

ASSESSMENT REPORT

Panel Reference	PPSNTH-41
DA Number	DA2020/0201
LGA	Richmond Valley
Proposed Development	Demolition of school rooms, canteen & construction of new science and GLA building
Street Address	Lots 3, 4, 7 & 9, Section 9, DP758236; Lot 1 DP1152394 and Lot 4 DP823664 (No. 122, 126 & 128) Canterbury Street, Casino
Applicant/Owner	Newton Denny Chappelle
Date of DA lodgement	29 April 2020
Number of Submissions	Nil
Recommendation	Approval Subject to Conditions of Consent
Regional Development Criteria (Schedule 7 of the SEPP (State and Regional Development) 2011)	Private infrastructure and community facilities (Educational Establishment) with a Capital Investment Value (CIV) over \$5 million
List of all relevant s4.15(1)(a) matters	<ul style="list-style-type: none"> • State Environmental Planning Policy (State and Regional Development) 2011 • State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017 • State Environmental Planning Policy No. 55 (Remediation of Land) • Richmond Valley Local Environmental Plan 2012 • Richmond Valley Development Control Plan 2015 • Clause 92(1)(b) EP&A Regulation-Demolition
List all documents submitted with this report for the Panel's consideration	<ul style="list-style-type: none"> • Proposed plans • Written request to vary a development standard under Clause 4.6 of the Richmond Valley LEP 2012 • Heritage Assessment Report prepared by Richmond Valley Council's Heritage Consultant • Recommended Conditions of Development Consent
Clause 4.6 requests	<ul style="list-style-type: none"> • Variation to Clause 4.3 Height of Buildings development standard under Richmond Valley LEP 2012
Summary of key submissions	No submissions received
Report prepared by	Debbie Pinfold
Report date	8 July 2020

Summary of s4.15 matters

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

Legislative clauses requiring consent authority satisfaction

Have relevant clauses in all applicable environmental planning instruments where the consent authority must be satisfied about a particular matter been listed, and relevant recommendations summarized, in the Executive Summary of the assessment report? **Yes**

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

Clause 4.6 Exceptions to development standards

If a written request for a contravention to a development standard (clause 4.6 of the LEP) has been received, has it been attached to the assessment report? **Yes**

Special Infrastructure Contributions

Does the DA require Special Infrastructure Contributions conditions (S7.24)? **Not Applicable**

Note: Certain DAs in the Western Sydney Growth Areas Special Contributions Area may require specific Special Infrastructure Contributions (SIC) conditions

Conditions

Have draft conditions been provided to the applicant for comment? **Yes**

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

1. EXECUTIVE SUMMARY

1.1 Overview of Proposal

Development Application DA2020/0201 (NRPP Reference No PPSNTH-41) seeks development consent for demolition of existing school buildings at St Mary's High School and construction of a two storey building containing general learning areas, common learning space, labs, amenities and canteen.

The proposal does not alter the student capacity of the school.

The proposed development seeks a variation to the 8.5 metre height of buildings development standard, to 10 metres.

1.2 Reason for consideration by Regional Planning Panel

The determining authority is the Northern Regional Planning Panel pursuant to cl. 2.15 of the Environmental Planning and Assessment Act 1979 and Schedule 7 of State Environmental Planning Policy (State and Regional Development) 2011 - being private infrastructure and community facilities (educational establishment) having a CIV greater than \$5 million.

1.3 Location

The proposed development site forms part of St Mary's High School and is located at Lots 3, 4, 7 & 9 Section 9, DP758236, Lot 1 DP1152394 and Lot 4 DP823664 (No. 122 - 128) Canterbury Street Casino.

1.4 Permissibility

The site is zoned R1 – General Residential pursuant to the Richmond Valley LEP 2012. The development of educational establishments on R1 zoned land is permissible under the provisions of Clause 35 of the State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017.

Development consent is required for the proposed development under the Education SEPP, as the site is identified as an area of environmental heritage under the Richmond Valley LEP 2012. As such, the development does not satisfy the general requirements for complying development.

1.5 Applicable Planning Controls

The following EPs and DCPs are applicable to the proposed development.

