concludes that the proposal is acceptable with regard to amenity impacts emanating from, noise, visual impact, including tree removal and overshadowing. The proposed built form is considered to be of an appropriate height, scale, and bulk for the locality.

The proposed removal of 29 trees will be adequately offset with new landscaping, including the planting of new Koala and Swift Parrot habitat trees throughout the site. The tree plantings are primarily located along the perimeter of the site where it interface residential land and the street, thereby maximising screening benefits.

The application included a Biodiversity Assessment Report (BAR) which found that the vegetation proposed for removal consisted of 0.24ha native remanent and planted species. The BAR found no threatened flora or fauna species listed under the BC Act 2016 and EPBC Act 1999 in the study area. An assessment of significance determined the proposal is unlikely to have a significant impact to threatened species, populations or ecological communities assessed. With regard to koala impacts the BAR confirms that 29 preferred koala feed trees will be removed as part of the proposal, which are proposed to be offset with 38 new plantings, thereby achieving compliance with the Port Stephens Comprehensive Koala Plan of Management.

Impacts to Aboriginal Heritage have been assessed in an Aboriginal and Historical Heritage Due Diligence Assessment. The Due Diligence Assessment confirms there are no recorded Aboriginal sites within the study area and no Aboriginal objects were identified during the archaeological survey.

The proposed development does not include an increase to the school population and therefore no traffic impacts would occur.

The proposal is consistent with the educational infrastructure related aims of the Hunter Regional Plan 2036.

Overall, the proposal is consistent with the relevant of environmental planning instruments applying to the land.

On balance the proposal is considered to be in the public interest.

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 5.

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

Table 3: Concurrence and Referrals to agencies

Agency	Concurrence/ referral trigger	Comments (Issue, resolution, conditions)	Resolved
Concurrence Requirements (s4.13 of EP&A Act)			
N/A			
Referral/Consultation Agencies			
Electricity supply authority	Section 2.48 – <i>State Environmental Planning Policy (Transport and Infrastructure) 2021</i>	Correspondence with the electrical supply authority, Ausgrid, has confirmed that the proposed works are in the vicinity of underground electricity assets. Accordingly,	Y

	Development near electrical infrastructure	Ausgrid recommended compliance with Ausgrid's Network Standard 156 - Working near or around underground cables during works.	
Transport for NSW	Section 3.58 - <i>State Environmental Planning Policy (Transport and Infrastructure) 2021</i> (Traffic Generating Development – Educational Establishment)	Referral correspondence from TfNSW raises no objection to the proposed development as it was considered there will be no significant impact on the nearby classified network. TfNSW offered advice comments relating to the loss of onsite car parking, management of construction traffic, internal management of traffic/pedestrian movements during operational phases and disability access. The advisory matters raised by TfNSW have been satisfactorily addressed, as outlined throughout this report.	Y
Department of Defence	Chapter B6 of the PSDCP for bird strike risk affecting RAAF Base Williamtown.	Referral correspondence from defence made no objection to the application and provided comments relating to aircraft noise and bird strike. Defence identified that the site is outside of the 2025 Australian Noise Exposure Forecast ANEF) for RAAF Base Williamtown and the Salt Ash Air Weapons Range. However, the subject site will experience some level of aircraft noise. As the site is outside of the ANEF no aircraft noise mitigation measures are required. In relation to Bird strike, Defence noted that the site is mapped as Bird Strike Group B and recommended the imposition of a condition for the management of organic waste to limit the risk of bird strike. This condition has been included in the recommended conditions of consent.	Y
Integrated Development (S 4.46 of the EP&A Act)			
N/A			

4.2 Council Officer Referrals

The development application has been referred to various Council officers for technical review as outlined **Table 6**.

