

COUNCIL ASSESSMENT REPORT

SYDNEY EASTERN CITY PLANNING PANEL

PANEL REFERENCE & DA NUMBER	PPSSEC-312 – DA-2024/53
PROPOSAL	Alterations and additions to an educational establishment (Hartford College) including alterations to Buildings A, B and C, construction of a two storey building, new parking area and vehicle crossover location, outdoor play area and associated site works
ADDRESS	33 Banks Avenue DACEYVILLE NSW 2032 Lot 3875 DP 752015
APPLICANT	Hartford College
OWNER	St Michael's Church
DA LODGEMENT DATE	14 March 2024
APPLICATION TYPE	Development Application
REGIONALLY SIGNIFICANT CRITERIA	Section 2.19(1) and Clause 5 of Schedule 6 of <i>State Environmental Planning Policy (Planning Systems) 2021</i> declares the proposal regionally significant development as: Development that has an estimated development cost of more than \$5 million for the purposes of an educational establishment.
CIV	\$10,812,752.00 (excluding GST)
CLAUSE 4.6 REQUESTS	BLEP 2021 - Clause 4.3 – Building Height
KEY SEPP/LEP	<ul style="list-style-type: none"> • <i>State Environmental Planning Policy (Planning Systems) 2021</i> • <i>State Environmental Planning Policy (Biodiversity and Conservation) 2021</i> • <i>State Environmental Planning Policy (Industry and Employment) 2021</i> • <i>State Environmental Planning Policy (Resilience and Hazards) 2021</i> • <i>State Environmental Planning Policy (Transport and Infrastructure) 2021</i> • <i>Bayside Local Environmental Plan 2021 (BLEP)</i> • <i>Bayside Development Control plan 2022 (Bayside DCP)</i>

TOTAL & UNIQUE SUBMISSIONS KEY ISSUES IN SUBMISSIONS	Nil.
DOCUMENTS SUBMITTED FOR CONSIDERATION	Architectural Plans Landscape Plans Statement of Environmental Effects Clause 4.6 – Exception to Development Standards Request Heritage Impact Assessment Acoustic Report Arborist Report Preliminary Site Investigation Traffic Report
HOUSING PRODUCTIVITY CONTRIBUTIONS	N/A
RECOMMENDATION	Approval
DRAFT CONDITIONS TO APPLICANT	Yes
SCHEDULED MEETING DATE	19 September 2024
PLAN VERSION	19 December 2023 Revision 01 30 July 2024 Revision 02
PREPARED BY	Ayse Kiziltekin – Development Assessment Planner
DATE OF REPORT	3 September 2024

EXECUTIVE SUMMARY

The development application (DA-2024/53) seeks consent for alterations and additions to an educational establishment (Hartford College) including alterations to Buildings A, B and C, construction of a two storey building, new parking area and vehicle crossover location, outdoor play area and associated site works.

The site contains internal boundary fencing dividing the site into three portions, however, have not been formally subdivided. This currently comprises of a variety of different uses, including the existing single storey school buildings and associated car parking and landscaping areas central to the site, being the subject area for this application. To the north of these buildings, within the site, there is a two-storey brick building which is associated with the Catholic Archdiocese Offices, the Marist Brothers. To the western side, within the site and along Gwea Avenue and Haig Avenue, Foley Gardens Self-Care Retirement Village is found which is completely separated from the subject buildings by a 1.8-metre-high fence. All the relevant car spaces for this component of the site are encompassed to the west of the site under a carport structure.

The site is located within the R2 Low Density Residential Zone, and within close proximity to the RE2 Private Recreation and RE1 Public Recreation Zones. The proposed educational establishment is permissible within the zone.

The site is located within the Daceyville Garden Suburb Heritage Conservation Area and is near heritage items to the north, at the St Michaels church/school site. The site is also located within a 20-25 ANEF Contour and is impacted by flooding, with both matters satisfactorily addressed in this report.

The site is restricted to a maximum FSR of 0.5:1 and maximum building height of 8.5m. The proposal seeks to vary the maximum permitted building height resulting in a variation of 450mm – 1.98m (5.29% - 23.29%). The variation to the height is limited to the roof ridge of proposed Building D and the Chapel entry signal. A cl4.6 variation request to vary s4.3 of the BLEP is assessed and considered acceptable in this instance.

The site has a primary frontage to Banks Avenue, and secondary frontage to Gwea Avenue. Across the entirety of the site there are two existing vehicular access points to each frontage, with one servicing the school. The proposal includes a new vehicular access entry point to Gwea Avenue. Traffic, car parking and access has been reviewed by Council's Development Engineer and been reviewed by the Bayside Traffic Development Advisory Committee. Following additional information request, issues with access and parking have been resolved.

The proposal was notified in accordance with Part 9.2 of the BDCP from 27 March to 12 April 2024. No submissions were received.

There were no concurrence requirements from agencies for the proposal and the application is not integrated development pursuant to Section 4.46 of the *Environmental Planning and Assessment Act 1979* ('EP&A Act'). A referral to Ausgrid pursuant to s2.48 of *State Environmental Planning Policy (Transport and Infrastructure) 2021* ('Transport and Infrastructure SEPP') and Sydney Water were sent and raised no objections, subject to compliance with recommended conditions of consent.

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

- Section 4.6 of the Transport and Infrastructure SEPP for consideration of whether the land is contaminated;
- Section 2.48(2) of the Transport and Infrastructure SEPP in relation to electricity distribution pole;
- Section 3.12(3)(a) of the Transport and Infrastructure SEPP as the development is identified as *specified development* with an increase of more than 50 students; and
- Section 3.6 of the Industry and Employment SEPP in relation to signage.

The application is referred to the Sydney Eastern City Planning Panel ('the Panel') as the development is '*regionally significant development*', pursuant to Section 2.19(1) and Clause (5)(b) of Schedule 6 of *State Environmental Planning Policy (Planning Systems) 2021* as the proposal is development for an *educational establishment* that has an estimated development cost of more than \$5 million.

A briefing was held with the Panel on 11 July 2024 where key issues were discussed, including the exceedance to the building height development standard, car parking and access, stormwater management, signage details, and building design elements related to BCA requirements. These issues, except for signage, have been addressed by way of amended plans and additional reporting, submitted to Council on 2 August 2024. There is insufficient information regarding signage and Council is not satisfied the relevant provisions have been met. Accordingly, relevant conditions are included which require separate approval to be obtained for the signage and has not been approved under this application.

The revised documentation has been reviewed and is supported subject to conditions. There are no environmental issues with regards to the proposal.

Following a detailed assessment of the proposal, pursuant to Section 4.16(1)(b) of the *EP&A Act*, DA-2024/53 is recommended for approval, subject to conditions contained at **Attachment A** of this report.

1. THE SITE AND LOCALITY

The subject site is legally identified as Lot 3875 DP 752015 and is known as 33 Banks Avenue, Daceyville. The site has an irregular shape with three frontages to Banks Avenue, Gwea Avenue and Haig Avenue. The site encompasses land known as 31 Banks Ave and 5-7 Gwea Ave. The site boundaries are 52.555m to the north (to 29 Banks Ave), 92.335m to the frontages adjoining 4 Haig Ave to the north-west, 13.81m to the west (to Haig Ave), 116.565m to the south and south-west frontages to Gwea Ave, and 90.19m to the primary frontage along Banks Ave. The total site area is 6,796m². The site is generally flat. The primary frontage is to Banks Ave which has two vehicular access points. Gwea Ave is the secondary frontage which contains two vehicular access points.

The site contains internal boundary fencing dividing the site into three portions, however, have not been formally subdivided. This currently comprises of a variety of different uses. The existing buildings subject to this application proposing alterations and additions are currently single storey brick buildings with terracotta roof. These buildings are in an 'L' shape generally central to the site and are used by Hartford College. There is a large car park central to those buildings with access off Banks Avenue. There is existing low brick fence along the Banks Avenue frontage, with internal open form colorbond vertical metal slat fencing within the site. There is vegetation and open space provided in the north-eastern and south-eastern side of the site. To the north of these buildings, within the site, there is a two-storey brick building which is associated with the Catholic Archdiocese Offices, the Marist Brothers. To the western side, within the site and along Gwea Avenue and Haig Avenue, Foley Gardens Self-Care Retirement Village is found which is completely separated from the subject buildings by a 1.8-metre-high fence. All the relevant car spaces for this component of the site are encompassed to the west of the site under a carport structure.

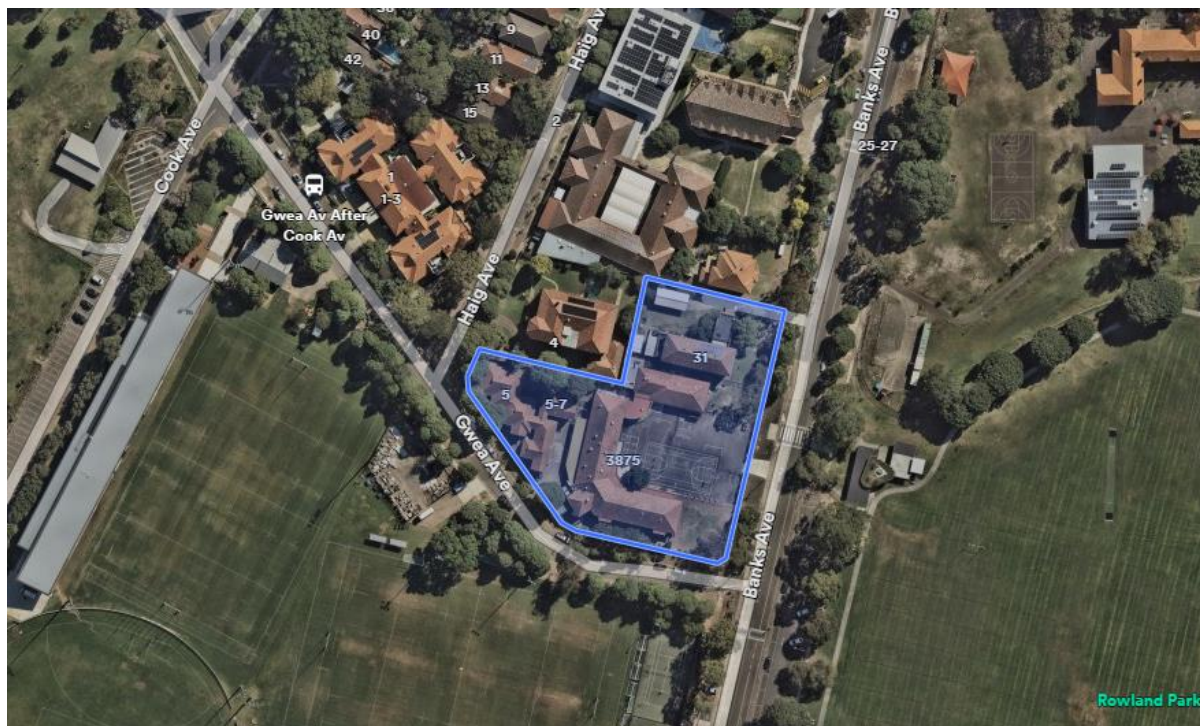


Figure 1: Satellite image of the subject site highlighted blue.



