

## COUNCIL ASSESSMENT REPORT

### HUNTER AND CENTRAL COAST REGIONAL PLANNING PANEL

<b>PANEL REFERENCE &amp; DA NUMBER</b>	PPSHCC-313 – DA 2024/60
<b>PROPOSAL</b>	Education Establishment (K-12 School)
<b>ADDRESS</b>	Lot 100 DP 1261496 (72-74 Maitland Street Muswellbrook)
<b>APPLICANT</b>	Pacific Brook Christian School
<b>OWNER</b>	Pacific Brook Christian Schools Limited
<b>DA LODGEMENT DATE</b>	12 August 2024
<b>APPLICATION TYPE</b>	Development Application
<b>REGIONALLY SIGNIFICANT CRITERIA</b>	Section 2.19 Schedule 6, of the SEPP Planning Systems 2021 (Private infrastructure Development greater than \$5-million)
<b>CIV</b>	\$7,892,500
<b>CLAUSE 4.6 REQUESTS</b>	NA
<b>KEY SEPP/LEP</b>	<ul style="list-style-type: none"> <li>• <i>State Environmental Planning Policy (Biodiversity Conservation) 2021</i></li> <li>• <i>State Environmental Planning Policy (Resilience and Hazards) 2021</i></li> <li>• <i>State Environmental Planning Policy (Sustainable Buildings) 2021;</i></li> <li>• <i>State Environmental Planning Policy (Sustainable Buildings) 2021;</i></li> <li>• <i>State Environmental Planning Policy (Transport and Infrastructure) 2021;</i></li> <li>• <i>State Environmental Planning Policy (Industry and Employment) 2021;</i></li> </ul> <i>Muswellbrook Local Environmental Plan 2009.</i>
<b>TOTAL &amp; SUBMISSIONS ISSUES SUBMISSIONS</b> <b>UNIQUE KEY IN</b>	<p>Nine (9) submission</p> <p>One (1) objection</p>
<b>DOCUMENTS SUBMITTED FOR CONSIDERATION</b>	<ul style="list-style-type: none"> <li>• Attachment A: Draft Conditions of consent</li> <li>• Attachment B: Architectural Plans</li> <li>• Attachment C: Flood Emergency Response Plan (June 2025 version)</li> <li>• Attachment D: NSW SES Final 24 February 2025 Letter</li> </ul>

	<ul style="list-style-type: none"> <li>• Attachment E: Applicant Planning and Flood Engineer Responses to Panell Briefing Flood Queries</li> <li>• Attachment F: Independent Review of Flood Response Plan</li> <li>• Attachment G : Site Remediation Report</li> <li>• Attachment H: Transport for NSW Referral Response</li> </ul>
<b>SPECIAL INFRASTRUCTURE CONTRIBUTIONS (S7.24)</b>	NA
<b>RECOMMENDATION</b>	Approval subject to recommended conditions
<b>DRAFT CONDITIONS TO APPLICANT</b>	Yes
<b>SCHEDULED MEETING DATE</b>	1 July 2025
<b>PLAN VERSION</b>	
<b>PREPARED BY</b>	Hamish McTaggart, Development Coordinator
<b>DATE OF REPORT</b>	24 June 2025

## EXECUTIVE SUMMARY

The site subject to this development application is Lot 100 DP 1261496 (72-72 Maitland Street Muswellbrook. The site is approximately 24,320m<sup>2</sup> and has previously been operated by NSW Forestry as a nursery. Buildings related to this previous use are located on the site and have been approved for demolition under a separate development application. There is native vegetation located across the site. In 2022 the site was rezoned from RU3 Forestry to R1 General Residential.

The proposed development involves a new kindergarten to year 12 school (Pacific Brook Christian School at 72-42 Maitland Street Muswellbrook (Lot 100 DP 1261496). The school would be constructed to accommodate 140 students and 16 staff.

The lowest lying part of the land holding are within the mapped extent of the 1% AEP flood event. The part of the land on which the school is above the 1%AEP event. The low area will be fenced off and excluded from the proposed development site. The entirety of the site including the proposed school location is within the mapped extent of the PMF flood event.

The proposed development is Regionally Significant development under the provisions of Schedule 6(5) of the State Environmental Planning Policy (Planning Systems) 2021 which specifies education establishments with a capital investment value greater than \$5-million as Regionally Significant Development.

The proposal was notified in accordance with the Council's Community Participation Plan from 4 September 2024 until 18 September 2024. A total of nine (9) unique submissions, comprising one (1) objection and eight (8) submissions in favour of the proposal.

Council Officers have completed an assessment of the proposed development against the relevant heads of consideration of Section 4.15 of the *Environmental Planning Assessment Act 1979*. As a result of the assessment Council Officers recommend that the development application be approved subject to recommended conditions of consent. Key findings of the Section 4.15 Assessment which informed this recommendation include:

- The proposed development would be compatible with the requirements of relevant State Environmental Planning Policies (SEPPs), including, SEPP (Transport and Infrastructure) 2021, SEPP (Resilience and Hazards) 2021, & SEPP (Biodiversity and Conservation) 2021.
- The proposed development is generally in accordance with the requirements of the Muswellbrook Development Control Plan 2009 (DCP) and conditions of consent have been recommended to ensure the development is carried out in accordance with specific DCP provisions.
- A Noise Impact Assessment has been prepared in relation to the proposed development. This Assessment considered potential noise emissions from the proposed development and noise emissions from external sources with the potential to impact the development (adjoining road and rail corridors). The report concludes that the proposal may be supported from a noise impact perspective subject to related conditions (recommended condition 12, 13 & 45).
- Remediation soil quality investigations were undertaken by Douglas and Partners. These investigations identified asbestos containing material/particles adjacent to existing buildings and isolated asphalt materials with elevated polycyclic hydrocarbon levels. A Remediation Action Plan has been prepared for the removal of asbestos containing material and placement of asphaltic material beneath parking area. Where carried out in accordance with the Remediation Action Plan the proposal would be compatible with SEPP (Resilience and Hazards) 2021 requirements.
- An ecological Assessment and Arborist Report has been prepared in relation to the proposed development. These reports conclude that the proposed development and ecological disturbance from undertaking the project would not trigger the Biodiversity Off-set scheme and that thereby the proposal may proceed from an ecological impact perspective without requirement of a BDAR or further related technical studies.
- An Aboriginal Cultural Heritage Assessment has been prepared in relation to the proposed development. No artefacts were identified through the study accompanying the report preparation and the report submits that the proposal is not likely to impact any aboriginal objects or heritage values. Council Officers are satisfied the proposed development may be supported from an aboriginal cultural heritage perspective.
- The proposed school buildings would be situated outside the mapped 1% AEP flood event area. The land is within the mapped extent of the PMF event. Given the proposal relates to an education establishment and includes young students it is necessary to have regard to the potential hazard posed to the site by PMF flood events and this is re-enforced by CI 5.22 of the Muswellbrook LEP 2009. This matter has been explored in detail through the assessment. In particular, under key issues and CI5.22 subheadings of this report. Informed by the Flood Emergency Response Plan, which includes measures to pre-emptively close the school on early flood warnings, a suitable strategy is available to ensure the safe operation of the premises. Council Officers consider that the proposal may be supported as a development consistent with related flood planning considerations.

Council Officers are satisfied that the operation of the premises would be a safe and reasonable proposal where carried out in accordance with the related flood response plan to manage flooding related risk.

- NSW SES have raised concerns with regard to the proposed siting of the school on a site within the mapped extent of the PMF flood event. The NSW SES advice is included as an attachment to this report and is discussed under referrals, key issues and S 5.22 headings of this report. NSW SES advice was considered by Council staff, however the Flood Emergency Response Plan provided for the proposed development, which includes measures to pre-emptively close the school on early flood warnings, presents a suitable strategy to ensure the safe operation of the premises.
- Section 13 of the DCP includes a provision for sensitive development to be constructed at heights exceeding the PMF flood event. The proposed development floor level would be constructed at a height that exceeds the 0.2% AEP event. Commentary specific to the consideration of this DCP provision is included under the Section 13 DCP sub-heading, with expanded flood commentary provided more generally under LEP and Key Issues headings.

The construction of school buildings to a higher level has not been recommended by flood studies informing this application. The performance solution established through the Flood Emergency Response Plan would see the site closed and evacuated ahead of any PMF event and with buildings protected up to the 0.2% AEP. This is viewed to be a reasonable, professionally informed and acceptable alternate performance solution to related DCP controls.

- The proposed development is generally in accordance with all other requirements of the Muswellbrook Development Control Plan 2009 (DCP). Conditions of consent have been recommended to ensure the development is carried out in accordance with certain DCP provisions.
- The proposed development was referred to TfNSW as a traffic Generating Development. TfNSW provided advice, this advice is discussed under the referrals heading of this assessment report. Council Engineers are satisfied that traffic matters raised have been suitably addressed for the proposed development to proceed, subject to related conditions and requirements. Related recommended conditions include the following additional works/improvements to the road environment –
  - the installation of barrier fencing within the New England Highway road island medium (recommended condition 17 & 49).
  - The installation of a pedestrian footpath from the Thompson Street signalised intersection along the site frontage up to the St Andrews Place New England Highway Intersection (recommended condition 5, 7 & 52).
- The proposal includes a total of thirty (30) off-street car parking spaces, and a kiss and ride drop off/collection system with eight (8) additional pull over car bays internal to the site. The off-street parking proposed is consistent with Muswellbrook DCP requirements, supported by the related Traffic Impact Assessment prepared in relation to the proposal and considered satisfactory by Council Engineers.

- The proposed development was referred internally to Council Engineers and the Environmental Health Section. Referral advice received from each Council Section was supportive of the proposed development subject to the imposition of conditions of consent.
- The assessment report considers potential environmental impacts and public interest considerations. Council Officers are satisfied that potential environmental impacts would be suitably managed/addressed in the carrying out of the proposed development and that the proposal is compatible with the public interest.

## 1. THE SITE AND LOCALITY

### 1.1 The Site

The subject site is Lot 100 DP 1261496 (72-72 Maitland Street Muswellbrook. Key site information includes:

- The site has a total area of approximately 24,320m<sup>2</sup> (2.4Ha).
- The subject site has historically been operated by NSW State Forests.
- The site is zoned R1 General Residential after being rezoned from RU3 Forestry by an LEP amendment carried out in 2022.
- The site has frontage to the New England Highway (Maitland Street). The New England Highway is a classified state road.
- The site directly adjoins the Muswellbrook Golf Course to the north and east.
- A signalised intersection is near north-western boundary of the site. This intersection provides a signalised pedestrian crossing opportunity for the New England Highway.
- The subject site contains unused buildings previously attached to the NSW State Forest operation of the site and plant nursery.
- There is no established kerb and gutter along part of the site frontage.
- The part of the site proposed for school buildings is outside the mapped extent of the 1% AEP flood event but affected by the mapped extent of the PMF. The sub-heading below provides information related to flooding.

The image below, taken from the Statement of Environmental Effects, shows the subject site in context with the adjoining locality.

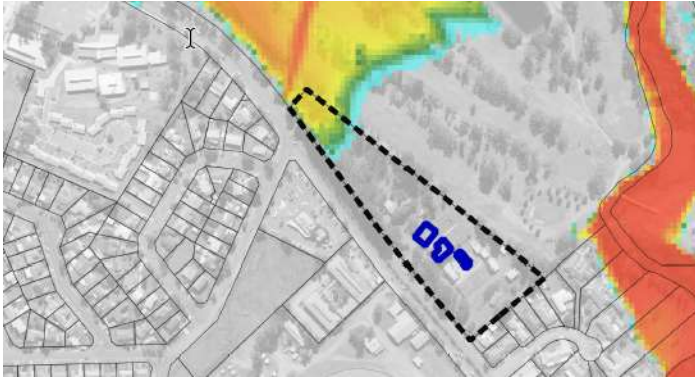


### 1.2 Site Flood Parameters

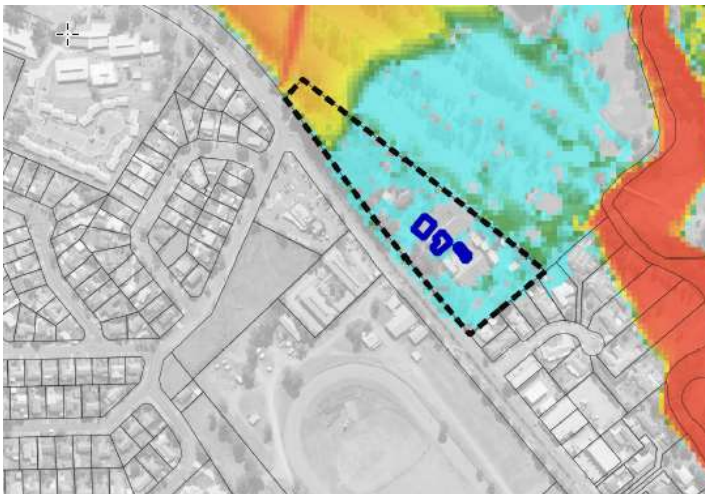
The images below have been taken from the Flood Impact Assessment and detail the mapped extent of flooding informed by the Muswellbrook Flood Risk Management Study and Plan 2019:



