



## COUNCIL ASSESSMENT REPORT

### SYDNEY NORTH PLANNING PANEL

<b>PANEL REFERENCE &amp; DA NUMBER</b>	PPSSNH-394 - DA/483/2023
<b>PROPOSAL</b>	Construction of a three-storey administration building
<b>ADDRESS</b>	Lot 1370 DP 1063007, No. 423-521 Old Northern Road Castle Hill
<b>APPLICANT</b>	Trustees Of De La Salle Brothers
<b>OWNER</b>	De La Salle Brothers
<b>DA LODGEMENT DATE</b>	09/06/2023
<b>APPLICATION TYPE</b>	Development Application (DA) - Integrated Rural Fires Act 1997
<b>REGIONALLY SIGNIFICANT CRITERIA</b>	Clause 5, Schedule 6 of State Environmental Planning Policy (Planning Systems) 2021: CIV >\$5m - educational establishments
<b>CIV</b>	\$17,336,000 (excluding GST)
<b>CLAUSE 4.6 REQUESTS</b>	HLEP Clause 4.3 - Height of buildings
<b>KEY SEPP/LEP</b>	<ul style="list-style-type: none"><li>• State Environmental Planning Policy (Biodiversity and Conservation) 2021</li><li>• State Environmental Planning Policy (Resilience and Hazards) 2021</li><li>• State Environmental Planning Policy (Transport and Infrastructure) 2021</li><li>• Hornsby Local Environmental Plan 2013</li><li>• Hornsby Development Control Plan 2013</li></ul>
<b>TOTAL &amp; UNIQUE SUBMISSIONS KEY ISSUES IN SUBMISSIONS</b>	None
<b>DOCUMENTS SUBMITTED FOR CONSIDERATION</b>	<ul style="list-style-type: none"><li>• Civil Design Report</li><li>• Amended Clause 4.6 Written Statement</li><li>• Demolition Elevation</li><li>• External Cladding Details</li><li>• Bushfire Assessment</li><li>• BCA Report</li><li>• Arborist Report</li><li>• Appendix C Hilltop Precinct Stormwater Drawings</li><li>• Appendix B Hilltop Precinct Civil Design Report</li></ul>

	<ul style="list-style-type: none"> <li>• Appendix A Civil DA Drawings</li> <li>• Accessibility Report</li> <li>• Survey Plan</li> <li>• Architectural Plans</li> <li>• Waste Management Plan</li> <li>• Traffic Report</li> <li>• Statement of Environmental Effects</li> <li>• Site Services Plan</li> <li>• Preliminary Site Investigation</li> <li>• Noise Impact Assessment</li> <li>• Landscape Plan</li> <li>• Heritage Impact Statement</li> <li>• HDCP Compliance Assessment</li> <li>• Geotech Report</li> <li>• Fire Engineering</li> <li>• Energy Efficiency Statement</li> </ul>
<b>SPECIAL INFRASTRUCTURE CONTRIBUTIONS (S7.24)</b>	N/A
<b>RECOMMENDATION</b>	Approval
<b>DRAFT CONDITIONS TO APPLICANT</b>	Yes
<b>SCHEDULED MEETING DATE</b>	8 November 2023
<b>PLAN VERSION</b>	Various - See Condition 2 for full list of approved documentation
<b>PREPARED BY</b>	George Papworth
<b>COI DECLARATION</b>	No conflict of interest declared
<b>DATE OF REPORT</b>	16 October 2023

## EXECUTIVE SUMMARY

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The Development Application No. DA/483/2023 seeks consent for the construction of a three storey 'Commons' administration building, a covered canopy structure, two walkway connections to the existing Adrian building, tree removal (5 trees), replacement planting (16 trees) and landscaping.

The overall site area of the 'De La Salle' estate is approximately 18.2 hectares. The site contains a number of school buildings, playing fields, sporting facilities, associated car parking areas and access roads. The site also features a cemetery positioned towards its eastern end and a chapel in the north western portion of the site. The remainder of the site along its eastern perimeter is predominately cleared grazing land used for agricultural studies and is bordered by a watercourse and two remnant stands of Blue Gum High Forest. Scattered amenity trees are located throughout the site.

The application was placed on public exhibition from 14 June 2023 to 6 July 2023 and no submissions were received.

It is noted that the proposal is considered to be Integrated Development pursuant to Section 4.46 of the *EP&A Act*, being on bushfire prone land and being for a sensitive use (educational establishment) and therefore requiring concurrence from NSW Rural Fire Service (RFS). The NSW RFS has issued General Terms of Approval under Division 4.8, and a Bush Fire Safety Authority, under section 100B of the *Rural Fires Act 1997*, subject to conditions.

The application is referred to the Sydney North Planning Panel ('the Panel') as the development is '*regionally significant development*', pursuant to Section 2.19(1) and Clause (5)(b) of Schedule 6 of State Environmental Planning Policy (Planning Systems) 2021 as the proposal is development for *community facilities* and an *educational establishment* with a CIV over \$5 million.

A briefing was held with the Panel on 9 August 2023 where the key issue of the proposed building height and consideration of a Clause 4.6 written statement was discussed, as well as minor clarifications regarding the proposed materials, bushfire impacts/ requirements and extent of the proposed demolition.

The key issue of the proposed development is the non-compliance with the maximum building height as prescribed in Clause 4.3 of the HLEP. The maximum permissible height for the subject site is 8.5m. The proposed Commons building would have a maximum building height of 14.81m which exceeds the development standard by 6.31m.

In response to this non-compliance, the applicant has made a submission in support of the contravention to the development standard in accordance with Clause 4.6 of the HLEP. Council's detailed assessment of the Clause 4.6 written statement concluded that the written request adequately establishes that compliance with the development standard is unnecessary in the circumstances of the development, and that sufficient environmental planning grounds exist to justify the contravention of the development standard for the following reasons:

- The proposed building height is largely comparable to the bulk and scale of several existing structures on site, including the De La Salle building and the Adrian Building immediately to the south of the proposed Commons Building.
- It is noted that the proposed building would not unreasonably increase demand for infrastructure capacity as the application does not propose any increase in student numbers.
- The proposed Commons building would be located centrally on the site and would not give rise to any unacceptable environmental or amenity impacts to surrounding development in relation to views, overshadowing, solar access, noise and visual privacy.

Following a detailed assessment of the proposal, approval of the application is recommended pursuant to Section 4.16(1)(a) of the *Environmental Planning and Assessment Act 1979*, subject to the draft conditions of consent attached to this report at Attachment A.

## 1 THE SITE AND LOCALITY

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### 1.3 The Site

The overall site area of the 'De La Salle' estate is approximately 18.2 hectares. The site contains a number of school buildings, playing fields, sporting facilities, associated car parking areas and access roads. The site also features a cemetery positioned towards its eastern end and a chapel in the north western portion of the site. The remainder of the site along its eastern perimeter is predominately clearing grazing land used for agricultural studies and is bordered by a watercourse and two remnant stands of Blue Gum High Forest. Scattered amenity trees are located throughout the site.



Figure 1: Aerial photograph of site (in red) as of 11 August 2023

The property is listed as a Heritage Item No. 259, known as Oakhill College, Original Building and Grounds of local significance under the provisions of Schedule 5 Environmental Heritage of the Hornsby Local Environmental Plan 2013 (HLEP).

Oakhill College operates a registered and accredited non-government school catering for approximately 1,667 students, boys only for Years 7 to 10 and co-educational in Years 11 and 12.

The site is bushfire prone, with a north western portion of the site being within 100m of bushfire prone vegetation.



The site is flood prone, generally along the alignment of the natural drainage channel that dissects the south eastern portion of the site.

The site itself is dominated by a hill (RL 183.5) which occupies the central position towards the western half of the property. The bulk of the school buildings are arranged about the south eastern slopes of the hill, with the exception of the JBB building occupying a prominent position on the north-eastern side of the hill. The hill slopes away to the north, east and south.

