



Richard Gill School

State Significant Development

SSD 10380

September 2020



Published by the NSW Department of Planning, Industry and Environment

dpie.nsw.gov.au

Title: Richard Gill School

Subtitle: State Significant Development SSD 10380

Cover image: *View of proposed play area [Source: Applicant's EIS]*

© State of New South Wales through Department of Planning, Industry and Environment 2020. You may copy, distribute, display, download and otherwise freely deal with this publication for any purpose, provided that you attribute the Department of Planning, Industry and Environment as the owner. However, you must obtain permission if you wish to charge others for access to the publication (other than at cost); include the publication in advertising or a product for sale; modify the publication; or republish the publication on a website. You may freely link to the publication on a departmental website.

Disclaimer: The information contained in this publication is based on knowledge and understanding at the time of writing September 2020 and may not be accurate, current or complete. The State of New South Wales (including the NSW Department of Planning, Industry and Environment), the author and the publisher take no responsibility, and will accept no liability, for the accuracy, currency, reliability or correctness of any information included in the document (including material provided by third parties). Readers should make their own inquiries and rely on their own advice when making decisions related to material contained in this publication.

Glossary

Abbreviation	Definition
BCA	Building Code of Australia
BDAR	Biodiversity Development Assessment Report
CIV	Capital Investment Value
Council	Muswellbrook Shire Council
Department	Department of Planning, Industry and Environment
EESG	Environment, Energy and Science Group of the Department
EIS	Environmental Impact Statement
EPA	Environment Protection Authority
EP&A Act	<i>Environmental Planning and Assessment Act 1979</i>
EP&A Regulation	Environmental Planning and Assessment Regulation 2000
EPI	Environmental Planning Instrument
ESD	Ecologically Sustainable Development
Minister	Minister for Planning and Public Spaces
MLEP	Muswellbrook Local Environmental Plan 2009
NVIA	Noise and Vibration Impact Assessment Report
SEARs	Planning Secretary's Environmental Assessment Requirements
OTAMP	Operational Transport and Access Management Plan
Planning Secretary	Secretary of the Department of Planning, Industry and Environment
PNTL	Project Noise Trigger Level
PSI	Preliminary Site Investigation
RTS	Response to Submissions
SEPP	State Environmental Planning Policy
SRD SEPP	State Environmental Planning Policy (State and Regional Development) 2011
SSD	State Significant Development
TIA	Traffic Impact Assessment Report
TfNSW	Transport for NSW

Executive Summary

This report provides an assessment of a state significant development (SSD) application (SSD 10380) for a new school (the Richard Gill School), located at 157 Maitland Street, Muswellbrook. The Applicant is Richard Gill School and the site is located within the Muswellbrook Shire local government area. The Department is satisfied that the subject site is suitable for the proposal and would provide a beneficial educational establishment for future students in the Muswellbrook Area and upper Hunter Region, with a special emphasis on music in its curriculum. The Department of Planning, Industry and Environment (the Department) concludes the proposal is in the public interest and recommends that the application be approved subject to conditions.

The application seeks approval for the adaptive reuse of the existing Muswellbrook Shire Council Administrative Centre Building (Council Building) as a new primary school for 50 students (Kindergarten (K) – Year 2). The proposal comprises internal and minor external alterations to the building and associated landscape works to enable operation of the school within the site.

The Department considers the application is consistent with the objects of the *Environmental Planning and Assessment Act 1979* including ecologically sustainable development, and the Hunter Regional Plan 2036. The Department is satisfied that the site is suitable for the proposed development, as it comprises the adaptive reuse of Council's administration building to provide new and improved educational facilities. The Department considers that the key issues (traffic, parking and access, landscaping, built form and environmental amenity) were satisfactorily considered by the Applicant and are acceptable with the inclusion of environmental mitigation measures and recommended conditions of consent.

The proposal has a Capital Investment Value (CIV) of \$490,784 and would generate 12 construction jobs and four operational jobs. The proposal is SSD under clause 15(1) of Schedule 1 of the State Environmental Planning Policy (State and Regional Development) 2011, as it is development for the purpose of a new school. Therefore, the Minister for Planning and Public Spaces is the consent authority.

The application was publicly exhibited between 15 June 2020 and 13 July 2020 (28 days). The Department received a total of 11 submissions; five from public authorities (including comments from Muswellbrook Shire Council) and six public submissions including three objections. The key issues raised in the submissions included site suitability, appropriateness of use of the public building as well as traffic, noise, amenity and biodiversity impacts.

The Applicant's Response to Submissions (RTS) included responses to the key issues raised in the submissions. The RTS included amendments to the proposed internal layout within the existing building and additional information regarding landscaping and fencing.

Public authorities raised no additional concerns subject to conditions.

Contents

1	Introduction	1
1.1	Site Description	1
1.2	Surrounding development	5
2	Project.....	7
2.1	Key Components and Features	7
2.2	Physical layout and design.....	8
3	Strategic context.....	12
4	Statutory Context.....	13
4.1	State significance	13
4.2	Permissibility	13
4.3	Other approvals.....	13
4.4	Mandatory Matters for Consideration.....	13
4.5	Biodiversity Development Assessment Report	17
5	Engagement.....	18
5.1	Department's engagement.....	18
5.2	Summary of submissions	18
5.3	Public Authority Submissions.....	18
5.4	Public Submissions	19
5.5	Response to submissions	20
6	Assessment	21
6.1	Traffic, Access and Parking	21
6.2	Landscaping, Tree Removal and Built Form.....	27
6.3	Environmental Amenity	30
6.4	Other issues	34
7	Evaluation.....	38
8	Recommendation.....	39
9	Determination.....	40
	Appendices	41
	Appendix A – List of referenced documents	41
	Appendix B – Statutory Considerations	42
	Appendix C – Recommended Instrument of Consent/Approval	47

1 Introduction

This report provides an assessment of a state significant development (SSD) application lodged under Part 4, Division 4.1 of the *Environmental Planning and Assessment Act 1979* (EP&A Act), for a new school, the Richard Gill School (SSD 10380) located at 157 Maitland Street, Muswellbrook within the Muswellbrook Shire local government area (LGA). The application was lodged by Richard Gill School (the Applicant).

The application seeks approval for the adaptive reuse of the Muswellbrook Shire Council Administrative Centre Building as a new primary school for 50 students (Kindergarten (K) – Year 2). The proposal comprises internal and minor external alterations to the building and associated landscape works to enable operation of the school within the site.

The Applicant has advised that in the future the school would likely seek to expand within the same building with an increase in the student capacity to 165 (K – 6). However, this is not included in the current application.

1.1 Site Description

The site is located at 157 Maitland Street, Muswellbrook and is legally described as Lot 2 DP 1118310. The site is approximately 2.5 kilometres (km) south east of Muswellbrook Central Business District (CBD) and 107km west of Newcastle CBD. The regional context is shown in **Figure 1**.

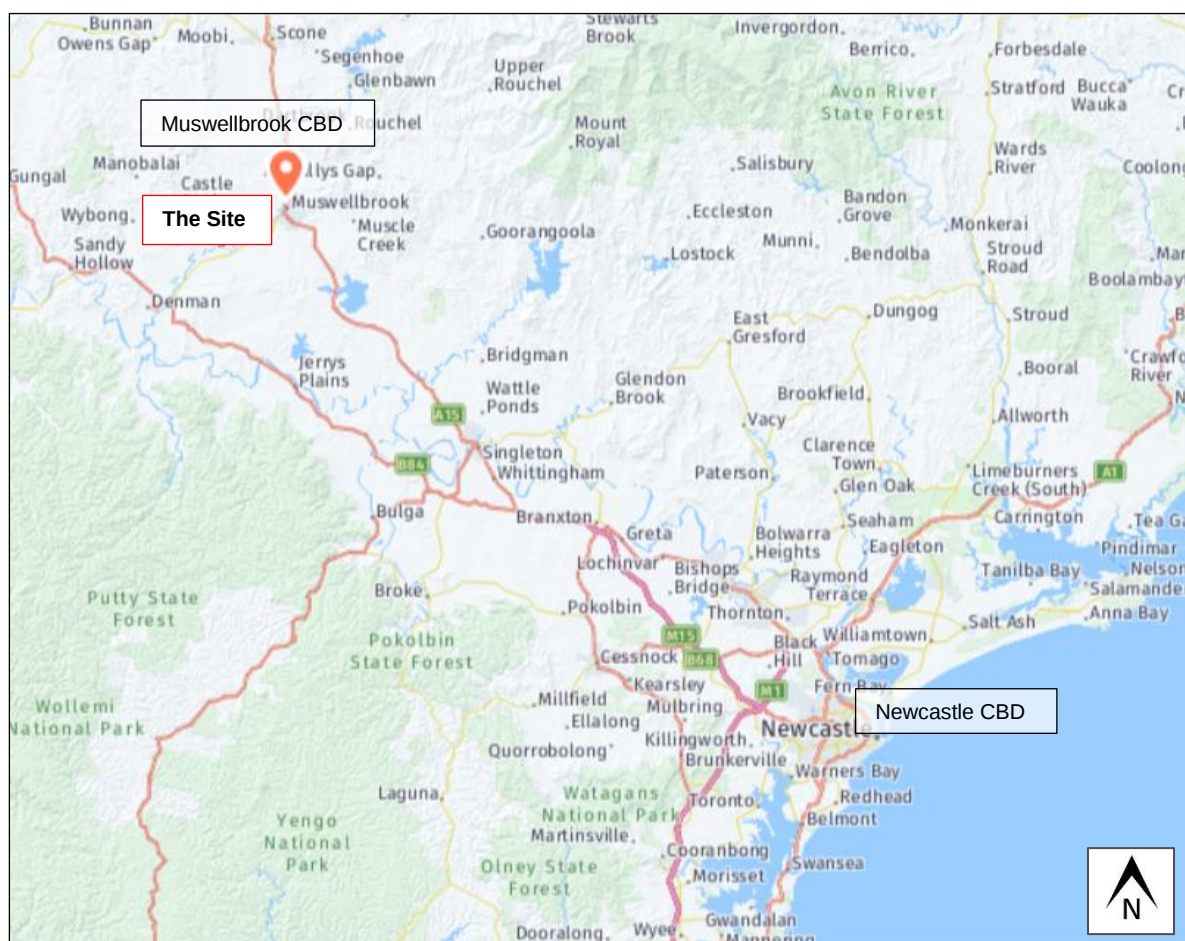


Figure 1 | Regional Context Map (Source: Nearmap 2020)

The site has an area of 5.19 hectares (ha) and is irregular in shape, with a 140 metres (m) wide street frontage to New England Highway (also known as Maitland Street in Muswellbrook). The site generally slopes down from the south to Maitland Street from RL180 to RL154. Only the northern part of the site (front section) is proposed to be used for the purpose of the school and has a flat landscape.

The development area of the site comprises the existing, Muswellbrook Shire Council Administrative Centre Building (existing Council building), the Muswellbrook Home and an existing Community Care Centre (a childcare centre), large asphalted parking areas and driveways intercepted by open spaces and scattered vegetation. Gullies and concrete drains surround the existing building and drain towards an existing water body to the west of the Council building. The Applicant has advised that the existing Council building would be vacated by 16 October 2020, and the administrative functions would relocate elsewhere within Muswellbrook town centre.

Vehicle access to the site is provided via a two-way driveway off Maitland Street. The driveway provides access to two car parks. A car parking area with 35 car spaces is located close to the existing Council building. The existing childcare centre adjoins the second carpark with 13 car spaces. An internal branch of the driveway extends along the eastern boundary to an overflow car parking area immediately adjoining the rear façade. An additional carpark with 14 car spaces is located on the western side of the site and accessed off Eucalypt Avenue.

The rear portion of the site is vacant with scattered trees. A low rock wall separates this vacant section where no works are proposed. The local context and existing features on the site are identified in **Figures 2 and 7**.