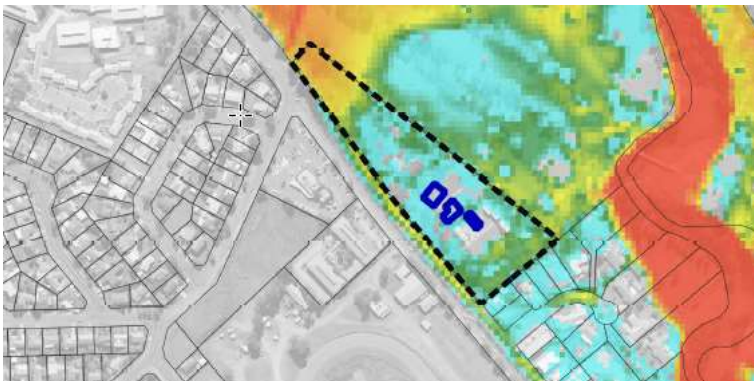
- 1% AEP event



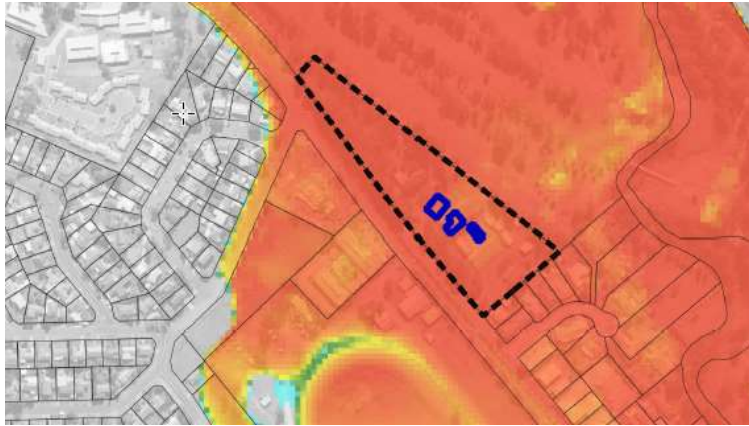
- 0.5% AEP flood event



- 0.2% AEP flood event

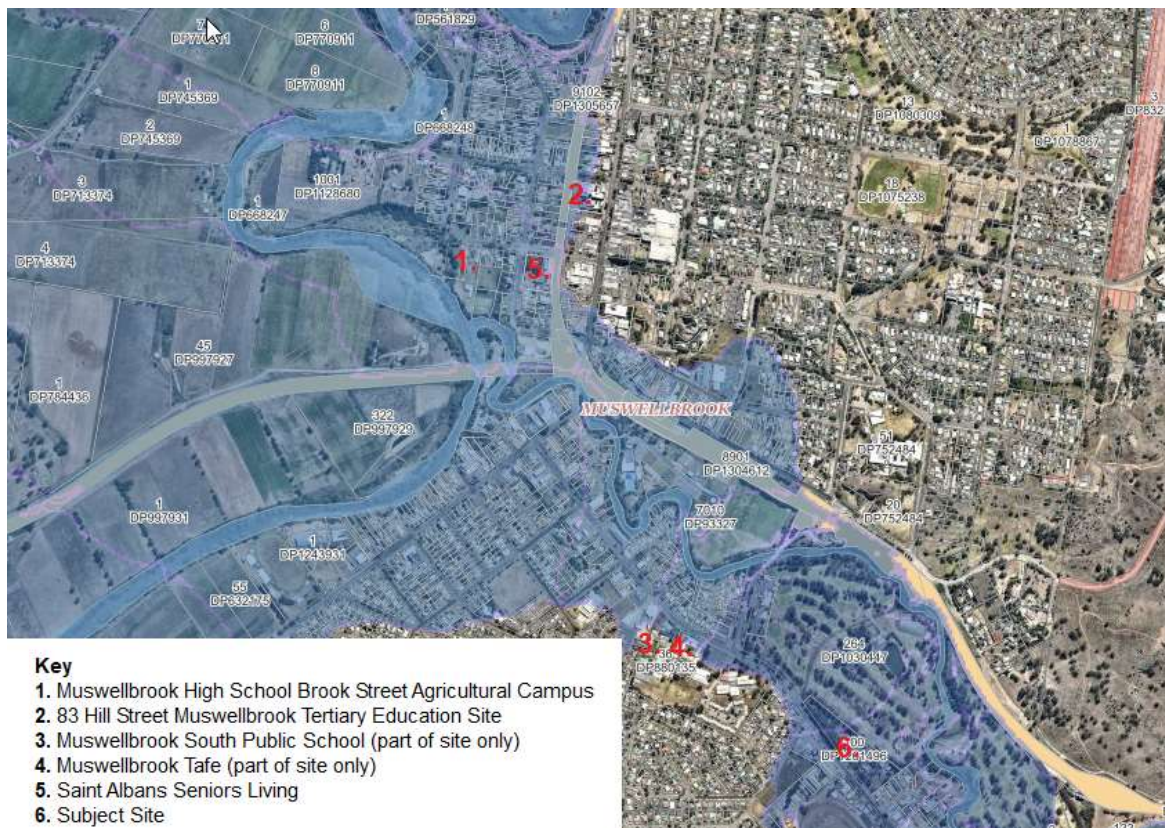


- PMF flood event



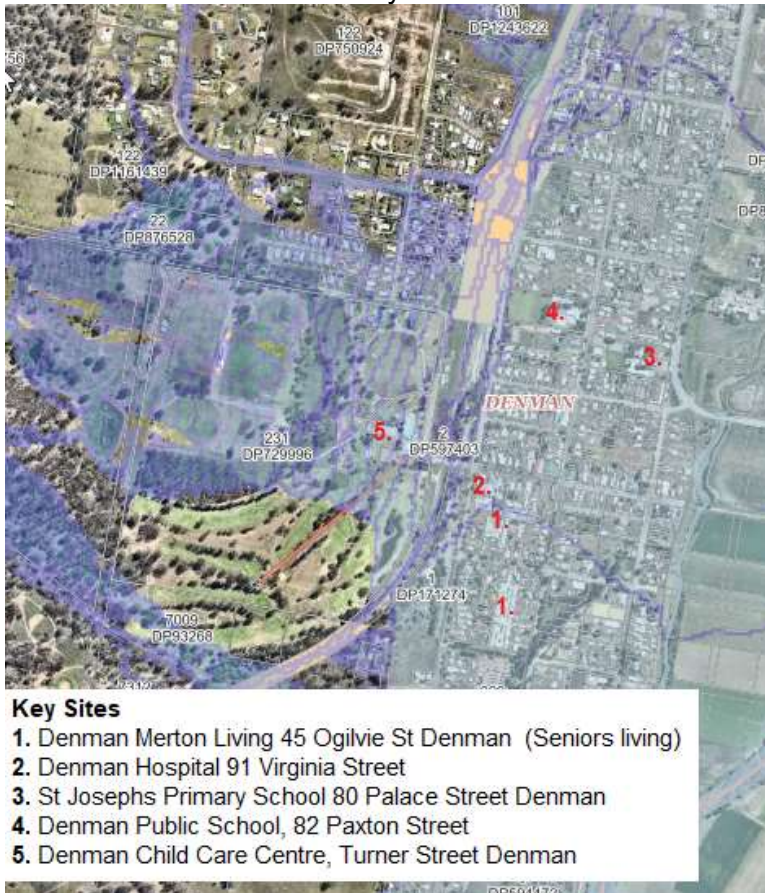
The images below provide additional context illustrating the PMF flood extent for Muswellbrook. The images identify certain (not all) types of flood sensitive development impacted by the mapped extent of the PMF.

- PMF Flood Layer Central Muswellbrook





- PMF Flood Layer Denman



## 2. THE PROPOSAL AND BACKGROUND

### 2.1 The Proposal

The proposal seeks consent for a new kindergarten to year 12 school (Pacific Brook Christian School at 72-42 Maitland Street Muswellbrook (Lot 100 DP 1261496).

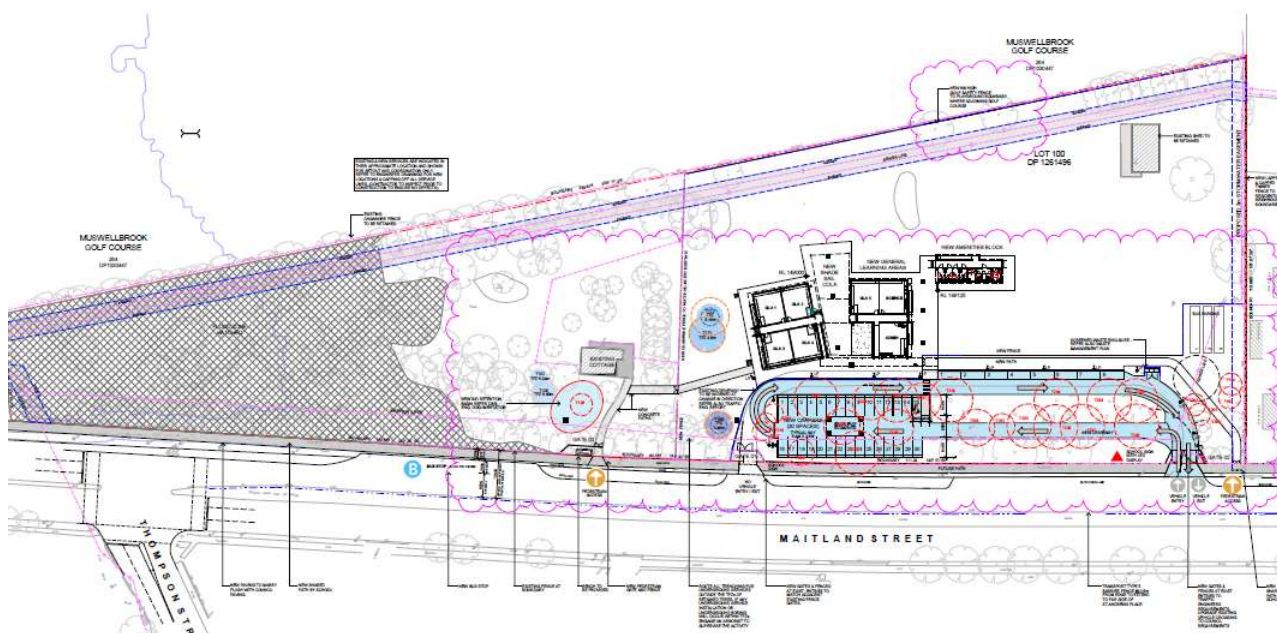
The school would be constructed to accommodate 140 students and 16 staff.

Works to establish the school include:

- Demolition of existing building and structures,
- Tree removal,
- Carrying out of site remediation work, and
- Construction of new site infrastructure, school buildings and installation of modular school buildings manufactured off-site.

Minor amendments have been made to the proposed plans through the assessment of the development application.

The image below from the current proposed plans provides a general overview of the proposed school layout in context with the site layout. The plans can be viewed in full in the related Assessment Report attachments.



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

**Table 1: Key Development Data**

Control	Proposal
Site area	24,325m <sup>2</sup>
GFA	513m <sup>2</sup>
FSR (retail/residential)	0.03:1 LEP Control (0.5:1)
Max Height	4.8m LEP Control (8.5m)
Maximum Student Numbers	140 students
Maximum Staff	16 staff
Car Parking spaces	30 car parking spaces proposed
Setback	25m

## 2.2 Background

The development application was lodged on **12 August 2024** chronology of the development application since lodgement is outlined below:

**Table 2: Chronology of the DA**

Date	Event
<b>12 August 2024</b>	Development application lodged
<b>30 August 2024</b>	Referral issued through the Planning Portal to: <ul style="list-style-type: none"> <li>• Department of Planning, Housing and Infrastructure (DPHI)</li> <li>• Transport for NSW (TfNSW)</li> </ul>
<b>2 September 2024</b>	Department of Planning, Housing and Infrastructure reject referral via the Planning Portal.  The Department advised their consideration of the proposal ceased when State Significant Development SSD-16858710 was withdrawn.
<b>18 September 2024</b>	Development Application Notified between <b>29 August and 18 September</b> .  Nine (9) Submissions were received in relation to the proposed development, Eight (8) of which were made in support of the proposed development.
<b>24 September 2024</b>	Transport for NSW provide referral response via NSW Planning Portal.  The referral response raises matters that require additional information. The content of this response has been communicated to the applicant for consideration and response.
<b>23 October 2024</b>	NSW State Emergency Services (SES) advisory referral issued – Attachments to the Flood Impact Assessment included correspondence from NSW SES related to the withdrawn SSD application.
<b>13 November 2024</b>	<b>Council RFI</b> Council issue request for additional information.
<b>18 November 2024</b>	<b>Panel Briefing</b> – status of DA Assessment and Council Request for Additional Information noted
<b>17 January 2025</b>	<b>Applicant additional information response</b> – submission of additional information and amendment of the application.

	<p>Amendments included:</p> <ul style="list-style-type: none"> <li>• Amended Plans</li> <li>• Amended Traffic Response</li> <li>• Amended Flood Response</li> <li>• Amended Ecology Report: <ul style="list-style-type: none"> <li>• Have regard to evacuation warning mechanisms through the Muscle Creek Flood Warning System.</li> <li>• Provide additional contextual information around flood evacuation timing and flood warning system milestones for response.</li> </ul> </li> </ul> <p>Peer review of Flood Management and Response Documents by independent flood expert</p>
<b>21 February 2025</b>	<b>NSW SES</b> NSW State Environmental Service additional information advisory referral issued.
<b>10 March 2025</b>	<p><b>TfNSW – Referral response.</b></p> <p>TfNSW determined the matter as completed/advised in the Planning Portal and provided Council with related advice.</p> <p>TfNSW advice issued advice noted insufficient information in some respects, and directed Council on matters for further consideration prior to determining. These matters were communicated to the applicant who provided a response (3 June 2025) that was evaluated by Council Engineers.</p>
<b>18 March 2025</b>	Panel Briefing – Panel briefing No.2 specifically related to flood assessment considerations
<b>18 March 2025</b>	<b>Council RFI</b> - Council issue request for additional information. Traffic & Flooding points
<b>3 June 2025</b>	<b>Applicant RFI response</b> - responding to final flooding and traffic matters.

### 2.3 Site History

- **Previous use** – the site was previously owned and operated by NSW State Forests as a plant propagation, grow out and sales facility (nursery). NSW State Forests' active use of the site concluded approx. 8years ago.
- **Planning Proposal** – 18 November 2022 an amendment to the Muswellbrook LEP 2009 was gazetted that established the rezoning of the site from its former RU3 Forestry to its current R1 General Residential. The Planning Proposal was lodged with Council by the school proponent and establishing a zoning for the site within which development for the purpose of an 'educational establishment' would be permissible was core to the Planning Proposal objectives.



- **DA 2020/104 demolition works** – this development application was approved by Council on the 12 November and obtained approval for the demolition of existing structures and the removal of fourteen trees at the site.
- **State Significant Development SSD-16858710** – on 26 April 2021, the (then) Department of Planning, Infrastructure and Environment (DPIE) issued Secretary's Environmental Assessment Requirements (SEARs) (SSD-16858710) for a staged concept application for the establishment of new school at the site, accommodating up to 656 students and 65 staff. The State Significant Development Application (SSDA) was lodged on 14 October 2021 and was publicly exhibited between 19 November and 16 December 2021.

The applicant for this development application advised that following feedback from the NSW State Emergency Service (SES) and the (then) DPIE's Biodiversity and Conservation Division (BCD) in relation to flooding, flood evacuation and on-site detention, the SSDA was withdrawn. Per the provisions of the *Environmental Planning and Assessment Regulation 2021* a withdrawn application is to be taken as having never been lodged.

