

COUNCIL ASSESSMENT REPORT

SYDNEY NORTH PLANNING PANEL

PANEL REFERENCE & DA NUMBER	PPSSNH-262 - DA/1012/2021
PROPOSAL	Change of use of the Mount St Benedict (MSB) Centre to an educational establishment including associated fitout and alterations and additions
ADDRESS	Lot 10 DP 1209584, No. 449D Pennant Hills Road, Pennant Hills
APPLICANT	Mecone - Addison Boykin
OWNER	Sisters of The Good Samaritan
DA LODGEMENT DATE	29 September 2021
APPLICATION TYPE	Development Application - Integrated Development - CIV>\$5M - Private Infrastructure and Community Facilities
REGIONALLY SIGNIFICANT CRITERIA	Clause 5, Schedule 7, State Environmental Planning Policy (State and Regional Development) 2011
CIV	\$5,265,266.00
CLAUSE 4.6 REQUESTS	Clause 4.3 'Height of Buildings' of the <i>Hornsby Local Environmental Plan 2013</i> within the R2 Low Density Residential zone
KEY SEPP/LEP	<ul style="list-style-type: none"> • <i>State Environmental Planning Policy (Educational Establishments and Childcare Facilities) 2017</i> • <i>State Environmental Planning Policy No. 55 Remediation of Land</i> • <i>State Environmental Planning Policy (State and Regional Development) 2011</i> • <i>State Environmental Planning Policy (Infrastructure) 2007</i> • <i>State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017</i> • <i>Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005</i> • <i>Hornsby Local Environmental Plan 2013</i>
TOTAL & UNIQUE SUBMISSIONS	Nil

DOCUMENTS SUBMITTED FOR CONSIDERATION	<ul style="list-style-type: none"> • Architectural Plans • Clause 4.6 Request • Heritage Report • Statement of Environmental Effects • Arboricultural Report • BCA & Access Report • Acoustic Report
SPECIAL INFRASTRUCTURE CONTRIBUTIONS (S7.24)	No
RECOMMENDATION	Approval
DRAFT CONDITIONS TO APPLICANT	Yes
SCHEDULED MEETING DATE	2 February 2022
PLAN VERSION	19 November 2021
PREPARED BY	Thomas Dales
DATE OF REPORT	19 January 2022

EXECUTIVE SUMMARY

The proposal seeks consent for the change of use of the Mount St Benedict (MSB) administration and Conference Centre to an educational establishment including associated fitout and alterations and additions.

The proposal does not seek an increase in the number of students or staff imposed by Condition No. 9 of Development Consent No. DA/383/2017 (1,232 students and 135 staff). Notwithstanding, on 14 October 2021 Council received a Section 4.55(2) modification application (DA/383/2017/A) seeking to modify the approved student numbers at the Mount St Benedict College site to increase to 1,440 students and increase staff to 159. At the time of writing, DA/383/2017/A has not been determined.

The proposal satisfies the definition of 'educational establishment' which is a permissible use with consent in the R2 Low Density Residential zone of the *HLEP*.

The 2.9-hectare site comprises Lot 10 DP 1209584, known as 449D Pennant Hills Road Pennant Hills. The site is located at the south-eastern corner of the intersection of Pennant Hills Road and Hull Road. The site contains a 4-storey former convent (MSB Centre) and associated buildings, internal driveways, car parking, a tennis court and extensive landscaped areas. The eastern portion of the site is mapped as bushfire prone with 'Category 1' vegetation located approximately 15m east of the subject site. Mount St Benedict Convent and grounds is included as local heritage item No. 653 under Schedule 5 - Environmental Heritage of the *Hornsby Local Environmental Plan 2013 (HLEP)*. The site is located in the Beecroft-Cheltenham Heritage Conservation Area.

The subject site adjoins the western boundary of the Mount St Benedict Catholic Girls School grounds site (No. 449C Pennant Hills Road).

The key matters of consideration/ issues relating to the proposed development can be summarised as follows:

- The proposal does not comply with Clause 4.3 of the *HLEP* with regard to building height. The applicant has made a submission in accordance with Clause 4.6 'Exceptions to development standards' to contravene the building height development standard. The submission is considered well founded and is supported.
- Balancing the retention of heritage fabric of the MSB Centre with the fire egress upgrades necessitated by the *Building Code of Australia* (BCA). At the conclusion of the Panel Assessment Briefing, it was resolved that further examination be undertaken to determine whether the proposed stair addition could be deleted from the proposal in place of an internal access solution. As discussed in the body of the report, the proposed development provides for a safe and accessible school building that effectively balances the BCA and heritage considerations of the *HLEP* and Hornsby Development Control Plan 2013 (HDCP).

The application is integrated development pursuant to Section 4.46 of the *Environmental Planning and Assessment Act 1979*. The application was referred to the NSW Rural Fire Service pursuant to Section 100B of the *Rural Fires Act 1997* and the RFS issued General Terms of Approval (GTAs), subject to conditions. Transport for NSW (TfNSW) were also consulted and raised no concerns.

The application is referred to the Sydney North Planning Panel ('the Panel') as the development is 'regionally significant development', pursuant to Clause (5)(b) of Schedule 7 of *State Environmental Planning Policy (State and Regional Development) 2011* as the proposal is development for community facilities with a CIV over \$5 million.

The application was placed on public exhibition from 30 September to 28 October 2021 in accordance with the Hornsby Shire Council Community Engagement Plan, with no submissions being received.

The proposal complies with the provisions of *State Environmental Planning Policy (Educational Establishments and Childcare Facilities) 2017*. The application is considered to have satisfactorily addressed Council's and relevant agencies' criteria and would provide a development outcome that, on balance, would result in a positive impact for the community.

Following a detailed assessment of the proposal, pursuant to Section 4.16(1)(a) of the EP&A Act, DA/1012/2021 is recommended for approval subject to the conditions contained at **Attachment A** of this report.

1. THE SITE AND LOCALITY

1.1 The Site

The 2.9-hectare site comprises Lot 10 DP 1209584, known as No. 449D Pennant Hills Road Pennant Hills. The site is located at the south-eastern corner of the intersection of Pennant Hills Road and Hull Road. The site contains a 4-storey former convent (MSB Centre) and associated buildings, internal driveways, car parking, a tennis court and extensive landscaped areas.

It is noted that the subject convent site is on separate title to the adjoining Mount St Benedict Catholic School site (No. 449C Pennant Hills Road). Notwithstanding, the two adjoining sites effectively operate as a single allotment.

Vehicular access to the site is provided via Hull Road.

The land slopes in a southerly direction away from Pennant Hills Road towards the rear of the site. An easement for the *NorthConnex* tunnel corridor traverses the site from the south-west to the north-east.

The eastern portion of the site is mapped as bushfire prone with 'Category 1' vegetation located approximately 15m east of the subject site. The site is not flood prone.

Mount St Benedict Convent and grounds is included as local heritage item No. 653 under Schedule 5 – Environmental Heritage of the *Hornsby Local Environmental Plan 2013 (HLEP)*. The site is located in the Beecroft-Cheltenham Heritage Conservation Area. The site is in the vicinity of two heritage items of local significance, namely:

- Hull Road, Beecroft, Street Trees - Heritage Item No. 111.
- Limona - Federation Arts and Crafts House - 23 Thompson Close West Pennant Hills - Heritage Item No. 677.

The southern portion of the site is mapped as comprising a vegetation community consistent with Blue Gum Shale Forest which is listed as Endangered Ecological Community under the *Commonwealth Environment Protection and Biodiversity Conservation Act 1995* and a Critically Endangered Ecological Community under the *NSW Biodiversity Conservation Act 2016*.

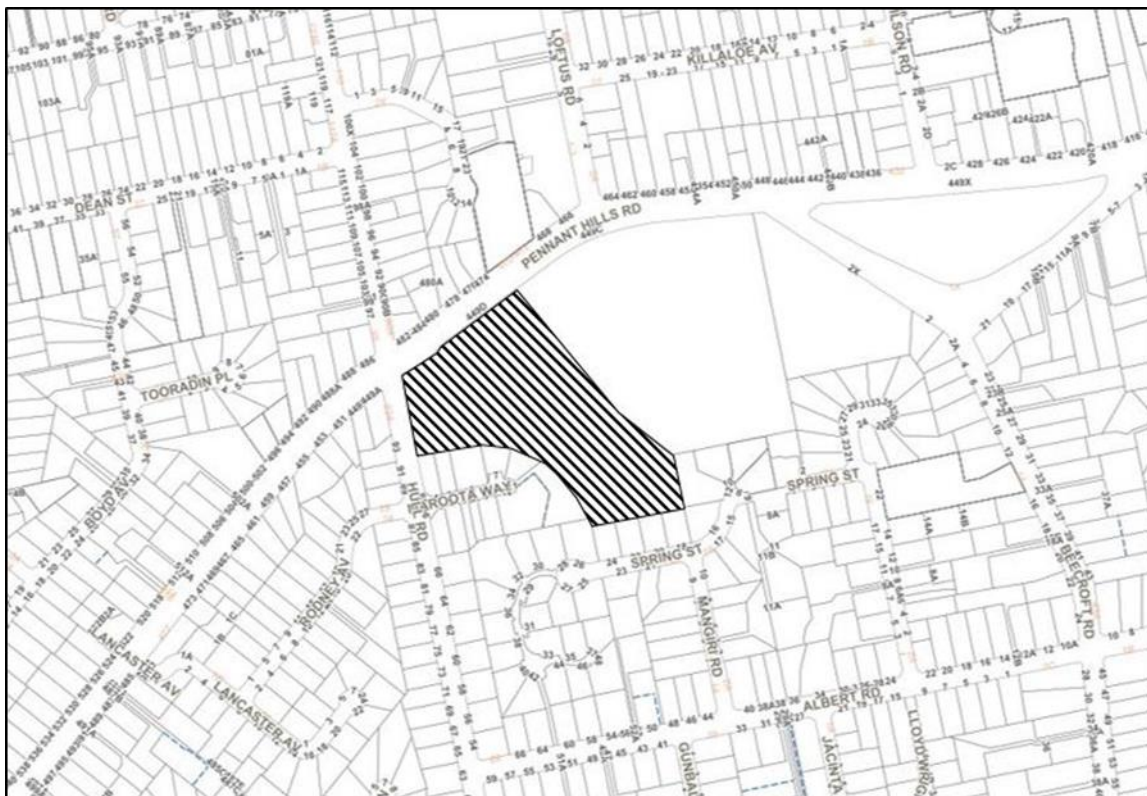


Figure 1: Locality Plan – Site Hatched. Note that the site adjoins the Mount St Benedict school grounds to the east of the subject site (449C Pennant Hills Road).



Figure 2: Aerial Photograph of site captured 6 October 2021



Figure 3: Photograph of south-eastern corner of MSB Centre building

1.2 The Locality

The subject site adjoins the western boundary of the Mount St Benedict Catholic Girls School site (No. 449C Pennant Hills Road). The school site has an area of 4.5Ha and comprises a number of buildings which are single storey, two storeys and three storeys in height. Several demountable classrooms are also situated on site as well as a number of car parking areas. A performing arts centre is also present.

Vehicular access is via a driveway from Pennant Hills Road with carparking provided on site. A sporting field is situated on a level expanse of land in the north western corner of the site. The southern half of the site contains dense bushland identified as Blue Gum High Forest.

The south of the subject site is adjoined by a mixture of residential developments, both single dwelling houses and multi-unit residential. The north and west of the site are bounded by low density residential development across Pennant Hills Road and Hull Road (R2 zoned land).

The site is located approximately 1.5km walking distance to the west of Pennant Hills Railway Station. The site benefits from numerous *Transport for NSW* bus stops along Pennant Hills Road servicing the '625' and '632' bus routes.

2. THE PROPOSAL AND BACKGROUND

2.1 The Proposal

The proposal seeks consent for the change of use of the Mount St Benedict (MSB) administration and Conference Centre to an educational establishment including associated fitout and alterations and additions.

Specifically, the proposal involves:

- Demolition of existing doors, kitchen fit-out and creation of new wall openings for circulation and new stairs on Ground Floor and Basement Level
- Demolition of later addition office walls, ceilings and floor finishes, and new wall openings for new stairs on first and second floor levels
- Construction of enclosed circulation and egress stair
- Upgrade of entry area including new accessible parking space
- The fit-out and refurbishment of Basement, First Floor and Second Floor to provide for additional student classrooms
- Construction of internal walls and fit-out/refurbishment of Ground Floor for administrative purposes
- Change of use of the building to an educational establishment
- Associated upgrades of fire services infrastructure at entry gate; and
- Associated removal of two trees.

Note: The proposal does not seek an increase in the numbers of students and staff imposed by Condition No. 9 of Development Application No. DA/383/2017 (1232 students and 135 staff).

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

Table 1: Development Data

Control	Proposal
Site area	2.9 hectares
FSR	N/A
Clause 4.6 Requests	Yes - Clause 4.3 'Height of Buildings' of the <i>HLEP</i>
Max Height	The proposed works would achieve a maximum height of 17.2m above existing ground level
Landscaped area	The majority of the proposed works are internal and would have a minor impact upon the provision of landscaping
Car Parking Spaces	An accessible car parking space is proposed to the western side of the MSB Centre. The site benefits from a lease from the adjacent Mount St Benedict College site for the use of its on-site car parking (93 spaces). The subject site would also contain 27 spaces.
Setbacks	The MSB Centre including the proposed external staircase would be setback from the adjacent residential properties by approximately 70m.