Figure 2 | Local Site Context (Source: Nearmap 2020)

1.1.1 Existing Council building

The existing Council building has a footprint of approximately 2300 square metres (m²) and is sited approximately 100m south from the Maitland street frontage. The building was built c1986 and currently accommodates the room that were previously used as Council chambers and public facilities, committee rooms and administration office areas, meeting rooms, a staff kitchen and associated outdoor eating spaces. The ceiling heights vary between 2.75m - to 5.5m with large windows on the exterior walls. An existing fence restricts access to the waterbody / lagoon on the western side of the building. The internal floor plan of the Council building is shown in **Figure 3** and photos of the Council building are provided in **Figures 4** and **5**.

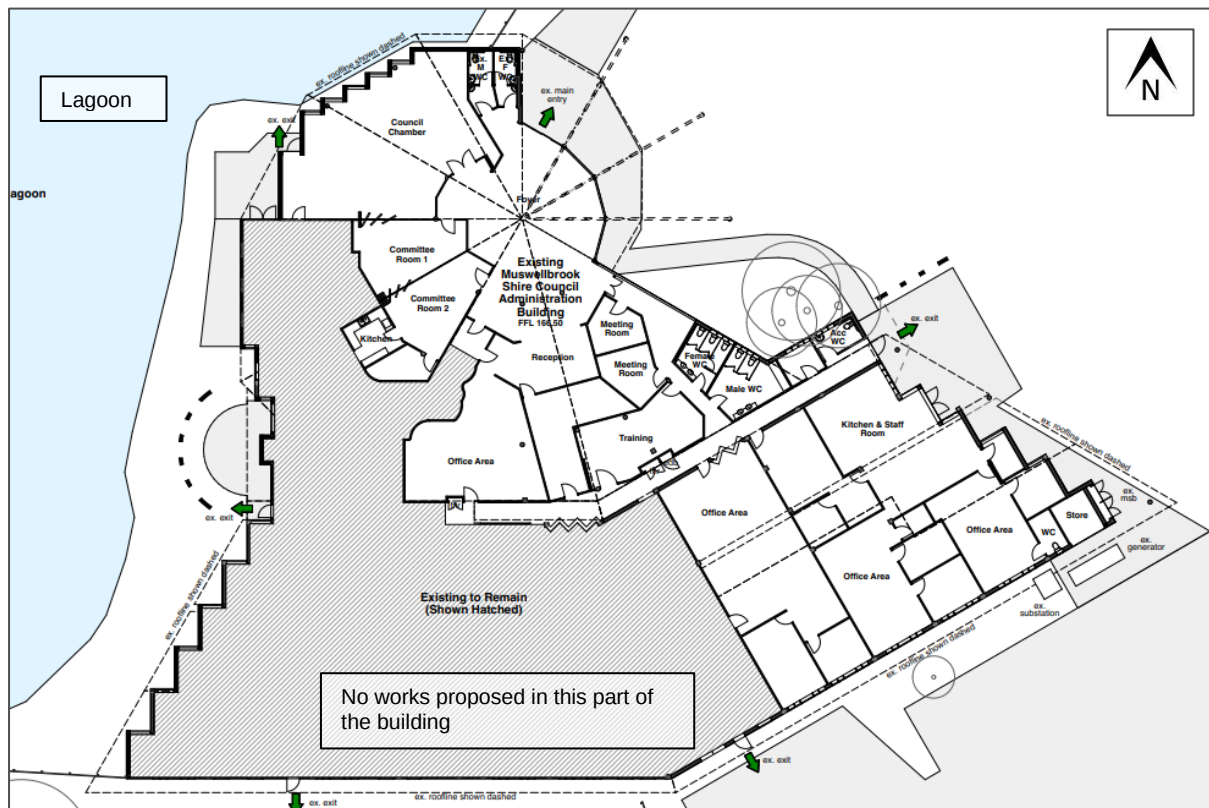


Figure 3 | Existing floor plan of the existing Council building (Source: Applicant's RTS)



Figure 4 | View of the Council building (Source: Applicant's EIS)



Figure 5 | View of the Council building (Source: Applicant's EIS)

1.2 Surrounding development

The site adjoins residential dwellings to the east, south and west, with New England Highway to the north. A motel is located immediately to the west of the existing childcare centre. The New England Highway is a classified state road, known as Maitland Street in this section of Muswellbrook.

Muswellbrook Golf Club is located on the opposite side of the site across Maitland Street. Two local roads, Eucalypt Avenue and Eurabbie Avenue, with cul-de-sac ends adjoin the western boundary of the site and service the adjoining residential area. Several local roads surround the southern, eastern and western boundaries of the site. The surrounding development and local roads are identified in **Figures 2 and 7**.

Public transport

The Newcastle train line is located north of Muswellbrook Golf Club, with Muswellbrook Train Station located approximately 2km to the west of the site.

Local bus services operate along Bimbadeen Drive and Henry Dangar Drive near the site and service Muswellbrook and the surrounds. An informal bus stop is located 150m west of the site on Maitland street with access via a shared pathway along the site's northern frontage.

The broader local context of the site is provided in **Figure 6**.

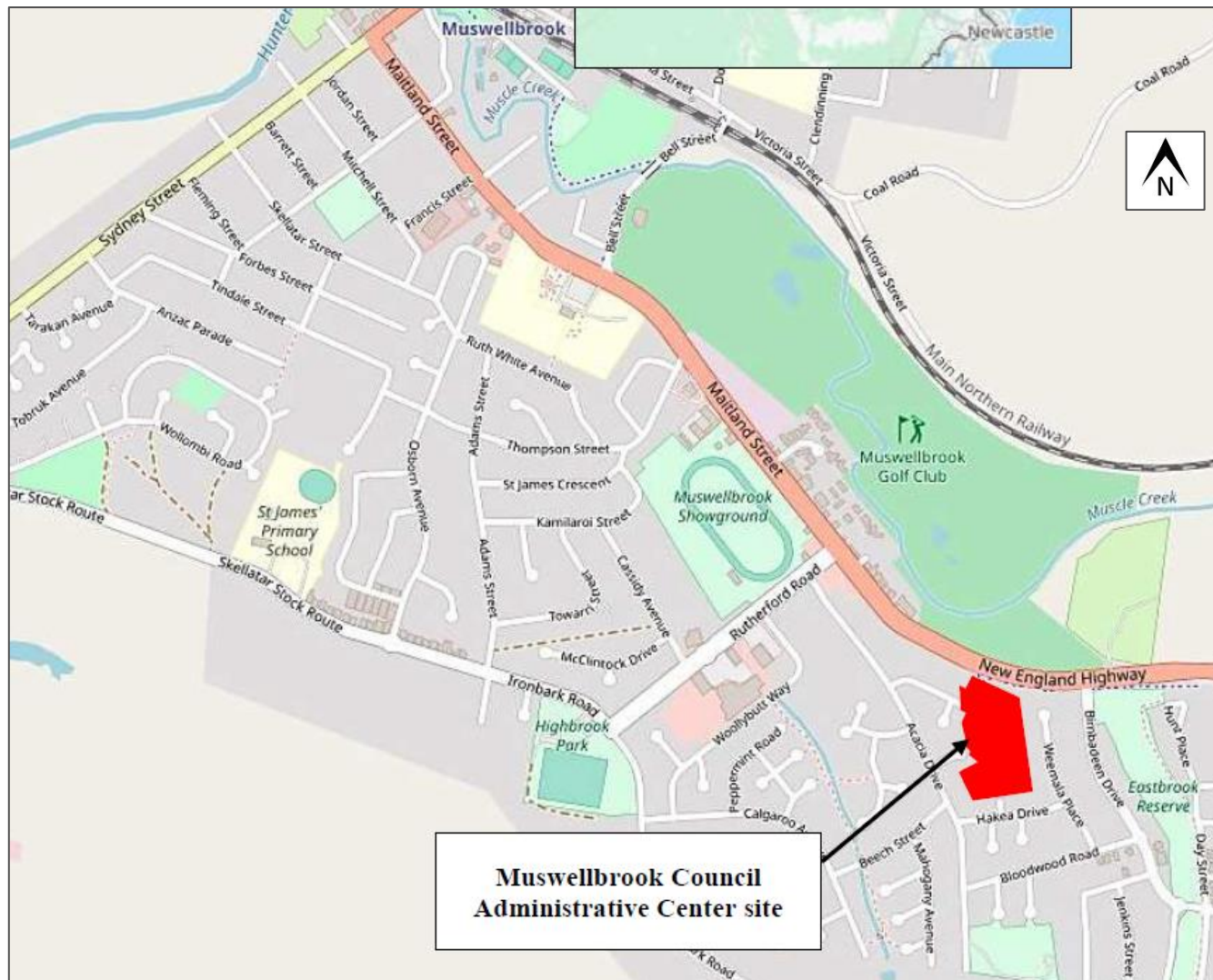


Figure 6 | Broader local context and surrounding developments (Source: Applicant's EIS)

2 Project

2.1 Key Components and Features

The key components and features of the proposal, as set out in the EIS and refined in the Response to Submissions (RTS), are provided in **Table 1** and are shown in **Figures 7 - 11**.

Table 1 | Main components of the project

Aspect	Description
Project summary	Use of an existing building as a new primary school for up to 50 students (K-2) and four full-time staff, associated landscaping, play area, provision of an on-site drop-off and pick-up area, tree removal and security fencing.
Site area	5.9ha.
Building works and internal layout	• Minor external modifications to create a new door. • Internal demolition works and alterations including: ○ conversion of the existing Council chamber to a library. ○ conversion of the existing committee rooms to a multi-purpose hall. ○ creation of administration and staff areas. ○ alterations to the existing office spaces to create three general learning areas (GLAs) and a breakout space with access to the rear hard surface sports court.
Landscaping and fencing	• Construction of a playground to the east of the existing building. • Conversion of part of the overflow carpark at the rear to a hard surface sports court with security gates to restrict vehicular access. • New security fencing around the playground area. • Removal of one tree and proposed replanting.
Access	• Retention of pedestrian and vehicle access from Maitland Street and Eucalypt Avenue. • Removal of existing pedestrian access from Eurabbie Avenue.
Car parking, drop-off and pick-up zone	• Use of the existing on-site car parking area with 14 car spaces (accessed from Eucalypt Avenue) as a staff car park. • Use of the existing on-site car parking area with 35 car spaces as the drop-off and pick-up zone and visitor's car park.

	• Provision of a 12-seater mini-bus drop-off and pick-up area within the carpark. • Provision for mini-bus parking within the rear overflow carpark.
Bicycle parking	• Provision for three bicycle parking spaces.
Hours of operation	• Core school hours: ○ Monday to Friday: 8:45am to 3:00pm. • Operational hours: ○ Monday to Friday: 8:00am to 6:00pm.
Jobs	• Construction: 12 jobs. • Operational: 4 jobs.
Use and student numbers	• Primary school for up to 50 students in K-2 and 4 staff. • No community use proposed.
Timing of construction	• Commence construction in October 2020 and operation in 2021.
CIV	• \$490,784.

2.2 Physical layout and design

Proposed site layout

The proposal would retain the existing site layout and utilise the front section of the site as the school. The boundary of the development area is identified by blue dotted line in **Figure 7**. No alterations are proposed to the existing use of the childcare centre or the adjoining carpark with 13 car spaces.

The existing driveway would provide vehicular access to the site. The larger carpark with 35 car spaces would be utilised as the on-site drop-off and pick-up zone as well as the proposed minibus drop-off zone. The staff carpark would be located to the west and connected to the school via internal pedestrian pathways. A new playground area is proposed to the east of the existing building. The playground area would incorporate play equipment and be connected to existing building and a hard surface sports at the rear.

New fencing is proposed to define playground areas and provide safe user access. No works are proposed within the rear, vacant section of the site. A fence would restrict access to the rear and the lagoon on the eastern side. The site layout and the components of the school are in **Figure 7**.

Proposed alternations to the Council building

Internal and external alterations to the Council building are proposed to enable use of the building as a primary school. The proposed changes to the internal layout (as refined by the RTS) are identified in **Figure 8** and the external elevations are provided in **Figures 9 – 11**.

