

## COUNCIL ASSESSMENT REPORT

### HUNTER AND CENTRAL COAST REGIONAL PLANNING PANEL

<b>PANEL REFERENCE &amp; DA NUMBER</b>	PPSHCC-197 – DA 16-2023-259-1
<b>PROPOSAL</b>	Alterations and additions to Educational Establishment (Hunter River High School) – new gymnasium, sports field, landscaping, car parking and service road
<b>ADDRESS</b>	36, 38 & 40 Elkin Avenue HEATHERBRAE LOT: 1 DP: 120189, LOT: 1 DP: 579025 & LOT: 1 DP: 540114
<b>APPLICANT</b>	Barr Property and Planning Pty Ltd
<b>OWNER</b>	NSW Department of Education c/o School Infrastructure NSW
<b>DA LODGEMENT DATE</b>	24 May 2023
<b>APPLICATION TYPE</b>	Crown Development Application
<b>REGIONALLY SIGNIFICANT CRITERIA</b>	Clause 4, Schedule 6 of State Environmental Planning Policy (Planning Systems) 2021: Crown Development over \$5 million
<b>CIV</b>	\$8,808,349 (excluding GST)
<b>CLAUSE 4.6 REQUESTS</b>	N/A
<b>KEY SEPP/LEP</b>	<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>
<b>TOTAL &amp; UNIQUE SUBMISSIONS ISSUES KEY IN SUBMISSIONS</b>	2 unique submissions
<b>DOCUMENTS SUBMITTED FOR CONSIDERATION</b>	Refer to attachments
<b>SPECIAL INFRASTRUCTURE CONTRIBUTIONS (\$7.24)</b>	N/A

<b>RECOMMENDATION</b>	Approval
<b>DRAFT CONDITIONS TO APPLICANT</b>	Yes
<b>SCHEDULED MEETING DATE</b>	6 December 2023
<b>PLAN VERSION</b>	14 April 2023 Version No F
<b>PREPARED BY</b>	EJE Architecture
<b>DATE OF REPORT</b>	29 November 2023

## EXECUTIVE SUMMARY

The proposal seeks consent for alterations and additions to an educational establishment – Hunter River High School. Specifically, the proposal involves:

- Construction of gymnasium (Block Y), consisting of a basketball court, equipment storage, canteen kitchen, staff room, first aid room and change room amenities;
- Construction of hardstand outdoor space north of the gymnasium;
- Construction of full-size rugby league field;
- Construction of new carpark consisting of sixty-six (66 parking spaces, including 6 accessible spaces);
- Extension of existing internal service Road to connect with new proposed car park;
- Relocation of two (2) existing 4.5KI LPG cylinders (9T storage capacity);
- Sewer construction;
- Ancillary works including the removal of 64 trees and compensatory plantings; and
- Demolition of an existing car park consisting of 24 spaces (including concrete slab), driveways and fencing.

The proposed development does not increase the student or staff population, but rather provides additional facilities to service the needs of the school. The number of students currently enrolled is 842 and the number of staff currently employed at the school is 89 Fulltime equivalent (FTE) staff. There are currently no consented limits restricting student numbers.

The subject site comprises three (3) allotments, including 36, 38 & 40 Elkin Avenue Heatherbrae, legally identified as follows:

- Lot 1 in Deposited Plan 120189;
- Lot 1 in Deposited Plan 540114; and
- Lot 1 in Deposited Plan 579025.

The site is irregular in shape and measures 9.2ha in size (See **Figure 1**). The majority of school buildings and a large playing field are located on Lot 1 DP 120189. Lot 1 DP 540114 is located to the west of Lot 1 DP 120189 and contains several demountable buildings, two basketball courts and open space. Lot 1 DP 579025 is the rear allotment and contains a single classroom block and several paddocks used for small scale agricultural activities.

The site is generally flat, with the exception of the northern portion which has a significant level change from 7.5m AHD to 1.5m AHD on a north/south transect. The Hunter River is located approximately 900m north of the site. The site is not traversed by any watercourses or waterbodies. The site is subject to flood inundation, which increases towards the north of the site, where the topography slopes steeply downhill towards the Hunter River.

The site is mainly cleared to support the existing buildings, car parking, agricultural paddocks and expansive playing fields. There is scattered vegetation throughout the site and a concentration of planted trees to the sites Pacific Highway frontage. A small portion in the north west of the site is mapped as wetlands under the Port Stephens Local Environmental Plan 2014.

Vehicular access to the site is available from two locations, including the western termination of Elkin Avenue and the Pacific Highway. A dedicated drop off bay with turning head within the Elkin Avenue road reserve also exists, enabling bus and parent drop off/pick up. Eighteen (18) school bus routes stop at this location. Pedestrian access is available at two points on Elkin Avenue.

The site is located within an existing residential area zoned R2 Low Density Residential, located approximately 4km from Raymond Terrace town centre. Land immediately to the north is also zoned R2 Low Density residential. Part of this R2 land has previously been developed into small number of allotments, while a larger 4.3ha area remains undeveloped with an active development consent for 48 lots approved under DA 16-20221-1156-1 in March 2023 at 5 Speedy Lock Lane. A caravan park, zoned RE2 Private Recreation is also located to the north. Further north is RU2 Rural landscape zoned land, primarily used for agricultural purposes. Land zoned R5 Large lot residential land is located to the southwest. To the south east on the opposite side of the Pacific Highway the land is zoned E3 Productivity Support and E4 General Industrial. An irregular shaped parcel of land zoned RE1 Public Recreation adjoins the rear of the site to the west and extends to waterfront of the Hunter River.

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 integrated development pursuant to Section 4.46 of the *Environmental Planning and Assessment Act 1979* ('EP&A Act') as the proposal is a special fire protection purpose that requires approval from the NSW Rural Fire Service (RFS) in accordance with Section 100B of the Rural Fires Act 1997. A referral was sent to the RFS who made no objection to the proposal and issued General Terms of Approval. Integrated referral was also sent to Heritage NSW (HNSW) for an Aboriginal Heritage Impact Permit (AHIP) under Section 90 of the National Parks and Wildlife Act 1974. HNSW made no objection to the application and issued General Terms of Approval.

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.

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 7.6 of the Port Stephens Local Environmental Plan 2013 in relation to the

provisions of essential services.

The proposal was notified in accordance with Council's Community Participation Plan from 31 May 2023 until 14 June 2023. Council received a total of 2 unique submissions, comprising 2 objections. The issues raised in these submissions relate to traffic and parking, amenity impacts, tree removal, community consultation and construction and vibration impacts. 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.

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. This is discussed in further detail in the key issues section.

A briefing was held with the Panel on 18 July 2023 where key issues were discussed, including management of vehicle and pedestrian movements, car parking, concurrent Part 5 assessment, visual impacts, tree removal and offset planting.

Following detailed assessment of the proposal the key issues can be summarised as follows:

1. *Section 7.12 Contributions* - 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.
2. *Noise* - 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.
3. *Flooding* – The proposed development is located on flood prone land categorised as minimal risk flood prone land. The application includes a Flood Impact Assessment and a Flood Emergency Response Plan (FERP). The proposed development is generally consistent with the requirements of the DCP and LEP flood controls.
4. *Aboriginal Heritage* – The application includes an Aboriginal Cultural Heritage Assessment Report, which concludes that an Aboriginal Heritage Impact Permit (AHIP) under Section 90 of the National Parks and Wildlife Act 1974 will be required. Accordingly, the application was referred to Heritage NSW as integrated development. In response HNSW made no objection to the application and issued General Terms of Approval.
5. *Traffic, car parking and pedestrian movements* - The application includes a Traffic Impact Assessment which identifies that the proposed development does not generate additional traffic as no change to student or teacher numbers is proposed.

The proposal will provide additional parking, thereby improving the historical car parking shortfall of 47 spaces, which would be reduced to a shortfall of only 5 spaces.

6. *Sewer Connection* – The proposal includes a sewer servicing strategy with various options for connection. The preferred connection point is through the yet to be constructed residential development at Speedy Lock Lane. A condition is recommended requiring sewer connection in accordance with the servicing strategy.
7. *Contamination* - Contamination and remediation has been considered in the detailed Site Investigation (DSI) for contamination and Remediation Action Plan (RAP). The proposal is satisfactory subject to conditions relating to remediation.

Following a detailed assessment of the proposal, pursuant to Section 4.16(1)(a) of the *EP&A Act*, DA 16-2023-259-1 is recommended for approval subject to the reasons contained at **Attachment A** of this report.

## **2. THE SITE AND LOCALITY**

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### **1. The Site**

The subject site comprises three (3) allotments, including 36, 38 & 40 Elkin Avenue Heatherbrae, legally identified as follows:

- Lot 1 in Deposited Plan 120189;
- Lot 1 in Deposited Plan 540114; and
- Lot 1 in Deposited Plan 579025.

The site is irregular in shape and measures 9.2ha in size (See **Figure 1**). The majority of school buildings and a large playing field are located on Lot 1 DP 120189. Lot 1 DP 540114 is located to the west of Lot 1 DP 120189 and contains several demountable buildings, two basketball courts and open space. Lot 1 DP 579025 is the rear allotment and contains a single classroom block and several paddocks used for small scale agricultural activities. Vehicular access to the site is available from two locations, including the western termination of Elkin Avenue and the Pacific Highway. A dedicated drop off bay with turning head within the Elkin Avenue Road reserve also exists, enabling bus and parent drop off/pick up. Eighteen (18) school bus routes stop at this location. Pedestrian access is available at two points on Elkin Avenue.

Staff parking is provided in two locations, one accessed at the western termination of Elkin Avenue (Car Park 1) and the other from the Pacific Highway (Car Park 2). Car park 1 consists of thirty-one (31) car parking spaces, including two (2) accessible spaces. Car Park 2 consists of fifty-five (55) parking spaces.

The site is generally flat, with the exception of the norther portion which has a significant level change from 7.5m AHD to 1.5m AHD on a north/south transect. The Hunter River is located approximately 900m north of the site. The site is not traversed by any watercourses or waterbodies. The site is subject to flood inundation, which increases towards the north of the site, where the topography slopes steeply downhill towards the Hunter River.

The site is mainly cleared to support the existing buildings, car parking, agricultural paddocks and expansive playing fields. There is scattered vegetation throughout the site and a concentration of planted trees to the sites Pacific Highway frontage. A small portion in the north west of the site is mapped as wetlands under the LEP.



A 'transmission line' is identified traversing the south east corner of the site on the Deposited Plan of Lot 1 in Deposited Plan 540114 and another crossing the middle of Lot 1 DP 579025 on an south west/north east transect. There are no other easements, restrictions or covenants identified on title. The site is not connected to reticulated sewer and currently utilises a septic system to manage effluent.



**Figure 1:** Aerial of subject site

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

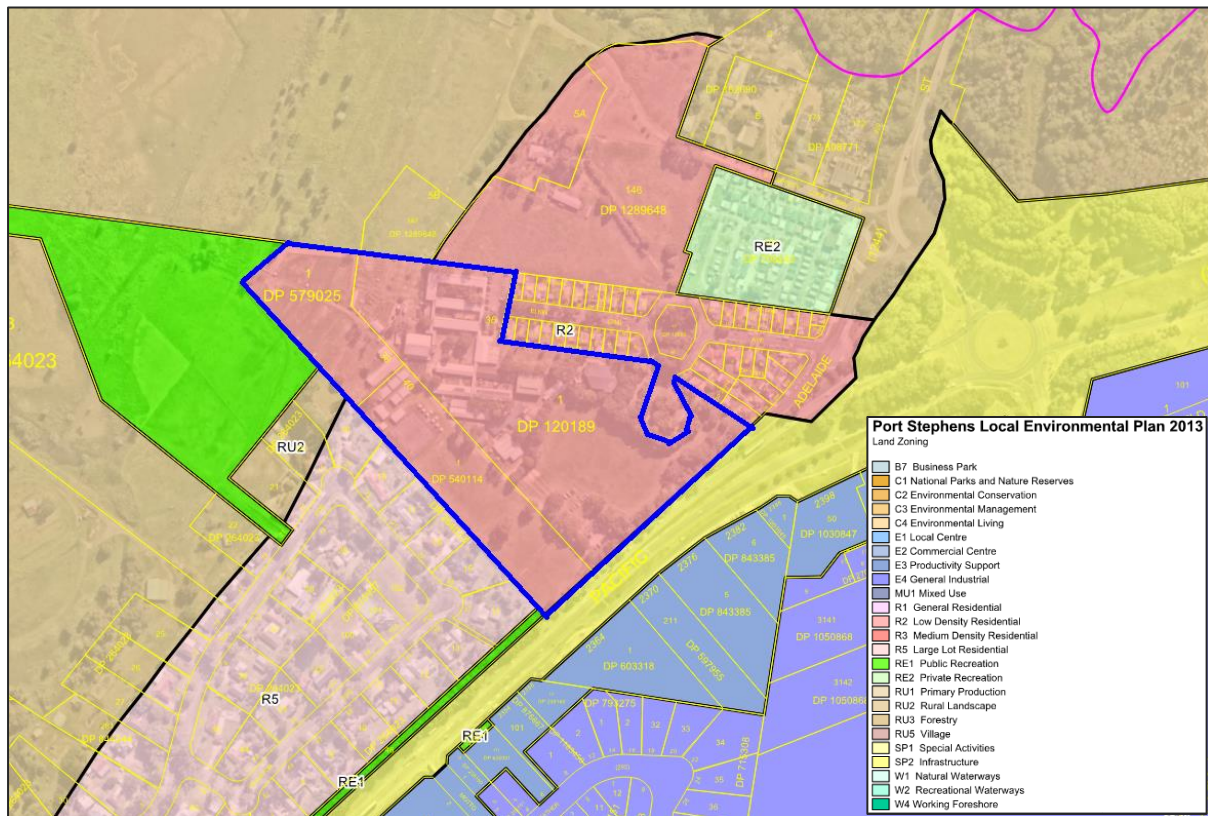
- Acid Sulfate Soils – class 4 and 2;
- Weed infestation;
- Bushfire Prone Land – Category 3 and buffer;
- Koala Habitat Planning Map – Clear;
- NSW Wildlife Atlas – Koala;
- Endangered Ecological Community – Swamp Schlerophyll Forest;
- RAAF Base Williamtown Height Trigger Map – Refer structures higher than 45m;
- Birstrike Group A;
- Wetland – LEP; and
- Flood Prone Land (Flood Planning Area and Probable Maximum Flood).

## 2. The Locality

The proposal is located within Port Stephens Local Government Area (LGA) within the suburb of Heatherbrae, approximately 23.6km north of the Newcastle Central Business District. 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 4km south of the Raymond Terrace town centre.

