

COUNCIL ASSESSMENT REPORT

Panel Reference	PPSNH-325		
DA Number	DA204/2022 (PAN-239356)		
LGA	North Sydney Council		
Proposed Development	Alterations and additions to an existing educational establishment (Neutral Bay Public School), including removal or demolition of six buildings, refurbishment of two buildings, construction of a three-storey building, expansion of school site, signage, and associated landscaping.		
Street Address	175-177 Ben Boyd Road and 10 & 16 Bydown Street, Neutral Bay		
Applicant/Owner	School Infrastructure NSW / Office of Education		
Date of DA lodgement	11 July 2022		
Total number of Submissions Number of Unique Objections	Notification	10 objections / 1 support	
	Amended Plans Renotification	8 objections	
	Total (All Unique)	Objections Support	18 1
Recommendation	Approval		
Regional Development Criteria (Schedule 6 to SEPP (Planning Systems) 2021)	<i>4 Development carried out by or on behalf of the Crown</i> (within the meaning of Division 4.6 of the EP&A Act 1979) that has a capital investment value of more than \$5 million.		
List of all relevant s4.15(1)(a) matters	<ul style="list-style-type: none"> • State Environmental Planning Policy (Biodiversity and Conservation) 2021 • State Environmental Planning Policy (Industry and Employment) 2021 • State Environmental Planning Policy (Planning Systems) 2021 • State Environmental Planning Policy (Transport and Infrastructure) 2021 • North Sydney Local Environmental Plan 2013 • Environmental Planning and Assessment Regulations 2021 • Biodiversity Conservation Act 2013 • Environmental Protection and Biodiversity Act 1999 		
List all documents submitted with this report for the Panel's consideration	<ul style="list-style-type: none"> • Architectural Plans – <i>DesignInc</i> – dated 12 December 2022 • Architectural Design Report – <i>DesignInc</i> – dated June 2022 • Statement of Environmental Effects – <i>GYDE</i> – dated June 2022 • Addendum SEE – <i>GYDE</i> – 13 December 2022 • Clause 4.6 (HoB) – <i>GYDE</i> – 15 December 2022 • Landscape Plans – <i>DesignInc</i> – dated 7 December 2022 • Arborist Report – <i>Independent Arbicultural Services</i> – dated 5 December 2022 • Ecological Assessment – <i>ADE Consulting</i> – dated 30 June 2022 • Heritage Impact Assessment – <i>City Plan Services</i> – dated 24 June 2022 • Addendum HIS – <i>City Plan Services</i> – 5 December 2022 • Access Capability Statement – <i>Philip Chun & Associates</i> – dated 9 December 2022 • BCA Capability Statement – <i>Philip Chun & Associates</i> – dated 9 December 2022 • Civil Engineering Plans – <i>enstruct</i> – dated 7 December 2022 • Survey Plan – <i>Project Surveyors</i> – 21 May 2022 • Sustainable Design Report – <i>Steensen Varming</i> – 28 June 2022 • Transport and Accessibility Impact Assessment – <i>TTW</i> – 27 June 2022 		

	<ul style="list-style-type: none"> Operational Waste Management Plan – <i>Elephants Foot Consulting</i> - dated 28 June 2022 Geotechnical Report – <i>Douglas Partners</i> – 29 June 2022 Site Investigations – <i>Douglas Partners</i> – 27 June 2022 Remediation Action Plan – <i>Douglas Partners</i> – 28 June 2022 Aboriginal Due Diligence Report – <i>Tocomwall</i> – 28 June 2022 Noise Impact Assessment – <i>acoustic studio</i> – 27 June 2022 CIV Report – <i>Turner and Townsend</i> – dated 23 June 2022
Clause 4.6 requests	<ul style="list-style-type: none"> North Sydney Local Environmental Plan 2013 Clause 4.3 – Height of Buildings Development Standard
Summary of key submissions	<ul style="list-style-type: none"> Bulk and scale of Building L Height variation and unsatisfactory supporting written request Design Quality Principles for Schools Heritage Residential amenity impacts Traffic and parking congestion Landscaping and tree removal Construction impacts Sustainability Various miscellaneous concerns
Report prepared by	Michael Stephens, Senior Assessment Officer
Report date	14 March 2023

Summary of s4.15 matters

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

Legislative clauses requiring consent authority satisfaction

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

Clause 4.6 Exceptions to development standards

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

Special Infrastructure Contributions

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

Conditions

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

Attachments

1. Architectural and Landscape Plans
2. Clause 4.6 – Height of Buildings
3. Design Excellence Panel minutes
4. Agreed Conditions of Consent

EXECUTIVE SUMMARY

The development application (PPSNH-325) seeks consent for alterations and additions to an existing educational establishment (Neutral Bay Public School), including removal or demolition of six buildings, refurbishment of two buildings of heritage significance, construction of a three-storey building, expansion of school site, signage, and associated landscaping, at 175-171 Ben Boyd Road and 10 & 16 Bydown Street, Neutral Bay, being the existing campus of Neutral Bay Public School.

The subject site is owned by the NSW Department of Education, a public authority, and is an existing educational establishment being Neutral Bay Public School providing co-educational primary (K-6) education for approximately 851 students. The application does not seek to result in any substantial increase in staff or student numbers. The site is zoned SP2 Infrastructure and R2 Low Density Residential, being prescribed zones permitting development for the purpose of educational establishments under SEPP (Transport and Infrastructure) 2021.

The application is reported to the Sydney North Planning Panel for determination as the application relates to Crown Development with a Capital Investment Values (CIV) of \$5 million or more.

The proposed new building (Building L) and internal works to two existing buildings (Buildings A & B) result in a non-compliance with the height of buildings development standard in Clause 4.3 in NSLEP 2013 by up to 5.65m (or 66.5%). The written request submitted pursuant to Clause 4.6 in NSLEP 2013 demonstrates that compliance with the development standard is unreasonable and unnecessary as the objectives of the standard are achieved notwithstanding the variation, and that there are sufficient environmental planning grounds to justify the variation in the circumstances of the case. The variation would be in the public interest as the proposed development is consistent with the objectives of the standard and the objectives of the SP2 Infrastructure (Educational Establishment) zone. The consent authority may assume the concurrence of the Minister.

The design quality of the proposed development is considered satisfactory when evaluated in accordance with the *Design Quality Principles for Schools* set out in Schedule 8 to SEPP (Transport and Infrastructure) 2021.

Whilst some levels of contamination were identified on the site, the consent authority can be satisfied that the subject site will be suitable for the intended use following the remediation works outlined in the Remediation Action Plan as required under Section 4.6 of SEPP (Resilience and Hazards) 2021.

The matters for consideration under Clause 5.10 *Heritage Conservation* and Clause 6.10 *Earthworks* in NSLEP 2013 have been taken into consideration and the proposed development is considered satisfactory.

The application is not integrated development under Section 4.46 of the Act and concurrence is not required from any external approval body under Section 4.13 of the Act. Relevant referral advice has been obtained in accordance with Sydney Water Act 1994 and SEPP (Transport and Infrastructure) 2021.

The proposed development supports the development of the existing school, providing fit for purpose permanent teaching and associated facilities whilst increasing the amount of outdoor play space per student. The proposed development provided public infrastructure whilst having acceptable impacts on the amenity and character of the area.

The development application and amended application were notified in accordance with Council's Community Engagement Protocol. Eighteen (18) submissions were received objecting to the proposed development raising concerns regarding the bulk and scale of Building L, heritage impacts, residential amenity impacts, traffic and parking congestion, construction management issues, tree removal and other miscellaneous concerns. These issues have been addressed in the assessment report.

On balance, the proposed development is considered reasonable and is recommended for approval subject to the agreed condition in attachment 4.

DESCRIPTION OF PROPOSAL

The development application seeks consent for alterations and additions to an existing educational establishment (Neutral Bay Public School), including removal or demolition of six buildings, refurbishment of two buildings, construction of a three-storey building, expansion of the school site, signage and associated landscaping including removal of 15 trees. The proposed works include:

Demolition

- Demolition of Building I and Building G;
- Demolition of internal walls within Building A and Building B (Heritage); and
- Removal of four temporary learning spaces currently located at the northern end of the site. The temporary learning spaces are to be relocated within the site during construction.

Construction

- Alteration and additions to Buildings A and B (Heritage) including alterations to learning spaces and amenities, and construction of external ramps to provide accessible access.

Building L

- Construction of a new three storey school building (Building L) adjacent to the Bydown Street frontage containing:
 - Seven General Learning Spaces (GLS)
 - Library
 - Student Amenities
 - Canteen
 - Staff facilities
 - Staff amenities
 - Offices and program spaces
- The proposed building is constructed of face brick with corbel detailing, vertically proportioned windows, and a flat roof behind a brick parapet; and
- The proposed building has external corridors along the western elevation with lift access and two sets of external staircases.

Ancillary Works

- Construction of a north-south accessible pathway connecting the kindergarten campus to the covered outdoor learning space and hall at the northern end of the school;
- Construction of four external plant and equipment enclosures;
- Construction of a waste storage enclosure along the Bydown Street boundary including reconstruction of an existing vehicle crossing to provide access for services.
- Construction of 76 bike parking spaces within the southwestern corner of the kindergarten campus and the northeastern corner of years 1-6 campus;
- Installation of an on-site detention tank;
- School identification signage “Neutral Bay Public School” on Bydown Street; and

Landscaping

- Removal of 15 declared trees under Section 16 of Part B in NSDCP 2013;
- Planting of 54 canopy trees capable of achieving a mature height of 5m or greater;
- Extensive additional planting throughout the school including hedge and screen planting, native gardens, shrubbery, and ground covers.
- Various unbuilt upon areas are to be constructed of asphalt, concrete, with various finishes and decorative line markings, impact absorbing material (soft fall), composite timber decking, or paving.
- Replacement of the existing turf playing field with an artificial playing field further to the south.