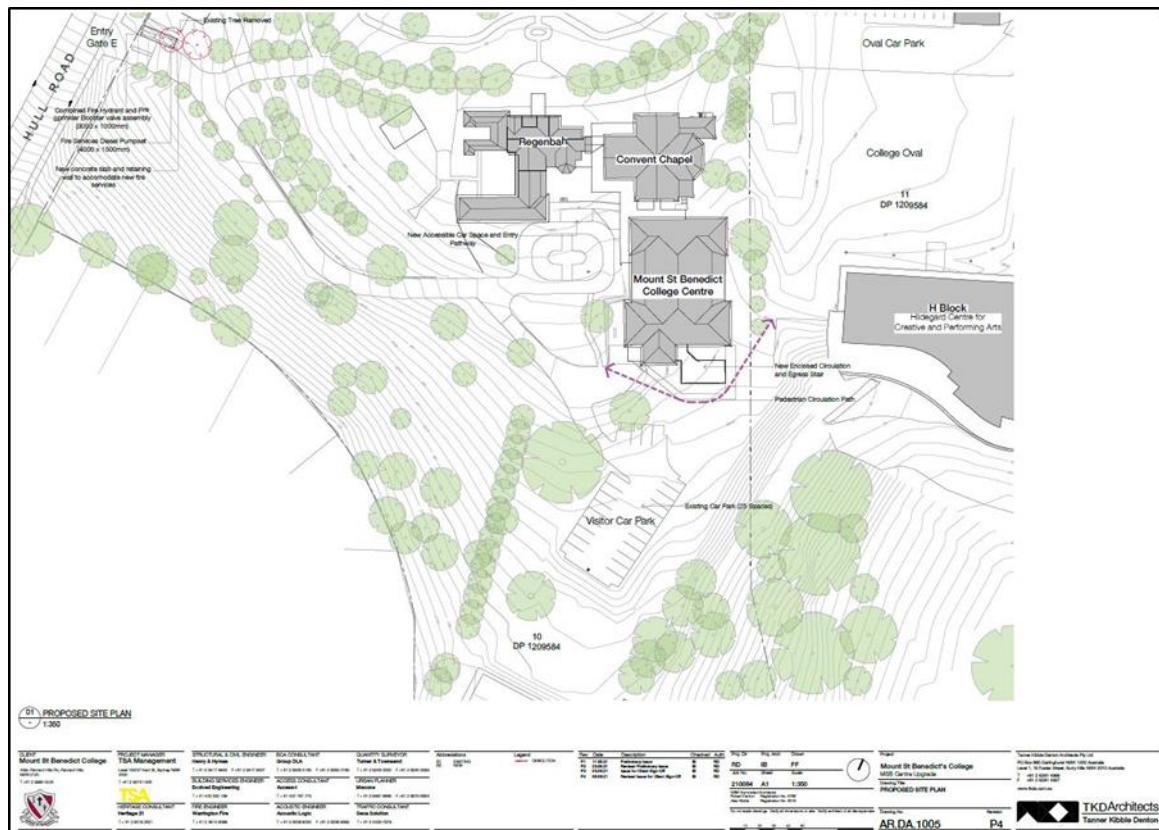


Figure 4: Site Plan showing the location of the MSB Centre



Figure 5: Photomontage of the development at completion

2.2 Background

A pre-lodgement meeting (PL/43/2021) was held prior to the lodgement of the application on 24 June 2021 where various issues were discussed. A summary of the key issues and how they have been addressed by the proposal is outlined below:

- Although elevation and section plans were not submitted with the pre-lodgement application, Council anticipated that a contravention to the Clause 4.3 'Height of Buildings' Development Standard of the *HLEP* would arise as a result of the proposed external stairs. Council advised that a future DA would be required to be supported by a request to contravene the height of building standard pursuant to Clause 4.6 of the *HLEP* and with regard to the most up to date caselaw surrounding Clause 4.6. A Clause 4.6 Request prepared by Mecone has been submitted with the development application.
- A comprehensive and detailed heritage significance assessment of the building (external and internal) was requested by Council to inform the proposal. It was advised by Council that the assessment would be required to identify potential heritage impacts on the site overall, the building itself and its layout, fabric, spaces, architectural details/features and uses. A Statement of Heritage Impact prepared by Heritage 21 supports the development application.
- A BCA Report was requested to be submitted as part of the Development Application to identify the scope of internal and external building alterations necessitated to comply with the *Building Code of Australia* (BCA). A BCA Report prepared by Group DLA accompanies the development application,

The development application was lodged on **29 September 2021**. A chronology of the development application since lodgement is outlined below including the Panel's involvement (briefings, deferrals etc) with the application:

Table 2: Chronology of the DA

Date	Event
29 September 2021	DA lodged
30 September 2021	Exhibition of the application
1 October 2021	DA referred to external agencies (NSW RFS & TfNSW)
19 October 2021	Panel Kick-off Briefing
9 November 2021	<p>Request for further information sent to applicant, summarised as follows:</p> <ul style="list-style-type: none"> • The amendment of the submitted Clause 4.6 Request to expand upon how the stairwell extension is a direct result of BCA requirements. Particular discussion was requested to be provided regarding alternative options considered and whether the proposed option is the most appropriate on environmental planning grounds. • The submitted External Materials and Finishes plan does not explicitly indicate the material or colour of the cladding proposed to the building extension. • Amended Elevations and Section Plans to provide an RL level at the highest point of the building extension. • Amended Architectural Plans and additional detail in relation to window operability/ safety, balustrade heights and stair and door design.
23 November 2021	<p>Panel Assessment Briefing. The key issues discussed in the meeting can be summarised as follows:</p> <ul style="list-style-type: none"> • Balancing heritage values with <i>Building Code of Australia</i> (BCA) fire egress requirements; and • Stairs to be recessive in character, to not detract from MSB centre.
24 November 2021	<p>Amended plans and documents were lodged dated 19 November 2021 accepted by Council under Cl. 55 of the Regulation on 24 November 2021. The key changes to the plans can be summarised as follows:</p> <ul style="list-style-type: none"> • The Clause 4.6 Request has been amended to delete the reference to "floor space ratio" and to extend the discussion of environmental planning grounds. • Further detail regarding external materials and finishes is provided in the updated architectural drawings. The proposed

	<p>external wall cladding for the new external stair is solid terracotta tile.</p> <ul style="list-style-type: none"> • Photomontages submitted demonstrating how the external stair will appear from various viewpoints • The architect has updated the elevation and section drawings to identify the RL at the highest point of the proposed addition • Additional BCA detail regarding window operability, balustrade heights and stair and door design, supported by supplementary Heritage Advice. • The provision of reflected ceiling plans to indicate proposed suspended acoustic ceilings in portions of the building.
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2.3 Site History

On 18 September 2017, Council approved Development Application No. DA/383/2017 for the increase in student numbers at the adjoining Mount St Benedict school site to permit a maximum of 1232 students. An extra 20 teachers were approved increasing the total teaching population to 135. Given the constrained nature of the school site, it was considered that limited areas exist to construct new car parking areas without impacting on existing open space and school facilities. For this reason, the application proposed to utilise 20 car spaces within the existing car park on the subject convent site to cater for the increase in student and staff numbers. A licence agreement was submitted and approved with the application demonstrating that the car park area would be available to staff of Mount St Benedict College for a period of 5 years. In this regard, the application sought consent for an increase in student numbers for a 5-year period only. After this time, the student numbers would revert to the previously approved numbers. A summary of the previous and approved numbers is detailed the table below:

	Previous numbers	Approved numbers
<i>Students</i>	1050	1232 (additional 182)
<i>Teachers</i>	115	135 (additional 20)
<i>Car Spaces</i>	115	135 (additional 20)

The increase in student numbers and car parking licensing agreement will lapse on 18 September 2022.

It is noted that the adjoining landowners of No. 449C Pennant Hills Road (Good Samaritan Education – existing Mount St Benedict School Grounds) and No. 449D Pennant Hills Road (Sisters of The Good Samaritan – Former Convent) are under negotiation to amalgamate the sites under Good Samaritan Education and it is envisaged that this agreement will be complete within the next few years.

On 24 June 2021, Council held a pre-lodgement meeting with the applicant to discuss the proposed change of use and fit-out of the MSB Centre (DA) and the increase in student numbers including parking upgrades (Modification of DA/383/2017).

On 14 October 2021, Council received a Section 4.55(2) modification application (DA/383/2017/A) seeking to modify the approved increase in student numbers at the adjoining Mount St Benedict College site. In particular, the S4.55 Application is seeking the following modifications:

- Increase in student numbers to 1,440 and increase staff to 159.
- 37 new parking spaces to increase the total parking to 159 spaces.

- Remove 5-year consent validity period.

The S4.55 Application has been supported by a lease agreement indicating that the MSB Centre would benefit from on-site parking for a period not less than forty years from 1 January 2022. It is anticipated that the consent authority for the S4.55 proposal will be Council.

3. STATUTORY CONSIDERATIONS

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

- (a) *the provisions of any environmental planning instrument, proposed instrument, development control plan, planning agreement and the regulations*
- (b) *the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,*
- (c) *the suitability of the site for the development,*
- (d) *any submissions made in accordance with this Act or the regulations,*
- (e) *the public interest.*

It is noted that the proposal is considered to be Integrated Development (s4.46) under Section 4.46 of the *Environmental Planning and Assessment Act 1979*.

These matters are further considered below.

3.1 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 No. 55 Remediation of Land*
- *State Environmental Planning Policy (State and Regional Development) 2011*
- *State Environmental Planning Policy (Infrastructure) 2007*
- *State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017*
- *State Environmental Planning Policy (Educational Establishments and Childcare Facilities) 2017*
- *Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005*
- *Hornsby Local Environmental Plan 2013*

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

Table 3: Summary of Applicable State Environmental Planning Policies

EPI	Matters for Consideration	Comply (Y/N)
SRD SEPP	<ul style="list-style-type: none"> • Clause 5, Schedule 7 – The application is required to be determined by the SNPP as the proposed educational establishment has a capital investment value (CIV) of more than \$5 million 	Y

SEPP 55	<ul style="list-style-type: none"> • Clause 7 - Contamination and remediation of the site is to be considered by the proponent and consent authority in the application 	Y
Infrastructure SEPP	<ul style="list-style-type: none"> • Clause 101 - Development with frontage to classified road • Clause 102(2) - Impact of road noise or vibration on non-road development • The application was referred to Transport for NSW for comment 	Y
Education SEPP	<ul style="list-style-type: none"> • Clause 35(1) - Development for the purpose of a school may be carried out by any person with development consent on land in a prescribed zone. • Clause 35(6) – Consideration whether the use of school facilities (including recreational facilities) are to be shared with the community • Schedule 4 – Design Quality Principles 	Y
Vegetation SEPP	<ul style="list-style-type: none"> • Part 3, Clause 9(2) - Protect the biodiversity and amenity values of trees within non-rural areas of the state 	Y
SREP (Sydney Harbour Catchment)	<ul style="list-style-type: none"> • Division 2 – Consideration of the impact of development on biodiversity, ecology and environment protection of the Sydney Harbour Catchment. 	Y
HLEP	<ul style="list-style-type: none"> • The site is located within the R2 Low Density Residential zone pursuant to Clause 2.3 of the <i>Hornsby Local Environmental Plan 2013 (HLEP)</i>. The proposed 'educational establishment' is permissible in the zone with consent. • The application seeks a contravention to Clause 4.3 'Height of Buildings' of the <i>HLEP</i> pursuant to Clause 4.6 of the <i>HLEP</i> 	Y

State Environmental Planning Policy (State and Regional Development) 2011

State Environmental Planning Policy (State and Regional Development) 2011 ('SRD SEPP') applies to the proposal as it identifies if development is regionally significant development. In this case, pursuant to Clause 20(1) of SRD SEPP, the proposal is a regionally significant development as it satisfies the criteria in Clause 5(b) of Schedule 7 of the SRD SEPP as the proposal is development for *community facilities* with a CIV over \$5 million. Accordingly, the Sydney North Planning Panel is the consent authority for the application.

State Environmental Planning Policy No. 55 Remediation of Land

The provisions of *State Environmental Planning Policy 55 Remediation of Land* (SEPP 55) have been considered in the assessment of the development application. Clause 7(1) of SEPP 55 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.

The site has been used by the Sisters of Good Samaritan for over 90 years, with Mount St Benedict College occupying the adjacent site for the previous 50 years. A search of historical Council records, aerial photography and EPA contaminated land records does not indicate any previous contaminating land use activities identified on site. It is further noted that the proposed works are primarily internal and involve no significant earthworks.

The proposal is considered to be consistent with SEPP 55, subject to imposition of relevant conditions of consent in relation to remediation works during construction and if unexpected finds are encountered.

State Environmental Planning Policy (Infrastructure) 2007

The application has been assessed against the requirements of *State Environmental Planning Policy (Infrastructure) 2007 (ISEPP)*. The development is not categorised as a 'traffic generating development' in accordance with Clause 104 and Schedule 3 of the *ISEPP* as the proposal would not result in an increase in the current student numbers of the school.

Notwithstanding, the application was referred to *Transport for NSW (TfNSW)* pursuant to Clauses 101 and 102 of the *ISEPP* regarding traffic noise, vehicle emissions and road safety as the development is located adjacent to a 'classified road' (Pennant Hills Road). *TfNSW* reviewed the application and raised no objections, subject to the imposition of conditions requiring construction vehicles to be wholly contained within the subject site.

State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017

State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017 (Vegetation SEPP) commenced 25 August 2017 and aims to protect the biodiversity and amenity values of trees within non-rural areas of the state.

Part 3 of the *Vegetation SEPP* states that a development control plan may make a declaration in any manner relating to species, size, location and presence of vegetation. Accordingly, Part 1B.6.1 of the *Hornsby Development Control Plan 2013 (HDCP)* prescribes works that can be undertaken with or without consent to trees.

The application has been considered against the relevant *HDCP* provisions (refer to Section 3.2) and has been assessed to be in accordance with Part 1B.6.1 of the *HDCP*.