The site is located within an existing residential area, zoned R2 Low Density Residential, as shown in **Figure 2** below. Land immediately to the north is also zoned R2 Low Density

residential. Part of this R2 land has previously been developed into small number of allotments, while a larger 4.3ha area remains undeveloped with an active development consent for 48 lots approved under DA 16-20221-1156-1 in March 2023 at 5 Speedy Lock Lane. A caravan park, zoned RE2 Private Recreation is also located to the north. Further north is RU2 Rural landscape zoned land, primarily used for agricultural purposes. R5 Large lot residential land is located to the southwest. To the south east on the opposite side of the Pacific Highway the land is zoned E3 Productivity Support and E4 General Industrial. An irregular shaped parcel of land zoned RE1 Public Recreation adjoins the rear of the site to the west and extends to waterfront of the Hunter River.



**Figure 2:** Aerial of overall site and zoning

### 3. THE PROPOSAL AND BACKGROUND

#### 1. The Proposal

The proposal seeks consent for alterations and additions to an educational establishment – Hunter River High School, as shown in **Figure 3**. Specifically, the proposal involves:

- Construction of gymnasium (Block Y), consisting of a basketball court, equipment storage, canteen kitchen, staff room, first aid room and change room amenities;
- Construction of hardstand outdoor space north of the gymnasium;
- Construction of full-size Rugby League Field;
- Construction of new carpark consisting of sixty-six (66) parking spaces, including 6 accessible spaces);
- Extension of existing internal service Road to connect with new proposed car park;
- Relocation of two (2) existing 4.5Kl LPG cylinders (9T storage capacity);
- Sewer construction;
- Ancillary works including the removal of 64 trees and compensatory plantings; and

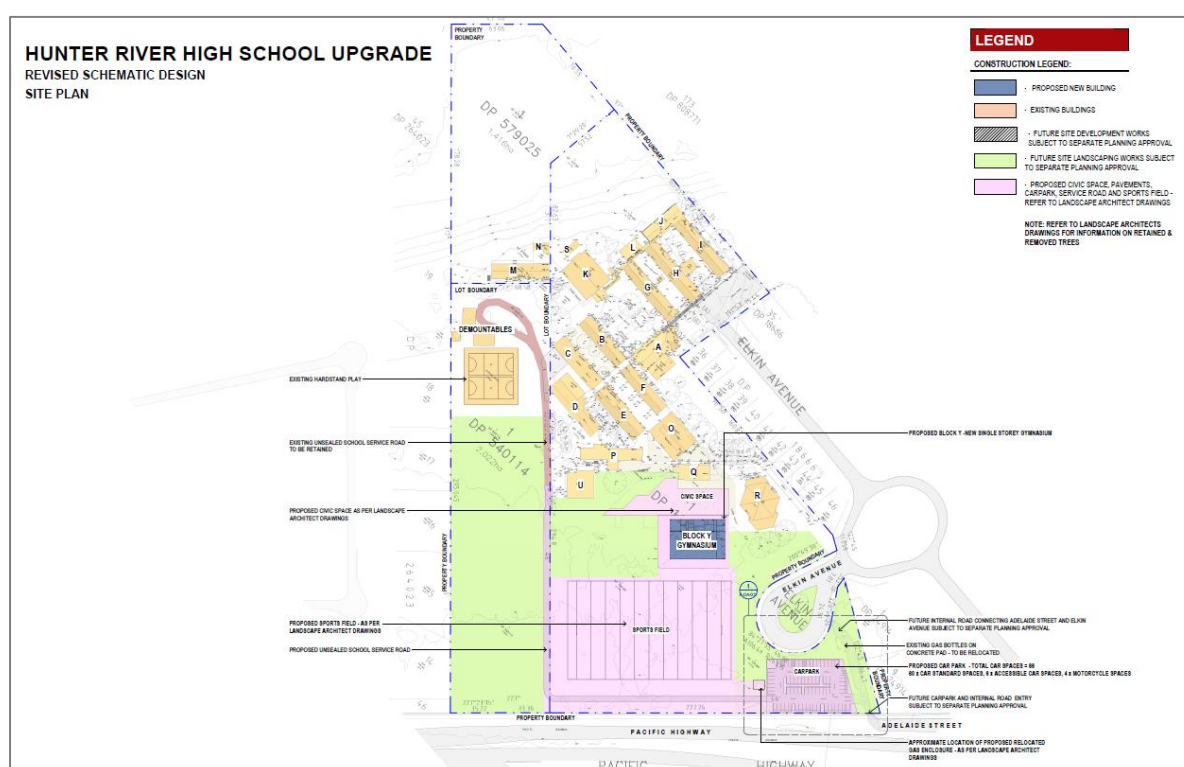


- Demolition of an existing car park consisting of 24 spaces (including concrete slab), driveways and fencing.

The proposed development would be integrated with the existing education establishment and continue to operate within the existing school operating hours, which are as follows:

- Students on site between 8am - 4pm Monday, Tuesday, Wednesday and Thursday and 8am – 1:50pm Friday;
- Staff on site between 7am – 5pm Monday to Friday; and
- Occasional school functions and other community uses outside of these times.

The proposed development does not increase the student or staff population, yet provides additional facilities service the needs of the school. The number of students currently enrolled is 842 and the number of staff currently employed at the school is 89 Fulltime equivalent (FTE) staff.



**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	842 (enrolled for 2023)

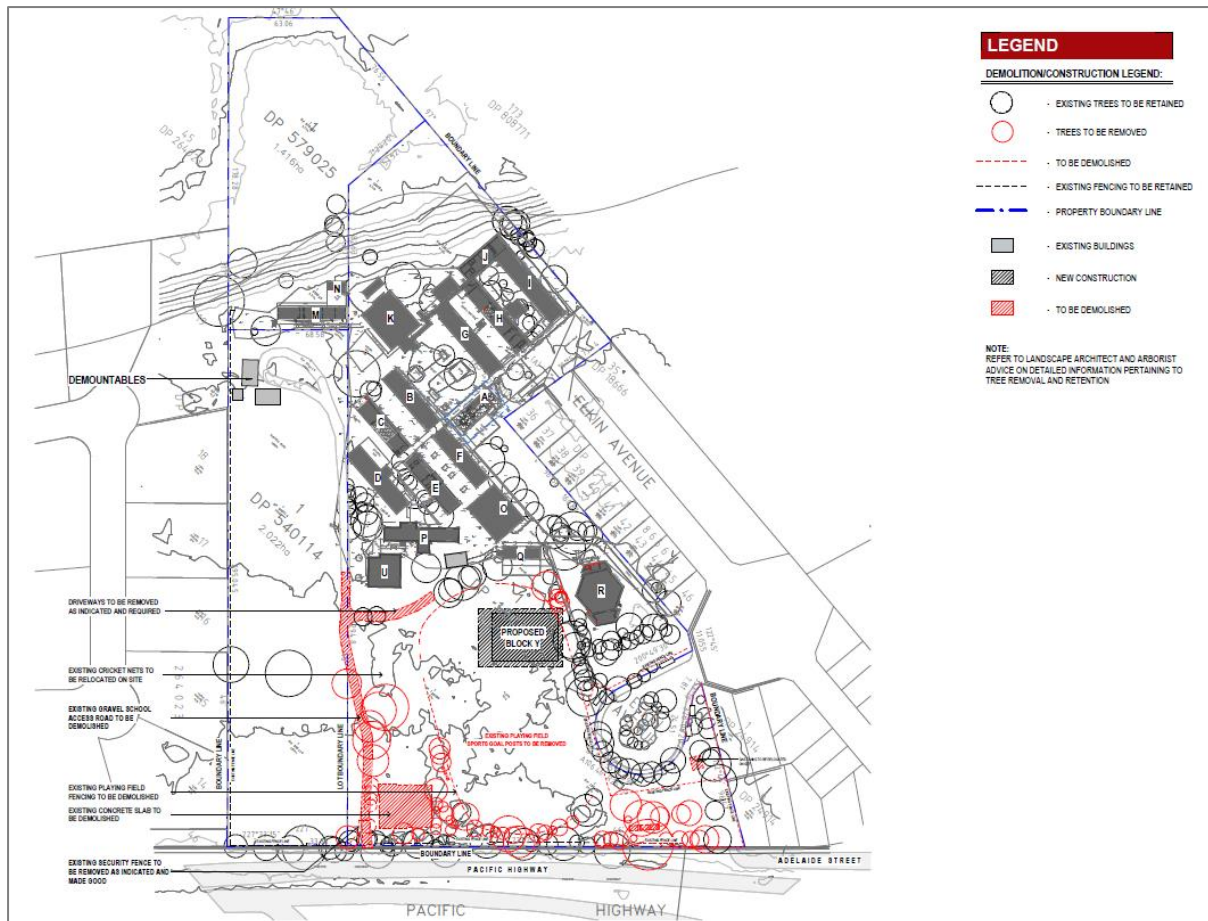


Proposed Student Numbers	No change
Existing Staff Numbers	89 (fulltime equivalent)
Proposed Staff Numbers	No change
Site area	9.2ha
GFA	1,017.5m <sup>2</sup>
Clause 4.6 Requests	N/A
Max Height	8.98m
Landscaped area	7.9ha (86%) including turfed areas
Existing Car Parking Spaces	55
Proposed Car Parking spaces	97
Setbacks	<u>Gymnasium</u> Minimum 50m from eastern boundary <u>Car Park</u> Minimum 1m from southern boundary (Pacific Highway) <u>Sports field</u> Minimum 14.5m from the eastern boundary (Elkin Avenue turning head)

### Demolition and Tree Removal

The proposal includes demolition of an existing car park consisting of 24 spaces (including concrete slab), driveways and fencing, as shown in **Figure 5** below.

The proposal includes the removal of 64 trees (see **Figure 5**) to facilitate the proposed development. The proposed tree removal includes the removal of a mix of native and non-native species. Replacement tree plantings are proposed at a 1:1 replacement ratio, including trees consisting of predominately the same species as those being removed, some of which also hold ecological value, such as koala feed trees.



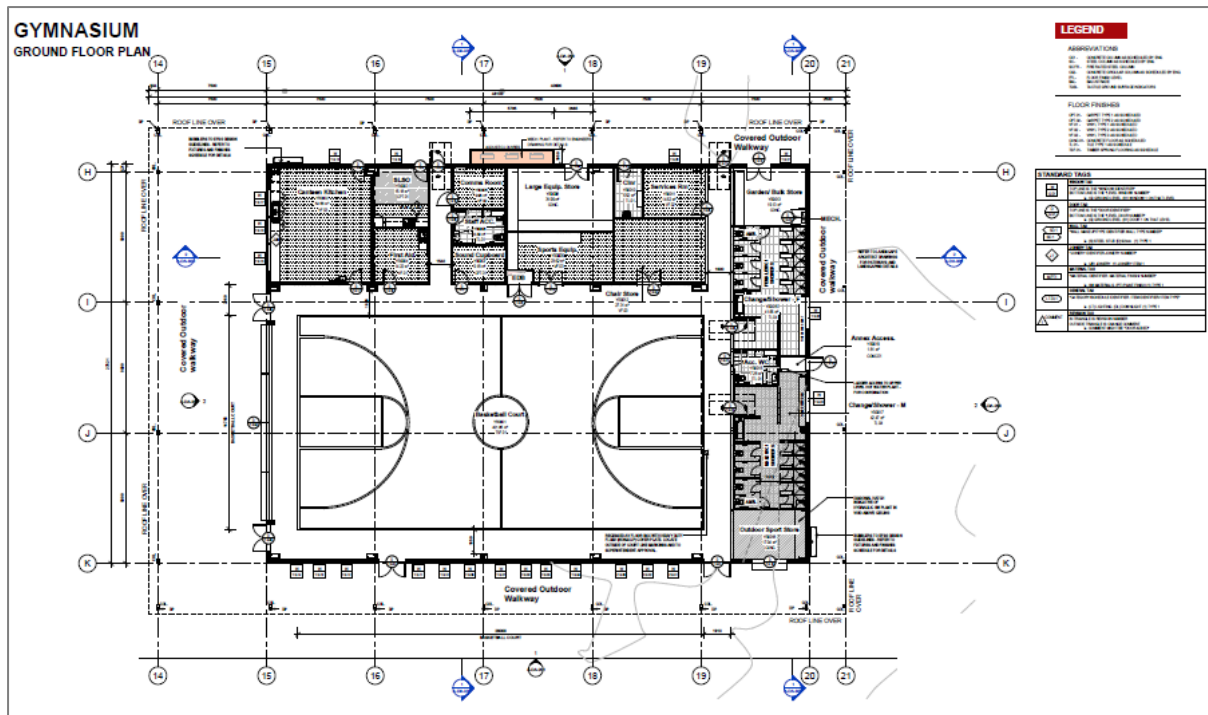
**Figure 5: Proposed Demolition Plan**

## Gymnasium

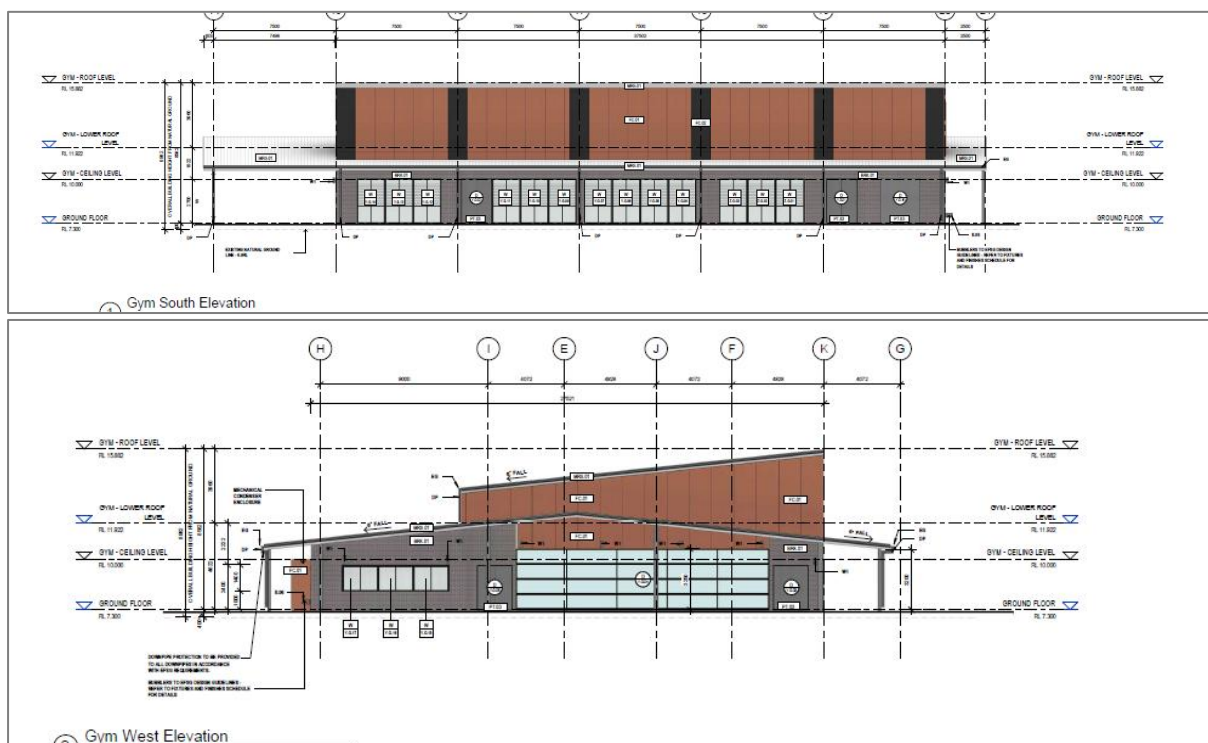
The proposed gymnasium is a single storey building, with dimensions of 37 metres in length and width of 27.5m, resulting in a gross floor area of approximately 1,017.5m<sup>2</sup>, as shown in **Figure 6 and 7** below. The maximum height of the building is 8.9m above existing ground level. The gymnasium façade is proposed to be constructed of primarily brickwork and fibre cement cladding with a colour pallet consisting of earthy tones.