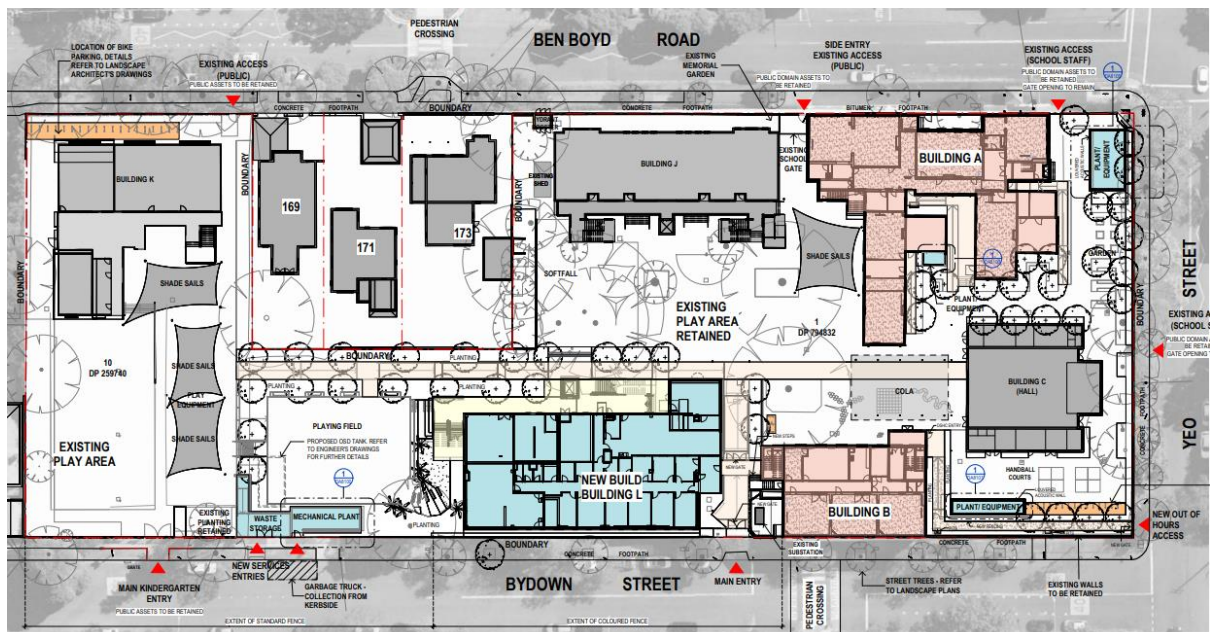


Figure 1. Proposed Site Plan

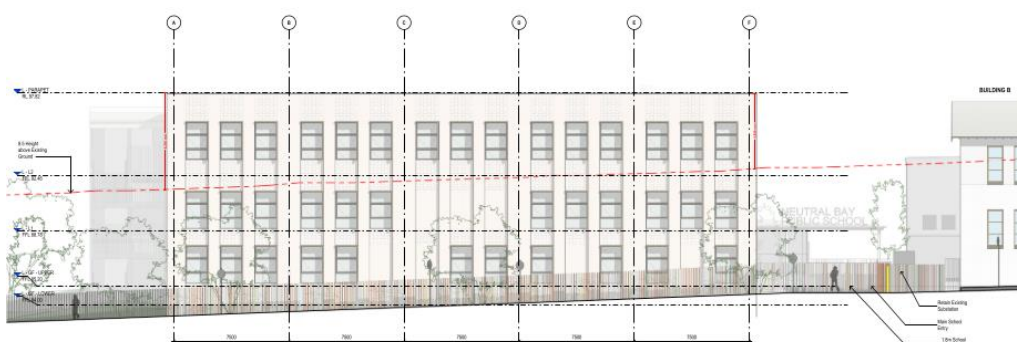


Figure 2. Proposed Eastern Elevation of Building L (Bydown Street)

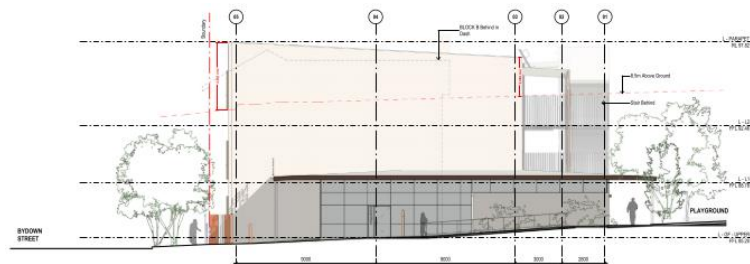


Figure 3. Proposed Northern Elevation of Building L

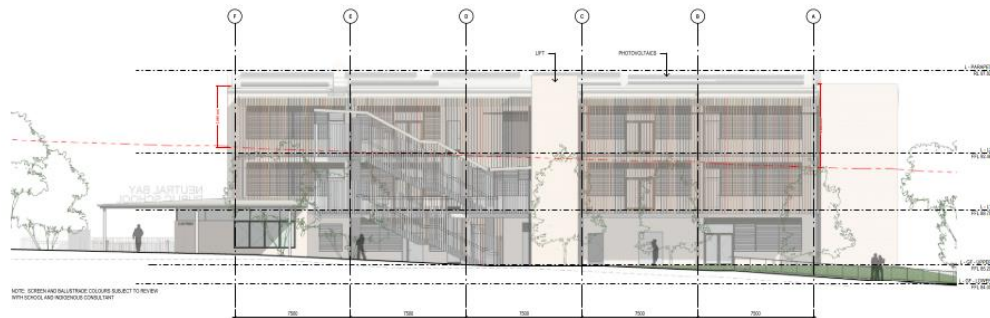


Figure 4. Proposed Western (Rear) Elevation of Building L

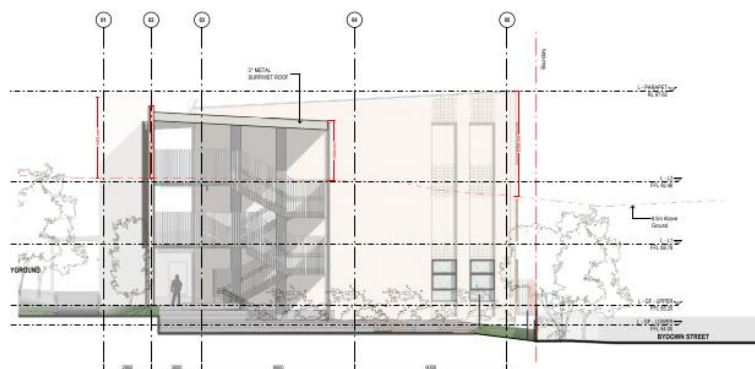


Figure 5. Proposed Southern Elevation of Building L



Figure 6. Photomontage of Building L.



Figure 7. Proposed Landscape Plan

STATUTORY CONTROLS

Environmental Planning and Assessment Act 1979

- State Environmental Planning Policy (Biodiversity and Conservation) 2021
- State Environmental Planning Policy (Industry and Employment) 2021
- State Environmental Planning Policy (Planning Systems) 2021
- State Environmental Planning Policy (Transport and Infrastructure) 2021
- North Sydney Local Environmental Plan 2013

Environmental Planning and Assessment Regulations 2021

Environmental Protection and Biodiversity Conservation Act 1999 (Cth)

Biodiversity Conservation Act 2016

Sydney Water Act 1994

DESCRIPTION OF LOCALITY

The subject site is known as 175-177 Ben Boyd Road and 10 & 16 Bydown Street, Neutral Bay and is legally described as:

- Lot 1 DP 794832 (175-177 Ben Boyd Road)
- Lot 2 DP 794832 (175-177 Ben Boyd Road)
- Lot 3 DP 794832 (175-177 Ben Boyd Road)
- Lot 1 DP 180937 (175-177 Ben Boyd Road)
- Lot 21 DP 572881 (175-177 Ben Boyd Road)
- Lot 22 DP 572881 (175-177 Ben Boyd Road)
- Lot 10 DP 259740 (10 Bydown Street)
- Lot 3 DP 320586 (16 Bydown Street)

The site has a split 36.7m and 100.5m frontage to Ben Boyd Road to the west, 68.8m frontage to Yeo Street to the north and 180m frontage to Bydown Street to the east. The site adjoins residential land to the south and surrounds three dwelling houses at Nos. 169, 171 and 173 Ben Boyd Road on the western side. The site has a total site area of 10,744.5sqm. The land falls from the north to the south by approximately 7.65m. There is also a fall of approximately 1m from the west to the east through the location of the proposed newbuilding (Building L).

The site is an existing school (Neutral Bay Public School) and includes 10 Bydown Street which was recently acquired and currently remains vacant following the demolition of the previous dwelling house. The school contains seven existing school buildings, four temporary learning spaces, amenities and outdoor play space and landscaping.



Figure 8. Aerial Image of the subject site and surrounds

The site is zoned predominantly SP2 Infrastructure (Educational Establishments) and part R2 Low Density Residential and contains an existing educational establishment, being Neutral Bay Public School. The surrounding land is zoned predominantly a mix of R2 Low Density Residential, R3 Medium Density Residential and R4 High Density Residential and contains a mixed typology of residential development.

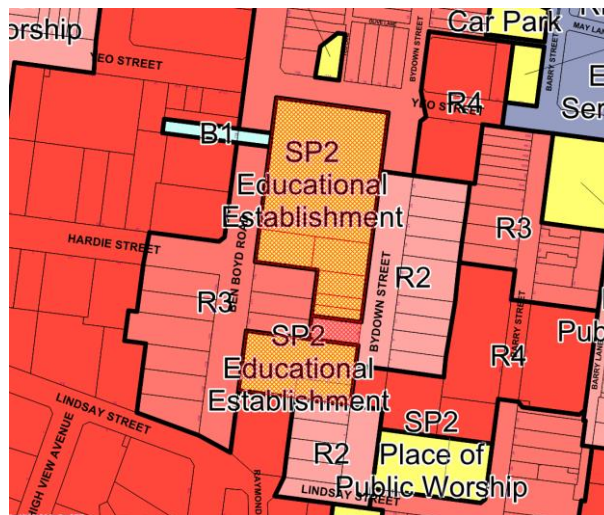


Figure 9. NSLEP 2013 Land use zoning map (subject site crosshatched).

Part of the site is identified as a Heritage Item (I0575) of local significance in Schedule 5 to NSLEP 2013. The heritage listing primarily relates to Buildings A constructed in a Federation Queen Anne style in 1886 and Building B constructed in an Inter-war Functionalist style in 1924.

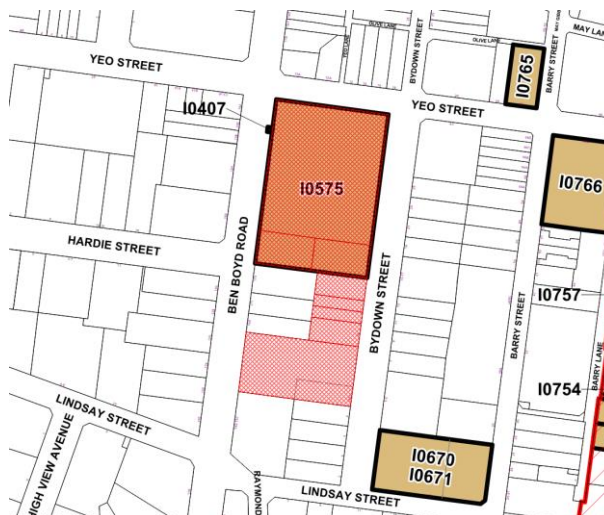


Figure 10. NSLEP 2013 Schedule 5 Heritage items (gold) (subject site crosshatched).

The site has a maximum permitted building height of 8.5m pursuant to Clause 4.3 in NSLEP 2013. The surrounding R2 Low Density Residential and R3 Medium Density Residential zoned land also has a maximum permitted building height of 8.5m. The surrounding R4 High Density Residential zoned land has a maximum permitted building height of 12m.



Figure 11. NSLEP 2013 Height of Buildings maps (subject site crosshatched).

There are forty (40) trees on the site and an additional thirty-six (36) street trees surrounding the site on Ben Boyd Road, Yeo Street and Bydown Street.

There is substantial short term drop-off and pick-up parking area located on Bydown Street with secondary drop-off and pick-up spaces on Yeo Street and Bydown Street. There are bus stops located on both sides of Ben Boyd Road which service several existing public and school bus services. There are also on-street accessible parking spaces located on Yeo Street and Bydown Street.

RELEVANT DEVELOPEMNT HISTORY

Development Application DA395/07 for the replacement of the existing 2.4 metre chain mesh boundary fence with a 1.8 metre steel security fence on Bydown Street, Yeo Street and Ben Boyd Road frontages of the school was approved under delegated authority on 31 October 2007.

Development Application DA131/07 for the demolition of an existing amenities block with construction of a new single storey multi-purpose building at the school with associated landscape works was approved under delegated authority on 5 July 2007.

Development Application DA410/12 for the construction of a prefabricated lightweight building containing 6 classrooms, the removal of 3 demountable classrooms and associated landscaping on the southern campus (kindergarten) of the school was approved by Council, following a Councillor Site Inspection on 8 April 2013.