Figure 2: View of the existing building 'Hartford College' as viewed from Banks Avenue



Figure 3: Catholic Archdiocese building on the northern portion of the site (not the subject of application)



Figure 4: Self-care retirement village on the western portion of the site (not the subject of application)

To the north of the site, St Michaels Primary School is found in addition to St Michaels Catholic Church. To the west of the site, on the eastern side of Haig Avenue, there are buildings associated with the Catholic Archdiocese. On the western side of Haig Avenue, there are single storey dwelling houses as well as Southern Cross Care Residential Aged Care Facility which is a two-storey building. On the eastern side of Banks Avenue, Daceyville Public School is located as well as Rowland Park. To the south of the site, there is UNSW David Phillips Field Sport Field.

The site is located within the Daceyville Garden Suburb Heritage Conservation Area and is near heritage items to the north, at the St Michaels church/school site. The site is also located within a 20-25 ANEF Contour and is impacted by flooding. The site is zoned R2 Low Density Residential and is restricted to a maximum FSR of 0.5:1 and maximum building height of 8.5m.



Figure 5: UNSW David Phillips Field



Figure 6: St Michael's Catholic Primary School

2. THE PROPOSAL AND BACKGROUND

2.1 The Proposal

The proposal seeks consent for alterations and additions to an educational establishment (Hartford College) including alterations to Buildings A, B and C, construction of a two storey building, new parking area and vehicle crossover location, outdoor play area and associated site works.

Specifically, the proposal involves:

Demolition and Removal of Vegetation

- The eastern portion of roofing on Building A and C to be removed to accommodate the first floor of Building D.
- The existing curved building and ramp between Buildings B and C to be demolished, along with the planter, slab and covered walkway along the exterior of Buildings A and B. Partial demolition of Building C office areas.
- Fencing around the existing car parking area to be demolished, along with the removal of the existing parking area, internal fencing, and playground.
- Removal of five (5) x shrubs at the southern boundary, to facilitate the provision of a new driveway crossover at Gwea Avenue.

Construction

- New ramp to southern side of Building A to provide accessible access to building.
- Internal alterations and additions to Building C:
 - Ground Floor to contain staff study, 3x bathrooms, 4x offices, staff lounge, clerical administration room and reception area, and new chapel containing sacristy and confession rooms at the corner where Building's C and D connect.
 - First Floor to contain class room with internal storage area.
- Addition of Building D to contain:
 - Ground Floor library, lobby, storage rooms, and meeting room.
 - First Floor 4x classrooms and 2x meeting rooms, covered walkway to access from stairs below, and first floor choir loft, bathroom and storage of the Chapel at the corner of Building C and D.
- Internal play/assembly area, seating benches, playground with decking and planting areas.
- Car parking proposed within the front setback area:
 - Fifteen (15) car parking spaces including eight (8) for staff, three (3) pickup/drop off spaces, three (3) student parking spaces inclusive of one accessible space, and one (1) Minibus parking space.
 - New vehicular entrance to Gwea Avenue, and existing Banks Ave vehicular access to be exit only, with the exception of access from the minibus.

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

Table 1: Key Development Data

Control	Proposal and Compliance
Site area	6,796m ²
FSR <i>Maximum permissible 0.5:1 Max GFA = 3,398m²</i>	Yes – GFA 3,062.34m ² Equivalent to FSR 0.45:1
Max Height <i>Permitted max height 8.5m</i>	No – Maximum height proposed between 8.95m – 10.48m.
Clause 4.6 Requests	Yes – Vary cl 4.3 Building Height. Variation of 450mm (5.29%) proposed to Roof Ridge of Building D and 1.98m (23.29%) to the Chapel.
Landscaped area <i>Required 25% = 1,699m²</i>	Yes – 25% (1,699m ²) of overall site area.
Car Parking spaces	Yes – Spaces compliant, and bus parking acceptable on merit.

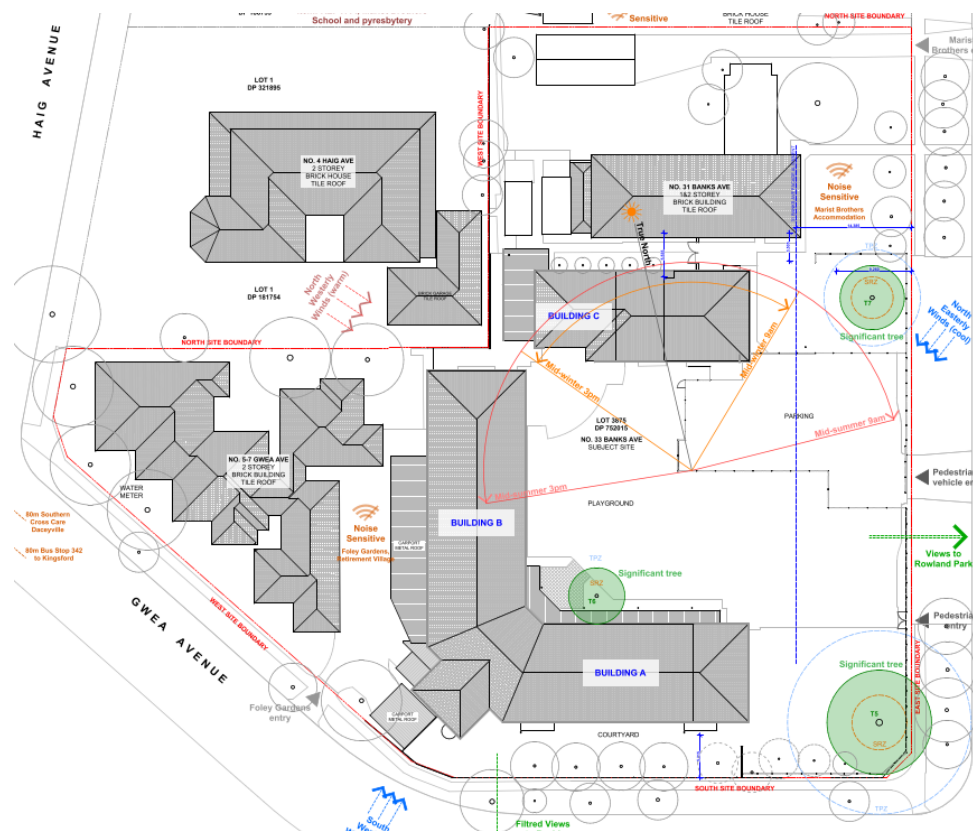


Figure 7: Existing Site Plan

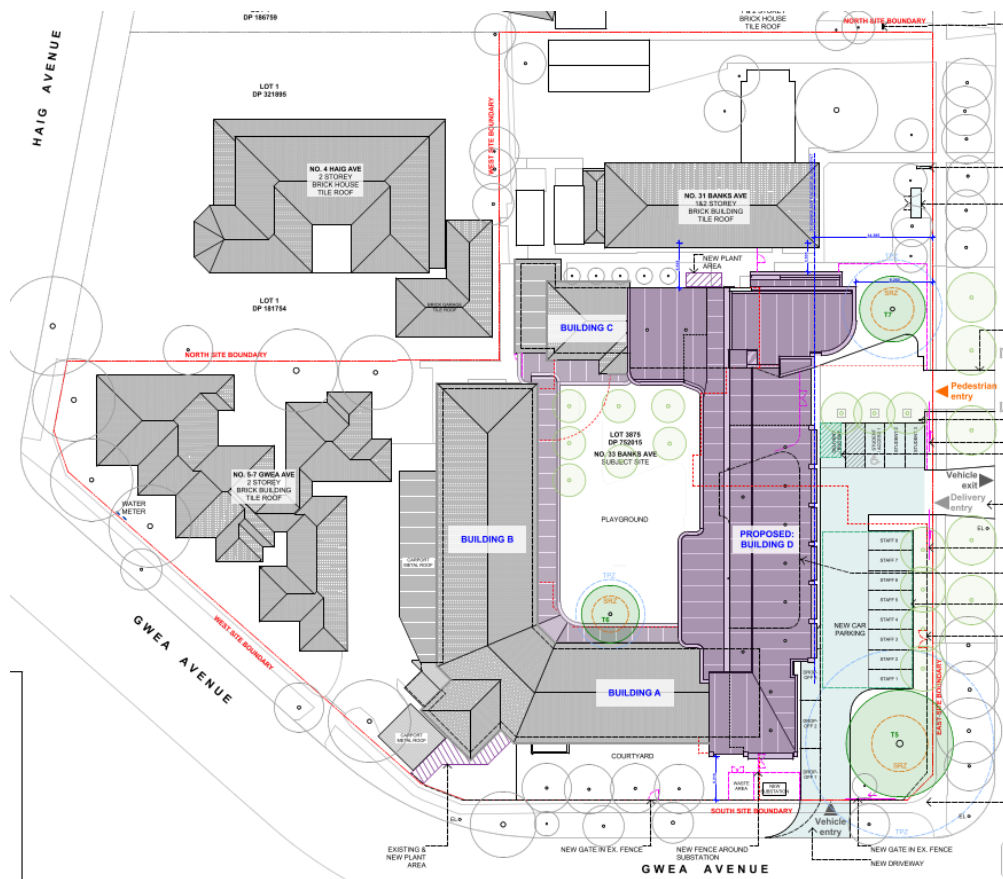


Figure 8: Proposed Site Plan highlighting new works in purple.



Figure 9: Photomontage of existing versus proposed building presentation to Banks Avenue

2.2 Background

The development application was lodged on **14 March 2024**. A chronology of the development application since lodgement is outlined in **Table 2**.

Table 2: Chronology of the DA

Date	Event
14 March 2024	The development application was lodged with Council.
15 March 2024	DA referred to external agencies
27 March 2024	Exhibition of the application from 27 March to 12 April
4 April 2024	Heritage response received
8 April 2024	Sydney water response received
3 May 2024	Trees and contributions referral responses received
11 June 2024	Traffic Committee meeting
1 July 2024	RFI sent
11 July 2024	Panel Briefing
2 August 2024	Final submission of outstanding information

2.3 Site History

- **BA-89/2254** - Erection of demountable steel-framed building for use as a regional office for the Catholic Education System was approved on 29 November 1989.
- **DA-02/426** - Alterations and additions to the administration and teaching facilities of the existing primary school was approved on 4 July 2002.
- Pre-Development Application **PDA-2021/3** - A pre-DA meeting was held on 4 May 2021 to discuss a future masterplan of the site for a school for years 5 to 12 (Hartford College).
- **DA-2021/246** - Change of use from offices to school (Hartford College) , minor modifications to existing bathrooms and existing ramps, on-site parking, recreation areas, site fencing, new signage and a bus pick up / drop off area, approved 15 July 2021.
- **DA-2022/123** - Stage 2 - Alterations and first floor additions to Building B at Hartford College to accommodate Years 8 and 9, withdrawn 1 November 2022.
- Pre-Development Application **PDA-2022/68** - Alterations to Buildings A, B and C, construction of an additional two storey building, new parking area and vehicle crossover location, outdoor play area and associated site works. A meeting was held on 16 March 2023.