The gymnasium includes a basketball court, equipment storage, canteen kitchen, staff room, first aid room and change room facilities including showers and amenities.

The application explains that the building can be utilised by external groups as a shared community facility in accordance with the NSW Department of Education's 'Sharing of School Facilities Policy'.



**Figure 6:** Proposed Gymnasium Floor Plan



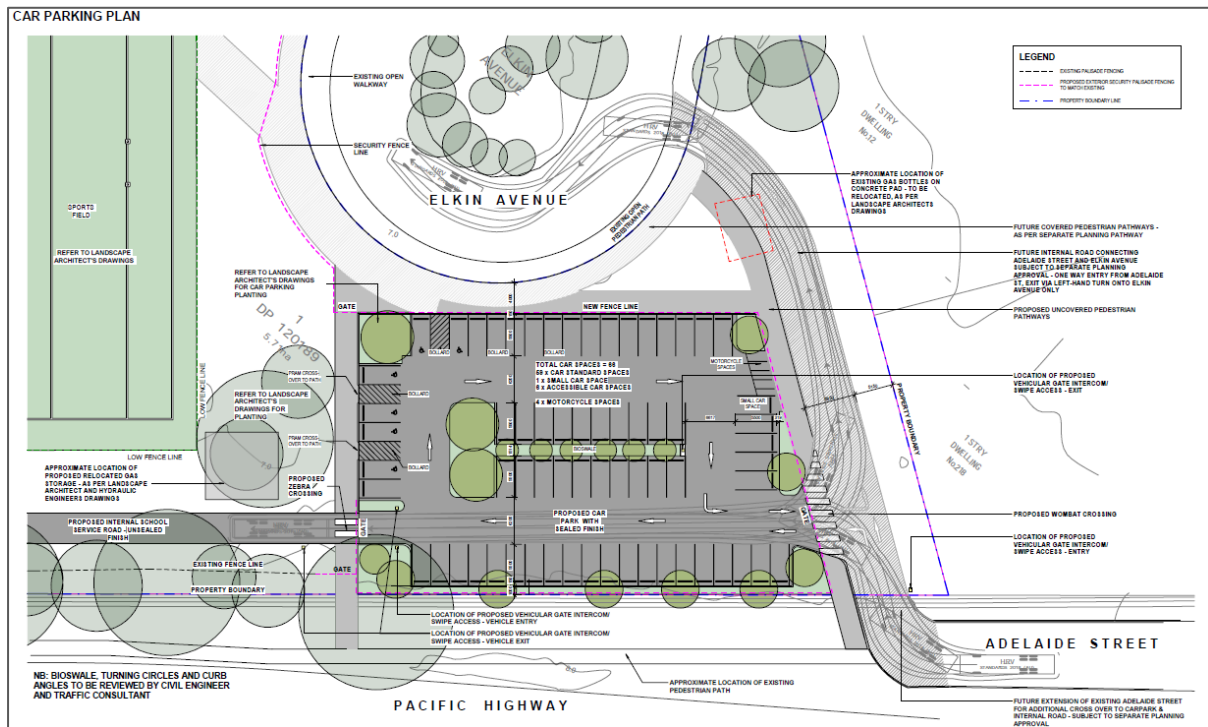
**Figure 7:** Proposed Gymnasium Elevations

### Parking and Access

A sixty-six (66) space car park, including 6 accessible spaces is proposed toward the sites Pacific Highway frontage, with access via a proposed one way road that would carry vehicles from Adelaide Street to Elkin Avenue, as shown in **Figure 8** below.

The proposed car park is proposed to be set back 1m from the Pacific Highway boundary where a small landscape buffer is proposed, consisting of mass planted ground cover species and 4 feature trees.

An existing vehicular access located off the Pacific Highway is proposed to be closed, as shown in the demolition plan at **Figure 5** above. The new road between Elkin Avenue and Adelaide Street to be approved under Part 5 is required to facilitate access to the new car park proposed under this DA.



**Figure 8: Proposed Car Park Layout**

## Landscaping

The proposed landscaping scheme includes a combination of large trees, amenity plantings and screening shrubs, predominately consisting of native and drought tolerant species.

A hardstand outdoor space is proposed immediately to the north of the gymnasium. A row of existing trees to the north of the space is proposed to be retained to provide shade coverage. The hardstand space also includes sandstone block seating which delineates the spaces from the adjacent turfed area which includes 6 shade/feature trees.

Koala feed tree offset plantings are proposed in the north west of the site. The proposed offset plantings include 4 *Eucalyptus robusta* and 4 *Corymbia maculata* at 45L pot size.

The proposed car park on the Pacific Highway frontage includes shade tree plantings which provide approximately 48% landscape coverage. A small 1m landscape buffer is proposed between the car park and the Pacific Highway which includes shade trees and mass plantings.

## Stormwater and Drainage

The existing school discharges stormwater directly onto the grassed and agricultural areas located toward the rear of the site.

The proposed stormwater system includes conveyance of stormwater through a pit and pipe systems and discharged via an absorption trench which filtrates over a 60m<sup>2</sup> lawn area



between the proposed gymnasium and Building Q. The proposed car park includes drainage to a second absorption trench which filtrates over a 60m<sup>2</sup> lawn area. Stormwater quality treatment devices are included for water quality treatment.

### **Servicing**

The proposal includes a servicing strategy which proposes connecting the gymnasium and other future development to reticulated sewer. Specifically, an extension of sewer is proposed from the neighbouring site at 5 Speedy Lock Lane, which has approval for a 48 lot residential subdivision.

The existing buildings on site are not proposed to be connected to reticulated sewer at this time and will continue to utilise an existing on site sewer management system. The strategy also details connection to other essential services including water and electricity.

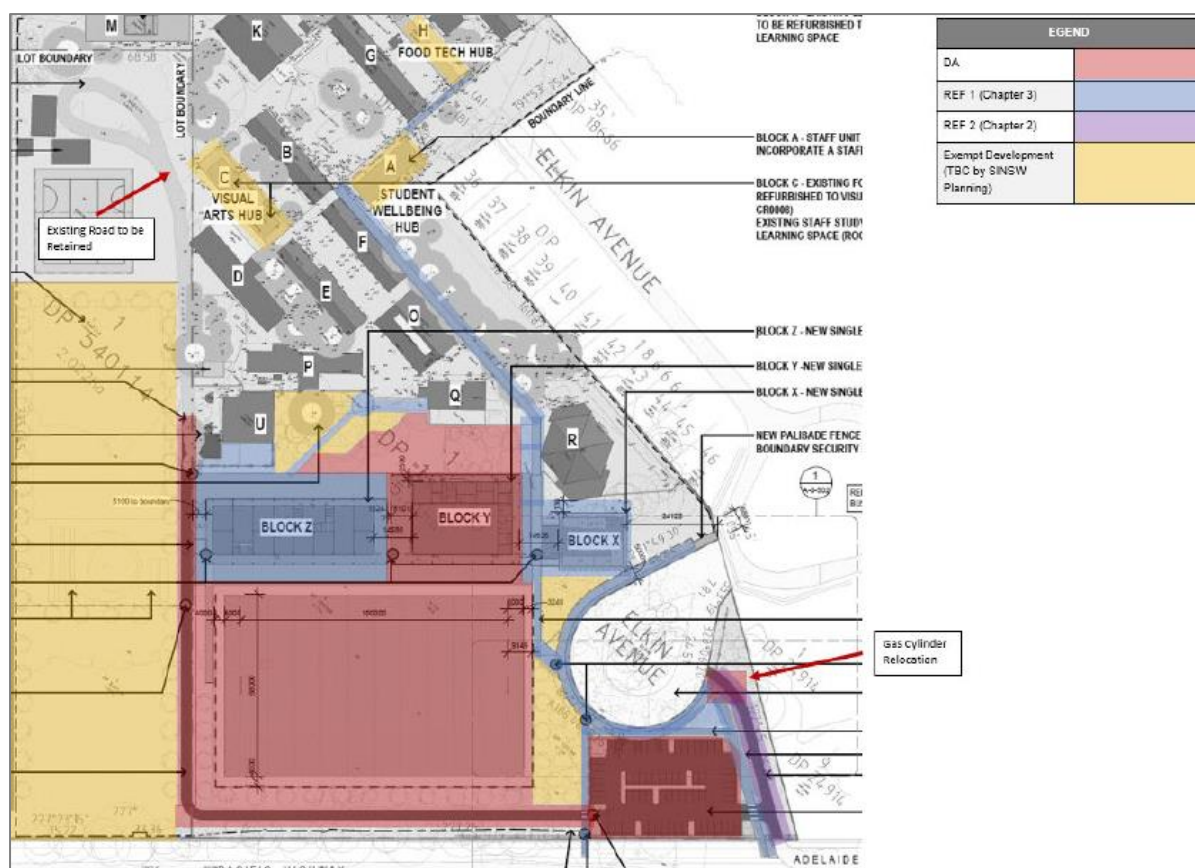
Separate to the proposed servicing strategy, the proposal involves relocation of two (2) existing 4.5KI LPG cylinders (9T storage capacity).

## **2. Background**

Hunter River High School is a co-educational high school, accommodating 842 students for the 2023 enrolment year. The school was established in 1956.

The proposed development, including new gymnasium, sports field, landscaping, car parking and service road is part of a larger suite of works to be carried out at the school. In addition to the proposed works that require development consent under Part 4 of the EP&A Act, further development is planned across the school site as exempt development or in accordance with Part 5 of the EP&A Act. Including construction of a new single storey Support Learning Hub, new single storey administration building, covered pedestrian walkways, construction of a new road between Elkin Avenue and Adelaide Street, new Kiss and drop zone, installation of reticulated water, electricity and sewer. The additional works, which are not subject to this application are shown in **Figure 9** below for context only.

The new road between Elkin Avenue and Adelaide Street to be approved under Part 5 is required to facilitate access to the new car park proposed under this DA.



**Figure 9:** Additional works not subject to this application shown in blue, purple and yellow

A pre-lodgement meeting was held prior to the lodgement of the applicant on 5 December 2022. A summary of the key issues raised during the meeting is outlined below:

- Contamination
- Bushfire threat
- Acoustic impacts
- Construction management procedures to minimise disruption to students
- Crime prevention through environmental design
- Aboriginal Heritage impacts
- Acid sulfate soils
- Waste management
- Flooding impacts
- Stormwater
- Traffic and car parking
- Biodiversity impacts
- Design quality principles within Section 3.36 of SEPP (Transport and Infrastructure) 2021
- Relocation of hazardous materials (LPG) in accordance with chapter 3 of SEPP (Resilience and Hazards) 2021.

The development application was lodged on **24 May 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
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<b>24 May 2023</b>	DA lodged
<b>24 May 2023</b>	DA referred to external agencies
<b>31 May 2023 to 14 June 2023</b>	Exhibition of the application
<b>22 June 2023</b>	Request for Information from Council to applicant
<b>18 July 2023</b>	Kick-off briefing
<b>19 June 2023</b>	Partial response to request for information from applicant
<b>11 September 2023</b>	Further response to request for information from applicant
<b>11 September 2023</b>	RFS request for information issued.
<b>10 October 2023</b>	Response to RFS request for information from applicant.
<b>13 October 2023</b>	Site visit completed.
<b>18 October 2023</b>	RFS issued GTAs.
<b>10 October 2023</b>	RFI for engineering matters issued.
<b>3 November 2023</b>	Response to engineering RFI received.

A site inspection was carried out on 13 October 2023. The site can be seen in **Images 1-7** below.





**Image 1:** Proposed location of gymnasium



**Image 2:** Location of Proposed Car Park





**Image 3:** Adelaide Street Entrance to Proposed Car Park



**Image 4:** Existing footpath on Adelaide Street





**Image 5:** Existing LPG Cylinders to be relocated



**Image 7:** Location of dwelling adjacent proposed car park





**Image 7:** Location of existing sporting fields to be reconfigured

### 3. Site History

The school was established in 1956 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
DA 16-2012-574-1	Part 4	Advertising Sign	Approved November 2012
CDC 9-2010-84-1	CDC	Alterations and Additions to Educational Establishment	Approved 2010
CDC 9-2009-19-1	CDC	Alterations and Additions to Educational Establishment	Approved 2009
DA 16-2004-864-1	Part 4	Covered Shelter	Approved 2004
DA 16-2002-1622-1	Part 4	Farm Building	Approved November 2002
DA 198/65	Part 4	Alterations to existing stormwater	Approved 2000
BA 198/65	BA	Laboratory & Hall Additions	Approved 1965
BA 197/65	BA	Classroom Additions	Approved 1965

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

#### 4. STATUTORY CONSIDERATIONS

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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):

- 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. The written agreement has been provided as **Attachment B** to this report.

The proposal is Integrated Development, pursuant to s4.46 as the proposal requires a bushfire safety authority approval from the NSW Rural Fire Service (RFS) in accordance with Section 100B of the *Rural Fires Act 1997*. A referral was sent to the RFS and in response no objection was made to the application, subject to general terms of approval relating to the following:

- Management of an inner protection area for part of the site.
- Upgrades to ember protection on existing buildings.
- New construction to comply with BAL 12.5 and Australian Standard AS3959-2018.
- Access roads compliant with Planning for Bushfire Protection 2019.
- Provision of water and utility services compliant with Planning for Bushfire Protection 2019.
- Preparation of a Bushfire Emergency Management and Evacuation Plan.