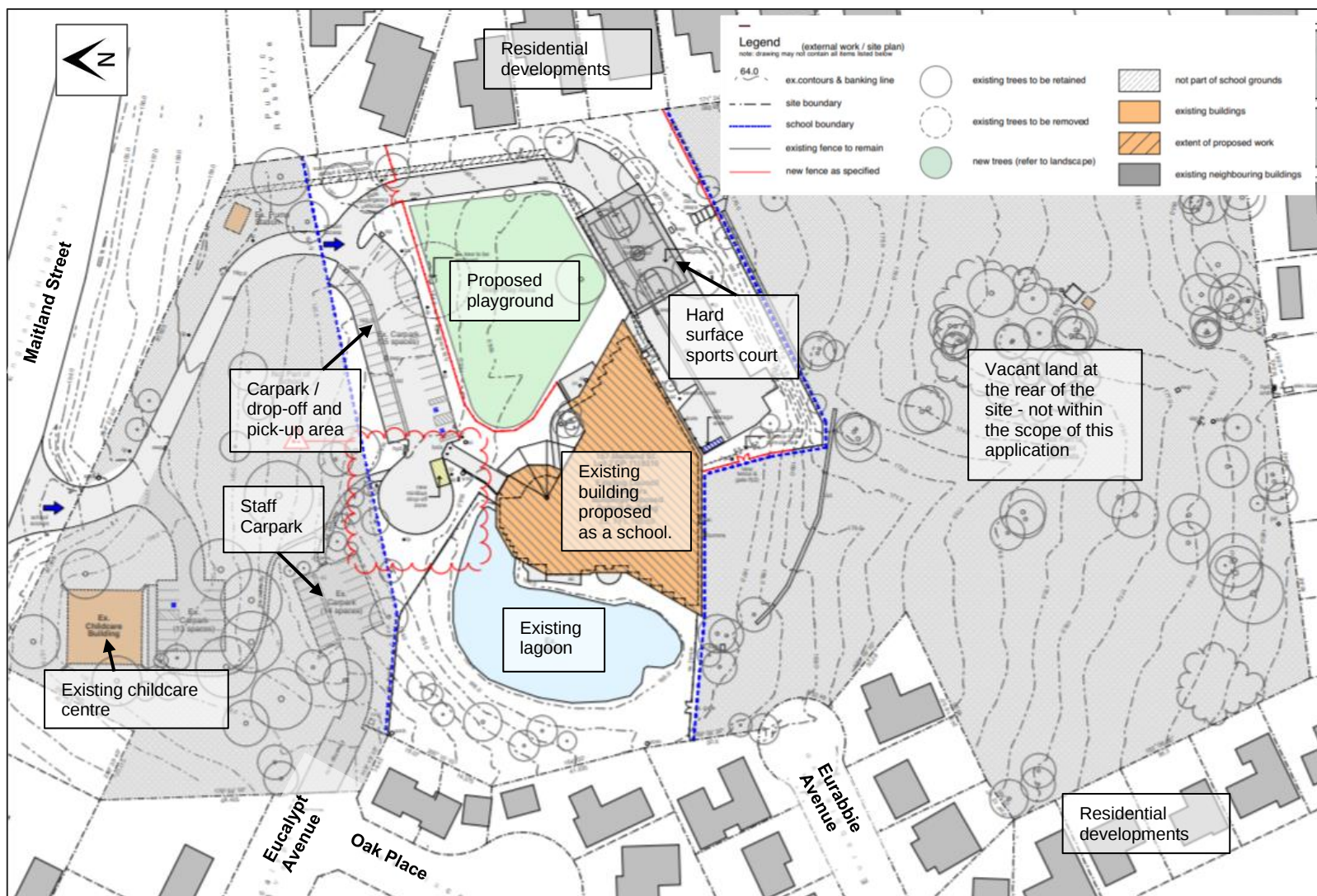


Figure 7 | Proposed external site layout (Source: Applicant's EIS)

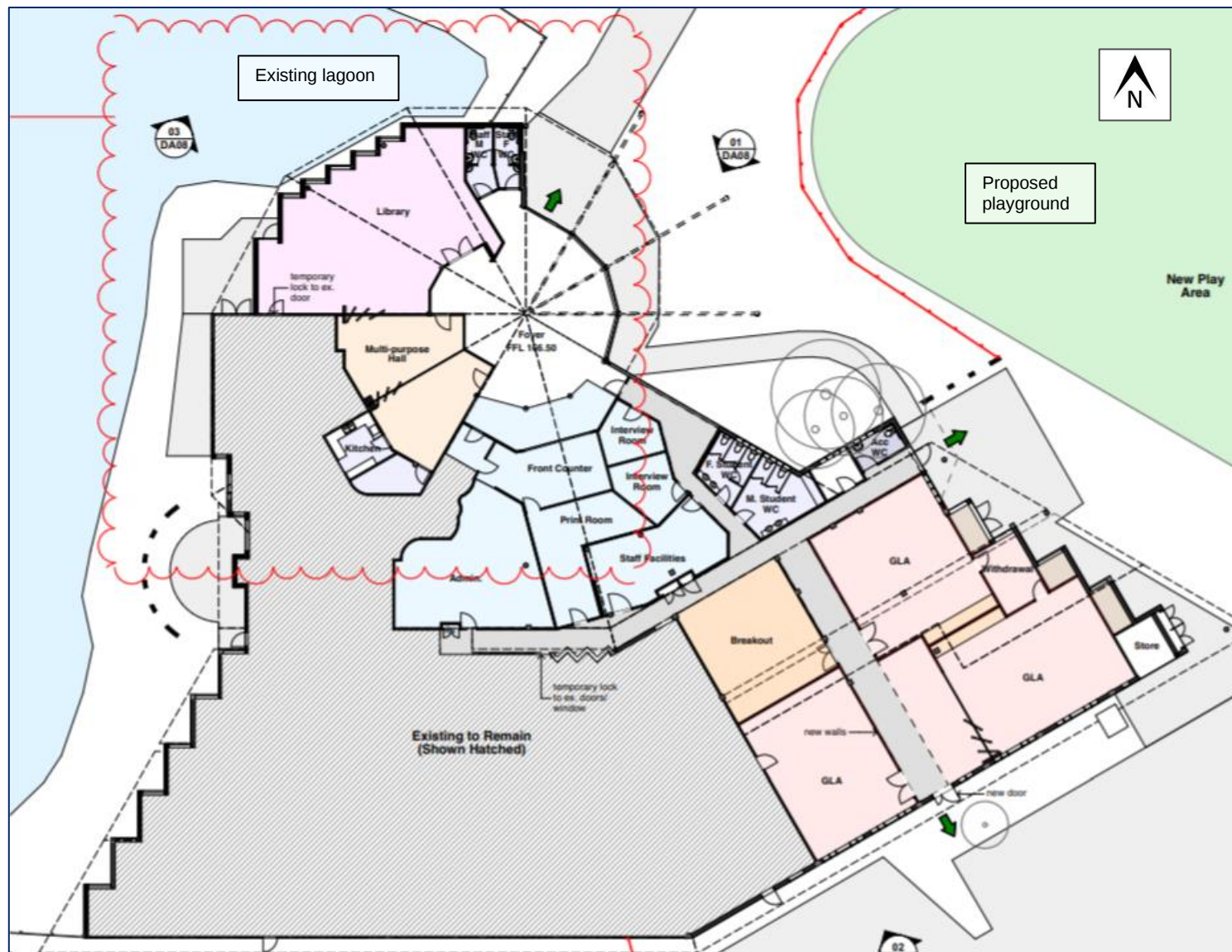


Figure 8 | Proposed internal floor plan (Source: Applicant's RTS)



Figure 9 | Existing eastern elevation (Source: Applicant's RTS)

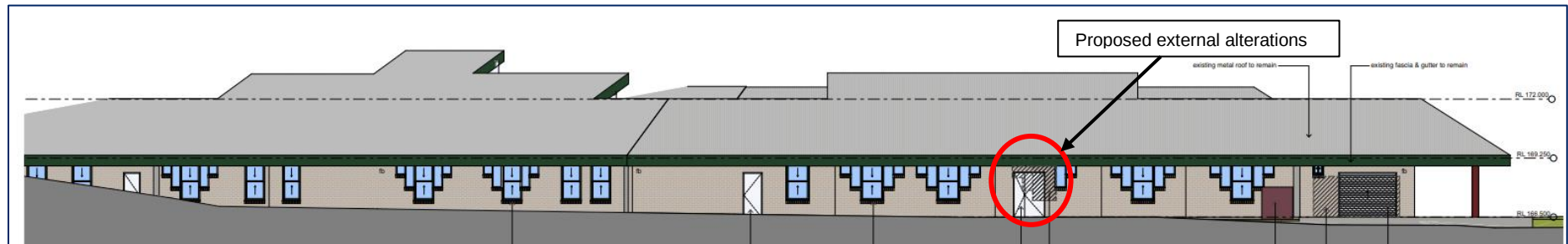


Figure 10 | Existing eastern elevation (Source: Applicant's RTS)

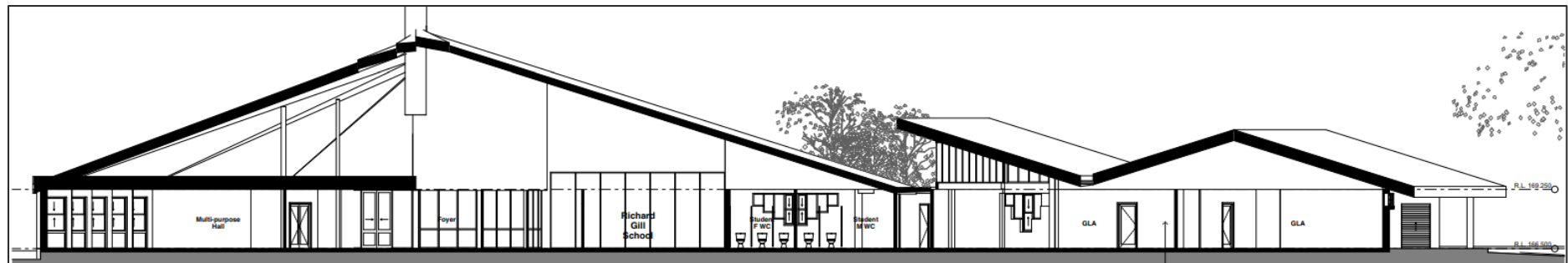


Figure 11 | Section through the existing building showing the learning areas and hall (Source: Applicant's RTS)

3 Strategic context

The Applicant's EIS indicates that the proposal is for a non-government independent school specifically designed to deliver a unique experience for children based on the school's central philosophy of music and physical education-based learning. It would cater for the social and educational needs of the wider Muswellbrook Area.

The school initially aims to provide learning opportunities to years K – 2, with plans to expand in the future to cater for K-6, in an environment where students can complete the primary Australian Curriculum subjects while having music and physical education as a cornerstone of the curriculum.

The Department considers that the proposal would ensure the continued use of a public administration building in the area for the purpose of a school, catering for the needs of the community in the region and providing additional learning facilities for music.

The Department considers that the proposal is appropriate for the site given it is consistent with:

- NSW Premier's Priorities, as the proposal intends to improve education standards and academic results by 2023.
- State Infrastructure Strategy 2018 – 2038, as the proposal would provide educational opportunities for people in a special learning program.
- Hunter Regional Plan 2036, as it would deliver a new education facility.

Additionally, the proposal would support four operational jobs and 12 construction jobs.

4 Statutory Context

4.1 State significance

The proposal is SSD under section 4.36 (development declared SSD) of the EP&A Act as the proposal is for the purpose of a new school under clause 15 of Schedule 1 of the State Environmental Planning Policy (State and Regional Development) 2011 (SRD SEPP).