3. STATUTORY CONSIDERATIONS

When determining a development application, the consent authority must take into consideration the matters outlined in Section 4.15(1) of the *Environmental Planning and*

Assessment Act 1979 ('EP&A Act'). These matters as are of relevance to the development application include the following:

- (a) *the provisions of any environmental planning instrument, proposed instrument, development control plan, planning agreement and the regulations*
 - (i) *any environmental planning instrument, and*
 - (ii) *any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Planning Secretary has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and*
 - (iii) *any development control plan, and*
 - (iiia) *any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4, and*
 - (iv) *the regulations (to the extent that they prescribe matters for the purposes of this paragraph),*
- (b) *that apply to the land to which the development application relates,*
- (b) *the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,*
- (c) *the suitability of the site for the development,*
- (d) *any submissions made in accordance with this Act or the regulations,*
- (e) *the public interest.*

These matters are further considered below.

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

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

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

The following Environmental Planning Instruments are relevant to this application:

- *State Environmental Planning Policy (Planning Systems) 2021*
- *State Environmental Planning Policy (Sustainable Buildings) 2022*
- *State Environmental Planning Policy (Biodiversity and Conservation) 2021*
- *State Environmental Planning Policy (Industry and Employment) 2021*
- *State Environmental Planning Policy (Resilience and Hazards) 2021*
- *State Environmental Planning Policy (Transport and Infrastructure) 2021*
- *Bayside Local Environmental Plan 2021*
- *Bayside Development Control plan 2022.*

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

Table 3: Summary of Applicable Environmental Planning Instruments

EPI	Matters for Consideration	Comply (Y/N)
State Environmental Planning Policy (Biodiversity & Conservation) 2021	Chapter 2: Vegetation in non-rural areas	Yes
Sustainable Buildings SEPP	Chapter 3 – Standards for non-residential development	Yes
State Environmental Planning Policy (Industry and Employment) 2021	Chapter 3: Advertising and Signage <ul style="list-style-type: none"> • Section 3.6 – granting consent to signage • Section 3.11(1) – matters for consideration 	Yes
State Environmental Planning Policy (Planning Systems) 2021	Chapter 2: State and Regional Development <ul style="list-style-type: none"> • Section 2.19(1) and Clause 5 of Schedule 6 of <i>State Environmental Planning Policy (Planning Systems) 2021</i> declares the proposal regionally significant development as: Development that has an estimated development cost of more than \$5 million for the purposes of an educational establishment. 	Yes
SEPP (Resilience & Hazards)	Chapter 4: Remediation of Land <ul style="list-style-type: none"> • Section 4.6 - Contamination and remediation has been considered in the Contamination Report and the proposal is satisfactory subject to conditions. 	Yes
State Environmental Planning Policy (Transport and Infrastructure) 2021	Chapter 2: Infrastructure <ul style="list-style-type: none"> • Section 2.48(2) (Determination of development applications—other development) – electricity transmission - the proposal is satisfactory subject to conditions. Chapter 3: Educational Establishments <ul style="list-style-type: none"> • Section 3.12 – Consultation with public authorities other than Councils • Section 3.4 – Schools – specific development controls • Schedule 8 Design quality principles in schools 	Yes
Bayside LEP 2021	<ul style="list-style-type: none"> • 2.3 – Permissibility and zone objectives • 2.7 – Demolition requires a development consent • 4.3 – Height of buildings • 4.4 – Floor space ratio • 4.6 – Exceptions to development standards • 5.10 – Heritage conservation • 5.21 – Flood planning • 6.3 – Stormwater and water sensitive urban design • 6.8 – Development in areas subject to aircraft noise 	See Discussion

	<ul style="list-style-type: none"> • 6.11 – Essential services 	
Bayside DCP 2022	<ul style="list-style-type: none"> • 3.4 Heritage • 3.5 Transport, Parking and Access • 3.6 Social Amenity, Accessibility, and Adaptable Design • 3.7 Landscaping, Private Open Space and Biodiversity • 3.8 Tree Preservation and Vegetation Management • 3.9 Stormwater Management and Water Sensitive Urban Design • 3.10 Flood Prone Land • 3.11 Contamination • 3.12 Waste Minimisation and Site Facilities • 3.13 Areas subject to Aircraft Noise and Airport airspace • 7.17 Daceyville 	Yes

State Environmental Planning Policy (Biodiversity and Conservation) 2021

Chapter 2: Vegetation in non-rural areas

This Chapter applies to non-rural areas of the State, including the Bayside local government area and aims to (a) *protect the biodiversity values of trees and other vegetation in non-rural areas of the State*, and (b) *preserve the amenity of non-rural areas of the State through the preservation of trees and other vegetation*.

This Chapter is triggered due to the need for approval to remove vegetation/trees as outlined in Bayside DCP 2022. An Arborist Report prepared by Tree iQ, dated 01/09/2020 was submitted with the application. This report details thirty-four (34) trees which were assessed on the site and note the five (5) additional low-retention value shrubs along the southern boundary which are proposed and recommended for removal to accommodate the proposed driveway to Gwea Avenue.

The application was reviewed by Council's Tree Management Officer and Landscape Officer who have not raised objection to the removal of the shrubs. There are several high-value trees within the site proposed for retention and protection during works. Relevant conditions are included to ensure the recommendations of the Arborist Report and complied with. Subject to this, the proposal satisfies the requirements of the SEPP.

State Environmental Planning Policy (Sustainable Buildings) 2022

Chapter 3 – Standards for non-residential development

Chapter 3 of the SEPP (Sustainable Buildings) 2022 outlines standard for non-residential development that involves:

(a) *the erection of a new building, if the development has an estimated development cost of \$5 million or more, or*

(b) *alterations, enlargement or extension of an existing building, if the development has an estimated development cost of \$10 million or more.*

The submitted Cost Summary Report states the total development cost as follows:

- Total Development Cost excl. contingency (excl GST) - \$9,611,335.00
- Design and Construction Contingency (12.5%) - \$1,201,417.00
- Total Development Cost incl. contingency (excl. GST) - \$10,812,752.00

It is noted that the application was lodged prior to 4 March 2024, when the regulatory changes to how development costs are calculated for planning purposes came into effect. In this regard, a buffer for 'contingency' in the estimated costs are not expressly included or excluded from

the total amount. Given the Cost Summary Report provides sufficient breakdown of costs, Council is satisfied that the proposal remains under the \$10 million trigger requiring additional information and the proposal is accepted in its current form.

State Environmental Planning Policy (Industry and Employment) 2021

Chapter 3: Advertising and Signage

This Chapter of the SEPP applies to all signage that is visible from a public place or public reserve except for signage that is exempt development.

The submitted Southern Elevation Plan indicates an area of approximately 3.8m x 1.5m depicting the school logo and name (see Figure 10 below). Additional information was requested regarding the signage, and for a Signage Plan to be submitted providing relevant details. In response to Council's information request, the applicant responded:

"As noted within the Statement of Environmental Effects (SEE) that accompanies DA-2024/53, the proposal seeks approval for a signage zone, as the particulars of the signage has not yet been confirmed by the school. The proposed signage zone will have a dimension of 3.8m x 1.5m and incorporates the school logo and individual lettering of the school name; "HARTFORD COLLEGE" which was assessed under Schedule 5 of the State Environmental Planning Policy (Industry and Employment) 2021.

The signage zone provides the consent authority with an understanding of the location of future signage on site and how it will respond to the overall design of the building and the presentation provided to the public domain. Notwithstanding, consent for the particulars of the signage can be addressed at a later date via separate development consent pathways."

Council had previously advised that the particular details of the signage would be required in order to satisfy the requirements of the SEPP. A signage zone does not provide enough information for Council to be satisfied, therefore is not supported. A relevant condition is included to state that any future signage shall be addressed under a separate application.

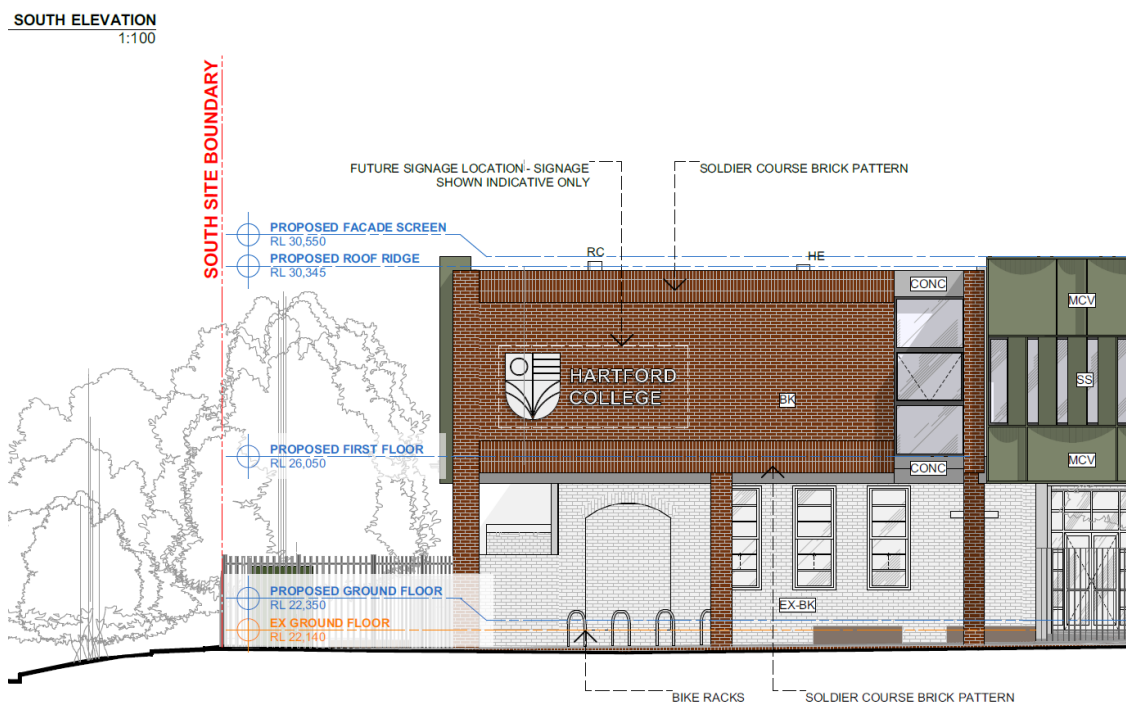


Figure 10: Excerpt from the Southern Elevation Plan indicating area of proposed 'signage zone'

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

Chapter 2: State and Regional Development

The proposal is *regionally significant development* pursuant to Section 2.19(1) as it satisfies the criteria in Clause 5 of Schedule 6 of the Planning Systems SEPP as the proposal is development for the purposes of an educational establishment with an estimated development cost of more than \$5 million. Accordingly, the Sydney Eastern City Planning Panel is the consent authority for the application. The proposal is consistent with this Policy.