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	<p><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.</p> <p>Section 2.10 provides that Council may issue a permit for tree removal.</p> <p>The proposal includes the removal of 64 trees which are proposed to be offset with compensatory planting, generally in accordance with the Port Stephens Council Tree technical Specification.</p> <p><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.</p> <p>The application included a Flora and Fauna Assessment, prepared by MJD Environment dated 23 April 2023 that confirms 8 koala feed trees will be removed as part of the proposal.</p> <p>The biodiversity value of the trees to koalas is minimal given there is no koala population in the locality, the sites proximity to the Pacific Highway, the open floodplains to the west and the schools palisade fencing. Notwithstanding, compensatory planting of 8 trees is proposed at the rear of</p>	Y

	<p>the site which is appropriate given the sites limited capacity to support koalas.</p> <p>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.</p>	
State Environmental Planning Policy (Planning Systems) 2021	<p><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.</p>	Y
SEPP (Resilience & Hazards)	<p><u>Chapter 4: Remediation of Land</u> Section 4.6 - Contamination and remediation has been considered in the detailed Site Investigation (DSI) for contamination and Remediation Action Plan (RAP). The proposal is satisfactory subject to conditions relating to remediation.</p> <p><u>Chapter 3 - Hazardous and offensive development</u> The proposed LPG storage does not exceed the 10 tonne threshold specified in Table 3 of the Applying SEPP 33 Guideline and as a result no preliminary hazard analysis is required.</p>	Y
State Environmental Planning Policy (Transport and Infrastructure) 2021	<p><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.</p> <p>Section 2.119 - Development with frontage to classified road applies to the development. The proposed development has frontage to the Pacific Highway. The proposal is consistent with the requirements of this section.</p> <p>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 appropriate levels, subject to conditions relating to the thickness of window glazing.</p> <p><u>Chapter 3: Educational Establishments</u> Chapter 3 provides development standards relating to centre based childcare facilities and educational establishments.</p>	Y

	The proposal is generally consistent with the requirements of this chapter.	
Proposed Instruments	N/A	N/A
LEP	<p>The following LEP clauses are relevant to the proposal:</p> <ul style="list-style-type: none"> <li>• Zone objectives and Land Use Table (Cl. 2.3)</li> <li>• Demolition requires development consent (Cl. 2.7)</li> <li>• Height of buildings (Cl. 4.3(2))</li> <li>• Exceptions to Development Standards (Cl. 4.6)</li> <li>• Heritage (Cl. 5.10)</li> <li>• Flooding (Cl. 5.21)</li> <li>• Acid sulphate soils (Cl. 7.1)</li> <li>• Earthworks (Cl. 7.2)</li> <li>• Essential Services (Cl. 7.6)</li> <li>• Wetlands (Cl. 7.9)</li> </ul> <p>The proposal is generally consistent with the LEP.</p>	Y
DCP	<p>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></p> <ul style="list-style-type: none"> <li>• B1 – Tree Management</li> <li>• B2 – Natural Resources</li> <li>• B3 – Environmental Management</li> <li>• B4 – Drainage and Water Quality</li> <li>• B5 – Flooding</li> <li>• B7 – Heritage</li> <li>• B8 – Road Network and Parking</li> </ul> <p>The proposal is generally consistent with the DCP.</p>	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.

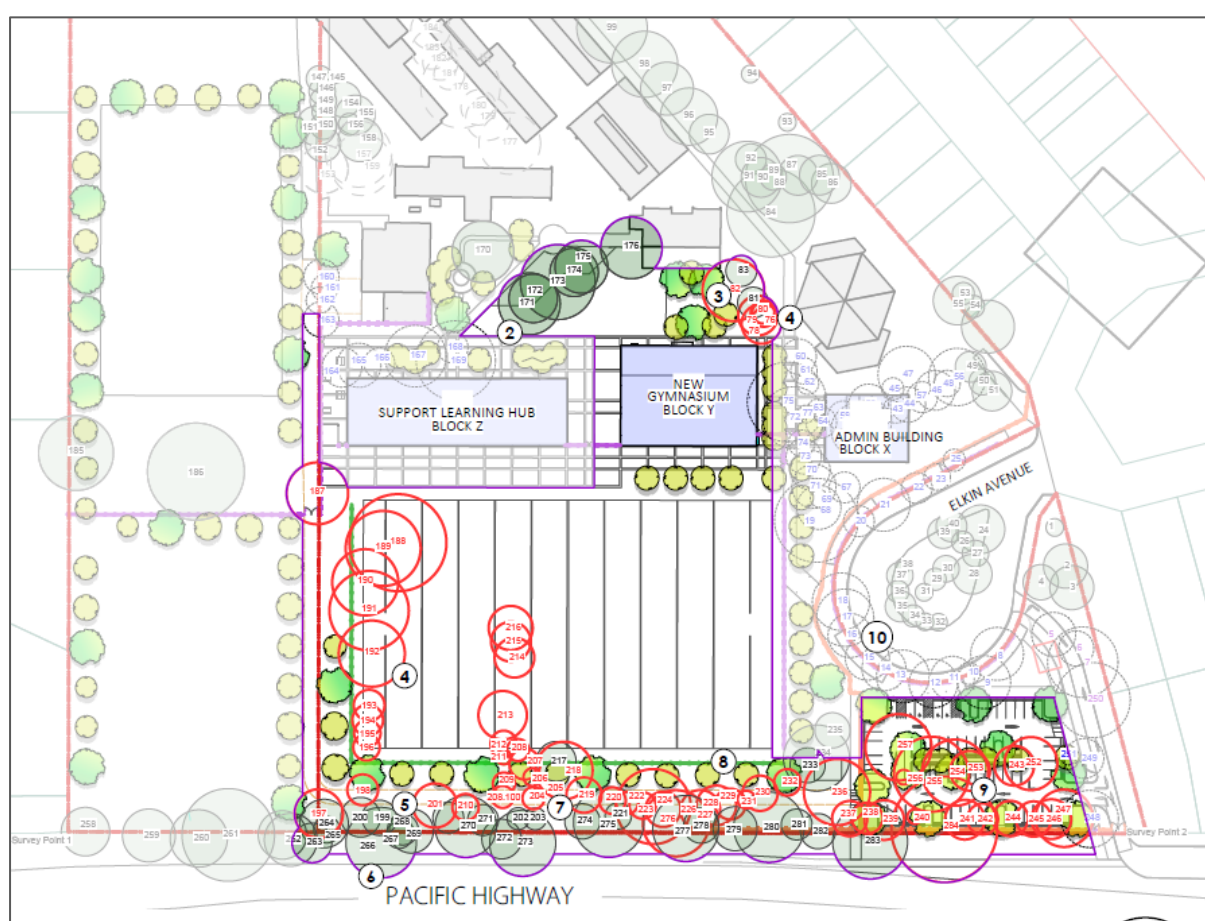
Part 2.3 of the Vegetation SEPP provides that Council's Development Control Plan can make declarations with regards to certain matters. The Vegetation SEPP further provides that Council may issue a permit for tree removal.

An Arboriculture Impact Assessment, prepared by Assurance Trees, V5.1 and dated 12 May 2023 was submitted with the application. A total of 286 trees are assessed within the Arboriculture Impact Assessment, which are primarily non-native species and a smaller range of non-native species scattered throughout the site. The assessment identifies 64 trees requiring removal to facilitate the proposed works.

The retention values of the 64 trees are as follows:

- High Retention Value (Grade A): 4
- Moderate Retention Value (Grade B): 42
- Low Retention Value (Grade C): 8
- Very Low Value: 4

None of the trees are listed on State or Local heritage registers or a significant tree register. The trees proposed to be removed are shown on **Figure 10** below.



**Figure 10:** Tree Removal and Planting Plan

The Port Stephens Council Tree Technical Specification 2014 stipulates the compensatory planting requirements, which are shown in **Figure 11** below.

<b>TABLE 4: COMPENSATORY PLANTINGS RATES</b>	
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 11: Compensatory Planting Rates

The total compensatory planting requirement in accordance with the Tree Technical specification is 154.

The proposed landscaping includes a 1:1 replacement ratio, including 64 trees consisting of predominately the same species as those being removed, some of which also hold ecological value, such as koala feed trees. Despite the 64 replacement trees being less than the 154 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.

Chapter 4 applies to all zones other than RU1 (Primary Production), RU2 (Rural Landscape) and RU3 (Forestry) in the Port Stephens Local Government Area. Section 4.8 requires that the application must be consistent with the approved koala plan of management that applies to the site. In Port Stephens, the relevant plan is the Comprehensive Koala Plan of Management (CKPoM).

The application included a Biodiversity Assessment Report (BAR), prepared by MJD Environmental, dated 23 April 2023 which includes an assessment against the CKPoM. The BAR confirms that 8 preferred koala feed trees (*Eucalyptus robusta* and *Eucalyptus microcorys*) 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 school facilities.

The biodiversity value of the trees to koalas is minimal given there is no known koala population in the locality, the sites proximity to the Pacific Highway, the open floodplains to the west and the schools palisade fencing. Notwithstanding, compensatory planting of 8 trees is proposed within the site boundaries. The compensatory planting is less than the 80 required in accordance with the CKPoM, however this is considered appropriate given the sites limited capacity to support koalas. In addition, the compensatory plantings will consist of advanced trees with a minimum pot size of 45 litres and taller than 1.2m at the time of planting. The compensatory plantings are proposed in a more appropriate location at the rear of the site where wider ecological benefits are offered to other threatened species such as the Grey-headed Flying Fox and Swift Parrot, which are more likely to utilise the trees than koala given the lack of koala population in the area.

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.

### *State Environmental Planning Policy (Resilience and Hazards) 2021*

#### Chapter 3 - Hazardous and offensive development

Chapter 3 of the State Environmental Planning Policy (Resilience and Hazards) 2021 (R&H SEPP), formally SEPP 33, applies to development which may be considered as hazardous or offensive industry or development which is considered potentially hazardous or offensive chapter.

The proposed development includes the relocation of two existing 4.5KI LPG cylinders. Accordingly, assessment as to whether the storage of 9KI (9 Tonnes) of LPG is considered potentially hazardous, as defined within this chapter. In determining whether development is hazardous or offensive, the consideration of the 'Applying SEPP 33 Guideline' (January 2011) is required in accordance with Section 3.7 of this SEPP.

Table 3 of the 'Applying SEPP 33 Guideline' includes the general screening threshold quantities to determine whether the storage of a material is potentially hazardous. In accordance with Table 3 of the guideline, the threshold for above ground LPG storage is 10 tonnes or 16m<sup>3</sup>. The storage cylinders have an overall capacity of 9 tonnes, accordingly, the storage of the LPG on the site does not meet the 10 tonne threshold to be considered potentially hazardous.

On the basis that the proposed LPG storage does not exceed the 10 tonne threshold specified in Table 3 of the 'Applying SEPP 33 Guideline', there are no further applicable provisions within Chapter 3 of the SEPP and no preliminary hazard analysis is required.

#### 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. However, the site has previously been used for agriculture which is a potentially contaminating land use, as per Table 1 of the EPA Contaminated Land Planning Guidelines.

Noting the historic agricultural use of the site and given the sensitive nature of the proposed land-use a Targeted Environmental Site Assessment (TESA), prepared by WSP, Revision B and dated 28/3/2023 was submitted with the application. The TESA included the excavation of 111 test pits within five different areas, totalling approximately 2.8ha of the site. Selected

representative soil samples were analysed for contaminants of concern, finding all samples to be below the adopted site criteria, except for two sample locations and a further fifteen Nickel EIL exceedances across all areas investigated. Non-friable asbestos was also identified in soil samples and one trace presence of friable asbestos within fill material. Testing of this material identified that the concentration was below the adopted health screening criteria.

Based on the results of this assessment it is considered that the site is not suitable for the proposed development until further remediation has occurred. In response to this recommendation, a Detailed Site Investigation (DSI) for contamination was prepared JBS&G Australia, dated 12 May 2023. The DSI identifies further contaminants of concern associated with fill materials with an unknown origin, historical structures, grounds keeping activities and car parking.

As part of the DSI, a Remediation Action Plan (RAP) has also prepared. The RAP proposes in situ management of soils by separation and ongoing management by capping and containing contaminated materials. The proposed actions outlined in the RAP have been prepared to the requirements of the Contaminated Land Management Guidelines for the NSW Site Auditor Scheme (3rd Edition). The DSI concludes that subject to the successful implementation of the measures described in the RAP, the site can be made suitable for the intended uses and that the risks posed by contamination can be managed in such a way as to be adequately protective of human health and the environment.

Subject to conditions of consent, at the completion of remediation works, a validation report is required that complies with the Contaminated Lands Planning Guidelines, Contaminated Lands Management Act 1997 and State Environmental Planning Policy (Resilience and Hazards) 2021, documenting the works as completed. Conditions of consent have also been recommended relating to unexpected finds protocol to be engaged in the event unexpected contaminants are discovered during works.

Based on the findings of the DSI and recommendations within the RAP, the site would be suitable for the development, subject to remediation.

On this basis, 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 within safe working distances of electrical infrastructure and other 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 frontage to the Pacific Highway to the east. The proposal includes closing an existing vehicular access from the Pacific Highway frontage to service vehicles only, and redirecting all staff and student generated traffic to a new ingress point at Adelaide Street. The relocation of this access brings the existing premises in compliance with sub clause (2)(a). Furthermore, given the proposed closure of the existing Pacific Highway access the proposed development would not adversely affect the safety, efficiency and ongoing operation of the classified road.

An educational establishment is a land use sensitive to traffic noise and vehicle emissions, however, the proposal does not include any new classrooms that would be disrupted or exposed to vehicle noise and the proposed gymnasium is not subject to a specific noise criteria under the NSW Road Noise Policy (2011). The application includes a Noise and Vibration Impact Assessment prepared by JHA Services, project no. 220264, Revision B and dated 21/04/2023 that concludes the acoustic design of the gymnasium can satisfy the noise criteria of the Education Facilities Standards and Guidelines. Further consideration is provided against Section 2.120 below.

The proposed location of the sporting field and new gymnasium is sufficiently setback from the classified road to minimise odour and air quality impacts borne from 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.

The proposal does not include any new classrooms that would be disrupted by vehicle noise and the proposed gymnasium is not subject to a specific noise criteria under the NSW Road Noise Policy (2011). The application includes a Noise and Vibration Impact Assessment prepared by JHA Services, project no. 220264, Revision B and dated 21/04/2023 that concludes the acoustic design of the gymnasium façade and other external building elements and ventilation openings can satisfy the noise criteria of the Education Facilities Standards and Guidelines with external glazing that provides 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 as 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 is consistent with the requirements of this section.