Table 4: Consideration of Council Referrals

Officer	Comments	Resolved
Engineering	Council's Engineering Officer reviewed the submitted stormwater concept plan and considered that there were no objections subject to conditions.	Y
Building & Certification	A site inspection of the building was undertaken on 24 October 2023 was carried out by Council's Fire Safety Officer, which determined that no upgrade to the existing building is required in accordance with Section 64 of the EP&A Regulation 2021.	Y
Environmental Health	The Environmental Health officer reviewed the noise assessment and supported the development with conditions.	Y
Natural Systems	The Natural Systems Officer confirmed the proposed vegetation removal would not trigger entry into the biodiversity offset scheme and the application was supported with conditions relating to offset planting requirements.	Y
Vegetation Management	The Vegetation Management Officer supported the application with conditions requiring additional plantings in an amended landscape plan prior to the commencement of works.	
Development Contributions	The applicants request for a contributions reduction was not supported as no exemption exists within the Port Stephens Local Infrastructure Contributions Plan. Accordingly, a condition requiring the payment of Section 7.12 contributions was recommended.	Y
Heritage	The heritage officer Supported with conditions.	Y

The outstanding issues raised by Council officers are considered in the Key Issues section of this report.

4.3 Community Consultation

The proposal was notified on two occasions in accordance with Council's Community Participation Plan from 22 February 2024 to 8 March 2024 and 25 September 2023 to 9 October 2023. The notification included the following:

- An advertisement in the local newspaper – The Port Stephens Examiner;
- Notification on Council's website;
- Notification letters sent to adjoining and adjacent properties (a rough estimate of the number of letters sent);
- Notification on the Council's website.

Council received a total of 1 unique submission, comprising 1 objection against the proposal. The issues raised in these submissions are considered in **Table 7** below.

Table 5: Community Submissions

Issue	No of submissions	Council Comments
Stormwater, Noise and Fencing Proposed, development impacting drainage, as water run-off is an issue at back fence of submitters property Noise impacts and need for higher fencing.	1	The proposed building is approximately 170m from the submitter's property and the student capacity of the school is not proposed to change. There are no changes proposed to the storm water drainage near the submitter's property. Storm water from the proposed buildings is proposed to be directed to Mount Hall Road through a pit and pipe network. The proposed development would not cause any noise impacts to the submitter's property due to the distance from the proposed buildings and due to the student capacity not changing. In addition no changes to fencing are proposed at this location.

5. KEY ISSUES

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 Disagreement on Conditions

The proposal is a Crown DA, pursuant to Section 4.33 of the EP&A Act and a consent authority must not impose a condition without approval of the applicant or the Minister. The applicant was provided with a draft set of conditions and in response the applicant requested a number of minor miscellaneous changes to conditions. The conditions the applicant requested to be modified are documented at **Attachment B**. The requested changes to conditions are acceptable to Council with the exception of the request to delete the condition for S.7.12 contributions and a further engineering condition preventing the flood inundation of the ground floor of the proposed buildings.

The applicants reasoning for not supporting a condition for Section 7.12 contributions is as follows:

“Planning Circular D6 represents the consistently held view that the Department of Education, as a Crown authority, provides critical community infrastructure and that to levy any developer contribution on provision of public education facilities increases the cost of such infrastructure for all taxpayers in the State.”

However, Planning Circular D6 is a guideline published in 1995 and the applicant's position is contrary to the Port Stephens Local Infrastructure Contributions Plan 2020 (LIC Plan). The LIC Plan provides that an educational establishment is not subject to Section 7.11 Contributions. The LIC Plan states that all development that is not subject to Contributions under Section 7.11 of the EP&A Act is subject to Contributions under Section 7.12, with the exception of development identified as exempt from requirements to pay contributions under any applicable Ministerial Direction issued under Section 7.17 of the EP&A Act.

There is no Ministerial Direction that excludes educational establishments from the requirement to pay contributions and therefore it is considered that Section 7.12 contributions are applicable.

Further to this, local infrastructure contributions fund the facilities and services necessary to support growth. A shortfall in expected funding will impact Council's ability to deliver the planned infrastructure and upgrades in the works schedule of the LIC Plan such as shared paths and footpaths in the area surrounding the school. The applicable contribution for this DA would be a 1% levy on the estimated cost of the development, which at the time of the DA being lodged was \$19,215,132, equating to an \$192,151 contribution (subject to change based on a new cost estimate at the time of payment).