State Environmental Planning Policy (Educational Establishments and Childcare Facilities) 2017

State Environmental Planning Policy (Educational Establishments and Childcare Facilities) 2017 (Education SEPP) provides planning controls for school development within Part 4 of the *SEPP*, with further controls within Schedule 4 which relate to the design quality of the development. An assessment against relevant sections of the *Education SEPP* is provided below.

Schedule 4 - Education SEPP - Design Quality Principles

Clause 35(6) of the *Education SEPP* requires the consent authority to consider the design quality of the development in accordance with Schedule 4. A discussion is provided below in regard to the requirements of Schedule 4.

Schedule 4 Schools - Design Quality Principles	
Design Principle	Council Comment
Principle 1 - context, built form and landscape	<p>The proposed development would predominantly comprise internal works to the existing MSB Centre building and would pose a neutral impact to the setting and landscape values of the site. The proposed external staircase is a minor addition necessary for BCA purposes and would be located greater than 70m from the nearest residential properties.</p> <p>Council's heritage assessment concurs with the submitted Heritage Impact Statement that the staircase would have a neutral impact on the site's heritage values. Section 3.2 of this report further discusses landscaping and heritage conservation.</p>
Principle 2 - sustainable, efficient and durable	<p>The proposed development would enable the re-use of underutilised school facilities for the purpose of providing additional classrooms for a growing local school-age population. In this regard, the proposed re-use would minimise construction waste and result in positive environmental, social and economic outcomes for the school and locality.</p> <p>Council's heritage assessment has determined that the proposed materials are high quality, efficient and durable and effectively integrate with the exiting built form.</p> <p>Waste management for the MSB Centre will be integrated into existing school operations.</p>
Principle 3 - accessible and inclusive	<p>The proposed development has been designed to provide safe access for all persons including those with a physical disability. An Access Report has been prepared in support of the proposed development which demonstrates that the proposal would meet the relevant performance requirements of the <i>Disability (Access to Premises-Buildings) Standards 2010</i> and the <i>Building Code of Australia (BCA)</i>.</p>
Principle 4 - health and safety	<p>The proposed fit-out has been designed in accordance with the <i>Building Code of Australia (BCA)</i> and fire engineering standards, ensuring the health and safety of future occupants.</p> <p>The application would modernise the health and safety standards incorporated into the building through necessitated <i>BCA</i> upgrade works to the entire building.</p>
Principle 5 - amenity	<p>The proposed fit-out provides fit-for-purpose classroom and administrative space in line with contemporary standards, providing suitable amenity for students and staff.</p> <p>The site is bounded by Pennant Hills Road to the north and west. Schools on busy roads should incorporate appropriate noise mitigation measures to ensure a high level of amenity for occupants. Section 3.2 of this report addresses acoustic and amenity considerations.</p>

	It is considered that the proposed school building would include appropriate learning spaces, access to sunlight, natural ventilation, outlook, visual and acoustic privacy, storage and service areas.
Principle 6 - whole of life, flexible and adaptive	<p>Schedule 4 of the <i>Education SEPP</i> stipulates that School design should consider future needs, take a whole-of-life-cycle approach and should deliver high environmental performance, ease of adaptation and maximise multi-use facilities.</p> <p>The proposed development seeks the re-use of a heritage listed school facility and the application has effectively demonstrated the ability of the building to be adaptable and accommodate the modern needs of the school population. Notwithstanding, the building has a long-term useful life given its heritage listing and robust structural foundations and it is anticipated that the building can undergo additional adaptations in the future.</p>
Principle 7 - aesthetics	<p>The proposed development comprises predominantly internal works, with the exception of external stairs and minor works to the ground floor entry.</p> <p>The proposed external staircase features a contemporary design with high quality materials and is positioned to remain subservient to the heritage building. Section 3.2 of this report further addresses the aesthetics of the proposed development with regard to heritage conservation.</p>

In summary, Council has assessed the development against the requirements of Schedule 4 and considers the proposal satisfactory. Additionally, in respect to Clause 35(6)(b), the consent authority must take into consideration whether the development enables the use of school facilities (including recreational facilities) to be shared with the community. The submitted Statement of Environmental Effects indicates that the proposed school facilities would not be shared with the community.

Schedule 2 - Education SEPP - Complying Development

Whilst the proposal was not lodged as a complying development, an assessment against the relevant complying development standards for educational establishments has been undertaken as a guideline for the assessment of the proposal. The following table sets out the proposal's compliance with relevant standards as described within Schedule 2 of the *Education SEPP*.

Schedule 2 - Complying Development Standards		
Control	Proposal	Compliance
Building Height The building height of a building (whether a new building, or an existing building as a result of an addition or alteration): (a) must not exceed 4 storeys, and (b) must not exceed 22m from ground level (mean).	Four storeys 17.2m in height	Y Y

<p>Setbacks</p> <p>A building (whether a new building, or an existing building as a result of an addition or alteration) or any part of a building (including a basement or any other part of a building that is constructed below ground):</p> <p>b) that is more than 15m but no more than 22m in height—must be located more than 10m from any side or rear property boundary with land in a residential zone or more than 4m from any side or rear property boundary with land in an industrial or a business zone</p>	<p>Whilst the proposed development would comply with the south-western side and rear boundary guideline, the development would be located 6m to the eastern side boundary and does not comply in this regard. Section 3.2 of this report further addresses boundary setbacks</p>	<p>N</p>
<p>Design and Materials</p> <p>A new building or an alteration or addition to an existing building must comply with the following:</p> <p>a) any new external walls or roof of the building must be constructed of non-reflective material,</p> <p>b) any external walls of the building that face a public road or reserve must contain windows.</p>	<p>Non-reflective materials</p> <p>The building does not face a public road or reserve and includes windows on all elevations</p>	<p>Y</p>
<p>Overshadowing</p> <p>A new building or an alteration or addition to an existing building must not overshadow any adjoining residential accommodation so that solar access to any habitable room or principal private open space on the adjoining property:</p> <p>a) is reduced to less than 3 hours of solar access between 9:00 am and 3:00 pm at the winter solstice, or</p> <p>b) is reduced in any manner if solar access to any habitable room on the adjoining property is already less than 3 hours</p>	<p>The development would not overshadow adjacent development</p>	<p>Y</p>
<p>Privacy</p> <p>A window in a new building, or a new window in any alteration or addition to an existing building, must have a privacy screen for any part of the window that is less than 1.5m above finished floor level if:</p> <p>a) the finished floor level is more than 1.5m above ground level (mean), and</p> <p>b) the window faces a building used for residential accommodation on an adjoining lot, and</p>	<p>No</p> <p>Yes (>70m separation)</p>	<p>No privacy screen required</p>

c) the wall in which the window is located has a setback of less than 5m from the boundary of that adjoining lot.	No	
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As detailed in the above table, the proposed development complies with the abovementioned standards of the *Education SEPP*, with the exception of the eastern side boundary setback. Section 3.2 of this report further addresses boundary setbacks.

In summary, the development has been assessed to meet the overall aims of the *Education SEPP* and is considered acceptable.

Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005

The site is located within the catchment of the Lane Cove River, part of the Sydney Harbour Catchment. The aim of the plan is to protect and enhance the catchment, promote ecologically sustainable urban development, the protection of watercourses, riparian lands and remnant vegetation.

Subject to the implementation of sediment and erosion control measures and stormwater management to protect water quality, the proposed development would comply with the relevant requirements of the Plan.

Hornsby Local Environmental Plan 2013

The relevant local environmental plan applying to the site is the *Hornsby Local Environmental Plan 2013 (HLEP)*. The aims of the *HLEP* include (but are not limited to) the facilitation of orderly and sustainable development of Hornsby, the equitable provision of community services, to protect and enhance the heritage of Hornsby and to minimise risk to the community in areas subject to environmental hazards, including flooding and bush fires.

The proposal is consistent with these aims as the proposed development would provide for the re-use and adaptation of an underutilized school building whilst preserving the environmental heritage of the convent and grounds.

Zoning and Permissibility (Part 2)

The site is located within the 'R2 Low Density Residential Zone' pursuant to Clause 2.2 of the *HLEP*.

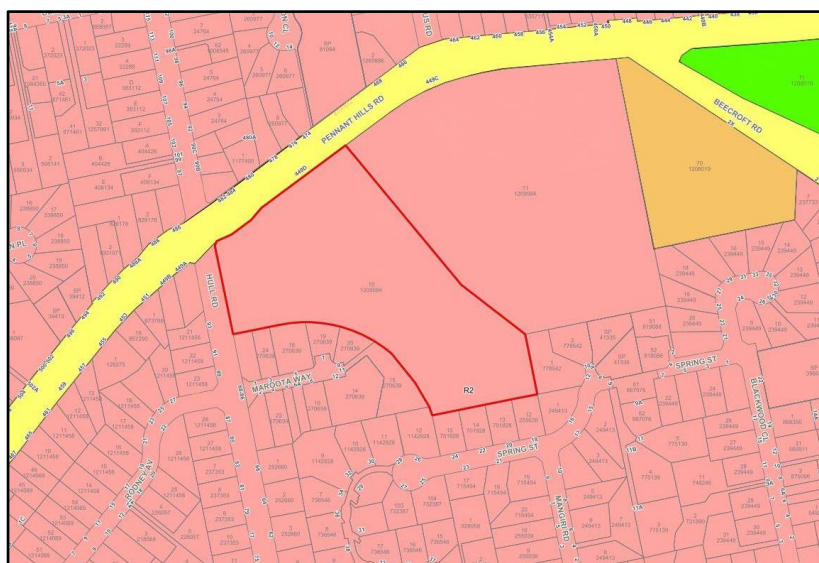


Figure 6: HLEP Zoning Map

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.

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 the residents.*

The proposal is considered to be consistent with these zone objectives for the following reason:

- The proposed development would provide educational facilities for the current and future college population, thereby providing an educational service to meet the day to day needs of the local residents and the school community.

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

The *HLEP* 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 Height of Buildings development standard in Part 4.3 of the *HLEP* and accordingly, a Clause 4.6 request has been provided with the application for the height exceedance.

Table 4: Consideration of the LEP Controls

Control	Requirement	Proposal	Comply
Height of buildings (CI 4.3(2))	8.5m	The proposed addition would achieve a height of 17.2m. The Clause 4.6 contravention is addressed below	N
FSR (CI 4.4(2))	N/A	N/A	N/A
Heritage (CI 5.10)	To conserve the environmental heritage of Hornsby and to conserve the significance of heritage items and heritage conservation areas, including associated fabric, settings and views Development consent is required to alter the exterior or interior of a heritage item	Mount St Benedict Convent and grounds is included as local heritage item No. 653 under Schedule 5 - Environmental Heritage of the <i>HLEP</i> . The site is located in the Beecroft-Cheltenham Heritage Conservation Area. The site is in the vicinity of two heritage items of local significance, namely: <ul style="list-style-type: none"> • Hull Road, Beecroft, Street Trees - Heritage Item No. 111. • Limona - Federation Arts and Crafts House - 23 Thompson Close West 	Y

		<p>Pennant Hills – Heritage Item No. 677.</p> <p>Section 3.2 of this report further addresses Heritage Conservation</p>	
Acid sulfate soils (CI 6.1)	Development consent is required for the carrying out of works on land shown on the Acid Sulfate Soils Map.	The subject site is not mapped in the <i>HLEP</i> as containing Acid Sulfate Soils.	N/A
Earthworks (CI 6.2)	The consent authority must consider the impact of proposed earthworks on drainage patterns, soil stability, quality of soil and the impact of the development on adjoining properties	As shown on the Civil Plans, a 0.48m x 2.06m bund will be constructed from 13 cubic metres of cut under the staircase landing and footpath. The earthworks are considered minor and are necessitated to construct the stairs.	Y

The proposal is considered to be generally consistent with the *HLEP*.

Clause 4.6 Request

The application has been assessed against the requirements of Clause 4.6 of the *HLEP*. This clause provides flexibility in the application of the development standards in circumstances where strict compliance with those standards would, in any particular case, be unreasonable or unnecessary or tend to hinder the attainment of the objectives of the zone.

The proposed building has a maximum height of 17.2m above natural ground level which exceeds the 8.5 metre maximum building height prescribed under Clause 4.3 Height of Buildings stipulated under the *HLEP*.



Figure 7: Building Height above 8.5m indicative height plane

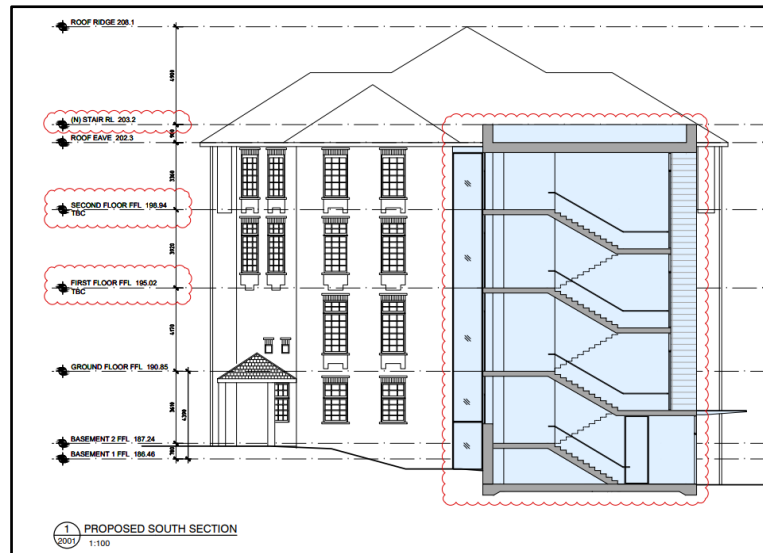


Figure 8: Proposed South Section

The objective of the Height of Buildings control is to permit building heights that are appropriate for the site constraints, development potential and infrastructure capacity of the locality.

The applicant has made a submission in support of the variation to the development standard in accordance with Clause 4.6 of the *HLEP*. The development application seeks to vary the development standard by 8.7m, representing a 102% contravention of the development standard.