State Environmental Planning Policy (Resilience and Hazards) 2021

Chapter 4: Remediation of Land

The provisions of Chapter 4 of *State Environmental Planning Policy (Resilience and Hazards) 2021* ('the Resilience and Hazards SEPP') have been considered in the assessment of the development application. Section 4.6 of Resilience and Hazards SEPP requires consent authorities to consider whether the land is contaminated, and 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. In order to consider this, a Preliminary Site Investigation ('PSI') has been prepared for the site.

The application was reviewed by Council's Environmental Scientist who provided the following assessment:

"The PSI conducted a review of aerial photographs between 1943 and 2022 to investigate historical site and surrounding land uses. Prior to 1951, the site is vacant. By 1956, a building had been constructed at the centre of the site. Historical records indicate this to be a school/college. By 1961, an additional building was constructed on the site. More buildings and hardstand play area can be seen by 1978. By 2011, one of these buildings were demolished. The school to the north was constructed around 1943 and the sports fields to the south were established by 1965. No other significant changes to the site have occurred. Review of aerials from Council IntraMaps confirms this information.

Review of NSW contaminated sites notified to EPA found one potentially impacting off-site source, a former landfill (Astrolabe Park) 145m to the west of the site. Given the expected south-westerly groundwater flow, the former landfill is considered to be cross gradient and hydrologically disconnected from the site. Hence, it was deemed unlikely to have any impact on the DA site.

Site inspection did not identify any visual or olfactory indicators of contamination, nor were noted during collection of soil samples. 13 soil samples were analysed to a maximum depth of 2.0m bgl. Analytical results, including that of the fill material identified in the southeast, did not find any exceedances in any of the potential contaminants tested. All concentrations were below the human health investigation criteria for sensitive land use (school), HIL-A. Hence, the PSI concluded that contamination was not present at the site and that the site was considered to be suitable for the proposed sensitive land use and development."

Having regard to the above, Section 4.6 - Contamination and remediation has been considered in the Contamination Report and the proposal is satisfactory subject to conditions.

State Environmental Planning Policy (Transport and Infrastructure) 2021

Chapter 2: Infrastructure

Division 5 / Subdivision 2 – Subsection 2.48 – Development likely to affect an electricity transmission or distribution network

The application is subject to Clause 2.48 of the SEPP as the proposed works are within the vicinity of electricity infrastructure and therefore, in accordance with Clause 2.48(2), the consent authority must give written notice to the electricity supply authority for the area in which the development is to be carried out, inviting comments about potential safety risks, and take into consideration any response to the notice that is received within 21 days after the notice is given.

The application was referred to Ausgrid on 15 March 2024 for comment. No objections were raised to the proposed development subject to the imposition of conditions of consent which have been incorporated within the recommended conditions of consent.

The application is consistent with the provisions of the SEPP and is acceptable in this regard.

Chapter 3: Educational Establishments

The relevant provisions of Chapter 3 have been taken into consideration as it relates to the proposal.

- **3.12 Consultation with public authorities other than councils**

Section 3.12(3) specifies that Transport for New South Wales is the specific authority required to be notified for specified development for an existing school, if:

- (a) the site has access to a road and the development will result in the school being able to accommodate 50 or more additional students, or*
- (b) the site has access to—*
 - (i) a classified road, or*
 - (ii) a road (the **connecting road**) that connects, within 90 metres (measured along the alignment of the connecting road) of the access point, to a classified road,**and the development will result in the provision of an additional 50 or more car parking spaces, or*
- (c) no road to which the site has access is classified and the development will result in the provision of an additional 200 or more car parking spaces, or*
- (d) the development will result in—*
 - (i) a new vehicular or pedestrian access point to the school from a public road, or*
 - (ii) a change in location of an existing vehicular or pedestrian access point to the school from a public road, or*
- (e) the development will involve excavation to a depth of 3 or more metres below ground level (existing) on land within or immediately adjacent to a classified road within the meaning of the [Roads Act 1993](#).*

As the proposal involves an increase of more than 50 students as referred to under section 3.12(3)(a), the application was referred to Transport for New South Wales. No objections were raised to the proposed development subject to the imposition of conditions of consent which have been incorporated within the recommended conditions of consent.

- **3.36 Schools—development permitted with consent**

The subject provisions of this section stipulate as follows:

- (1) Development for the purpose of a school may be carried out by any person with development consent on land in a prescribed zone.*

The subject site is located within the R2 Low Density Residential Zone, whereby the proposed educational establishment is a permissible use.

- (2) Development for a purpose specified in section 3.40(1) or 3.41(2)(e) may be carried out by any person with development consent on land within the boundaries of an existing or approved school.*

Not applicable. Complying development cannot be carried out on the site as it is located within a Heritage Conservation Area.

- (3) *Development for the purpose of a school may be carried out by any person with development consent on land that is not in a prescribed zone if it is carried out on land within the boundaries of an existing or approved school.*

The site remains wholly within a prescribed zone and therefore complies.

- (4) *Subsection (3) does not require development consent to carry out development on land if that development could, but for this Chapter, be carried out on that land without development consent.*

The land is located within a Heritage Conservation Area and consent is required by the consent authority.

- (5) *A school (including any part of its site and any of its facilities) may be used, with development consent, for the physical, social, cultural or intellectual development or welfare of the community, whether or not it is a commercial use of the establishment.*

The proposal continues to operate predominantly as a school.

- (6) *Before determining a development application for development of a kind referred to in subsection (1), (3) or (5), the consent authority must take into consideration—*

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

This is addressed in the Schedule 8 discussion below.

- (7) *Subject to subsection (8), the requirement in subsection (6)(a) applies to the exclusion of any provision in another environmental planning instrument that requires, or that relates to a requirement for, excellence (or like standard) in design as a prerequisite to the granting of development consent for development of that kind.*

Noted.

- (8) *A provision in another environmental planning instrument that requires a competitive design process to be held as a prerequisite to the granting of development consent does not apply to development to which subsection (6)(a) applies that has an estimated development cost of less than \$50 million.*

The proposal was not subject to a competitive design process.

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

Council's DCP does not have any controls relating to educational establishments therefore an assessment under the SEPP has been carried out.

- (10) *Development for the purpose of a centre-based child care facility may be carried out by any person with development consent on land within the boundaries of an existing or approved school.*

There are no childcare facilities within the school.

- **Schedule 8 Design quality principles in schools—Chapter 3**

Principle 1—context, built form and landscape

Schools should be designed to respond to and enhance the positive qualities of their setting, landscape and heritage, including Aboriginal cultural heritage. The design and spatial organisation of buildings and the spaces between them should be informed by site conditions such as topography, orientation and climate.

Landscape should be integrated into the design of school developments to enhance on-site amenity, contribute to the streetscape and mitigate negative impacts on neighbouring sites.

School buildings and their grounds on land that is identified in or under a local environmental plan as a scenic protection area should be designed to recognise and protect the special visual qualities and natural environment of the area and located and designed to minimise the development's visual impact on those qualities and that natural environment.

Comment: The subject site is located within the Daceyville Garden Suburb Heritage Conservation Area. The proposed building has been designed sympathetically to ensure that the heritage qualities of the area, and adjoining items; are not adversely impacted. The proposal appropriately responds to its context, enhances heritage qualities, and remains consistent with the desired future character of the area. Further discussion is provided under s5.10 of the BLEP of this report.

The proposal provides sufficient landscaping, and several significant trees are retained within the site. Additional planting is proposed within the site and public domain to enhance the streetscape setting, providing shading for the play areas, and act as additional screening measures for privacy.

Principle 2—sustainable, efficient and durable

Good design combines positive environmental, social and economic outcomes. Schools and school buildings should be designed to minimise the consumption of energy, water and natural resources and reduce waste and encourage recycling.

Schools should be designed to be durable, resilient and adaptable, enabling them to evolve over time to meet future requirements.

Comment: The application was accompanied with a Section J report which details energy and water efficiency measures. There was no additional requirement to address sustainability provisions under the Sustainable Buildings SEPP as indicated in this report. Notwithstanding, the building has been designed to respond to the growing population of the school with adaptive rooms and spaces, without compromising on amenity or quality. Waste management has been satisfactorily managed on site.

Principle 3—accessible and inclusive

School buildings and their grounds should provide good wayfinding and be welcoming, accessible and inclusive to people with differing needs and capabilities.

Note— Wayfinding refers to information systems that guide people through a physical environment and enhance their understanding and experience of the space.

Schools should actively seek opportunities for their facilities to be shared with the community and cater for activities outside of school hours.

Comment: Appropriate signage is provided within the school, and car parking area for the future users of the school. Ramps and lift access is provided within the school and the proposed new building elements. The high-traffic areas, namely the reception office, is located at the ground floor with direct pedestrian access.

Principle 4—health and safety

Good school development optimises health, safety and security within its boundaries and the surrounding public domain, and balances this with the need to create a welcoming and accessible environment.

Comment: The proposal provides an appropriate balance between good passive surveillance of the public domain and providing privacy and screening internally. Appropriate fencing is maintained around the school boundaries, whilst providing pedestrian access points, clear signage, and entry points to the new buildings.

Principle 5—amenity

Schools should provide pleasant and engaging spaces that are accessible for a wide range of educational, informal and community activities, while also considering the amenity of adjacent development and the local neighbourhood.

Schools located near busy roads or near rail corridors should incorporate appropriate noise mitigation measures to ensure a high level of amenity for occupants.

Schools should include appropriate, efficient, stage and age appropriate indoor and outdoor learning and play spaces, access to sunlight, natural ventilation, outlook, visual and acoustic privacy, storage and service areas.

Comment: It is noted that within the immediate site context the site adjoins other schools, public and private recreation spaces, and the aged care facility located within the site. Therefore, the increased intensity of the site is comparable to surrounding development and not likely to have considerable increased impacts.

The proposed new works incorporate new classrooms, offices and play areas to the school to service the growing student population. There are undercover areas, shade areas and enclosed spaces to provide relief from weather. The new building provides adequate amenity, natural lighting and ventilation.

Principle 6—whole of life, flexible and adaptive

School design should consider future needs and take a whole-of-life-cycle approach underpinned by site wide strategic and spatial planning. Good design for schools should deliver high environmental performance, ease of adaptation and maximise multi-use facilities.

Comment: The proposal is designed for the growing student population, to allow for the growth of students from 75 to 200. This has been sufficiently addressed by way of quality design, sufficient outdoor play area, landscaping, and provision of car parking for students, staff and visitors.

Principle 7—aesthetics

School buildings and their landscape setting should be aesthetically pleasing by achieving a built form that has good proportions and a balanced composition of elements. Schools should respond to positive elements from the site and surrounding neighbourhood and have a positive impact on the quality and character of a neighbourhood.

The built form should respond to the existing or desired future context, particularly, positive elements from the site and surrounding neighbourhood, and have a positive impact on the quality and sense of identity of the neighbourhood.

Comment: The proposed building is sympathetic to the existing buildings on site, and its surrounding site context. Whilst the building includes a height variation, as discussed under s4.6 of the BLEP, this is limited to the roof edges and chapel signal entry point. The building design effectively responds to the streetscape and provides an aesthetically pleasing built form.