Section 3.58 – Traffic-generating development does not apply to the proposal as the proposal would not result in the educational establishment being able to accommodate 50 or more additional students.

### 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 and therefore the provisions of this chapter apply.

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 a 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	<p>The proposed development is considered appropriate with regard to the surrounding context, built form and landscape for the following reasons:</p> <ul style="list-style-type: none"> <li>• The high quality design of the proposed building provides a sense of place, clear entry and a positive contribution to the public realm.</li> <li>• The proposed building is sited appropriately to avoid overshadowing and visual, privacy and acoustic impacts to surrounding residential areas.</li> <li>• The proposed building is reflective of the predominant scale, materials and colours of existing buildings in the school.</li> <li>• The proposal incorporates a high standard of landscaping.</li> <li>• Landscape buffering and building design reduces the visual impact of the school on the neighbouring area, while providing a more functional educational environment.</li> </ul>
Principle 2—sustainable, efficient and durable	<p>The proposal uses energy efficient materials and devices wherever possible to meet or exceed Australian standards.</p> <p>The proposed gymnasium features a large bi folding door and glass louvers enabling natural ventilation</p>



Principle	Comment
	<p>of the space. Extensive expanses of windows also enable natural lighting of the indoor space.</p> <p>High quality landscaping is proposed to increase shading and reduce heat island effects.</p>
Principle 3—accessible and inclusive	<p>The application includes an Accessibility Assessment Report, Project no. N220079, Revision 2 and dated 22 April 2023, which confirms the proposed design is Disability (Access to Premises – Buildings) Standards 2010, BCA and relevant Australian standards relating to accessibility.</p> <p>The applicant has stated that there will be some out of hours usage by school related users, as per existing arrangements, consistent with the school's existing policies.</p>
Principle 4—health and safety	<p>The existing school includes fencing along all external boundaries to ensure children are kept within the grounds and keep unauthorised persons outside of the school. In addition, low level fencing is provided around the new playing field, as a safety barrier against vehicular school service road.</p> <p>The integration of green space and other hard &amp; soft landscaped areas will provide an improved level of amenity for staff &amp; students, offering a variety of outdoor areas that can be utilised as informal learning spaces, for play and for gatherings.</p> <p>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.</p>
Principle 5—amenity	<p>Externally, there are a range of thoughtfully designed spaces to provide opportunities for engagement and learning for children, including a new courtyard adjacent the proposed gymnasium.</p> <p>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.</p>
Principle 6—whole of life, flexible and adaptive	<p>The design of the gymnasium internally allows for flexibility of spaces for future purposes, given its expansive internal space.</p> <p>The external areas provide wide walkways and landscaped areas, which will cater for potential student increases or if there are school events.</p>
Principle 7—aesthetics	<p>The overall design of the building and landscaping is attractive and a positive addition to Raymond Terrace. The design delivers a positive visual</p>

Principle	Comment
	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.

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 (high 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 R2 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 represents an important facility to meet the day to day needs of local residents, including families with school age children.
- 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 below the flood planning level.

#### *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 proposal includes demolition of an existing car park consisting of twenty-four 24 spaces (including concrete slab), driveways and fencing. 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 have 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 building is 8.98m which complies with the maximum building height standard. The proposed building height is consistent with the height of existing structures on the site and on this basis, is appropriate for the context and character of the area. The proposal would not disrupt the hierarchy of centres as the 8.9m proposed building height is reflective of the surrounding low density and agricultural zones and is less than those permitted in the nearby Raymond Terrace town centre where the maximum building height standard ranges between 15m and 19m.

#### *Section 4.4 – Floor space ratio*

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

#### *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.

#### European Heritage

The site is not listed as being locally significant or within a conservation area under Schedule 5 of the *PSLEP 2013* or on the State Heritage register.



## Aboriginal Heritage

With regard to Aboriginal Heritage, the applicant submitted an Aboriginal Cultural Heritage Assessment Report (ACHAR), prepared by Kayandel Archaeological Services and dated June 2023 and an Archaeological Report, prepared by Kayandel Archaeological Services and dated June 2023. The ACHAR and Archaeological Report identified that the school contains areas of archaeological sensitivity finding 3 Aboriginal sites, comprising 22 stone artefacts and 1 ochre nodule as a result of archaeological excavation.

The ACHAR further identifies that the site has been assessed to have a low to moderate archaeological potential and significance.

The ACHAR concludes that an Aboriginal Heritage Impact Permit (AHIP) under Section 90 of the National Parks and Wildlife Act 1974 will be necessary to impact any of the identified Aboriginal sites. The ACHAR further concludes that it is unlikely that Aboriginal stone artefacts in significant frequencies would be recovered during a salvage excavation program and recommends that any artefacts be reburied on site and a new AHIMS site registered at the burial location.

Due to the need for an AHIP, the application was referred to Heritage NSW as integrated development. In response HNSW made no objection to the application and issued General Terms of Approval, requiring the AHIP be sought and approved prior to the commencement of works and associated ongoing consultation with the Aboriginal community.

Subject to the General Terms of Approval and recommendations of the archaeological report, which have been incorporated as recommended conditions of consent, the proposal is consistent with the requirements of this section.

### *Clause 5.21 – Flood Planning*

Clause 5.21(2) provides that the consent must not be granted to development on land the consent authority considers to be within the flood planning area unless the consent authority is satisfied the development complies with the following matters—

- (a) is compatible with the flood function and behaviour on the land, and*
- (b) will not adversely affect flood behaviour in a way that results in detrimental increases in the potential flood affectation of other development or properties, and*
- (c) will not adversely affect the safe occupation and efficient evacuation of people or exceed the capacity of existing evacuation routes for the surrounding area in the event of a flood, and*
- (d) incorporates appropriate measures to manage risk to life in the event of a flood, and*
- (e) will not adversely affect the environment or cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of river banks or watercourses*

Clause 5.21(3) provides that in deciding whether to grant development consent on land to which this clause applies, the consent authority must consider the following matters—

- (a) the impact of the development on projected changes to flood behaviour as a result of climate change,*

- (b) the intended design and scale of buildings resulting from the development,*
- (c) whether the development incorporates measures to minimise the risk to life and ensure the safe evacuation of people in the event of a flood,*
- (d) the potential to modify, relocate or remove buildings resulting from development if the surrounding area is impacted by flooding or coastal erosion.*

The proposed development is located on land outside the flood planning area, however, is located within an area susceptible to flooding in a probable maximum flood (PMF) event. The proposal is a development type that is vulnerable to emergency response as per the 'Considering Flooding in Land Use Planning Guideline' (DPIE, July 2021).

The application includes a Flood Impact Assessment (FIA), Project no. A12077, Version 2, Prepared by BMT and dated 19 April 2023. The FIA categorises a small portion of the rear of the site as a 'high hazard floodway' and 'high hazard flood storage area', while the remainder of the site, where all existing and proposed buildings are located is 'minimal risk flood prone land'. Impacts to local flooding behaviour have been considered within the FIA up to and including the PMF event. The FIA concludes that the proposed development has no impact on flood behaviour and does not result in flood impacts to other private properties or public roads.

The proposed gymnasium has a finished floor level of 7.3m AHD, and the proposed car park has a finished level of 6.3m AHD which is above the Flood Planning Level for the site being 5.7m AHD. Construction of the development at the Flood Planning Level (FPL), appropriately mitigates risk to property.

Whilst the proposed development is above the FPL, it is below the PMF level and therefore consideration of how the site would be evacuated during a PMF flood is required to determine risk to life. The application includes a Flood Emergency Response Plan (FERP), Project no. A12187, Version 2, Prepared by BMT and dated 19 April 2023. The FERP identifies peak flood levels, flood hazard categories and a flooding timeline assessment to inform the evacuation strategy and procedures. The FERP's principle emergency response strategy is for the school is early closure prior to the commencement of flooding and before the start of the school day. However, in the unlikely event of an unforeseen severe rainfall event, evacuation and shelter in place strategies are recommended.

The FERP recommends two acceptable evacuation routes (The Pacific Highway in the northerly direction and the Masonite Road route towards the Newcastle Airport), the Pacific Highway northerly option is preferred route. While the preferable flood emergency strategy is evacuation via the Pacific Highway (in the northerly direction), in the unlikely event of PMF flooding, the available evacuation time might be not sufficient to safely drive along the designated route. In this situation, the FERP recommends a shelter-in-place strategy within the existing upper levels of buildings Blocks G, H, I, J and K, which are above the PMF flood level. In conclusion, the FERP recommends that a further FERP be prepared by the school operator to formalise the flooding evacuation plan and strategy with respect to "flood intelligence, the flood behaviour presented in this report, and relevant procedures. The FERP will be expected to build on the strategy and intent presented in this report." The report further recommends that the school operator liaise with the State Emergency Service (SES) in the preparation of this plan and install flood level warning triggers on the site. In line with this recommendation, it a condition has been recommended requiring the school operator prepare a FERP, in accordance with the BMT FERP.

Noting the existing and proposed school buildings are above the FPL, the availability of a PMF refuge and evacuation routes identified in the FERP, and that the proposal does not involve an increase to the capacity of the school in terms of student numbers, it is considered the proposed development adequately addresses risk to life from flooding.

#### *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 4 and 2 Acid Sulfate Soils. The proposed development is situated entirely within areas mapped Class 4 and as such works entailing works more than 2m below natural ground surface are subject to the requirements of this clause. The proposed development entails excavations to a depth of 0.5m to 1m for the proposed car park and service road. The proposed gymnasium include 0.5m of fill and therefore the footings are not expected to exceed 2m in depth. The proposed stormwater and service installation requires excavation to a maximum depth of approximately 2m.

A Geotechnical Report has been prepared by Douglas Partners, Project no. 216008.00, dated August 2022. The report assessed the soil conditions for the presence of ASS. The report concludes that there were no samples that would indicate the presence of ASS to a depth of 3m. Therefore, it is unlikely that ASS would be encountered during works and an ASS Management Plan is not required to accompany the application, in accordance with clause 7.1(4).

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 and a Geotechnical Report has been prepared by Douglas Partners, Project no. 216008.00, dated August 2022. The bulk earthworks plan indicates that at total of 2,680m<sup>2</sup> of cut and 3,980m<sup>2</sup> of fill is required to support the proposed development. The extent of cut required relates to the proposed car parking, while the proposed fill is related to the proposed gymnasium building and playing fields.

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 1m and fill of 0.75m. 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 areas below the flood planning level, 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,*

The application includes a Detailed Site Investigation (DSI) for contamination prepared JBS&G Australia, dated 12 May 2023. The DSI identifies contaminants of concern associated with fill materials with an unknown origin, historical structures, grounds keeping activities and car parking. As part of the DSI a Remediation Action Plan (RAP) has also prepared. The DSI concludes that subject to the successful implementation of the measures described in the RAP, the site can be made suitable for the intended uses and that the risks posed by contamination can be managed in such a way as to be adequately protective of human health and the environment.

Conditions of consent are recommended restricting all imported fill materials to virgin excavated natural material or other material subject to an EPA resource recovery exemption.

*(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 east of the site. The proposed earthworks which are a minimum of 15m from the nearest dwelling could be undertaken without adverse impacts 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,*

Conditions of consent are recommended restricting all imported fill materials to virgin excavated natural material or other material subject to an EPA resource recovery exemption.

*(f) the likelihood of disturbing relics,*

There are no local or state listed heritage items on or in proximity to the site. The application includes an Aboriginal Cultural Heritage Assessment (ACHAR) and Archaeological Assessment. The ACHAR concludes that an Aboriginal Heritage Impact Permit (AHIP) under Section 90 of the National Parks and Wildlife Act 1974 will be necessary to impact 3 Aboriginal sites, comprising 23 artefacts. Due to the need for an AHIP, the application was referred to Heritage NSW as integrated development. In response HNSW made no objection to the application and issued General Terms of Approval, requiring the AHIP be sought and approved prior to the commencement of works and associated ongoing consultation with the Aboriginal community.

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

The earthworks are proposed to be undertaken approximately 1.1km from the nearest waterway - the Hunter River and 480m from the Grahamstown drain. The distance to the nearest waterways, combined with the proposed stormwater quality controls and conditions relating to sediment and erosion control will ensure no adverse impacts occur to the Hunter River.

There are no environmentally sensitive areas within proximity to the site and is not located within a drinking water catchment.

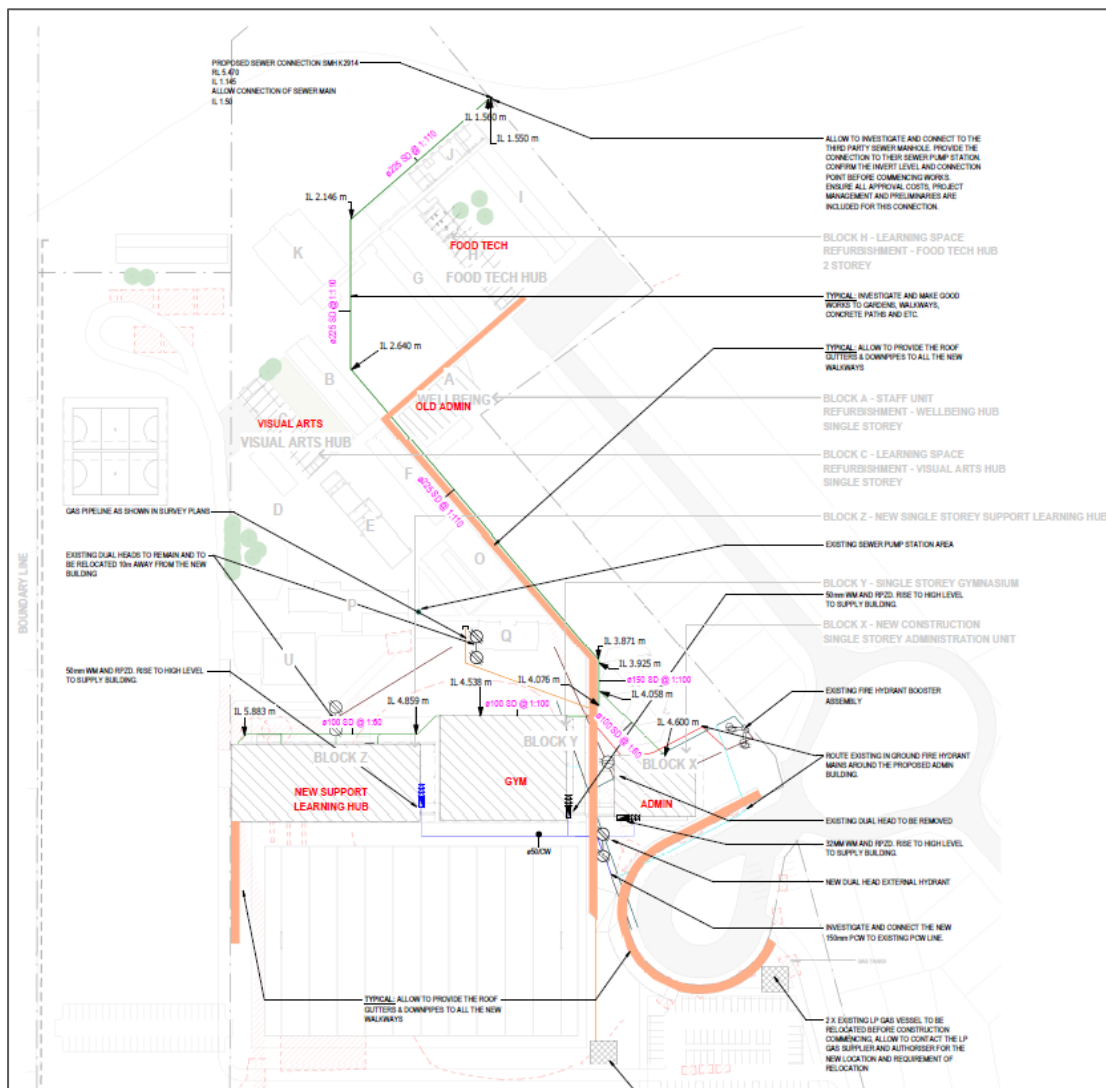
*(h) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.*

The proposed earthworks which are a minimum of 15m from the nearest dwelling could be undertaken without adverse impacts dust impacts to the dwellings, subject to standard conditions relating to sediment and erosion control.