Preconditions to be satisfied

Clause 4.6(4) of the *HLEP* establishes preconditions that must be satisfied before a consent authority can exercise the power to grant development consent for development that contravenes a development standard. Clause 4.6(2) provides this permissive power to grant development consent for a development that contravenes the development standard, subject to conditions.

The two preconditions include:

1. Tests to be satisfied pursuant to Clause 4.6(4)(a) - this includes matters under Clause 4.6(3)(a) and (b) in relation to whether the proposal is unreasonable and unnecessary in the circumstances of the case and whether there are sufficient environmental planning grounds to justify contravening the development standard and whether the proposal is in the public interest (Clause 4.6(a)(ii)); and
2. Tests to be satisfied pursuant to Cl4.6(b) - concurrence of the Planning Secretary.

There are five common methods by which an applicant can demonstrate that compliance with a development standard is unreasonable or unnecessary in the circumstances of the development. Initially proposed for objections under clause 6 of *SEPP 1* in the decision of *Wehbe v Pittwater Council* [2007] NSWLEC 827 Pearson C summarised and applied these methods to written requests made under Clause 4.6 in *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1009 [61-62]. These five methods are generally as follows:

- The objectives of the development standard are achieved notwithstanding non-compliance with the standard.
- The underlying objective or purpose is not relevant to the development.
- That the objective would be defeated or thwarted if compliance was required.

- That the development standard has been virtually abandoned or destroyed by the Council's own actions in departing from the standard.
- The zoning of the land is unreasonable or inappropriate.

It is not necessary to demonstrate that a development meets multiple methods as listed above, and the satisfaction of one can be adequate to demonstrate that the development standard is unreasonable or unnecessary. These matters are considered below for the proposed development having regard to the applicant's Clause 4.6 request.

The applicant's request has been summarised as follows:

- *Compliance with the standard is unreasonable and unnecessary as the proposal is consistent with the objectives of the zone notwithstanding non-compliance with the standard. The height of the proposed staircase responds directly to existing site conditions/constraints. The staircase is required to provide BCA-compliant egress from all levels of the existing building. Given the existing building exceeds the height limit, the staircase will also necessarily exceed the height limit. The staircase raises no issues regarding development potential or infrastructure capacity.*
- *The standard has been virtually abandoned/destroyed at the site as evidenced by the height of the existing MSB Centre, which is approximately 22m above existing ground level or 13.5m above the height limit. The proposed external stairs must serve all levels of the existing building and therefore must exceed the height limit. If strict compliance with the height standard were required, emergency egress could not be provided for all levels of the building, and the health and safety of the building occupants could not be protected.*
- *The proposed contravention promotes the "proper construction of buildings, including the protection of the health and safety of their occupants". It does this by providing egress stairs that are required for BCA-compliance purposes. There is no height compliant alternative that would have acceptable heritage impacts.*
- *The existing internal stairs cannot be utilised for egress purposes because they do not meet BCA requirements in the following respects:*
 - *They do not achieve BCA requirements for level of construction or fire resistance.*
 - *They do not achieve an egress width of 2m, which is required given that each level of the building will accommodate up to 200 staff and students.*
 - *The existing balustrades do not meet the BCA minimum height requirement of a 1000mm. Theoretically, BCA-compliant egress stairs could be constructed within the existing building, which would avoid any contravention of the height standard. This approach, however, would require the demolition of significant portions of the internal building fabric and is therefore unacceptable from a heritage impact perspective.*
- *The additional height, being located well below the ridgeline of the existing building, will result in no significant overshadowing impacts.*
- *The additional height allows for no overlooking to neighbouring sensitive uses. The nearest residential land is approximately 70m to the southwest of the MSB Centre and buffered by vegetation.*

- *The proposed development is consistent with the objectives of the zone as the proposal provides for upgrades to an existing building for a purpose (school) that is compatible with the surrounding low density environment.*

Particular attention has recently been placed on the caselaw established in *Four2Five Pty Ltd v Ashfield Council* [2015] which underlined that consent authorities must be directly satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3) of Clause 4.6, that is compliance with the development standard is unreasonable or unnecessary in the circumstances of the case and that there are sufficient environmental planning grounds to justify contravening the development standard.

The applicant's submission to vary the 'height of buildings' development standard is considered well founded for the following reasons:

- *Consideration of Whether Compliance with the Development Standard is Unreasonable and Unnecessary in the Circumstances of the Case*

The objective of Clause 4.3 'Height of Buildings' of the *HLEP* is "to permit a height of buildings that is appropriate for the site constraints, development potential and infrastructure capacity of the locality".

Council's assessment considers that the proposed height of the additions would be lower than the existing MSB Centre building. It is noted that the existing MSB Centre is approximately 22m above existing ground level or 13.5m above the height limit. Council considers that the standard has been virtually abandoned/destroyed at the site as evidenced by the height of the existing MSB Centre (Wehbe point 4). Further, it is noted that the Education SEPP permits as complying development school buildings up to 22m in height for educational establishments in R2 low density residential zones. The height of the proposed works complies with the height control contained within Schedule 2 of the Education SEPP.

Given the substantial distance (approx. 70m) to adjoining properties, it is considered that the four-storey built form would not pose a detrimental impact to adjoining properties with regard to bulk and scale, privacy, overshadowing and amenity. The proposed building would not unreasonably increase demand for infrastructure capacity within the locality. The proposed application does not propose any increase in student numbers, would not require any alterations of existing electricity, sewerage or drainage systems and would not necessitate additional car parking on-site.

Educational establishments are permissible with development consent within the R2 zone and is a prescribed zone specifically listed in Section 33 of the Education SEPP. It is therefore considered that the zoning of the site is appropriate given the exiting use of the site for a school.

For the reasons outlined above, it is considered that the written request to vary the height of building standard adequately demonstrates that the objectives of the height of buildings development standard contained within Clause 4.3 of the *HLEP* are achieved, notwithstanding non-compliance with the standard.

- *Environmental Planning Grounds – Clause 4.6(3)(b)*

In addition to demonstrating that compliance is unreasonable or unnecessary, Clause 4.6(3)(b) requires that there are sufficient environmental planning grounds to justify contravening the development standard. In demonstrating that sufficient environmental planning grounds exist it must be demonstrated that the planning grounds are particular to the circumstances of the development on the subject site (*Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1009 [60]).

The proponent has outlined that sufficient environmental planning grounds exist to justify the building height contravention, namely that the proposed contravention promotes the “*proper construction of buildings, including the protection of the health and safety of their occupants*” pursuant to Section 1.3(h) of the *EP&A Act 1979* by providing egress stairs that are required for BCA-compliance purposes. It is understood by Council that BCA-compliant fire egress stairs could be constructed within the existing building, which would avoid any contravention of the height standard. This approach, however, would require the demolition of significant portions of the internal building fabric and has been deemed by Council to be unacceptable from a heritage impact perspective (See Section 3.2 of this report).

Further, the Council concurs with the applicant’s submission that the additional height would not result in overshadowing impacts or overlooking of neighbouring sensitive uses.

Council’s review of the environmental planning grounds presented by the applicant raises no points of contention, and it is considered that the four-storey built form is justified having regard to the circumstances of the site and existing built form. Council is satisfied that Clause 4.6(3)(b) of the *HLEP* is adequately addressed.

- Public Interest and Clause 4.6(4)

Clause 4.6(4) states that development consent must not be granted for development that contravenes a development standard unless:

(a) *The consent authority is satisfied that:*

- (i) *The applicant’s written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
- (ii) *The proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*

(b) *The concurrence of the Planning Secretary has been obtained*

With regard to part (i), the written requests are considered to adequately address the matters required to be demonstrated as outlined above.

With regard to part (ii), the proposed development is considered to be in the public interest because it is consistent with the objectives of the particular standard and the objectives for height of building contained within the *HLEP*.

With regard to (b) the concurrence of the Planning Secretary has been obtained.

Based on this assessment, it is considered that compliance with the development standard would be unreasonable and unnecessary in the circumstances of the case. Accordingly, the Clause 4.6 submission is supported.

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

The following Development Control Plan is relevant to this application:

- Hornsby Development Control Plan 2013 (‘the HDCP’)

The proposed development has been assessed having regard to the relevant desired outcomes and prescriptive requirements within the *Hornsby Development Control Plan 2013 (HDCP)*. The following table sets out the proposal’s compliance with the prescriptive requirements of the Plan:

HDCP - Part 7.1 Community Uses			
Control	Proposal	Requirement	Complies
Building Height	17.2m	8.5m	No
No. storeys	4 storeys	max. 2 + attic	No
Setbacks			
- <i>Pennant Hills Road (north)</i>	65m	9m	Yes
- <i>Hull Road (west)</i>	140m	3m	Yes
- <i>Side (east)</i>	6m	1.5m	Yes
- <i>Side (south-west)</i>	70m	1.5m	Yes
- <i>Rear (south)</i>	140m	8m	Yes
Site Coverage	6%	max. 30%	Yes
Landscaped Area (% of lot size)	87%	min. 45%	Yes

As detailed in the above table, the proposed development complies with the above prescriptive requirements within the *HDCP*, with the exception of the building height and number of storeys. A brief discussion on compliance with relevant performance requirements and Part 1C General Controls is provided below.

Tree and Vegetation Preservation

The application has been accompanied by an Arboricultural Impact Assessment prepared by Urban Arbor dated 11 September 2021.

The application proposes the removal of two trees to facilitate proposed works, identified as tree Nos. 2 (*Canary Island date palm*) and 12 (*Ash Tree*). Tree No. 2 is necessitated for removal to facilitate construction of a proposed footpath, while Tree No. 12 is proposed to be removed to allow for the installation of fire hydrant and booster services.

The southern portion of the site is mapped as comprising a vegetation community consistent with Blue Gum Shale Forest which is listed as Endangered Ecological Community under the *Commonwealth Environment Protection and Biodiversity Conservation Act 1995* and a Critically Endangered Ecological Community under the *NSW Biodiversity Conservation Act 2016*. The proposed works would be located approximately 20m north of the mapped Blue Gum Shale Forest vegetation community and would not pose a detrimental impact to the root zones or canopy of the community.

The two trees proposed for removal have been assessed in the Arboricultural Impact Assessment to be of 'low' value and not worthy of material constraint. Council's tree assessment concurs with the 'low' value prescribed to the two trees and raises no concerns to their removal. Council acknowledges that the removal of these trees presents an opportunity for the planting of higher value replacement trees on-site. Accordingly, a condition has been recommended under Attachment A requiring 4 replacement trees on-site prior to the issue of an Occupation Certificate.

With regard to trees proposed to be retained on the subject site or adjoining sites, the proposal would not result in Tree Protection Zone (TPZ) encroachments, with the exception of Tree No. 1 which would have an encroachment of less than 5% as a result of the proposed footpath. Council's tree assessment concurs with the report and has determined that all trees proposed to be retained on the site would be successfully retained subject to protection measures during construction.

Council's tree assessment raises no concerns to the proposed development, subject to recommended conditions under Attachment A requiring the appointment of a project arborist to oversee installation of tree protection fencing and works within the TPZ of trees to be retained.

Scale

As discussed previously in this report, the height of the development exceeds the 8.5m building height requirement. The height of the four-storey additions would be 17.2m. The proposed external stairs would be 4.9m lesser in height compared to the attached educational establishment. Further, there is a precedent for 3-4 storey development on the site and adjoining school grounds.

The scale, form, character of the development is considered acceptable for its intended use and relates to the sites constraints.

Privacy, Security and Sunlight

The proposed development is located within the existing convent grounds and is set well back from private residential boundaries. The closest residential properties are the existing dwellings located on eastern side of Hull Road and Maroota Way. The shadow diagrams indicate the shadows cast by the proposed buildings would fall within the convent grounds.

The proposal includes upgrades to the ground floor level entry pathway and landing and would provide a safe, clear and direct pedestrian entry to the building. The windows of the proposed external stairs would be orientated towards school buildings and playing fields on the grounds. It is considered that the development would provide high levels of security and would have no adverse impact on the privacy of adjoining residential properties.

The proposed development would meet the *HDCCP* desired outcome for privacy, security and sunlight.

Heritage

The application has been supported by a Heritage Impact Statement (HIS) and Addendum Letter prepared by Heritage 21 dated 12 September 2021 and 19 November 2021, respectively.

Mount St Benedict convent and grounds is included as local heritage item No. 653 under Schedule 5 of the *HLEP*. The site is located in the Beecroft-Cheltenham Heritage Conservation Area. The site is in the vicinity of two heritage items of local significance, namely:

- Hull Road, Beecroft, Street Trees - Heritage Item No. 111.
- Limona - Federation Arts and Crafts House - 23 Thompson Close West Pennant Hills - Heritage Item No. 677.

The submitted HIS notes that the MSB building has undergone numerous additions, especially during the 1960s where multiple internal partitions were constructed. Alterations to the exterior have included a covered walkway between the MSB Building and the chapel and an accessible ramp to the southern facade installed in the 1980s. Notwithstanding, the HIS acknowledges that *'although numerous alterations have been undertaken, the current form of the MSB Centre building has retained legibility of*

the original scale and character of the Inter-war Free Classical style. The building is in overall good condition'.

External modifications proposed to the MSB Centre include a new shared area and entry adjacent to the existing turning circle on the western (main entry) side of the building, a new accessible car space, repainting of exterior elements, demolition of the existing retaining wall, hedge, entry path and stairs and new entry landscaping. A new accessible entry ramp is also proposed at the front of the building.

A four-storey clad, aluminium and glass structure comprising stairs is proposed adjacent to the south-east corner of the MSB Centre for BCA compliance and accessibility purposes. A corridor at all 4 levels (basement, ground, first, and second floors) would attach the new building with the existing. New openings in the southern façade of the existing building are required to facilitate the corridor connection.