The site is burdened by a number of easements across expansive grounds.

### 1.3 The Locality

The property is bounded to the west by Old Northern Road, where it occupies a total road frontage of approximately 768 metres. There are two access points off Old Northern Road to the De La Salle property, being a main entrance to the school ground to the south, with a secondary entrance approximately 500 metres to the north for the primary residence.

Adjoining the southern boundary is the Anglican Retirement Village, an extensive residential retirement village development in a bushland setting. St Paul's Anglican Church adjoins the south west boundary adjacent to the playing field.

Adjoining the eastern boundary is predominately low-density housing development, with residential properties along Foley Place, Brosnan Place and Armidale Crescent.

The site is burdened by a number of easements across expansive grounds.

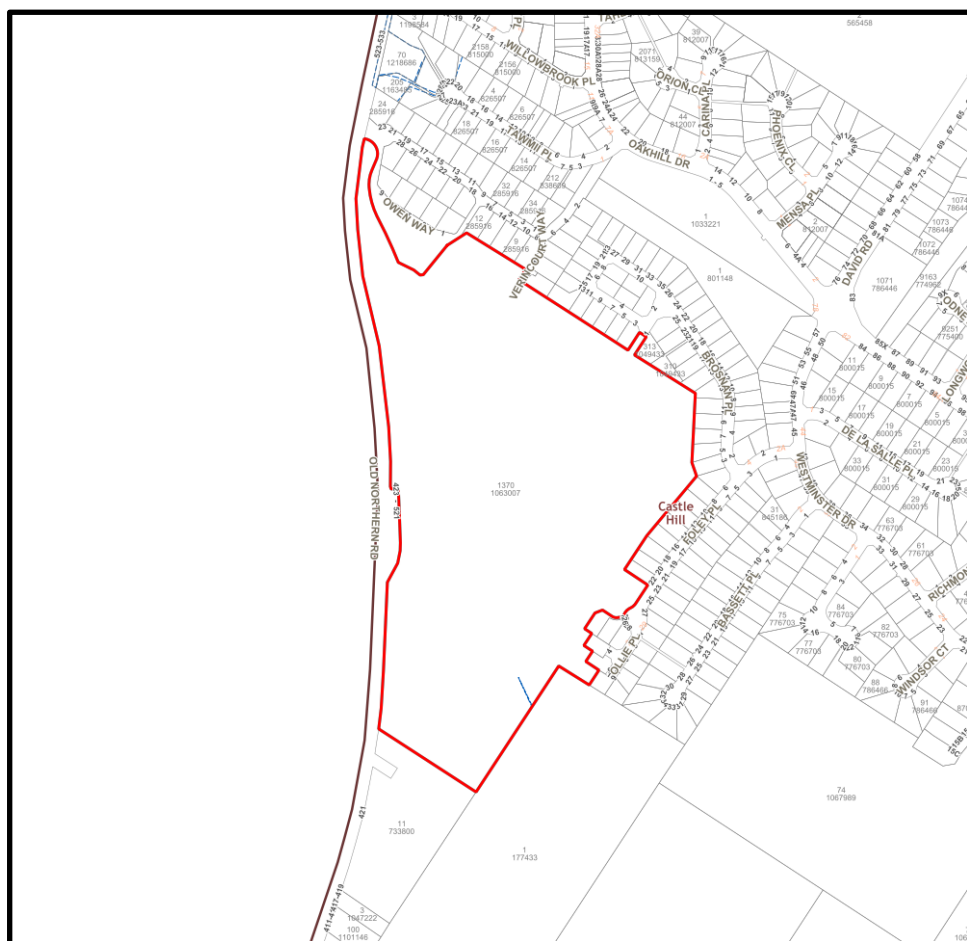


Figure 2: Locality Plan - Site marked in red

## 2 THE PROPOSAL AND BACKGROUND

### 2.3 The Proposal

The proposed development comprises the construction of a three storey 'Commons' administration building, a covered canopy structure, two walkway connections to the existing Adrian building, removal of five trees, replacement planting (16 trees) and landscaping.

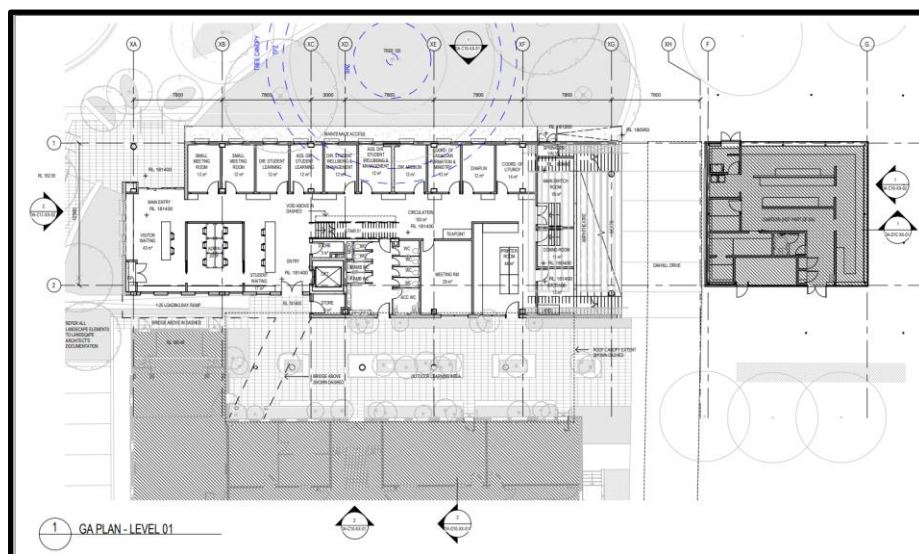
The Commons building would consist of an array of meeting rooms, offices, breakout rooms, staff rooms, printer room, toilets, and store rooms.

Two walkway connections, one on the first floor and one on the second floor would provide level access to the Adrian building. Two windows would be removed on the north elevation of the Adrian Building and altered to a doorway to provide access from the walkways/ bridges.

A canopy would be constructed between the proposed Commons Building and the Adrian Building to create a covered outdoor learning area.

**Table 1: Development Data**

Control	Proposal
Site area	18.2 hectares
GFA	1,603m <sup>2</sup>
Primary Land Use	Educational Establishment
Clause 4.6 Requests	Yes - Amended Clause 4.6 written request
No. of storeys	Three
Max Height	14.81m
Landscaped area	Landscaping provided around the building
Car Parking spaces	No change
Tree removal	5 trees to be removed, 16 new trees to be planted



*Figure 3: Ground Floor Plan prepared by BVN Architects*



Figure 4: North & South Elevations prepared by BVN Architects

## 2.3 Background

A pre-lodgement meeting (PL/15/2023) was held prior to the lodgement of the application on 27 March 2023 where various issues were discussed. A summary of the key issues and how they have been addressed by the proposal is outlined below:

- Height

The information submitted indicated that the proposed building height would exceed the maximum permissible 8.5m under Clause 4.3. In response, the applicant has provided a Clause 4.6 Written Statement request a contravention of this development standard.

- Heritage

Concerns were raised to the potential impact of the new building on the historic Adrian Building. The matters raised were identified to be considered in the future design of the new building and addressed in a Heritage Impact Statement. In response, the applicant has provided a Heritage Impact Statement prepared by Curio Projects that addresses the relevant parts of the HDCP and the heritage values of the historic Adrian building.

- Bushfire

The subject site is mapped as bushfire prone land. As such, the development of the site for the purposes of a school constitutes 'Integrated Development' under Division 4.8 of the *Environmental Planning and Assessment Act 1979*. In response, the applicant submitted a Bushfire Assessment report prepared by Peterson Bushfire. The NSW RFS reviewed the submitted amended information and issued General Terms of Approval under Division 4.8, and a Bush Fire Safety Authority, under section 100B of the *Rural Fires Act 1997*, subject to conditions.

