



REVIEW OF ENVIRONMENTAL FACTORS

TOONGABBIE CHRISTIAN COLLEGE

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REVIEW OF ENVIRONMENTAL FACTORS

TOONGABBIE CHRISTIAN COLLEGE

28-30 Metella Road
Toongabbie

Security Upgrade – Fencing and Gates

April 2019

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1.0 PROJECT IDENTIFICATION

1.1 Project Title and Proponent

Installation of new security fencing and gates as part of Toongabbie Christian College Security Upgrade Plans. No other works are proposed and all works occur wholly within the subject site.

1.2 Proponent and Determining Authority

Toongabbie Christian College.

1.3 Location

The work is proposed to be located within the site of the existing Toongabbie Christian College (TCC), Toongabbie. The school site is one allotment, legally described as Lot 1 DP 1207960. It has an estimated area of 2.8ha.

The school has two street frontages – Metella and Octavia Streets. Both streets have crossovers and driveways to onsite car parks. The main entrance into the school grounds is from Metella Street. Octavia Street is essentially the side entrance to the school grounds.

At the corner of Metella and Octavia Streets there is a cluster of six (6) single dwelling sites. Each has a single access from within the street. The south and south-east of the site is tree-lined with sporting fields and low density housing on the southern side of the trees. To the south-west of the site is a set of two-storey townhouses. Adjoining these are low density dwellings.



Figure 1: Location of the site

1.4 Commencement

The project construction is proposed to commence in 2019.

1.5 Documents and Plans Relied Upon

1.5.1 List of plans

- Paynter Dixon, dated 1 November 2018

1.5.2 Documents

- Planning Pathway letter prepared by McCullough Robertson, Lawyers, dated 8 November 2018 (see annexure A)

1.6 Background to the Project

The school is undertaking a Security Upgrade Plan. As part of the plan additional security fencing is proposed in four areas of the school. A full description of the proposal is contained in Section 1.7 below.

The location of the proposed security fencing

The site of the new fencing is internal to the school grounds. No other works but the fences to be carried out.