### 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.

The proposal includes a servicing strategy which includes connecting the proposed gymnasium and other future development to reticulated sewer. Specifically, an extension of sewer is proposed from the neighbouring site at 5 Speedy Lock Lane, which has approval for a 48 lot residential subdivision. The route of the sewer connection is shown in **Figure 12** below. The approved sewer in the residential subdivision is not yet constructed. In the event the sewer from the residential subdivision is not available prior to the completion of the school works, two alternate sewer connection routes have been identified in a Hunter Water Corporation Section 50 Certificate. To ensure the sewer connection is available to service the development, a condition has been included requiring connection prior to the issue of an Occupation Certificate.



**Figure 12: Proposed Sewer Route Connection**

The Servicing Strategy also details connection to other essential services including water and electricity. The Servicing strategy includes a HWC application for a Statement of Available Pressure and Flow which confirms that sufficient water pressure will be available at the nearest hydrant. Electricity is available for connection through extension of adjacent existing infrastructure and suitable drainage and vehicular access arrangements have been detailed within the civil engineering plans submitted with the application. Vehicular access to the site exists at two locations, including the western termination of Elkin Avenue and the Pacific Highway. The Pacific highway access is proposed to be closed and replaced with a new access from Adelaide Street which links with the proposed car park.

Conditions have been recommended requiring that all essential services are available prior to the issue of an Occupation Certificate. A condition is also recommended requiring connection to sewer occur in accordance with the proposed servicing strategy and the works completed in accordance with the associated HWC Section 50 Certificate prior to the issue of an Occupation Certificate for the development.

Accordingly, it is considered the proposed development satisfies this clause as adequate arrangements have been made to service the site.

#### *Clause 7.9 Wetlands*

The objective of this clause is to ensure that wetlands are preserved and protected from the impacts of development. Before determining a development application for development on land to which this clause applies, the consent authority must consider—

- (a) whether or not the development is likely to have any significant adverse impact on the following—*
  - (i) the condition and significance of the existing native fauna and flora on the land,*
  - (ii) the provision and quality of habitats on the land for indigenous and migratory species,*
  - (iii) the surface and groundwater characteristics of the land, including water quality, natural water flows and salinity, and*
- (b) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.*

In addition, development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that—

- (a) the development is designed, sited and will be managed to avoid any significant adverse environmental impact, or*
- (b) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or*
- (c) if that impact cannot be minimised—the development will be managed to mitigate that impact.*

A small portion of land at the rear of the site is identified as wetland in the LEP. No development is proposed within the wetland areas and the nearest works relating to sewer installation are approximately 120m from this location.

The proposed stormwater system includes conveyance of stormwater through a pit and pipe systems and discharged via an absorption trench which filtrates over two 60m<sup>2</sup> lawn area, one adjacent the proposed car park and the other adjacent the proposed gymnasium. These measures ensure there is no concentrated discharge to the wetland area at the rear of the

site. Stormwater quality treatment devices are also included, ensuring no adverse water quality impacts occur to the wetland.

Overall, it has been determined by Council's Natural Systems Officer that the development has been designed and sited to not have an adverse impact on the flora and fauna of the wetland, including either native and migratory species, or the characteristics of the ground or surface water.

**(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.*

The Port Stephens Development Control Plan 2014 contains no specific standards or requirements with regard to school design. Notwithstanding, Section 3.36(9) consideration of the development against Councils Development Control Plan to the development is provided below:

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

*Chapter 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.



An Arboriculture Impact Assessment, prepared by Assurance Trees, V5.1 and dated 12 May 2023 was submitted with the application, in accordance with Section B1.5 of the DCP. A total of 286 trees are assessed within the Arboriculture Impact Assessment, which are primarily non-native species and a smaller range of non-native species scattered throughout the site. The assessment identifies 64 trees requiring removal to facilitate the proposed works. None of the trees are listed on State or Local heritage registers or a significant tree register.

The total compensatory planting requirement in accordance with the Tree Technical Specification is 154. The proposed landscaping includes a 1:1 replacement ratio, including trees consisting of predominately the same species as those being removed, some of which also hold ecological value, such as koala feed trees. Despite the 64 replacement trees being less than the 154 compensatory planting required by the Tree Technical Specification and by extension B1.7 of the DCP, 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 for the school operation, the proposed tree removal and replacement scheme was supported by Council's Vegetation Management Officer.

Some of the trees to be removed contain hollow bearing limbs and therefore a Biodiversity Assessment Report is required in accordance with B1.8 of the DCP. Consideration of the Biodiversity Assessment Report is provided against Section B2 of the DCP below.

The proposed development is consistent with the requirements of this section.

#### *Chapter 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 partially mapped as containing Endangered Ecological Community – Swamp Schlerophyll Forest and a wetland. As a result, the provisions of the chapter apply.

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 entry into the Biodiversity Offset Scheme in accordance with Section 7.3 (4) of the BC Regulation. However, a flora and fauna/Biodiversity Assessment Report is required in accordance with Section B2.1 of the DCP.

The application included a Biodiversity Assessment Report (BAR), prepared by MJD Environmental, dated 23 April 2023 which identifies the removal of the following vegetation as part of the proposal:

- 0.092 ha of Native Remnant Canopy
- 0.008 ha of Native Planted Canopy
- 1.021 ha of Endemic & Exotic Planted Canopy
- 3.096 ha of Managed Lawn - Exotic dominated

The BAR found no threatened flora or fauna species listed under the BC Act 2016 and EPBC Act 1999 in the study area. Similarly, no hollow bearing trees were found. An assessment of significance determined the proposal is unlikely to have a significant impact to threatened species, populations or ecological communities assessed. The BAR concludes that no

biodiversity credits are required and therefore section B2.4 does not apply.

There are no priority weeds known to occur on the site and therefore section B2.3 does not apply.

With regard to koala impacts under section B2.4 of the DCP, the BAR confirms that 8 preferred koala feed trees (*Eucalyptus robusta* and *Eucalyptus microcorys*) 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 sites proximity to the Pacific Highway, the open floodplains to the west and the schools palisade fencing. Notwithstanding, compensatory planting of 8 trees is proposed within the site boundaries. The compensatory planting is less than the 80 required in accordance with the CKPoM, however this is considered appropriate given the sites limited capacity to support koalas. In addition, the compensatory plantings will consist of advanced trees with a minimum pot size of 45 litres and taller than 1.2m at the time of planting. The compensatory plantings are proposed in a more appropriate location at the rear of the site where wider ecological benefits are offered to other threatened species such as the Grey-headed Flying Fox and Swift Parrot, which are more likely to utilise the trees than koala given the lack of koala population in the area.

Accordingly, the proposed development complies with the performance criteria listed in Appendix 4 of the Port Stephens CKPOM and B2.4 of the DCP.

Overall, the BAR demonstrates that the proposal is consistent with the requirements of this Chapter.

### *Chapter B3 – Environmental Management*

Chapter B3 contains provisions relating to ASS, air quality, earthworks and noise have been assessed below.

#### 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).

#### Acid Sulfate Soils

The site is mapped as Class 4 and 2 Acid Sulfate Soils. The proposed development is situated entirely within areas mapped Class 4 and as such works entailing works more than 2m below natural ground surface are subject to the requirements of this clause. The proposed development entails excavations to a depth of 0.5m to 1m for the proposed car park and service road. The proposed gymnasium include 0.5m of fill and therefore the footings are not expected to exceed 2m in depth. The proposed stormwater and service installation requires excavation to a maximum depth of approximately 2m.

A Geotechnical Report has been prepared by Douglas Partners, Project no. 216008.00, dated August 2022. The report assessed the soil conditions for the presence of ASS. The report concludes that there were no samples that would indicate the presence of ASS to a depth of 3m. 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 chapter.

### 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 car park, public address and school bell systems, student related noise and plant equipment associated with the gymnasium building. The impacted receivers include the residential dwellings located to the north east and south west of the site.

A Noise and Vibration Impact Assessment (NVIA), prepared by JHA Services, Project no. 220264, dated 21 April 2023 was submitted with the application.

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 following:

- Recommendations to minimise the impact of external noise emissions associated with the public address and school bell systems of the proposed development to the nearest sensitive receivers.
- Further consideration of noise impacts from plant equipment prior to the issue of a Construction Certificate, when plant design details are known.
- Construction noise management procedures.

Regarding noise generated from students, based on the proposed new buildings and refurbishment works, there is not expected to be any additional noise impacts to the surrounding residential receivers. There will not be any increase in student numbers at the school, therefore no additional noise impacts are expected.

Regarding car parking and traffic associated impacts, the NVIA notes that based on a review of the proposed arrival / drop off path, and bus stop, there is not expected to be any additional noise impacts to the residential receivers. Furthermore, due to the proximity of the new road and proposed new carpark to the Pacific Highway, the noise from Pacific Highway is expected to mask any additional noise that may be generated, therefore no additional impacts expected.

Subject to conditions relating to the NVIA recommendations, 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 and includes conveyance of stormwater through a pit and pipe systems and discharged via an absorption trench which filtrates over a 60m<sup>2</sup> lawn area between the proposed gymnasium and Building Q. The proposed car park includes drainage to a second absorption trench which filtrates over a 60m<sup>2</sup> lawn area. Stormwater quality treatment devices are included for water quality treatment.

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 B5 – Flooding*

This chapter applies to development on flood prone land.

The proposed development area is located on flood prone land categorised as minimal risk flood prone land and therefore this chapter applies. The proposal is a development type that is vulnerable to emergency response as per the 'Considering Flooding in Land Use Planning Guideline' (DPIE, July 2021).

The application includes a Flood Impact Assessment (FIA), Project no. A12077, Version 2, Prepared by BMT and dated 19 April 2023 and a Flood Emergency Response Plan (FERP), Project no. A12187, Version 2, Prepared by BMT and dated 19 April 2023.

A detailed assessment against this chapter is provided at **Attachment C**. The proposed development is generally 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 Williamstown Obstacle Limitation map.

The site is located in the Williamstown RAAF Base bird strike control area – Group A where certain development types are restricted or alternatively require specific management measures relating to the storage of organic waste materials. 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 Williamstown which requires structures higher than 45m to be referred to Defence. The proposed development has a maximum height of 8.98m 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 Cultural Heritage Assessment Report (ACHAR), prepared by Kayandel Archaeological Services and dated June 2023 and an Archaeological Report, prepared by Kayandel Archaeological Services and dated June 2023. The ACHAR and Archaeological Report identified that the school contains areas of archaeological sensitivity finding 3 Aboriginal sites, comprising 22 stone artefacts and 1 ochre nodule as a result of archaeological excavation.

The ACHAR further identifies that the site has been assessed to have a low to moderate archaeological potential and significance.

The ACHAR concludes that an Aboriginal Heritage Impact Permit (AHIP) under Section 90 of the National Parks and Wildlife Act 1974 will be necessary to impact any of the identified Aboriginal sites. The ACHAR further concludes that it is unlikely that Aboriginal stone artefacts in significant frequencies would be recovered during a salvage excavation program and recommends that any artefacts be reburied on site and a new AHIMS site registered at the burial location.

Due to the need for an AHIP, the application was referred to Heritage NSW as integrated development. In response HNSW made no objection to the application and issued General Terms of Approval, requiring the AHIP be sought and approved prior to the commencement of works and associated ongoing consultation with the Aboriginal community.

Subject to the General Terms of Approval and recommendations of the archaeological report, which have been incorporated as recommended conditions of consent, the proposal is consistent with the requirements of this section.

## *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 C, dated 11/05/2023, which assesses, access, traffic and car parking related impacts of the development. These key areas of impact are assessed in the following section.

### Access

An existing vehicular access located off the Pacific Highway is proposed to be closed and an associated 24 space car park demolished. A new driveway between Elkin Avenue and Adelaide Street, to be approved under Part 5, is proposed to facilitate access to the new car park proposed under this DA. The addition of the linking road, although not proposed under this DA, is anticipated to provide a safer road environment for students accessing the site because of the separation of 'kiss and drop' vehicles from pedestrian paths and the provision of two pedestrian crossings facilitating safe walking from the south. An unsealed service road is proposed from the Adelaide Street access to provide vehicular access to the rear of the

school. Deliveries are proposed to occur within the access road proposed under Part 5 and waste management is proposed to continue in line with existing operations.

To ensure the new access, car park, service road and kiss and drop off zone are safely managed for pedestrians, the applicant has proposed to prepare an Operational Traffic and Pedestrian Management Plan to document strategies for managing pedestrian and vehicle conflict, including the distribution of a 'Travel Access Guide' to students, parents and the public. In addition, a condition has been recommended requiring service vehicle movements be undertaken outside of peak school drop-off and pick-up times (8:00am and 9:30am and 2:30pm and 4:00pm on school days) wherever practically possible.

### Traffic Impacts

The proposed development does not generate additional traffic as no change to student or teacher numbers is proposed.

The proposal includes a one-way access to the new car park from Adelaide Street which does not currently have any through vehicular connection to the school. However, some school drop-off/pick-up currently occurs on Adelaide Street as there is a pedestrian connection to the school from this point. The provision of a new vehicular access at this location will see increased traffic on Adelaide Street associated with the new car park, however, drop off traffic is expected to be similar to that already occurring informally in the Adelaide Street Road Reserve.