- Engineering

A Water Sensitive Urban Design is to be designed and constructed. The stormwater leaving the premises must achieve the quality as specified in Council's Development Control Plan 2013 (table 1C.1.2(b) Urban Stormwater Quality Targets) or utilise one of the deemed to comply solutions. In response, the applicant submitted a Civil Design Report prepared by SCP Consulting.

The development application was lodged on 9 June 2023. A chronology of the development application since lodgement is outlined in Table 2 below including the Panel's involvement (briefings, deferrals etc) with the application:

**Table 2: Chronology of the DA**

Date	Event
09/06/2023	DA lodged
14/06/2023 to 06/07/2023	Exhibition of the application
15/06/2023 & 10/08/2023	DA referred to external agencies
24/07/2023	Request for Information from Council to applicant
09/08/2023	<p>Panel briefing - Key Issues Discussed</p> <ul style="list-style-type: none"> <li>• Clarification regarding extent of demolition and external finishes to the building</li> <li>• Council is waiting on applicant to provide updated Bushfire Assessment, which will require further referral response from RFS</li> <li>• Council is not satisfied that the Applicant's clause 4.6 request provides sufficient environmental planning grounds - amended request will be required</li> </ul>
21/08/2023	<p>Amended plans lodged:</p> <ul style="list-style-type: none"> <li>• Clause 4.6 Request dated 18/08/2023.</li> <li>• Demolition Elevation dated 18/08/2023.</li> <li>• External Cladding details</li> <li>• Bushfire Assessment dated 09/08/2023.</li> </ul> <p>Accepted by Council under CI 38(1) of the Environmental Planning and Assessment Regulation 2021 ('EP&amp;A Reg') on 21/08/2023.</p>
09/10/2023	<p>Amended plans lodged:</p> <ul style="list-style-type: none"> <li>• Minor internal changes to Level 1 and to the openings into the outdoor learning area.</li> <li>• Amended bridge design on Level 2 and 3.</li> <li>• Demolition Elevation to include awnings on Adrian Building.</li> <li>• Design change to canopy roof.</li> <li>• Increase in parapet height.</li> </ul> <p>Accepted by Council under CI 38(1) of the EP&amp;A Reg on 09/10/2023</p>

### 2.3 Site History

The site has had an extensive history of development, from the inception of the school in 1936 to the present day. Developments of note include the subdivision of the peripheries for residential allotments in the late 1990's and the development of a sporting complex and sporting facilities in the early 2000's period.

More recently, on 12 May 2021, the SNPP approved Development Application No. DA/509/2020 (PPSSNH-122) for the demolition of two educational buildings and construction of an "innovation hub" educational building within an existing educational establishment.



On 8 April 2022, Council approved a Section 4.55 (1A) Modification Application No. DA/509/2020/A to relocate services.

On 15 September 2022, Council approved a Section 4.55(1A) modification application (DA/509/2020/B) to include external plant with an acoustic barrier.

### **3 STATUTORY CONSIDERATIONS**

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

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

These matters are further considered below.

It is noted that the proposal is considered to be Integrated Development pursuant to Section 4.46 of the *EP&A Act*, being on bushfire prone land and being for a sensitive use (educational establishment) and therefore requiring concurrence from NSW Rural Fire Service (RFS).

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

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

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

The following Environmental Planning Instruments are relevant to this application:

- State Environmental Planning Policy (Biodiversity and Conservation) 2021
- State Environmental Planning Policy (Planning Systems) 2021

- State Environmental Planning Policy (Resilience and Hazards) 2021
- State Environmental Planning Policy (Transport and Infrastructure) 2021
- Hornsby Local Environmental Plan 2013

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

**Table 3: Summary of Applicable Environmental Planning Instruments**

<b>EPI</b>	<b>Matters for Consideration</b>	<b>Comply (Y/N)</b>
SEPP (Biodiversity & Conservation)	Chapter 2: Vegetation in non-rural areas Chapter 6: Water catchments	Y
SEPP (Planning Systems)	Chapter 2: State and Regional Development <ul style="list-style-type: none"> <li>Section 2.19(1) declares the proposal regionally significant development pursuant to Clause 5 of Schedule 6 as it comprises an educational establishment with a CIV &gt; \$5m.</li> </ul>	Y
SEPP (Resilience & Hazards)	Chapter 4: Remediation of Land <ul style="list-style-type: none"> <li>Section 4.6 - Contamination and remediation has been considered in the Contamination Report and the proposal is satisfactory subject to conditions.</li> </ul>	Y
SEPP (Transport and Infrastructure)	Chapter 2: Infrastructure <ul style="list-style-type: none"> <li>Section 2.118(2) - Development with frontage to classified road</li> </ul> Chapter 3: Educational Establishments <ul style="list-style-type: none"> <li>Section 3.36 - Schools—development permitted with consent</li> </ul>	Y
HLEP	Clause 4.3 - Height of Buildings	N
HDCP	Part 1 & Part 7	Y

Consideration of the relevant SEPPs is outlined below.

### **State Environmental Planning Policy (Biodiversity and Conservation) 2021**

The application has been assessed against the requirements of Chapter 2 of State Environmental Planning Policy (Biodiversity and Conservation) 2021.

Chapter 2 of this policy aims to protect the biodiversity and amenity values of trees within non-rural areas of the state.

Part 2.3 of the policy states that a development control plan may make a declaration in any manner relating to species, size, location and presence of vegetation. Accordingly, Part 1B.6.1 of the HDCP prescribes works that can be undertaken with or without consent to trees and objectives for tree preservation.

Further discussion under the DCP Heading of this report provides an assessment in accordance with Part 1B.6.1 of the HDCP.

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

The application has been assessed against the requirements of Chapter 2 of State Environmental Planning Policy (Planning Systems) 2021.

The proposal is *regionally significant development* pursuant to Section 2.19(1) as it satisfies the criteria in Clause 5 of Schedule 6 of the Planning Systems SEPP as the proposal is development for educational establishment with a CIV > \$5m. Accordingly, the Sydney North Planning Panel is the consent authority for the application. The proposal is consistent with this Policy.

## **State Environmental Planning Policy (Resilience and Hazards) 2021**

The application has been assessed against the requirements of Chapter 4 of State Environmental Planning Policy (Resilience and Hazard) 2021.

Section 4.6 of the Resilience and Hazard SEPP states that consent must not be granted to the carrying out of any development on land unless the consent authority has considered whether the land is contaminated or requires remediation for the proposed use.

Should the land be contaminated, Council must be satisfied that the land is suitable in a contaminated state for the proposed use. If the land requires remediation to be undertaken to make the land suitable for the proposed use, Council must be satisfied that the land will be remediated before the land is used for that purpose.

The applicant submitted a Preliminary Site Investigation (PSI) prepared by Alliance Geotechnical for the proposed development which considers that the potential for widespread contamination of the site is low and that the site is suitable for the proposed educational establishment land use. The PSI consisted of a search of historical records, fieldwork observations and laboratory analytical data. Alliance Geotechnical considers as at the date and time of the fieldwork, the material assessed would classify as General Solid Waste (non-putrescible).

Council's Environmental Protection team's assessment of the submitted information raised no objection to the proposed development, subject to the recommended conditions of consent.

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

The application has been assessed against the requirements of Chapter 2 of State Environmental Planning Policy (Transport and Infrastructure) 2021.

### **Frontage to a Classified Road**

The application is subject to assessment under Section 2.119 of the SEPP given the proposal has a frontage to a classified road being Old Northern Road.