The proposed development satisfies all relevant clauses in all applicable environmental planning instruments, where the consent authority must be satisfied about a particular matter before granting development consent.

i. State Environmental Planning Policies

- Clause 20 and Schedule 7(5) of SEPP – State and Regional Development 2017
- Clauses 33 and 35 and Schedule 4 of SEPP – Educational Establishments and Child Care Facilities 2017
- Clause 7 of SEPP 55 – Remediation of Land

ii. Richmond Valley Local Environmental Plan 2012

- Clause 2.3(2) – Zone Objectives and Land Use Table
- Clause 4.3 – Height of Buildings

- Clause 4.6 – Exceptions to Development Standards
 - Clause 5.10 – Heritage Conservation
 - Clause 6.2 – Essential Services
 - Clause 6.5 – Flood Planning
 - Schedule 5 – Environmental Heritage
- iii. Richmond Valley Development Control Plan 2015**
- Part I-1.10 Development in the vicinity of a heritage item
 - Part I-3 Setbacks and Building Height
- vi. Richmond Valley Council Section 94A Contributions Plan**

1.6 Draft Conditions of Consent

The draft conditions of consent have been provided to the applicant and have been agreed.

1.7 Recommendations

1. Pursuant to the provisions of Clause 4.6 of the Richmond Valley Local Environmental Plan 2012, the written submission in relation to the variation to the height of buildings development standard satisfies the relevant provisions of Clause 4.6 and is therefore supported. It is recommended that the provisions of Clause 4.6 be invoked and that the height of buildings development standard be varied to 10m, in respect to this application.
2. That development application DA2020/0201 (PPSNTH-41) be determined by granting consent subject to the conditions of consent contained within Attachment C .

1.8 Attachments

- Attachment A Applicant’s Request to Vary LEP Height Development Standard under clause 4.6.
 Attachment B Heritage Assessment Report by Council’s Heritage Consultant
 Attachment C Recommended Conditions of Consent
 Attachment D Proposed Development Plans

2. DESCRIPTION OF PROPOSAL

The proposal seeks development consent for demolition of existing school buildings and construction of a two storey building containing general learning areas, common learning space, labs, amenities and canteen.

The proposed development seeks to provide learning facilities with the necessary flexibility to deliver a contemporary multi disciplinary school curriculum, providing state of the art STEM (Science Technology Engineering Maths) facilities intended to remain functional for at least the next 20 years.

The proposal updates school facilities but is not intended to increase the school population.

The proposal has an estimated CIV of \$8.394 million and comprises the following key components:

- Demolition of three 2 storey buildings, a single storey toilet and classroom, canteen building, and associated covered walkways, landscaped and paved areas.

- Construction of a new two storey building in the same location, but with a more compact footprint. The new building will contain general learning areas, common learning space, labs, amenities and canteen.

The proposed development seeks a variation to the 8.5m Height of Buildings development standard to 10m. The height variation occurs in the centre of the proposed building over the central learning commons area, with the maximum 10m height at the eastern end of the building facing towards Centre Street. The classroom areas on either side of the central learning commons comply with the 8.5m height development standard. The finished level of the highest point of the roof is RL33.50m, which is 4 metres lower than the ridge line of the adjoining St Mary's Church and set back onto the site some 30 metres from the ridgeline of the church.

3. DESCRIPTION OF THE SITE AND LOCALITY

The development is located at Lots 3, 4, 7 & 9 Section 9, DP758236, Lot 1 DP1152394 and Lot 4 DP823664 (No. 122 - 128) Canterbury Street Casino.

The subject site forms part of the St Mary's Catholic College, which fronts Centre Street (eastern boundary), Canterbury Street (southern boundary) and West Street (western boundary). The school buildings occupy the central to southern parts of the property.

The heritage listed St Mary's Catholic Church and St Mary's Catholic Presbytery adjoin the development site on the corner of Centre Street and Canterbury Street. The high school and above-mentioned church buildings occupy a site of approximately 2 hectares.

The school site itself forms part of the larger St Mary's precinct occupying the approximately 4 hectare block bounded by Canterbury Street, Centre Street, North Street and West Street. This precinct includes the primary and secondary schools and various church buildings.

Figure 1 shows the locality and footprint of the proposed new building. Views to the development site from Centre Street and Canterbury street are shown in figures 2 and 3 respectively.

The St Mary's Primary School adjoins the site of the proposed new building to the north. To the east, the development site is separated from Centre Street by an at grade car park. Single and two storey Commercial and residential developments are located on the opposite side of Centre Street, some 90 metres from the proposed building. To the south, the development site is separated from Canterbury Street by the Presbytery and school buildings. Predominantly single storey commercial and residential developments are located on the opposite side of Canterbury Street, some 95 metres from the proposed building. To the west, the building site is located 80 metres from West Street and is separated from West Street by outdoor recreation areas for the high school and two storey school buildings along the West Street Frontage. The multipurpose school hall on the corner of West Street and Canterbury Street itself has a height of 9 metres.