- **Preparation of current application** – the application before the Panel has been revised with the size of the school reduced to 16 staff and 140 students. The application has demonstrated continued consultation with the NSW SES to inform revisions and updates to their approach to flood risk management in the preparation of this new application.

### 3. STATUTORY CONSIDERATIONS

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

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

- Integrated Development (s4.46)
- Designated Development (s4.10)

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

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

**Table 3: Summary of Applicable State Environmental Planning Policies**  
(Preconditions in **bold**) and Muswellbrook LEP 2009

EPI	Matters for Consideration	Comply (Y/N)
SEPP (Planning Systems) 2021)	<ul style="list-style-type: none"> <li>• <b>Section 2.19</b> – The proposed development is Regionally Significant development for the purposes of Section 2.19 of the SEPP. The proposed development involves an ‘education establishment’ with a total cost between \$5-million to \$20-million.</li> </ul>	Y
SEPP (Biodiversity Conservation) 2021	<ul style="list-style-type: none"> <li>• <b>Chapter 3</b> – requires consideration of the relationship of the development with koala habitat protection. An ecological assessment has been undertaken which identified the site did not contain suitable habitats to support koala population. Further investigation against the SEPP provisions is not required.</li> </ul>	Y
SEPP (Resilience and Hazards) 2021	<ul style="list-style-type: none"> <li>• <b>Chapter 4</b> – requires consideration of potential site contamination and remediation requirements. Soil quality investigations have been carried out in relation to the site and a Remediation Action Plan prepared for the removal of localised asbestos findings through this investigation and the management of asphalt containing material.</li> </ul> <p>Where carried out in accordance with the Remediation Action Plan the proposed development may progressed in accordance with the SEPP provisions.</p>	Y
SEPP (Sustainable Buildings) 2021	<ul style="list-style-type: none"> <li>• <b>Section 3.2</b> – the proposal is non-residential development with a value greater than \$5-million. In accordance with related SEPP requirements NABERS and ESD reports have been prepared in relation to the development design.</li> <li>•</li> </ul>	Y
SEPP (Transport and Infrastructure) 2021	<ul style="list-style-type: none"> <li>• <b>Clause 2.1 &amp; 2.10</b> – noise impact assessment demonstrating compliance with <i>Development Near Rail Corridors and Busy Roads – Interim Guideline</i> (2008). (Determination of development applications—other development) – electricity transmission - the proposal is satisfactory subject to conditions.</li> <li>• <b>Section 2.122 &amp; Section 3.58 (traffic generating development)</b> – proposed development referred to</li> </ul>	Y

	<p>TfNSW in accordance with requirements for traffic generating development and TfNSW advice has informed the DA assessment.</p> <ul style="list-style-type: none"> <li>• <b>Chapter 3 – Schedule 8</b> Education Establishments – proposed development is compatible with education establishment design principles – a related architectural design report has been submitted demonstrating compliance with each relevant criteria.</li> </ul>	
SEPP (Industry and employment)	<ul style="list-style-type: none"> <li>• Chapter 3 – proposed development involves modest advertising signage. The proposed signage has been reviewed against the provisions of Schedule 5 of the SEPP. Proposed signage is compatible with these relevant assessment requirements.</li> </ul>	Y
Muswellbrook LEP 2009	Development in accordance with Muswellbrook LEP 2009. Key area of consideration relates to the proposal's relationship with CI 5.22 Special Flood Planning Considerations	Y

### State Environmental Planning Policy (Planning Systems) 2021

Section 2.19 of the SEPP specifies that development identified by Schedule 6 is declared to be Regionally Significant Development for the purpose of the *Environmental Planning and Assessment Act 1979*.

Schedule 6(5) specifies the following as Regionally Significant Development:

*Development that has an estimated development cost of more than \$5 million for any of the following purposes—*

- (a) *air transport facilities, electricity generating works, port facilities, rail infrastructure facilities, road infrastructure facilities, sewerage systems, telecommunications facilities, waste or resource management facilities, water supply systems, or wharf or boating facilities,*
- (b) *affordable housing, child care centres, community facilities, correctional centres, educational establishments, group homes, health services facilities or places of public worship.*

The proposed development is a type of educational establishment with a development cost of more than \$5-million. The total cost of the development is \$7,892,500.

It is relevant to note that the total development cost is less than the value that might otherwise cause the development to be classified as State Significant Development.

Accordingly, the proposed development is classified as Regionally Significant Development per the *Environmental Planning and Assessment Act 1979* and the Hunter and Central Coast Regional Planning Panel is the consent Authority for the application.

### State Environmental Planning Policy (Biodiversity Conservation)

An ecology report was prepared by Abel Ecology for the proposed development. The report identified that the site did not contain suitable natural habitat to support any koala population.

Council Officers are satisfied that the subject site does not comprise a potential koala habitat requiring further investigation against SEPP requirements

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

Soil quality investigations have been undertaken for the site by Douglas Partners and related reports submitted with this application.

The soil quality investigations identified:

- Localised bonded asbestos containing materials identified at the surface of the site adjacent to existing buildings.
- Asphalt materials containing elevated polycyclic hydrocarbons levels.

While investigation identified these materials requiring management through the carrying out of works, reports were generally supportive of the project moving forward from a contamination management perspective. A Supplementary Detailed Site Investigation made the following related recommendation:

*'In summary, the site is considered to be suitable for the proposed school development in relation to site contamination, subject to appropriate demolition of existing structures and clearance of hazardous building materials including minor surface ACM identified adjacent to Buildings 5 and 8'.*

A Remediation Action Plan (RAP) has been provided in relation to the proposed development. This plan sets out works required for:

- Removal and off-site disposal of the asbestos containing material (ACM). ACM was identified at the surface of the site adjacent to the existing buildings proposed for
- Placement of the asphalt containing elevated PAH beneath the carpark. (the RAP notes the volume of material to comprise approximately 70 – 100m<sup>3</sup> or 0.2m of depth and references the placement of materials to be precautionary measure not technically constituting remediation or attracting any long term management.
- Post-demolition surface inspections of building footprint and surrounds to confirm site conditions.

Council Officers are satisfied that, where carried out in accordance with the RAP, site contamination will be suitably remediated and the development may be supported as a development compatible with the related provisions of Section 4.6 and Chapter 4 of the SEPP.



### State Environmental Planning Policy (Sustainable Buildings) 2021

**Section 3.1** of the SEPP provides that development for the erection of a new building, which is not for the purpose of residential accommodation, if the development has an estimated development cost of \$5 million or more, is development for the purposes of this SEPP.

Section 3.2 of the SEPP applies to development with an estimated value of greater than \$5million.

Section 3.2 (1) sets out matters related to ensuring the sustainability, energy efficiency and resource consumption has been appropriately considered through the preparation of the building design.

Section 3.2 (2) requires the quantification of embodied emissions attributed to the proposed development.

The applicant has submitted the following documentation:

- An Ecology Sustainable Development (ESD) Report – a report which demonstrates compliance with the building sustainability design criteria set out in Section 3.2(1)
- A NABERS report – a report that quantifies embodied emissions attributed to the proposed development required by Section 3.2(2).

A review of both the NABERS and ESD reports suggest that the relevant Section 3.2 requirements have been considered and that the proposed development may proceed as a development compatible with the requirements of this SEPP.

### State Environmental Planning Policy (Transport and Infrastructure) 2021

- **Section 2.100 (rail Noise)** – requires education establishment development at a close proximity to rail corridors to have regard to the potential impact of rail noise and vibration on that development. The subject site is located within 400m of the northern rail line

A Noise Impact Assessment prepared by Acoustic Logic considers the impacts of rail noise and vibration on the proposed school development in accordance with the requirements of the *Development Near Rail Corridors and Busy Roads – Interim Guideline* (2008). This report concludes that due to the distance between the proposed school and the rail corridor, as well as the use of typical building construction elements, that rail noise and vibration will not have an adverse impact on the proposed development.

- **Section 2.122 & Section 3.58 (Traffic Generating Development)** - The proposed development meets the criteria of Traffic Generating Development under both Section 2.122 (general) and Section 3.58 (education establishment) of the SEPP.

In accordance with related provisions of the SEPP the proposed development has been referred to Transport for NSW (TfNSW) for their concurrence.

TfNSW advice is discussed under a referrals heading of this report. The matters raised in TfNSW final correspondence have been suitably addressed to support the progression of the proposed development.

- **Section 2.10 (Road Noise)** – requires education establishment development adjacent a road corridor with an annual average traffic of more than 20,000 vehicles to have regard to the potential impact of road noise and vibration on that development.

The New England Highway (Maitland Street) published traffic figures suggests that this adjoining road does not exceed the 20,000 vehicle trips per annum.

The Noise Impact Assessment for the proposed development had regard to Maitland Street as a noise source in context with the requirements of *Development Near Rail Corridors and Busy Roads – Interim Guideline* (2008). The report notes that to achieve the recommended noise level of 40dB(A) per classroom acoustic treatments should be considered for the building façade where the development is constructed prior to the Muswellbrook Bypass (which will divert heavy vehicle traffic from Maitland Street).

- **Chapter 3 (Education establishments)** – this Chapter of the SEPP requires the consideration of design principles set out in Schedule 8 of the SEPP and suspends aspects of local Development Control Plans related to a proposed school development.

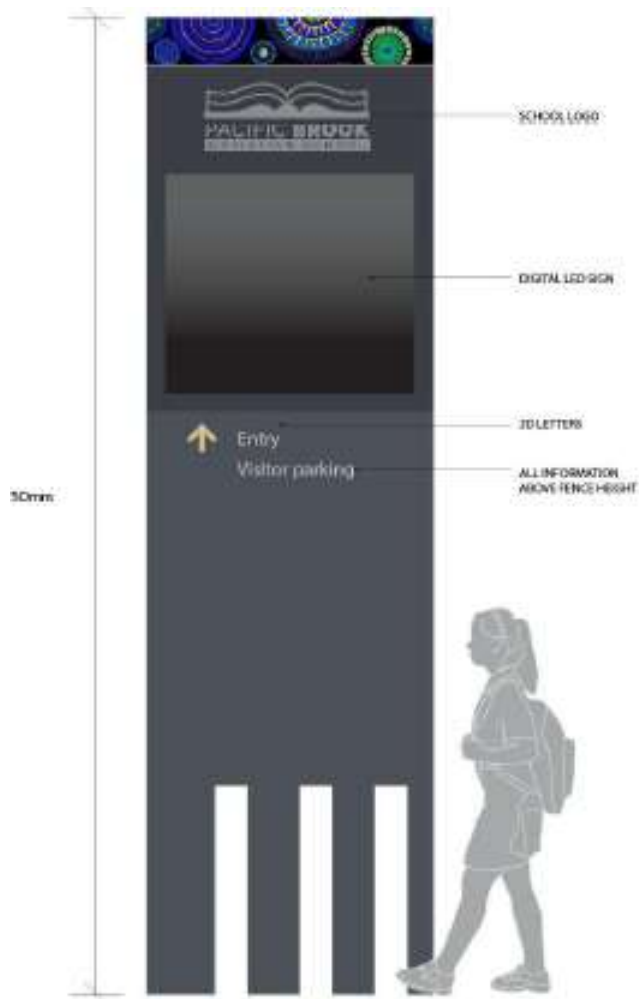
An Architectural Design Report has been submitted with the development application which elaborates on how these design principles have been considered in the preparation of the design.

Council Officers have reviewed these supporting documents and are satisfied that the proposal is compatible with relevant design principles.

### State Environmental Planning Policy (Industry and Employment) 2021

**Chapter 3** Provisions of Chapter 3 of the SEPP inform the assessment of development involving advertising signage.

The signage plan has been included with the architectural plans indicates that the proposal would include one business identification sign requiring approval and consideration against the SEPP. The related sign is shown in the image below.



The Statement of Environmental Effects includes commentary reviewing the proposed sign against the SEPP provisions. The assessment concludes that the proposed development would be compatible with the SEPP requirements.

Council Officers are satisfied that the proposed signage would be compatible with the relevant SEPP provisions, where carried out in accordance with related draft recommended conditions of consent.

Council Officer have had regard to the proposed illumination of the sign. The established pattern of illuminated signage along Maitland St in the vicinity of the development site, including signage attached to educational establishments north-west of the site has been noted. To ensure the illuminated school board sign is operated in a manner consistent with the SEPP provisions and local requirements, conditions of consent have been recommended related to hours of illumination, illumination intensity and restricting any flashing or word alert illuminations that may cause driver distraction.

### **Muswellbrook Local Environmental Plan 2009**

The relevant local environmental plan applying to the site is the Muswellbrook *Local Environmental Plan 2009* (MLEP'). The aims of MLEP include:

- (aa) *to protect and promote the use and development of land for arts and cultural activity, including music and other performance arts,*

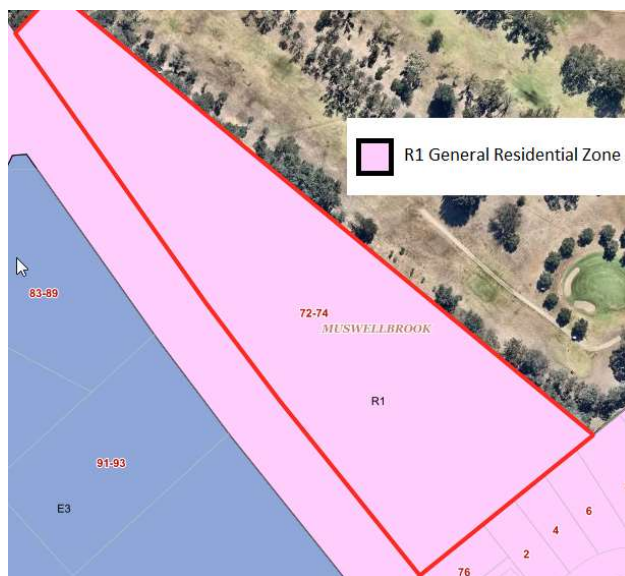
- (a) to encourage the proper management of the natural and human-made resources of Muswellbrook by protecting, enhancing or conserving—
  - (i) productive agricultural land, and
  - (ii) timber, minerals, soils, water and other natural resources, and
  - (iii) areas of significance for nature conservation, and
  - (iv) areas of high scenic or recreational value, and
  - (v) places and buildings of archaeological or heritage significance,
- (b) to manage the urban areas of Muswellbrook by strengthening retail hierarchies and employment opportunities, promoting appropriate tourism development, guiding affordable urban form and providing for the protection of heritage items and precincts,
- (c) to promote ecologically sustainable urban and rural development,
- (d) to manage development in flood-prone areas by ensuring any obstruction, re-direction or pollution of flood waters will not have adverse consequences for the environment or increase the risk of endangering life or property,
- (e) to enhance the urban amenity and habitat for flora and fauna,
- (f) to protect and conserve—
  - (i) soil stability by controlling development in accordance with land capability, and
  - (ii) remnant native vegetation, and
  - (iii) water resources, water quality and wetland areas, natural flow patterns and their catchments and buffer areas,
- (g) to provide a secure future for agriculture by expanding Muswellbrook's economic base and minimising the loss or fragmentation of productive agricultural land,
- (h) to allow flexibility in the planning framework so as to encourage orderly, economic and equitable development while safeguarding the community's interests and residential amenity, and to achieve the objectives of each zone mentioned in Part 2 of this Plan.