Development Application DA395/15 for the addition of a new demountable classroom, the relocation of an existing demountable classroom and the removal of a Port Jackson Fig Tree on the Yeo Street frontage of the school was approved under Delegated Authority on 28 January 2016.

Development Application DA450/16 for the replacement of the existing 4 module demountable classroom with a 6 module demountable classroom in the northeastern corner of the school was approved under Delegated Authority on 13 March 2017.

RELEVANT APPLICATION HISTORY

A prelodgement meeting was held on 20 May 2022.

Date	Assessment
11 July 2022	The application was lodged with Council via the NSW Planning Portal.
20 July 2022	The application was notified in accordance with Council's Community Engagement Protocol from 29 July 2022 until 12 August 2022
5 August 2022	A site inspection was undertaken by Council Assessment Staff with the Applicant.
9 August 2022	The application was considered by the Design Excellence Panel with the Panel minutes issued 24 August 2022.
10 August 2022	Briefing with the Sydney North Planning Panel.
14 September 2022	A preliminary assessment letter was sent to the Applicant advising that the application could not be supported, raising concerns regarding the height variation, bulk and massing of Building L, streetscape and residential amenity impacts. Amended plans were requested.
2 November 2022	Briefing with the Sydney North Planning Panel.
16 November 2022	A meeting was held between Council Staff and the Applicant to discuss potential amendments.
25 November 2022	A meeting was held between Council Staff and the Applicant to discuss further potential amendments.
14 December 2022	Briefing with the Sydney North Planning Panel.
16 December 2022	Amended plans were lodged with Council via the NSW Planning Portal
19 December 2022	The amended application was renotified from until 13 January 2023 until 27 January 2023.
24 February 2023	Conditions provided to the Applicant for agreement.
14 March 2023	Report published to NSW Planning Portal

REFERRALS

Design Excellence Panel

The application was considered by the Design Excellence Panel on 9 August 2022 with minutes issued to the Applicant on 24 August 2022. The Panel did not support the proposed development in its current form (**Refer to Attachment 3**).

It is noted that there is not statutory requirement to obtain the advice of the Design Excellence Panel and they act in an advisory capacity. The Design Quality Principles are addressed under sub-section 3.36 of SEPP (Transport and Infrastructure) 2021 assessment later in this report. The amended plans received 15 December 2022 were considered to take into consideration the advice of the Panel.

Building

The application was referred to Council's Building Surveyors. The following referral advice was provided:

The buildings are classified by the NCC BCA as class 5 and 9b buildings with buildings A and B of Type B construction and building L of Type A construction.

The application is supported by a Building Code of Australia Pre-Construction Certificate Capability Statement for Crown DA Submission dated 9 December 2022 prepared by Philip Chun Building Compliance which concludes the proposed development can comply with the Deemed to Satisfy provisions and Performance Requirements of the NCC BCA.

The application is also supported by an Access Capability Statement for Crown DA dated 9 December 2022 prepared by Philip Chun Building Compliance which concludes that the proposed design can comply with the NCC BCA with regards to accessibility.

Given the proposed alterations to buildings A and B represents less than 50% of the buildings total volume upgrade of the building is not required pursuant to Clause 64 of the Environmental Planning & Assessment Regulations 2021.

As building L is a new building its construction is required to be in accordance with the NCC BCA.

Generally, the proposed development can comply with the NCC BCA, Volume 1.

A detailed assessment of compliance with the Building Code of Australia 2019 will be undertaken by an appropriately registered certifier at the Crown Certificate stage of the proposed development. Additionally, a Fire Safety Schedule is to be prepared by the certifier and accompany the Certification.

Standard building conditions were recommended.

Pursuant to s6.28 of the Act the development will be subject to a Crown Design Verification Certificate that certifies that the development complies with the NCC/BCA.

Health

The application was referred to Council's Environmental Health Officers who raised no objection to the proposed development. The following advice was provided:

Noise

There would be no change to the school bell volume or use with one speaker proposed to be relocated to account for the new building.

The external corridors providing access to the general learning spaces within the proposed new building are not anticipated to generate additional impact above the existing noise levels of the school and are therefore not expected to have adverse noise impact on sensitive receivers surrounding the site. The external corridors are used for access and not for gathering or teaching. There is an expectation that the day-to-day management from teachers would ensure that students move through these area promptly whilst keeping noise within acceptable levels. It is also noted that the soffit above the external corridors is proposed to be treated with an appropriate sound absorbing material to further minimise noise.

Nosie from play areas is expected to be similar to the existing levels. The proposed relocated playing field has a greater set back than the existing to the adjoining residential properties at Nos. 169, 171 and 173 Ben Boyd Road. There would be some additional noise where play spaces are to be re-established following the removal of the existing demountable teaching spaces, however, any noise would be similar to the noise levels before the demountables were installed and these areas do not directly adjoin any sensitive receiver.

The Acoustic Report makes recommendations regarding the required construction noise and vibration management plan, the location and design of plant and equipment including noise mitigation measures, and management measures. The recommendations of the report are to be adopted.

Contamination and Remediation

The Detailed Site Investigation and Remediation Action Plan prepared by Douglas and Partners is considered to address the relevant requirements for site contamination and remediation. In addition, refer to Section 4.6 of SEPP (Resilience and Hazards) 2021 assessment later in this report.

Standard conditions regarding construction management, remediation, waste removal and acoustics were recommended.

Heritage

The amended application was referred to Council's Heritage Conservation Planner given that part of the subject site is identified as a Heritage Item (I0575) of local significance in Schedule 5 to NSLEP 2013. The following referral advice was provided:

Heritage Status and Significance

The northern part of the subject site (Lot 1 DP 794832 and Lots 2-3 DP 794832) is identified as a Heritage Item (I0575) of local significance in Schedule 5 to NSLEP 2013. Whilst the whole site has social significance only buildings A and B have aesthetic and historic significance.

The main school building facing Ben Boyd Road (Building A) was constructed in 1886 in the Federation Queen Anne style and is a two storey institutional building constructed of brick with a gabled roof of slate with decorative terracotta and ridge capping. Features include semi-circular arched recessed panels and semi-circular arched door openings. Windows are generally rectangular and vertically proportioned.

Building B facing Bydown Road constructed in 1924 in the Inter-war Functionalist style is also painted brick with metal roof sheeting and has vertically proportioned timber framed windows.

Heritage Impact Assessment

The proposed development is considered to satisfy Clause 5.10 in NSLEP 2013 because the social significance of the site as a school, and the aesthetic and historical significance of the Federation and Interwar buildings (Buildings A and B) will be retained.

In detail:

Heritage Items – *The heritage significance and curtilage of the existing heritage significant buildings identified above will be retained.*

Form, massing and scale – *There is adequate separation between the proposed new building and the existing historic buildings on the site, in particular the adjoining building to the north, to ensure that the height of the proposed building does not overwhelm the scale of the existing historic buildings.*

The proposed new building is simple in form, with a parapet roof, and would not visually overwhelm or dominate the historic buildings on the site. The design and proportioning of the window, being vertical in presentation, are reflective of the adjoining historic building.

Whilst the massing of the proposed new building is larger than the adjoining historic building given its longer length and greater height, it is considered acceptable because of the physical separation between the buildings. The proposed 1.2m setback to Bydown Street is minimal, however, provides some landscaping whilst the adjoining historic building provides no setback to Bydown Street.

Roof form – *The proposed skillion roof for the new building is located behind a parapet wall, and whilst it differs from the pitched roofs of the historic buildings, is considered acceptable because its simple form would not visually compete with the more complex roof forms and detailing.*

Materials – *The proposed schedule of materials is reflective of the historic buildings on the site. The pale bricks for the proposed new building will be complimentary to the pale painted walls of Buildings A and B. The proposed sheet metal roof material is considered acceptable because it is used for a contemporary building and would not be visible from the public domain. The use of more detailed screening on the western elevation of the proposed new building is considered acceptable.*

Fences – *The proposed fencing is low scale and open in design, and therefore would not obscure views to the heritage item.*

Community and Public Buildings – *The proposed development would retain the significant fabric of the historic buildings.*

Standard heritage relating conditions were recommended.

Traffic

The amended application was referred to Council's Traffic Engineers. The following advice was provided:

No objection is raised to the proposed development because there would not be any additional demand imposed on the existing traffic network as the number of staff and students is to remain unchanged.

The amended waste collection area can be serviced from Bydown Street. The redundant vehicle crossing in front of No. 16 Bydown Street is to be removed to ensure that there is no net loss in parking spaces. Any additional waste collection signage may be considered following approval of the waste management plan.

The following condition was recommended:
B1 Construction Traffic Management Plan

Engineering

The amended application was referred to Council's Development Engineers who raised no objection to the proposed development. Standard and site specific engineering conditions were recommended.

Landscape

The amended application was referred to Council's Landscape Development Officer who raised no objection to the proposed development, including the removal of 15 trees subject to the implementation of the submitted Landscape Plan and standard and site specific tree related condition. The application would result in a net increase in tree canopy after the establishment of the replacement planting.

External Referral Advice

All external referral advice is addressed within this report below under the relevant legislation or policies that triggered referral.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979

The relevant matters for consideration under section 4.15(1) of the Environmental Planning and Assessment Act 1979, are assessed under the following headings:

4.15(1)(a) provisions of any environmental planning instruments, draft instruments, development control plans and the regulations.

STATE ENVIRONMENTAL PLANNING POLICY (PLANNING SYSTEMS) 2021

Chapter 2 State and Regional Development

The development application is identified as Regionally Significant Development pursuant to Section 4 of Schedule 6 to the Policy because the development application is made on behalf of the Crown and has a Capital Investment Value of over \$5 million (CIV\$21,564,770) as specified in the submitted CIV Report prepared by Turner and Townsend. The application does not meet the \$50 million threshold for State Significant Development.

The application is therefore required to be referred to the relevant Sydney district planning panel, being the Sydney North Planning Panel, for determination pursuant to Section 2.15 of the Policy.

STATE ENVIRONMENTAL PLANNING POLICY (BIODIVERSITY AND CONSERVATION) 2021

Chapter 2 Vegetation in Non-Rural Areas

Section 2.6 of the Policy specifies that a person must not clear declared vegetation in a non-rural area of the State without consent of Council. The Policy confers the ability for Council to declare vegetation that consent is required in a Development Control Plan. Section 16 of Part B in NDCP 2013 specifies declared trees for the purpose of the Policy.

The proposed development seeks consent to remove 15 declared trees, i.e., trees greater than 5m in height or canopy (except exempt species). Council's Landscape Development Officer has reviewed the proposed development and is satisfied that the removal of trees is acceptable having regard to the matters for consideration in Provision P3 of Section 16.2.2 of Part B in NSDCP 2013 as addressed in the referral advice provided above.

Additionally, to satisfy Section 2.10 of the Policy, the proposed tree removal would not exceed the biodiversity offsets scheme threshold in accordance with Section 7.4 of the Biodiversity Conservation Act 2016.

Therefore, the provisions of Chapter 2 of the Policy have been met.

Chapter 6 Water Catchments

The subject site is located a substantial distance, approximately 1.2km, from the Harbour and is unlikely to adversely impact the visual quality of the Harbour or its foreshores and would not adversely impact the health of the waterway or its tributaries.

STATE ENVIRONMENTAL PLANNING POLICY (RESILIENCE AND HAZARDS) 2021

Chapter 4 Remediation of land

Section 4.6 of the Policy requires the consent authority to consider whether the subject site is contaminated, and if so, whether the land is suitable for its intended use, or the extent of remediation required to make the site suitable for the intended use.

The subject site has historically been used for a school and, in the case of Lot 3 DP320586, for a residential dwelling.