The majority of the proposed works are internal and involve changes to non-original building fabric such as 1960s office partitions and bathroom and kitchen fit-outs, BCA upgrades and installation of perforated plasterboard ceilings. While some original internal fabric would be impacted, the form and Free Classical style of the MSB building would not be affected and the mitigation measures identified in Section 7.2 of the HIS appropriately maximise the conservation of the significance of the interiors in the context of the proposed works. They include a Photographic archival recording prior to development and works sign-off by a heritage architect/consultant.

While the proposed new stair and circulation structure would be tall, it would be 4.9m lesser in height compared to the existing MSB Centre, located at the rear of the main entrance, and sufficiently separate from the existing building to allow it to be subservient to it in terms of scale and bulk. Section 5.2 of this report addresses the balancing of BCA and heritage considerations relating to the proposed stair addition.

The proposal is consistent with the requirements of Part 9.2.1 of the *HDCP*, excerpted as follows:

- *Meets contemporary safety standards without unreasonably impacting heritage significance;*
- *Does not dominate the heritage item in terms of bulk, scale, form, setbacks and materials due to its location, form and materials;*
- *Encourages new uses that facilitate the ongoing viability of heritage items without adversely affecting heritage significance;*
- *Is located to minimise adverse impacts on the setting of the heritage item; and*
- *Designed to complement the heritage item in terms of scale, proportion, bulk, massing and detail.*

Council raises no heritage objections to the proposed works, subject to recommended conditions under Attachment A requiring that the mitigation measures Specified in Section 7.2 of the HIS be imposed.

Stormwater Management

The application proposes to connect the proposed development to the existing stormwater infrastructure on the site. Council's stormwater assessment raises no concerns to the proposed method of stormwater management, subject to appropriate conditions recommended under Attachment A.

Transport and Parking

Council's Traffic Engineering Officer reviewed the proposal and indicated that the application does not propose an increase in student/staff numbers and consequently would not have any adverse traffic or

on-site parking implications. It is considered that there is no nexus between the proposed development and any potential increase in traffic on the local road network or the requirement for additional parking on-site. Notwithstanding, Council's Traffic team are currently reviewing a concurrent S4.55 Application seeking an increase in student and staff numbers and the provision of 37 additional parking spaces.

To ensure that approval of this application would not result in an increase in student numbers, an operational condition has been recommended under Attachment A requiring that the existing student and staff numbers approved under DA/383/2017 be maintained, unless otherwise approved under separate development consent.

Accessible Design

The application has been supported by an Access Report prepared by Access-I dated 30 August 2021 and a BCA Report prepared by Group DLA dated 2 September 2021.

The proposal includes fire safety and BCA upgrades to the MSB Centre which are required to enable the proposed '*Class 9b – Assembly building*' use of the building, including the addition of the external stairs, widening of particular doorways, installation of a sprinkler system and the installation of a smoke detection system.

The proposed development is capable of compliance in combination with the deemed to satisfy provisions and Performance Requirements (by way of Performance Solutions) with the *Building Code of Australia (BCA) 2019* and *Disability (Access to Premises – Buildings) Standards 2010*.

Council's assessment concurs with the conclusions of the Access and BCA Reports. To ensure that the conclusions of the report are fulfilled, appropriate conditions have been recommended under Attachment A in this regard.

Section 5.2 of this report provides discussion regarding the balancing of BCA and heritage considerations relating to the proposed external stairs.

Waste Management

With regard to construction waste, Part 1C.2.3 of the *HDGP* notes that a waste management plan should be prepared and submitted with development applications in accordance with Council's guidelines. A waste management plan prepared by TSA is included in the application detailing anticipated waste, objectives, mitigation measures and actions.

Mount St Benedict College currently partners with BRASV Group for the provision of a waste and recycling management Service. The application acknowledges that this partnership would be expanded to include the MSB Centre development. All waste is sorted and compacted on-site prior to on-site collection. General waste is to be collected five times per fortnight, with cardboard and paper collected weekly and co-mingle recycling collected twice weekly.

Council considers that the submitted waste management plan meets the desired outcomes of Part 1C.2.3 of the *HDGP* and is considered acceptable. A condition of consent is recommended requiring the waste management plan be adhered to throughout the duration of works and operations.

Noise and Vibration

An Acoustic Report has accompanied the application prepared by Acoustic Logic dated 7 September 2021.

The nearest residential properties are located approximately 70m to the south of the proposed development, with Pennant Hills Road being located approximately 65m to the MSB Centre building.

Long-term unattended and short-term attended noise monitoring has been undertaken on-site to inform the Acoustic Report to characterise the existing noise environment. The monitoring was undertaken between 4 August and 13 August 2021 to record:

- Background noise levels at the surrounding residential properties.
- Traffic noise levels.

Development that is adjacent to a road corridor with an annual average daily traffic volume of more than 20,000 vehicles (such as Pennant Hills Road) is to have regard to Clause 102 of *SEPP (Infrastructure) 2007* to determine the impact of road noise or vibration on proposed development. In accordance with 'Development Near Rail Corridors and Busy Roads' (DNBRRRC), educational establishments are to comply with <40dB(A) assuming closed windows and doors.

Calculated external noise intrusion levels within rooms at nearest affected facades are:

- 26dB(A)Leq15min – Windows Closed.
- 41dB(A)Leq15min – Windows Open (to 5% of the room floor area).

In conclusion, the Acoustic report states that additional acoustic treatments would not be required, and the proposal complies with the DNBRRRC criteria.

With regard to adjoining residential properties, the acoustic report has identified the primary noise emission sources to be from the operation of mechanical services (air conditioning and ventilation plant) as well as demolition and fit-out works during construction. Given the primary use of the MSB Centre building would be for general learning and administration with no specialist spaces proposed (i.e. music, dance or drama performance), the Acoustic Report has assessed that student and other activity noise would be minimal. Occupation would be generally limited to internal areas with no additional outdoor play areas or sporting fields proposed. The Acoustic report concludes that general student activity would be far below the background noise level when assessed at nearest residential receivers. The Acoustic Report concludes that the proposal complies with the amenity, intrusiveness and sleep disturbance criteria of the *NSW EPA – 'Noise Policy for Industry' 2017*.

Council's Environmental Protection officers have assessed the proposal and concur with the finding of the submitted Acoustic Report. It is also noted that Council's officers have also reviewed the concurrent S4.55 Application (increase in student & staff numbers) and raise no acoustic objections.

Landscaping

The application proposes the planting of a hedge to the western side of the MSB Centre building in addition to a proposed garden bed located between the stair addition and the existing building. It is considered that the proposed development would complement the existing landscaping and extensive landscaping changes would not be required to improve the development.

More broadly, it is assessed that 87% of the site would be landscaped which meets the *HDCP* requirement for a minimum of 45% landscaping on the site.

Contributions Plans

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

- Hornsby Shire Council Section 7.12 Development Contributions Plan 2019-2029

The Hornsby Shire Council Section 7.12 Contributions Plan 2019-2029 applies to the development as the estimated costs of works is greater than \$100,000. Should the application be approved, an appropriate condition of consent is recommended requiring the payment of a contribution in accordance with the Plan.

3.3 Section 4.15(1)(a)(iia) – Planning agreements under Section 7.4 of the EP&A Act

There have been no planning agreements entered into and there are no draft planning agreements being proposed for the site.

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

The likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality must be considered. In this regard, potential impacts related to the proposal have been considered in response to SEPPs, LEP and DCP controls outlined above and the Key Issues section below.

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

- Social impact – The proposed development would make a positive social contribution to the local community by providing a contemporary educational establishment with improved facilities to service the needs of the school community.
- Economic impact – The proposal would have a positive impact on the local economy in terms of employment generation during the construction phase of the development.
- Construction – Potential impacts from construction would be adequately mitigated through a recommended condition requiring the site to be managed in accordance with the publication *Managing Urban Stormwater – Landcom (March 2004)* and the *Protection of the Environment Operations Act 1997* to mitigate sediment run-off, excessive dust, noise or odour emanating from the site.

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

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

The subject site has not been mapped as flood prone. The eastern portion of the site is mapped as bushfire prone and in this regard the *NSW RFS* has raised no concerns to the proposed development and issued a Bushfire Safety Authority and General Terms of Approval. As detailed in the report, the proposed development would not pose a detrimental impact to the heritage significance of the heritage listed convent and grounds, nearby heritage items or the Beecroft-Cheltenham Heritage Conservation Area. The application has demonstrated that the proposed works would be located clear of the mapped Endangered Ecological Community (Blue Gum Shale Forest) and would be appropriately positioned in this respect.

The site is considered to be capable of accommodating the proposed development. The scale of the proposed development is consistent with the capability of the site and is considered acceptable.

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

Submissions are considered in Section 4.3 of this report.

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

Section 4.15(1)(e) of the Act requires Council to consider *“the public interest”*.

The public interest is an overarching requirement, which includes the consideration of the matters discussed in this report. Implicit to the public interest is the achievement of future built outcomes adequately responding to and respecting the future desired outcomes expressed in environmental planning instruments and development control plans.

The application is considered to have satisfactorily addressed Council's and relevant agencies' criteria and would provide a development outcome that, on balance, would result in a positive impact for the community. Accordingly, it is considered that the approval of the proposed development would be in the public interest.

4. REFERRALS AND SUBMISSIONS

4.1 Agency Referrals and Concurrence

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

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

Table 5: Concurrence and Referrals to agencies

Agency	Concurrence/ referral trigger	Comments (Issue, resolution, conditions)	Resolved
Concurrence Requirements (s4.13 of EP&A Act)			
N/A			
Referral/Consultation Agencies			
TfNSW	Clause 101 and 102 - SEPP (Infrastructure) 2007	Correspondence has been received from TfNSW raising no objections to the proposed development, subject to conditions requiring all structures to be constructed clear of the North Connex Tunnel and Pennant Hills Road boundary and that a Road Occupancy Licence be obtained from TfNSW for any works that may impact on traffic flows along Pennant Hills Road during construction	Y (conditions)

Integrated Development (S 4.46 of the EP&A Act)			
RFS	S100B - <i>Rural Fires Act 1997</i> development of land for special fire protection purposes (including schools)	The NSW RFS has issued a Bushfire Safety Authority and General Terms of Approval (GTAs) for the proposed development, subject to conditions including the establishment of an Asset Protection Zone (APZ) on the property, construction to BAL-12.5 standards and the preparation of a Bushfire Emergency Management & Evacuation Plan	Y (conditions)

4.2 Council Referrals

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

Table 6: Consideration of Council Referrals

Officer	Comments	Resolved
Engineering	Council's Engineering Officer reviewed the submitted Civil Works Drawings and considered the proposed stormwater management arrangements and civil works to be satisfactory. Section 3.2 of this report further addresses civil engineering works.	Y (conditions)
Traffic	Council's Traffic Engineering Officer reviewed the proposal and indicated that the application does not propose an increase in student/staff numbers and would not have any traffic or on-site parking implications. It is considered that there is no nexus between the proposed development and the requirement for additional parking. Notwithstanding, Council's Traffic team are currently reviewing a S4.55 Application seeking an increase in student and staff numbers and the provision of 37 additional parking spaces.	Y
Building	Council's Building Surveyor has reviewed the application and raise no concerns to the proposed development, subject to conditions requiring upgrades to the building pursuant to the provisions of the <i>Building Code of Australia (BCA)</i> and the <i>Building Code of Australia (BCA) 2019</i> and <i>Disability (Access to Premises – Buildings) Standards 2010</i> . Section 3.2 further addresses the <i>BCA</i> .	Y (conditions)

Environmental Protection / Acoustics	Council's Environmental Protection officer has assessed the proposal and raise no concerns to the development with regard to contamination or acoustic impacts, subject to conditions. It is noted that Council's officers have reviewed the concurrent S4.55 Application (increase in student & staff numbers) and raise no acoustic or construction management objections. Section 3.2 of this report further addresses acoustics.	Y (conditions)
Tree Management	No concerns are raised to the proposal by Council's Tree Management team, subject to conditions requiring the appointment of a project arborist to oversee the installation of tree protection fencing and works within the TPZ of trees to be retained. In addition, the requirement for on-site replacement planting (4 trees) has been conditioned by Council. Section 3.2 of this report further addresses tree preservation.	Y (conditions)
Natural Resources	Council's Natural Resources officer has reviewed the proposal and raises no objections to the development, subject to conditions. Section 3.2 of this report further addresses biodiversity.	Y (conditions)
Heritage	There are no heritage objections provided that the mitigation measures identified in Section 7.2 of the Heritage Impact Statement and addendum and the tree sensitive construction methods are utilised for during construction. Section 3.2 of this report further addresses heritage.	Y

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

4.3 Community Consultation

The proposal was notified in accordance with the Hornsby Shire Council Community Engagement Plan from 30 September 2021 until 28 October 2021. The notification included the following:

- A sign placed on the site.
- Notification letters sent to adjoining and adjacent properties (47 letters sent); and
- Notification on Council's website.

The Council received no submissions with respect to the proposal.

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 Building Height

The proposed additions would have a maximum height of 17.2m above natural ground level which exceeds the 8.5 metre maximum building height prescribed under Clause 4.3 Height of Buildings

stipulated under the *HLEP*. The applicant has made a submission in support of a contravention to the development standard in accordance with Clause 4.6 of the *HLEP*.

Resolution: As discussed under Section 3.1 of this report, the applicant's submission to vary the 'height of buildings' development standard is considered well founded.

5.2 Balancing Heritage and BCA Considerations

Clause 94 of *Environmental Planning and Assessment Regulation 2000* requires the consideration of whether the measures contained in a building are adequate to protect persons using the building and to facilitate their egress from the building in the event of fire, or to restrict the spread of fire from the building to other buildings nearby. In determining a development application to which this clause applies, a consent authority is to take into consideration whether it would be appropriate to require the existing building to be brought into total or partial conformity with the *Building Code of Australia (BCA)*.