Council has consistently applied contributions on educational premises, including recently for DA 16-2020-230-1 for a TAFE Crown development at 1 Central Avenue, Salamander Bay and DA 16-2022-97-1 for alterations and additions to St Michael's School at 12 Sproule Street Nelson Bay. Advice consistent with this approach was also provided in September 2021 in response to an enquiry from Schools Infrastructure NSW regarding Irrawang High School which requested a waiver to the Section 7.12 contributions associated with a Complying Development Certificate (CDC). In the letter response, Council advised that Section 7.12 contributions would be applicable to the CDC.

For these reasons, Council considers it appropriate for any approval of the DA to include a condition relating to the payment of local infrastructure contributions, consistent with the Port Stephens LIC Plan.

The applicant also did not approve condition 2.2 of the recommended conditions which is intended to prevent flood inundation of the proposed buildings. The applicant suggested the following changes to the condition, shown in red below:

2) Civil engineering plans – Civil engineering plans prepared by a qualified Engineer, indicating drainage, roads, access ways, earthworks, pavement design, street lighting, details of line-marking, traffic management, water quality and quantity facilities including stormwater detention and disposal, must be prepared in accordance with the approved plans and Council's Infrastructure Specifications and include the following:

*a) Overland flows across the **entire** hydraulic catchment/s **for the new development** are to be controlled, up to and including the 1% Annual Exceedance Probability design rainfall event, so as to not create inundation of buildings or nuisance. Discharges of existing overland flow paths **that are impacted by the development** may be via infiltration or level spreading so as to not concentrate flows or otherwise create nuisance impacts offsite.*

Details demonstrating compliance must be provided to and approved by the Crown Certifier prior to the issue of Crown certification for any drainage works.

Note. Under the Roads Act 1993, only the Roads Authority can approve commencement of works within an existing road reserve.

The changes suggested by the applicant do not meet the original intent of the condition and essentially result in the condition having no effect, as it would now only involve controlling overland flows from new buildings, despite the problematic uncontrolled flows being generated by existing buildings. The uncontrolled flows generated by the existing buildings will inundate the lower floor of the proposed buildings unless appropriately catered for/diverted elsewhere across the site. For this reason, there is a clear nexus for a condition requiring these uncontrolled flows to be managed. Alternatively, the new buildings should be

raised above the flood level. Without this condition, the proposal is inconsistent with Chapter B5 – Flooding of the PSDCP.

Retention of these conditions is recommended to ensure compliance with the Port Stephens LIC Plan and Chapter B5 of the DCP. In accordance with Section 4.33 a consent authority must not impose a condition without approval of the applicant or the Minister. Whilst Council does not agree to removing the S.7.12 contributions condition the discretion to refer the matter to the Minister lies with the HCCRPP as the consent authority.

5.2 Traffic and Car Parking

The application includes a Traffic Impact Assessment (TIA) prepared by Stantec, Revision F, dated 24 January 2023, which assesses, access, traffic and car parking related impacts of the development.

The proposal does not include any changes to the sites existing driveway accesses. Deliveries and waste management would continue in line with existing operations within the eastern most car park where delivery bays and waste collection points already exist.

Following construction of the proposed 4 space car park, the school will have a total of 109 car spaces which satisfies the car parking requirements of Figure BT of the DCP, based on a total of 69 employees, and 1,006 students, 232 of which are senior high school students (year 11 and 12).

The proposed alterations and additions would not increase the total number of students able to be accommodated at the school. As a result the proposal does not generate car parking demand.

However, the proposal includes the reconfiguration of car parking, which when the DA was originally lodged, resulted in the loss of 39 spaces by removing Car Park B, leaving 69 spaces to service the school.

Following a request for information, the car parking plan was amended to reinstate 40 spaces (2 accessible) in a new location, resulting in 109 spaces to service the school, which exceeds the DCP car parking demand of 98 spaces.