The applicant has submitted a Detailed Site Investigation prepared by Douglas Partners that identified some levels of contamination above the Site Assessment Criteria (SAC) including:

- benzo(a)pyrene
- benzo(a)pyrene TEQ
- total recoverable hydrocarbons
- asbestos containing material

Consequently, a Remediation Action Plan was prepared by Douglas Partners outlining the remediation measures necessary to ensure that the subject site is rendered suitable for the proposed development. The Remediation Action Plan outlines the following preferred remediation methodology:

- Levelling and off-site disposal of soil as required to meet design levels.
- Capping of remaining contaminated fill in situ.
- Long term management of the contaminated fill in accordance with a legally enforceable long-term environmental management plan (EMP).

Provided that the remediation measures outlined in the Remediation Action Plan are adhered to, as required by conditions E15 and G4, the subject site would be suitable for the proposed development and therefore the consent authority can be satisfied that the requirements in Section 4.6 of the Policy are satisfied.

STATE ENVIRONMENTAL PLANNING POLICY (TRANSPORT AND INFRASTRUCTURE) 2021

Chapter 2 Infrastructure

Section 2.48 Determination of development applications—other development

The application was referred to AUSGRID, being the electricity supply authority, pursuant to Section 2.48 of the Policy. AUSGRID provided the following referral advice on 27 July 2022:

The development is to have regard to the proximity to existing overhead powerlines and the substation in the vicinity of the subject site. A copy of the referral advice is made available to the Applicant via the Planning Portal.

The amended application was referred pursuant Section 43 of the Regulations. No further comments were received.

Section 3.36 Schools – development permitted with consent

Permissibility

Development for the purpose of a school is permitted with consent in a prescribed zone. The subject site is zoned part R2 Low Density Residential and part SP2 Infrastructure (Educational Establishments) in NSLEP 2013. In accordance with Section 3.34 *Interpretation* of the Policy, both the R2 and SP2 zones are *prescribed zones* and therefore the proposed development is permitted with consent because development for the purpose of a school is permitted on land in a prescribed zone under Subsection 3.36(1) of the Policy.

In accordance with subsection (6) before determining the development application, the consent authority must take into consideration the following:

- (a) *the design quality of the development when evaluated in accordance with the design quality principles set out in Schedule 8, and*

Schedule 8 - Design Quality Principles

Design Principle	Consideration
<i>Principle 1—context, built form and landscape</i>	<p>The location of the proposed new building (Building L) has regard to the existing buildings on the site, in particular buildings A and B which are of heritage significance. The proposed three storey building accommodates administration and program functions, amenities and the library in a central location within the school which is also located adjacent to a main entry. Additional learning spaces are provided on the upper levels.</p> <p>The multistorey built form reduces the footprint of the proposed building (Building L) to increase outdoor play space and landscaping. Administrative facilities and the canteen are prioritised placement at ground level.</p> <p>Some consideration has also been given to the intended construction program noting that the school will need to remain operational throughout construction. The location of the proposed building allows the most intensive construction work to be undertaken away from the remainder of the school.</p> <p>The proposed new building also has a 1.2m set back to Bydown Street to incorporate additional landscaping to soften the built form.</p>

<i>Principle 2—sustainable, efficient, and durable</i>	<p>The application is accompanied by a ESD report prepared by Steensen Varming outlining the environmental sustainability initiatives incorporated into the proposed development.</p> <p>Access to natural daylight and ventilation has been reviewed in conjunction with ESD and NCC/BCA consultants. Operable windows have been specified in addition to mechanical ventilation and ceiling fans to reduce reliance on mechanical ventilation for heating or cooling.</p> <p>Where feasible certified recycled and reused materials with low embodied energy would be utilised.</p>
<i>Principle 3 —accessible and inclusive</i>	<p>The proposed development would meet the relevant access requirements as outlines in the submitted Access Report (and addendum) prepared by Phillip Chun and Associates and incorporates holistic accessibility upgrades to the existing buildings which currently are not accessible.</p> <p>Following the acquisition of No. 16 Bydown Street, the proposed north-south central access path provides a DDA compliant connection between the Kindergarten campus at the south of the school to the main campus at the northern end of the site.</p> <p>The proposed landscaping provides a mix of outdoor play spaces intended to provide equitable and inclusive play for all students.</p>
<i>Principle 4—health and safety</i>	<p>The proposed additional outdoor play areas and additional landscaping encourage social interaction and physical activity.</p> <p>Learning spaces within Building L would receive good levels of natural light and ventilation.</p> <p>The development has been designed having regard to Crime Prevention through Environmental Design principles.</p>
<i>Principle 5—amenity</i>	<p>The adoption of the Educational Facilities Standard and Guidelines (EFSG) ensures that the amenity of the school meets expected standards. The design of the proposed new building (Building L) would achieve good access to natural daylight and ventilation. The design of the hub layouts supports cross ventilation.</p> <p>The proposed development would increase the amount of outdoor space and incorporates additional landscaping throughout the site.</p>
<i>Principle 6—whole of life, flexible and adaptive</i>	<p>The adoption of the templates in the EFSG provides flexible and adaptive learning spaces in line with current best practices.</p>

Principle 7—<i>aesthetics</i>	<p>The design of the proposed development, in particular the proposed external finishes and materials are considered to be of a high quality. The external presentation of the proposed new building (Building L) within the Bydown Street streetscape respect to the existing character of the adjoining building (Building B) which is of heritage significance by utilising detailed external face brickwork and replicating the vertical presentation of the windows.</p> <p>The internal (western) elevation provides more playful aesthetics, incorporating greater detail and visual interest drawn from the colours and textures chosen in consultation with Aboriginal stakeholders. The internal elevation is adjacent to the internal play areas.</p> <p>Works to the existing buildings, particularly those of heritage significance seek to maintain the original aesthetic of these buildings with limited intrusions, primarily to improve access.</p> <p>The proposed landscaping works also contribute to the improved landscaped quality of the school and there would be an increase in tree canopy.</p>
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- (b) *whether the development enables the use of school facilities (including recreational facilities) to be shared with the community.*

The applicant has advised that at this stage school facilities are not proposed to be shared with the community. However, the proposed development may enable the future use of the facilities for the community.

As per subsection 3.36(9) of the Policy a provision of a development control plan that specifies a requirement, standard or control in relation to the development is of no effect, regardless of when the development control plan was made. Accordingly, NSDCP 2013 is of no effect.

Section 3.39 Temporary school structures

Three existing temporary learning facilities (dismountables) and a temporary facilities building are proposed to be utilised through varying stages of the construction program to facilitate the construction program whilst ensuring that the school remains operational.

The proposed temporary works would constitute exempt development in the opinion of the proponent under the subsection 3.39(1) of the Policy and therefore these temporary works do not form part of the subject development application.

Section 3.58 - Traffic Generating Development

The proposed development would not result in the educational establishment being able to accommodate 50 or more additional students and therefore this section does not apply.

The proposed development seeks to maintain the existing student numbers. The school currently has 851 students, with 2036 demand projections growing to 863 students. There is no proposed change to this capacity, noting there is consent in place for up to 922 students **(DA410/2012)**.

The application involves the removal of the existing demountable classrooms and construction of permanent classrooms in their place and therefore would not accommodate an increase in the number of students.

STATE ENVIRONMENTAL PLANNING POLICY (INDUSTRY AND EMPLOYMENT) 2021

Chapter 3 Advertising and Signage

The proposed development includes new building identification signage for the proposed new building (Building L) located adjacent to the existing entry to the school from Bydown Street. The proposed signage is located above the entry canopy and says “Neutral Bay Public School” in large format floating letters.



Figure 12. Photomontage of proposed signage located on Bydown Street

In accordance with Section 3.6, development consent must not be granted unless the consent authority is satisfied –

- (a) *that the signage is consistent with the objectives of this Chapter as set out in section 3.1(1)(a), and*

The proposed signage is consistent with the aims and objectives of the Chapter because it is compatible with the desired amenity and visual character of the area, having regard to the character of the existing school, and provides effective communication. The quality and finish of the proposed signage is also of a high standard and is compatible with the heritage listing of the property.

- (b) *that the signage the subject of the application satisfies the assessment criteria specified in Schedule 5.*

The assessment criteria in Schedule 5 are addressed below:

- 1 Character of the area** – The subject site is an existing school located largely within a residential area. The proposed signage is compatible with the existing and future character of the school.
- 2 Special areas** – The proposed signage has regard to the heritage listing of the school and the character of the adjoining building (Building B) which contributes to the heritage significance of the property.
- 3 Views and vistas** – The proposed signage would not detract from or obscure any notable views or vistas and would not conflict with any other signage.
- 4 Streetscape, setting or landscape** – The proposed signage is well proportioned having respect to the scale of development along Bydown Street. The proposed signage would not detract from the visual contribution of the surrounding landscaping and street trees. The proposed signage is located above the entry canopy, however, this is a single storey element and is flanked by buildings of a larger scale.
- 5 Site and building** – The proposed signage is compatible with the built form of the proposed new building (Building L) which it is to be affixed to and the adjoining existing building (Building B). The proposed signage has regard to the heritage listing of the school.
- 6 Associated devices and logos with advertisements and advertising structures** – Not applicable.
- 7 Illumination** – The proposed signage is not illuminated.
- 8 Safety** – The proposed signage would not diminish the safety of pedestrians, particularly children noting the location, bicyclists or other road users because the design of the signage would not be distracting and is set back from the roadway to avoid obscuring any sightlines.

North Sydney Local Environmental Plan 2013

Permissibility

The subject site is zoned part R2 Low Density Residential and part SP2 Infrastructure (Educational Establishments) in NSLEP 2013. Permissibility is satisfied under the provisions of SEPP (Transport and Infrastructure) 2021 above.

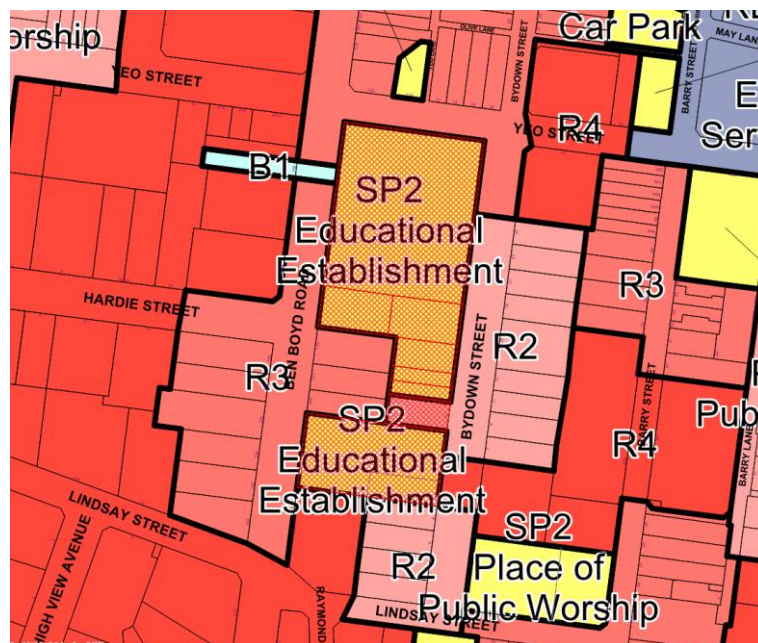


Figure 13. NSLEP 2013 Land use zoning map

Objectives of the zone

The objectives of the relevant land use zones are addressed below.