The proposal is consistent with these aims as the proposal.

### Zoning and Permissibility (Part 2)

#### Permissibility

The site is located within the R1 General Residential zoning pursuant to Clause 2.3 of the Muswellbrook LEP 2009.



The proposed development involves an 'education establishment'.

Development for the purpose of 'educational establishment' is permissible with consent in the R1 General Residential zone.



### Zone Objectives

Clause 2.3(2) of MLEP 2009 requires a consent authority to have regard to the land use zone objectives for the relevant land use zone, in this case R1 General residential, when determining a development application.

The zone objectives for the R1 General Residential zone have been included below.

- *To provide for the housing needs of the community.*
- *To provide for a variety of housing types and densities.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To enable sensitive infill development of other housing types.*
- *To allow people to carry out a reasonable range of activities from their homes, where such activities do not adversely affect the living environment of neighbours.*
- *To promote the principles of ecological sustainable development including energy and water efficient subdivision and housing design.*
- *To minimise the impact of non-residential uses and ensure these are in character and compatible with surrounding development.*
- *To ensure that development is carried out in a way that is compatible with the flood risk of the area.*

The proposal is a type of development compatible with the land use zone objectives. Council Officers have had regard to the following as key considerations:

- As an 'educational establishment' the proposed development is a type of development permissible with consent under the relevant land use table.
- There is alignment between the proposed development and land use objectives related to the provision of housing and local liveability. At a community wide scale, the provision of diverse school offerings is necessary to support housing and population growth within the community.
- The proposed development and education land use is compatible with the characteristics of the locality.
- The proposed development is considered to be compatible with modelled flood risk for the locality with suitable mitigation and safety measures to be incorporated into the development.

### General Controls and Development Standards (Part 2, 4, 5 and 6)

The LEP also contains controls relating to development standards, miscellaneous provisions and local provisions. The controls relevant to the proposal are considered in **Table 4** below.

**Table 4: Summary Consideration of the LEP Controls**

Control	Requirement	Proposal	Comply
Minimum subdivision Lot size (CI 4.1)	600m <sup>2</sup>	No subdivision proposed	Yes
Height of buildings (CI 4.3(2))	8.5 metres	4.8m (approximately)	Yes
FSR (CI 4.4(2))	0.5:1	FSR of 0.03:1.	Yes

		Floor area of 692m <sup>2</sup> , a site area of 24,230m <sup>2</sup> .	
Flood Planning (CI5.21)	Compliance demonstrated with matters specified by this Clause.	The proposed development is outside the extent of the 'flood planning area' and thereby Clause provisions not directly applicable. This notwithstanding, and noting the evaluation of flooding related relevant under CI 5.22 the proposal is considered to be compatible with related flood considerations.	Yes
Special Flood Considerations (CI 5.21)	Compliance demonstrated with matters specified by this Clause.	Where carried out in accordance with the FERP and related recommended conditions the proposal is viewed to comply with relevant flood safety matters under this Clause	Yes
Earthworks (CI 7.6)	Compliance demonstrated with matters specified by this Clause.	Explored in sub-section below.	Yes

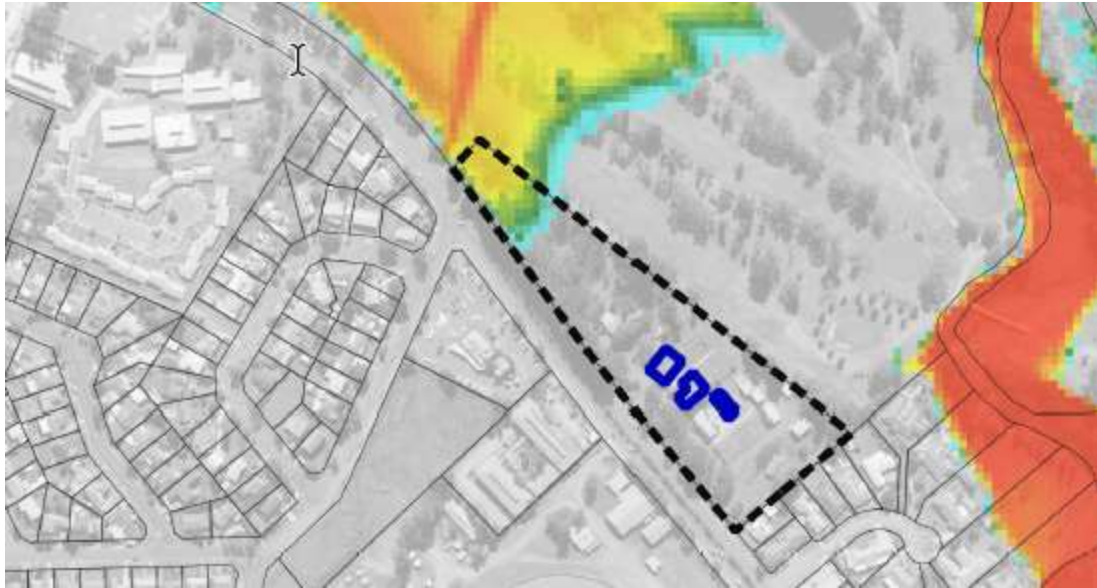
The proposal is considered to be generally consistent with the LEP.

#### Clause 5.21 Flood Planning

This Section prescribes additional matters for consideration for a consent authority when considering development within a 'flood planning area'. To define what comprises a 'flood planning area' the Clause references the related definitions contained within the *Flood Risk Manual*.

The definition provided for 'flood planning area' in the *Flood Risk Manual* is link to a sub-definition of the 'flood planning level' which is associated with the 1% AEP flood event and a 0.5m freeboard.

The part of the site proposed for structures is outside the 1% AEP flood event. A map has been included below.



Council Officers consider the proposed development to be outside of the 'flood planning area' for the purposes of this Section of the Muswellbrook LEP 2009.

Notwithstanding, Council Officers are satisfied that all matters prescribed for consideration by the Clause have been suitably addressed through the flood strategy and Flood Emergency Response Plan proposed.

**Clause 5.22 Special Flood Considerations Flood Planning**

**Section 5.22** applies to sensitive and hazardous development (which includes education establishment) within the PMF. When determining a relevant development application this Section requires the consent authority to consider whether the development:

- a) *will affect the safe occupation and efficient evacuation of people in the event of a flood*
- b) *incorporates appropriate measures to manage risk to life in the event of a flood*
- c) *will adversely affect the environment in the event of a flood.*

These matters have been considered and commented on below:

- a) *will affect the safe occupation and efficient evacuation of people in the event of a flood*

**Planning comment:**




A Flood Emergency Response Plan details evacuation planning for the proposed development.

The Flood Emergency Response Plan emphasises the extremely rare nature of events that may pose a hazard to the school (events exceeding the 0.2% flood event) and puts forward a proactive strategy to monitor conditions where flood risk is elevated and make pre-emptive decisions to enact school closure and/or flood evacuation procedures (in red alert scenarios).

The flood evacuation strategy is supported by pre-emptive triggers for risk conditions including:

- Severe Weather Warnings (including East Coast Lows)
- Severe Thunderstorm Warnings
- Flood Watches
- Flood Warnings

These early warning alerts will trigger pre-emptive school closures under the alert warning thresholds described below. The lead in time for each alert warning trigger level is also shown in the accompanying images.

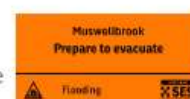
Muswellbrook and surrounding areas <b>Stay informed</b>	Muswellbrook <b>Prepare to evacuate</b>	Muswellbrook <b>Evacuate now</b>
 Flooding 	 Flooding 	 Flooding 

- Yellow: flooding of the Site is possible in coming day (>12hrs warning)
  - Flood Watch or Flood Warning issued for minor to moderate flooding – heightened monitoring of developing situation
  - Flood Watch or Flood Warning issued for moderate to major flooding – pre-emptive school closure



Amber: flooding of the Site is possible within the hours of operation

- Flood Watch or Flood Warning issued for major flooding – pre-emptive school closure outside of school hours or immediate school closure within school hours

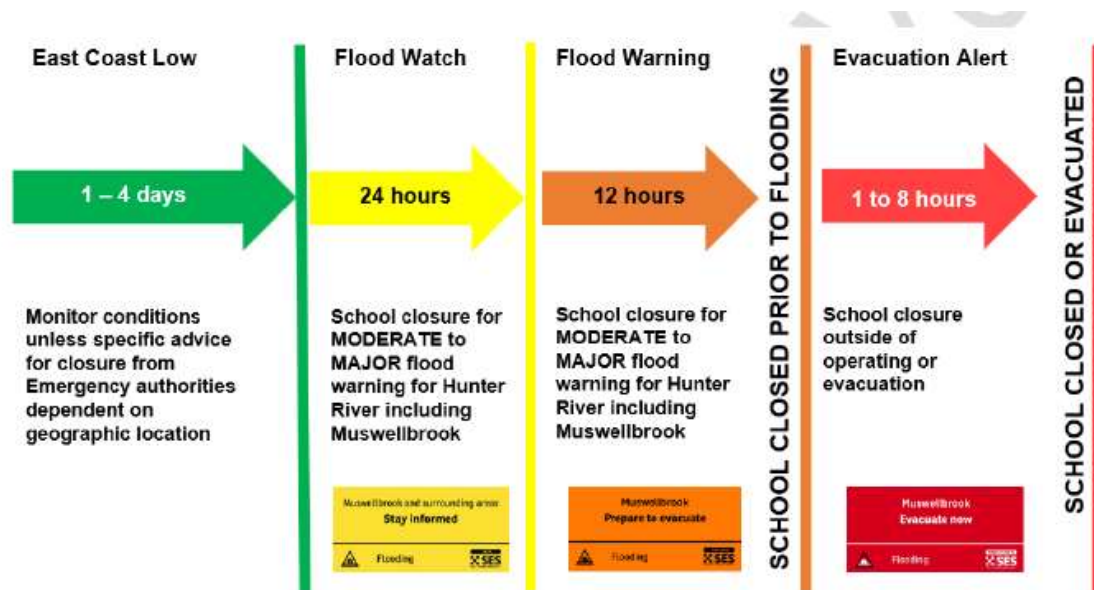


- Red: imminent flooding of the Site is expected
  - Flood Evacuation alert issued by SES or other emergency services, or Flood alert issued from the Muscle Creek Flood Warning System – immediate initiation of Flood Evacuation Plan
  - Site water level or rainfall gauge alert – immediate initiation of Flood Evacuation Plan



- Green: all clear, floodwaters have receded and local access to the Site is available
  - Emergency service has cleared access to the Site
  - Review Site conditions and opportunity for normal operation





The warning level system provides a comfortable lead in warning timeline for issuing pre-emptive closure decisions prior to any flood inundation risk. Council Officers consider a school managed in accordance with the FERP early warning strategy would facilitate safe occupation and evacuation outcomes.

In addition to the early warning strategies, the FERP contains additional redundancies and details how an emergency flood evacuation would be triggered should an unlikely scenario eventuate that the early warning strategies were not appropriate or failed in a fast moving situation. In such an unlikely scenario, the FERP details the following measures that would trigger an immediate response:

- Warning triggered by Council's Muscle Creek Early Warning System – when water level 144.1m AHD in Muscle Creek.
- Evacuation Order NSW SES, BoM
- 50mm of water recorded in 30-minutes or less at-on-site water gauge
- On-site floodwater alarm triggered at gauge installed on part of the site subject to 1% flood level inundation.

Modelling for a worst case PMF event at the site indicates that in this most extreme probability scenario, the evacuation window for the site would be as low as 70 minutes between red alert warning and the minimum timeline to have safely evacuated.

An evacuation response timeline indicates that, once triggered, evacuations will be undertaken in as little as 35 minutes and thereby safe response timelines can be achieved.

The evacuation timeline also indicates that in the event of a malfunction or the non-triggering of the Muscle Creek Flood Warning system the on-site flood warning system would be triggered 30 minutes after the initial warning providing a 40 minute response window that would also achieve site evacuation in line with the 35 minute response plan.

While flood documents indicate that site evacuation is achievable in all scenarios, NSW SES have reservation with the proposal. NSW SES comments highlight reservation with a flood evacuation strategy being used to justify introducing new vulnerable people to a floodplain site and adding complexity to flood response planning for the locality. Their commentary also indicates concern around the risk of system failures in enacting response plans creating risk for vulnerable persons/children.

After having regard to both the NSW SES concerns and the flood documentation submitted Council Officers consider the flood response plan can provide for the safe occupation and efficient evacuation of people in the event of a flood. Points informing this view include:

- In scenarios up to the 0.2% AEP flood event there will be an ample time window to administer the efficient closure/evacuation of the site.
- The pre-emptive school closure timetable indicates that the warning level system provides a comfortable lead in warning timeline for pre-emptive closure decisions to be made prior to the eventuation of any flood inundation risk. Given the time available, Council Officers view a development carried out in accordance with the FERP early warning strategy would facilitate safe occupation and evacuation outcomes.
- The physical flood warning systems (alarm/weather station) are recognised to be a last resort redundancy. While the documentation indicates that in a PMF worst case scenario type flood event there is a 70-minute window for site evacuation from the time that the first physical (audible message system) flood warning system is triggered.

While unlikely that an immediate evacuation response would be necessitated given the strategy to close the school days before a PMF event, a full site evacuation can be achieved within a 35 minute window.