Figure 1 – Subject Site and Locality. Red Box Indicates Proposed Development Footprint



Figure 2 – Subject Site Viewed from Canterbury Street, Near Intersection with Centre Street - Presbytery (LHS) and Church (RHS)



Figure 3 – Development Site Viewed from Centre Street: Church (LHS), St Mary's Primary School Building (RHS)

4. BACKGROUND

A history of the development proposal is as follows:

- The current development application was submitted on 27 April 2020.
- The application was placed on public exhibition from 7 May to 4 June 2020. No submissions were received.
- When initially received the application was incorrectly identified as Local Development and the public exhibition process advised that Council was the determining authority.
- As a result, the proposed development was again placed on public exhibition from 4 June to 3 July 2020, with the Northern Regional Planning Panel correctly identified as the determining authority. No submissions were received.
- Additional information regarding the clause 4.6 variation request and to confirm the environmental health requirements arising from the canteen and science laboratories was requested on 26 May 2020 and received on 2 June 2020.
- On 11 June 2020 the development application form and statement of environmental effects were amended to correct a misdescription in the property address. An amended landowner authority was also new owners consent form was also received. The error involved an incorrect lot and DP number on the application form and SOEE. The plans at all stages correctly located and described the proposed development. It was considered that this minor misdescription was not material to the public exhibition process as it did not impede the ability of the community to correctly identify the location of the proposed development.

5. ADEQUACY OF APPLICANT'S SUBMISSION

In relation to the Statement of Environmental Effects, plans and other documentation submitted with the application or after a request from Council, the applicant has provided adequate information to Council to enable an assessment of this application, including a written request to vary the Maximum Height development standard under clause 4.6 of Richmond Valley Local Environmental Plan 2012.

6. PUBLIC PARTICIPATION

The application was advertised in accordance with the provisions of the Richmond Valley Community Participation Plan 2019. The development was notified online and in the print newspaper. Eighteen adjoining property owners were also notified. No submissions were received.

7. REFERRALS

The following referrals were undertaken as part of the assessment process:

7.1 Heritage Consultant

The proposal was referred to Council's heritage consultant, as the site is within the curtilage of the St Marys Church and Presbytery, which are items of local heritage significance under the Richmond Valley LEP 2012. The heritage consultant advised that the proposed development could be supported subject to conditions of consent requiring submission of the following information to Council, prior to the Construction Certificate:

- a final schedule and samples of external finishes and colours, and
- a landscaping plan to define the curtilage and pathways around the adjoining heritage items.

The full report from Council's Heritage Consultant forms Attachment C to this report.

7.2 Development Engineer

Council's development engineer assessed the infrastructure, traffic and flooding requirements arising from the proposed development, and calculated the Section 7.12 Levy applicable to the development. The development engineer concluded that proposed development can be supported subject to conditions of consent.

Further comment on flooding is provided in section 11.3 of this report.

7.3 Environmental Health

Council's Environmental Health Officer assessed the potential for contamination arising from the demolition of the building, as well as the environmental health requirements arising from the proposed canteen and science labs.

The Environmental Health Officer proposed development can be supported subject to conditions of consent. Further comment on land contamination issues is provided in section 11.4 of this report

7.4 Building

Council's building officer has advised that the proposed development can be supported subject to conditions of consent.

8. STATUTORY CONSIDERATIONS

The subject land is located within the R1 General Residential Zone pursuant to the Richmond Valley LEP 2012. The proposed development, being an educational establishment, is a permissible land use within the zone under the provisions of Clause 35 of the State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017.

The following Environmental Planning Instruments (EPIs) and Development Control Plans (DCPs) are relevant to this application:

i. State Environmental Planning Policies

- Clause 20 and Schedule 7(5) of SEPP – State and Regional Development 2017
- Clauses 33 and 35 and Schedule 4 of SEPP – Educational Establishments and Child Care Facilities 2017
- Clause 7 of SEPP 55 – Remediation of Land

ii. Richmond Valley Local Environmental Plan 2012

- Clause 2.3(2) – Zone Objectives and Land Use Table
- Land Use Table (Objectives of Zone) – Zone R1 General Residential
- Clause 4.3 – Height of Buildings
- Clause 4.6 – Exceptions to Development Standards
- Clause 5.10 – Heritage Conservation
- Clause 6.2 – Essential Services
- Clause 6.5 – Flood Planning
- Schedule 5 – Environmental Heritage

iii. Richmond Valley Development Control Plan 2015

- Part I-1.10 Development in the vicinity of a heritage item
- Part I-3 Setbacks and Building Height

iv. Richmond Valley Council Section 94A Contributions Plan

There are no draft EPIs relevant to this application.

9. SECTION 4.15 ASSESSMENT

A detailed assessment of the application has been carried out having regard to the Heads of Consideration under Section 4.15 of the Environmental Planning and Assessment Act 1979. The assessment is summarised below and a commentary on the relevant planning controls is then provided.