On this basis, the traffic, access and car parking related matters are satisfactorily resolved.

5.2 Building Height Variation

The maximum height of the building is 11.4m which is a 26.7% exceedance of the 9m building height limit, as shown in **Figure 15** above.

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 subject to two preconditions 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.

These matters are considered in detail at **Attachment C** which confirms that the preconditions to the grant of consent have been satisfied having regard to the applicant's Clause 4.6 request.

The applicant's justification relies on the following key points:

- The height exceedance is primarily associated with the sites topography and establishing a level foundation for equitable access. In the alternative, a stepped building foundation in response with the topography will restrict access to some users.
- The percentage of the roof area that exceeds the height limit is restricted to a small portion of the total roof area, which is modest in relation to the scale of the building.
- The height exceedance is restricted to the central section of the architectural roof feature and decreases in height exceedance with the pitch of the roof structure.
- The building location is significantly setback from the road and surrounding properties, thereby avoiding amenity impacts such as overshadowing or excessive bulk and scale.
- Whilst the scale of the building is taller than the existing buildings located on the school site, the style and format of the building is considered to compliment the educational use of the site.
- The LEP building height of 9m is presumed to be based on the maximum typical building height of a two-storey residential dwelling. It is noted that school buildings are more akin to commercial buildings in their construction, requiring a greater floor to ceiling height.
- Schedule 6 of the Transport and Infrastructure (T&I) SEPP 2021 allows complying development for the purpose of schools to be built to a height of four storeys and a maximum of 22 metres.
- Educational premises are permissible within the R2 Low Density Residential Zone by virtue of the T&I SEPP. Therefore, school buildings which are typically taller than residential buildings can be expected in this zone and are reflective of the land use structure and hierarchy.

Overall, the proposed development is considered to be consistent with the objectives of Clause 4.6 given it will achieve a better outcome in these particular circumstances as the objectives of the development standard are achieved notwithstanding non-compliance.

Accordingly, it is recommended that the HCCRPP approve the Clause 4.6 variation to vary clause 4.3 – height of buildings.

5.3 Noise and vibration Assessment

The proposal presents the potential for noise generation from the proposed buildings and car park and associated operational changes.

A Noise and Vibration Impact Assessment (NVIA), prepared by JHA Engineers Project no. 220265, Revision C and dated 14 April 2023 was provided with the application which modelled the potential noise generation for the school, including sleep disturbance noise emissions. The Noise Assessment quantifies the potential operational noise emissions pertaining to vehicles, school bells, the public address (PA) system, mechanical plant associated with the proposed buildings and construction activities. In addition, the assessment quantifies the noise intrusion from the classified Road (Pacific Highway, in accordance with the requirements of SEPP (Transport and Infrastructure) 2021.

The NVIA recommends that the Public Address and School Bell Systems, would have a negligible noise impact to the nearest sensitive receivers subject to recommended noise

controls. Regarding vehicle generated noise the NVIA concludes that noise associated with additional traffic during both construction and operational phases is expected to be less than the maximum allowable increase of 2.0dB(A) specified under the NSW Road Noise Policy.

The NVIA also identifies that final mechanical plant selections have not been made; therefore, it is not possible to undertake a detailed assessment of the mechanical plant noise emissions. To address this, a condition of consent has been recommended requiring that further acoustic testing be undertaken prior to the issue of a construction certificate to ensure that the cumulative noise levels from the plant to the nearest noise sensitive receivers meets the NSW NPI noise level criteria.

Overall, the NVIA demonstrates that the cumulative emissions from the proposed development would satisfy the relevant criteria at all receivers subject to the implementation of the noise attenuation measures recommended in the NVIA. A condition of consent has been recommended to reflect the recommendations made in the NVIA.

The NVIA also assesses noise intrusion from the adjoining classified road and demonstrates that the noise can be attenuated to the relevant internal noise level of 40dB(A). Subject to conditions, in line with the Acoustic Report recommendations, the proposal complies with the NSW DECCW, Road Noise Policy (RNP) 2011 and NSW Road Maritime Service (RMS), Construction Noise and Vibration Guideline 2016) and therefore the requirements of this section are satisfied.