R2 Low Density Residential zone

- To provide for the housing needs of the community within a low density residential environment.
- To enable other land uses that provide facilities or services to meet the day to day needs of residents. [dot point 2]
- To encourage development of sites for low density housing, including dual occupancies, if such development does not compromise the amenity of the surrounding area or the natural or cultural heritage of the area.
- To ensure that a high level of residential amenity is achieved and maintained [dot point 4]

Dot points 2 and 4 are relevant objectives for the proposed development. The proposed development would support the ongoing operation of the existing school which provides education, being a day to day need, for children who live within the area. The proposed development ensures that a high level of residential amenity is maintained for surrounding residents by ensuring that reasonable levels of visual and acoustic privacy, solar access, and outlooks are maintained.

SP2 Infrastructure zone

- To provide for infrastructure and related uses.
- To prevent development that is not compatible with or that may detract from the provision of infrastructure.

The subject site is zoned SP2 Infrastructure and specified as an Educational Establishment. The proposed development for the purpose of a school is consistent with the zoning and provides the intended facilities and infrastructure for the community.

Clause 4.3 – Height of buildings

The subject site has a maximum permitted building height of 8.5m pursuant to clause 4.3(2) in NSLEP 2013.



Figure 14. NSLEP 2013 Height of Buildings maps (subject site crosshatched).

Extent of variation

The proposed development results in a variation to the maximum permitted building height for the proposed new building (Building L) and for internal works to two existing buildings (Building A & B) where the existing building height exceeds the current standard. The proposed variations are identified in the table below:

	Non-compliant Building Element	Control	Height	Variation
A.	Building A (existing) internal works	8.5m	10.7m	2.2m (26%)
B.	Building B (existing) internal works		9.7m	1.2m (14%)
C.	Building L southern roof parapet		13.3m	4.8m (57%)
D.	Building L eastern roof parapet (south)		14.2m	5.65m (66.5%)
E.	Building L eastern roof parapet (north)		12.6m	4.1m (48%)
F.	Building L northern roof parapet		12.1m	3.6m (42%)
G.	Building L western roof parapet		12.1m	3.6m (42%)
H.	Building L western parapet (southern stair)		10.3m	1.82 (21%)

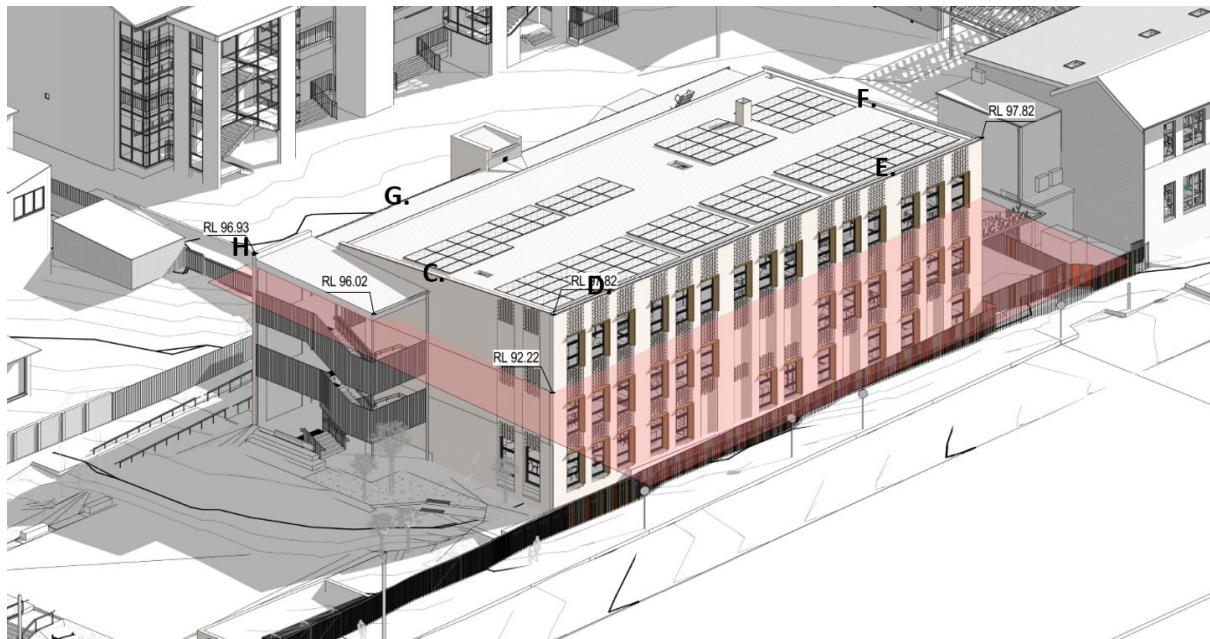


Figure 15. Height Plane Diagram indicating the extent of the proposed variations.

A written request to contravene the height of buildings development standard has been submitted and has been considered below.

Clause 4.6 – Contravention of a Development Standard

Extent of Variation

The proposed variations are identified in the written request and provides an accurate summary of the maximum extent of the proposed variations for various points throughout the existing and proposed buildings.

Clause 4.6(3)(a)

(3) *Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating—*

(a) *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and”*

The written request relies upon Test 1 outlined in *Wehbe v Pittwater Council* [2007] NSWLEC 827 at [42] (*‘Wehbe’*) to demonstrate whether compliance is unreasonable or unnecessary by demonstrating that the objective of objectives of the development standard are achieved notwithstanding noncompliance with the development standard.

The objectives of the development standard are addressed below:

- (1)(a) to promote development that conforms to and reflects natural landforms, by stepping development on sloping land to follow the natural gradient,*

The land falls from north to south through the length of the footprint of the proposed building. It is also noted that the land falls from west to east towards Bydown Street. The location of proposed Building L on the site has regard to the fall of the land and adjoins the proposed north-south Disability Discrimination Act compliant pathway that adjoins the proposed building to the rear and provides at grade access to the internal floor levels.

The location of the proposed extent of the building footprint seeks to minimise cut and fill and in turn reducing the potential height of the building. The internal floor level closely aligns with the existing ground level to the west at the middle of the building where the potential height variation is more sensitive given the proximity of the adjoining dwellings to the rear (No. 171, 173 and 175 Ben Boyd Road). The external covered staircases have lower roof levels and step down towards the south and west to minimise potential impacts.

The proposed alterations and additions to the existing buildings (Buildings A and B) are internal and therefore do not alter the relationship to the natural landforms.

- (1)(b) to promote the retention and, if appropriate, sharing of existing views,*

The subject site is located within a urban environment and no notable views have been identified. In particular, no relevant view corridors or vistas are identified in the Forsyth Neighbourhood character statement in Part C of NSLEP 2013.

- (1)(c) to maintain solar access to existing dwellings, public reserves and streets, and to promote solar access for future development,*

The written request and supporting shadow analysis demonstrates that the proposed development, notwithstanding the variations, would reasonably maintain solar access to the surrounding dwellings and public spaces.

The subject site directly adjoins three dwelling houses to the west (Nos. 171, 173 & 175 Ben Boyd Road) which have private open space and living areas facing the site. The submitted solar analysis has identified the location of areas of private open space and the use of any rooms within the dwellings that are potentially impacted.

The proposed new (Building L) is located to the northeast of these dwellings and would result in minor additional overshadowing during the morning hours in mid-winter. The overshadowing would impact portions of the rear private open space of the dwellings and the east facing kitchen window of No. 171 Ben Boyd Road. The overshadowing caused by proposed Building L ceases by 9:30am and ensures that a minimum of 3 hours solar access is maintained to the private open space and primary living area of the respective dwellings.

The subject site is located opposite dwelling houses and multi-dwelling housing located on the eastern side of Bydown Street. Building L is located to the west opposite these dwellings (Nos. 9, 11, 13 and 15-17) and would result in minor additional overshadowing during the afternoon hours in mid-winter. The overshadowing caused by Building L commences at 2:00pm, however, would affect only the front garden areas of these dwellings and would not have any material impact on the existing solar access to the private open spaces and primary living areas of the respective dwellings.

The overshadowing to Bydown Street itself from approximately 12pm onwards in mid-winter is noted, however, is of little consequence given that the public space is not a recreational area.

The proposed alterations and additions to existing buildings A and B are internal and therefore would not cause any additional overshadowing.

(1)(d) to maintain privacy for residents of existing dwellings and to promote privacy for residents of new buildings,

The proposed new building (Building L) is setback a minimum of 6.9m from the western boundary of the subject site adjoining the dwellings at Nos. 171 and 173 Ben Boyd Road. A minimum of 12m building separation is provided to the rear glass line of the dwellings which adjoin the building footprint of Building L. The dwelling at No. 169 Ben Boyd Road is located further to the south and is not likely to be impacted.

The external circulation spaces and stairwells are located on the western side of the building and would have the potential to overlook these dwellings. Accordingly, external privacy screening has been incorporated across the western edge of the external corridors and stairwells to minimise overlooking to the adjoining dwellings.

A 1.2m wide landscaped buffer has been incorporated at ground level adjoining the rear boundaries of the directly adjoining dwellings to the west which would provide further screening between the proposed new building and the adjoining dwellings, including private open spaces.

The proposed alterations and additions to the existing buildings (Buildings A and B) are internal and therefore would not cause any additional privacy impacts.

(1)(e) to ensure compatibility between development, particularly at zone boundaries,

The design and composition of the street elevation draws cues from the adjoining building to the north (Building B) which is of heritage significance. The proposed 1.2m landscaped setback to Bydown Street assists in breaking down the scale of the building at the street wall and contributes to the landscaped quality of the area.

The significant building separation distances and privacy treatments to the rear (west) of building L seeks to ensure that the proposed building, notwithstanding the height variations, is compatible with the adjoining residential dwellings to the west (Nos. 169, 171 & 173 Ben Boyd Road) which are located on land zoned R3 Medium Density Residential.

- (1)(f) to encourage an appropriate scale and density of development that is in accordance with, and promotes the character of, an area.*

The proposed new building (Building L) is located within an existing school site. The school is located in a predominantly residential area known as the Forsyth Neighbourhood in the NSDCP2013 character statements, however, some regard is to be given to the differing although compatible uses and therefore different building typologies.

The multistorey form of Building L minimises the building footprint, having the intended effect of increasing the amount of ground level outdoor space from 4.2sqm to 6.9sqm per student. The height of Building L is consistent with other school buildings on the site including Buildings A, B and J, and in particular when viewed within the Bydown Street streetscape would be commensurate with the height of the building B adjoining directly to the north. The proposed new building within the streetscape would inevitably introduce an additional building mass, however, is of a high quality built form being compatible with the character of the existing school site. The design of the roof form minimises the overall height of the building.

The bulk and scale of Building L has been minimised where feasible having regard to the standard hub layouts and EFSG requirements.

- (1)(g) to maintain a built form of mainly 1 or 2 storeys in Zone R2 Low Density Residential, Zone R3 Medium Density Residential and Zone E4 Environmental Living*

This objective is not relevant to the proposed development because the buildings where the variations occur are located on land zoned SP2 Infrastructure.