9.1 Section 4.15 Assessment Summary Table

Key: **Considered and Satisfactory (Y) Considered and Unsatisfactory (N) and Not Relevant N/A**

(a)(i)	The provisions of any environmental planning instrument (EPI)	
	• State Environmental Planning Policies (SEPP)	Y
	• Regional Environmental Plans (REP)	Y
	• Local Environmental Plans (LEP)	Y
	The proposed development proposal is generally consistent with the and objectives of the relevant EPIs. Further detail is provided below.	
(a)(ii)	The provision of any draft environmental planning instrument (EPI)	
	Comment: There are no draft EPIs that apply to the subject land.	N/A
(a)(iii)	Any development control plans	
	Comment: The proposal is consistent with the relevant DCP provisions.	Y
(a)(iv)	Any matters prescribed by the regulations	
	Clause 92(1)(b) EP&A Regulation-Demolition – provisions of AS2601	Y
	Comment: Demolition is addressed through conditions of consent. Other matters prescribed by the regulations not applicable to this application	Y
(b)	The likely impacts of the development	
	Comment: The proposal is considered to have acceptable impacts on the surrounding locality and on other development, including adjoining heritage items, within the St Mary's precinct.	Y
(c)	The suitability of the site for the development	
	Comment: The proposal is located within an existing school.	Y
(d)	Any submissions made in accordance with this Act or the regulations	
	Comment: Council received no submissions.	Y
(e)	The public interest	
	Comment: The proposal has been assessed to be satisfactory and has acceptable impacts. The proposed development is therefore in the public interest.	Y

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

The development is declared regionally significant development pursuant to clause 20(1) as:

- it is a type of development specified in Schedule 7(5)(b) of the SEPP (educational establishment with a capital investment value over \$5 million) and
- does not satisfy any of the exclusions in clause 20(2).

9.3 State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017

In addition to the matter of permissibility addressed in section 8 of this report, the SEPP requires consideration of the matters discussed below.

Clause 35(6) of the SEPP requires the consent authority to take into consideration the following matters:

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

The applicant has prepared an evaluation of the proposed development against the design quality principles set out in Schedule 4 of the SEPP. It forms Appendix 4 of the Applicant's Statement of Environmental Effects. It is considered that the proposed development satisfies the design quality principles, subject to the landscaping condition recommended by Council's Heritage Consultant.

Having regard to clause 35(6)(b), it is noted that the development, being school classrooms will be used solely by the school community. Given the nature of the development, this is not considered material to the approval of the development application.

The provisions of clause 57 of the SEPP (Traffic Generating Development) are not triggered as the proposal does not result in an increase in student numbers.

9.4 SEPP 55 – Remediation of Land

Clause 7 - Contamination and remediation to be considered in determining development application provides that:

- (1) A consent authority must not consent to the carrying out of any development on land unless—*
 - (a) it has considered whether the land is contaminated, and*
 - (b) if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out, and*
 - (c) if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose.*

The site of the proposed development is not identified as contaminated land on Council's Contaminated Lands Map and the applicant advises that the site has been for education and residential purposes since the St Mary's Primary School was established in 1884.

Demolition of the existing building will need to take into account the potential for asbestos and lead paint, but as outlined in section 11.4 of this report, it is considered that this issue can be satisfactorily addressed with conditions of consent.

9.5 Richmond Valley LEP 2012

i. Clause 2.3(2) – Zone Objectives

The proposed development is located within the R1 General Residential Zone. Clause 2.3 (2) requires the consent authority to have regard to the objectives for development in a zone when determining a development application in respect of land within the zone. The objectives are:

- *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 ensure that housing densities are generally concentrated in locations accessible to public transport, employment, services and facilities.*
- *To minimise conflict between land uses within the zone and land uses within adjoining zones.*

The proposed development is considered consistent with the zone objectives as it does not adversely impact on the provision of housing in the zone, provides facilities to meet the day to day needs of residents, and being located within the centre of an existing school and compatible with the adjoining heritage items, does not result in conflict between uses within the zone.

ii. Clause 4.3 Height of Buildings

Clause 4.3(2) provides that *the height of a building on any land is not to exceed the maximum height for the land shown on the Height of Buildings Map*. The map establishes a maximum height of 8.5m for the site, and the proposed development seeks a variation of this standard to 10 metres.

iii. Clause 4.6 Exceptions to Development Standards

A clause 4.6 variation request has been submitted. Assessment of this request is provided in section 11.1 of this report.

iv. Clause 5.10 Heritage Conservation

The relevant provisions are:

(1) **Objectives** *The objectives of this clause are as follows—*

- (a) *to conserve the environmental heritage of Richmond Valley,*
- (b) *to conserve the heritage significance of heritage items and heritage conservation areas, including associated fabric, settings and views,*
- (c) *to conserve archaeological sites,*
- (d) *to conserve Aboriginal objects and Aboriginal places of heritage significance*