- Council Officers recognise advice provided by NSW SES related to risk of system failures impacting evacuation and creating additional risk to occupants. When considering this issue in relation to the proposed flood response plan Council Officers have noted the amended FERP which provides additional detail on the early warning school closure strategy, also includes layers of redundancy incorporated into the multiple evacuation triggers (including the two automated flood detection systems referenced in bullet points above). These levels of redundancy provide both a reasonable safety platform for the sites operation along with measure that mitigate the risk of this type of system failure or coupled with potential for inaction by the operator. The FERP is viewed to provide a well-informed pre-emptive school closure strategy with levels of redundancy to manage risk of system failure or human error.
- Council Officers also acknowledge:
  - The type of flood with the potential to cause risk to the site occupants (being events >0.2% AEP) is a statistically rare event.
  - The probability of the school being in operation at the time of a flood event is around a 15% chance – compounding the improbability of a flood event creating a risk to students occupying the site.
  - The sites R1 General Residential zoning would enable a residential development to be undertaken across parts of the site above the 1%AEP – potentially up to 30 residential lots.

In any scenario where a residential development was undertaken on the site it is considered plausible that there would be greater risk to children or elderly occupants of resulting residential premises due to their 24/7 use (despite differences in density of potentially exposed vulnerable people) given the far fewer hours the site would be occupied.



- This Clause does not outright restrict school development on land affected by the PMF. The Clause requires a suitable flood evacuation strategy, which the FERP is viewed to be.

- The following sensitive uses were located within the PMF areas at Muswellbrook and Denman:

- Muswellbrook High School Brook Street Agricultural Campus
- 83 Hill Street Muswellbrook Tertiary Education Site (multi-storey building parts of the premises likely to exceed the PMF flood height)
- Muswellbrook South Public School (part of site only – majority of school buildings outside PMF)
- Muswellbrook Tafe (part of site only – majority of TAFE Buildings, not including newly constructed permitted without consent outside of PMF)
- Saint Albans Seniors Living (Corner of Brook Street/Hunter Terrace)
- Denman Merton Living 45 Ogilvie St Denman (Seniors living)
- Denman Hospital 91 Virginia Street
- St Josephs Primary School 80 Palace Street Denman
- Denman Public School, 82 Paxton Street
- Denman Child Care Centre, Turner Street Denman

**Note:** this list has focused on, educational establishments, hospitals, child care and Seniors living – S5.22 definition of sensitive and hazardous development is also a relevant consideration for, caravan parks and tourist and visitor accommodation – there are additional examples of those types of development within the PMF area.

While Council Officers have not contacted these established uses to confirm any flood emergency plans, given the age of these uses Council Officers find it unlikely that significant flood emergency planning was carried out related to their establishment.

The emergency response plan proposed for the school includes pre-emptive early closure of the school, and a plan for safe and efficient evacuation in the event of a flood in the event the school is in operation when an extreme flood occurs, without the need for SES support.

- Correspondence has been provided by a third-party engineer endorsing the suitability of the Flood Assessment documentation and flood risk to be acceptable in context with the proposed management strategies.

Complies – Council Officers view the proposal to be compatible with this requirement.

*b) incorporates appropriate measures to manage risk to life in the event of a flood*

Planning comment: the Flood Emergency Response Plan is a strategy to manage potential risk for life by enacting site evacuation in response to flooding danger. The plan is explored in detail under S 5.22 (a) head of consideration (immediately above) with regard to managing risk to life.

It is considered that the proposal through the response strategy established through this plan and measures that may be imposed as conditions of consent where the proposal is approved would incorporate suitable measures to manage risk to life.

Complies – Council Officers view the proposal to be compatible with this requirement.

*c) will adversely affect the environment in the event of a flood.*

Planning comment: the proposal is considered unlikely to have an impact on how flood events impact neighbouring properties. The site would be outside the extent of the 1%AEP event. The site would be evacuated or closed in a scenario where on-site flooding is possible.

The proposed development would not contain any dangerous goods or sensitive structures with the potential to cause significant environmental impacts in the event of flooding.

There is no enhanced risk of environmental harm through potential damage to school buildings proposed to what might result from an alternate type of development of the site permitted within the related land use zone.

Complies – Council Officers view the proposal to be compatible with this requirement.

**Summary Comment – complies. Informed by the above considerations it is the preliminary view of Council Officers that the proposed development would be compatible with the relevant Section 5.22 Assessment criteria and thereby may be supported by the consent authority pursuant to these provisions.**

#### Clause 7.6 Earthworks

This Clause requires a consent authority to have regard to the following when determining a development application involving the carrying out of earthworks:

- (a) the likely disruption of, or any detrimental effect on, existing drainage patterns and soil stability in the locality,*
- (b) the effect of the proposed development on the likely future use or redevelopment of the land,*
- (c) the quality of the fill or of the soil to be excavated, or both,*
- (d) the effect of the proposed development on the existing and likely amenity of adjoining properties,*
- (e) the source of any fill material or the destination of any excavated material,*
- (f) the likelihood of disturbing relics,*
- (g) the proximity to and potential for adverse impacts on any watercourse, drinking water catchment or environmentally sensitive area.*

Council Officers have had regard to the above matters and are satisfied that the proposal is compatible with the related criteria under which consent may be granted for the carrying out of earthworks. Key considerations informing this view include:

- The proposed development involves moderate earthworks related to the establishment of the school and buildings, landscape areas, parking and roadways. The extent of earthworks proposed are not viewed to be extensive for a development of this nature or when considered in context with the site profile.
- A stormwater drainage plan has been prepared in relation to the proposed development. It is considered that where carried out in accordance with this plan (or an updated version of it per any related conditions) the proposed earthworks would not have an adverse impact on existing drainage patterns.
- A standard recommended condition will be put forward where the proposed development is recommended for approval, related to ensuring the quality of fill material.

- The proposed earthworks do not involve any substantive site filling or ground level adjustments with the potential to have an adverse impact on adjoining properties.

Having regard to the above, Council Officers are satisfied that the proposed development complies with this Clause and may be supported. **Complies**

### **3.2 Section 4.15 (1)(a)(ii) - Provisions of any Proposed Instruments**

There are several proposed instruments which have been the subject of public consultation under the EP&A Act. The proposed development is not subject to any proposed instrument which would inform the assessment of this development application.

### **3.3 Section 4.15(1)(a)(iii) - Provisions of any Development Control Plan**

The following Development Control Plan is relevant to this application:

- *Muswellbrook Development Control Plan 2009* ('the DCP')

A summary of the relevant Sections of the Muswellbrook Development Control Plan has been included below alongside an assessment of the proposed development against the related controls.

#### Section 3 Site Analysis

Council Officers are satisfied that the proponent has adequately considered the provisions of this Section and prepared the documentation accompanying the development application in accordance with the requirements of this Section. **Complies**

#### Section 6 Residential Development

This Section of the DCP applies to development within the R1 General Residential zone. The applicant has included a detailed review of the proposal against the Section 6 Development Standards in their Statement of Environmental Effects.

While applicable to the proposed development by virtue of the site zoning, related controls are largely drafted toward residential dwelling and unit developments.

Council Officers have undertaken a review of the proposed plans and supporting Statement of Environmental Effects commentary for compatibility with this DCP Section. Council Officers are satisfied that the proposal meets the related DCP provisions. **Complies**

#### Section 13 Floodplain Management

The Muswellbrook Development Control Plan Section 13 provides limited guidance related to the exploration of sensitive uses within the flood plain.

Table 2 of this document which specifies minimum floor height requirements for certain types of development provides the only reference to this type of development.

The table specifies minimum floor heights for this type of development to be provided as follows:

<b>Sensitive Uses identified in the Special Flood Considerations clause in MLEP 2009 (e.g. residential care facilities, hospitals, respite care, child care centres etc.) that are difficult to evacuate.</b>	Habitable floor height	Probable Maximum Flood level
	Non-Habitable rooms/areas	Probable Maximum Flood level
	Parking areas	1% AEP flood level
	Vehicular access between a flood free public road and the Development	Probable Maximum Flood level unless an alternative solution is approved as part of an evacuation plan

The proposed development would not achieve minimum floor heights related to Probable Maximum Flood Level.

Flood consultants raised concern to this type of design/strategy as it encouraged a shelter in place scenario which was deemed unsafe and contrasted more directly with NSW SES flood management strategies which discourage shelter in place approaches to flood safety.

Council Officers view the proposal to be a development compatible with Development Control Plan Objectives, noting the provisions of the Flood Emergency Response Plan, the impracticalities including potential adverse outcomes where a PMF floor height is provided enabling potential shelter in place outcomes and the manner which this plan responds to the S 5.22 provisions of the Muswellbrook LEP 2009 – variation to the Development Control Plan may be supported on merit. **Complies with DCP objectives**

#### Section 14 Outdoor Signage

The proposed development includes modest outdoor signage. The only public area orientated advertisement structure is a 3.75m school sign with a digitised illumination.

The height bulk and scale of the proposed sign is compatible with Council DCP requirements for a freestanding sign.

Sub-section 14.2.8 includes requirements related to illuminated signs. With regards to the controls in this Section the proposed sign

- Is not orientated toward an adjoining residential area.
- Recommended conditions have been included to limit the duration of time which any illumination will be displayed
- Recommended conditions have been included to limit any flashing illuminations that could cause a disturbance or impact to adjoining properties or roadways.
- A recommended condition has been put forward to ensure the intensity of illumination is controlled.

This Section of the DCP requires specifies requirements related to the preparation of erosion and sediment control plans and their implementation through the carrying out of development.

**Complies**

## Section 16 Car Parking and Access

Section 16 of the DCP requires off-street car parking to be provided to an education establishment at rates of

**Secondary** - 1 space per 2 employees, PLUS 1 space per 10 students

**Primary** - 1 space per 2 employees, PLUS 1 space per 12 students

*As the proposal has been put forward as a mixed school the more intensive calculation of 1 space per 10 students has been selected for this assessment.*

Based on the proposed maximum of 140 students and 16 staff the proposed development would require a minimum of

14 off-street car parking related to the student based calculation and eight (8) related to the staff calculation. Total of twenty two (22).

To ensure suitable off-street parking the applicant has:

- Proposed thirty (30) off-street parking spaces
- Proposed a kiss n drop of system internal to the development site, which allows for eight (8) pullover bays for the drop of and collection of students (and overflow parking during outside hours).
- Undertaken a Traffic Impact Assessment related to the proposed development to ensure the rates of parking and transport services conform to the development servicing requirements.

Informed by the above calculations and considerations of parking and access servicing requirements in context with the local street environment undertaken by Council Roads and Drainage Engineers and TfNSW Council Officers are satisfied that the proposal complies with off-street car parking rates prescribed by this Section of DCP and suitably addresses related performance requirements.

## **Complies**

## Section 20 Erosion and Sediment Control

This Section of the DCP requires specifies requirements related to the preparation of erosion and sediment control plans and their implementation through the carrying out of development.

The proposed development involves modest earthworks related to the construction of buildings, parking, roadways, hardstands and landscaping.

An erosion and sediment control plan has been prepared in relation to the proposed development and the carrying out of these works. Council Officers are satisfied that where carried out in accordance with the sediment and erosion control plan and related recommended conditions that the proposed development would be in accordance with related DCP requirements.

## **Complies**

## Section 24 Waste Minimisation and Management

A Waste Management Plan has been prepared in relation to the proposed development. The document has regard to construction and operational waste

streams. Council Officers are satisfied that the document and proposed waste management strategy is compatible with the DCP provision.

## **Complies**

### **Section 25 Stormwater**

A stormwater management plan has been prepared in relation to the proposed development in accordance with the requirements of this Section of the DCP.

The stormwater management plan has been considered by Council Roads and Drainage Engineers referred the application to consider its relationship with Council drainage assets.

Referral comments from Council Engineers have indicated that they are satisfied that the proposed development may proceed subject to recommended conditions of consent, indicating that they are generally satisfied with the proposed method of stormwater, collection, detention, water quality management and disposal.

Where carried out in accordance with conditions of consent related to stormwater management Council Officers are satisfied that the proposal would comply with the provisions of this Section of the DCP.

## **Complies**

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

- *Muswellbrook Section 94A Contributions Plan (2010)*

Muswellbrook Section 94A Contribution Plan (2010) requires the payment of a Section 7.12 Contribution (former Section 94A) at a rate of 1% of the total estimated cost of the development.

The total estimated cost of the development is \$7,892,500

Under the provisions of Council's Section 94A Plan a Section 7.12 Contribution of \$78,925 would be applicable to the proposed development.

Where approved Council Officer's would recommend a condition of consent requiring payment of the related contribution prior to the issue of a Construction Certificate.

### **3.4 Section 4.15(1)(a)(iia) – 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.

### **3.5 Section 4.15(1)(a)(iv) - Provisions of Regulations**

Clause 92(1) of the Regulation contains matters that must be taken into consideration by a consent authority in determining a development application.



Council notes the following with regard to matters for consideration prescribed by the Regulation:

- Demolition – the proposed development does not involve the carrying out of demolition work related to the existing nursery and forestry building on the site. Demolition works are to be carried out under and in accordance with the separate development application approved under DA 2020/104.
- Dark Sky Planning Guideline - the Dark Sky Planning Guideline a Council is still required to have regard to the Guideline when determining a Regionally Significant Development which is 'likely to affect the night sky' within in 200km of the Siding Springs Observatory. The proposed development is outside the 200km radius (approximately 210km) from the Siding Springs Observatory. Accordingly the provisions of the Dark Sky Planning Guideline do not require further consideration in relation to the proposed development.

The provisions of the 2021 EP&A Regulation do not present any other matters requiring considered evaluation as part of the assessment of this application. The proposal may proceed as a development compatible with the matters for consideration prescribe through the EP&A Regulation 2021. **Complies**

### 3.6 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** – Council Officers are satisfied that the proposed development is compatible with the context and setting of the existing locality. While the site is zoned R1 General Residential the general locality has a transitional presence between residential, commercial and community uses. This character is reflected through the existing development and infrastructure including, New England Highway Road corridor, McDonalds (southwest), motel (southwest), Showground area (southwest) residential area (southeast), golf club (north) and ribbon business development along the Highway.

The proposed development would not be out of character with development patterns in this precinct. Where constructed in accordance with the architectural and landscape plans submitted Council Officers are satisfied that the proposal would compliment the streetscape.

- **Access and traffic** – access, traffic and parking has been subject to detailed consideration through the assessment of the proposed development.