Clause 4.6(3)(b)

- (3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating—*
- (b) that there are sufficient environmental planning grounds to justify contravening the development standard.*

The following relevant environmental planning grounds are provided on Pages 26 & 27 of the written request to justify the contravention of the development standard:-

- The current significant shortfall of play space (4.49m²) is well below the recommendation of 10m² per student. The variation from the height development standard enables the freeing up of the ground plane to provide approximately 7m² of play space per student (2.51m² increase per student). The absence of the height variation would mean the new learning spaces would occupy additional play space at ground level and result in a poor planning, design, and community outcome. This achieves the following key objectives in the Act and NSLEP noted below in italics.*

- *The proposed mass and scale of proposed Building L is driven by the need to upgrade the out-dated learning facilities on the site to achieve compliance with the EFSG requirements and hub layouts and respond to the drivers set out in the Treasury approved Business Case for the project dated 31 January 2020. This achieves the following key objectives in the Act and NSLEP as follows:*
 - *in the Act – the objective in 1.3(a) to ‘promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State’s natural and other resources’; and*
 - *in the NSLEP – the aim in clause 1.2(aa) to ‘protect and promote the use and development of land for arts and cultural activity, including music and other performance arts’.*
- *The contravention of the standard enables the provision of additional learning spaces which achieve contemporary requirements. This achieves the following key objectives in the Act and NSLEP:*
 - *in the Act – the objective in 1.3(c) to ‘promote the orderly and economic use and development of land’; and*
 - *in the NSLEP – the aim in clause 1.2(a) to ‘promote development that is appropriate to its context and enhances the amenity of North Sydney community and environment’.*
- *The extent of the variation of Building L has been reduced since the original submission by 0.641 metres. This reduction has resulted from removal of the COLA at the southern end of Building L and associated overhang on level 2, internal spatial replanning, redesign of the external stairs and replanning of the servicing including lift shaft. This has allowed a reduction in the overall mass of the building. This achieves the following key objectives in the Act and NSLEP:*
 - *in the Act – the objective in 1.3(g) to ‘promote good design and amenity of the built environment’; and*
 - *in the NSLEP – the aim in clause 1.2(b)(i) to ‘ensure that new development is compatible with the desired future character of an area in terms of bulk, scale and appearance’.*
- *The shadow analysis prepared by DesignInc confirms the residential properties at 169- 173 Ben Boyd Road (west of the site) and the eastern side of Bydown Street continue to receive a sufficient level of solar access between 9.00am and 3.00pm mid-winter, notwithstanding the proposed height variation for Building L. This achieves the following key objectives in the Act and NSLEP: –*
 - *in the Act – the objective in 1.3(g) quoted above; and*
 - *in the NSLEP – the aim in clause 1.2(b)(i) quoted above and 1.2(d)(ii) to ‘ensure that non-residential development does not adversely affect the amenity of residential properties and public places, in terms of visual and acoustic privacy, solar access and view sharing’.*

- *The upgrades afford a high level of privacy through separation distances, materiality which responds to the heritage context of the site/area, landscape hedge buffer at the ground floor eastern elevation of Building L, existing trees in the mid-west of the site and varied treatment of the eastern and western facades of Building L. This achieves the following key objectives in the Act and NSLEP:*
 - *in the Act – the objective in 1.3(g) quoted above; and*
 - *in the NSLEP – the aim in clause 1.2(d)(i) and 1.2(d)(ii) quoted above*
- *There are no view corridors affecting the site or nearby in the locality. This achieves the following key objectives in the Act and NSLEP:*
 - *in the Act – the objective in 1.3(g) quoted above; and*
 - *in the NSLEP – the aim in clause 1.2(d)(ii) quoted above.*
- *The internal alterations and additions to Buildings A and B do not result in any environmental impacts as there is no change to the existing envelopes/height of those buildings. However, they have been considered in this request for the avoidance of doubt/for completeness. This achieves the following key objectives in the Act and NSLEP:*
 - *in the Act – the objective in 1.3(c) and 1.3(f) quoted above; and*
 - *in the NSLEP – the aim in clause 1.2(a), b(ii) and d(i) quoted above.**and;*
- *The contravention does not detract from the development's achievement of the objective of the height development standard and the objectives of the zone (discussed further below).*

The environmental planning grounds advanced in the written request are considered to sufficiently justify the variation. The grounds are specific to the development and relate to the cause of the variations rather than seeking to promote the benefits of the development as a whole. Substantially, the minimisation of the potential building footprint by providing a multi-storey building, notwithstanding the consequential variation, provides for a better outcome by increasing the quality and quantity of outdoor play space and landscaping for the school. The proposed built form has been managed by being well located, sited, and designed to minimise potential amenity impacts to the surrounding dwellings and ensures that the addition of the building is compatible within its context. The proposed development would have a positive social benefit for the community.

Clause 4.6(4)

Clause 4.6(4) states:

- (4) *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.*

Clause 4.6(4)(a)(i)

It is considered that the consent authority can be satisfied that the applicant's written request adequately addresses the matters required to be demonstrated by subclause (3) as discussed in detail above.

Clause 4.6(4)(a)(ii)

It is considered that the consent authority can be satisfied that 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.

Objectives of the standard

It is considered that the consent authority can be satisfied that the proposed development is consistent with the objectives of the height of building development standard.

It is useful to consider the interpretation that the test of "consistency" is less onerous than that of "achievement" as outlined in *Moskovich v Waverley Council* [2016] NSWLEC 1015 [53] ("*Moskovich*").

The applicant's written request assessed above relied on *Wehbe* Test 1 to demonstrate that compliance is unreasonable or unnecessary by demonstrating that the objectives of the development standard are achieved notwithstanding noncompliance with the development standard. Consistent with *Moskovich*, should it be found that the written request is acceptable then the proposed development would also be consistent with the objectives of the standard.

Notwithstanding this comparison, the proposed development is considered to be consistent with the objectives of the standard. The proposed development reasonably responds to the topography of the site and minimises cut and fill. The proposed development promotes the retention of views, and maintains solar access and reasonable levels of privacy to surrounding properties and the public domain. The proposed development would be compatible with surrounding development having an appropriate bulk and scale, consistent with the nature of the development and the existing character of the school and surrounding area.

Objectives of the zone

The land where the variations occur is zoned SP2 Infrastructure (Educational Establishment). The proposed development satisfies the objectives of the zone as addressed above.

Clause 4.6(4)(b) Concurrence of the Minister

The Sydney North Planning Panel as consent authority may assume concurrence with the Minister as outlined in Planning Circular PS 20-002 dated 5 May 2020.

Clause 5.10 – Heritage conservation

The northern part of the subject site (Lot 1 DP 794832 and Lots 2-3 DP 794832) is identified as a heritage item (I0575) of local significance in Schedule 5 to NSLEP 2013.

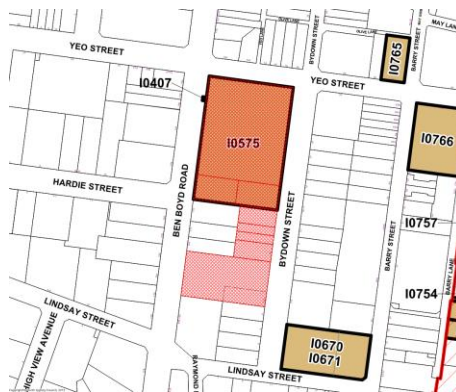


Figure 15. NSLEP 2013 Schedule 5 Heritage items (gold) (subject site crosshatched).

Council's Conservation Planner is satisfied that the proposed development would not adversely impact the heritage significance of the heritage item as addressed in the referral advice provided above.

The application includes an Aboriginal Due Diligence report confirming that there are no sites recorded within the site or the development footprint.

Clause 5.21 – Flood Planning

The subject site is not identified as a being within the flood planning area.

Clause 6.10 – Earthworks

Subclause 6.10(3) in NSLEP 2013 requires the consent authority to consider the following matters:

- (a) *the likely disruption of, or any detrimental effect on:*
 - (i) *drainage patterns and soil stability in the locality of the development, and*
 - (ii) *natural features of, and vegetation on, the site and adjoining land,*

The proposed earthworks are minimised by balancing the proposed cut and fill on the site to construct the proposed new building and the playing field to the south having regard to the fall of the land from north to south. All substantial earthworks are set back from the site boundaries. The proposed development would not require any significant intervention or impact to natural features or vegetation, accept where deemed acceptable, on the subject site and would not affect the adjoining land.

(b) *the effect of the development on the likely future use or redevelopment of the land,*

The proposed earthworks would facilitate the continued development of the school and would not detrimentally impact the potential future development of surrounding land.

(c) *the quality of the fill or the soil to be excavated, or both,*

The applicant has submitted a Detailed Site Investigations report and Remediation Action plan that confirms the quality of soil material proposed to be excavated and ensures that any contamination is suitably remediated.

(d) *the effect of the development on the existing and likely amenity of adjoining properties,*

The proposed development balances the extent of cut and fill to minimise the height of the building and ensures any substantial excavation is set back from shared boundaries. The proposed earthworks are not expected to give rise to any amenity impacts affecting adjoining properties.

(e) *the source of any fill material and the destination of any excavated material,*

Any excavated material to be removed from the site would be disposed of at a facility legally able to receive any such materials. The submitted Remediation Action Plan addresses these requirements. A waste management plan is to be prepared prior to commencement of works.

(f) *the likelihood of disturbing Aboriginal objects or relics,*

The proposal is unlikely to disturb any Aboriginal objects or relics. The existing site has been previously developed and does not include any remanent natural areas as indicated in the Aboriginal Due Diligence report. The recommended conditions of consent includes the need to adopt a protocol should works find any potential Aboriginal objects or relics.

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

The site is not located in close proximity to a waterway or environmentally sensitive area.

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

Relevant standard and site specific conditions have been recommended that seek to minimise any potential adverse impacts of the proposed development.

OTHER ACTS, REGULATIONS AND POLICIES

Environmental Planning and Assessment Regulation 2021

As advised by Council's Building Surveyor, an upgrade for Buildings A and B is not required under Section 64 *Consent authority may require upgrade of buildings* of the Regulations because the proposed works do not involve works to more than half of the total volume of those buildings and the current measures are not considered inadequate.

Section 294 *Crown Development* of the Regulations defines persons prescribed as the Crown as:

- (a) *a public authority, other than a council,*

The land is owned by the Office of Education/NSW Department of Education which is a public authority and therefore Crown land.

North Sydney Local Contributions Plan 2020

In accordance with Section 1.3.2 of the Plan, development for the purpose of a Government Schools established under the *Education Act 1900* are exempt from contributions or levies.

BIODIVERSITY CONSERVATION ACT 2016

The purpose of the Biodiversity Conservation Act 2016 (BC Act) is to maintain a healthy, productive and resilient environment for the greatest well-being of the community, now and into the future, consistent with the principles of ecologically sustainable development.

The proposed development is unlikely to significantly affect threatened species as required under Section 7.2 of the BC Act because:

- a) The proposed development is unlikely to significantly affect threatened species or ecological communities, or their habitats, according to the test in section 7.3;

Comment: The application is accompanied by an Ecological Assessment Report prepared ADE Consulting which outlined the potential threatening processes and their impact on the threatened species that are potentially found on site. It was concluded that there would not be a significant threat.

- b) The proposed development would not exceed the Biodiversity Offset Scheme Development Thresholds pursuant to Section 7.4 of the Act;
- c) The subject site is not located in a declared area of outstanding biodiversity value.

ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999

A referral to the Australian Government Minister for the Environment is not required as the proposed development does not involve actions that are likely to have a significant impact on 'matters of national environmental significance'. The application is accompanied by an Ecological Assessment Report prepared ADE Consulting that undertook a review of threatened species that occur within the vicinity of the site and concluded that the proposed development does not have a significant impact. The existing trees proposed to be removed do not constitute any threatened or endangered ecological community identified in an EPBC list.

SYDNEY WATER ACT 1994

Section 78 Consent authority to notify Corporation of development and building applications

The application was referred to Sydney Water in accordance with Section 78 of the Act. Sydney Water provided the following referral advice on 10 August 2022.

The proposed development may require amplifications, adjustments, and/or minor extensions to the existing potable water supply available the existing watermain in Yeo Street and the existing wastewater servicing main available within the subject site.