Section 2.119(2) of the Policy states:

- (2) *The consent authority must not grant consent to development on land that has a frontage to a classified road unless it is satisfied that:*
  - (a) *where practicable, vehicular access to the land is provided by a road other than the classified road, and*
  - (b) *the safety, efficiency and ongoing operation of the classified road will not be adversely affected by the development as a result of:*
    - (i) *the design of the vehicular access to the land, or*

- (ii) *the emission of smoke or dust from the development, or*
- (iii) *the nature, volume or frequency of vehicles using the classified road to gain access to the land, and*
- (c) *the development is of a type that is not sensitive to traffic noise or vehicle emissions, or is appropriately located and designed, or includes measures, to ameliorate potential traffic noise or vehicle emissions within the site of the development arising from the adjacent classified road.*

In regard to Section 2.119(2)(a), no changes to the existing vehicle access to the site via Old Northern Road is proposed, which satisfies this requirement.

In regard to Section 2.119(2)(b), Council's Traffic and Road Safety Team and Transport for NSW have assessed the proposed development and raised no objections to the proposed application, which is unlikely to have a detrimental impact on the classified road network.

In regard to Section 2.119(2)(c), the proposed development is setback over 100m from the classified road and is therefore considered to be appropriately located and designed in accordance with S2.119(2)(c).

### **Development for the Purpose of a School**

The application is subject to assessment under Section 3.36 of the SEPP given the proposal is for the purpose of a school on land in a prescribed zone, being within a R2 Low Density Residential zone.

In accordance with Clause 3.36(6), the proposed design has been shaped by the seven principles outlined in Schedule 8 of the Transport and Infrastructure SEPP.

- Principle 1 - context, built form and landscape. The proposed development responds to and enhances the surrounding setting and heritage. The design and spatial organisation of buildings across the site has been informed by the topography and to ensure logical and connected development occurs while minimising conflicts to the natural environment. Landscaping has been integrated into the design and existing school setting. The proposed development retains existing views and would have no undue visual impacts on the surrounding low density residential area.
- Principle 2 - sustainable, efficient and durable. The proposed development has been designed to be resilient, durable and adaptable and will continue to operate in line with the schools waste management policies.
- Principle 3 - accessible and inclusive. The proposed development enables easy wayfinding and is accessible for all. The proposal includes a link bridge which improves accessibility to the existing Adrian building.
- Principle 4 - health and safety. The proposed development clearly delineates areas between the public and school environment.
- Principle 5 - amenity. The proposed development protects the amenity of the surrounding residential area. The proposed development has been located away from the main roads to ensure appropriate internal amenity. The proposed development allows for ample natural lights and indoor spaces.
- Principle 6 - whole of life, flexible and adaptive. The proposed development allows for high environmental performance and would be easily adaptable for multi uses.

- Principle 7 - aesthetics. The proposed development is of a high quality built design, providing a pleasing visual form that relates to the nearby existing buildings.

### **Hornsby Local Environmental Plan 2013**

The relevant local environmental plan applying to the site is the Hornsby Local Environmental Plan 2013 ('the LEP'). The aims of the LEP include:

- (aa) *to protect and promote the use and development of land for arts and cultural activity, including music and other performance arts,*
- (a) *to facilitate development that creates—*
  - (i) *progressive town centres, thriving rural areas and abundant recreation spaces connected by efficient infrastructure and transport systems, and*
  - (ii) *a well-planned area with managed growth to provide for the needs of future generations and people enriched by diversity of cultures, the beauty of the environment and a strong economy,*
- (b) *to guide the orderly and sustainable development of Hornsby, balancing its economic, environmental and social needs,*
- (c) *to permit a mix of housing types that provide for the future housing needs of the community near employment centres, transport nodes and services,*
- (d) *to permit business and industrial development that meets the needs of the community near housing, transport and services, and is consistent with and reinforces the role of centres within the subregional commercial centres hierarchy,*
- (e) *to maintain and protect rural activities, resource lands, rural landscapes and biodiversity values of rural areas,*
- (f) *to provide a range of quality passive and active recreational areas and facilities that meet the leisure needs of both the local and regional community,*
- (g) *to facilitate the equitable provision of community services and cultural opportunities to promote the wellbeing of the population of Hornsby,*
- (h) *to protect and enhance the scenic and biodiversity values of environmentally sensitive land, including bushland, river settlements, river catchments, wetlands and waterways,*
- (i) *to protect and enhance the heritage of Hornsby, including places of historic, aesthetic, architectural, natural, cultural and Aboriginal significance,*
- (j) *to minimise risk to the community in areas subject to environmental hazards, including flooding and bush fires.*

The proposal is consistent with these aims.



## Zoning and Permissibility (Part 2)

The site is located within the R2 Low density residential zone pursuant to Clause 2.2 of the LEP.

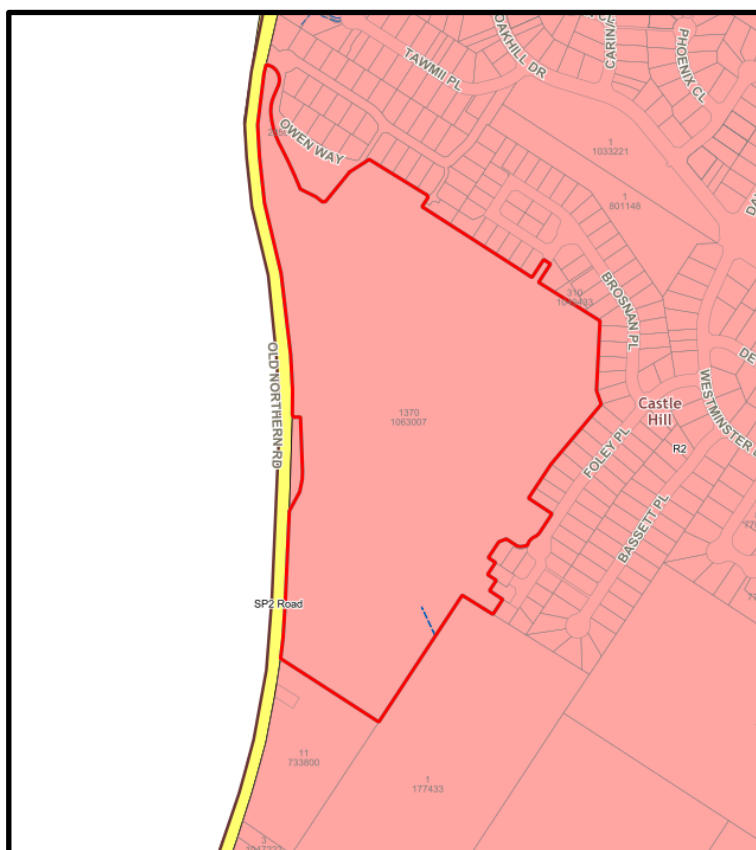


Figure 5: Land Zoning Map

According to the definitions in Clause 4 (contained in the Dictionary), the proposal satisfies the definition of educational establishment which is a permissible use with consent in the Land Use Table in Clause 2.3.

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

- *To provide for the housing needs of the community within a low density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

The proposal is consistent with these zone objectives as follows:

- The proposed development supports the ongoing use of the site as an educational establishment which provides a service to meet the day to day needs of residents.

Section 3.36 of the Transport and Infrastructure SEPP states that development for the purposes of a school may be carried out by any person with development consent on land in a prescribed zone, which includes the R2 Low density residential zone.

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

The LEP also contains controls relating to development standards, miscellaneous provisions and local provisions. The controls relevant to the proposal are considered in Table 4 below. The proposal does not comply with the development standard in Part 4 of the LEP and accordingly, a Clause 4.6 request has been provided with the application for the exceedance of the maximum building height.