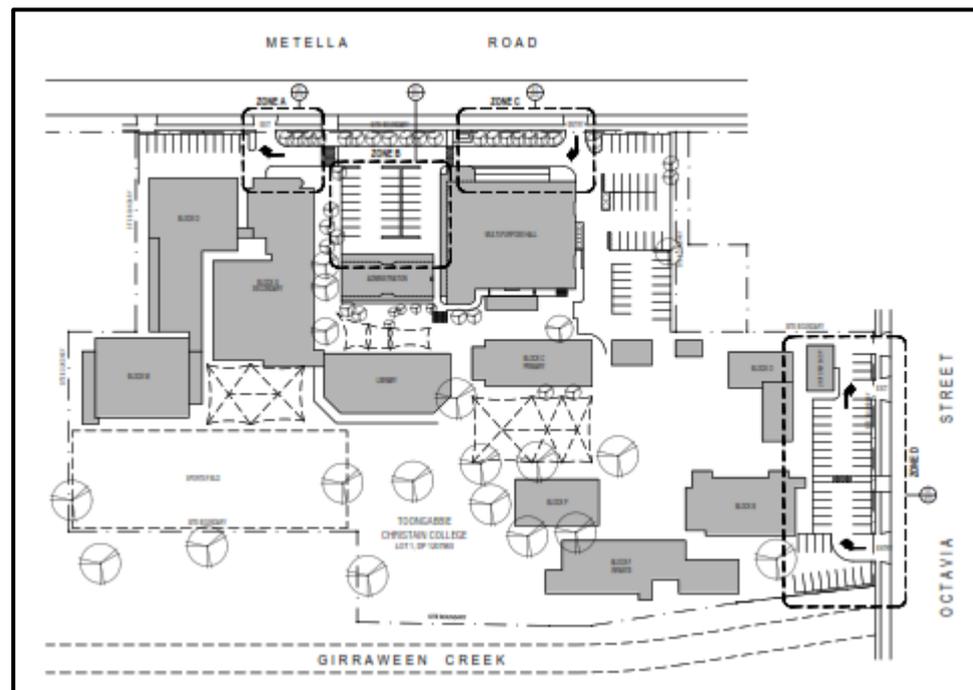


Figure 2: Site Plan show location of proposed fencing

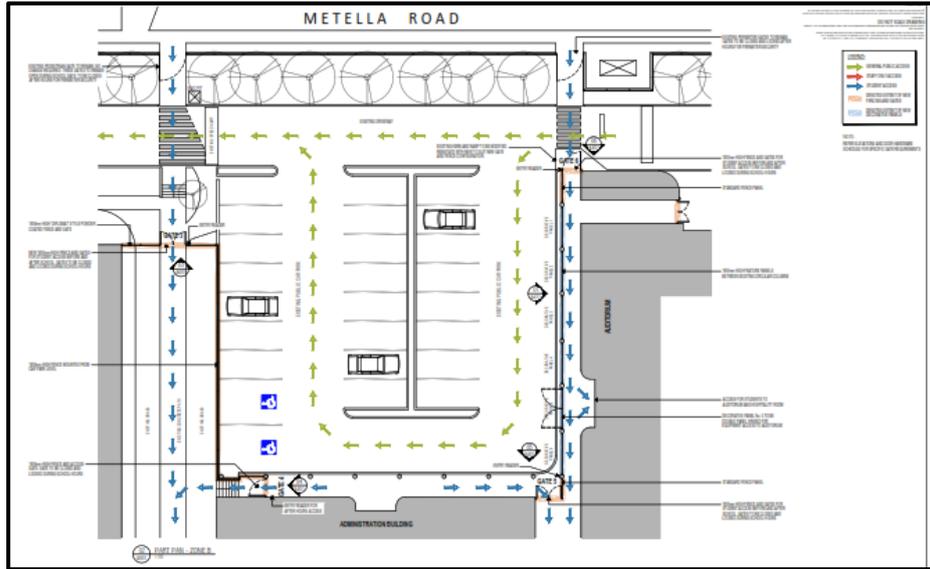


Figure 4: Zone B works

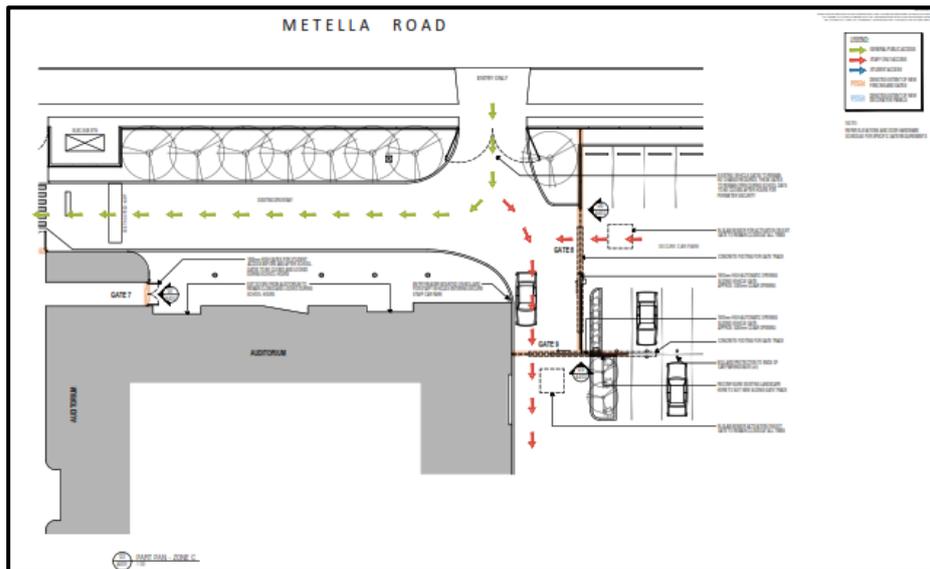


Figure 5: Zone C works

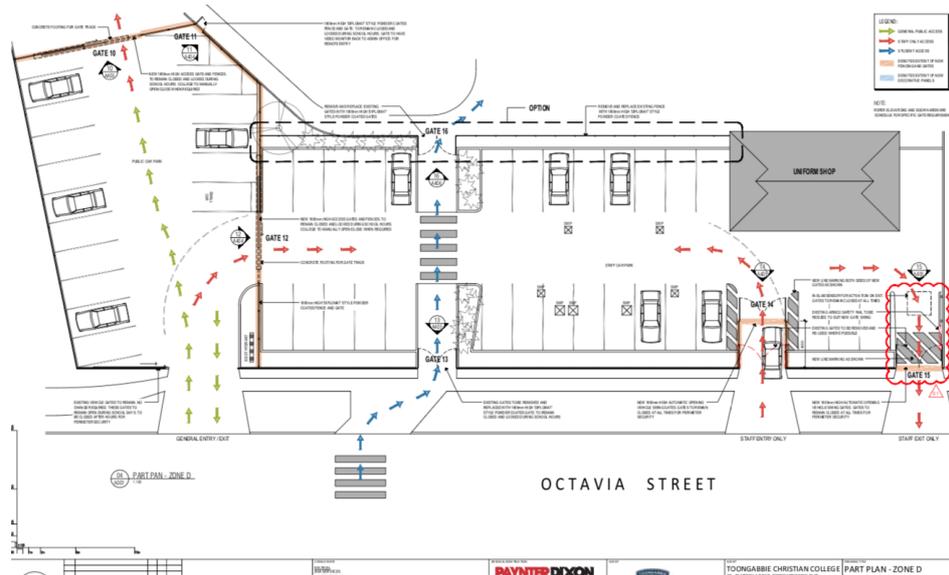


Figure 6: Zone D works

1.8 Planning Pathway

The proposed works have been assessed against the provisions of SEPP (Educational Establishment and Child Care Facilities) 2017 (referred to as the ESEPP).

A letter, prepared by McCullough Robertson, Lawyers, dated 8 November 2018 considers the planning pathway for the proposed works – security fencing. A copy of the letter is Appendix A of this REF.

The advice concludes that:

- *Clause 38(1)(f) of the ESEPP and its reference to "gates" should not be interpreted to accommodate the present circumstances.*
- *In our view, the Site is within the boundaries of an existing school subject to the existence of development consents granted over the Site enabling its use as a school.*
- *The exempt development pathway presents issues due to the development standards contained in Schedule 1 of the ESEPP, whereby it is only exempt development to the extent that it relates to fencing that fronts roads or other non-road boundaries.*
- *The development without consent pathway under clause 36 of the ESEPP is our recommended approval pathway. In our opinion, the proposed development is a "security measure", and so long as the development does not contravene the most recent development consent and does not alter the traffic arrangements of the Site, then the development is permissible as development without consent for the purposes of the ESEPP.*

Clause 36 of the ESEPP states:

36 Schools—development permitted without consent

(1) Development for any of the following purposes may be carried out by or on behalf of a public authority without development consent on land within the boundaries of an existing school:

(a) construction, operation or maintenance, more than 5 metres from any property boundary with land in a residential zone and more than 1 metre from any property boundary with land in any other zone, of:

(i) a library or an administration building that is not more than 1 storey high, or

(ii) a portable classroom (including a modular or prefabricated classroom) that is not more than 1 storey high, or

(iii) a permanent classroom that is not more than 1 storey high to replace an existing portable classroom and that is used for substantially the same purpose as the portable classroom, or

(iv) a kiosk, cafeteria or bookshop for students and staff that is not more than 1 storey high, or

(v) a car park that is not more than 1 storey high,

(b) minor alterations or additions, such as:

(i) internal fitouts, or

(ii) alterations or additions to address work health and safety requirements or to provide access for people with a disability, or

(iii) alterations or additions to the external facade of a building that do not increase the building envelope (for example, porticos, balcony enclosures or covered walkways),

(c) restoration, replacement or repair of damaged buildings or structures,

(d) security measures, including fencing, lighting and security cameras,

(e) demolition of structures or buildings (unless a State heritage item or local heritage item).

(2) However, subclause (1) applies only to development that:

(a) does not require an alteration of traffic arrangements (for example, a new vehicular access point to the school or a change in location of an existing vehicular access point to the school), or

(b) in the case of development referred to in subclause (1) (a)—does not allow for an increase in:

(i) the number of students the school can accommodate, or

(ii) the number of staff employed at the school,

that is greater than 10% (compared with the average of each of those numbers for the 12-month period immediately before the commencement of the development).