Key matters related to the consideration of traffic matters include:

- The proposed development would provide off-street parking internally within the development site. A total of thirty (30) off-street parking spaces are provided under the development. This exceeds rate of parking required by Muswellbrook DCP.
- Off-street parking will be further supplemented by a kiss n drop pullover area capable of accommodating 8 vehicles without causing traffic queuing in internal manoeuvring spaces.

- A new on-street bus stop will be established at the sites frontage.
- The road shoulder adjacent to the site access is to be established as a slow down lane.
- Pedestrian pathway improvement requirements have been required and a 2.5m wide footpath is to be installed along the site frontage and extending between the Thompson St traffic lights to the New England Highway St Andrews Place intersection.
- Pedestrian safety barrier fencing is to be installed in the New England Highway median.
- A Traffic Impact Assessment was prepared in relation to the proposal to inform the consideration of this matter. This Traffic Impact Assessment is further supplemented by additional information responses from Traffic Consultants.
- The proposed development was referred to TfNSW. Per SEPP (Transport and Infrastructure) 2021 as traffic generating development. Final referral comments from TfNSW are set-out and commented on under the referrals heading of this report. All relevant matters raised have been addressed.
- Traffic, parking and access considerations have been referred to and reviewed by Council Roads and Drainage Engineers. Final comments from Council Roads and Drainage Engineers indicate that the proposal would be acceptable from traffic and parking perspective, and their requirements have informed related conditions of consent. Roads and Drainage Section referral outcomes are referenced under the referral section of this report.

Informed by the above and the final outcomes of related referrals Council Officers are satisfied that the proposed development would not have an adverse traffic, access or parking impact and may be supported subject to related recommended conditions of consent.

- **Public Domain** – the proposed development relationship with the public domain has been the subject of consideration through the assessment of the development application, particularly with regard to pedestrian connectivity to and from the school site.

Under the amended proposal the applicant has accepted Council's position that as part of the carrying out of the development a pedestrian footpath will need to be provided along the site's frontage to the Thompson Street signalised intersection. The pedestrian pathway would continue beyond the site frontage to St Andrews Place a residential cul-de-sac nearby the school. Beyond the Thompson Street intersection there is an established pedestrian network providing connectivity from the site to other places of interest and larger residential areas where students may transit from.

To ensure safety in context with the busy New England Highway Environment TfNSW have encouraged the consideration of a guard rail in the New England Highway median opposite the site. TfNSW position on this issue has been adopted and is reflected in recommended conditions of consent. The installation of this guard rail will cause disturbance to Council landscaping currently installed in the medium. Recommended conditions have been put forward related to these works

- **Utilities** – the applicant has included information related to the utility service connections proposed. Standard recommended conditions have been put forward related to Council water and sewerage utility service connection requirements. Telecommunications and electricity service connections are to be provided to the proposed development by connection to service infrastructure within the locality in consultation with the related service providers.

- **Heritage** – the proposed development does not relate to or adjoin a listed heritage item or heritage conservation area.

An Aboriginal Cultural Heritage Report was prepared and submitted in relation to the proposed development to consider the report concludes that the site does not have any aboriginal archaeological potential. The report recommends that standard unexpected finds protocols are employed should any unanticipated aboriginal archaeological material be encountered during site works.

- **Flora and fauna impacts** – To inform the consideration of ecological considerations Abel Consulting has prepared an arborist Report and Ecological Assessment in relation to the proposal.

Following the amendment of the proposed report and the adjustment of the car parking areas both reports have been amended to account for the adjusted disturbance areas. A brief overview of the findings of each report have been noted below.

#### *Arborist Report*

The arborist report notes the proposed development will involve the removal of 27 trees of varying maturities. The report notes:

- Few of the trees are in conditions that match their natural habitats and that trees have consequently grown many defects and/or are low in vitality.
- Identifies 7 trees to be protected during site works.
- Supports the removal of trees within the building footprint along with trees identified to be structurally unsound.
- Makes recommendations related to the carrying out of tree removal works including the protection of retained trees and pre-removal inspection of trees by an ecologist related to the identification and removal of any roosting species.

Should the development be approved it is recommended that it is subject to conditions requiring compliance with the arborist report recommendations related to tree removal and protection.

#### *Ecology Report*

The ecology assessment reviews the proposed works and disturbance area is accordance with the Biodiversity Conservation Act 2017. The report concludes that the proposed development would not exceed any threshold requiring entry into the NSW Biodiversity Offset Scheme and thereby a Biodiversity Development Assessment Report (BDAR) is not required to inform the assessment of the development application.

The report makes recommendations related to the carrying out of works to minimise the ecological disturbances. Where approved it is recommended that conditions are imposed requiring compliance with the report recommendations.

Council Officers are satisfied that the proposed development would be in accordance with the Biodiversity Conservation Act 2017 provisions and would not have a significant adverse ecological outcome where carried out in accordance with the recommendations of these arborist and ecological report recommendations.

- **Noise and vibration** – A Noise Impact Assessment (NIA) has been prepared in relation to the proposed development by Acoustic Logic. The NIA explores potential noise emissions and impacts related to:
  - Operational noise emissions from the school
  - Construction noise
  - The potential for external noise intrusions to impact on the proposed development (road and rail noise)

The report concludes that the proposed development may be supported from an acoustic perspective provided that recommendations put forward around noise management and mitigation are incorporated into any determination. Key recommendations include:

- Controls related to school operating hours, waste collection and ground maintenance.
- Controls related to PA and speaker use
- Boundary fencing detail
- Provision of detailed plans/performance assessment of windows/ventilation to achieve suitable noise mitigation measures with regard to controlling the impact of noise emissions from the New England Highway on classrooms.
- Submission of detailed plans regarding plant acoustic emissions for approval prior to CC.
- Carrying out of construction in accordance with report recommendations.

Informed by the findings of this report Council Officers are satisfied that the proposed development would not have a significant adverse acoustic impact to adjoining property, nor would it be significantly affected by existing external noise sources and thereby may be supported, subject to related recommended conditions.

- **Natural hazards** – The subject site is located outside the maximum extent of the 1% AEP flood event, but is situated within the mapped extent of the probable maximum flood (PMF). Detailed documentation has been prepared in relation to the evaluation of this hazard and is commented on throughout this report. After having regard to this documentation Council Officers are satisfied that the proposed development is appropriately sited and that appropriate redundancies would be put in place through the Flood Emergency Response Plan for the proposal to be supported as a development compatible with the sites identification as land affected by PMF flood events.
- **Safety, security and crime prevention** – The Statement of Environmental Effects includes a considered review of the proposed development against the Crime Prevention Through Environmental Design (CPTED) principles. Council Officers are satisfied that where carried out in accordance with the proposed plans and CPTED recommendations that the proposed development would not present any substantive safety, security or crime opportunity issues.
- **Social and Economic Impacts** – Council Officers are satisfied that the proposed development would have an overall positive social and economic impact for the locality. The proposal will:
  - Provide an additional modern school campus in the local area.
  - Provide local parents with an additional schooling option.
  - Support additional local employment opportunities.
  - Enhance the education offerings and reputation of Muswellbrook as a centre that provides diverse education offerings.

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

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

Council Officers are satisfied that the subject site is suitable for the proposed development. This view has been informed by the following:

- A strategy has been put forward related to bus transport, pedestrian fencing, parking and school drop of which limit student exposure to traffic hazards on the New England Highway.
- An ecological study and aboriginal archaeological assessment have been carried out both of which are supportive of the proposed development.
- A remediation plan has been proposed to remove asbestos containing particles related to the existing dilapidated buildings on-site and manage existing asphaltic material to ensure site is suitable from a soil quality/contamination risk perspective.
- With the exception of the PMF, the site is not subject to any mapped hazards that limit the potential for the development to be carried out.
- The FERP presents a reasonable strategy for the management of any risk associated with significant flood events which could have the potential to threaten the inundation of the school. A sensible approach of pre-emptively closing the school informed by flood warnings and this strategy being further backed up by physical warning systems puts in place systems that where adhered to the school will be capable of managing related risk in their operations.
- The part of the site proposed for development is outside of the 1% AEP flood event and floor levels will be established above the 0.2% AEP event.

### **3.8 Section 4.15(1)(d) - Public Submissions**

These submissions are considered in Section 5 of this report.

### **3.9 Section 4.15(1)(e) - Public interest**

Council Officers are satisfied that the proposed development is compatible with the public interest. Key considerations informing this view include:

- The proposed development would be compatible with the requirements of relevant State Environmental Policies and the Muswellbrook LEP 2009.
- The proposed development would be compatible with the Muswellbrook DCP.
- The site exposure to the PMF flood event has been subject to considered evaluation. While the site has the potential to be impacted by this event the probability/frequency of such an event occurring is low and Council Officers are satisfied that suitable redundancy measures will be put in place to ensure that school is pre-emptively closed and that there is no risk to the school population during severe weather events.
- The proposed development would have positive social and economic impacts for the Muswellbrook locality and contribute toward the enhancement of Muswellbrook as a centre offering diverse education services.

## **4. REFERRALS AND SUBMISSIONS**

### **4.1 Agency Referrals and Concurrence (external)**

The development application has been referred to various agencies for comment/concurrence/referral as required by the EP&A Act and outlined below in Table 5.

**Table 5: 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>			
Transport for NSW	Section 2.122 & Section 3.58 SEPP (Transport and Infrastructure) 2021	<p>Initial correspondence dated 24 September requested additional information.,</p> <p>Final correspondence dated 10 March 2025 specified matters for consideration contained in table 5.1 below.</p> <p>Council Officers are satisfied that the matters specified in the 10 March 2025 correspondence are suitably resolved and that development consent may be granted to the proposal.</p>	Y
<b>Referral/Consultation Agencies</b>			
Department of Planning Housing and Infrastructure	Advisory referral for advice related to SSD application	Referral rejected by DPHI via Planning Portal	Y
NSW SES	<p>Advisory referral.</p> <p>Purpose of referral was to obtain any advice from NSW SES Officer liaise with by the applicant's flood consultant related to the preparation of flood management documents to inform related flooding considerations.</p> <p>The final NSW SES referral correspondence was received 21 February 2025, prior to the submission of the most recent updated Flood Emergency Response Plan (5 June 2025), this updated version of the document was submitted 25 May 2025. No further referral was issued given the timing of this determination</p>	<p>NSW SES are unsupportive of development from a flood hazard perspective. Their referral comments are provided on an advisory basis.</p> <p>Their most recent correspondence is included as an attachment. NSW commentary is discussed in detail under Section 5.1.4 of the key issues heading and is also referenced in the evaluation of the flood strategy under S 5.22 of the Muswellbrook LEP 2009.</p> <p>The recommendation of Council Officers is that the advice of NSW SES notwithstanding it would be suitable and in accordance with the EPA Act 1979 S 4.15 assessment head of consideration</p>	N



	meeting. Given the extensive consultation carried out in relation to this proposal and the previous SSD application it was also considered unlikely that a different view or new significant information would arise through further consultation.	for the proposal to proceed from a flood impact perspective.	
<b>Integrated Development (S 4.46 of the EP&amp;A Act) NA</b>			

Matters raised by TfNSW for Council information/consideration are discussed in the sub-table below

**Table 5.1 TfNSW Final Comments**

<b>TfNSW Advice</b>	<b>Council Review</b>	<b>Resolved</b>
<p>There is the potential for parents to drop-off and pick-up children from the shoulder of the New England Highway adjacent to Rutherford Road to avoid the school pick-up/drop-off area. It is likely that these children will cross the New England Highway unsafely, posing a significant safety concern.</p> <p>As such, the Transport Type 5 Barrier Fence should be extended along the entire length of the median from Thompson Street to Rutherford Road.</p>	<p>The proposed development has been amended to include the installation of barrier fencing along the medium per the New England Highway intersection between Thompson St and Rutherford Rd in accordance with the TfNSW recommendation.</p> <p>Related recommended conditions have been put forward to ensure the fencing is installed as part of the development.</p>	<b>Y</b>
<p>The catchment area shown in the TIA indicates that 35% of students reside to the north of the site. These students can only access the site entrance via the Sydney Street/New England Highway intersection, and the Bell Street/New England Highway intersection. TfNSW notes that these intersections have not been modelled. Council should be satisfied that all relevant intersections have been considered and assessed.</p>	<p>Additional modelling has been provided as part of the RFI response.</p> <p>This modelling confirms that the Bell St that the intersection continues to perform at a Level of Service B in the morning peak and A in the evening peak in all scenarios. This confirms that the proposed school has no notable impact on the intersection performance.</p> <p>The TfNSW advice and the related additional information has been reviewed by Council's Roads and Drainage Engineers who are satisfied</p>	<b>Y</b>

	that the proposed development would not have any significant impact on the intersection and its performance.	
<p>Confirmation of the location of the proposed fencing should be clearly noted on the plans, and details regarding the current and proposed Over Size Over Mass (OSOM) clearance is still necessary for TfNSW to understand whether there will be impacts for</p> <p>the OSOM network. Further consultation may be required with Council and TfNSW regarding the location of the fence due to the vegetation in the median.</p>	<p>The proposed medium fence location is detailed in the architectural plans included as an attachment.</p> <p>The fence will be setback 500mm from the existing kerb. This will minimise disturbance of the well established vegetation, complimentary to the streetscape and Muswellbrook town entry. The location will maintain the 10m over size over mass vehicle clearance requirements.</p> <p>Related conditions will confirm approval to the fencing detail design and clearance prior to obtaining any WAD from TfNSW as the Roads Authority.</p>	<b>Y</b>
<p>Details on the potential noise impacts from the New England Highway freight corridor have not been provided to TfNSW for review.</p>	<p>A Noise Impact Assessment (NIA) accounting for noise emissions from the New England Highway has been prepared and submitted. This NIA is reviewed under likely environmental impacts and SEPP (Transport and Infrastructure) 2021 sub-headings.</p> <p>The NIA confirms that the proposal can be supported from a noise impact perspective subject to related recommended conditions.</p>	<b>Y</b>
<p>TfNSW notes there are existing "Loading Zone" and "No Stopping" signage along the frontage of the site. Council should be satisfied of these arrangements and details of the signage should be shown in the plans.</p>	<p>Changes to the no-stopping signage along the site frontage are not proposed.</p> <p>It is the recommendation of Council Roads and Drainage Officer that no changes are made to this arrangement.</p>	<b>Y</b>
<p>The construction of the new bus bay will require a geotechnical investigation. Any new pavement will be subject to a TfNSW Pavement Approval.</p>	<p>This requirement has informed recommended conditions related to the detailed design of the bus bay.</p>	<b>Y</b>
<p>All new Drainage on Maitland Street will need to be designed and constructed in accordance with TfNSW QA Specification R11 Stormwater Drainage.</p>	<p>This requirement has informed recommended conditions related to the detailed design of stormwater drainage within the road reserve.</p>	<b>Y</b>