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

Control	Requirement	Proposal	Comply
Minimum subdivision Lot size (CI 4.1)	500m <sup>2</sup>	18.2Ha	Yes
Height of buildings (CI 4.3(2))	8.5m	14.81m (Clause 4.6 written request)	No
Heritage (CI 5.10)			Yes
Flood planning (CI 6.3)	<p>(a) <i>to minimise the flood risk to life and property associated with the use of land,</i></p> <p>(b) <i>to allow development on land that is compatible with the land's flood hazard, taking into account projected changes as a result of climate change,</i></p> <p>(c) <i>to avoid significant adverse impacts on flood behaviour and the environment.</i></p>	The proposed Commons Building would be located at a distance of over 200m from the flood affected portion and would be elevated over 20 metres above the overland flow path	Yes
Earthworks (CI 6.2)	Council is required to assess the impacts of the works on adjoining properties, drainage patterns and soil stability of the locality	Earthworks are confined to the building footprint, are relatively minor in scale when compared to the expansive development site, and are adequately setback from neighbouring land uses	Yes

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

#### **Clause 4.6 Written Request**

Clause 4.3 of the LEP prescribes that the height of a building on any land should not exceed the maximum height shown for the land on the Height of Buildings Map. The maximum permissible height for the subject site is 8.5m. The proposal does not comply with this provision, with a maximum building height of 14.81m which contravenes the development standard by 6.31m.

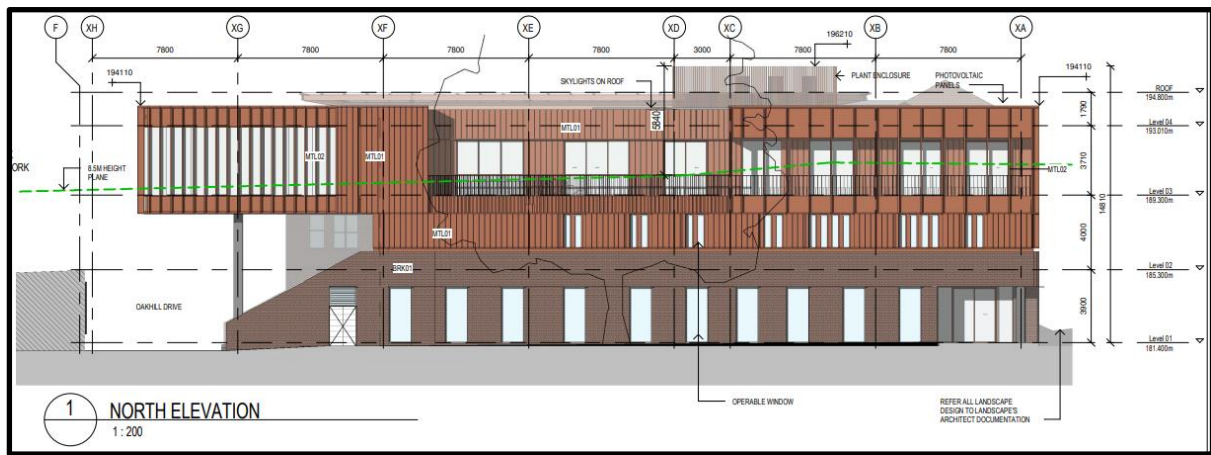


Figure 6: Clause 4.6 height exceedance - north elevation

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

The two preconditions include:

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

The applicant has made a submission in support of the contravention of the development standard in accordance with Clause 4.6 of the LEP. Clause 4.6 provides that 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
- (b) That there are sufficient environmental planning grounds to justify contravening the development standard.

In *Initial Action Pty Ltd v Woollahra Municipal Council* [2008] NSW LEC 118, Preston CJ clarified the correct approach to dealing with a written request under Clause 4.6 to justify the contravention of a development standard.

In relation to determining the matter under cl 4.6(3)(a), the unreasonable or unnecessary clause, the consent authority must be satisfied that the applicant's written request adequately addresses the matter as opposed to of making its own judgement regarding whether compliance is unreasonable or unnecessary. Additionally, the clause does not require that a non-compliant development should have a neutral or beneficial effect relative to a compliant development.

In relation to determining the matter under cl 4.6(3)(b), the environmental planning grounds clause, non-compliant development is not required to result in a 'better environmental planning outcome for the site'

relative to a compliant development. Instead, the requirement is only that there are sufficient environmental planning grounds to justify the development standard contravention.

Council must be satisfied that the written request provided by the applicant under Clause 4.6 addresses both the unreasonable and unnecessary test and demonstrates sufficient environmental planning grounds to justify contravening the development standard. These matters are discussed below.

#### **Unreasonable or Unnecessary Clause 4.6(3)(A)**

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

- The objectives of the development standard are achieved notwithstanding non-compliance with the standard.
- The underlying objective or purpose is not relevant to the development.
- That the objective would be defeated or thwarted if compliance was required.
- That the development standard has been virtually abandoned or destroyed by the Council's own actions in departing from the standard.
- The zoning of the land is unreasonable or inappropriate.

It is not required to demonstrate that a development meets multiple methods as listed above, and the satisfaction of one can be adequate to demonstrate that the development standard is unreasonable or unnecessary.

The written request prepared by Willowtree Planning, dated 18 August 2023 provides a detailed assessment of the proposal with respect to the development standard sought to be contravened. The request argues that:

- a) *The proposal represents logical and co-ordinated development of the site for a continued use as an educational establishment (School) and continues to meet the aims of the R2 Low Density Residential zone.*
- b) *The proposal will result in improvements to the functionality and operations of the site through allowing upgraded and purpose built facilities to support the ongoing use by Oakhill College.*
- c) *The design response and built form is responsive to the site constraints, largely keeping to the already established area of development on the College grounds, is suitable to the context and heritage setting and existing character of the College and surrounding residential area.*
- d) *The architectural design provides a high quality built form outcome for the site and is functional for the proposed outcomes.*
- e) *Development will be compatible with the desired and future character of the immediate locality.*
- f) *The proposed building height is acceptable in terms of heritage impacts and is of a similar height of various existing college buildings and will sit below the heritage De La Salle building height, resulting in a sympathetic heritage outcome.*

- g) *The proposed variation to the building height will not give rise to any unacceptable environmental or amenity impacts to surrounding development in relation to views, overshadowing, solar access, noise and visual privacy.*
- h) *Compliance may be achieved by reducing the scale of the development, but this would undermine both the functionality of the design and operations of the College.*
- i) *Reducing the building height to achieve a compliant building height would not deliver any measurable environmental or amenity benefits.*

Council notes that the objectives of Clause 4.3 of the HLEP are as follows:

#### 4.3 Height of buildings

- (1) *The objectives of this clause are as follows:*
  - (a) *to permit a height of buildings that is appropriate for the site constraints, development potential and infrastructure capacity of the locality.*
- (2) *The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.*

Further, the dictionary contained within the HLEP, defines building height as follows:

*building height (or height of building) means:*

- a) *in relation to the height of a building in metres - the vertical distance from ground level (existing) to the highest point of the building, or*
- b) *in relation to the RL of a building - the vertical distance from the Australian Height Datum to the highest point of the building,*  
  
*including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like.*

With reference to the reasoning provided by the applicant above, Council does not object to the conclusion that the proposed additions meet the objectives of Clause 4.3. In reaching this conclusion the following points are noted:

- It is considered that the proposed building height is largely comparable to the bulk and scale of several existing structures on site, including the De La Salle building and the Adrian Building immediately to the south of the proposed Commons Building.
- It is noted that the proposed building would not unreasonably increase demand for infrastructure capacity as the proposal does not result in any increase in student numbers.
- The building is located centrally on the site and would not give *rise to any unacceptable environmental or amenity impacts to surrounding development in relation to views, overshadowing, solar access, noise and visual privacy*

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



### **Environmental Planning Grounds - Clause 4.6(3)(B)**

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

The applicant provided the following planning grounds for the contravention of the development standard:

- a) *The increased height will allow for improved accessibility and connectivity with the nearby Adrian Building, which currently does not cater to disabled access. To ensure connectivity that is appropriate and weather proofed, the additional height is required to align with the existing floor levels of the Adrian building and provide a covered canopy between the buildings.*
- b) *The increased height of the building can also be attributed to the greater floor to floor requirements for the proposed use, to also ensure ample natural daylight into the rooms and foster a positive learning environment.*
- c) *The sloped topography of the site also contributes to the variation in the building height exceedance across the proposed development, with a lesser variation at the point where the natural ground is higher.*
- d) *The additional height also contributes to a high quality and cohesive built form environment, which is in keeping with the established internal character of the School buildings in particular relating to the existing predominant built form that surrounds the proposal.*
- e) *The additional height of the building in part also is attributed to the lift overrun which is an essential component to ensure access to all levels for all users.*
- f) *The additional height at the eastern end of the proposed building also provides for improved outdoor space for the students, allowing a weatherproof amphitheatre.*
- g) *Of particular note, the additional height of the building would have no impacts in terms of amenity, privacy, outlook or overshadowing to the internal College buildings and the adjoining residential development.*

Council considers that the environmental planning grounds stated within the written request are sufficient with respect to Clause 4.6(3)(b) and that the stated grounds are specific to the proposed development and the circumstances of the development site. It is therefore considered that the written request adequately demonstrates compliance with the clause and is acceptable in this regard.

In demonstrating the unreasonable and unnecessary test, the applicant further established satisfactory environmental planning grounds with respect to the site and the surrounding constraints.

Council is therefore satisfied that Clause 4.6(3)(b) of the HLEP is adequately addressed.

### **Public Interest and Clause 4.6(4)**

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

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

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

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

With regard to part (a)(i), the written request is considered to adequately address the matter required to be demonstrated as outlined above.

With regard to part (a)(ii), the proposed development is considered to be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out.

With regard to (b), on 21 February 2018, the Secretary of the Department of Planning and Environment issued a Notice under cl. 64 of the Environmental Planning and Assessment Regulation 2000. The Secretary's concurrence may not be assumed by a delegate of council if the development contravenes a numerical standard by greater than 10% or if the variation is to a non-numerical standard.

The development contravenes a numerical standard by greater than 10% and therefore the concurrence of the Planning Secretary is assumed under the delegation of the Sydney North Planning Panel.

Therefore, the exceedance of the height of buildings development standard is supported in this instance.

## Heritage

The site is listed as Heritage Item No.259 (Oakhill College, Original Building and Grounds) under the provisions of Schedule 5 of the *HLEP*. The heritage listing for the site relates to the original three storey (De La Salle) building, located in the north western hill top area of the site and the grounds.

The relevant objectives of Clause 5.10 are to conserve the environmental heritage of Hornsby, and to conserve the heritage significance of heritage items and heritage conservation areas, including associated fabric, settings and views. Council has undertaken an assessment of the specific portions of the development, as they relate to heritage conservation which is provided in the table below:

**Table 5: Consideration of the Heritage Conservation HDCP Controls**

Key Development Aspect	Heritage Comment
Heritage Item - New Work	<p>The site of the proposed Commons Building and canopy structure are generally within the footprint of previous buildings (now removed) dating from the 1960s. The bulk of the new building is immediately to the rear of the similarly scaled historic brick three storey Adrian building (c.1952). The new contemporary structures would be largely screened from the primary front entrance of the grounds by the Adrian building and has a similar design to the 2021 approved 'Innovation Hub' building located at the rear of the school.</p> <p>The heritage listed De La Salle building is located to the northwest of the proposed Commons building and is sufficiently separated from the listed brick three storey De la</p>

	<p>Salle building. Views to and from the listed De La Salle building are maintained.</p> <p>The overall height of the new structures is marginally higher than the Adrian building with minimal visual impact on the primary front views and landscaped visual setting of the De La Salle and Adrian buildings. The lift over run is higher than the Adrian building roof, however, this would be a minor visual impact due to visual separation, compatible copper colour scheme and small area of the lift overrun.</p> <p>The connecting walkways from the rear of the Adrian building to the proposed Commons building remove two windows to create doorways. This work would have minimal impact on the identified heritage values of the Adrian building and understanding of the original building would remain.</p> <p>The HIS has addressed the heritage values of the grounds and buildings. The assessment and recommendations of the HIS are supported. The overall impact on the buildings and grounds is minor and considered reasonable to meet the contemporary needs of the school, without unreasonably impacting heritage significance.</p>
Materials and Finishes	<p>The proposed materials and finishes include “heritage red brick work (BRK01) at ground floor level of the Commons building with the upper two levels comprising glass and metal walls (copper colour to match brickwork - MTL01&amp;02); metal roofs (copper coloured) and glass roof canopy.</p> <p>The proposed exterior finishes and materials would be sympathetic and compatible with the predominantly brick De La Salle and Adrian historic buildings.</p>
Gardens, Trees, and Landscaping	<p>The replacement planting (16 trees), tree relocation and landscaping compensates for tree removal and would maintain the established well landscaped grounds.</p>
Heritage Items in the Vicinity	<p>The proposed works would not have an adverse impact on the heritage items in the vicinity of the site due to physical and visual separation</p>
Archaeology	<p>The HIS locates the Commons building partially within the (c1910) footprint of the former Cox residence. The majority of the former residence is within the footprint of a separately approved canteen building and previous 1960s buildings were also in the same location.</p> <p>The HIS supports Urbis ‘s 2021 conclusions that “<i>remains of the Cox residence and its grounds do not contain archaeological significance due to their late construction date and low likelihood for significant archaeological deposits</i></p>

	<i>(such as rubbish dumps or privies) to survive in the site area or grounds of the former buildings itself."</i>
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As outlined in the table above, the proposal while substantial, is located to the rear of the historic Adrian Building and visually separated from the heritage listed Da La Salle Building. Impacts are minimal due to siting, landscaping and compatible materials proposed. The recommendations of the HIS report contain sound heritage advice and are recommended to be included as conditions of development consent, as recommended in Attachment 1 of this report.

## Earthworks

Clause 6.2 of the HLEP states that consent is required for proposed earthworks on site. Before granting consent for earthworks, Council is required to assess the impacts of the works on adjoining properties, drainage patterns and soil stability of the locality.

Council's assessment of the proposed works and excavation concludes that excavation to be undertaken on the subject site is largely limited to the building footprint and would comprise of approximately 200m<sup>3</sup>. As the majority of these earthworks are confined to the building footprint, are relatively minor in scale when compared to the expansive development site, and are adequately setback from neighbouring land uses, it is not considered that the proposed earthworks would have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land.

## Flood Planning

The objectives of Clause 6.3 are as follows:

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

Part of the school site is flood prone, with a 1/100 year average recurrence interval overland flow path impacting the south eastern portion of the site. The proposed Commons Building would be located over 200m from the flood affected portion and would be elevated over 20m above the overland flow path and therefore, would not be impacted by flood waters.

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

The following Development Control Plan is relevant to this application:

- *Hornsby Development Control Plan 2013 ('the DCP')*

## Site Requirements

Part 7.1.1 Site requirements of the HDGP outlines the site-specific requirements for an educational establishment. The proposed development is consistent with the requirements outlined in Part 7.1.1 and would not permit the generation of any land use conflicts, or unacceptable amenity outcomes for the subject site, or any adjoining development.

## **Scale**

The relevant desired outcome of Part 7.1.2 Scale of the HDCP is for development with a height, bulk and intensity that is compatible with the character of the area.

The prescriptive measures outline that the maximum building height should be in accordance with the LEP height of buildings map, and the maximum site coverage should be no more than 30%.

With respect to the height of the building, this aspect is discussed in detail in the Clause 4.6 Written Requestion section of this report.