(3) Nothing in this clause authorises the carrying out of development in contravention of any existing condition of the most recent development consent (other than a complying development certificate) that applies to any part of the school, relating to hours of operation, noise, car parking, vehicular movement, traffic generation, loading, waste management, landscaping or student or staff numbers.

(4) A reference in this clause to development for a purpose referred to in subclause (1) (a), (b) or (c) includes a reference to development for the purpose of construction works in connection with the purpose referred to in subclause (1) (a), (b) or (c).

Note. Section 100B (3) of the *Rural Fires Act 1997* requires a person to obtain a bush fire safety authority under that Act before developing bush fire prone land for a special fire protection purpose such as a school.

On the basis of the above, the development is considered to be 'Development without Consent' and the assessment of proposal is undertaken in accordance with Part 5 of the EP&A Act 1979, in accordance with the NSW Code of Practice for Part 5 Activities (For Registered Non-Government Schools (August 2017)).

1.9 NSW Code of Practice for Part 5 Activities (For Registered Non-Government Schools

The NSW Code of Practice for Part 5 Activities (For Registered Non-Government Schools (RNS) (referred to as the *Code of Practice*) was adopted by the NSW Government in August 2017.

The purpose of Code of Practice is to ensure that the environmental assessment of school developments is undertaken appropriately, and leads to good on-ground outcomes.

This Code is an approved Code under a clause (clause 244N) of the EP&A Regulation 2000. Compliance with the Code is required under the EP&A Regulation by an RNS who intends to undertake any activities identified as 'development without consent' under the ESEPP. A breach of the mandatory provisions of the Code will be an offence under the EP&A Act.

The requirement for the RNS to comply with this Code also applies to any works to be done on their behalf under the Education SEPP (e.g. by a contractor or subcontractor).

The 'determining authority' in this case is the RNS (i.e. the principal of Toongabbie Christian College).¹

An assessment of the proposed works against the Code of Practice is Appendix B.

1.10 Sequence of Activities

The general sequence of activities for the proposed works is:

- Establishment of the construction site such as entry/exit points, erosion and sediment controls, stormwater management controls, temporary protection fencing, etc.
- Installation of security gates and fencing, as per plans.
- Site clean-up and removal of waste.

Preliminary plans of the proposal are submitted with this REF.

1.11 Operational Requirements

Environmental safeguards outlined in REFs are normally incorporated into a Contractor's Environmental Management Plan (CEMP) that forms part of the contractual obligations.

¹ Code of Practice, page 7.

Work Site

- Provision of portable site toilets and washroom facilities for use by the construction workforce.
- Site toilets and other sheds are to be provided within the contractor's compound.
- Erect site fencing, if required, complying with Australian Standard.
- The proposed works comply with Australian Standards.

Erosion and Sediment

- No plant and equipment storage areas or bunded areas for the storage of petroleum, distillate or other chemicals are permitted within the school grounds.
- Any loose material stockpiles such as topsoil is to be located within the site compound and protected from possible erosion.

Air Quality

The existing air quality will remain unaltered by the proposal.

Noise and Vibration

Issue relates to the works on site and potential noise during proposed works, otherwise the buildings onsite are to be used as general classrooms and school related activities.

Construction Noise and Vibration

Works are to be undertaken during normal work hours, as follows:

- *Works to be carried out between 7.00 am and 6.00 pm on Monday to Friday, 8am to 1pm Saturday and no works carried out at any time on a Sunday or a public holiday.*

There is an ability for very low impact works to occur outside these times if limited to the following activities and where noise control compliance can be achieved:

- Painting
- Sanding by hand only
- Cleaning by hand (without any motorised, electrical or battery driven appliances, tools or equipment)
- Activity that does not generate noise of any type and does not involve powered tools or devices of any type which includes battery powered tools, appliances or devices (this includes vacuum cleaners and the like).

Regardless of the above there is to be no noise generated on site by any activity outside the hours prescribed above.

The site is to be secured with the required safety fencing and appropriate signage to indicate works in progress.