Adelaide Street is a 9m wide two-way local road which terminates at the north eastern boundary of the school. A review from Council's Traffic Engineer confirmed that Adelaide Street has sufficient capacity in its current configuration to cater for the expected traffic generation.

### On-site Parking Provisions

The proposal includes a new sixty-six (66) space car park, including 6 accessible spaces toward the sites Pacific Highway frontage.

The proposal does not generate car parking demand as no change to student or teacher numbers is proposed. However, additional car parking is required to offset the proposed demolition of an existing car park consisting of twenty-four (24) spaces. As a result of the new car park, there is a net gain of 42 spaces. This takes the existing car parking DCP shortfall from 47 to 5 and provides the 5 required accessible spaces, as outlined in **Table 6** below.

**Table 6: Car Parking Demand of Proposal**

DCP Requirement	Calculated demand	DCP Existing Spaces	Proposed Spaces	Proposed Shortfall/oversupply
1 Car space per employee	89 spaces	54	96	Shortfall of 5 spaces
1 Car space per 8 senior high school students	12 spaces			
2 bike spaces per 20 employees and students	89 bike spaces for staff and 7 spaces for staff	12 spaces	12 spaces	No shortfall
1 accessible car space per 20 car spaces	5 spaces	1 space	8 spaces	Oversupply of 3 spaces

A condition of consent has been recommended requiring that the access approved under Part 5 is constructed and made operational prior to the issue of an Occupation Certificate and the new car park constructed prior to the demolition of the existing 24 space car park.

As the proposal does not generate any additional car parking demand and significantly improves the existing car parking shortfall, the proposal satisfies the parking requirements of this chapter.

- *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.

**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 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 gymnasium 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 point being the Pacific Highway.

The proposed 66 space car park is located on the sites frontage to the Pacific Highway, with a 1.5m 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 gymnasium is largely obscured from view from Elkin Avenue and Adelaide Street 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 Cultural Heritage Assessment (ACHAR) and Archaeological Assessment. The ACHAR concludes that an Aboriginal Heritage Impact Permit (AHIP) under Section 90 of the National Parks and Wildlife Act 1974 will be necessary to impact 3 Aboriginal sites, comprising 23 artefacts. Due to the need for an AHIP, the application was referred to Heritage NSW as integrated development. In response HNSW made no objection to the application and issued General Terms of Approval, requiring the AHIP be sought and approved prior to the commencement of works and associated ongoing consultation with the Aboriginal community.
- 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 ensure 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 detailed site investigation for contamination has revealed the site is contaminated. A remediation Action Plan has been prepared, which once implemented would render the site suitable for the intended uses and managed to adequately protective of human health and the environment. The proposed stormwater system includes water sensitive design that ensure no adverse water quality impacts would occur to the receiving Hunter River flood plain. No adverse air quality impacts are expected.
- 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. Similarly, no hollow bearing trees were found. 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 bulk earthworks plan indicates that a total of 2,680m<sup>2</sup> of cut and 3,980m<sup>2</sup> of fill is required to support the proposed development. The extent of cut required relates to the proposed car parking, while the proposed fill is related to the proposed gymnasium building and playing fields.

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 – Natural hazards including flooding and bushfire have been adequately addressed, as demonstrated in the bushfire assessment, flood impact assessment and flood emergency response plan.
- 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.

The proposed gymnasium and sporting field will on occasion, be made available for public use, thereby promoting interactions between the new development and the community. The nature of the gymnasium and sporting field also provide a facility for fitness and exercise which promotes the health and wellbeing of the community.

- 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.

- Cumulative impacts – The site is relatively clear of significant site constraints, meaning that the continued expansion of the school as part of this proposal and into the future, is unlikely to cause any adverse cumulative impacts.

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

### **3. Section 4.15(1)(c) - Suitability of the site**

The site contains an existing operational public school. The proposed building has been suitably located within the school 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.

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. Similarly, no hollow bearing trees were found. 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 existing vehicular ingress/egress from the Pacific Highway is proposed to be closed and relocated to Adelaide Street, which is a more appropriate, low speed road to provide access from. Adelaide Street is a local road with sufficient carriage width to accommodate the expected traffic volumes.

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

### **4. Section 4.15(1)(d) - Public Submissions**

These submissions are considered in Section 5 of this report.

### **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 64 trees will be adequately offset with new landscaping, including the planting of new trees at a 1:1 replacement ratio throughout the site. The tree plantings are primarily located along the perimeter of the site where it interface residential land and the Pacific Highway, thereby maximising screening benefits.

The application included a Biodiversity Assessment Report (BAR) which found that the vegetation proposed for removal consisted of 0.1ha 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 8 preferred koala feed trees will be removed as part of the proposal, which are proposed to be offset with 8 new plantings, thereby achieving compliance with the Port Stephens Comprehensive Koala Plan of Management.

Impacts to Aboriginal Heritage have been assessed in an Archaeological Report and an Aboriginal Cultural Heritage Assessment Report, which conclude the proposal will have impact to 3 Aboriginal sites. As a result an Aboriginal Heritage Impact Permit under Section 90 of the National Parks and Wildlife Act 1974 is required and would require approval prior to the commencement of works, as indicated in the General Terms of Approval issued by heritage NSW.

The application included a traffic assessment which found the local and state road network has sufficient capacity to cater for the traffic generated by the proposed development. The proposed 66 space car park reduces a historical shortfall of car parking.

The application includes a 'Sustainable Development Plan' for Hunter River High School which outlines a number of ecological sustainable development initiatives to comply with the Educational Facilities Standard Guidelines and 4 star green star design certification.

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.

## 5. REFERRALS AND SUBMISSIONS

### 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 6**.

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 6: Concurrence and Referrals to agencies**

Agency	Concurrence/ referral trigger	Comments (Issue, resolution, conditions)	Resolved
<b>Concurrence Requirements (s4.13 of EP&amp;A Act)</b>			
N/A			
<b>Referral/Consultation Agencies</b>			
Electricity supply authority (Ausgrid)	Section 2.48 of <i>State Environmental Planning Policy (Transport and Infrastructure) 2021</i> Development near electrical infrastructure	Correspondence with the electrical supply authority, Ausgrid, has confirmed that the proposed works are in the vicinity of underground electricity assets. Accordingly, Ausgrid recommended compliance with Ausgrid's Network Standard 156 - Working near or around underground cables during works.	Y

Transport for NSW	Section of 138 Roads Act 1993 (Non-integrated)	TfNSW advised that due to the proposal not including any works within the road reserve, the referral is not required.	N/A
Department of Defence	Chapter B6 of the PSDCP for bird strike risk affecting RAAF Base Williamtown	Defence recommended a condition of consent relating to the management of organic waste be incorporated to mitigate the risk of bird strike.	Y
<b>Integrated Development (S 4.46 of the EP&amp;A Act)</b>			
Heritage NSW	Section 90 of the National Parks and Wildlife act 1974 for an Aboriginal Heritage Impact Statement	Heritage NSW made no objection to the application and issued general terms of approval requiring an AHIP be approved prior to the commencement of works.	Y
NSW Rural Fire Service	Section 100B of the Rural Fires Act 2000.	RFS requested additional information to assess the existing buildings on the site against Section 6.4 of Planning for Bushfire Protection 2019. Following the submission of an amended bushfire report RFS supported the application and issued GTAs.	Y

## 2. Council Officer Referrals

The development application has been referred to various Council officers for technical review as outlined **Table 7**.

**Table 7: Consideration of Council Referrals**

Officer	Comments	Resolved
Engineering	The Development Engineer reviewed the stormwater management plan and flooding information and supported the development with conditions.	Y
Building Certification/Fire Safety	The Building Certification/Fire Safety Officer reviewed the proposed architectural plans and conducted a site inspection. The proposal was supported with no specific conditions required.	Y
Environmental Health	The Environmental Health Officer reviewed the noise assessment and sewer servicing strategy 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.	Y



Vegetation Management	The Vegetation Management Officer reviewed the proposed landscape plan and supported the proposal with conditions.	Y
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 the application with conditions.	Y

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

### 3. Community Consultation

The proposal was notified in accordance with Council's Community Participation Plan from 31 May 2023 until 14 June 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.

The Council received a total of 2 unique submissions, comprising 2 objections. The issues raised in these submissions are considered in **Table 8** below.

**Table 8: Community Submissions**

Issue	No of submissions	Council Comments
<b>Traffic</b> Submissions raise the following traffic related concerns: <ul style="list-style-type: none"> <li>• Adelaide Street is not a suitable location for the new vehicle access proposed from a traffic and road safety perspective.</li> <li>• The driveway loop from Adelaide Street to Elkin Avenue is not suitable from a traffic/road safety perspective.</li> </ul>	2	<p>Adelaide Street is a 9m wide two-way local road which terminates at the north eastern boundary of the school. The proposal does not include an increase in the number of students and associated traffic, however, the provision of a new access at Adelaide street would see existing traffic directed to Adelaide Street. A review by Council's Traffic Engineer confirmed that Adelaide Street has sufficient capacity in its current configuration to cater for the expected traffic generation.</p> <p>The driveway loop from Adelaide Street to Elkin Avenue is not proposed under this DA. The applicant notes that the driveway is to be approved under Part 5 of the EP&amp;A Act 1979. For this reason, the consent authority's determination of this DA cannot extend to the driveway.</p> <p>An existing footpath along the Pacific Highway terminates where it meets the southern end of</p>

<ul style="list-style-type: none"> <li>• A pedestrian crossing is recommended on Adelaide Street to link with the existing footpath.</li> <li>• Construction site gates on Elkin Avenue are unacceptable.</li> </ul>		<p>Adelaide Street. The footpath does not extend along Adelaide Street and therefore a pedestrian crossing is not required across the proposed driveway. The proposal does not include extension of this path, however, it is noted that it may be extended in the future as it is identified in Port Stephens Infrastructure Contributions Plan.</p> <p>The proposed construction site access from Elkin Avenue has been assessed by Council's Traffic Engineer, confirming that Elkin Avenue has sufficient capacity to cater for the construction traffic movements. Use of the existing access at the Pacific Highway to the south as suggested in one of the submissions is not appropriate due to it being located in a much higher speed traffic environment and does not include a deceleration lane.</p>
<p><b>Parking</b> Submissions raise the following car parking related concerns:</p> <ul style="list-style-type: none"> <li>• The proposed car park is too far away from the school buildings.</li> <li>• Service vehicles passing through the proposed car park could be dangerous.</li> <li>• Existing car parking occurs on Adelaide Street where people to park on the nature strips of residences.</li> </ul>	2	<p>The distance of the car park from the school buildings is primarily an operational consideration for the school, however, it is noted that the existing car park to be demolished is currently located at a similar distance. There are also no specific planning controls for the placement of carparks within schools. The application includes an accessibility report which confirms the distance and path of travel from the proposed accessible car parks is compliant with the relevant disabled access requirements.</p> <p>The car park has been designed to provide adequate manoeuvring for a heavy rigid vehicle. In addition pedestrian crossings have been added where footpaths cross the car park. In addition, the applicant has stated that the majority of service vehicle movements would occur outside of school hours. These measures are sufficient to ensure adequate car park safety.</p> <p>The proposed development includes the addition of 42 on-site car parks, whilst not expanding the number of students or teachers at the schools. As a result, any existing overflow car parking on Adelaide Street will be reduced and improve the existing situation.</p>
<p><b>New Service Road</b> Submissions raise the following concerns relating to the proposed service road:</p> <ul style="list-style-type: none"> <li>• The original location of the</li> </ul>	2	<p>The existing service road has been retained towards the rear of the site, however, the service road has been redirected at the front of the site to link with the new access point at Adelaide Street. The access from Adelaide Street is preferred to the existing Pacific Highway access, as it is a much lower speed environment, allowing for safer vehicle manoeuvring.</p> <p>Tree removal is proposed to be offset with new tree plantings at a 1:1 ratio, which has been supported by</p>

service road is better and does not require removal of trees.		Councils Natural Systems and Vegetation Management Officer.
<b>Amenity Impacts</b> Submissions raise concern that the new location of the car park, service road and associated tree removal will cause adverse amenity impacts to nearby residents by way of noise, fumes, lost privacy, visual impact and shade.	2	<p>The application included a noise and vibration impact assessment which concludes that there is not expected to be any additional noise impacts to the residential receivers from the proposed car park. Due to the proximity of the new road and proposed new carpark to the Pacific Highway, the existing background noise from the Pacific Highway is expected to mask any additional noise that may be generated, therefore no additional impacts expected. The presence of existing fencing along this boundary will prevent privacy impacts and assist in preventing the travel of fumes across the residential land.</p> <p>In response to submissions, the applicant has amended the landscape plan to include offset plantings in the area between the new road and existing dwellings to compensate the loss of existing trees in this location.</p>
<b>Tree Removal</b> Submissions raises concern that the proposed removal of 127 trees is too many for biodiversity and amenity reasons.	2	<p>The application includes a Biodiversity Assessment Report which found that the proposed removal of 64 trees 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.</p> <p>The proposed landscaping includes a 1:1 replacement ratio, including trees consisting of predominately the same species as those being removed. The proposed compensatory plantings, once established would appropriately offset the amenity impacts caused by the removal of the exiting trees.</p> <p>Removal of additional trees, totalling 127 is associated with a broader scope of works subject to a separate Part 5 approval.</p>
<b>Community consultation</b> Submissions raised concern that the he Education Department has not undertaken sufficient	2	<p>The development application was notified in accordance with Council's Community Participation Plan from 31 May 2023 until 14 June 2023. This satisfies the development exhibition requirements of the EP&amp;A Act 1979.</p> <p>The applicant has stated that consultation has also occurred prior to the lodgement of the DA as follows:</p> <ul style="list-style-type: none"> <li>• Letterbox drops.</li> </ul>

community consultation.		<ul style="list-style-type: none"> <li>• Door knocking and leaving of contact cards.</li> <li>• Information sessions.</li> </ul>
<b>Construction Vibration impacts</b> Submissions raises concern that vibration caused during construction will disturb residents and damage dwellings.	1	<p>The draft Construction Environmental Management Plan submitted with the application states that a detailed Construction Noise and Vibration Management Plan (CNVMP) shall be prepared by the Head Contractor addressing the noise and vibration impacts during the construction stages when specific information around construction methodology and construction plant will be known, and to provide acoustic mitigation measures and management measures based on specific construction works, equipment and locations. The noise and vibration impact assessment submitted with the application, also includes specific recommendations to minimise vibration impacts which can be incorporated in the detailed CNVMP.</p> <p>Conditions of consent are recommended requiring compliance with the draft Construction Environmental Management Plan and noise and vibration impact assessment. Subject to these conditions, disruption to human comfort or damage to buildings as a result of construction vibration is considered unlikely to occur.</p>

## 6. 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:

### 6.1. Section 7.12 Contributions

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 the request to delete the condition for S.7.12 contributions. This is discussed in further detail in the key issues section. The applicants reasoning 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 \$9,689,184 (including GST), equating to an \$96,892 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 recently provided 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.