With respect to site coverage, the site has a site coverage of less than 30%, with over 70% of the site covered with open space.

The proposed scale is therefore considered to be consistent with the desired outcome of Part 7.1.2 of the HDCP.

## **Setbacks**

The desired outcome of Part 7.1.3 setbacks of the HDCP is for *'setbacks that are compatible with adjacent development and compliment the streetscape'* and *'setbacks that allow for the retention of significant landscape features and respect site constraints'*.

The proposed Commons Building would be setback over 100m from the front boundary with Old Northern Road and over 100m from the rear boundary with Brosnan Place.

The proposed setback is considered to provide adequate separation between the bulk and scale of the subject site, and that of the surrounding residential environment. The proposed setbacks are considered to be appropriate, and generally consistent with the desired outcomes of Part 7.1.3 Setbacks of the HDCP.

## **Privacy, Security and Sunlight Access**

The desired outcomes of Part 7.1.6 of the HDCP is for *'development designed to provide reasonable privacy and sunlight to adjacent properties'* and *'development designed to provide high levels of security.'*

The proposed Commons building would be located within established school grounds, which are enclosed by security fencing on all sides. No security concerns would arise resulting from the construction of the proposed Commons building.

With respect to privacy and sunlight access, the proposed Commons building would be setback over 100 metres from the nearest boundary with a residential dwelling and would therefore not result in any privacy or sunlight access concerns.

The proposed development generally meets the desired outcomes of Part 7.1.6 of the HDCP and is considered acceptable.

## **Vehicular Access and Parking**

The desired outcome of Part 7.1.7 of the HDCP, is for development with simple, safe and direct vehicular and pedestrian access, and for carparking that meets the requirements of future occupants and their visitors. Additionally, further controls relating to transport and parking are contained within Part 1C.2.1 Transport and Parking of the HDCP.



In regard to traffic generation and parking it is noted that, the proposal does not seek consent for any increase in student or staff numbers and no changes to the on-site car parking provisions are proposed.

The proposal meets the desired outcomes of Part 7.1.7 of the HDCP and is considered acceptable.

### **Design Details**

The relevant desired outcome of Part 7.1.8 Design Details of the HDCP is for *“Development that compliments the streetscape”*.

This desired outcome is supported by prescriptive measures that state that building design should complement the desired future character of the zone, which includes a detailed list of design areas in which consideration should be provided.

Part 3.2.4 of this report provides a detailed assessment of how the proposed design has been shaped by the seven principles outlined in Schedule 8 of the Transport And Infrastructure SEPP.

As part of this assessment, an assessment of how the development relates to the adjoining low density residential environment is included. The proposal is considered to be compatible with the sites zoning, and the desired future character of the site.

### **Heritage**

Part 9 of the HDCP provides heritage controls for development of heritage items, development near heritage items or development within the Heritage Conservation Areas contained within the shire. These controls, in conjunction with the requires of Clause 5.10 of the HLEP have been discussed.

### **Tree and Vegetation Preservation**

The prescriptive measures of Part 1B.6.1 Tree Preservation of the HDCP state that:

- a) *“the prescribed trees that are protected by the Vegetation SEPP and/or Clause 5.10 of the HLEP and this section of the DCP include:*
- *all trees except exempt tree species in Hornsby Shire as listed in Table 1B.6 (a) or subject to a Biodiversity Offset Scheme,*
  - *all trees on land within a heritage conservation area described within the HLEP, and*
  - *all trees on land comprising heritage items listed within the HLEP.*
- b) *To damage or remove any tree protected under the HDCP is prohibited without the written consent of Council, except in accordance with the exemptions prescribed in this part (under the heading ‘Exempt Tree Work’).”*

There are nine trees located within or immediately adjacent to the site. The applicant has submitted an Arboricultural Impact Assessment (AIA) prepared by Naturally Trees dated 23 March 2023.

The proposal would result in the removal of five trees numbered 1A, 1B, 1C, 102 and 103. Council’s tree management assessment raised no objections to the removal of these trees as there is sufficient space on the site to provide compensatory plantings of locally occurring species to maintain the local amenity. Accordingly, conditions of consent have been recommended in Attachment 1 of this report to ensure appropriate replacement plantings and tree protection measures to the retained trees.

In regard to biodiversity, the proposal does not require the removal or modification of a significant area of vegetation or habitat, is generally consistent with the Biodiversity element of HDCP 2013 and would not have a significant impact on matters listed under the NSW BC Act 2016.

The proposal meets the prescriptive measures of Part 1B.6.1 Tree Preservation of the HDCP and is considered acceptable, subject to conditions.

### **Development contributions**

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

- *Hornsby Shire Council S7.12 Development Contributions Plan 2019-2029*

This Contributions Plan has been considered and included the recommended draft consent conditions.

### **Section 4.15(1)(a)(iiia) - Planning agreements under Section 7.4 of the EP&A Act**

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

The proposal is consistent with this Planning Agreement as discussed in this report.

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

Section 61 of the 2021 EP&A Regulation contains matters that must be taken into consideration by a consent authority in determining a development application which includes demolition.

Accordingly, conditions of consent have been recommended to ensure the demolition of the existing shed structure and two windows are carried out in accordance with the provisions of AS 2601.

Section 62 (consideration of fire safety) and Section 64 (consent authority may require upgrade of buildings) of the 2021 EP&A Regulation are not relevant to the proposal.

These provisions of the 2021 EP&A Regulation have been considered and are addressed in the recommended draft conditions (where necessary).

### **Section 4.15(1)(b) - Likely Impacts of Development**

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

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

### **Context and setting**

The proposed development responds to and enhances the surrounding setting and heritage. The proposed Commons building sits centrally on the site, setback over 100 metres to the nearest boundaries. The design and spatial organisation of buildings across the site has been informed by the topography and to ensure logical and connected development occurs while minimising conflicts to the natural environment. Landscaping has been integrated into the design and existing school setting. The proposed development retains existing views and would have no undue visual impacts on the surrounding low density residential area.

## **Access and traffic**

In regard to traffic generation and parking it is noted that, the proposal does not seek consent for any increase in student or staff numbers and no changes to the on-site car parking provisions are proposed.

## **Public Domain**

The proposed Commons building is setback over 100m from the Old Northern Road frontage and is of a similar height to the existing Adrian Building to the south. The proposed Commons Building would have no impact on the public domain in the vicinity.

## **Utilities**

The site accommodates the existing school and therefore is serviced by all essential services and utilities. Appropriate connections to services are proposed and the proposed development would not impact on any existing easements.

## **Heritage**

Earlier sections of this report discuss the Heritage assessment of this application and summarises that, the proposal while substantial, is located to the rear of the historic Adrian Building and visually separated from the heritage listed Da La Salle building. Impacts are minimal due to siting, landscaping and compatible materials proposed. The recommendations of the HIS report contain sound heritage advice and are recommended to be included as conditions of development consent, as recommended in Attachment 1 of this report.

## **Land contamination**

The applicant submitted a Preliminary Site Investigation (PSI) prepared by Alliance Geotechnical for the proposed development which considers that the potential for widespread contamination of the site is low and that the site is suitable for the proposed educational establishment land use.

## **Flora and fauna impacts**

There are nine trees located within or immediately adjacent to the site. The applicant has submitted an Arboricultural Impact Assessment (AIA) prepared by Naturally Trees dated 23 March 2023.

The proposal would result in the removal of five (5) trees numbered 1A, 1B, 1C, 102 and 103. Council's tree management assessment raised no objections to the removal of these trees as there is sufficient space on the site to provide compensatory plantings of locally occurring species to maintain the local amenity. Accordingly, conditions of consent have been recommended in Attachment 1 of this report to ensure appropriate replacement plantings and tree protection measures to the retained trees.