The Minister for Planning and Public Spaces (the Minister) is the consent authority under section 4.5 of the EP&A Act. In accordance with the Minister's delegation to determine SSD applications dated 9 March 2020, the Executive Director, Infrastructure Assessments may determine this application as:

- the relevant Council has not made an objection.
- there are less than 50 public submissions in the nature of objection.
- a political disclosure statement has not been made.

4.2 Permissibility

The site is identified as being located within the R1 – General Residential zone under Muswellbrook Shire Council Local Environmental Plan 2009 (MLEP). A school is permissible in the R1 zone with development consent. Therefore, the Minister for Planning and Public Spaces or a delegate may determine the carrying out of the development.

4.3 Other approvals

Under section 4.41 of the EP&A Act, a number of other approvals are integrated into the SSD approval process, and consequently are not required to be separately obtained for the proposal.

Under section 4.42 of the EP&A Act, several further approvals are required but must be substantially consistent with any development consent for the proposal (e.g. approvals for any works under the *Roads Act 1993*).

The Department has consulted with the relevant public authorities responsible for integrated and other approvals and has considered their advice in its assessment of the project and included suitable conditions in the recommended conditions of consent (see **Appendix C**).

4.4 Mandatory Matters for Consideration

4.4.1 Environmental planning instruments

Under section 4.15 of the EP&A Act, the consent authority is required to take into consideration any environmental planning instrument (EPI) that is relevant to the development the subject of the development application. Therefore, the assessment report must include a copy of, or reference to, the provisions of any EPIs that substantially govern the project and that have been considered in the assessment of the project.

The Department has undertaken a detailed assessment of these EPIs in **Appendix B** and is satisfied the application is consistent with the requirements of the EPIs.

4.4.2 Objects of the EP&A Act

The objects of the EP&A Act are the underpinning principles upon which the assessment is conducted. The statutory powers in the EP&A Act (such as the power to grant consent/ approval) are to be understood as powers to advance the objects of the legislation, and limits on those powers are set by reference to those objects. Therefore, in making an assessment, the objects should be considered to the extent they are relevant. A response to the objects of the EP&A Act is provided at **Table 2**.

Table 2 | Response to the objects of section 1.3 of the EP&A Act

Objects of the EP&A Act	Consideration
(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,	The proposal would provide a new school that offers a strong music-based learning curriculum. The proposal would promote the social and economic welfare of the local community with no negative impacts on the natural environment.
(b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,	The development does not involve the construction of a new building but includes measures to deliver ecologically sustainable development wherever possible in relation to the proposed fit out (Section 4.4.3).
(c) to promote the orderly and economic use and development of land,	The proposal would be an orderly and economic use and development of land as it utilises an existing building as a fit-for-purpose school.
(d) to promote the delivery and maintenance of affordable housing,	Not applicable.
(e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,	The proposal would result in the removal of one tree within the site. The Department has considered the impacts of the proposed works on existing trees in Section 6 .
(f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),	The site does not include any heritage items and is not near any identified heritage conservation areas. The proposal would not impact on any nearby local heritage items or Aboriginal cultural heritage.
(g) to promote good design and amenity of the built environment,	The proposal relates to the adaptive reuse and would not affect the external design of the existing building.
(h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,	The proposal does not involve any major building works. The Applicant has prepared management plans to ensure that the completed development operates in accordance with legislation, guidelines, policies and procedures.

(i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,	The Department publicly exhibited the proposal (Section 5.1), which included consultation with Council and other public authorities and considered their responses (Section 5.1 and 6).
(j) to provide increased opportunity for community participation in environmental planning and assessment.	The Department publicly exhibited the proposal as outlined in Section 5.1 , which included notifying adjoining landowners, placing a notice in newspapers and displaying the proposal on the Department's website and at Council during the exhibition period. Issues raised in the submission have been addressed in Section 6 .

4.4.3 Ecologically Sustainable Development

The EP&A Act adopts the definition of ESD found in the *Protection of the Environment Administration Act 1991*. Section 6(2) of that Act states that ESD requires the effective integration of economic and environmental considerations in decision-making processes and that ESD can be achieved through the implementation of:

- the precautionary principle.
- inter-generational equity.
- conservation of biological diversity and ecological integrity.
- improved valuation, pricing and incentive mechanisms.

The Applicant's EIS has provided a brief assessment against the above principles and ensures a sustainable approach through the proposed reuse of the existing building on the site. Specific ESD measures for the building have not been proposed.

The Department recognises the limited opportunities to incorporate ESD measures in the building considering the existing built form. However, the Department considers that some ESD initiatives and sustainability measures can be included such as:

- efficient heating, ventilation and air conditioning selection.
- use of energy efficient LED lighting and lighting control systems with dimmable fittings.
- water efficient equipment, fixtures and fittings to minimise hot water consumption and subsequently reduce energy demand.

The Department has recommended a condition that requires the Applicant to implement the above ESD measures prior to the commencement of operation.

The Department has considered the proposed development in relation to the ESD principles. The precautionary and inter-generational equity principles have been applied in the decision-making process via a thorough and rigorous assessment of the environmental impacts of the proposed development. Having considered the objects of the EP&A Act, including the incorporation of the additional ESD measures, the Department considers the application can promote ESD subject to the recommended conditions.

4.4.4 Environmental Planning and Assessment Regulation 2000

Subject to any other references to compliance with the Environmental Planning and Assessment Regulation (EP&A Regulation) cited in this report, the requirements for Notification (Part 6, Division 6) and Fees (Part 15, Division 1AA) have been complied with.

4.4.5 Planning Secretary's Environmental Assessment Requirements

The EIS is compliant with the Planning Secretary's Environmental Assessment Requirements (SEARs) and is sufficient to enable an adequate consideration and assessment of the proposal for determination purposes.

4.4.6 Section 4.15(1) matters for consideration

Table 3 identifies the matters for consideration under section 4.15 of the EP&A Act that apply to SSD in accordance with section 4.40 of the EP&A Act. The table represents a summary for which additional information and consideration is provided for in **Section 6** (Assessment) and relevant appendices or other sections of this report and EIS, referenced in the table.

Table 3 | Section 4.15(1) Matters for Consideration

Section 4.15(1) Evaluation	Consideration
(a)(i) any environmental planning instrument	Satisfactorily complies. The Department's consideration of the relevant EPIs is provided in Appendix B of this report.
(a)(ii) any proposed instrument	Not applicable.
(a)(iii) any development control plan (DCP)	Under clause 11 of the SRD SEPP, DCPs do not apply to SSD. Notwithstanding this, the objectives of the relevant controls under the MLEP, where relevant, has been considered in Section 6 .
(a)(iiia) any planning agreement	Not applicable.
(a)(iv) the regulations <i>Refer Division 8 of the EP&A Regulation</i>	The application satisfactorily meets the relevant requirements of the EP&A Regulation, including the procedures relating to applications (Part 6 of the EP&A Regulation), public participation procedures for SSD and Schedule 2 of the EP&A Regulation relating to EIS.
(a)(v) any coastal zone management plan	Not applicable.
(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	Impacts have been appropriately mitigated or conditioned as discussed in Section 6 .

(c) the suitability of the site for the development	The site is suitable for the development as discussed in Sections 3 and 6.
(d) any submissions	Consideration has been given to the submissions received during the exhibition period and discussed in Sections 5 and 6.
(e) the public interest	The proposal is in the public interest as discussed in Sections 6.

4.5 Biodiversity Development Assessment Report

Section 7.9(2) of the *Biodiversity Conservation Act 2016* (BC Act) requires all applications for SSI and SSD to be accompanied by a Biodiversity Development Assessment Report (BDAR) unless the Planning Agency Head and the Environment Agency Head determine that the proposed development is not likely to have any significant impact on biodiversity values.

The delegated Planning Agency Head in the Planning and Assessment Group of the Department and the delegated Environment Agency Head in the Environment, Energy and Science Group (EESG) of the Department determined that the proposed works are not likely to have a significant impact on biodiversity values and as such the application is not required to be accompanied by a BDAR. Consequently, a BDAR waiver was issued by the Department on 26 May 2020.

5 Engagement

5.1 Department's engagement

In accordance with Schedule 1 of the EP&A Act, the Department publicly exhibited the application from 15 June 2020 until 13 July 2020 (28 days). The application was exhibited on the Department's website only with no public exhibition notices placed in newspapers (in accordance with the COVID-19 restrictions).

The Department also notified adjoining landholders and relevant state and local government authorities in writing. A Department representative visited the site to provide an informed assessment of the development.

The Department has considered the comments raised in the public authority and public submissions during the assessment of the application (**Section 6**) and/or by way of recommended conditions in the instrument of consent at **Appendix C**.

5.2 Summary of submissions

The Department received a total of 11 submissions, comprising five from public authorities including comments from Muswellbrook Shire Council (Council) and six individual public submission (including three objections, one support and two comments). A summary of the issues raised in the submissions is provided at **Section 5.3** and **5.4** and copies of the submissions may be viewed at **Appendix A**.

5.3 Public Authority Submissions

A summary of the issues raised in the public authority submissions is provided at Error! Reference source not found. and copies of the submissions may be viewed at **Appendix A**.

Table 4 | Summary of Public authority Submissions to the EIS

Council
Council supported the proposed use and advised that it complies with the Strategic and Operational Plans of the region.
Transport for NSW (TfNSW)
- TfNSW provided several recommendations requiring the consent authority to: - consider the need for additional safety measures at the intersection of the driveway with Maitland Street including a give way sign and a double dividing line. - ensure that appropriate signage is provided during construction works. - consider the compliance of sight distances at the driveway intersection. - ensure that the stormwater from the site does not impact on the drainage system within the New England Highway.

- consider the impacts of road traffic noise on the development in accordance with the relevant guidelines.

Water NSW

- Water NSW advised that the development would not impact on any of their assets.

EESG

- EESG noted that a BDAR waiver has been granted and stated it has no comments in relation to biodiversity, Aboriginal cultural heritage, flooding or flood risk.

NSW Environment Protection Authority (EPA)

- EPA provided the following comments:
 - it does not appear that the proposal would be a scheduled activity as listed in Schedule 1 of the *Protection of the Environment Operations Act 1997*, nor is the proposal being undertaken by a NSW Government education provider.
 - Council is the appropriate regulatory authority for any environmental pollution matters.

5.4 Public Submissions

A summary of the key issues raised in the three public objections are provided below and a copy of the submissions may be viewed at **Appendix A**.

The public submissions objected to the proposal on the following grounds:

- adverse traffic impacts due to the development and erroneous traffic survey results.
- adverse noise impacts due to the playground use and the musical instruments being played.
- adverse impacts on the adjoining developments due to light spill.
- removal of an accessway through the rear of the site which connects adjoining developments and is also used to park caravans by landowners in the locality.
- adverse impacts on local biodiversity and lack of flora and fauna studies.
- use of Council's 'Future Funds' to contribute funds to the school and associated enquiries in relation to the committee members in the Future Fund Committee.
- ongoing operation of the school and the operation of the Principal's office from the premises prior to the consent being granted, as well as details of enrolment being published on the school's website.
- conflicts of interest between local Councillors and the school.
- lack of consultation with the community regarding this development.
- lack of transparency of the application process and no public hearing by the Minister.
- noise and air pollution during construction works.
- the proposal being for K – 2 and being advertised on the school's website as K – 12.
- adverse impacts on the stormwater in the area due to overflow from the lagoon.

The public submissions also commented that the proposed use is contrary to Council's proposal for rezoning the land to a reserve in the future.

5.5 Response to submissions

Following the exhibition of the application the Department placed copies of all submissions received on its website and requested the Applicant provide a response to the issues raised in submissions.

On 13 August 2020, the Applicant provided a response to submissions (RTS) (**Appendix A**) on issues raised during the exhibition of the proposal. The RTS included:

- an amended internal layout to relocate the library.
- provision of two disabled car spaces within the designated drop-off and pick-up area.

The RTS also included additional information regarding the location of the bin storage area, fencing details and a response to all public and public authority submissions.

The RTS was made publicly available on the Department's website and was referred to public authorities for comments.