The built form is reflective of the desired future character of the area, will be a positive contribution to the streetscape, and is not likely to impact onto the qualities of the heritage conservation area.

Bayside Local Environmental Plan 2021

Zoning and Permissibility (Part 2)

The site is located within the R2 Low Density Residential Zone pursuant to Clause 2.2 of the LEP. According to the definitions in Clause 4 (contained in the Dictionary), the proposal satisfies the definition of *educational establishment* which is a permissible use with consent in the Land Use Table in Clause 2.3.

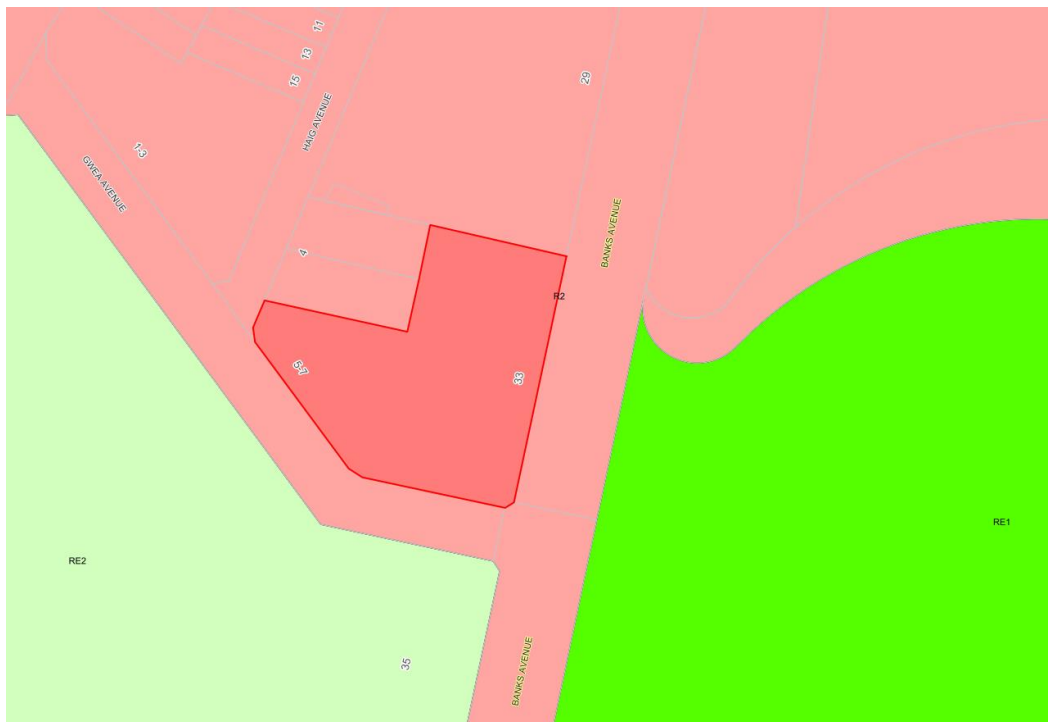


Figure 11: Zoning Map showing the subject site highlighted red within the R2 Low Density Residential Zone

The zone objectives include the following (pursuant to the Land Use Table in Clause 2.3):

- *To provide for the housing needs of the community within a low density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To ensure land uses are carried out in a context and setting that minimises impact on the character and amenity of the area.*
- *To enable residential development in accessible locations to maximise public transport patronage and encourage walking and cycling.*

The proposal is consistent with these zone objectives. The educational establishment is permissible within the zone and the proposed alterations and additions will positively contribute to the existing school, and the community. The proposal will meet the needs of residents within the area and provides a built form and land use intensity compatible with its context and low density environment.

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. The proposal does not comply with the Building Height development standard in Part 4 of the LEP and accordingly, a Clause 4.6 request has been provided with the application.

Table 4: Consideration of the LEP Controls

Control	Requirement	Proposal	Comply
Height of buildings (CI 4.3(2))	8.5 metres	Proposed between 8.95m – 10.48m.	No
FSR (CI 4.4(2))	0.5:1 (3,398m ²)	GFA 3062.34m ² = FSR 0.45:1	Yes
Variation Request (CI 4.6)	cl4.6 submitted to vary Building Height	Variation of 450mm (5.29%) proposed to Roof Ridge of Building D and 1.98m (23.29%) to the Chapel.	Yes
Heritage (CI 5.10)	Located within Daceyville Garden Suburb HCA and within vicinity of other items	HIS submitted.	Yes
Flood planning (CI 5.21)	1% AEP	Designed to flood levels.	Yes
Stormwater Management (CI 6.3)	WSUD principles and site specific stormwater management	Compliant with site specific requirements.	Yes
Development subject to aircraft noise (CI 6.8)	Sensitive development type impacted with 20+ ANEF contour requires further investigation	Acoustic Report submitted, concludes building can be made compliant.	Yes
Essential Services (CI 6.11)	Essential services to be available on site	Services remain available.	Yes

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

4.3 - Height of Buildings

A maximum height standard of 8.5 metres applies to the subject site.

The proposal generally complies with this requirement, with majority of the building under the building height limit, however the maximum building height proposed is between 8.95m and 10.48m. This results in a variation of 450mm (5.29%) and 1.98m (23.29%).

Accordingly, the proposal was accompanied with a variation request as discussed under cl4.6.

4.4 – Floor Space Ratio

A maximum FSR standard of 0.5:1 (GFA of 3,398m²) applies to the subject site and proposal.

Based on Council's calculations, the proposal has a maximum GFA of 3,062.34m² across the site, equivalent to FSR 0.45:1. The proposed FSR across the site complies with the provisions and objectives of this section.

4.6 - Exceptions to Development Standards

Section 4.6 allows a variation to a development standard subject to a written request by the applicant justifying the variation by demonstrating:

Section (3)(a)- that compliance with the standard is unreasonable or unnecessary in the circumstances of the case, and

Section (3)(b)- that there are sufficient environmental planning grounds to justify the variation.

The assessment of Section 4.6 below has been undertaken in accordance with the principles established by the Chief Judge in ***Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118*** where it was observed that:

- in order for there to be 'sufficient' environmental planning grounds to justify a written request under section 4.6, the focus must be on the aspect or element of the development that contravenes the development standard and the environmental planning grounds advanced in the written request must justify contravening the development standard, not simply promote the benefits of carrying out the development as a whole; and
- there is no basis in Section 4.6 to establish a test that the non-compliant development should have a neutral or beneficial effect relative to a compliant development.

The applicant is seeking to vary the s4.3 Height of Buildings development standard by a maximum of 1.98m which equates to a 23.29% variation. A Section 4.6 variation to justify the non-compliance has been prepared by Creative Planning Solutions. The Clause 4.6 variation includes figures which demonstrate the degree of non-compliance which are provided below.

The applicants' Clause 4.6 variation argues that there are sufficient environmental planning grounds to support the non-compliant Building Height. The variation is templated to address at least one of the five tests including whether the variation is unreasonable or unnecessary and provides environmental planning grounds to argue their case. The applicant has chosen the first method test for their assessment. These components are summarised below with Council's response provided:

Section 4.6(3)(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case,

Officer Comment:

The applicant utilises the first Wehbe method to address the variation to the development standard and outlines how the development satisfies the provisions of the R2 Low Density Residential Zone and the objectives of s4.3 of the BLEP 2021.

As identified by the applicant, the majority of the proposed building is compliant with the height of buildings development standard with a minor variation along the edges of the roof to proposed Building D fronting Banks Ave by 450mm (5.29%). A greater variation of 1.98m (23.29%) is sought to the chapel entry signal of Building D towards the northern part of the building.

The site is within the R2 Low Density Residential Zone and demonstrates that the development will be carried out in a context and setting to minimise impacts onto the character and amenity of the area. The proposed educational establishment is permissible in the zone, and forms part of an existing school. The land use intensity is considered to be suitable for the site. The objectives of the standard have been addressed in the applicant's discussion on whether the development is unreasonable or unnecessary. The proposal has been designed to take into consideration the objectives of the building height standard and this has been appropriately addressed.

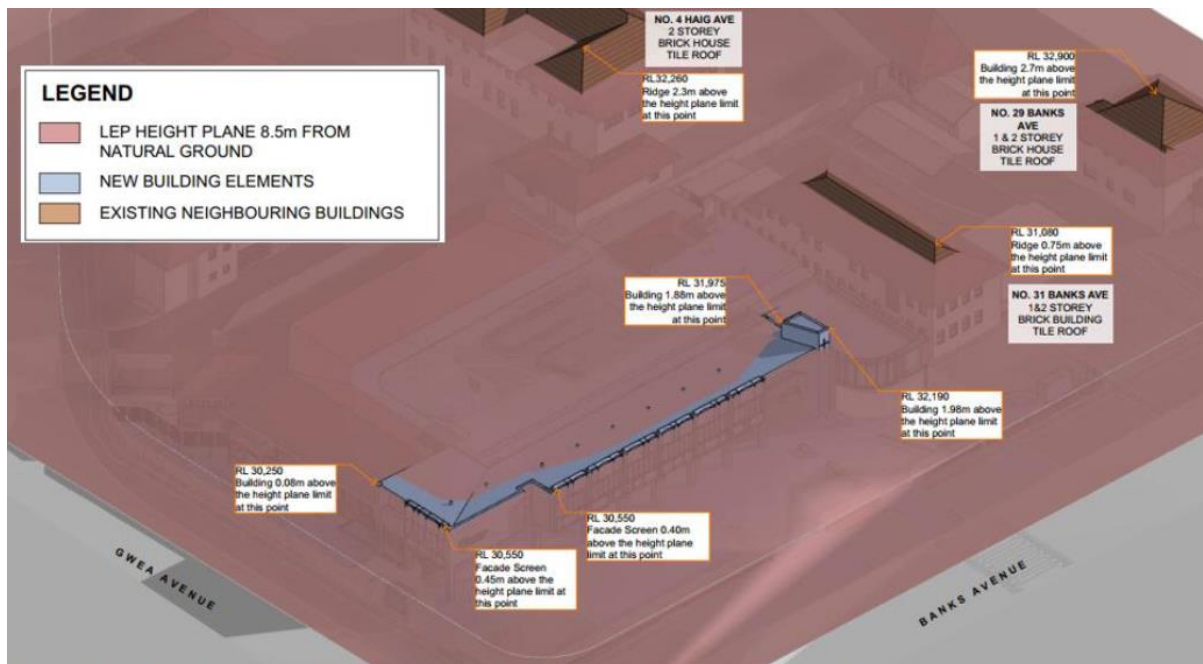


Figure 10: 3D Height Plane which illustrates how the neighbouring buildings at 4 Haig Avenue and 29 Banks Avenue and the existing buildings on the subject site exceed the 8.5m building height limit provided by BLEP 2021.

Source: Sam Crawford Architects, July 2024.