The proponent is required to obtain a Compliance Certificate in accordance with Section 73 of the Act which will ensure detailed requirements will be provided prior to the commencement of works (Refer to Condition D6 *Sydney Water Approvals*)

The amended application was rereferred on 21 December 2022. Sydney Water confirmed that the advice issued on 10 August 2022 remains applicable.

Section 4.15(1)(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,

Built Environment

The proposed additional building would have an acceptable impact on the streetscape and the surrounding properties. The form, massing and scale of the building has been considered having regard to the need to replace the existing temporary learning spaces with fit for purpose permanent facilities and increasing the amount of outdoor play space for the students.

The design quality and aesthetics of Building L draws elements from the adjoining historic building and would have a positive contribution to the streetscape.

The proposed development reasonably responds to the cultural and aesthetic heritage significance of the subject site, identified as a heritage item, and the retains the significant fabric of the existing historic buildings on the site.

Natural Environment

The proposed development requires the removal of 15 trees and has been assessed by Council's Landscape Development Officer and is deemed acceptable in the circumstances to facilitate the redevelopment of the school. The proposed 54 replacement tree plantings would result in a net increase in tree canopy on the site. The proposed tree removal would not result in a reduction in biodiversity within the area or significantly impact any threatened species or their habitat.

The proposed development would not adversely impact the environment including surrounding bushland or watercourses within the vicinity of the site.

Crime Prevention Throughout Environment Design

The proposed development incorporates principles to promote crime prevention and safety through the design and management of the built environment.

Construction Management

The proposed works will be staged to ensure that the school remains operational during construction. The preliminary construction management program prepared by Johnstaff is considered acceptable. The staging requires certain temporary structures to be installed on or relocated within the school site, however, the installation of temporary structures would constitute exempt development under section 3.39 of SEPP (Transport and Infrastructure) 2021.

Relevant agreed conditions of consent include the preparation of a Construction Traffic Management Plan, Construction Management Plan and Construction Noise Management Plan to manage potential construction impacts. Other conditions relevant to the effective and safe operation and management of the site and local environment.

Traffic and Parking

The proposed development does not seek to increase the number of staff or students. The existing school has approximately 851 students with the 2036 demand forecast to increase student numbers to 863. Changes to the existing on street parking and drop off area are not anticipated to be required.

The existing school does not have any on-site parking for staff and the proposed development does not seek to introduce parking. As there is no increase proposed increase in student numbers and consequently no increase in staff numbers, the proposed development would not increase the existing demand for on street parking. The proposed development includes additional bicycle parking and introduces end-of-trip facilities for staff which encourages commuting via active modes of travel. There are also ample public transport services within vicinity of the site.

Residential Amenity

The potential amenity impact caused by the proposed development have been considered in this report and have informed the amendment of the application on 15 December 2022. The proposed development, in particular the construction of Building L would result in some amenity impacts for surrounding properties. The three directly adjoining dwellings located on Ben Boyd Road are likely to be the most effected with some additional overshadowing experiences in mid-winter and a notable change to the existing outlook from these properties.

Similarly, the additional overshadowing to the adjoining dwellings on the eastern side of Bydown Street would experience some additional overshadowing in mid-winter although this would not materially impact the amenity of these dwellings.

The proposed development is likely to change the timing and nature of noise emanating from the school with buildings and outdoor play spaces relocated or reconfigured, however, is not anticipated to generate noise levels above the existing levels or outside of anticipated acceptable levels for a school. There would be no noise impacts outside of school (and OOSH care) hours or on weekends.

The relocation of the existing playing field further from the shared boundaries would have some positive impact. The north-south pathway, and similarly, the external corridors on the western side of proposed Building L traverses the rear boundary of the directly adjoining dwellings. The use of the north-south pathway, being at ground level, is unlikely to have a significant impact, however, the use of the elevated external corridors would have the potential to have an adverse impact. In both circumstances, being a primary school students generally move around the campus less and are generally in groups accompanied by teachers who would be able to manage any excessive noise.

The use and placement of amplified speakers is also to be designed to mitigate noise emanation.

Social

The proposed development would have a positive social impact on the community by providing fit for purpose facilities and increase outdoor play space for an existing public primary school.

Economic

The proposed development does not seek to increase the number of staff, however, would have a temporary benefit during construction employing relevant tradespersons and consultants.

Section 4.15(1)(c) the suitability of the site for the development,

Educational Establishments are permitted on the subject site. The subject site contains an existing school. The existing school currently relies on demountable classrooms and some outdated classrooms. The proposed development would accommodate the existing students within permanent buildings that have been designed in accordance with *Educational Facilities Standards & Guidelines* prepared by NSW Department of Education whilst increasing the amount of outdoor play space for the students. The school is located within a predominantly residential area and the design of the proposed development is considered to be compatible with the surrounding amenity and character of the area.

Section 4.15(1)(d) any submissions made in accordance with this Act or the regulations,

The development application was notified on 20 July 2022 in accordance with Council's Community Engagement Protocol from 29 July 2022 until 12 August 2022. Ten submissions were received objecting to the proposed development and one submission was received in support of the proposed development.

Amended Plans were received on 16 December 2022 which incorporated the following amendments:

- Increased setback for Building L to Bydown Street.
- Internal reconfiguration of Building L to shorten the length of the building to the south and remove the undercroft form.
- Amendments to the floor to ceiling height and roof form to reduce the height of the Build L.
- Relocation and amendments to external mechanical plant and equipment enclosures and waste storage area, including consequential amendments to the landscaping.

The amended plans received on 19 December 2022 were renotified in accordance with Council's Community Engagement Protocol from 13 January 2023 until 27 January 2023. A further eight submissions were received objecting to the amended proposed development.

The issues raised in the submissions received in response to both notified schemes remain relevant matters for consideration and are included in the summary of submissions below addressed below. A copy of all of the submission have also been provided to the Panel for consideration.

Building L

- *Building L breaches the maximum permitted building height in Clause 4.3 of NSLEP 2013.*

The application is supported by a satisfactory written request in accordance with Clause 4.6 of NSLEP 2013 to address the proposed variation.

- *The written request made pursuant to clause 4.6 in NSLEP 2013 to contravene the development standard is unsatisfactory for the following reasons:*
 - *Objective C regarding solar access is not met*
 - *Objective D regarding privacy is not met*
 - *Objective F regarding bulk and scale is not met*

The submitted amended written request (Attachment 2) is considered to satisfactorily demonstrate that the matters required in subclause 4.6(3) in NSLEP 2013 have been satisfied. The objectives of the height of buildings development standard have been achieved notwithstanding the variation and there are sufficient environmental planning grounds to justify the variation as address previously in the report. Approval of the variation would be in the public interest.

- *The bulk and massing of Building L is out of scale with the Bydown Street streetscape.*

The bulk and massing of Building L would change the existing streetscape of Bydown Street by nature of its addition to the streetscape, however, is considered to be compatible with the surrounding area. The bulk and massing, notwithstanding the variation is considered to be acceptable in the context given the size of the site and the use of the building as a school. There is a degree of understanding that the building, being institutional and not another residential property, would not directly reflect the form or character of the surrounding low density residential properties. The Bydown Street elevation draws elements from the adjoining historic school building and incorporates fine grain detail and balanced fenestration proportioning to create visual interest and breakdown the scale of the building.

- *Building L should be set back from Bydown Street given its size.*

A greater setback of 1.2m has been incorporated in the amended plans lodged 15 December 2022. The setback whilst not significant, does provide sufficient space to establish landscaping along the length of the building to soften the building form.

- *The length of Building L is excessive as viewed within the context of the Bydown Street streetscape.*

The length of the building has been marginally reduced in the amended plans lodged 15 December 2022 and is considered acceptable in the context of the Bydown Street streetscape noting the size of the subject site. There are sufficient breaks in the built form along Bydown Street to provide visual breaks between buildings and to support landscaping within the site.

- *The proposed flat roof is unsympathetic to the existing roof typologies on the site.*

The proposed flat roof form with a parapet is simple in nature and does not seek to dominate or compete with the more intricate pitched roof form of the adjoining building historic building to the north (Building L).

- *The brick detailing for Building L whilst attractive does not mitigate the perceived bulk and scale of the building.*

The proposed brick detailing is well considered, however, notwithstanding, the bulk and massing of the building is considered acceptable, and these elements seek to create visual interest and avoid sparse blank walls.

- *Location of Building L fragments play space.*

The design of proposed Building L seeks to minimise the footprint of building on the site by increasing the amount of outdoor play space per student and allows the removal of the existing temporary learning spaces at the northern end of the site which currently prevents the use of these areas as play spaces.

Whilst some play areas are smaller in size than others, it is appropriate to have play areas of varying sizes and to promote inclusive and equitably play for all students.

- *The size of Building L appears to be driven by adopting the standard building templates and is not a site specific response. There is potential to site the additional massing at the northern end of the site adjoining Yeo Street.*

The submitted design report explored alternative options including varying building masses across the site. The supporting documentation lodged with the amended plans on 15 December 2022 has also addressed the reasoning for the location of Building L and outlined why further development at the Yeo Street end of the site unfavourable at this time.

The design of the building adopts the Department of Education EFSG templates and seeks to provide flexible learning spaces developed based on current teaching and pedagogy methodology. The resulting building form, and in particular the height has been driven by intention to increase the amount of outdoor play space by providing an efficient building form, also minimising its potential footprint.

- *The proposed setback to rear (western) boundary with adjoining dwelling houses is insufficient given the size of the proposed building.*

The proposed setback to the adjoining dwellings achieves a minimum building separation of 12m to the nearest glass line which is considered to be sufficient.

- *Reduction in height in the amended plans insignificant/insufficient.*

The reduction in building height in the amended plans lodged 15 December 2022 is approximately 600mm. Whilst the numerical reduction may not be significant, the amended plans have reduced the potential amenity impacts to the adjoining properties.

- *The colour and finishes of the proposed metal batten screening is not in keeping with the surrounding character.*

The proposed colours and finishes are intended to be drawn from the surrounding landscape. This element is located on an internal elevation within the school site and would not be highly visible. It is considered appropriate that this element is more colourful in comparison to the external finishes for the remainder of the building which are designed to be sympathetic to the adjoining historic building when viewed as part of the streetscape.

Heritage

- *The built form of Building L is unsympathetic to the heritage significance of the historic school buildings.*

Council's Conservation Planner is satisfied that the proposed development is sympathetic to the heritage significance of the site and building and would not detract from the heritage significance of the heritage item.

- *The proposed flat roof is unsympathetic to the historic school buildings.*

The proposed flat roof form with a parapet is simple in nature and does not seek to dominate or compete with the more intricate pitched roof form of the adjoining building historic building to the north (Building L).