No additional comments were received from public authorities that raised any issues or concerns. Council noted the community submissions in relation to operational matters and advised that Council would contact the landowners separately to resolve these matters.

6 Assessment

The Department has considered the EIS, the issues raised in submissions and the Applicant's RTS in its assessment of the proposal. The Department considers the key issues associated with the proposal are:

- traffic, access and parking.
- built form, landscaping and tree removal.
- environmental amenity.

Each of these issues is discussed in the following sections of this report. Other issues that were taken into consideration during the assessment of the application and are discussed at **Section 6.4**.

6.1 Traffic, Access and Parking

The EIS was supported by a Traffic Impact Assessment Report (TIA) which provides an assessment of the proposal's potential traffic, transport and parking related impacts. The relevant matters in relation to traffic generation, vehicular access and parking arrangements are discussed below.

6.1.1 Operational Traffic Generation

Existing traffic conditions and road network capacity

The TIA indicates that the New England Highway provides an arterial function with two lanes on the eastbound and a single lane on the westbound side. Its mid-block capacity, based on the performance standards in the TfNSW Guide to Transport Impact Assessments, is in the order of 1900 vehicles per hour (vph) eastbound and 1200 – 1400 vph westbound.

The Applicant conducted traffic surveys on the New England Highway (Maitland Street) in the vicinity of the site and found the daily traffic volume to be approximately 11,000. Based on traffic survey data for existing traffic generation in the AM (8:15am–9:15am) and PM (3:30pm–5:30pm) commuter peak hours, the TIA concludes that the peak commute hours traffic volume would be less than 650 vph which is well within the mid-block capacity for this road.

The TIA also included surveys of existing traffic flows from the site on to Maitland Street, with the Council building and the existing childcare centre between 8:15am–9:15am and between 3:30pm–4:30pm.

Proposed traffic generation

The development has the potential to generate traffic due to the drop-off and pick-up of 50 students and access to the site by four staff members.

The TIA adopted a trip generation rate in accordance with 'Trip Generation Surveys – School Analysis Report' prepared by TfNSW for seven regional primary schools in NSW, and considers that there would be a high rate of usage of private vehicle trips during the peak hours for this school (noting the students being in Years K – 2). Based on the worst-case scenario, the TIA calculated the future trip generation due to the school between 7:45am–8:45am and 3pm–3:15pm. However, the TIA acknowledges that the school would use a 12-seater minibus to drop-off and pick-up students. Consequently, the future trip generation may be less than that anticipated.

Comparing the existing and the future traffic scenarios (worst case scenario), the TIA concludes that the proposed school and the childcare centre operations would generate a maximum of 53 additional trips in the AM peak and 86 additional trips in the PM school peak hours.

The current mid-block traffic flow within this section of the New England Highway is much lower than its capacity. Consequently, the TIA concludes that the additional traffic due to the school and the childcare centre would be easily accommodated within the classified road network.

The TIA has also considered student travel data at several Catholic primary schools throughout the Maitland Newcastle Diocese. By comparing the report and the surveyed data from other schools, the TIA anticipate the following modal split for the school the possible future expansion:

- 60% students travel by car.
- 35% students travel by bus.
- 5% students by walk or cycle.

This implies that future expansion of the school would result in more students utilising public transport or school buses. Consequently, a significant impact on the local road network is not anticipated even in the future with the increased school capacity.

Intersection performance

The TIA identifies that the intersection of the driveway from the site with Maitland Street would be the only intersection that is likely to be impacted by this development. The driveway intersection is connected to Maitland Street via a short right turn lane and a left turn deceleration lane (**Figure 12**).



Figure 12 | Location of the driveway intersection and existing road infrastructure (Source: Nearmap 2020)

The TIA includes SIDRA modelling results for the performances at the intersection of the existing driveway to the site, during the AM / PM school peak hour for 2020 and in 10 years for 2030. The results indicate that it would perform at level of service A or B including the development traffic in 2020 and 2030. Additionally, the EIS advises that the construction of Muswellbrook Bypass would result in reduced traffic flows through Maitland Street in the future (expected construction start date per the TfNSW website is 2022)

Queuing Length

The TIA states that currently there are minimal delays for vehicles entering the site from Maitland Street (in both directions). Given the AM peak school traffic would be distributed through a half hour, there would be sufficient opportunity for vehicles to turn right out of the site in the morning. During the PM peak, queuing is expected due to vehicles leaving the site at one time. The driveway has an internal length of approximately 27m which can accommodate the queuing length in the PM peak, predicted to be 10m – 16m in the SIDRA modelling.

Submissions

During the EIS exhibition, Council and TfNSW did not raise any concerns about traffic impacts due to the proposal or the performance and queuing at of the driveway intersection. Community submissions raised concerns regarding the impacts of traffic generated by the development on the surrounding road network including Eurabbie Avenue. Submissions also raised concerns that the traffic data collected during COVID-19 may be flawed and that the traffic movements do not consider the drop-off and pick-up of students.

Applicant's Response

In response, the RTS indicated that the traffic assessment was undertaken prior to the COVID-19 lockdown period. The TIA has still factored in an additional 10% traffic flows over the surveyed data in modelling the intersection performances and the traffic volume on Maitland Street. The RTS also indicated that the drop-off and pick-up movements have been accounted for and include vehicle trips generated due to this development.

Department's Assessment

The Department has assessed the TIA and the RTS regarding the traffic impacts due to the proposal including traffic generation, intersection performance and queuing. The Department notes that the site was previously used as a Council administrative building and as a current childcare centre. The additional traffic generated by the development would result in a nett 2% increase in vehicles per hour during peak hours on the section of Maitland Street fronting the site. The Department is satisfied that the additional traffic can be accommodated in the surrounding traffic network with minimal impacts on the surrounding residential streets. The development would not need any upgrades to the driveway intersection.

The Department also notes that four staff members would likely drive to the site daily via Eucalypt Avenue, thus not impacting on the intersection at Maitland Street. No access to the site is proposed from Eurabbie Avenue (identified in **Figure 7**) and thus no additional traffic impacts on this road are envisaged.

The Department acknowledges that traffic impacts may increase in the future if the school progresses its expectations to expand. However, that would be subject to a separate development application and the traffic impacts would be assessed in detail then.

6.1.2 Car Parking, Bicycle Parking and Access

Car Parking

The proposal relies on the two existing on-site car parking areas accommodating 14 and 35 car parking spaces respectively. The Applicant advised that the 35-space car park would be used a drop-off and pick-up zone during the school peak hours and includes two accessible car spaces. At other times it may be utilised as a visitor carpark. The Muswellbrook Development Control Plan 2009 (DCP) requires the provision of one space per staff member plus the provision of a drop-off and pick-zone. The proposal complies with this requirement.

The Applicant's EIS notes that there is an existing car parking area at the rear of the existing building. The proposed development would convert this car park area partly into a hard surface sports court with appropriate lane marking over the car spaces. The Applicant advised that during future school events this area may be used for overflow car parking, and the minibus, when not in use, would be parked in this area. A security gate and fence would restrict unauthorised vehicular access to this part.

The location of the proposed carparking and drop-off and pick-up areas on the site are provided in **Figures 13 and 14**.

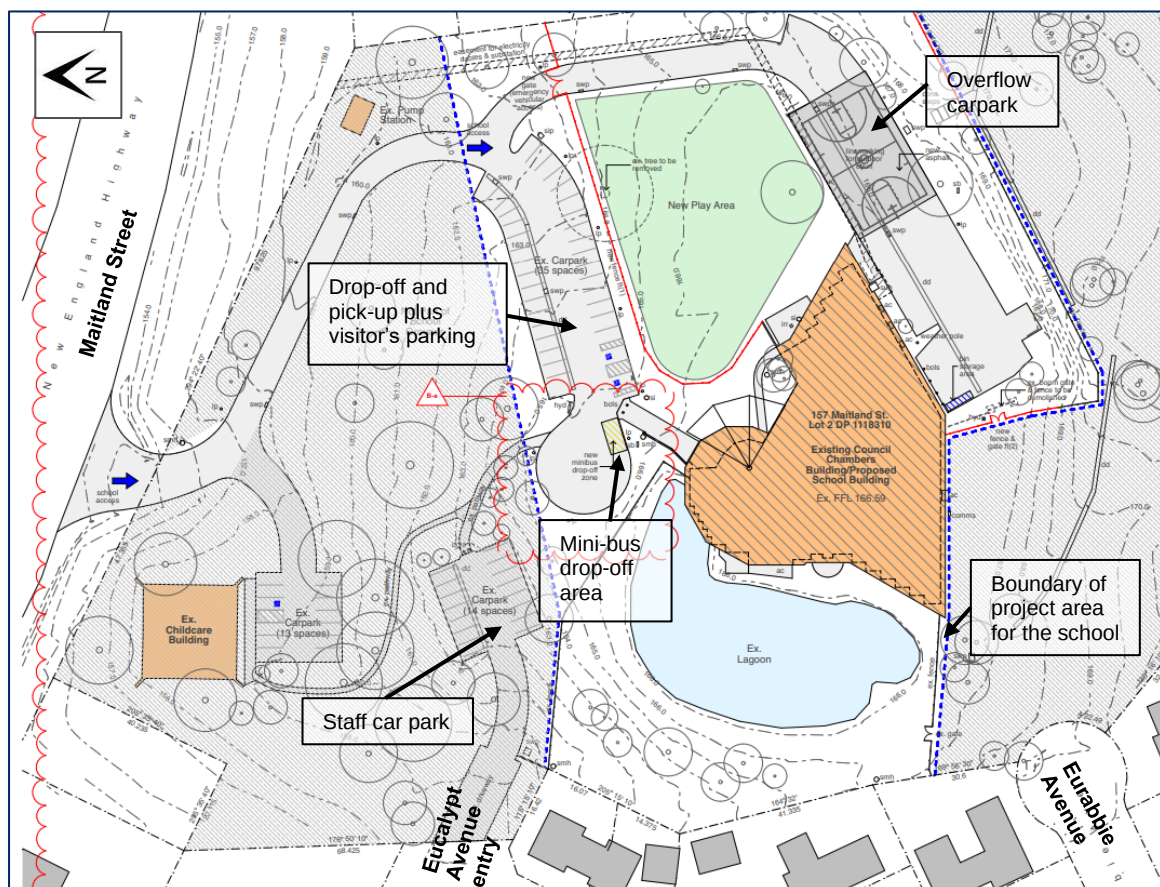


Figure 13 | Location of carparks and entries to the site (Source: Applicant's RTS)



Figure 14 | View of drop-off and pick-up area (left) and the overflow car park (right) (Source: Applicant's EIS)

The Department considers that the site includes sufficient parking spaces to accommodate the staff and visitors at the school and also allow for future expansion of the premises (if needed). Additionally, there are existing internal pedestrian connections within the site providing safe access for the users between the carparks and the existing building.

The Department has recommended a condition requiring the preparation of an Operational Transport and Access Management Plan (OTAMP) prior to the commencement of operation that sets out the arrangements to ensure compliance with the commitments in the TIA with regard to use of the car parking areas, associated overflow parking and security measures.

The adequacy of the drop-off and pick-up provisions is discussed in **Section 6.1.3**.

Bicycle Parking

The DCP does not require the provision of bicycle parking facilities on the site. Traffic surveys of other regional primary schools conducted by the TIA identify the need for about three bicycle parking spaces on the site (5% of the students). The EIS commits to providing this on the site.

The Department has recommended a condition requiring three bicycle parking facilities to be installed on the site prior to the commencement of operation.

Vehicular Access

Access and egress to the site is proposed to continue to occur via the combined entry / exit driveway off Maitland Street, which also provides connection to the childcare centre (**Figure 7**).

The TIA concludes that the width of the existing driveway is suitable for the development. The heavy vehicles including waste collection / delivery / emergency vehicles would also utilise this access outside the school peak hours. The staff would access the site via Eucalypt Avenue, thereby reducing the traffic demand on the main driveway.