All new Kerb work on Maitland Street will need to be designed and constructed in accordance with TfNSW QA Specification R15 Kerbs and Channels (Gutters).	This requirement has informed recommended conditions related to the detailed design of the kerb and gutter.	<b>Y</b>
Removal of TfNSW sealed pavement is to be minimised as much as practical. Any pavement restoration that may be required is to be deep lift asphalt in accordance with TfNSW QA Specification R116 Heavy Duty Dense Graded Asphalt.	This requirement has informed recommended conditions related to the design/carrying out of work.	<b>Y</b>

#### 4.2 Council Referrals (internal)

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

**Table 6: Consideration of Council Referrals**

<b>Officer</b>	<b>Comments</b>	<b>Resolved</b>
Roads and Drainage Engineers	<p>The proposal was referred to Council Roads and Drainage Engineers for consideration of matters related to:</p> <ul style="list-style-type: none"> <li>• Flooding</li> <li>• Traffic and access</li> <li>• Stormwater management</li> </ul> <p>Final comments from Council Engineers was supportive of the proposal and recommended related conditions of consent. Key related recommended conditions of consent include proposed draft recommended conditions regarding:</p> <ul style="list-style-type: none"> <li>- Requirement for 2.5m wide footpath between Thompsom Street traffic lights and St Andrews Close.</li> <li>- Internal parking and trafficable areas design and construction requirements.</li> <li>- Requirement for the preparation of an event parking management plan – for larger school-based events.</li> <li>- General conditions regarding parking, traffic and stormwater.</li> </ul>	<b>Y</b>
Water and Waste	<p>Referral Comments provided by Council Water and Waste Engineers.</p> <p>Comments raise no issue with water and sewerage servicing and propose standard conditions of consent.</p>	<b>Y</b>

Environmental Health	Council's Senior Environmental Health Officer was referred the proposed development. No objection was raised with regard to the proposed development and standard conditions of consent were recommended. It was noted that the proposed plans did not indicate the inclusion of any food shop (canteen) operational conditions were recommended to make the operator of related food shop fitout requirements should they seek to install a canteen at a future stage.	Y
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The outstanding issues raised by Council officers are considered in the Key Issues section of this report.

### 4.3 Community Consultation

The proposal was notified in accordance with the Council's Community Participation Plan from 4 September 2024 until 18 September 2024. A total of nine (9) unique submissions, comprising one (1) objections and eight (8) submissions in favour of the proposal.

The issues raised in these submissions are considered in **Table 7**

**Table 7: Community Submissions**

Issue	Council Comments
Concern that the rate of enrolment and staffing may be greater than that referenced in the submitted documentation.	<p>The development application before the panel seeks development consent for a 140 student school.</p> <p>Should the development application be approved it would be subject to conditions of consent limiting the total school size to the maximum 140 student population proposed.</p> <p>The applicant has indicated their willingness, both in the shaping of the development application and in related discussion to accept this restriction in a Notice of Determination.</p> <p>Should the applicant seek to increase the school population in the future it would be incumbent on them to obtain approval for this through either a modification to this application or a separate development application.</p> <p><b>Council Officers are satisfied that this matter is suitably addressed.</b></p>
Concern that the proposed school lacks sufficient classrooms and amenities to operate as proposed	<p>The minimum rate which amenities are to be provided for an education establishment development is informed by the National Construction Code Series Building Code of Australia, which must be complied with before a development can move forward to a Construction Certificate.</p>

	<p>A Building Code Assessment has been prepared in relation to the proposed development. This BCA Assessment indicates that the amenities proposed are adequately provided for in accordance with the Building Code of Australia requirements for the development to progress to construction.</p> <p>Compliance with the Building Code of Australia is administered through a related development consent condition and condition requiring a Construction Certificate.</p> <p><b>Council Officers are satisfied that this matter is suitably addressed.</b></p>
<p>Concern regarding the adequacy of proposed site fencing to protect school users from misstruck golf balls from the adjoining golf course.</p>	<p>The applicant has proposed a 6m high safety fence (typical driving range mesh fence construction) to be installed at the site boundary with the Muswellbrook Golf Course. This fence should provide a level of student protection should a golf ball be misstruck in the direction of the site commensurate with the site risk (noting the site location parallel to a tea off area).</p> <p>Council Officers are also satisfied that such a fence would not have an adverse visual impact, and note these type of fences to be semi-prevalent at golf courses and driving ranges in urban areas.</p> <p>A recommended condition of consent has been put forward for the related fence to be installed prior to the issue of an Occupation Certificate.</p> <p><b>Council Officers are satisfied that this matter is suitably addressed.</b></p>

## 5. KEY ISSUES CONSIDERATION – FLOODING

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

### 5.1.1 FLOODING CONSIDERATION EXPANDED COMMENTARY

To inform the Panel in their review of flooding assessment matters Council Officers have provided within this section of the Briefing Report a summary of the key flood impact assessment documentation and NSW SES referral commentary that has informed Council's assessment of flood related considerations.

Key relevant flood assessment documents are:

- Flood Impact Assessment (August 2024), Torrent Consulting
- Flood Emergency Response Plan (Amended Version May 2025), Torrent Consulting
- Peer Review of Flood Management and Response Plans (16 January 2025) Henry & Hymas
- NSW SES Referral Advice (final correspondence 21 February 2025)

- Flood Commentary Related to Planning Panel Briefing Minutes (Flood Response    Torrent    Consulting    Planning    Response    EPM)

A summary of each document is included under the sub-headings below:

### **5.1.1 Flood Impact Assessment**

Key discussion points related to Council's preliminary review of the Flood Impact Assessment have been bullet pointed below

- The Flood Impact Assessment indicates that the proposed development would have a minor impact on the distribution of flood waters in relation to adjoining properties and the road network for events up to and including the PMF.
- With regard to the extent of flood inundation maps detailing the extent of the 1%, 0.5%, 0.2% and PMF events in relation to the site have been included under the Site Flood Parameters subheading of the Site and Locality Report heading.
- Proposed classroom would have a minimum floor height of 149.625m AHD, which is above the height of flood events up to and including the 0.2% (1 in 500) AEP, the flood level for this event is 149.2m AHD.
- During the PMF event the site is inundated to depths greater than 2m.
- The Flood Impact Assessment concludes that the proposed development may be supported from a flood impact assessment perspective subject to the implementation of the Flood Emergency Response Plan.

### **5.1.2 Flood Emergency Response Plan**

This document is included as an attachment. The highlighted parts of the report are were updated in the preparation of the current document.

Discussion points/observations related to Council's preliminary review of the Flood Emergency Response Plan (FERP) have been bullet pointed below:

- Noting school hours and school holidays there is a low probability, around 25% of the site being in operation at a time where any given flood event was to occur.
- The probability of the type of flood events that could cause the inundation of school buildings are in themselves rare events. Flood event terminology from the publication Australian Runoff and Rainfall 2019 identifies the frequency of the 0.2% and events exceeding this event as ranging from very rare.
- A proactive strategy would be employed to monitor bureau of meteorology severe weather warnings to proactively close the site prior to the start of the school day or provide additional lead in warning to close the school where operating on days where adverse weather conditions have the potential to give rise to flooding. Warning types that would inform a proactive school closure would have adequate lead in times to enable a safe response (flood watch warnings – typically 24 hours prior to flooding) (Flood Warning typically 12 hours prior to major flood level at Muswellbrook).



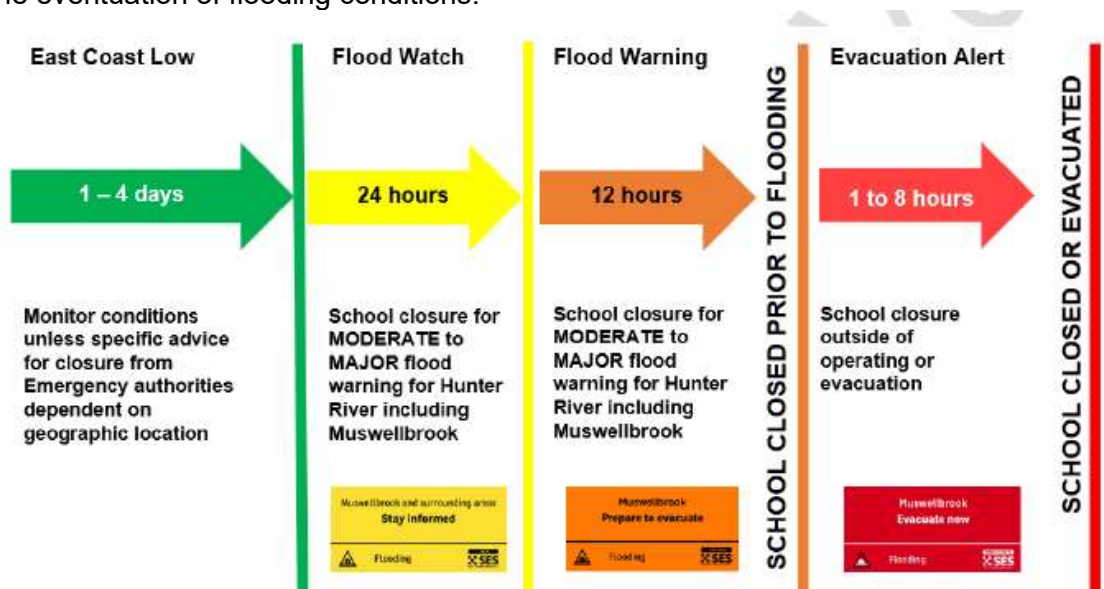
- The strategy for pre-emptive decisions to close the school ahead of potential flooding conditions would be informed through NSW levels of flood warning alert types described below.



The image below describes responses attributed to each alert level colour warning

- Yellow: flooding of the Site is possible in coming day (>12hrs warning)
  - Flood Watch or Flood Warning issued for minor to moderate flooding – heightened monitoring of developing situation
  - Flood Watch or Flood Warning issued for moderate to major flooding – pre-emptive school closure
- Amber: flooding of the Site is possible within the hours of operation
  - Flood Watch or Flood Warning issued for major flooding – pre-emptive school closure outside of school hours or immediate school closure within school hours
- Red: imminent flooding of the Site is expected
  - Flood Evacuation alert issued by SES or other emergency services, or Flood alert issued from the Muscle Creek Flood Warning System – immediate initiation of Flood Evacuation Plan
  - Site water level or rainfall gauge alert – immediate initiation of Flood Evacuation Plan
- Green: all clear, floodwaters have receded and local access to the Site is available
  - Emergency service has cleared access to the Site
  - Review Site conditions and opportunity for normal operation

The image below represents the typical lead in time for each level of alert to the eventuation of flooding conditions.



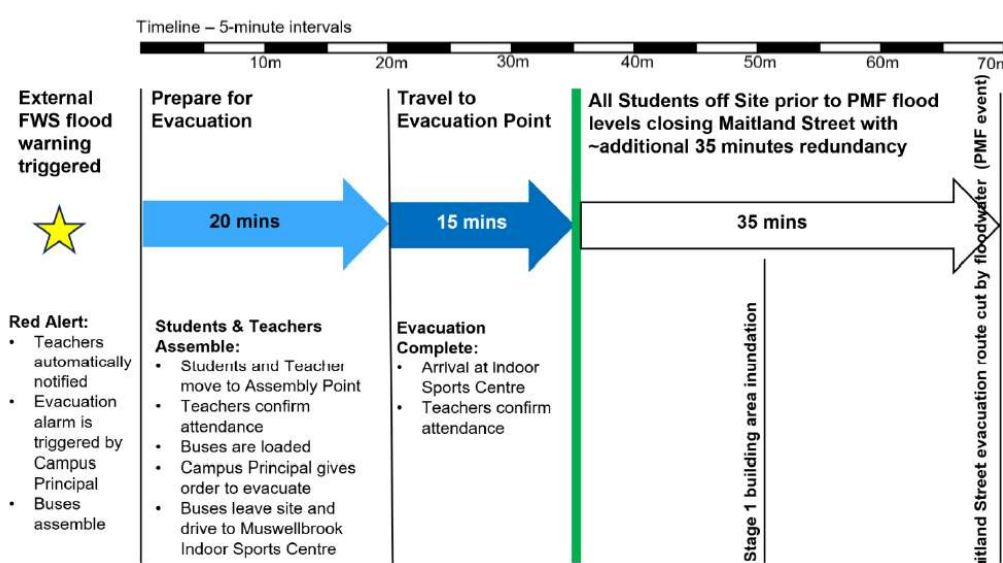
The pre-emptive strategy described above sets out a plan for the yellow 'stay informed' warning to trigger a watch and act situation at the school for advanced preparedness for closure or evacuation. The orange to trigger a pre-emptive school closure. The red an immediate school closure and the movement of students off-site where the school is open at the time of the waring.

The FERP provides expanded commentary on each of the closure scenarios in related sections.

- As further practical redundancies in the unlikely event a warning trigger for the proactive closure is missed or the impending flood risk develops rapidly the FERP establishes firm warning/trigger levels under which a red alert closure or evacuation of the site would be triggered in a scenario where earlier proactive warning strategies have not resulted in a pre-emptive site closure. Trigger levels include:
  - Warning triggered by Council's Muscle Creek Early Warning System
  - Evacuation Order NSW SES, BoM
  - 50mm of water recorded in 30-minutes or less at on-site water gauge
  - On-site floodwater alarm triggered at gauge installed on part of the site subject to 1% flood level inundation.

The alert triggers above include two physical flood warning systems (one of which is existing and the other proposed) with capacity to trigger audible alert and in the instance of the Muscle Creek flood warning system an audible alert and direct text message notification. Each system is described in detail in the FERP.

In a red alert scenario where immediate evacuation is prescribed the FERP identifies the time available in a worst case scenario to evacuate the site from the triggering of the related warning system or secondary warning systems bullet pointed above. The timeline included in the response plan indicates that a red alert evacuation can be achieved within the related minimum time windows.