At the conclusion of the Panel Assessment Briefing, it was resolved that further examination be undertaken to determine whether the proposed stair addition could be deleted from the proposal in place of an internal access solution. The panel indicated that the deletion of the external addition would allow for the external fabric of the heritage listed building to be maintained. It was also noted by the panel that any such consideration to the deletion of the external stairs would need to satisfy BCA requirements for access via alternate means.

In response to the matters raised in the Panel Assessment Briefing, the applicant submitted additional information indicating that the existing internal stairs could not be utilised for egress purposes as they do not meet BCA requirements in the following respects:

- They do not achieve BCA requirements for level of construction or fire resistance.
- They do not achieve an egress width of 2m, which is required given that each level of the building will accommodate up to 200 staff and students.
- The existing balustrades do not meet the BCA minimum height requirement of 1m.

The existing MSB Centre building includes two internal stairs, identified as 'Stair 1' and 'Stair 2' on the submitted Floor Plans. The submitted BCA Report has assessed the existing timber 'Stair 2' as non-compliant with the Deemed to Satisfy (DTS) requirements of the BCA and has not been considered an acceptable exit for the proposed *Class 9b – Assembly building* use of the building.

Council's Building Surveying assessment concurs with the findings of the BCA Report and further notes that the connecting floors are timber, and the existing 'Stairs 2' is required by the BCA to be non-combustible (due to the type of building construction). In order to construct BCA compliant internal stairs, 'Stair 2' would be required to be demolished and reconstructed with a concrete / steel shaft. Hypothetically, BCA-compliant egress stairs could be constructed within the existing building, which would avoid any contravention of the height standard.

To ascertain whether such BCA upgrades to 'Stair 2' would pose a detrimental impact to the internal fabric of the heritage listed building, collaborative discussions were held with Council's BCA and heritage officers. It was advised by Council's heritage officer that the option to reconstruct the stairs with a concrete / steel shaft would necessitate substantial demolition and remediation works over four levels and would irreversibly and detrimentally impact upon the heritage significance of the heritage item. Despite altering the external appearance of the building, it was considered that the proposed

external stairs addition would pose a lesser heritage impact in comparison to the substantial works required to achieve BCA compliant internal stairs.

On balance, the proposed development provides for a safe and accessible school building that effectively balances the BCA and heritage considerations of the HDCP.

Resolution: The issue has been resolved through the provision of additional information and internal discussions with Council's heritage and BCA officers.

6. CONCLUSION

The development generally meets the desired outcomes of Council's planning controls and is satisfactory having regard to the matters for consideration under Section 4.15 of the *Environmental Planning and Assessment Act 1979*. It is considered that the proposed development would not result in any unreasonable impacts and is suitable for the site. Council received no submissions during the public notification period.

Having regard to the circumstances of the case, approval of the application is recommended.

The reasons for this decision are:

- The proposed development complies with the requirements of the relevant environmental planning instruments, including *State Environmental Planning Policy (Educational Establishments and Childcare Facilities) 2017*.
- The written request pursuant to Clause 4.6 of the *Hornsby Local Environmental Plan 2013* to vary the height of buildings development standard contained within Clause 4.3 adequately establishes that compliance with the development standard is unnecessary in the circumstances of the development, and that sufficient environmental planning grounds exist to justify the contravention of the development standard.
- The proposed development does not create unreasonable environmental impacts to adjoining development with regard to visual bulk, overshadowing, solar access, amenity, privacy, heritage conservation and traffic management, subject to conditions.

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

7. RECOMMENDATION

That the Development Application DA/1012/2021 for the change of use of the Mount St Benedict (MSB) Centre to an educational establishment including associated fitout and alterations and additions at Lot 10 DP 1209584, No. 449D Pennant Hills Road Pennant Hills 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 A - DRAFT CONDITIONS OF CONSENT

GENERAL CONDITIONS

The conditions of consent within this notice of determination have been applied to ensure that the use of the land and/or building is carried out in such a manner that is consistent with the aims and objectives of the relevant legislation, planning instruments and Council policies affecting the land and does not disrupt the amenity of the neighbourhood or impact upon the environment.

Note: For the purpose of this consent, the term 'applicant' means any person who has the authority to act on or the benefit of the development consent.

Note: For the purpose of this consent, any reference to an Act, Regulation, Australian Standard or publication by a public authority shall be taken to mean the gazetted Act or Regulation or adopted Australian Standard or publication as in force on the date that the application for a construction certificate is made.

1. Approved Plans and Supporting Documentation

The development must be carried out in accordance with the plans and documentation listed below and endorsed with Council's stamp, except where amended by Council and/or other conditions of this consent:

Approved Plans

Plan No.	Plan Title	Drawn by	Dated	Council Reference
AR.DA.0000, P7	Site Location Plan	TKD Architects	19.11.21	
AR.DA.1001, P3	Aerial Campus Plan	TKD Architects	3.9.21	
AR.DA.1005, P4	Proposed Site Plan	TKD Architects	9.9.21	
AR.DA.1101, P5	Ground Floor Demolition Plan	TKD Architects	19.11.21	
AR.DA.1102, P5	First Floor Demolition Plan	TKD Architects	19.11.2021	
AR.DA.1103, P5	Second Floor Demolition Plan	TKD Architects	19.11.2021	
AR.DA.1104, P5	Basement Floor Demolition Plan	TKD Architects	19.11.2021	
AR.DA.2001, P6	Ground Floor Plan	TKD Architects	19.11.2021	
AR.DA.2002, P6	First Floor Plan	TKD Architects	19.11.2021	
AR.DA.2003, P6	Second Floor Plan	TKD Architects	19.11.2021	
AR.DA.2004, P6	Basement Floor Plan	TKD Architects	19.11.2021	

Plan No.	Plan Title	Drawn by	Dated	Council Reference
AR.DA.2005, P3	Roof Plan	TKD Architects	19.11.2021	
AR.DA.2501, P2	Ground Floor Ceiling Plan	TKD Architects	19.11.2021	
AR.DA.2502, P2	First Floor Ceiling Plan	TKD Architects	19.11.2021	
AR.DA.2503, P2	Second Floor Ceiling Plan	TKD Architects	19.11.2021	
AR.DA.2504, P2	Basement Floor Ceiling Plan	TKD Architects	19.11.2021	
AR.DA.3003, P4	West & South Elevations	TKD Architects	19.11.2021	
AR.DA.3004, P4	East & North Elevations	TKD Architects	19.11.2021	
AR.DA.3101, P3	South Section	TKD Architects	19.11.2021	

Supporting Documents

Document Title	Prepared by	Dated	Council Reference
External Materials & Finishes Plan No. AR.DA.4001, P2	TKD Architects	19.11.2021	D08300323
Addendum to Statement of heritage Impact	Heritage 21	19.11.21	D08300325
Waste Management Plan (Construction)	TSA Management	7.9.21	D08257104
Waste Management Plan (Operations)	TSA Management	Sep 2019	D08257106
Arboricultural Impact Assessment	Urban Arbor	11.9.21	D08257112
BCA Report	Group DLA	2.9.21	D08257115
Access Report	Access-i	30.8.21	D08257109
NSW RFS General Terms of Approval (DA20211007004309-Original-1)	NSW RFS	17.11.21	D08295212
TfNSW Correspondence (SYD21/01207)	Transport for NSW	18.10.21	D08323167

2. Construction Certificate

- a) A Construction Certificate is required to be approved by Council or a Private Certifying Authority prior to the commencement of any construction works under this consent.
- b) The Construction Certificate plans must not be inconsistent with the Development Consent plans.

3. Removal of Trees

This development consent permits the removal of tree(s) numbered T2 and T12 as identified in the Arboricultural Impact Assessment prepared by Urban Arbor dated 11/9/2021.

Note: The removal of any other trees from the site requires separate approval by Council in accordance with Part 1B.6 Tree and Vegetation Preservation of the Hornsby Development Control Plan, 2013 (HDCP).

4. Section 7.12 Development Contributions

- a) In accordance with Section 4.17(1) of the *Environmental Planning and Assessment Act 1979* and the *Hornsby Shire Council Section 7.12 Development Contributions Plan 2019-2029*, **\$57,917.90** must be paid towards the provision, extension or augmentation of public amenities or public services, based on development costs of **\$5,791,793**.
- b) The value of this contribution is current as of 5 January 2022. If the contributions are not paid within the financial quarter that this consent is granted, the contributions payable will be adjusted in accordance with the provisions of the Hornsby Shire Council Section 7.12 Development Contributions Plan and the amount payable will be calculated at the time of payment in the following manner:

$$\begin{aligned} \$C_{PY} &= \frac{\$C_{DC} \times CPI_{PY}}{CPI_{DC}} \end{aligned}$$

Where:

\$C_{PY} is the amount of the contribution at the date of Payment

\$C_{DC} is the amount of the contribution as set out in this Development Consent

CPI_{PY} is the latest release of the Consumer Price Index (Sydney – All Groups) at the date of Payment as published by the ABS.

CPI_{DC} is the Consumer Price Index (Sydney – All Groups) for the financial quarter at the date of this Development Consent.

- c) The monetary contributions shall be paid to Council:
- (i) prior to the issue of the Subdivision Certificate where the development is for subdivision; or
 - (ii) prior to the issue of the first Construction Certificate where the development is for building work; or
 - (iii) prior to issue of the Subdivision Certificate or first Construction Certificate, whichever occurs first, where the development involves both subdivision and building work; or
 - (iv) prior to the works commencing where the development does not require a Construction Certificate or Subdivision Certificate.

Note: It is the professional responsibility of the Principal Certifying Authority to ensure that the monetary contributions have been paid to Council in accordance with the above timeframes.

Note: In accordance with Ministerial Directions, the payment of contribution fees for development with a cost of works of over \$10 million can be deferred to prior to Occupation Certificate.

Note: The Hornsby Shire Council Section 7.12 Development Contributions Plan may be viewed at www.hornsby.nsw.gov.au or a copy may be inspected at Council's Administration Centre during normal business hours.

5. Heritage Mitigation Measures

The works are to be undertaken in accordance with the recommendations provided under Section 7.2 of the Statement of Heritage Impact prepared by Heritage 21 dated 12 September 2021.

REQUIREMENTS PRIOR TO THE ISSUE OF A CONSTRUCTION CERTIFICATE

6. Appointment of a Project Arborist

- a) A project arborist with AQF Level 5 qualifications must be appointed.
- b) Details of the appointed project arborist must be submitted to Council and the PCA for registration with the application for the construction certificate.

7. Construction Management Plan (CMP)

To assist in the protection of the public, the environment and Council's assets, a separate Construction Management Plan must be prepared by a suitably qualified environmental consultant in consultation with a qualified traffic engineer and AQF 5 arborist and submitted to Council's Compliance Team via Council's Online Services Portal for review and written approval.

The CMP must include the following details:

- a) A Construction Traffic Management Plan (CTMP) including the following:
 - i) The order of construction works and arrangement of all construction machines and vehicles being used during all stages.
 - ii) The CTMP plans shall be in accordance with all other plans submitted to Council as part of this development proposal.
 - iii) A statement confirming that no building materials, work sheds, vehicles, machines or the like shall be allowed to remain in the road reserve area without the written consent of Hornsby Shire Council.
 - iv) The Plan shall be in compliance with the requirements of the Roads and Maritime Services *Traffic control at work sites Manual 2018* and detail:
 - a. Public notification of proposed works;
 - b. Long term signage requirements;
 - c. Short term (during actual works) signage;
 - d. Vehicle Movement Plans, where applicable;
 - e. Traffic Management Plans;

- f. Pedestrian and Cyclist access and safety.
 - v) Traffic controls including those used during non-working hours. Pedestrian access and two-way traffic in the public road must be able to be facilitated at all times.
 - vi) Details of parking arrangements for all employees and contractors, including layover areas for large trucks during all stages of works. The parking or stopping of truck and dog vehicles associated with the development will not be permitted other than on the site and the plan must demonstrate this will be achieved.
 - vii) Confirmation that a street 'scrub and dry' service will be in operation during all stages of works.
 - viii) Proposed truck routes to and from the site including details of the frequency of truck movements for all stages of the development.
 - ix) Swept path analysis for ingress and egress of the site for all stages of works.
 - x) Site plans for all stages of works including the location of site sheds, concrete pump and crane locations, unloading and loading areas, waste and storage areas, existing survey marks, vehicle entry, surrounding pedestrian footpaths and hoarding (fencing) locations.
 - xi) The total quantity and size of trucks for all importation and exportation of fill on site throughout all stages of works, and a breakdown of total quantities of trucks for each stage of works.
 - xii) The number of weeks trucks will be accessing and leaving the site with excavated or imported fill material.
 - xiii) The maximum number of trucks travelling to and from the site on any given day for each stage of works.
 - xiv) The maximum number of truck movements on any given day during peak commuting periods for all stages of works.
 - xv) The source site location of any proposed fill to be imported to the site, for all stages of works.
 - xvi) The Plan must state that the applicant and all employees of contractors on the site must obey any direction or notice from the Prescribed Certifying Authority or Hornsby Shire Council in order to ensure the above.
 - xvii) If there is a requirement to obtain a Work Zone, Out of Hours permit, partial Road Closure or Crane Permit, the Plan must detail these requirements and include a statement that an application to Hornsby Shire Council will be made to obtain such a permit.
- b) A Construction Waste Management Plan detailing the following:
- i) Details of the importation or excavation of soil and fill, the classification of the fill, disposal methods and authorised disposal depots that will be used for the fill.