The TIA indicates that a minimum sight distance of 114m – 123m is needed for the 60km / hour posted speed-limit on this section of New England Highway (Maitland Street). The road alignment at the site frontage would allow for sight distances exceeding 150m in both directions along the road as identified in **Figure 15**.



Figure 15 | Views of the entry to the site looking west (left) and east (right) (Source: Applicant's EIS)

During the EIS exhibition, TfNSW reviewed the proposal and recommended that additional safety measures be introduced at the driveway intersection with Maitland Street to ensure a safer environment in the future. These recommendations included sign posting and line marking with 'give way' signs.

The Applicant's RTS advised that these may be recommended as conditions of consent. The RTS also included a swept path analysis to demonstrate that waste collection vehicles and minibuses can satisfactorily access the site and manoeuvre within the designated drop-off and pick-up area.

Based on the assessment in the TIA and the advice from TfNSW, the Department considers that the design and alignment of the driveway would satisfactorily cater for the development subject to the inclusion of additional safety measures. In accordance with the recommendations of TfNSW, the Department has included a condition requiring the provision of a give way sign at the intersection within two months of commencement of operation of the school.

Pedestrian access

A shared pathway for pedestrians and cyclist currently runs along the northern frontage of the site. The main pedestrian access to the site is via the Maitland Street entry. There is an existing informal access to the site via Eurabbie Avenue, a set of stairs and informal walkways at the rear vacant section. An existing internal pedestrian road network connects the various sections of the site and the car parks.

The TIA considers the existing infrastructure to be sufficient for the development.

During the EIS exhibition, a community submission raised concerns about pedestrian safety in relation to the development. The submission indicated that there are no provisions for bus drop-off areas on Maitland Street near the site. Being a 60km / hour speed zone, the students / staff cannot access the public bus stop from the site safely. Submissions also sought clarification regarding the future pedestrian access to the site from Eurabbie Avenue. One submission indicated that the residents on Hakea Drive (adjoining the southern boundary of the site and identified in **Figure 2**) currently have access to the southern side of the site through walking tracks and access other properties by via this route.

In response to the submissions, the Applicant's RTS reiterated that the driveway and the pedestrian access are safe and appropriate. The Applicant's RTS also indicated that there are no legal walking tracks or accessways through the rear of the site and as such the school does not propose to use this part of the site for any activities. Any existing access can be retained and is a matter between the residents and Council.

The Department has reviewed the TIA and notes that an informal public bus stop is located 150m west of the site on Maitland Street with connection via the existing shared pathway. Given that the proposal includes an on-site parking area for a 12-seater minibus a further provision for a bus bay on Maitland Street is not necessary for 50 students and four staff members. The Department is satisfied that the existing shared path and the existing entry (identified in **Figure 12**) are sufficient to cater for the pedestrians to the site. The Department has recommended that the OTAMP identifies all safe pedestrian walking routes to the site and restricts pedestrian access to Maitland Street and Eucalypt Avenue only with no access permitted from Eurabbie Avenue or the stairs on the rock wall to the south of the existing building.

The Department notes that there is no existing pedestrian access to the rear of the site from Hakea Drive (per the survey plan). Consequently, this is not a matter for consideration in this application.

6.1.3 Student Drop-off and Pick-up

The Applicant seeks to use the existing car park for the drop-off and pick-up of the students (identified in **Figure 13**). As discussed earlier, about 50 cars are expected use the drop-off and pick-up area during the AM and PM peak hours. The TIA states that the 35 spaces within the car park is sufficient to cater for the 50 cars. The additional vehicles would queue within the existing driveway with no significant impact on the through traffic flows within Maitland Street.

During the EIS exhibition one submission requested the Applicant to clarify whether Eurabbie Avenue would be used as a drop-off and pick-up zone in the future. The Applicant's RTS confirmed that this is not proposed. The public authorities did not raise any concerns regarding the proposed drop-off and pick-up provisions.

Given the limited number of students being dropped off and picked up, and the anticipated availability of car spaces as well as queue length within the site, the Department considers that the proposed drop-off and pick-up arrangement is suitable. A suitable pedestrian pathway links the drop-off and pick-up zone to the main existing building providing safe access for the users. The Department has recommended a condition requiring operational management procedures for drop-off and pick-up parking to be addressed in the OTAMP.

6.1.4 Construction Traffic

The TIA notes that the school would operate from the existing Council building and car park, therefore construction traffic associated with the proposal will be minimal and limited to facilitate minor internal works within the site and construction of the playground area. Construction vehicles would access the site from the New England Highway and be parked within the site.

The Department agrees with the Applicant's assessment of construction traffic. Noting the minor scale of works, a Construction Traffic Management Plan is not considered necessary.

6.2 Landscaping, Tree Removal and Built Form

6.2.1 Landscaped areas

The proposal involves the design and construction of a playground to the east of the existing building and directly connected to the GLAs. The proposed play equipment would be suitable for K – 2 students. A hard surface outdoor sports court is also proposed to the south of the playground in an area designated for dual use as an overflow car park in the future.

A combination of 1 – 1.8m high palisade fence and a 1.8m high chain wire fence is proposed to secure the play area from the carpark to the north. A security gate would restrict vehicular access to this section of the site.

During the EIS exhibition one submission enquired as to how the safety of the children would be maintained having regard to the location of the lagoon near the existing building. In response, the Applicant advised that an existing fence already restricts access to the lagoon and would be maintained in the future.

The landscape plan and details of fencing are provided in **Figures 16 and 17**.

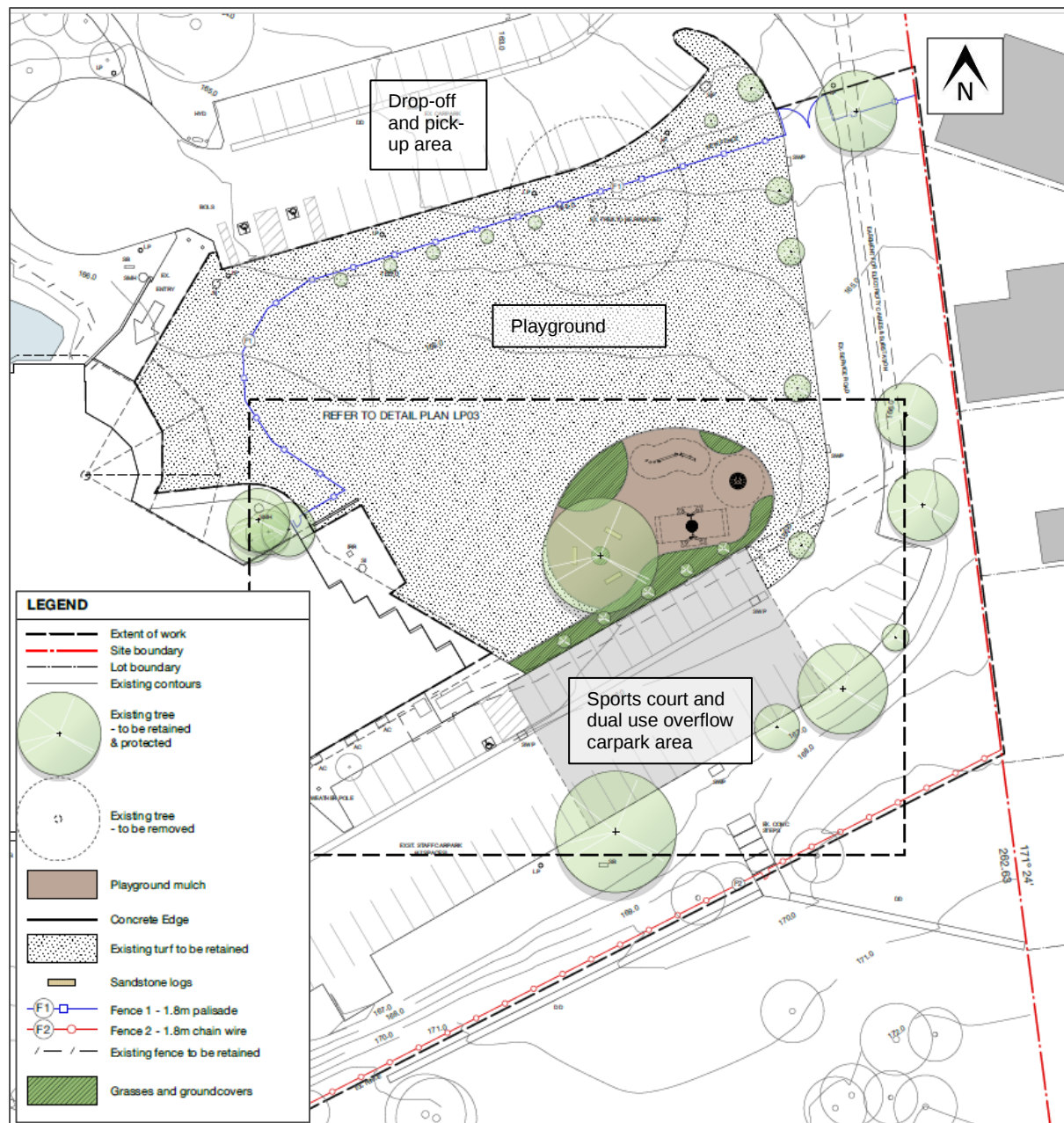


Figure 16 |Landscape plan for the proposed playground (Source: Applicant's EIS)



Figure 17 | Proposed palisade (left) and chain wire (right) fence details (Source: Applicant's EIS)

The Department supports the design of the playground and the dual use of the overflow carpark at the rear as a sports court. The design of the outdoor areas would ensure integration with the existing building and opportunities for passive surveillance from the building. The proposed fencing would ensure the security of the safety of the students in accordance with the Crime Prevention Through Environmental Design principles. The Department has recommended a condition requiring the submission of detailed design plans of the playground to the Certifier, prior to the commencement of works on the site.

6.2.2 Tree removal

As discussed in **Section 4.5**, the Department granted a waiver to lodge a BDAR with the application.

Only one large canopy tree (*Eucalyptus microcarpa*) is proposed to be removed as part of the development. The Applicant's RTS was supported by a statement from the Arborist which confirmed that the tree has been pruned extensively in the past and had hollow branches due to subterranean termites. Considering the bad health of the tree and to maintain the safety of the students, the Arborist Report recommended removal of this tree.

During the EIS exhibition, community submissions raised concerns about the adverse impacts of the development on the native flora and fauna associated with the site, specifically in the vacant rear section. Submissions indicated that additional flora and fauna studies should be submitted to assess the impacts of the development on the local biodiversity. EESG reviewed the application and raised no concerns with regard to the impacts on biodiversity in the locality.

The Department notes the community submissions, however, recognises that the BDAR waiver was granted on the basis that no significant biodiversity is expected due to the development. The proposal does not involve any major construction works apart from creating a playground in a vacant part of the land adjoining the existing building. Consequently, no additional flora and fauna studies are considered necessary for this site. The Department has recommended a condition requiring the proposed school to be located within the "school boundary" marked on the submitted site plan.

The Department also notes that the State Environmental Planning Policy (Koala Habitat Protection) 2019 (Koala SEPP) applies to the site as it is located within the Muswellbrook Shire LGA. While the site contains numerous trees, the proposal itself would be restricted to the building footprint and the disturbed areas of the site. Consequently, no significant impact to a koala habitat is anticipated due to this development.

Based on the comments from EESG, the Department agrees with the Applicant's argument and supports the removal of the tree within the playground. However, the Department notes that the *Eucalyptus microcarpa* is listed as potential feed species in Schedule 2 of the Koala SEPP. Noting this, the Department has recommended a condition requiring that three canopy trees of suitable native species, including one *Eucalyptus microcarpa* or any other koala feed species tree, be planted within the development area. At least one tree should be planted within the playground, to provide shade to the users.

6.2.3 Built form

The proposal only involves internal alterations to the existing Council building and minor external alterations to create a door on the eastern elevation. The EIS includes an Access Report which concludes that the Council building and the associated works can comply with the Building Code of Australia Deemed-to-Satisfy Provisions, subject to compliance with a number of recommendations.