Design Quality Principles for Schools

- *Inconsistent with Design Quality Principles for Schools*

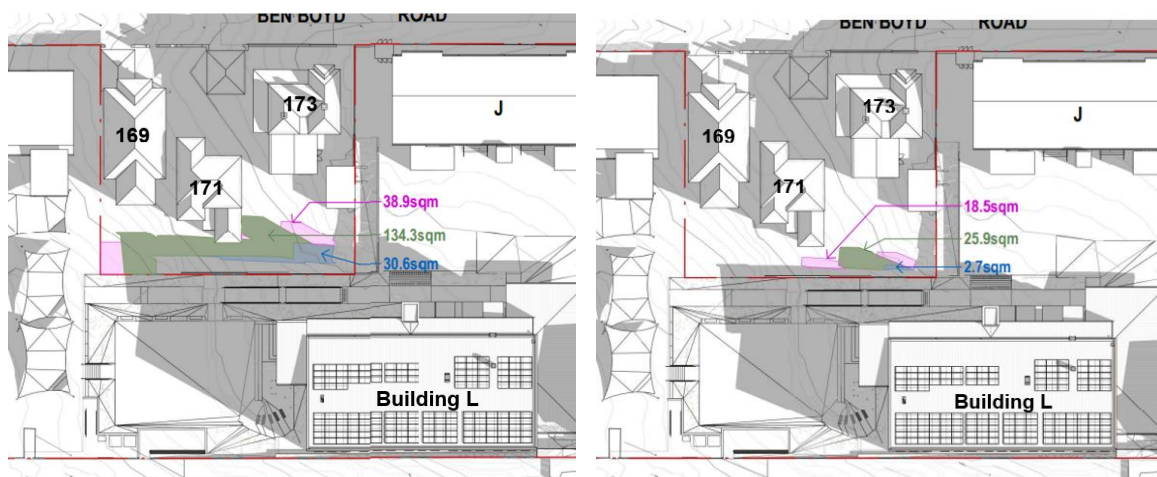
The proposed development has been evaluated against the design quality principles in Schedule 8 of SEPP (Transport and Infrastructure) 2021 earlier in the report and is considered satisfactory.

Residential Amenity

Overshadowing

- *Proposed Building L would cause overshadowing to the adjoining properties to the west facing Ben Boyd Road.*

The overshadowing caused by proposed Building L to the adjoining properties at Nos. 169, 171 and 173 would not materially impact the amenity of the private open spaces and living areas. Any overshadowing to eastern living area windows ceases before 9:30am in mid-winter and any overshadowing to the rear private open space ceased by 10:00am with three hours or more solar access retained throughout the day.



Figures 16 & 17. 9:30am & 10:00am mid-winter shadow diagram

- *Proposed Building L would cause overshadowing to the adjoining properties to the east facing Bydown Street.*

The overshadowing caused by proposed Building L to the adjoining properties at Nos. (Nos. 9, 11, 13 and 15-17 Bydown Street) would not materially impact the amenity of the private open spaces and living areas. The overshadowing occurs after 2:00pm and would affect the front elevations of these dwellings as opposed to any private open spaces and living area primarily located at the rear of the properties.

- *The amended application does not reduce the extent of overshadowing.*

The amended application documents the minor reduction in the extent of overshadowing in comparison to the originally submitted scheme. This is identified highlighted pink in the submitted amended solar study.

Privacy

- *Proposed Building L would allow overlooking to the adjoining properties to the west facing Ben Boyd Road.*

The western elevation of proposed Building L has been designed to mitigate overlooking to the adjoining dwelling houses to the west (Nos. 169, 171 and 173 Ben Boyd Road) by incorporating high-sills for the classroom windows, solid walls and decorative battens to screen the external corridors and staircases. Additional landscaping screen is proposed adjacent to the rear boundaries of the dwellings to further minimise overlooking.

- *Proposed Building L would allow overlooking to the adjoining properties to the east facing Bydown Street.*

Proposed Building L achieves significant building separation to the adjoining dwellings on the eastern side of Bydown Street by virtue of the road carriage and would not materially impact the privacy of these properties.

- *The proposed excavation and filling of the land to construct the new playing field would result in the ground level being increased in some areas and resulting in privacy impact to the adjoining dwellings to the west.*

The proposed land level changes to the south of proposed Building L to construct the playing field and for the north-south accessible pathway have been undertaken in consideration of the adjoining land levels. Additional landscaping is proposed adjacent to the rear boundaries of the dwellings to further minimise overlooking.

Acoustics

- *The proposed north-south pathway is located adjacent to the rear of the adjoining dwellings to the west and would result in excessive noise impacts for the adjoining dwellings given the large number of students moving past.*

The proposed pathway is located at ground level and is unlikely to result in excessive noise.

The potential impact is considered acceptable.

- *The elevated open corridors and staircases for Building L would result in excessive noise impacts for the adjoining dwellings.*

The proposed external corridors and staircases along the western elevation would have the potential to cause some noise impacts given these are elevated, however, given the nature of the school it is considered that appropriate management would ameliorate potential excessive noise. Being a primary school students move to and from the teaching spaces less often and do so in groups accompanied by a teacher who would be able to manage any excessive noise.

- *The submitted acoustic report is inadequate to assess the potential impact to the surrounding residential properties.*

Council's Environmental Health Officers has reviewed the submitted acoustic report and the proposed amended plans. Whilst it is acknowledged that the school would result in some noise emanation, this is consistent with the existing use of the school and is likely to remain within acceptable levels.

- *The proposed covered outdoor learning area at the southern end of Building L would result in excessive noise emanating adjacent to surrounding residential properties.*

This element has been deleted as part of the amended plans lodged 15 December 2022.

Landscaping and Trees

- *The proposed removal of trees is excessive and should not be supported.*

The application has been assessed by Council's Landscape Development Officer who advised that the proposed tree removal is considered acceptable having regard to the nature of the proposed development and constrained nature of the site to establish new buildings.

- *Any tree removal should require appropriate replacement planting.*

The submitted landscape plans include significant replacement canopy trees and landscaping throughout the site to re-establish and improve the existing tree canopy.

- *The proposed development would increase the impervious surfaces and reduce deep-soil and landscaping throughout the site.*

The proposed development would result in some decrease in deep soil areas throughout the site. In part this is caused by the development of the recently acquired lot on Bydown Street which is currently landscaped area and the conversion of the existing playfield to artificial turf. Despite the numerical loss of deep soil areas, the proposed landscaping would result in a net increase in tree canopy. The increased use of impervious surfaces is considered acceptable noting the improved durability of surfaces considering the constant use of outdoor play areas.

- *The proposed development appears to reduce the amount of outdoor play space for the students. Outdoor space also appears fragmented.*

The proposed development results in a net increase in outdoor play space, increasing the rate from approximately 4.5sqm to 7sqm per student, by removing the existing demountable and consolidating the recently acquired lot on Bydown Street. Outdoor play area includes various areas design to accommodate inclusive and engaging play for all students.

Traffic and Parking

- *The policy / practice of the school is contradictory to the provision of bike racks.*

The proposed development includes additional on-site bike parking areas. End-of-trip facilities are also provided for Staff. The School Transport Plan prepared by TTW would facilitate and encourage the use of active modes of travel.

School Capacity

- *The proposal does not provide any additional drop off / pick up arrangements to address the increase in student numbers.*

The proposed development does not seek to materially increase the number of staff or students. The proposed development primarily replaces the existing temporary facilities with permanent fit for purpose buildings.

Construction Impacts

- *Measures should be put in place to manage construction traffic.*

Condition B1 requires the preparation of a Construction Traffic Management Plan to ensure that construction traffic is managed.

- *Concerns regarding dust and asbestos contamination during construction.*

Relevant conditions have been recommended to address the removal of asbestos and mitigate any dust emissions.

- *Mitigation measures should be in place to minimise noise during construction.*

Relevant conditions have been recommended to manage construction noise.

Stormwater Management

- *The existing stormwater disposal arrangements are unsuitable, and the proposed development would exacerbate the existing issues.*
- *The increased impervious surfaces would increase runoff from the site.*

Council's Development Engineer has reviewed the proposed stormwater management plans and is satisfied that the proposed development would not result in uncontrolled stormwater runoff. An on-site detention tank is to be installed that would assist in regulating stormwater disposal into Council's existing drainage infrastructure.

Sustainability

- *Roof gardens should be incorporated into Building L.*

This suggestion is outside the scope of the application. Nevertheless, the proposed landscape plan is considered acceptable.

- *Further sustainability measures should be incorporated into the proposed development.*

The application is accompanied by an Environmentally Sustainable Development report which outlines the measures incorporated into the design of the proposed development.

Community Consultation

- *The length of the notification period is inadequate given the size and complexity of the proposed development.*

The development application and amended application were notified in accordance with Council's Community Engagement Protocol which complies with the Regulations. As per Council's usual practice, all submissions received have been considered in this report, including those received outside of the specific notification periods.

- *The applicant did not undertake any prior consultation with residents.*

Whilst there is no obligation under the Environmental Assessment and Planning Act 1979 to undertake direct consultation prior to the lodgement of during the assessment of a development application, Council understands that the applicant undertook consultation with the local community including directly adjoining neighbours.

Miscellaneous

- *The proposed mechanical plant and equipment is located at ground level and is poorly integrated resulting in the loss of outdoor play space and landscaping.*

The proposed mechanical plant and equipment locations have been amended and have been suitably located and enclosed with appropriate physical and landscaping screening to minimise any visual impact. There is limited opportunity to place plant and equipment on the roofs of the existing or proposed buildings considering the heritage significance of some of the buildings and the potential associated impacts with respect to proposed Building L.

- *Capacity of the existing school hall remains inadequate for the size of the school.*

The existing school hall is outside the scope of the current application.

- *Passive surveillance into the school is obstructed by fencing and landscaping.*

The proposed fencing is generally low scale and of an open design additional landscaping screening is primarily located to screen the plant and equipment enclosures.

- *Waste collection should occur from within the site rather than from the street.*

The proposed waste collection arrangements are considered acceptable by Council's Traffic Engineers.

- *Daily waste collection from Bydown Street is excessive and would disturb the amenity of nearby dwellings.*

Waste collection is proposed via the waste collection area off Bydown Street and would occur at most at a bi-weekly frequency.

Section 4.15(1)(e) the public interest

The proposed development is considered to be in the public interest.

Section 4.33 Determination of Crown development applications

The conditions recommended by Council are subject to section 4.33 of the Act which specifies that Council may not impose a condition of consent to a Crown Development Application, except with the approval of the applicant or the Minister. The attached conditions were provided to the Applicant on 24 February 2023 and agreed by the applicant.

CONCLUSION

The matters for consideration as outlined in section 4.15(1) of the Act have been satisfied. The proposed development is permissible under SEPP (Transport and Infrastructure) 2021 and the design has been evaluated against the Design Quality Principles for Schools and is considered satisfactory.

The mandatory matters for consideration under the relevant State Environmental Planning Policies and Legislation have been satisfied in the assessment report.

The proposed development involves a variation to the height of buildings development standard in Clause 4.3 in NSLEP 2013 and is supported by a written request to vary the development standard pursuant to Clause 4.6 in NSLEP 2013 which is considered to satisfactorily address the matters required to be demonstrated in subclause 4.6(3). Approval of the variation would be in the public interest.

The proposed development supports the development of the existing school, providing fit for purpose permanent teaching and associated facilities whilst increasing the amount of outdoor play space per student. The proposed development provided public infrastructure whilst having acceptable impacts on the amenity and character of the area.

On balance, the application is considered reasonable and is recommended for approval.

RECOMMENDATION

PURSUANT TO SECTION 4.16 OF ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979 (AS AMENDED)

THAT the Sydney North Planning Panel, as the consent authority assume the concurrence of the Secretary, Department of Planning, Industry and Environment and invoke the provisions of Clause 4.6 in NSLEP 2013 in relation to the non-compliance with Clause 4.3 in NSLEP 2013 and grant consent to Development Application No. 204/2022 for school on land at Nos. 175-179 Ben Boyd Road and 10 & 16 Bydown Street, Neutral Bay, subject to the conditions of consent in attachment 4.



Michael Stephens
SENIOR ASSESSMENT OFFICER



Robyn Pearson
TEAM LEADER ASSESSMENTS



Stephen Beattie
MANAGER OF DEVELOPMENT SERVICES

Date: 13 March 2023