(4) **Effect of proposed development on heritage significance** *the consent authority must, before granting consent under this clause in respect of a heritage item or heritage conservation area, consider the effect of the proposed development on the heritage significance of the item or area concerned. This subclause applies regardless of whether a heritage management document is prepared under subclause (5) or a heritage conservation management plan is submitted under subclause (6).*

(5) **Heritage assessment** *The consent authority may, before granting consent to any development—*

- (a) *on land on which a heritage item is located, or*
- (b) *on land that is within a heritage conservation area, or*

- (c) on land that is within the vicinity of land referred to in paragraph (a) or (b), require a heritage management document to be prepared that assesses the extent to which the carrying out of the proposed development would affect the heritage significance of the heritage item or heritage conservation area concerned.*

A heritage assessment was submitted as part of the development application and reviewed by Council's Heritage Consultant. The proposed development does not adversely impact on the heritage significance of the adjoining heritage items. See section 11.2 For further details.

v. Clause 6.2 Essential services

Development consent must not be granted for development unless the consent authority is satisfied that any of the following services that are essential for the proposed development are available or that adequate arrangements have been made to make them available when required—

- (a) the supply of water,*
- (b) the supply of electricity,*
- (c) the disposal and management of sewage,*
- (d) stormwater drainage or on-site conservation,*
- (e) suitable road access.*

All relevant essential services are available to the site and proposed development.

vi. 6.5 Flood planning

(1) The objectives of this clause are as follows—

- (a) to minimise the flood risk to life and property associated with the use of land,*
- (b) to allow development on land that is compatible with the land's flood hazard, taking into account projected changes as a result of climate change,*
- (c) to avoid significant adverse impacts on flood behaviour and the environment.*

(2) This clause applies to land at or below the flood planning level.

(3) Development consent must not be granted for development on land to which this clause applies unless the consent authority is satisfied that the development—

- (a) is compatible with the flood hazard of the land, and*
- (b) is not likely to significantly adversely affect flood behaviour resulting in detrimental increases in the potential flood affectation of other development or properties, and*
- (c) incorporates appropriate measures to manage risk to life from flood, and*
- (d) is not likely to significantly adversely affect the environment or cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of river banks or watercourses, and*
- (e) is not likely to result in unsustainable social and economic costs to the community as a consequence of flooding.*

(4) A word or expression used in this clause has the same meaning as it has in the Floodplain Development Manual (ISBN 0 7347 5476 0), published in 2005 by the NSW Government, unless it is otherwise defined in this clause.

*(5) In this clause, **flood planning level** means the level of a 1:100 ARI (average recurrent interval) flood event plus 0.5 metre freeboard.*

The proposed development satisfies the above mentioned controls, for the reasons outlined in section ??? of this report.

9.6 Richmond Valley Development Control Plan

The Richmond Valley Development Control Plan 2015 applies to the site.

The applicable DCP controls are discussed below:

i. Part I- 1.10 Development in the vicinity of a heritage item

Objectives

(1) Encourage development in the vicinity of a heritage item to be designed and sited to protect the significant of the heritage item.

Controls

Development in the vicinity of a heritage item is to minimise the impact on the setting of the item by:

- *Providing an adequate area around the heritage item to allow its interpretation.*
- *Providing an adequate area around the heritage item to allow its interpretation.*
- *Retaining original or significant landscaping associated with the heritage item.*
- *Protecting and allowing the interpretation of archaeological features associated with the heritage item.*
- *Retaining and respecting significant views to and from the heritage item.*

As outlined in the heritage assessment (Attachment B) , the proposed development is designed and sited to protect the significant heritage item.

ii. Part I-3. Setbacks and Building Height

The follow setback requirements apply:

I-3.3 Front Building Line Setback – 6m primary frontage & 3m secondary frontage

I-3.4 Side and Rear Boundary Setbacks - Merit

The proposed development is located in the centre of the site and readily achieves the required street setbacks. The buildings have an appropriate relationship to adjoining buildings located on adjoining lots within the St Marys precinct.

9.7 Richmond Valley Section 94A Contributions Plan

The Richmond Valley s94A Plan applies to the subject land and the proposed development. Council's 7.12 contribution levy has been calculated in accordance with the plan and a condition of consent applied.

10. KEY ISSUES

The main issues arising from the assessment of the development application are the variation to the height of buildings development standard, heritage, flood planning and demolition. These issues are discussed below.

10.1 Height of Buildings Development Standard

The proposed development fails to comply with the development standard for height. Clause 4.3(2) of RVLEP 2012 stipulates a maximum height of 8.5m for this site. The proposed building has a maximum height of 10.0m, which is a 17.6% variation to the development standard.