In regard to biodiversity, the proposal does not require the removal or modification of a significant area of vegetation or habitat, is generally consistent with the Biodiversity element of HDCP 2013 and would not have a significant impact on matters listed under the NSW BC Act 2016.

## **Noise and vibration**

The applicant submitted a Noise Impact Assessment prepared by E-Lab Consulting dated 24 May 2023. Council's Environmental Protection team raised no objection and agreed with findings that the proposed development would be compliant with the relevant noise criteria controls for this type of development and would comply with the applicable regulations with regards to noise.

## **Safety, security and crime prevention**

The proposed Commons building would be located within established school grounds, which are enclosed by security fencing on all sides. No security concerns would arise as a result of the construction of the proposed Commons building.

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

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

Section 4.15(1)(c) of the Act requires Council to consider *“the suitability of the site for the development”*.

#### **Flooding**

The development site is flood prone, with a 1/100 year average recurrence interval overland flow path impacting the south eastern portion of the site. The proposed Commons building would be located at a distance of over 200m from the flood affected portion and would be elevated approximately 20 metres above the overland flow path and therefore would not be impacted by flood waters.

#### **Bushfire**

The site is bushfire prone, with a north western portion of the site being within 100 metres of bushfire prone vegetation. The bushfire prone portion of the development site would be located approximately 200m to the north west of the proposed Commons building location.

The development of bushfire prone land for a school is identified as integrated development under Section 100B of the *Rural Fires Act 1997*. The application was forwarded to the New South Wales Rural Fire Service (RFS) for comment, who provided General Terms of Approval which have been included in Attachment 1 of this report.

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

No submissions were received.

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

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

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

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

## **4 REFERRALS AND SUBMISSIONS**

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### **4.1 Agency Referrals and Concurrence**

The development application has been referred to various agencies for comment/concurrence/referral as required by the EP&A Act and outlined below in Table 6.

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

**Table 6: Concurrence and Referrals to agencies**

Agency	Concurrence/ referral trigger	Comments (Issue, resolution, conditions)	Resolved
<b>Concurrence Requirements</b> (s4.13 of EP&A Act)			
<b>Referral/Consultation Agencies</b>			
Transport for NSW	Section 2.121 - <i>SEPP (Transport and Infrastructure)</i> Development that is deemed to be traffic generating development in Schedule 3.	TfNSW has reviewed the submitted documents and has no requirements for the subject development application as the proposed development is unlikely to have a detrimental impact on the classified road network	Yes
<b>Integrated Development (S 4.46 of the EP&amp;A Act)</b>			
NSW Rural Fire Service (NSW RFS)	S100B - <i>Rural Fires Act 1997</i> bush fire safety of subdivision of land that could lawfully be used for residential or rural residential purposes or development of land for special fire protection purposes	The NSW RFS has reviewed the submitted amended information. General Terms of Approval are now re-issued, under Division 4.8 of the Environmental Planning and Assessment Act 1979, and a Bush Fire Safety Authority, under section 100B of the Rural Fires Act 1997, are now issued subject to conditions.	Yes (conditions)

## 4.2 Council Officer Referrals

The development application has been referred to various Council officers for technical review as outlined Table 7.

**Table 7: Consideration of Council Referrals**

Officer	Comments	Resolved
Engineering	Council's Engineering Officer reviewed the submitted stormwater concept plan and considered that there were no objections subject to conditions.	Yes (conditions)
Traffic	Council's Traffic Engineering Officer reviewed the proposal and raised no concerns in relation to traffic generation and car parking.	Yes (conditions)

Building	Councils' Building Certifications team raises no objection to the application subject to conditions of approval.	Yes (conditions)
Environmental Protection	Council's Environmental Protection team reviewed the submitted sediment and erosion control plan, waste management plan, acoustic assessment and traffic report and considered that there were no objections subject to conditions.	Yes (conditions)
Tree	No objections are raised to the proposal in terms of its anticipated impact on trees, subject to conditions.	Yes (conditions)
Heritage	<p>Council's Heritage Officer reviewed the submitted Heritage Impact Statement ('HIS') prepared for the applicant and concurred with the conclusion of the HIS that there would not be any adverse impacts on heritage values arising from the proposal.</p> <p>The proposal while substantial, is located to the rear of the historic Adrian building and visually separated from the heritage listed Da La Salle building. Impacts are minimal due to siting, landscaping and compatible materials proposed. The recommendations of the HIS report contain sound heritage advice and are recommended to be included as conditions of consent.</p>	Yes (conditions)

### 4.3 Community Consultation

The proposal was notified in accordance with the Council's Community Engagement Plan from 14 June 2023 until 6 July 2023. The notification included the following:

- A sign placed on the site.
- Notification letters sent to adjoining and adjacent properties (33 letters).

The Council did not receive any unique submissions.

## 5 KEY ISSUES

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

### 5.1 Height of Building

Clause 4.3 of the HLEP prescribes that the height of a building on any land should not exceed the maximum height shown for the land on the Height of Buildings Map. The maximum permissible height for the subject site is 8.5m. The proposal does not comply with this provision, with a maximum building height of 14.81m which exceeds the development standard by 6.31m.

In response to this non-compliance, the applicant has made a submission in support of the contravention to the development standard in accordance with Clause 4.6 of the *HLEP*. Clause 4.6 provides that 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 that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and that there are sufficient environmental planning grounds to justify contravening the development standard.

This report assessed the Clause 4.6 written statement and concludes that the proposed building height is largely comparable to the bulk and scale of several existing structures on site, including the De La Salle building and the Adrian Building immediately to the south of the proposed Commons Building.

It is noted that the proposed building would not unreasonably increase demand for infrastructure capacity as the proposed application does not propose any increase in student numbers.

The proposed Commons building would be located centrally on the site and would not give *rise to any unacceptable environmental or amenity impacts to surrounding development in relation to views, overshadowing, solar access, noise and visual privacy*.

Accordingly, the written request pursuant to Clause 4.6 of the *HLEP* to vary the height of buildings development standard contained within Clause 4.3 adequately establishes that compliance with the development standard is unnecessary in the circumstances of the development, and that sufficient environmental planning grounds exist to justify the contravention of the development standard.

## **6 CONCLUSION**

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

The development generally meets the desired outcomes of Council's planning controls and is satisfactory having regard to the matters for consideration under Section 4.15 of the EP&A Act.

Council received nil submissions during the public notification period.

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

The reasons for this decision are:

- The proposed development complies with the requirements of the relevant environmental planning instruments, including the State Environmental Planning Policy (Transport & Infrastructure) 2021, the Hornsby Local Environmental Plan 2013 and the Hornsby Development Control Plan 2013.
- The written request pursuant to Clause 4.6 of the Hornsby Local Environmental Plan 2013 to vary the height of buildings development standard contained within Clause 4.3 adequately establishes that compliance with the development standard is unnecessary in the circumstances of the development, and that sufficient environmental planning grounds exist to justify the contravention of the development standard.
- The proposed development does not create unreasonable environmental impacts to the adjoining residential development with regard to visual bulk, overshadowing, solar access, traffic, parking, amenity or privacy.

*Note: At the time of the completion of this planning report, no persons have made a Political Donations Disclosure Statement pursuant to Section 10.4 of the Environmental Planning and Assessment Act 1979 in respect of the subject planning application*



## **7 RECOMMENDATION**

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THAT Council assume the concurrence of the Secretary of the Department of Planning and Environment pursuant to Clause 4.6 of the Hornsby Local Environmental Plan 2013 and approve Development Application No. DA/483/2023 for the construction of a three-storey administration building at Oakhill College - Lot 1370 DP 1063007, Nos. 423-521 Old Northern Road Castle Hill subject to the conditions of consent at Attachment A of this report.

The following attachments are provided:

- Attachment A: Draft Conditions of Consent
- Attachment B: Architectural Plans
- Attachment C: Clause 4.6 Request