During the EIS exhibition, the Department raised concerns about the lack of natural light and ventilation to the proposed library. In response the Application amended the proposed internal layout so that the library received sufficient natural light and ventilation (**Figure 8**).

The Department has reviewed the proposal internal layout and is satisfied that it would be suitable for a primary school with 50 students. A large section of the Council building would remain unused with future opportunities for further alterations, expansion and increase in school capacity (with development consent).

The Department has recommended a condition requiring the Applicant to demonstrate compliance with the recommendations of the Accessibility Report prior to the commencement of operation.

6.3 Environmental Amenity

6.3.1 Noise

Existing conditions

The EIS was supported by a Noise and Vibration Assessment Report (NVIA) which identified the sensitive receivers around the site in noise catchment areas (NCA) (**Figure 18**) and established the project noise trigger levels (PNTLs) at the identified receivers.



Figure 18 | Noise monitoring locations and NCAs (Source: Applicant's EIS)

NCA1 and NCA2 primarily accommodates residential developments while NCA3 includes a short-term residential accommodation (motel). **Figure 19** provides the established PNTLs for the NCAs.

NCA	Receiver type	Assessment period ¹	Intrusiveness noise level, dB $L_{Aeq,15min}$	Amenity noise level ² , dB $L_{Aeq,15min}$	PNTL ³ , dB $L_{Aeq,15min}$
1	Residential	Day	46	n/a	46
		Evening	44	n/a	44
		Night	38	n/a	38
2 & 3	Residential	Day	46	n/a	46
		Evening	46	n/a	46
		Night	43	n/a	43
	Childcare	When in use	n/a	58	58
	Motel	Day	n/a	68	68
		Evening	n/a	58	58
		Night	n/a	53	53

Figure 19 | Established PNTLs (Source: Applicant's EIS)

Road Traffic Noise

The NVIA includes an assessment of road traffic noise intrusion into the existing building and the playground, as per clause 102 of the State Environmental Planning Policy (Infrastructure 2007) (Infrastructure SEPP) and the Development Near Rail Corridors and Busy Roads – Interim Guidelines. The recommended internal noise levels for GLAs, per the guidelines, is 40dB L_{Aeq} (windows closed) and 50dB L_{Aeq} (windows open). The noise targets for the playground have been considered in accordance with the Road Traffic Noise Policy 2011 (being 55dB L_{Aeq}).

In accordance with the NVIA and TIA, there was 10 – 12% reduction in traffic volume on Maitland Street at the time of noise monitoring, due to the COVID-19 lockdown situation. Consequently, the future road traffic noise may be 0.4dB higher than the measured value, which has been factored into the relevant calculations. The NVIA advises that the recommended internal noise levels within the GLAs can be achieved via the existing acoustic treatments in the building, given the level of road traffic noise at this location. Therefore, no further acoustic treatments would be necessary.

The measured road traffic noise level at the playground is 51dB L_{Aeq} , which complies with the noise target within the Road Noise Policy 2011.

TfNSW have not raised any concerns with regard to the road traffic noise and recommended that the proposal complies with the requirements of the relevant policies and standards in this regard.

The Department considers that the NVIA includes a comprehensive assessment of noise impacts due to the proximity of the school to a busy road. Notwithstanding the assessment of the NVIA, the Department has recommended a condition requiring an additional road traffic noise study to be conducted prior to the occupation of the building to confirm the outcomes of the assessment in the NVIA and include additional corrective measures, should the noise levels not be achieved at that time.

Operational Noise

The NVIA includes an assessment of the noise generated by the operations of the school (mechanical plant, children using the playground, vehicle movements, public address / school bell system and additional road traffic on Maitland Street). The assessment concludes that the noise levels generated by the proposed use of the school would be within the established PNTLs and not adversely impact on the identified sensitive receivers in the near vicinity. The school does not include any intensive outdoor activities or out-of-hours use on the site that may generate unreasonable noise impacts.

During the EIS exhibition, community submissions raised concerns regarding noise generated by the children playing in the outdoor areas and the playing of musical instruments within the proposed multi-purpose hall or the GLAs. The EPA and Council did not raise any concerns in this regard.

The Department has reviewed the operational noise impacts and notes that the playground is setback at least 15 – 20m from the nearest residential developments to the east (NCA1). A solid colourbond fencing separates these residences from the playground and would act as a acoustic barrier. The Department is satisfied that the small scale of the development and the limited use proposed would not have an unreasonable noise impact on these neighbouring residents. NCA2 and the southern part of NCA3 are at a significant distance than the proposed development area. Consequently, they would not be impacted by this development. The developments in NCA3 are already subject to the noise from the childcare centre. The additional noise due to the vehicle movements within the staff carpark is negligible.

The Department also notes that the musical instruments are also likely to be played within the multi-purpose hall which already is acoustically treated. Consequently, no additional impacts are envisaged due to these reasons.

To ensure that the operational noise from the development is appropriately mitigated and managed in the future, the Department has recommended the following conditions:

- design details of the mechanical plant / equipment to be finalised prior to construction and mitigation measures (per the NVIA) be incorporated to ensure that the PNTLs are achieved.
- a Community Communication Strategy be prepared prior to the commencement of operation to the development. The strategy must include mechanisms to facilitate communication between the Applicant, the Council and the community (including adjoining affected landowners and businesses, and others directly impacted by the development), during the operation of the development to ensure that operational impacts are minimised effectively and the amenity of the surrounding residents are maintained.
- an Operational Noise Management Plan be submitted to the Certifier prior to the commencement of operation to include details of:
 - operational measures to minimise noise impacts on any sensitive residential receivers.
 - arrangements for the management and monitoring of the use of outdoor student areas.
 - include a complaints management procedure and a review program.

Construction Noise and Vibration

The proposal involves minimal construction works. Construction activities are limited to landscaping and remediation works. The NVIA includes an assessment of the noise generated by the construction works against the provisions of the Interim Construction Noise Guideline (ICNG). The assessment reveals that during certain times (such as excavation works within the playground), the predicted noise levels would exceed the noise management levels at NCA1. However, during all times, the predicted noise levels would be below the 'Highly affected noise level' identified in the ICNG (being 75dB L_{Aeq}).

The NVIA includes recommendations and mitigation measures to ensure that the amenity of the residential developments in NCA1 are maintained during the construction works. These include:

- choice of quieter equipment.
- regular inspection and maintenance of equipment.
- appropriate work practice method.
- minimisation of truck movements.
- scheduling of noisy works in consultation with the surrounding community.

The Department is satisfied that the NVIA includes a comprehensive assessment and provides reasonable mitigation measures to reduce noise impacts during construction works. The Department has recommended a condition requiring the preparation and implementation of a Construction Noise and Vibration Management Plan to ensure that any adverse impacts on the surrounding residents during construction works be minimised.

6.3.2 Visual Privacy

The proposed development would be located at a sufficient distance from all surrounding residential properties. Additionally, no residential properties would directly overlook onto the proposed playground area or vice versa.

The Department is satisfied that the development would have no unreasonable impact on the surrounding properties in relation to visual privacy.

6.3.3 Light spill

Community submissions raised concerns regarding impacts of outdoor and security lighting spill on the surrounding properties.

The Department notes the community submissions and has recommended conditions to consent requiring all outdoor lighting to comply with the relevant Australian Standards to prevent any adverse impacts on surrounding residents due to light spill.

6.4 Other issues

The Department's consideration of other issues is provided at **Table 5** below.

Table 5 | Summary of other issues

Issue	Findings	Recommendations
Site Contamination	- The EIS includes a Preliminary Site Investigation (PSI) which advises that no gross contamination has been observed on the site and therefore no further testing is necessary. - The PSI recommended the implementation and an unexpected finds procedure during construction work in relation to soil contaminants. - EPA have provided no comments in relation to contamination.	- Based on the PSI, the Department is satisfied that the site does not include any significant soil contamination. - However, to comply with the requirements of State Environmental Planning Policy No 55 – Remediation of Land, the Department has recommended the following conditions: - an unexpected finds protocol to be developed for managing unexpected contaminants during construction works. - a Site Auditor to provide a Section A Site Audit Statement prior to commencement of operation to confirm that the site is suitable for the proposed development.
Waste Management	- The proposed bin storage area would be located at the rear of the existing building. The Applicant's RTS advised that a private contractor would collect waste from the site and access the bin storage area. - Swept Path analysis has been provided to demonstrate that a	- The Department's assessment with regard to waste management is satisfactory. - The Department has recommended a condition requiring the preparation of an operational Waste Management Plan with details of the waste collection procedures.

	waste collection vehicle can appropriately manoeuvre on the site.	The OTAMP would also include details of hours of access for waste collection vehicle and the parking areas.
Social Impact and Site Suitability	- The Applicant's EIS included consideration of alternatives for locating the school. The analysis concludes that the current location would commemorate the relationship between Richard Gill, the Muswellbrook Area and the Upper Hunter Conservatorium of Music. - The Applicant provided a Social Impact Assessment Report with the EIS. The Statement noted that the school would serve the population of Muswellbrook as well as the broader regional catchment. The students of this school would participate in a unique academic experience without having to move to Newcastle or Sydney. - The report recommends that in the future, the multi-purpose hall be made available for community use and that the adverse impacts due to traffic and noise be mitigated appropriately.	- The Department considers that the school would provide social benefits to the community through the additional curriculum for music and considers that the location of the school would specifically benefit the population in the greater Muswellbrook Area. - The Department agrees with the findings of the Social Impact Assessment Report and supports the adaptive reuse of a Council building as this would be an effective use of the site with sufficient opportunities to expand in the future. - The Department considered traffic and noise impacts in Sections 6.1 and 6.3 and recommended suitable conditions. - The Department notes that no community use is proposed within this application. It is anticipated that in the future, community use could be incorporated on the site with the future expansion of the school, subject to a detailed assessment of the traffic and noise impacts in the weekday evenings and weekends. The Department is satisfied that the site is suitable for the development.
Dust generation	One community submission raised concerns regarding dust generation during construction works	The Department has included a condition of consent requiring suitable dust mitigation measures to be incorporated during the construction.
Contributions	In accordance with Muswellbrook Shire Section 94A Development Contributions Plan 2010, the proposed development is subject to a section 7.12 levy, being 1% of CIV.	The Department considers that a Section 7.12 levy applies to the development and has been levied as a condition of consent.

Aboriginal Cultural Heritage	The Applicant has prepared a due diligence report which concludes that the proposal would not impact on Aboriginal Cultural Heritage Values.	- The Department considers that the due diligence report is satisfactory for the development given the low level of site disturbance. - A condition of consent requires the preparation and implementation of an unexpected finds protocol in relation to Aboriginal Cultural Heritage, during the landscaping works.
Miscellaneous matters and public interest	- The proposal would provide up to 50 students with the opportunity for a tailored and unique learning environment. - Community submissions raised concerns regarding the appropriateness of use of the previous Council building as a school, associated fund management matters and conflicts of interests between Councillors and the Applicant. - Community submissions also raised concerns regarding the use of the site without consent and the school being advertised for Years K – 12, whereas consent is being sought for K – 2. - Council noted the submissions and advised that the nearby landowners would be contacted separately to resolve the operational concerns.	- The Department considers that the proposed development would improve educational outcomes for students in the Muswellbrook Area and provide for the additional benefit of teaching music. - Council has provided owner's consent for the use of the site. Other matters in relation to funds in not within the scope of this application. - The Department notes allegations regarding the current use of the site. The Applicant's RTS has advised that this is not a planning matter. The Department considers that the alleged use of part of the building as an office by the school principal does not constitute the use of the site as a school. Consequently, no further assessment in this regard is necessary. - The application seeks consent for K – 2 students and this has been included as a condition of consent. - Overall, the Department is satisfied that the proposal is in the public interest subject to the implementation of recommended conditions.
Rezoning of land	Community submissions expressed concerns that the school is proposed on land which is zoned as a recreational reserve.	As noted in Section 4.2, the site is zoned R1 and the development for the purpose of a school is permissible on this land with consent.
Public hearing and lack of consultation	Community submissions raised concerns regarding the lack of a public hearing and	The Department is satisfied that the Applicant has suitably consulted with the community prior to the lodgement of

consultation during the EIS preparation.

the EIS. Additionally, the Department has consulted with the community during the EIS exhibition.