Figure 12: Excerpt from applicants' cl4.6 variation request depicting the portion of the building exceeding the building height limit and surrounding buildings

Council notes that any impacts onto the streetscape, and existing surrounding development have been taken into consideration. It is noted that the adjoining property at 31 Banks Ave has an existing height variation, higher than that proposed to the subject site. The heritage qualities and properties of the Heritage Conservation Area are taken into consideration, and Council agrees that the impacts onto the surrounding area are negligible and considered acceptable. The proposed building has a prominent siting fronting Banks Ave and has been designed sympathetically to maintain sightlines through the building and into the site. Council agrees that the proposal is compatible with surrounding development and in line with the desired future character of the area. The design elements of the building include face brick to the façade accented with steelwork in a pale eucalypt colour and white concrete slabs. This is consistent with architectural colour and materials within the site context and general HCA.

The offending portion of the development does not contribute to notable disruption of views, loss of privacy, or solar impacts to the development or the public domain. The land use intensity remains consistent within the low density environment. The objectives are considered to be satisfied by the proposal and have been sufficiently justified by the variation.

Section 4.6(3)(b)- Are there sufficient environmental planning grounds to justify contravening the development standard?

Officer Comment:

The scale of the built form is consistent with development in the surrounding area, and the educational establishments within the site context. The applicant demonstrates that notwithstanding the minor variation request, the proposal will not adversely impact the public domain, or onto the amenity of the adjoining properties. The offending portion of the development has been sited to ensure minimal impacts, not significantly contributing to visual privacy, or overshadowing. It is noted that the sensitive use of the site as an educational establishment is required to comply with strict flood planning controls, which directly contributes to the height variation at the chapel entry way. It is however noted that the height variation exceeds the extent to which the building is required to be raised for flood planning. Notwithstanding, the building maintains a compatible rhythm within the streetscape, and Council agrees that the variation requested is negligible and will not adversely impact onto the surrounding area.

Having regard to the above, there are sufficient environmental planning grounds to justify contravening the development standard.

Given the above, Council the consent authority is satisfied that the provisions have been achieved and that the clause 4.6 is satisfactory, therefore the variation is supported.

5.10 – Heritage Conservation

The subject site is located within the Daceyville Garden Suburb Heritage Conservation Area identified in Schedule 5 of the LEP, and is located within the vicinity of the following heritage items all of local significance:

- Marist Brothers School and Presbytery, Haig Avenue Daceyville (Item No. I242)
- Former St Michaels Church (now hall), Haig Avenue Daceyville (Item No. I243)
- Daceyville Public School, Joffre Crescent, Daceyville (Item No. I244)

The application was submitted with the application prepared by Weir Phillips Heritage and Planning dated 18 December 2023. The application was accordingly referred to Council's Heritage Officer for review, who provided the following comments:

"Assessment"

The presbytery building is a two storey brick building with a hipped tiled roof which provides a transition between the adjoining heritage item – Marist Brothers School and Presbytery Daceyville (Item No. I242) and the proposed buildings. The ridge of the presbytery is slightly taller than the façade height of the development which will reduce the visual impact from within the HCA impact.

The new building will be brick and olive coloured metal cladding. The earth tones sit comfortably with Daceyville Garden Suburb. Metal cladding is a contemporary material and not found in the HCA. However, the building is a contemporary building which has utilised the cladding to break up the scale and create visual interest. The overall affect is understated and neutral in relation to the HCA.

The parking in the street front zone is to be landscaped to screen it from the street. The existing fence is to be retained which will also screen the small amount of car parking.

Bayside LEP 2021

The development is consistent with the heritage aims and objectives of BLEP2021. 33 Banks Avenue, Daceyville is a neutral site on the edge of the Daceyville Garden Suburb HCA it is not from the key period of significance and does not demonstrate the same characteristics as contributory buildings in the HCA.

The proposed development retains the existing buildings and make an addition of a two storey building parallel to Banks Avenue. The building has been set back to minimise its impact. In the context of the two adjoining heritage items the proposed development is consistent in siting, form and massing.

The significance of the adjoining heritage items will not be impacted by the proposed development. The significance of the HCA will not be impacted by the proposed development.

Bayside DCP 2022

3.4.5 Vicinity of Heritage Items - The development conserved the significance of heritage items in the vicinity.

3.4.6 HCA - The proposed development increases the density on the subject site and introduces a new building which is higher than the existing school buildings but equal to the presbytery building. The development utilises a large existing setback, so the new building is aligned with the existing building line established by the presbytery with the exception of a small chapel. Overall, the development has an understated architectural form and a sympathetic palette of colours and materials. The development is consistent with the objectives for HCA.

7.17.1 All properties within the Daceyville HCA are considered to be contributory. - In the case of the 1955 St Michaels School the buildings are not representative of the principal or significant characteristics of the HCA. They are considered to be neutral rather than contributory.

7.17. O2 Infill - The design of the proposed development is sympathetic with the character of the HCA. Located at the outer edge of the HCA the site is not located amongst residential contributory development. The scale and form of the proposed buildings are consistent with its location and its function as an educational establishment.

7.17 O7. Retain contributory buildings - The existing buildings are not considered to be contributory.

C43 and C.45. The proposed development is sympathetic to the existing building and the setting of the HCA.

C44. The open space in the courtyard of the existing school has been retained. An undercroft located at the northern end of the new school building adjacent to the proposed chapel will provide views through to the courtyard open area."

Having regard to the above, the proposal is considered acceptable in terms of heritage impacts. The recommendation from Council's Heritage Planner is in support of the application. The colours and materials are supported and considered to compliment the HCA. The landscaping and screen planting to the car parking areas is encouraged. Overall the development is not likely to adversely impact onto adjoining heritage items of significance, or the HCA generally.

5.21 – Flood Planning

Council records indicate that the lot is subject to flooding in a 1% AEP and is identified within a flood fringe area. Given the proposal has a sensitive use, the new Building D has been designed to meet the PMF flood levels of RL 22.35m AHD.

The application was reviewed by Council's Development Engineer who did not raise objections with regards to flooding, subject to compliance with conditions imposed.

The proposal has been designed to adhere to the relevant minimum flood levels and is satisfactory with respect of the provisions of this LEP Clause.

6.3 – Stormwater and WSUD

The site is identified as being within an absorption area, hence an absorption system is proposed to manage stormwater on site. This is confirmed by the accompanying Geotechnical Report determining the suitability of the absorption system. There are rainwater tanks, and absorption trenches located underground within the car parking area in the front setback. Additional information was requested by Council with regards to stormwater management, and the issues raised by Councils Development Engineer have been addressed by way of amended plans. No further objection was raised regarding the amended plans, and subject to compliance with relevant conditions imposed, the proposal satisfies the relevant provisions of this section.

6.8 – Development in Areas subject to Aircraft Noise

The subject site is located within the 20 – 25 ANEF Contour, thus subject to adverse aircraft noise. Given the aforementioned, appropriate noise attenuation measures are required for the proposed development as it is a sensitive use development type. The proposal was accompanied by an Acoustic Report prepared by WSP dated 29 November 2023 which identifies the maximum aircraft noise level affecting the subject site to be 85dBA.

Relevant construction recommendations are included for the external walls, ceiling/roof, and the glass windows and doors. The report concludes that construction in line with the recommendations will comply with the requirements specified under AS2021:2015.

Conditions of consent are proposed to ensure the recommendations of the report are implemented on site. In particular, a relevant condition is proposed to ensure a Construction Noise and Vibration Management Plan is obtained prior to commencement of construction to ensure the construction methodology can comply with the assessed criteria. As conditioned; the proposal is satisfactory with respect of the requirements and objectives of this section.

6.11 – Essential Services

Services are generally available on site to facilitate to the proposed development, as proposed to be modified. Appropriate conditions have been recommended requiring approval or consultation with relevant utility providers with regard to any specific requirements for the provision of services on the site.

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

There are no draft environmental planning instruments of direct relevance to the proposal.

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

The application is subject to the Bayside Development Control Plan 2022 ("the DCP"). This is the comprehensive DCP relevant to the proposal. The DCP was adopted by the elected Council on 22 March 2022 and came into effect on 10 April 2023 and supports the provisions of the LEP.

The following table outlines the relevant Clauses of the DCP applicable to the proposal, while aspects warranting further discussion follows:

Relevant Clauses	Compliance with Objectives	Compliance with Standard / Provision
PART 3 – GENERAL DEVELOPMENT PROVISIONS		
3.1 Site Analysis and Locality	Yes	Yes

Relevant Clauses	Compliance with Objectives	Compliance with Standard / Provision
3.4 Heritage	Yes	Yes - see discussion
3.5 Transport, Parking and Access	Yes	Yes - see discussion
3.6 Social Amenity, Accessibility and Adaptable Design	Yes	Yes - see discussion
3.7 Landscaping, Private Open Space and Biodiversity	Yes	Yes - see discussion
3.8 Tree Preservation and Vegetation Management	Yes	Yes - see discussion
3.9 Stormwater Management and WSUD	Yes	Yes - see discussion
3.10 Flood Prone Land	Yes	Yes - see discussion
3.11 Contamination	Yes	Yes - see discussion
3.12 Waste Minimisation and Site Facilities	Yes	Yes - see discussion
3.13 Areas subject to Aircraft Noise and Airport airspace	Yes	Yes - see discussion
PART 7 – SPECIFIC PLACES		
7.17 Daceyville	Yes	Yes - see discussion

The following sections elaborate on key matters from the above table.

Part 7 is dealt with first, as the DCP states: “*provisions in the chapter [7] prevail over any similar provisions in other sections of the DCP*”.

Part 7 – Daceyville

This section of the DCP provides controls and guidelines for 17 areas within the Local Government Area. Not all areas are included. The areas chosen are either unique or have been subject to detailed master planning controls, with more specific controls to guide development. As stated, the provisions of this Section prevail over other sections of the DCP, including where there is any inconsistency.

The site is located within the Daceyville Precinct, with a dual frontage to Banks Avenue primarily, and Gwea Avenue to the south/south-west.

Description

The description of the locality, as relevant to the proposal, includes:

- Daceyville, or Dacey Garden Suburb as it was known originally, is historically, aesthetically, and socially significant, and significant for its historical associations to the former City of Botany Bay, the current Bayside LGA, the state of New South Wales, Australia and potentially internationally.

- The character of the Daceyville HCA is made up of Federation Arts and Crafts cottages constructed between 1910 and 1920, with some commercial buildings. Existing housing stock is a combination of single-storey cottages, semi-detached dwellings, and town houses.



Figure 152: Daceyville Precinct (Top) and Garden Suburb HCA/Heritage Items (Bottom)

Figure 13: Excerpt from Part 7.17.1 of the BDCP 2022

Desired Future Character

- This character should be preserved and retained through the retention of contributory buildings, public open space, the existing subdivision pattern and typical Garden Suburb layout, and large street trees. Characteristic elements to be preserved include:
 - Original Federation Arts and Crafts detached and semi-detached single and two-storey buildings, with styles of dwellings often repeated throughout the precinct.
 - The dominant material palette of brick, painted brick, fibro and rendered brick in a variety of period colours including peach, apricot, pink, brown, green and red.
 - The relationship between the public and private domain with open landscaped theme created by generous front setbacks, large landscaped areas surrounding buildings with established gardens, low scale fences, and a lack of boundary fences abutting public roads and open space.
 - Wide streets and wide verges with mature street plantings.
 - Radial avenues centred on Dacey Gardens Reserve.