On this basis, the proposal is considered consistent with the requirements of the DCP.

5.4 Biodiversity Impacts

The site is mapped as containing Koala Habitat (Clear & Marginal), an Endangered Ecological Community (Lower Hunter Spotted Gum (Ironbark Forest)) and a Threatened Species or Community with Potential for Serious and Irreversible Impacts (Swift Parrot) which is listed on the biodiversity values map.

The application included a Biodiversity Assessment Report, prepared by MJD Environment, dated 22 May 2023 and an addendum dated 6th October 2023 which identifies the removal of 0.24ha of vegetation (0.20 native and 0.04 exotic) as part of the proposal.

The site is mapped on the NSW Biodiversity Values Map, however the site is zoned R2 – Low Density Residential. As the proposed development is being carried out on land that was subdivided prior to commencement of the *Biodiversity Conservation Act 2016*, the development is exempt from requiring a BDAR in accordance with Section 7.3(4) of the *Biodiversity Conservation Regulation 2017*.

The proposed development involves the removal of 0.20ha of Swift Parrot (*Lathamus discolor*) habitat, which is a Threatened Species with Potential for Serious and Irreversible Impacts. The Flora and Fauna Assessment, includes a test of significance which found that the proposed tree removal is unlikely to have a significant impact on the species, subject to compensatory plantings totalling 38 trees.

The proposal involves the removal of 29 preferred koala feed trees and therefore the Port Stephens Comprehensive Koala Plan of Management (CKPoM) applies.

The proposal demonstrates avoidance of koala feed trees where possible, however, avoidance of all trees is not practical due to the layout of existing infrastructure.

The biodiversity value of the trees to koalas is minimal given there is no koala population in the locality, the site does not form part of a koala corridor and is fenced with palisade fencing. Notwithstanding, compensatory planting of 38 koala/parrot habitat trees is proposed within the site boundaries which is appropriate given the sites limited capacity to support koalas. Accordingly, the proposed development complies with the performance criteria listed in Appendix 4 of the Port Stephens CKPOM.

Overall, the proposal would not cause any unacceptable impacts to biodiversity and the proposal is consistent with the requirements of the *Biodiversity Conservation Act 2016* and CKPoM.

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. 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 can be supported.

The proposed building has been suitably located within the site to avoid amenity impacts to neighbouring residences in terms of overshadowing, privacy, noise and visual impact.

It is considered that the key issues pertaining to traffic and car parking, building height, noise and vibration and biodiversity impacts have been satisfactorily resolved, subject to the recommended conditions have been resolved satisfactorily through amendments to the proposal and/or in the recommended draft conditions at **Attachment A**.

7. RECOMMENDATION

That the Development Application 16-2023-42-1 for Alterations and additions to an Educational Establishment – Irrawang High School at 80 Mount Hall Road be APPROVED pursuant to Section 4.16(1)(a) of the *Environmental Planning and Assessment Act 1979* subject to the recommended conditions of consent attached to this report at **Attachment A**.

The following attachments are provided:

- Attachment A: Recommended conditions of consent
- Attachment B: Applicant's comments on conditions of consent
- Attachment C: Clause 4.6 Assessment
- Attachment D: Architectural Plans
- Attachment E: Stormwater and Civil Plans
- Attachment F: Landscape Plans
- Attachment G: Acoustic Assessment - DA 16-2023-42-1 - 80 Mount Hall Road Raymond Terrace
- Attachment H: Access Report
- Attachment I: BCA Report
- Attachment J: CPTED
- Attachment K: Waste Management Plan
- Attachment L: Preliminary CEMP
- Attachment M: Sustainable Development Plan
- Attachment N: Geotechnical Report
- Attachment O: Arborist Report
- Attachment P: Arborist Report Addendum
- Attachment Q: Biodiversity Assessment