- ii) Asbestos management requirement and procedures for removal and disposal from the site in accordance with AS 2601–2001 – ‘The Demolition of Structures’, and the Protection of the Environment Operations (Waste) Regulation 2005.
 - iii) General construction waste details including construction waste skip bin locations and litter management for workers.
- c) A Tree Protection Plan (TPP) prepared by an AQF 5 Arborist in accordance with any approved Arboricultural Impact Assessment and tree location plans, detailing the following:
 - i) A site plan showing tree protection zones (TPZ) and structural root zones (SRZ) of trees to be retained and specific details of tree protection measures inclusive of distances (in metres) measured from tree trunks.
 - ii) Construction methodology to avoid damage to trees proposed to be retained during construction works.
 - iii) iii) Specifications on tree protection materials used and methods within the TPZ or SRZ.
 - iv) Location of dedicated material storage space on site outside of TPZ’s and SRZ’s for retained trees.
- d) A Construction Noise and Vibration Management Plan (CNMP) which includes:
 - i) Existing noise and vibration levels within the proximity of the proposed development site.
 - ii) Details of the extent of rock breaking or rock sawing works forming part of the proposed development works.
 - iii) The maximum level of noise and vibration predicted to be emitted during each stage of construction.
 - iv) The duration of each stage of works where the maximum level of noise and vibration are predicted to be emitted for.
 - v) Details of mitigation measures, inclusive of respite periods, that will meet acoustic standards and guidelines at each stage of works.
 - vi) Details of a complaints handling process for the surrounding neighbourhood for each stage of works.
- f) Identification of approved sediment and erosion control measures.
- g) The CMP must detail the contact information for developers, builder, private certifier and any emergency details during and outside work hours.

Note: The CMP must be lodged via Council’s Online Services Portal at: <https://hornsbyprd-pwy-epw.cloud.infor.com/ePathway/Production/Web/Default.aspx> and by selecting the following menu options: Applications > New Applications > Under ‘Application Types’: Management Plans.

8. Photographic Archival Recording

- a) A Photographic Archival Record (PAR) of all interior and exterior spaces and building fabric including stairs, balustrades, fixtures, works and elements and garden and landscape areas impacted by the proposed works at Lot 10 DP 1209584, No. 449D Pennant Hills Road, Pennant Hills is to be undertaken by a suitably qualified heritage professional.
- b) The photographic record is to be undertaken in accordance with the NSW Heritage Office *Guidelines for Photographic Recording of Heritage Items using Film or Digital Capture* and 1 complete 'hard' paper and an electronic copy submitted to Hornsby Council for written endorsement.
- c) Satisfaction of this condition must be confirmed in writing by Council to the certifier prior to issue of the Construction Certificate.

Note: The electronic copy of the PAR must be sent to devmail@hornsby.nsw.gov.au and marked to the attention of Council's Strategic Land Use Planning Team and reference the DA number.

9. Stormwater Drainage

The stormwater drainage system for the development must be designed for an average recurrence interval (ARI) of 20 years and be gravity drained to the existing internal drainage system.

10. Internal Driveway/Vehicular Areas

The driveway and parking areas on site must be designed and a Construction Certificate issued in accordance with *Australian Standards AS2890.1, AS2890.2, AS3727* and the following requirements:

- a) The driveway be a rigid pavement.
- b) The driveway grade must not exceed 25 percent and changes in grade must not exceed 8 percent.

11. Noise – Road Corridor

The development must be carried out in accordance with the requirements of the Department of Planning's *Development Near Rail Corridors and Busy Roads – Interim Guideline* and RailCorp's *Interim Guidelines for Applicants*.

Note: The Department of Planning's document is available at www.planning.nsw.gov.au (development assessments). The RailCorp document is available at www.railcorp.nsw.gov.au/publications.

12. Building Code of Australia

Detailed plans, specifications and supporting information is required to be submitted to the certifying authority detailing how the proposed building work achieves compliance with the *National Construction Code - Building Code of Australia*. All building work must be carried out in accordance with the requirements of the *National Construction Code - Building Code of Australia*.

13. Fire Safety and Structural Upgrade

To ensure the protection of persons using the building and to facilitate egress from the building in the event of a fire, the application for a construction certificate must demonstrate that it will comply with the following building upgrades:

- a) Fire safety and Building Code upgrades as detailed in the BCA Report dated 2nd September 2021 shall be carried out including but not limited to the following:
 - i) Prior to the issue of the Subdivision Certificate where the development is for subdivision; or
 - ii) The installation of a sprinkler system throughout the building in accordance with BCA Clause E1.5 and AS 2118.1.
 - iii) The installation of a smoke detection system for shutdown of Air Handling systems on detection and EWIS system in accordance with Spec E2.2 and AS 1670.1 and AS 1670.4.
 - iv) Provision of a compliant hydrant system in accordance with BCA E1.3 and AS 24.9.1.
 - v) Portable extinguishers upgraded to achieve compliance with section E1.6 and AS 2444.
 - vi) Exit and emergency lighting upgraded throughout the building in accordance with BCA Part E4 and AS 2293.1.
 - vii) Building Code non compliances such as no fire rating of floors and supporting posts (general structure), open stairs connecting more than three levels, non-compliant separation of buildings and proximity to other buildings shall be subject to further consideration by a performance solution prepared by a suitably qualified person to accompany the construction certificate.
- b) Windows situated within 1m of floor level shall comply with human impact requirements of AS 1288, excerpt as follows:

5.10.2 Schools and early childhood centres

Glazing within 1 000 mm of the floor level or ground level shall be Grade A safety glass in accordance with —

- (a) [Table 5.1](#) for fully framed glazing; or
- (b) [Table 5.3](#) for unframed glazing.

NOTE Schools refers to primary and secondary education facilities.

- c) External balcony balustrades shall be treated in accordance with agreed heritage advice so that they are no less than 1m in height and compliant with BCA Part D2.16.
- d) Doors to the ground floor kitchenette opens outwards onto a stair. The first tread is within the door swing arc. The stairs shall be remodelled/ redesigned and shall incorporate a landing in order to meet Building Code requirements.
- e) Compliant door hardware shall be fitted to all designated exit doorways in accordance with the requirements of BCA Part D2.21.

- f) Structural engineers' certification shall be obtained confirming that the structural capacity and load bearing capacity of the building with the proposed works shall be sufficient in accordance with design codes, reference: *Australian Standard AS 1170.0, AS1170.1 and AS1170.2.*

14. Fire Safety Schedule

A schedule of all proposed essential fire safety measures to be installed in the building (e.g. hydrants, hose reels, emergency warning systems etc.) shall be submitted with the construction certificate application. The schedule shall distinguish between existing and proposed fire safety measures.

15. Sydney Water – Approval

This application must be submitted to *Sydney Water* for approval to determine whether the development would affect any *Sydney Water* infrastructure, and whether further requirements are to be met.

Note: Building plan approvals can be obtained online via Sydney Water Tap inTM through www.sydneywater.com.au under the Building and Development tab.

REQUIREMENTS PRIOR TO THE COMMENCEMENT OF ANY WORKS
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16. Erection of Construction Sign

- a) A sign must be erected in a prominent position on any site on which any approved work is being carried out:
- i) Showing the name, address and telephone number of the principal certifying authority for the work;
 - ii) Showing the name of the principal contractor (if any) for any demolition or building work and a telephone number on which that person may be contacted outside working hours; and
 - iii) Stating that unauthorised entry to the work site is prohibited.
- b) The sign is to be maintained while the approved work is being carried out and must be removed when the work has been completed.

17. Protection of Adjoining Areas

A temporary hoarding, fence or awning must be erected between the work site and adjoining lands before the works begin and must be kept in place until after the completion of the works if the works:

- a) Could cause a danger, obstruction or inconvenience to pedestrian or vehicular traffic;
- b) Could cause damage to adjoining lands by falling objects; and/or
- c) Involve the enclosure of a public place or part of a public place; and/or
- d) Have been identified as requiring a temporary hoarding, fence or awning within the Council approved Construction Management Plan (CMP).

Note: Notwithstanding the above, Council's separate written approval is required prior to the erection of any structure or other obstruction on public land.

18. Toilet Facilities

- a) To provide a safe and hygienic workplace, toilet facilities must be available or be installed at the works site before works begin and must be maintained until the works are completed at a ratio of one toilet for every 20 persons employed at the site.
- b) Each toilet must:
 - i) be a standard flushing toilet connected to a public sewer; or
 - ii) be a temporary chemical closet approved under the *Local Government Act 1993*; or
 - iii) have an on-site effluent disposal system approved under the *Local Government Act 1993*.

19. Erosion and Sediment Control

To protect the water quality of the downstream environment, erosion and sediment control measures must be provided and maintained throughout the construction period in accordance with the manual '*Soils and Construction 2004 (Bluebook)*', the approved plans, Council specifications and to the satisfaction of the principal certifying authority. The erosion and sediment control devices must remain in place until the site has been stabilised and revegetated.

Note: On the spot penalties may be issued for any non-compliance with this requirement without any further notification or warning.

20. Garbage Receptacle

- a) A garbage receptacle must be provided at the work site before works begin and must be maintained until all works are completed.
- a) The garbage receptacle must have a tight fitting lid and be suitable for the reception of food scraps and papers.
- b) The receptacle lid must be kept closed at all times, other than when garbage is being deposited.
- c) Food scraps must be placed in the garbage receptacle and not in demolition and construction waste bins.

21. Installation of Tree Protection Measures

- a) Trees to be retained and numbered T1, T3, T4, T5, T6, T7, T9, T10 and T11 as identified in the Arboricultural Impact Assessment prepared by Urban Arbor dated 11/9/2021 must have tree protection measures for the ground, trunk and canopy installed by the project arborist as follows:
 - i) For the duration of demolition works, in accordance with the Tree Protection Plan for prepared by Arboricultural Impact Assessment prepared by Urban Arbor dated 11/9/2021.

- ii) For the duration of construction works, in accordance with Tree Protection Plan prepared Arboricultural Impact Assessment prepared by Urban Arbor dated 11/9/2021.
- b) Tree protection fencing for the trees to be retained numbered T1, T3, T4, T5, T6, T7, T9, T10 and T11 must be installed by the engaged AQF 5 project arborist and consist of 1.8m high temporary fencing panels installed in accordance with *Australian Standard AS4687-2007 Temporary fencing and hoardings*.
- c) The installation of all required tree protection fencing must include shade cloth attached to the fencing to reduce transport of dust, particulates and liquids from entering the tree protection zone.
- d) Tree crown protection measures are required and must be installed by the AQF 5 project arborist.
- e) The circumference of the trunk(s) must be wrapped in hessian material to provide cushioning for the installation of timber planks.
- f) Timber planks (50 x100mm) must be spaced at 100mm intervals and must be attached using adjustable ratchet straps.
- g) All tree protection zones must have a layer of wood-chip mulch at a depth of between 150mm and 300mm.
- h) Where wood-chip mulch is permitted by Council instead of tree protection fencing within the tree protection zones, the wood-chip must be covered with a layer of geotextile fabric and rumble boards.

REQUIREMENTS DURING DEMOLITION AND CONSTRUCTION

22. Construction Work Hours

All works on site, including demolition and earth works, must only occur between 7am and 5pm Monday to Saturday.

No work is to be undertaken on Sundays or public holidays.

23. Demolition

To protect the surrounding environment, all demolition work must be carried out in accordance with *Australian Standard AS2601-2001 Demolition of structures* and the following requirements

- a) Demolition material must be disposed of to an authorised recycling and/or waste disposal site and/or in accordance with an approved waste management plan; and
- b) Demolition works, where asbestos material is being removed, must be undertaken by a contractor that holds an appropriate licence issued by *SafeWork NSW* in accordance with the *Work Health and Safety Regulation 2017* and be appropriately transported and disposed of in accordance with the *Protection of the Environment Operations (Waste) Regulation 2014*; and
- c) On construction sites where any building contain asbestos material, a standard commercially manufactured sign containing the words 'DANGER ASBESTOS

REMOVAL IN PROGRESS' and measuring not less than 400mm x 300mm must be displayed in a prominent position visible from the street.

24. Environmental Management

To prevent sediment run-off, excessive dust, noise or odour emanating from the site during the construction, the site must be managed in accordance with the publication *'Managing Urban Stormwater – Landcom (March 2004)* and the *Protection of the Environment Operations Act 1997*.

25. Compliance with Construction Management Plan

The Council approved Construction Management Plan must be complied with for the duration of works, unless otherwise approved by Council.

26. Council Property

To ensure that the public reserve is kept in a clean, tidy and safe condition during construction works, no building materials, waste, machinery or related matter is to be stored on the road or footpath.

27. Disturbance of Existing Site

During construction works, the existing ground levels of open space areas and natural landscape features, including natural rock-outcrops, vegetation, soil and watercourses must not be altered unless otherwise nominated on the approved plans.

28. Prohibited Actions Within the Fenced Tree Protection Zone

The following activities are prohibited within the approved fenced tree protection zones unless otherwise approved by Council:

- a) Soil cutting or filling, including excavation and trenching
- b) Soil cultivation, disturbance or compaction
- c) Stockpiling storage or mixing of materials
- d) The parking, storing, washing and repairing of tools, equipment and machinery
- e) The disposal of liquids and refuelling
- f) The disposal of building materials
- g) The siting of offices or sheds
- h) Any action leading to the impact on tree health or structure

29. Maintaining the Health of Trees Approved for Retention

The appointed project arborist must monitor and record any and all necessary actions required to maintain tree health and condition for trees numbered T1, T3, T4, T5, T6, T7, T8, T9, T10 and T11 on the approved plans.

30. Maintaining Tree Protection Measures

Tree Protection Measures must be maintained by the project arborist in accordance with this consent for the duration of works.