- During an emergency evacuation response the FERP sets out an evacuation response procedure to be triggered during red alerts to evacuate personal to

the nearby Muswellbrook Indoor Sports Centre and flood refuge. This is community flood refuge for flooding events in the LGA. This evacuation procedure relies on school buses stationed at the premises, the document reinforces that these buses will be at site and available during an emergency scenario (early warning thresholds will restrict them leaving the site for any school related purpose), if they are not available for any reason a pedestrian evacuation to the same location (500m away) would be triggered.

- The FERP includes additional informing information around the systems triggering a flood emergency response and response procedures.

### 5.1.3 Peer Review of Flood Management Documents

This peer review was conducted by a third-party engineer and had regard to the January 2024 version of the FERP, that document has been subject to a further update that further expands on its related flood response strategy. Key Council Officer observations from the document findings:

- The document was prepared by an engineering firm independent of Torrent Consulting who undertook the preparation of Flood Assessment material supporting the application.
- The review was undertaken and related document prepared by Henry Hymas, Senior Civil Engineer Nicholas Heazlewood. Mr Heazlewood's professional profile is provided as part of the document. Mr Heazlewood's profile references specialised expertise in stormwater design, flood modelling and list Major Project Experience in Flooding related matters (listed major project experience related to flooding matters includes flood sensitive development such as seniors living, childcare and hospital developments where sensitive user groups may present additional evacuation and safety considerations).
- Document and study references its purpose as:  
*'The key purpose of this review is to determine whether the overall flooding strategy for the aforementioned school, in particular the evacuation strategy, can be supported'.*
- The review concludes:  
*'After reviewing all of the above documentation, the FIA and FERP prepared by Torrent consulting is entirely supported. The FIA demonstrates that the flooding impacts in the post development condition are very minor and acceptable. The proposed design adequately considers the flooding behaviour of the site.'*

### 5.1.4 NSW SES Referral Advice

**The 21 February 2025 NSW correspondence has been included in full as an attachment to this report. Panel members may wish to refer to the document directly.** A summary of the document has been included below as an assessment reference point given the commentary related to the applicant's flood information supportive of the proposal has also been included here.

Key summary discussion points related to key information conveyed by the NSW SES referral advice:

- Prior to the 21 February 2025 letter NSW SES have previously issued correspondence which raised reservations with the overall project (whether this

application or the withdrawn SSD proposal. Previous correspondence has been made available to the Panel as part of the applicant's submitted documentation, or in relation to NSW SES 8 November 2024 letter (DA 2024/60 – initial referral advice) provided to the Panel by Council.

Key points conveyed by the 21 February 2025 correspondence:

- The NSW SES referral has been provided on advisory basis NSW SES. While their advice has weighting as an emergency management authority, they are not a statutory approval authority.
- NSW SES 21 February correspondence does not make an outright statement of objection to the proposal. However, the detail of the correspondence (as is the case for prior correspondence) makes clear that the NSW SES has reservations with the proposal.
- References the PMF parameters at the site including inundation depth and high hazard ratings of the site for flood waters experienced in a PMF event.
- Raises concerns related to regular occupants including young children's ability to self-evacuate.
- References the proposal increases complexity of flood operations in Muswellbrook and transfer risk to NSW SES.
- References/recognises that NSW SES does not have a statutory authority to endorse or approve flood emergency response plans. Council understands it to be the role of the consent authority (Panel) to review NSW SES correspondence in context with documents supplied by the applicant and informing legislation to make a final determination on matters related to flood impact, risk and response/safety.
- Statement to the effect that approaching flood risk matters through a Flood Emergency Response Plan is not a preferred method to approaching/managing flood risk and should not be used to justify introducing vulnerable people into the floodplain.
- Statement to the effect that flood warning systems including Muscle Creek system can succumb to operating/maintenance failures. Relying on such systems increases complexity in responses and exposes community groups to risk in the event of system failures.

### **5.1.5 NSW Applicant Flood Commentary to Planning Panel Minutes**

These documents have been included as attachments for the Panel's information. The documents include a summary of most recent updates to the FERP and individualised responses to Minutes from the Planning Panel's most recent preliminary meeting related to flood planning considerations.

The document directly responds to each of the questions posed by the Panel related to the flood management strategy at the most recent related Panel briefing.

## **5.2 Flood Management and Safety Evaluation**

The consideration of flooding related impacts to the proposed development from a planning context is informed by five key areas

- Flooding related provisions contained in the Muswellbrook LEP 2009.
- Flooding related provisions contained in the Muswellbrook DCP.
- The review of flooding considerations as a likely environmental impact.
- The effect of flooding constraints on the consideration on the suitability of the site for development.
- Flood constraints as they relate to the public interest test.

Each of these matters have been evaluated throughout the Section 4.15 assessment above. To assist the Panel in their deliberations on this critical DA assessment issue a summary has been provided in relation to each of these areas of consideration.

### 5.2.1 Muswellbrook LEP 2009

See the Muswellbrook LEP 2009 CI 5.22 Special Flood Planning Considerations for the detailed evaluation of this issue.

As is well established the part of the site proposed for development is outside the maximum extent of the 1% AEP flood event. The proposed school becomes affected by extreme and highly rare flood events only becoming inundated by flood events in excess of the 0.2% event and up to the PMF. Consequently, provisions of the Muswellbrook LEP CI 5.21 typically associated with flooding up to the 1% AEP has limited bearing on the proposal, instead, and given the application relates to a school, CI 5.22 becomes the critical assessment criteria for guiding the assessment of flooding on the proposed development.

The matters for consideration prescribed by this Clause have been listed below.

- a) *will affect the safe occupation and efficient evacuation of people in the event of a flood*
- b) *incorporates appropriate measures to manage risk to life in the event of a flood*
- c) *will adversely affect the environment in the event of a flood.*

As can be seen these matters for consideration predominately attach to ensuring any development to which this Clause applies.

In the deliberation on these matters Council Officers have had regard to and recognised the comments provided by NSW SES relating to safety matters, and recognise their knowledge in this area and role as first responders. At the same time consideration is given to the:

- Flood Emergency response documentation,
- the highly extreme nature of flood event with the potential to threaten the site,
- the timeline to achieve a school closure or school evacuation from the initial flood warning threshold being triggered (24 hours in the most extreme cases).
- The redundancies proposed to put in place emergency warning systems as a fail safe that trigger immediate evacuations should for any unforeseen reason a pre-emptive closure not be achieved.
- The duty of care of school operators to their pupils which heighten the level of responsibility and requirement to adhere to the flood safety strategy and ensure related training of staff and application of the plan.

### 5.2.2 Muswellbrook DCP

The Muswellbrook Development Control Plan Section 13 provides limited guidance related to the exploration of sensitive uses within the flood plain.

A table within the document notes that schools and other sensitive uses should have floor heights above the height of the Probable Maximum Flood Event.

In relation to the proposed development it is understood that the applicant team initially proposed that an earlier design for the school would include floor heights above the PMF as part of their withdrawn SSD application. Council understands that the consent authority or their flood consultants raised objection to this type of design/strategy as it encouraged a shelter in place type scenario which was deemed unsafe and contrasted more directly with NSW SES flood management strategies which discourage shelter in place approaches to flood safety.

This has caused for the current proposal to be arrived at that does not include floor heights exceeding the PMF event. This strategy and logic to not establishing floor heights above the PMF event height is supported by the applicant's consultant engineer. While the pre-emptive school closure and evacuation strategy will ensure that students are not at-risk during flood events.

It is also noted that the proposed building floor levels are above the 1% AEP and are flood free up to the 0.2% AEP event.

Overall and informed by the FERP and position of the applicant's flood engineer Council Officers view the proposal to be a development compatible with Development Control Plan Objectives, noting the provisions of the Flood Emergency Response Plan, the impracticalities including potential adverse outcomes where a PMF floor height is provided enabling potential shelter in place outcomes and the manner which this plan responds to the S 5.22 provisions of the Muswellbrook LEP 2009 – variation to the Development Control Plan may be supported on merit. **Complies with DCP objectives**

### 5.2.3 Likely Environmental Impacts - Flooding

The proposed development would not alter the physical attributes of the 1% AEP flood event the typically guides the consideration of the impact of development in terms of flood profiles and impacts of inundation.

The unique flood impact considerations attach to the sensitivity of site users (students) and the unacceptability of a school containing children being established at a site that there is any significantly increased risk that harm could befall them for reasons attached to a known site hazard (such as flooding)

The considerations of these issues are largely what guides the Muswellbrook LEP 2009 CI 5.22 considerations. In the consideration of that matter a Council Officers arrived at an appreciation while the school had the potential to be affected by PMF flood events that these rare and infrequent and only occur after inundation of lower sites and extensive meteorological lead in warning time. That this enables a suitable flood response strategy to mitigate risk and establish a pre-emptive plan to close the school well in advance of conditions which may threaten its inundation.

The Flood Emergency Response Plan prepared and submitted by the applicants flood expert team is considered to be such a strategy and where the development is carried out in accordance with this plan it is considered that the proposal would be carried out with little to no risk of students, to the extent which Council Officers consider it highly likely that a residential development (which could be carried out on the land without regard to PMF flooding considerations) would likely present a type of development that

exposes a heightened danger risk to children or young adults being put at risk during flood events than the school proposal before the Panel.

#### **5.2.4 Suitability of the site – flooding**

The part of the site proposed for development is flood free up to the most extreme events and outside the 1% AEP. Buildings will be located at a height that puts them above events up to the 0.2% AEP event. The Flood Emergency Response Plan presents a plan for pre-emptive school closures that elevates risk of students being on site in instances where adverse flood conditions could arise.

The strategy is informed/reinforced by the real-world scenarios of 2021, 2022 and recent 2025 East Coast Low events where schools were closed in advance of flood warnings.

The irregularity of the type of flood warnings that would trigger the school closure should give the Panel confidence that the issuing of such warnings would not be so frequent as to limit the ability of the school to sensibly operate from the site.

Council Officers do not hold reservation with the suitability of the site for the proposed development for reasoning attached to flooding.

#### **5.2.5 The Public Interest**

It is considered that where carried out in accordance with the Flood Emergency Response Plan, which the school would be heavily incentivised to do (through any recommended conditions as well as their own obligations as a school operator, the proposed development would not create a scenario where students would be exposed to flood hazards or danger.

That being the case Council Officers are not able to arrive at a conclusion that the proposed development is contrary to the public interest for reasoning attached to flood hazard or related student safety considerations.

#### **5.2.6 Conclusion**

It is the view of Council Officers that the proposed development appropriately responds to all Section 4.15 assessment considerations that relate to the consideration of flood hazards related to this development proposal. As such Council Officers view that the proposed development may be supported from a flood impact/flood safety perspective, subject to related recommended conditions of consent and subject to the Panel's own views of these matters.

A brief summary of recommended conditions put forward by Council Officers to ensure that the development operationally meets flood safety responsibilities established through the FERP and accompanying documents is included below:

Recommended condition Number	Summary of condition requirement related to flooding	Planning comment related to condition purpose
1	Flood Emergency Response plan referenced as an approved plan	Establishes the development to be operated in accordance with this plan that details the school responsibilities related to flood warning and closure management.



19	Requirement for designs submitted with CC to include finished floor levels of buildings at a minimum height of 1449.62m AHD	Ensures finished floor levels are established at a height above the 0.2% AEP flood event and that this is detailed in the Construction Certificate plans.
30	Requires survey reports to be undertaken during building works to confirm the finished floor level will achieve the required 144.92m AHD minimum floor level requirement.	Ensure construction proceeds in a manner consistent with the consent minimum floor level requirement.
54	Requires agreements for or the purchase of the school buses (required to support emergency evacuation scenarios) to be demonstrate prior to the issue of an Occupation Certificate.	Ensure that fleet required for the facilities flood emergency response is available from the commencement of operations.
55	Requirement for school contact to be registered into the Muscle Creek Flood Warning System automated warning text message service prior to an Occupation Certificate	Ensure systems related to flood emergency response warnings are put in place prior to the Occupation Certificate
56	Requirement for the flood gauge and weather station that form part of the FERP response plan to be installed prior to an Occupation Certificate	Ensure systems related to flood emergency response warnings are put in place prior to the Occupation Certificate
64	Requirement for the buses to be continually maintained as part of the development	Ensure buses related to flood emergency response maintained as part of the development at all times
65	Requirement for the flood gauge on-site to be serviced/tested annually and a service report provided confirming its satisfactory operation.	Ensure infrastructure related to flood warning systems maintained at all times.
66	Requirement for the automated weather station on-site to be serviced/tested annually and a service report provided confirming its satisfactory operation.	Ensure infrastructure related to flood warning systems maintained at all times.
67	Requires training programme to be prepared by a suitably qualified person and a copy of the training programme provided to Council. The condition requires all staff to be trained in its implementation and a refresher course held annually. Documentary evidence is to be retained confirming such a course has been hosted.	Ensure staff are trained in the implementation of flooding responses and that training is kept up to date.
68	Requires a suitably qualified person to undertake a detailed review and update of the Flood Emergency Response Plan on a 5 yearly basis.	Ensure the Flood Emergency Response Plan remains current, fit for purpose and aligns with best practice.
69	Operational Plan updates	Requires some updates to the operational plan related

		to flood assessment outcomes as well as the annual review and updating of this plan thereafter.
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## 6. CONCLUSION

This development application has been considered in accordance with the requirements of the EP&A Act and the Regulations as outlined in this report. Following a thorough assessment of the relevant planning controls, issues raised in submissions and the key issues identified in this report, it is considered that the application can be supported.

Include a short summary of key issues, whether the site is suitable and whether the proposal is compatible with the locality etc.

It is considered that the key issues as outlined in Section 5 have been resolved satisfactorily through amendments to the proposal and/or in the recommended draft conditions at **Attachment A**.

## 7. RECOMMENDATION

That the Development Application DA 2024/60 involving a 140 student school (Pacific Brook Christian School) at 72-42 Maitland Street Muswellbrook (Lot 100 DP 1261496, pursuant to Section 4.16(1)(a) of the *Environmental Planning and Assessment Act 1979* subject to the draft recommended conditions of consent attached to this report at Attachment A.

The following attachments are provided:

- Attachment A: Draft Conditions of consent
- Attachment B: Architectural Plans
- Attachment C: Flood Emergency Response Plan (June 2025 version)
- Attachment D: NSW SES Final 24 February 2025 Letter
- Attachment E: Applicant Planning and Flood Engineer Responses to Panell Briefing Flood Queries
- Attachment F: Independent Review of Flood Response Plan
- Attachment G : Site Remediation Report
- Attachment H: Transport for NSW Referral Response