The objectives of the height of buildings development standard set out in clause 4.3 (1) of RVLEP 2012 are as follows:

- (a) to establish the maximum height for buildings,*
- (b) to ensure that the height of buildings complements the streetscape and character of the area in which the buildings are located,*
- (c) to minimise visual impact, disruption of views, loss of privacy and loss of solar access to existing development.*

The proposed development is consistent with the above mentioned objectives for the reasons outlined below:

- The building sits near the centre of the St Marys precinct, a locality which is distinctly different in character from the remainder of the R1 Zone and the surrounding development. The precinct is characterised by several buildings of a grander scale – both height and bulk than the surrounding streets of residential and commercial development. The proposed height of the building is consistent with and complements the height of other existing buildings within the Saint Marys Precinct, while remaining respectful of the scale and setting of the adjoining heritage Presbytery and Church.
- The proposed building is located near the centre of the site, and notwithstanding the height variation minimises visual impact, does not impact on views, privacy or solar access to existing residential development.

The proposed development is located within zone R1 General Residential. The objectives of this zone are as follows:

- 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 ensure that housing densities are generally concentrated in locations accessible to public transport, employment, services and facilities.
- To minimise conflict between land uses within the zone and land uses within adjoining zones.

The proposed development is considered consistent with the objectives of the zone, for the reasons outlined below:

- The proposed development is a permitted use in the R1 General Residential Zone and provides school facilities to meet the day to day needs of residents.
- The proposed building replaces existing school facilities and is located near the centre of the site, removed from surrounding residential development, minimising the potential for conflict with adjoining land uses.
- The proposed building height and location does not adversely impact upon the provision of residential accommodation within the surrounding area.

The applicant has lodged a written request in accordance with the requirements of clause 4.6 of RVLEP 2012.

A full copy of this request forms Attachment A to this report. The most relevant section is reproduced below:

C.1. Clause 4.6(3)(a) – Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case

Strict compliance with the maximum height of building standard is unreasonable and unnecessary in the circumstances of the application based on the following:

- *The proposal is consistent with the objectives of the development standard as provided in clause 4.3 of the RVLEP 2012 – refer to **Table 1** below.*
- *The extent of non-compliance (i.e. additional 1.5m) does not result in consequential environmental impacts. The height difference has an inconsequential shadowing impact at mid-winter to any key buildings and no impact upon the public domain.*

4.3 Height of buildings

(1) The objectives of this clause are as follows—

- a. to establish the maximum height for buildings,*
- b. to ensure that the height of buildings complements the streetscape and character of the area in which the buildings are located,*
- c. to minimise visual impact, disruption of views, loss of privacy and loss of solar access to existing development.*
- d. To minimise conflict between land uses within the zone and land uses within adjoining zones.*

No other amenity impacts (privacy, views or outlook) will arise from the additional height proposed.

Having regard to the recognised educational and religious nature of the locality, the proposal represents an appropriate built form set by the surrounding buildings inclusive of St Mary’s Church.

Considering the above, in the circumstances of this application, it is neither reasonable or necessary to require compliance with the height of building standard under the RVLEP. Each of the matters listed within the ‘five-part test’ outlined in Wehbe v Pittwater [2007] NSWLEC 827 and Varying development standards: A Guide is listed and responded to as follows:

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

*Comment: The underlying objectives of the building height control as listed within Clause 4.3 of the RVLEP 2012 have been achieved as summarised in **Table 1** below.*

Table 1 – Assessment of Consistency with Development Standard Objectives

Objective	Comment
<i>(a) to establish the maximum height for buildings</i>	<i>The proposal has had due regard to the building height established for the subject land. The building does not represent the tallest structure on the site and therefore will not dominate the streetscape or view paths around the site.</i>
<i>(b) to ensure that the height of buildings complements the streetscape and character of the</i>	<i>At a high level – the proposed building successfully mitigates environmental impacts such as overshadowing, privacy and view loss, consistent with this objective.</i>