31. Approved Works within Tree Protection Zone Incursions

- a) Where tree root pruning is required for the installation of piers, driveway or underground services, the pruning must be overseen by the AQF 5 project arborist and must be undertaken as follows:
 - i) Using sharp secateurs, pruners, handsaws or chainsaws with the final cut being clean.
 - ii) The maximum diameter of roots permitted to be cut is 40mm
- b) Where the building footprint enters or transects the Tree Protection Zones of trees to be retained, sensitive construction techniques in the form of screw pilings or piers, cantilevered or suspended slab design must be employed to create a 100mm clearance above existing soil grade.
- c) Approved excavations within the Tree Protection Zone of trees to be retained not associated with installation of services must be undertaken as follows:
 - i) Excavations for the construction and/or installation of the house/deck/driveway/piers in the Tree Protection Zone of trees to be retained must be supervised by the project arborist for the first 1.000 meter undertaken manually to locate roots and allow for pruning in accordance with the consent.
- d) To minimise impacts within the Tree Protection Zone (TPZ) of trees to be retained on the approved plans, the installation of services must be undertaken as follows:
 - i) The AQF 5 project arborist must be present to oversee the installation of any underground services which enter or transect the tree protection.
 - ii) The installation of any underground services which either enter or transect the designated TPZ must be undertaken manually.
 - iii) For manually excavated trenches the AQF 5 project arborist must designate roots to be retained. Manual excavation may include the use of pneumatic and hydraulic tools.
- e) Where scaffolding is required, ground protection must be installed beneath the scaffolding in the following order:
 - i) Installation of a 100mm deep layer of woodchip; and
 - ii) Installation of geotextile fabric ground covering; and
 - iii) Installation of scaffold boarding above the woodchip and geotextile fabric.

32. Building Materials and Site Waste

The stockpiling of building materials, the parking of vehicles or plant, the disposal of cement slurry, wastewater or other contaminants must be located outside the tree protection zones as prescribed in the conditions of this consent of any tree to be retained.

33. Landfill not Permitted

The importation of fill material associated with earthworks, or structural or engineering works, is not permitted as part of this consent.

34. Excavated Material

All excavated material removed from the site must be classified by a suitably qualified environmental consultant in accordance with the NSW Environment Protection Authority's *Waste Classification Guidelines* and *Protection of the Environment Operations (Waste) Regulation 2014* prior to disposal to a licensed waste management facility. Tipping dockets for the total volume of excavated material that are received from the licensed waste management facility must be provided to the principal certifying authority prior to the issue of an Occupation Certificate.

35. Maintenance of Public Footpaths

Public footpaths must be maintained for the duration of works to ensure they are free of trip hazards, displacements, breaks or debris to enable pedestrians to travel along the footpath safely.

36. Unexpected Finds

Should the presence of asbestos or soil contamination, not recognised during the application process be identified during any stage of works, the applicant must immediately notify the PCA and Council.

37. Street Sweeping

During works and until exposed ground surfaces across the site have been stabilised, street sweeping must be undertaken following sediment tracking from the site.

The street cleaning service must utilise a 'scrub and dry' method and be undertaken for the full extent of any sediment tracking.

38. Waste Management

All work must be carried out in accordance with the approved waste management plan.

REQUIREMENTS PRIOR TO THE ISSUE OF AN OCCUPATION CERTIFICATE

39. Final Heritage Certification

The works are to be inspected and a certificate issued by a suitably qualified Heritage Architect/Consultant certifying that the works have been undertaken in accordance with the approved plans and recommendations provided under Section 7.2 of the Statement of Heritage Impact prepared by Heritage 21 dated 12 September 2021.

40. Fire Safety Statement – Final

In accordance with the *Environmental Planning & Assessment Regulation 2000*, upon completion of the building, the owner must provide Council with a certificate in relation to each fire safety measure implemented in the building.

41. Replacement Tree Requirements

- a) The two trees approved for removal under this consent must be offset through replacement planting of a minimum of 4 trees.
- b) All replacement plantings must be species selected from the 'Trees Indigenous to Hornsby Shire (as of 1 September 2011)' document available for viewing on the Hornsby Council's website <http://www.hornsby.nsw.gov.au/environment/flora-and-fauna/tree-management/indigenous-trees>
- c) The location and size of tree replacement planting must comply with the following:
 - i) All replacement trees must be located in either front or rear setbacks and planted 4 metres or greater from the foundation walls of the approved development.
 - ii) The pot size of the replacement trees must be a minimum 45 litres
 - iii) All replacement trees must be a minimum of 3 metres in height.
 - iv) All replacement trees must have the potential to reach a mature height greater than 10 metres.

42. Final Tree Certification

- a) The AQF 5 Project arborist must submit to the Principal Certifying Authority a certificate that includes the following:
- b) All tree protection requirements complied with the as approved tree protection plan for the duration of demolition and/or construction works; and
- c) All completed works relating to tree protection and maintenance have been carried out in compliance with the conditions of consent and approved plans; and
- d) Dates, times and reasons for all site attendance; and
- e) All works undertaken to maintain the health of retained trees; and
- f) Details of tree protection zone maintenance for the duration of works; and
- g) A statement to confirm that tree replacement planting meets NATSPEC guidelines and the approved landscape plan.

Note: Copies of monitoring documentation may be requested throughout DA process.

43. Certification of RFS Requirements

A Certificate prepared by a BPAD accredited Bushfire Consultant is to be provided to the Principal Certifying Authority (PCA) certifying the completion of all works required by the NSW RFS General Terms of Approval (GTAs) prior to the issue of the Occupation Certificate.

44. Excavated Material Tipping Dockets

Tipping dockets for the total volume of excavated material that are received from the licensed waste facility must be provided to the Principal Certifying Authority prior to the issue of an Occupation Certificate.

45. Asbestos Clearance Certificate

Should any asbestos be encountered during demolition or construction works, a licenced asbestos assessor is required to provide a Clearance Certificate to the Certifier prior to the issue of an Occupation Certificate, certifying that the asbestos has been removed and appropriately disposed of, and the site is now suitable for its approved use.

46. Damage to Council Assets

To protect public property and infrastructure, any damage caused to Council's assets as a result of the construction or demolition of the development must be rectified by the applicant in accordance with AUS-SPEC Specifications (www.hornsby.nsw.gov.au/property/build/aus-spec-terms-and-conditions). Rectification works must be undertaken prior to the issue of an Occupation Certificate, or sooner, as directed by Council.

47. Retaining Walls

All required retaining walls must be constructed as part of the development.

OPERATIONAL CONDITIONS

48. Use of Premises

The development approved under this consent shall be used as an educational establishment and not for any other purpose without Council's separate written consent.

49. Number of Students

- a) This consent does not permit any additional students or staff members at Mount St Benedict College.
- b) A maximum of 1232 students are to be enrolled and a maximum of 135 staff are to be employed (as approved under DA/383/2017).
- c) Any increase to these student or staff numbers is not to occur without prior development consent.

50. Fire Safety Statement - Annual

On at least one occasion in every 12-month period following the date of the first 'Fire Safety Certificate' issued for the property, the owner must provide Council with an annual 'Fire Safety Certificate' certifying each essential service installed in the building.

51. Noise

All noise generated by the proposed development, inclusive of mechanical plant, must be attenuated to prevent levels of noise being emitted to adjacent premises which possess tonal, beating and similar characteristics or which exceeds background noise levels by more than 5dB(A).

GENERAL TERMS OF APPROVAL – NSW RURAL FIRE SERVICE (NSW RFS)

The following conditions of consent are General Terms of Approval from the nominated State Agency pursuant to Section 4.47 of the *Environmental Planning and Assessment Act 1979* and must be complied with to the satisfaction of that Agency.

52. NSW RFS Condition No. 1

From the commencement of building works and in perpetuity, the property around the subject building and proposed works must continue to be maintained as an inner protection area to the following distances and aspect in accordance with the following requirements of Appendix 4 of *Planning for Bush Fire Protection 2019*:

- a) East and south for a distance of 93 metres
- b) Tree canopy cover should be less than 15% at maturity
- c) Trees at maturity should not touch or overhang the building
- d) Lower limbs should be removed up to a height of 2m above the ground
- e) Tree canopies should be separated by 2 to 5m; and
- f) Preference should be given to smooth-barked and evergreen trees
- g) Create large discontinuities or gaps in the vegetation to slow down or break the progress of fire towards buildings should be provided
- h) Shrubs should not be located under trees
- i) Shrubs should not form more than 10% ground cover; and
- j) Clumps of shrubs should be separated from exposed windows and doors by a distance of at least twice the height of the vegetation.

53. NSW RFS Condition No. 2

New construction must comply with section 3 and section 5 (BAL 12.5) *Australian Standard AS3959-2018 Construction of buildings in bushfire-prone areas* or the relevant requirements of the *NASH Standard - Steel Framed Construction in Bushfire Areas* (incorporating amendment A - 2015). New construction must also comply with the construction requirements in Section 7.5 of *Planning for Bush Fire Protection 2019*.

54. NSW RFS Condition No. 3

A Bush Fire Emergency Management and Evacuation Plan must be prepared and be consistent with the NSW RFS document: *A Guide to Developing a Bush Fire Emergency Management and Evacuation Plan*. The plan must also include the following:

- a) Consideration must be given to the non-occupation of the school on days with an 'extreme' or 'catastrophic' fire danger rating
- b) Consideration must be given to the creation of a mechanism for the relocation of occupants on days with an 'extreme' or 'catastrophic' fire danger rating or days declared as a total fire ban
- c) Contact details for the local rural fire service office

- d) Procedures for coordinated evacuation of the site in consultation with local emergency services. A copy of the bush fire emergency management and evacuation plan should be provided to the local emergency management committee for its information prior to the occupation of the development.

CONDITIONS OF CONCURRENCE – TRANSPORT FOR NSW (TfNSW)

The following conditions of consent are from the nominated State Agency pursuant to Section 4.13 of the *Environmental Planning and Assessment Act 1979* and must be complied with to the satisfaction of that Agency.

55. TfNSW Condition No. 1

Any new building or structures, together with any improvements integral to the future use of the site, are erected clear of the NorthConnex Tunnel and Pennant Hills Road boundary. The integrity of the NorthConnex Tunnel is not compromised.

56. TfNSW Condition No. 2

All demolition and construction vehicles are to be contained wholly within the site and vehicles must enter the site before stopping. A construction zone will not be permitted on Pennant Hills Road.

57. TfNSW Condition No. 3

A Road Occupancy Licence (ROL) should be obtained from Transport Management Centre for any works that may impact on traffic flows on Pennant Hills Road during construction activities. A ROL can be obtained through <https://myrta.com/oplinc2/pages/security/oplincLogin.jsf>.

- END OF CONDITIONS -

ADVISORY NOTES

The following information is provided for your assistance to ensure compliance with the *Environmental Planning and Assessment Act 1979*, *Environmental Planning and Assessment Regulation 2000*, other relevant legislation and Council's policies and specifications. This information does not form part of the conditions of development consent pursuant to Section 4.17 of the Act.

Environmental Planning and Assessment Act 1979 Requirements

The *Environmental Planning and Assessment Act 1979* requires:

- The issue of a construction certificate prior to the commencement of any works. Enquiries can be made to Council's Customer Services Branch on 9847 6760.
- A principal certifying authority to be nominated and Council notified of that appointment prior to the commencement of any works.
- Council to be given at least two days written notice prior to the commencement of any works.
- Mandatory inspections of nominated stages of the construction inspected.
- An occupation certificate to be issued before occupying any building or commencing the use of the land.

Long Service Levy

In accordance with Section 34 of the *Building and Construction Industry Long Service Payments Act 1986*, a 'Long Service Levy' must be paid to the Long Service Payments Corporation or Hornsby Council.

Note: The rate of the Long Service Levy is 0.35% of the total cost of the work.

Note: Hornsby Council requires the payment of the Long Service Levy prior to the issue of a construction certificate.

Tree and Vegetation Preservation

Hornsby Development Control Plan 2013 Tree and Vegetation Preservation provisions have been developed under Council's authorities contained in *State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017* and the *Environmental Planning and Assessment Act 1979*.

In accordance with these provisions a person must not cut down, fell, uproot, kill, poison, ringbark, burn or otherwise destroy the vegetation, lop or otherwise remove a substantial part of the trees or vegetation to which any such development control plan applies without the authority conferred by a development consent or a permit granted by Council.

Fines may be imposed for non-compliance with the *Hornsby Development Control Plan 2013*.

Note: A tree is defined as a long lived, woody perennial plant with one or relatively few main stems with the potential to grow to a height greater than three metres (3m). (HDCP 1B.6.1.c).

Disability Discrimination Act

The applicant's attention is drawn to the existence of the *Disability Discrimination Act 1992*. A construction certificate is required to be obtained for the proposed building/s, which will provide consideration under the *Building Code of Australia*, however, the development may not comply with the requirements of the *Disability Discrimination Act 1992*. This is the sole responsibility of the applicant.

Covenants

The land upon which the subject building is to be constructed may be affected by restrictive covenants. Council issues this approval without enquiry as to whether any restrictive covenant affecting the land would be breached by the construction of the building, the subject of this consent. Applicants must rely on their own enquiries as to whether or not the building breaches any such covenant.

Dial Before You Dig

Prior to commencing any works, the applicant is encouraged to contact *Dial Before You Dig* on 1100 or www.dialbeforeyoudig.com.au for free information on potential underground pipes and cables within the vicinity of the development site.

Asbestos Warning

Should asbestos or asbestos products be encountered during demolition or construction works, you are advised to seek advice and information prior to disturbing this material. It is recommended that a contractor holding an asbestos-handling permit (issued by *SafeWork NSW*) be engaged to manage the proper handling of this material. Further information regarding the safe handling and removal of asbestos can be found at:

www.environment.nsw.gov.au

www.adfa.org.au

www.safework.nsw.gov.au

Alternatively, telephone the *SafeWork NSW* on 13 10 50.

Telecommunications Act 1997 (Commonwealth)

If you are aware of any works or proposed works which may affect or impact on Telstra's assets in any way, you are required to contact: Telstra's Network Integrity Team on Phone Number 1800810443.