Controls

The following responds to the Controls for the locality. It is noted that detailed assessment of compliance with regards to the Daceyville Precinct have been undertaken by Council's Heritage Officer under s5.10 of the BLEP 2021. The proposal generally complies with the objectives within this section and contribute positively to the Daceyville Garden Suburb HCA.

- The proposed alterations and new addition to the existing school have been designed sympathetically as to compliment the existing architecture, colours and materials. This in turn compliments the predominant characteristics found within the HCA. As indicated within the desired future character of the area, the dominant brick is retained, and complimented with pale 'eucalyptus green' materials.
- The built form results in a land use intensity compatible with the existing school, and the other educational establishments within the site context to the north and east of the site. The proposal remains compliant with regards to FSR, and minor exceedance to the building height has been sufficiently justified.
- Landscaping and planting across the site is maintained, with only small shrubs proposed for removal to accommodate the new driveway to Gwea Ave. The importance of the 'Garden Suburb' is demonstrated with retention of several significant trees across the site.

PART 3 – GENERAL DEVELOPMENT CONTROLS

Part 3.4 – Heritage

An assessment against stormwater management has been discussed in response to Clause 6.3 of the LEP, in the previous Section of this report.

Part 3.5 – Transport, Parking and Access

Table 3 of the DCP stipulates the parking required, based on the proposed use. The proposed educational establishment is therefore required to provide car parking in line with the below:

Land use	Car Parking Rate
Educational establishments	<p>Schools</p> <p><u>Infants, Pre-schools and Primary</u></p> <p>Parking Assessment based on survey of similar developments is required. Otherwise, the following applies:</p> <ul style="list-style-type: none"> • 1 space / 2 employees; plus • 1 pick-up and set-down space / 50 students; plus 1 bus pick-up and set-down space <p><u>Secondary</u></p> <p>Parking Assessment based on survey of similar developments is required. Otherwise, the following applies:</p> <ul style="list-style-type: none"> • 1 space / 2 employees; plus • 1 space / 10 students (Year 12); plus • 1 pick-up and set-down space / 100 students; plus • 1 bus pick-up and set-down space <p>Note: Size of a bus is defined equivalent to Heavy Rigid Vehicle (HRV) in AS2890.2</p> <p>Others</p> <p>Parking Assessment based on survey of similar developments is required. However, as a minimum:</p> <ul style="list-style-type: none"> • 1 space / 2 employees; plus • 1 space / 5 students

Figure 14: Excerpt from Part 3.5 of the BDCP 2022

The proposal seeks to grow student population numbers to 200 and staff numbers to 15 by 2028. The proposal demonstrates the provision of fifteen (15) car parking spaces including eight (8) for staff, three (3) pickup/drop off spaces, three (3) student parking spaces inclusive of one accessible space, and one (1) Minibus parking space. It is noted that the DCP requires an HRV sized bus, however due to the car parking configuration a minibus is considered acceptable for the site.

The application was subject to review by the Bayside Traffic Development Advisory Committee, which provided the following comments:

“1. That details be provided for how the car park will operate and be managed during pick-up/drop-off periods. The following matters need to be addressed:

- a. The car park needs to be designed to prevent rat-running through the site with suitable signage and gates provided.*
- b. The design only allows for pick-up/drop-off to occur when entering from Gwea Avenue, details need to be provided of how parents will be prevented from entering the site from Banks Avenue.*
- c. That details be provided of how to manage vehicles that enter the car park when it is fully occupied.*

2. That the provision for a 22 seater mini bus on the site is preferable in lieu of HRV.”

Having regard to the above, in Council’s additional information request a minibus was accepted and a larger vehicle was not requested. To address the traffic committee concerns regarding the conflicting movements of vehicle when the car park is full, the driveway on Banks Avenue is to be one way to minimise the vehicle circulation and preventing vehicles from reversing into the roads. The following signage will be provided to prevent to ensure one way traffic movement within the site. The signage is required to ensure vehicles enter through Gwea Ave and exist via Banks Ave.

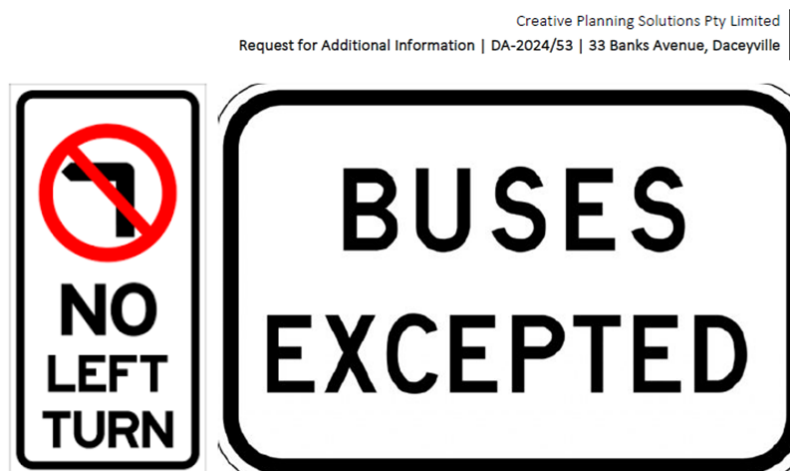


Figure 15: Excerpt from amended information indicating directional signage to be used within the carpark

As referred to above, the proposal includes the provision of a new vehicular access point to Gwea Avenue to the south of the site. This will allow for vehicles to enter from Gwea Ave and access either car parking spaces for staff, students, bus or the pickup/drop off zones. To manage vehicular movements, directional signage is proposed, and to utilise one way of traffic to exit only to Banks Ave.

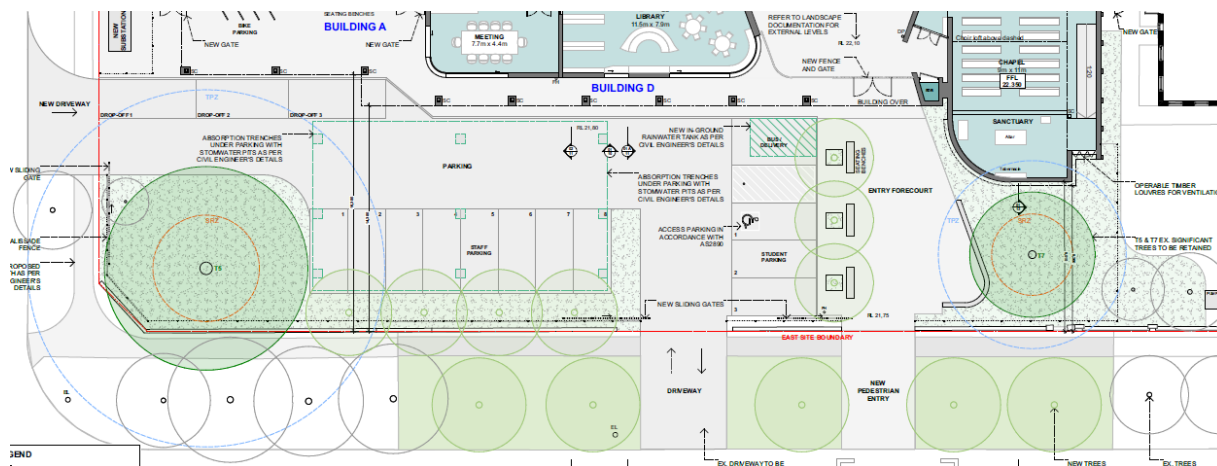


Figure 16: Excerpt of the front setback car parking area

A Traffic and Parking Assessment report was submitted with the DA, prepared by SLR Consulting Australia Pty Ltd and dated 20 December 2023. This report and the application were referred to Council's Development Engineer who had no objections to the proposal, subject to conditions which have been included in the recommended conditions. The proposal satisfies the transport, access and parking requirements of the DCP.

Part 3.6 – Social Amenity, Accessibility and Adaptable Design

The proposal has been designed so that the development is accessible from the public domain and internally. The development provides level access with all-weather access between buildings, ramping to rooms as required, disabled bathrooms, accessible car parking space, and access to the proposed first floor level within the new Building D via a lift.

The applicant has provided an access report prepared by Jensen Hughes dated 20 December 2023. The report provides assessment against compliance with Deemed-to-Satisfy provisions relating to Access for Persons with a Disability outlined within the National Construction Code Building Code of Australia 2022 Volume One (BCA) and Disability (Access to Premises – Buildings) Standards 2010 Compilation No.2 (DAPS).

The proposal is generally compliant with regards to the above, however two areas are raised as matters to be addressed via performance solution to ensure compliance. This relates to the accessible car space and any future amplification system within the classrooms. All other areas of assessment are considered capable of compliance with regards to the above.

A relevant condition is included to ensure compliance with relevant provisions, and for any matters outlined in the Access Report to be satisfied. Subject to compliance with the recommended conditions, the proposal is satisfactory and complies with the objectives of the DCP.

Part 3.7 and 3.8 – Landscaping, Private Open Space, Biodiversity and Tree/Vegetation Management

The application was accompanied with an Arboricultural Impact Assessment Report prepared by Tree iQ dated 15 November 2023, and a Landscape Plan prepared by Taylor Brammer, dated 16th January 2023. This was referred to both Council's Tree Management Officer and Landscape Officer. Discussion is provided under the Biodiversity and Conservation SEPP above.

The proposal seeks to maintain trees on the site, particularly those of greater significance. No trees of significance either within the site, or within the public domain are impacted by the proposal. It is noted that there are five (5) low-retention value shrubs along the southern boundary which are proposed and recommended for removal to accommodate the proposed driveway to Gwea Avenue. No objections were raised to this.

Councils Landscape Officer notes that the Landscape Plan depicts a deep soil coverage area of 25%, which satisfies the provisions of this section. Adequate landscaping is provided having regard to existing and proposed structures. The planting scheme meets CPTED principles, and the landscaping is in scale with the proposed development-built form delivering sufficient greenery to the streetscape. Further, the car parking areas include canopy tree coverage to satisfy relevant landscaping controls related to parking areas.

Relevant conditions have been recommended by both officers to ensure significant trees on site are retained and protected, and landscaping is delivered in accordance with the submitted plan and reporting.

Subject to compliance with the conditions imposed, the proposal is satisfactory with regards to the provisions of this section.

Part 3.9 – Stormwater Management and WSUD

An assessment against stormwater management has been discussed in response to Clause 6.3 of the LEP, in the previous Section of this report.

Part 3.10 – Flood Prone Land

An assessment against flood management has been discussed in response to Clause 5.21 and 5.22 of the LEP, in the previous Section of this report.

Part 3.11 – Contamination

An assessment against contamination has been discussed in the Resilience and Hazard SEPP above.