- The Minister has not required a public hearing in this instance.
-

7 Evaluation

The Department has reviewed the EIS, RTS and assessed the merits of the proposal, taking into consideration advice from the public authorities, including Council. Issues raised in the public submission have been considered and all environmental issues associated with the proposal have been thoroughly addressed.

The proposal is consistent with the objects of the *Environmental Planning and Assessment Act 1979* and is consistent with the State's strategic objectives as set out in the Hunter Regional Plan 2036 as it would create a specialised educational facility with a high emphasise on music for students in the broader region.

The proposal is suitable for the site and the identified residential amenity, noise and traffic impacts are considered satisfactory on balance and in the context of the benefit the proposal would provide for the local community. The Department has recommended conditions to manage the potential construction and operational impacts on the surrounding land uses.

The proposal is considered to be in the public interest as it would provide public benefits including:

- delivering increased education facilities to cater for the Muswellbrook LGA.
- providing education facilities in an area and the broader region.
- delivery of four operational jobs.

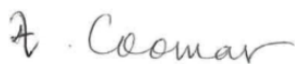
The Department concludes the impacts of the proposal are acceptable and can be appropriately mitigated through the implementation of the recommended conditions of consent. Consequently, the Department considers the proposal is in the public interest and should be approved subject to conditions.

8 Recommendation

It is recommended that the Executive Director, Infrastructure Assessments, as delegate of the Minister for Planning and Public Spaces:

- **considers** the findings and recommendations of this report.
- **accepts and adopts** all of the findings and recommendations in this report as the reasons for making the decision to grant consent to the application.
- **agrees** with the key reasons for approval listed in the notice of decision.
- **grants consent** for the application in respect of SSD-10380.
- **signs** the attached development consent/project approval and recommended conditions of consent (**Appendix C**).

Recommended by:



Aditi Coomar
Team Leader
School Infrastructure Assessments

Recommended by:



Karen Harragon
Director
Social and Infrastructure Assessments

9 Determination

The recommendation is **Adopted / Not adopted** by:

David Gainsford

Executive Director

Infrastructure Assessments

Appendices

Appendix A – List of referenced documents

1. Environmental Impact Statement

<https://www.planningportal.nsw.gov.au/major-projects/project/25596>

2. Submissions

<https://www.planningportal.nsw.gov.au/major-projects/project/25596>

3. Response to Submissions

<https://www.planningportal.nsw.gov.au/major-projects/project/25596>

4. Additional submissions from Public Authorities received after close of exhibition

Electronic copies of all information provided under separate cover.

Appendix B – Statutory Considerations

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)

To satisfy the requirements of section 4.15(a)(i) of the EP&A Act, this report included references to the provisions of the EPIs that govern the carrying out of the project and have been taken into consideration in the Department's environmental assessment.

Controls considered as part of the proposal are:

- State Environmental Planning Policy (State & Regional Development) 2011 (SRD SEPP)
- State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017 (Education SEPP)
- State Environmental Planning Policy (Infrastructure 2007) (Infrastructure SEPP)
- State Environmental Planning Policy No.55 – Remediation of Land (SEPP 55)
- State Environmental Planning Policy (Koala Habitat Protection) 2019
- Draft State Environmental Planning Policy (Remediation of Land) (Draft Remediation SEPP)
- Draft State Environmental Planning Policy (Environment) (Draft Environment SEPP)
- Muswellbrook Shire Council Local Environmental Plan 2009

COMPLIANCE WITH CONTROLS

State Environmental Planning Policy (State and Regional Development) 2011 (SRD SEPP)

Table B1 | SRD SEPP compliance table

Relevant Sections	Consideration and Comments	Complies
3 Aims of Policy: The aims of this Policy are as follows: (a) to identify development that is State significant development	The proposed development is identified as SSD.	Yes
8 Declaration of State significant development: section 4.36 (1) Development is declared to be State significant development for the purposes of the Act if: (a) the development on the land concerned is, by the operation of an environmental planning instrument, not permissible without development consent under Part 4 of the Act, and	The proposed development is permissible with development consent. The proposal is for the purpose of a new school (regardless of the capital investment value) under clause 15 (educational establishments) of Schedule 1.	Yes

- (b) the development is specified in Schedule 1 or 2.

State Environmental Planning Policy (Infrastructure 2007) (Infrastructure SEPP)

The Infrastructure SEPP aims to facilitate the effective delivery of infrastructure across the state by improving regulatory certainty and efficiency, identifying matters to be considered in the assessment of development adjacent to particular types of infrastructure development, and providing for consultation with relevant public authorities about certain development during the assessment process.

The development is for the purposes of an educational establishment and is adjacent to a busy road and in accordance with clause 102 of the Infrastructure SEPP, the consent authority must take into consideration any guidelines that are issued by the Planning Secretary for the purposes of this clause (Development Near Rail Corridors and Busy Roads – Interim Guideline).

The Department has consulted and considered the comments from the relevant public authorities (**Section 5** and **6**). The Department has considered noise impacts from the main road in its assessment (**Section 6.3**) and has recommended conditions of consent (see **Appendix C**).

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

The Education SEPP aims to simplify and standardise the approval process for childcare centres, schools, TAFEs and universities while minimising impacts on surrounding areas and improving the quality of the facilities. The Education SEPP included planning rules for where these developments can be built, which development standards can apply and constructions requirements. The application has been assessed against the relevant provisions of the Education SEPP in relation to schools.

Clause 42 of the Education SEPP states that Development consent may be granted for development for the purpose of a school that is State significant development even though the development would contravene a development standard imposed by this or any other environmental planning instrument under which the consent is granted.

Clause 57 of the Education SEPP requires traffic generating development that involve an addition of 50 or more student be referred to Transport for NSW (TfNSW). The application was referred to TfNSW in accordance with this clause. TfNSW raised no concerns subject to recommended conditions.

Clause 35(6)(a) requires that the design quality of the development be evaluated in accordance with the design quality principles set out in Schedule 4. An assessment of the development against the design principles is provided in **Table B2**.

Table B2 | Consideration of the Design Quality Principles

Design Principles	Response
Context, built form and landscape	The proposal does not seek to create any new built form and is an adaptive reuse of an existing council administration building.

	The existing landscaping and vegetation is proposed to be maintained and supplemented by new landscaping works, playground, and an outdoor sports court.
Sustainable, efficient and durable	The proposal seeks to use an existing building for the school, and thereby reduce the environmental impacts associated with demolishing and rebuilding. The Department recognises therefore there is limited opportunity to implement ESD measures, however, has recommended a condition requiring ESD initiatives be provided where appropriate.
Accessible and inclusive	The Department notes the existing building is single storey and the development area of the site is generally flat. Nonetheless, the Department has recommended a condition requiring a suitably qualified Accessibility Consultant to certify that the building complies with the relevant accessibility requirements.
Health and Safety	The proposal includes the provisions for a suitably sized outdoor playground with adequate play equipment for primary school students. The proposal has considered the Crime Prevention Through Environmental Design principles. The demarcated school boundary would have fences on all sides, with the ability to lock and secure the site.
Amenity	The proposed development would be located to minimise adverse impacts on the adjoining residential developments. The proposed landscaping and the internal alterations would improve the amenity for the school users in the future.
Whole of life, flexible, adaptable	The proposal flexibly adapts the existing Council building for use as a school.
Aesthetics	The proposal does not seek to change the built form or external design of the existing building on the site. The proposed additional landscaping would improve the appearance of the overall site and integrate with the existing landscape.

State Environmental Planning Policy No. 55 – Remediation of Land (SEPP 55)

SEPP 55 aims to provide a state-wide approach to the remediation of contaminated land. SEPP 55 aims to promote the remediation of contained land to reduce the risk of harm to human health and the environment by specifying under what circumstances consent is required, specifying certain considerations for consent to carry out remediation work and requiring that remediation works undertaken meet certain standards.

The Applicant submitted a preliminary site investigation for the site which identified no potential for soil contamination.

The Department considers in accordance with clause 7 of SEPP 55, no further assessment would be necessary. Contamination is considered in more detail in **Section 6.4** of this report.

The Department has recommended condition for an unexpected find protocol during the construction works and the engagement of a Site Auditor to provide a Site Audit Statement confirming suitability of the post development. Subject to the implementation of these conditions the Department is satisfied that the site can be made suitable for a school.

State Environmental Planning Policy (Koala Habitat Protection) 2019

State Environmental Planning Policy (Koala Habitat Protection) 2019 commenced on 20 March 2020. It aims to encourage the conservation and management of areas of natural vegetation that provide habitat for koalas to support a permanent free-living population over their present range and reverse the current trend of koala population decline.

The Department is satisfied the proposed development would not result in any adverse impacts on any known koala habitats. The Applicant had submitted an ecological report with the BDAR waiver request which indicated that there are no known threatened flora or fauna on site (which includes koalas). EESG and the Department had granted a BDAR waiver at that time, based on the Applicant's report.

As such, the proposal would not impact on any koala habitats and is therefore consistent with the objectives of State Environmental Planning Policy (Koala Habitat Protection) 2019. The proposal would result in the removal of one tree which is listed in Schedule 2 of the SEPP. The Department has recommended a condition requiring the replacement of this tree including one *Eucalyptus microcarpa* or any other koala feed species.

Draft State Environmental Planning Policy (Remediation of Land) (Draft Remediation SEPP)

The Draft Remediation SEPP will retain the overarching objective of SEPP 55 promoting the remediation of contaminated land to reduce the risk of potential harm to human health or the environment.

Additionally, the provisions of the Draft Remediation SEPP require all remediation work that is to be carried out without development consent, to be reviewed and certified by a certified contaminated land consultant, categorise remediation work based on the scale, risk and complexity of the work and require environmental management plans relating to post-remediation management of site or ongoing operation, maintenance and management of on-site remediation measures (such as a containment cell) to be provided to council.

The Department is satisfied that the proposal is consistent with the objectives of the Draft Remediation SEPP.

Muswellbrook Local Environmental Plan 2009 (MLEP)

The Department has consulted with Council throughout the assessment process and has considered all relevant provisions of the MLEP and those matters raised by Council in its assessment of the development (refer to **Section 6**). The Department concludes the development is consistent with the relevant provisions of the MLEP. Consideration of the relevant clauses of the MLEP is provided in **Table B3**.

Table B3 | Consideration of the MLEP

MLEP	Assessment
Clause 2.3 Zone Objectives and Land Use Table	The site is zoned R1 General Residential. The use of the site as a school is permissible with development consent.
Clause 4.3 Height of buildings	The development does not propose to increase the height of the existing building. No further assessment in this regard is necessary.
Clause 4.4 Floor Space Ratio	The site is subject to a maximum floor space ratio control of 0.5:1 under the MLEP. No additional floor space is proposed as part of this development and no further assessment in this regard is necessary.
Clause 5.10 Heritage conservation	There are no listed heritage items on the site and is it not within a heritage conservation area.
Clause 7.1 Acid sulfate soils	The Applicant's EIS advises that site does not contain Acid Sulfate Soils and it is not mapped as potential acid sulfate land in the MLEP.
Clause 7.3 Flood planning	The site is not identified as a flood prone site. Accordingly, no flood assessment was required.
Clause 7.21 Essential services	The proposal is consistent with this clause as the site and existing building are already supplied by essential services.

Other Policies

In accordance with Clause 11 of the SRD SEPP, Development Control Plans do not apply to State significant development. Notwithstanding, the objectives of relevant controls under the Muswellbrook Development Control Plan, where relevant, have been considered in **Section 6** of this report.

Appendix C – Recommended Instrument of Consent/Approval