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.

## **6.2. Noise**

The proposal presents the potential for noise generation from the proposed car park, public address and school bell systems, student related noise and plant equipment associated with the gymnasium building. The impacted receivers include the residential dwellings located to the north east and south west of the site.

A Noise and Vibration Impact Assessment (NVIA), prepared by JHA Services, Project no. 220264, dated 21 April 2023 was submitted with the application.

The NVIA demonstrates that the cumulative emissions from the proposed development would satisfy the relevant criteria at all receivers.

Regarding noise generated from students, based on the proposed new buildings and refurbishment works, there is not expected to be any additional noise impacts to the surrounding residential receivers. There will not be any increase in student numbers at the school, therefore no additional noise impacts are expected.

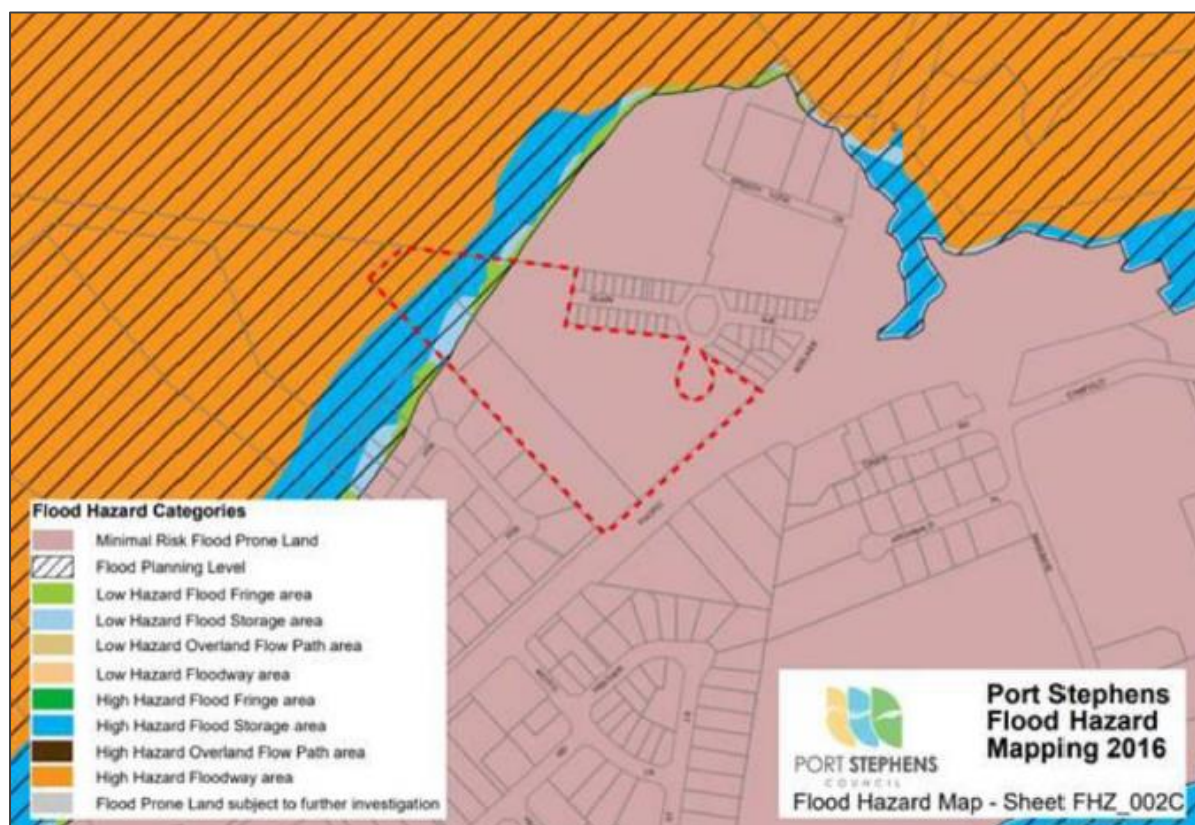
Regarding car parking and traffic associated impacts, the NVIA notes that based on a review of the proposed arrival / drop off path, and bus stop, there is not expected to be any additional noise impacts to the residential receivers. Furthermore, due to the proximity of the new road and proposed new carpark to the Pacific Highway, the noise from Pacific Highway is expected to mask any additional noise that may be generated, therefore no additional impacts expected.



Subject to conditions relating to the NVIA recommendations, the noise impacts of the proposal are satisfactorily mitigated.

### 6.3. Flooding

The proposed development is located on land outside the flood planning area, however, is located within a minimal risk flood prone area which is inundated in a probable maximum flood (PMF) event, as shown in **Figure 13** below. The proposal is a development type that is vulnerable to emergency response as per the 'Considering Flooding in Land Use Planning Guideline' (DPIE, July 2021).



**Figure 13: Flood Mapping**

The application includes a Flood Impact Assessment (FIA), Project no. A12077, Version 2, Prepared by BMT and dated 19 April 2023. The FIA categorises a small portion of the rear of the site as a 'high hazard floodway' and 'high hazard flood storage area', while the remainder of the site, where all existing and proposed buildings are located is 'minimal risk flood prone land'. Impacts to local flooding behaviour have been considered within the FIA up to and including the PMF event. The FIA concludes that the proposed development has no impact on flood behaviour and does not result in flood impacts to other private properties or public roads.

The proposed gymnasium has a finished floor level of 7.3m AHD, and the proposed car park has a finished level of 6.3m AHD which is above the Flood Planning Level (FPL) for the site of 5.7m AHD. Construction of the development at the FPL, appropriately mitigates risk to property.

Whilst the proposed development is above the flood planning level, it is below the PMF level and therefore consideration of how the site would be evacuated during a PMF flood is required to determine risk to life. The application includes a Flood Emergency Response Plan (FERP), Project no. A12187, Version 2, Prepared by BMT and dated 19 April 2023. The FERP

identifies peak flood levels, flood hazard categories and a flooding timeline assessment to inform the evacuation strategy and procedures. The FERP's principle emergency response strategy is for the school is early closure prior to the commencement of flooding and before the start of the school day. However, in the unlikely event of an unforeseen severe rainfall event, evacuation and shelter in place strategies are recommended.

The FERP recommends two acceptable evacuation routes (The Pacific Highway in the northerly direction and the Masonite Road route towards the Newcastle Airport), the Pacific Highway northerly option is preferred route. While the preferable flood emergency strategy is evacuation via the Pacific Highway (in the northerly direction), in the unlikely event of PMF flooding, the available evacuation time might not be sufficient to safely drive along the designated route. In this situation, the FERP recommends a shelter-in-place strategy within the existing upper levels of the existing buildings blocks, which are above the PMF flood level. In conclusion, the FERP recommends that a further FERP be prepared by the school operator to formalise the flooding evacuation plan and strategy with respect to "flood intelligence, the flood behaviour presented in this report, and relevant procedures. The FERP will be expected to build on the strategy and intent presented in this report." The report further recommends that the school operator liaise with the State Emergency Service (SES) in the preparation of this plan and install flood level warning triggers on the site. In line with this recommendation, it a condition has been recommended requiring the school operator prepare a FERP, in accordance with the BMT FERP.

Noting the existing and proposed school buildings are above the FPL, the availability of a PMF refuge and evacuation routes identified in the FERP, and that the proposal does not involve an increase to the capacity of the school in terms of student numbers, it is considered the proposed development adequately addresses risk to life from flooding.

#### **6.4. Aboriginal Heritage**

The application included an Aboriginal Cultural Heritage Assessment Report (ACHAR), prepared by Kayandel Archaeological Services dated June 2023 and an Archaeological Report, prepared by Kayandel Archaeological Services dated June 2023. The ACHAR and Archaeological Report identified that the school contains areas of archaeological sensitivity finding 3 Aboriginal sites, comprising 22 stone artefacts and 1 ochre nodule as a result of archaeological excavation.

The ACHAR further identifies that the site has been assessed to have a low to moderate archaeological potential and significance.

The ACHAR concludes that an Aboriginal Heritage Impact Permit (AHIP) under Section 90 of the National Parks and Wildlife Act 1974 will be necessary to impact any of the identified Aboriginal sites. The ACHAR further concludes that it is unlikely that Aboriginal stone artefacts in significant frequencies would be recovered during a salvage excavation program and recommends that any artefacts be reburied on site and a new AHIMS site registered at the burial location.

Due to the need for an AHIP, the application was referred to Heritage NSW as integrated development. In response HNSW made no objection to the application and issued General Terms of Approval, requiring the AHIP be sought and approved prior to the commencement of works and associated ongoing consultation with the Aboriginal community.

Subject to the General Terms of Approval and recommendations of the archaeological report, which have been incorporated as recommended conditions of consent, the proposal is consistent with the requirements of this section.

#### **6.5. Traffic, car parking and Pedestrian Movements**

The application includes a Traffic Impact Assessment (TIA) prepared by Stantec, Revision C, dated 11/05/2023, which assesses access, traffic and car parking related impacts of the

development. The proposed development does not generate additional traffic as no change to student or teacher numbers is proposed.

An existing vehicular access located off the Pacific Highway is proposed to be closed and an associated 24 space car park demolished. The demolished car park and access is proposed to be replaced with a new driveway from Adelaide Street, a kiss and drop zone and a 66 space car park. As a result, the existing historical car parking shortfall of 47 spaces would be reduced to 5 spaces. The proposal does not involve a change to student or teacher numbers and therefore the 5 space shortfall is acceptable.

The addition of the kiss and drop area off Adelaide Street is anticipated to provide a safer road environment for students accessing the site as it will reduce the amount of informal drop-offs currently occurring in Adelaide Street.

To ensure the new access, car park, service road and kiss and drop off zone are safely managed for pedestrians the applicant has proposed to prepare an Operational Traffic and Pedestrian Management Plan to document strategies for managing pedestrian and vehicle conflict, including the distribution of a 'Travel Access Guide' to students, parents and the public. In addition, a condition has been recommended requiring service vehicle movements be undertaken outside of peak school drop-off and pick-up times (8:00am and 9:30am and 2:30pm and 4:00pm on school days) wherever practically possible.

As the proposal does not generate any additional car parking demand and significantly improves the existing car parking shortfall, the proposal satisfies the parking requirements of this chapter.

#### **6.6. Sewer Connection**

The proposal includes a servicing strategy which includes connecting the proposed gymnasium and other future development to reticulated sewer. Specifically, an extension of sewer is proposed from the neighbouring site at 5 Speedy Lock Lane, which has approval for a 48 lot residential subdivision. The route of the sewer connection is shown in **Figure 12** above. However, the approved sewer in the residential subdivision is not yet constructed. In the event the sewer from the residential subdivision is not available prior to the completion of the school works, two alternate sewer connection routes have been identified in a Hunter Water Corporation Section 50 Certificate. To ensure the sewer connection is available to service the development, a condition has been included requiring connection prior to the issue of an Occupation Certificate. A condition has also been included requiring the connection to sewer occurs generally in accordance with the Servicing Strategy proposed by the applicant.

A condition is recommended requiring that all essential services are available prior to the issue of an Occupation Certificate. Subject to this condition, the proposed sewer connection satisfies clause 7.6 of the LEP.

#### **6.7. Contamination**

The site has previously been used for agriculture which is a potentially contaminating land use, as per the EPA Contaminated Land Planning Guidelines.

Noting the historic agricultural use of the site and given the sensitive nature of the school a Targeted Environmental Site Assessment (TESA), prepared by WSP, Revision B and dated 28/3/2023 was submitted with the application. The TESA included the excavation of 111 test pits within five different areas. The soil samples found 17 adopted human health criteria exceedances across all areas investigated.

Based on the results of this assessment it is considered that the site is not suitable for the proposed development until further remediation has occurred. In response to this recommendation, a Detailed Site Investigation (DSI) and Remediation Action Plan (RAP) for contamination were prepared JBS&G Australia, dated 12 May 2023.

The RAP proposes in situ management of soils by separation and ongoing management by capping and containing contaminated materials. The proposed actions outlined in the RAP have been prepared to the requirements of the Contaminated Land Management Guidelines for the NSW Site Auditor Scheme (3rd Edition). The DSI concludes that subject to the successful implementation of the measures described in the RAP, the site can be made suitable for the intended uses and that the risks posed by contamination can be managed in such a way as to be adequately protective of human health and the environment.

Subject to conditions of consent, at the completion of remediation works, a validation report is required that complies with the Contaminated Lands Planning Guidelines, Contaminated Lands Management Act 1997 and State Environmental Planning Policy (Resilience and Hazards) 2021, documenting the works as completed. Conditions of consent have also been recommended relating to unexpected finds protocol to be engaged in the event unexpected contaminants are discovered during works.

Based on the findings of the DSI and recommendations within the RAP the site would be suitable for the development, subject to the proposed remediation.

## 7. 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. Similarly, the proposal has been sited to avoid the adverse effects natural constraints, including flooding and bushfire.

It is considered that the key issues pertaining to noise, flooding, Aboriginal heritage and connection to sewer 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**.

## 8. RECOMMENDATION

That the Development Application 16-2023-259-1 for Alterations and additions to Educational Establishment (Hunter River High School) – New gymnasium, sports field, landscaping, car parking and service road at 36, 38 & 40 Elkin Avenue Heatherbrae 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 Response to Draft Conditions
- Attachment C: DCP Compliance Table (Chapter B5 – Flooding)
- Attachment D: Architectural Plans
- Attachment E: Stormwater & Civil Plans
- Attachment F: Stormwater Management Report
- Attachment G: Landscape Plans
- Attachment H: Services Strategy
- Attachment I: Noise and Vibration Assessment

- Attachment J: Access report
- Attachment K: BCA Report
- Attachment L: CPTED Report
- Attachment M: Waste management plan
- Attachment N: CEMP
- Attachment O: Sustainable Development Plan
- Attachment P: Geotechnical report
- Attachment Q : Aboriginal Cultural Heritage Report
- Attachment R: Archaeological Report
- Attachment S: Biodiversity Assessment Report
- Attachment T: Arborists report
- Attachment U: Flood Emergency Response Plan
- Attachment V: Flood Impact Assessment
- Attachment W: Bushfire Assessment Report
- Attachment X: RFS GTAs
- Attachment Y: Heritage NSW GTAs