<p>area in which the buildings are located</p>	<p><i>The building height exceedance responds to the conditions of the site, in part arising from the desire to provide an educational building to create an inspirational, light filled connection of all the learning spaces. The nature of an education building is such that certain height parameters must be met in order for the building to be 'fit for purpose'. The building has been designed such that only a portion of the building (<20%) is located above the nominated 8.5m height control and this element provides adequate natural light to the learning commons area which will be used for teaching. All other parts of the building are compliant with the height control.</i></p> <p><i>The proposed building when set against the existing buildings which form the St Mary's campus is commensurate in scale and height. This is deemed to be reflective of the immediate character of the locality achieved through the historic use of the land for the Church and educational built form. To this end, the campus already provides a clear differentiation to the smaller scale form of residential and commercial structures which adjoining the development site.</i></p> <p><i>The siting of the development with encompassing a setback to the west of the St Mary's Church retains the Church as the key built form and focal point when viewed from the public domain on Centre Street. This reinforces a positive streetscape character and meets the broad objectives established under this building height objective.</i></p>
<p><i>(c) to minimise visual impact, disruption of views, loss of privacy and loss of solar access to existing development.</i></p>	<p><i>The site is removed from areas with particular visual or scenic values with respect to the Church structure, being setback some 12m, being 4m further than the existing school buildings. The building has therefore been designed to provide a proportioned and articulated building which is suited to its strategic location.</i></p> <p><i>The building is located within the school campus in a manner which will not result in any loss of solar access or reduction in privacy from surrounding non-educational buildings. Importantly, the proposal will not impact upon the amenity of the St Mary's Church which is located to the south-east of the building and as such will not be subjected to adverse overshadowing impacts.</i></p>

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

Comment: This test is not applicable in the circumstances of the case. The objectives of the development standard are relevant to the development.

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

*Comment: The RVLEP 2012 includes objectives for the R1 General Residential zone. These objectives are identified in **Table 2**. This table demonstrates that the variation is consistent with the objectives of the zone. Strict compliance with the building height development standard would not be antipathetic to the achievement of these objectives.*

Objective	Comment
<i>To provide for the housing needs of the community.</i>	<i>The proposed building height does not impact upon the delivery of housing within the Casino locality.</i>
<i>To provide for a variety of housing types and densities.</i>	<i>The proposed building and associated built form is located within an existing educational campus and as such the designed building height will not impact upon the delivery of housing within the Casino locality.</i>
<i>To enable other land uses that provide facilities or services to meet the day to day needs of residents.</i>	<i>The proposed building height variation has been designed to meet the operational need for an educational building upon the St Marys High School campus. The proposal will directly meet the zone objective.</i>
<i>To ensure that housing densities are generally concentrated in locations accessible to public transport, employment, services and facilities.</i>	<i>The proposed building height has no material impact upon the delivery of housing.</i>
<i>To minimise conflict between land uses within the zone and land uses within adjoining zones.</i>	<p><i>The portion of the proposed building height variation will generate no conflicts with adjoining land uses when regard is made to the location of the building on the educational campus and the setbacks to the cadastral boundaries.</i></p> <p><i>The building is setback from all property boundaries with a public interface, with carparking, driveways and landscaping located within the setback area. The portions of the building exceeding the nominated height standard are then set within the central portion of the structure (with the outer areas all compliant with the 8.5m control). The portions of the building exceeding the 8.5m limitation are setback from property boundaries as follows:</i></p> <ul style="list-style-type: none"> <i>o Centre Street - 27m; and</i> <i>o Canterbury Street– 36m.</i>

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

Comment: Richmond Valley Council has previously supported Clause 4.6 variations, where contraventions of the building height standard were demonstrated to be supportable. This is demonstrated within the 2016/17 Standards Variation Register attached to this request.

5. The compliance with development standard is unreasonable or inappropriate due to existing use of land and current environmental character of the particular parcel of land. That is, the particular parcel of land should not have been included in the zone.

Comment: This test is not applicable in the circumstances of the case. It's assumed the site's land use and built form controls reflect Council's planning intent for the area.

C.2. 6.1.2. Clause 4.6(3)(b) – Are there sufficient environmental planning grounds to justify contravening the development standard?

The proposed development is supportable on environmental planning grounds for the following reasons:

- *The nature of an education building is such that certain height parameters must be met in order for the building to be 'fit for purpose'. The building has been designed such that only a portion of the building (<20%) is located above the nominated 8.5m height control. All other parts of the building are compliant with the height control. Removing the proposed glazing and modifying the roof form for height compliance would not achieve the operational brief for the education building associated with the learning commons and thus be inconsistent with the 'other land use' objective of the RVLEP 2012;*
- *The proposal establishes a finished floor level to adhere with flood planning for the site and thus contributes to the overall building height. Reducing the floor level would also result in potential nuisance impacts for the use of the educational building.*
- *The addition of an extra 1.5m (from the RVLEP 2012 control of 8.5m) does not give rise to any consequential environmental impacts (e.g. shadowing, view loss or visual impacts).*
- *The variation enables the continued appreciation of the St Marys Church building. The new building retains the pattern of development of the existing development, being a large double story school building within the centre of the school. The proposed building height allows a superior relationship between the proposal and adjoining buildings (in terms of the established/desired building height and scale).*

As such, given the high level of compliance with other key development standards, the alignment with the desired future character of the area (both in terms of built form and land use) and the appropriate mitigation of environmental impacts, the variation to the development standard is supportable on environmental planning grounds.