Part 3.12 – Waste Minimisation and Management

A Waste Minimisation and Management Plan prepared by Dickens Solutions Pty Ltd dated November 2023 was submitted with the application listing methods for minimising and managing construction and ongoing waste on site. The architectural plans depict waste storage location within the site. An appropriate condition has been included in the recommended conditions to ensure compliance with the submitted report, and to ensure waste is handled in accordance with the relevant site requirements.

Part 3.13 – Areas subject to Aircraft Noise and Airport airspace

An assessment against aircraft noise has been discussed in response to Clause 6.8 of the LEP, in the previous Section of this report.

Development Contributions

The City of Botany Bay S94A Development Contributions Plan 2016 contributions plan is applicable 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). The S7.12 contributions levy is applicable based on the total cost of work including GST. The Contributions Plan has been considered and relevant condition is included in the recommended draft consent conditions.

(d) 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.

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

In terms of provisions of the Regulation:

- The DA submission has included sufficient information to enable environmental assessment of the application (Clause 24);
- No other concurrences or other approvals are proposed or required (Clause 25);
- No approval under the Local Government Act 1993 is sought as part of this DA (Clause 31(3)); and
- Demolition works are able to meet the provisions of Australian Standard (“AS”) 2601 and this is addressed by conditions of consent.

All relevant provisions of the Regulations have been taken into account in the assessment of this proposal.

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

This Section of the Act requires consideration of natural and built environmental impacts, and social and economic impacts. The potential and likely impacts related to the proposal have been considered in response to SEPPs, LEP and DCP controls. The impacts that require further consideration are outlined below:

Plan of Management

A Plan of Management (PoM) is a document in progress which provides assurance to local residents that the general operation of the use of the site can and will be appropriately managed. A PoM prepared by Creative Planning Solutions Pty Ltd dated 1 August 2024 was submitted following an additional information request from Council.

The PoM details the operation and management of the proposed use, including but not limited to, hours of operation, staffing, management obligations, waste management, noise management, safety and security, complaints register etc.

On 1 November 2005, the Land & Environment Court in its approval of a commercial / residential development in ‘*NSWLEC 315, Renaldo Plus 3 Pty Ltd v Hurstville City Council*’ established eight Planning Principles for consideration as part of an assessment of the appropriateness and adequacy of a Plan of Management. The submitted Plan of Management has been assessed against the eight planning principles as follows.

1. *Do the requirements in the Management Plan relate to the proposed use and complement any conditions of approval?*

Comment

The requirements stipulated in the management plan relate to the proposed use and complement recommended conditions of consent as drafted by the assessing officer.

2. *Do the requirements in the Management Plan require people to act in a manner that would be unlikely or unreasonable in the circumstances of the case?*

Comment

The PoM is comprehensive and relates directly to the use of the school, and anticipated growth in population numbers. Operational details and reasonable management / staff obligations and are clearly identified.

It is not considered that the requirements of the PoM require staff or visitors to act in a manner which is unlikely or unreasonable, which would impede the operations of the premises or result in adverse impacts onto neighbouring properties. The PoM is satisfactory in this regard.

3. *Can the source of any breaches of the Management Plan be readily identified to allow for any enforcement action?*

Comment

The Management Plan incorporates a contents page with various sections dealing with a range of operational matters. The source of potential breaches of the management plan are easily identifiable and capable of enforcement action, given the clear operational measures detailed and obligations of staff which have been identified.

4. *Do the requirements in the Management Plan require absolute compliance to achieve an acceptable outcome?*

Comment

Conditions of consent in addition with the requirements of the POM are sufficient to ensure an acceptable outcome is achieved on site and to neighbouring properties. The PoM is capable of future revision in the event this is required.

5. *Can the people the subject of the Management Plan be reasonably expected to know of its requirements?*

Comment

The PoM stipulates that Council will obtain a copy and that all staff will be advised of its requirements as part of any contract of employment.

6. *Is the Management Plan to be enforced as a condition of consent?*

Comment

The PoM has been conditioned as a requirement for the operation of the premises.

7. *Does the Management Plan contain complaint management procedures?*

Comment

The submitted management plan incorporates a complaints recording and handling process in Section 9.0 Complaints Management.

8. *Is there a procedure for updating and changing the Management Plan, including the advertising of any changes?*

Comment

Section 10.0 Review notes that the PoM is to be reviewed every 24 months to “*determine whether the objectives of this document have been achieved. This is to enable assessment of the effectiveness of the plan and ensure its ongoing relevance to the day to day running of the operations*”. The proposal has been conditioned to ensure the aforementioned occurs and the PoM is appropriately revised.

Based on the assessment above and as conditioned it is considered that the PoM is consistent with the principles adopted by the Land and Environment Court which are appropriate and relevant to apply to the subject application.

Noise Impacts

The noise impacts from the development have been taken into consideration in the proposal. As indicated, the proposal seeks to increase the student population from 75 students to 200 students by 2028. The proposal was accompanied with an Acoustic Report prepared by WSP dated 29 November 2023.

The report provides an assessment of Operational Noise Impacts from the school including its operations, anticipated noise levels resulting from increased student and staff population, car parking movements, and outdoor play areas.

The report concluded the following:

“The offensive noise assessment was concluded with four ‘No’ responses versus one ‘Yes’ and one ‘limited impact’ response. On balance, the NSW NGLG assessment of the noise emissions is considered not offensive as the noise emission from the outdoor play and learning areas are considered typical for the area, and do not occur during the evening or night time. Therefore it is not likely to significantly affect the sensitive receivers’ comfort or repose.

...

A criteria has been developed for staff and student activity noise emissions. Noise breakout from internal activities (classrooms) and outdoor activities (outdoor play and learning) were modelled and are predicted to be compliant with the proposed criteria. The noise emissions were also assessed as not offensive in accordance with the NGLG.”

It is noted that while there is a notable increase projected within the school over time, the noise impacts have been sufficiently considered. The outdoor play areas remain central to the school, enclosed with the new Building D. The play areas will generally impact onto the street, being further away from neighbouring residential or aged care premises. The Acoustic Report also provides supporting conclusion and recommendations in response to the proposal. Notwithstanding, additional conditions are included to appropriate noise control measures are implemented and the proposal does not result in adverse impacts onto residents or the public domain.

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

The relevant matters pertaining to the suitability of the site for the proposed development have been considered in the assessment of the proposal, throughout this report. There are no known major physical constraints, environmental impacts, natural hazards or exceptional circumstances that would hinder the suitability of the site for the proposed development. Appropriate conditions of consent are proposed to further manage and mitigate impacts on neighbouring properties and the environment. Subject to the recommended conditions, the proposal is suitable for the site.

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

These submissions are considered in Section 4.3 of this report. The application was placed on public notification between 27 March to 12 April. No submissions were received.

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

The proposal has been assessed against the relevant planning instruments and controls applying to the site, also having regard to the applicable objectives of the controls. As demonstrated in this assessment of the development application, the proposal is suitable for the site and has acceptable environmental impacts, subject to recommended conditions. Impacts on adjoining properties have been considered and addressed. As such, granting approval to the proposal will be in the public interest, subject to the recommended conditions which help manage and mitigate environmental or potential environmental impacts.

4. REFERRALS AND SUBMISSIONS

4.1 Agency Referrals and Concurrence

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

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

Table 5: Concurrence and Referrals to agencies

Agency	Concurrence/ referral trigger	Comments (Issue, resolution, conditions)	Resolved
Referral/Consultation Agencies			
Ausgrid	S2.48, Chapter 2, SEPP (transport and Infrastructure) 2021	Supported, subject to conditions	Y
Sydney Water	S78, Sydney Water Act 1994	Supported, subject to conditions	Y
Transport for New South Wales	S3.12, Chapter 3, SEPP (transport and Infrastructure) 2021	Supported, subject to conditions	Y

4.2 Council Officer Referrals

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

Table 6: Consideration of Council Referrals

Officer	Comments	Resolved
Engineering	Council's Engineering Officer reviewed the stormwater concept plan and considered the proposed stormwater management arrangements are unsatisfactory and required additional information. This has been addressed by the applicant following Council's additional information request. Subject to conditions, no further objection raised.	Yes

Traffic	Council's Traffic Engineering Officer reviewed the proposal and raised concerns in relation to traffic generation and car parking. This has been addressed by the applicant following Council's additional information request. No further objection was raised.	Yes
Building Surveyor	Council's Building Surveyor reviewed submitted Section J Report and Architectural Plans. Noted that the proposed alterations and additions would require a fire safety upgrade, however this could be achieved. Further information was sought regarding façade treatment elements to Building D which was provided by the applicant in response to Council's additional information request. Subject to conditions, no further objection raised.	Yes
Landscape	Council's Landscape Officer did not raise any objection, subject to compliance with recommended conditions.	Yes
Environmental Scientist	Council's Environmental Scientist did not raise any objection, subject to compliance with recommended conditions.	Yes
Tree Management	Council's Tree Management Officer did not raise any objection, subject to compliance with recommended conditions.	
Heritage	Council's Heritage Officer reviewed the submitted Heritage Impact Statement ('HIS') prepared for the applicant and concurred with the conclusion of the HIS that there would not be any adverse impacts on heritage values arising from the proposal.	Yes

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 part 9.2 of the Bayside DCP from 27 March to 12 April 2024. No submissions were received.

5. KEY ISSUES

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

5.1 Signage

The proposal includes a 'signage zone' to the proposed Building D fronting Banks Ave. The area was indicated to be a zone only for future signage, and indicated the approximate area. An additional information request from Council sought more information on this area.

In response, the applicant advised it would likely contain school name and logo, however particular details including colours, materials, illumination etc, could not be confirmed. Given the prominent location of the signage zone, and the site location within the HCA, Council is not satisfied with this level of information.

Resolution: The signage component is not supported, and relevant condition is included for separate approval to be obtained for any future signage.

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 and the key issues identified in this report, it is considered that the application can be supported for the following reasons:

- The development, subject to conditions, is consistent with the objectives of the R2 Low Density Residential Zone and the relevant objectives of Bayside Local Environmental Plan 2021.
- The development, subject to conditions, is generally consistent with the objectives of the Bayside Development Control Plan 2022.
- The variation request is well founded and satisfies the requirements of s4.6 of the BLEP 2021 to support the variation to the s4.3 Height of Buildings development standard.
- The proposal is an appropriate response to the streetscape and topography and will not result in any significant impact on the environment or the amenity of nearby residents. The scale and design of the proposal is suitable for the location and is compatible with the desired future character of the locality.

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-2024/53 for Alterations and additions to an educational establishment (Hartford College) including alterations to Buildings A, B and C, construction of a two storey building, new parking area and vehicle crossover location, outdoor play area and associated site works, at 33 Banks Avenue, Daceyville be APPROVED pursuant to Section 4.16(1)(a) of the *Environmental Planning and Assessment Act 1979* subject to the draft conditions of consent attached to this report at Attachment A.

The following attachments are provided:

- Attachment A: Draft Conditions of consent
- Attachment B: Architectural Plans
- Attachment C: Clause 4.6 Request
- Attachment D: Plan of Management