The applicant's written submission demonstrates that compliance with the height development standard is unreasonable or unnecessary in the circumstances of the case. It also demonstrates sufficient environmental planning grounds to justify varying this development standard.

The proposed development is in the public interest as the proposal complies with the objectives for both height and the R1 General Residential zone, for the reasons outlined above, and in the applicant's clause 4.6 variation request.

The proposed variation does not raise any matters of State or regional environmental planning significance. In addition, there is no public benefit to maintain the height development standard in the circumstances of this case. The proposed building benefits from the additional height proposed in terms of its design and functionality, as outlined in the applicant's clause 4.6 variation request; without impacting on the character or amenity of the area.

In conclusion the variation to the height of buildings development standard satisfies all relevant parts of clause 4.6 and therefore the variation can be supported.

10.2 Heritage

The proposed development is located adjacent to St Mary's Church and Presbytery. These buildings are listed as heritage items of local significance in the Richmond Valley LEP 2012. The proposed development introduces a contemporary building of considerable scale and modern materials into the setting of these two heritage items.

A heritage impact statement forms part of the development application and has been assessed by Council's Heritage Consultant. The report of Council's Heritage Consultant forms attachment C to this report. The assessment concluded that the proposed development is not likely to affect the significance or setting of the two heritage items and could be supported subject to conditions of consent. Council's consultant also supported the height variation for the proposed design on the basis that it creates interest to the elevation and a more appealing facade.

10.3 Flood Planning

Council's Floodplain Risk Management Plan categorises the site as having a "rare low" hazard. This category includes land that is inundated in the PMF event but are generally above the 100 year design flood and not assigned to any other flood categories.

The 100year flood planning level for the site is RL 22.7m AHD. The proposed ground floor level of RL 23.5m AHD is 0.8m above the flood planning level.

Council's Floodplain Risk Management Plan requires that where practicable new community services buildings such as schools provide some or all floor levels greater than or equal to the Probably Maximum Flood (PMF), so that these buildings will be available for accommodation / storage during and after a flood emergency. However, in the circumstances of the case, Council's engineer has advised that, even at the 100 year design flood level the area of the school is surrounded by floodwaters and is therefore not an appropriate evacuation centre. Therefore, it is not considered necessary or practical to require the building be above the PMF flood level of RL 26.1 metres AHD.

Having regard to the mandatory flood planning considerations in clause 6.5 of the Richmond Valley LEP 2012, Council's engineer has confirmed that the proposed development satisfies the flood planning heads of consideration in clause 6.5 of the Richmond Valley LEP 2012. The development is compatible with the flood hazard of the land and is not expected to adversely affect flood behaviour or downstream properties. The finished floor level is considered an appropriate measure to manage the life risk from flood and avoid unsustainable social and economic costs to the community as a consequence of the design flood. Given its location in the centre of town, the building will not affect any watercourse or environment.

10.4 Demolition of Existing Building

Council's Environmental Health Officer has identified the potential for lead paint and asbestos contamination in the materials of the existing building and recommended a condition of consent requiring the provision of a preliminary contaminated land assessment prior to the release of the construction certificate, to ensure that appropriate work practices are put in place for the demolition of the existing structure, if such contamination is found.

Council's Building Officer has confirmed that the demolition process can be adequately addressed through conditions of consent.

11. CONCLUSION

Development consent is sought for demolition of existing school buildings at St Mary's High School and construction of a two storey building containing general learning areas, common learning space, labs, amenities and canteen.

The proposed development creates an enhanced learning environment for students at the school, to facilitate modern learning practices.

The requested variation to the Height of Buildings development standard satisfies all relevant parts of clause 4.6 and therefore the variation can be supported.

The proposed development maintains an appropriate relationship with the adjoining heritage buildings and is supported by Council's Heritage Consultant.

The proposed development is situated in an existing school and fits comfortably within the school site. The site is part of the wider St Mary's church and school precinct and is well separated from residential and commercial development in the surround streets. The development does not propose an increase in student numbers and as such does not generate additional traffic, parking or amenity impacts.

No public submissions were received in response to the public exhibition of the development application.

Demolition of the existing buildings can be appropriately managed, with the assistance of conditions of development consent.

The proposed development complies with legislative requirements, has appropriately considered potential impacts, is suitable for the location and will have substantial benefits. The development is not considered to be inconsistent with the public interest.

It is recommended that development application no. DA2020/0201 (NRPP reference no. PPSNTH-41) be approved subject to conditions contained in the Schedule of recommended conditions of consent at Attachment D.