Contamination

Prior to works commencing on the site, the Head contractor and builder are to satisfy themselves that there are no contamination issues on the site. Any testing and sampling is to occur prior to work commencing on site. All testing to be completed by a NATA registered laboratory.

Flora and Fauna

No trees or significant vegetation are to be removed.

Waste Management

Waste generated by the proposed works will consist primarily of leftover gate and fencing materials and some replaced materials. The DET guidelines for waste management are to be implemented during construction and include:

- Waste suitable for recycling will be recycled in accordance with the NSW Government's Waste Reduction and Purchasing Policy (WRAPP guidelines).
- Waste and containers not able to be recycled are to be regularly collected and deposited of at a licenced landfill or other licenced disposal site in the area.
- Head contractor and builder to develop a waste management plan prior to commencement of works on site.

1.12 Equipment

Equipment used for the works include the following mobile plant and equipment:

- Light commercial and passenger vehicles;
- Hand tools.

1.12 Timing and Staging of Activities

It is envisaged that works will commence in early 2019.

2.0 PROPOSAL - NEED AND JUSTIFICATION

2.1 Objectives of the proposal

The proposal is to undertake additional security measures around the site as part of a Security Upgrade Plan. There are 3 main outcomes for the proposed project:

- Improved security for teaching, administration staff and visitors to the facility;
- Improved security for children while attending school;
- Improved management of access and designation of parking areas within the site;

2.2 Options considered

The updating of existing security fencing and gates around the site is part of an overall Security Upgrade Plan for the TCC.

There are no options presented as part of this REF as the need for improvements is clear and there are no other options but upgrade fencing, gates and security measures to achieve this outcome as part of the overall Security Plan. The proposed works are considered by school representatives as the most viable/effective at this time.

The 'do nothing' option was considered but not adopted in this case as this would not provide for the longer term needs of the school. In terms of safety and security for the whole community the 'do nothing' option was not an acceptable option in this case.

2.3 Preferred option justification

The preferred option considers the principles of ecologically sustainable development and satisfies the objects of the EP&A Act namely, the precautionary principle, intergenerational equity, conservation of biological diversity and ecological integrity, improved valuation, pricing and incentive mechanisms.

3.0 STATUTORY FRAMEWORK

3.1 Environmental Planning Instruments

The *EP&A Act 1979* provides for the creation and implementation of State Environment Planning Policies (SEPPs) and Local Environment Plans (LEP). Collectively they are referred to as Environmental Planning Instruments (EPIs) and can be used to determine whether an activity is permissible within a designated zone.

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

The SEPP identifies ‘prescribed zones’ as a specific term that does not appear in local planning instruments (cl 33).

Clause 36 Schools—development permitted without consent is open to development for a variety of purposes subject to the development being on land within the boundaries of an existing school and it satisfies a number of criteria (as below).

The Planning Pathway for this proposal is established in Section 1.7 above. A letter, prepared by McCullough Robertson, Lawyers, dated 8 November 2018 considers the planning pathway for the proposed works – security fencing (see Annexure A).

Having regard to the advice received from McCullough Robertson, Lawyers, the proposal is permissible without consent under clause 36 of the ISEPP criteria.

3.2 NSW and Commonwealth legislation

- Environment Protection and Biodiversity Conservation Act 1999
- NSW Threatened Species Conservation Act 1995 (TSC Act)
- SEPP 55 – Remediation of Land

3.2.1 Commonwealth Environmental Factors

The Commonwealth *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) was enacted on 16 July 2000.

This Act requires the approval of the Commonwealth Minister for the Environment Heritage and the Arts for actions that may have a significant impact on matters of National Environmental Significance. Approval from the Commonwealth is in addition to any approvals under NSW legislation.

An assessment of the project in relation to the listed matters of National Environmental significance is given below:

EPBC Act
<p><i>Any environmental impact on a world heritage property or National heritage places?</i> No.</p>
<p><i>Any environmental impact on wetlands of international importance (RAMSAR wetlands)?</i> No.</p>
<p><i>Any environmental impact on listed threatened species and listed ecological communities</i> No.</p>
<p><i>Any environmental impact on Commonwealth listed migratory species?</i> No.</p>
<p><i>Does any part of the project involve a nuclear action?</i> No.</p>
<p><i>Any environmental impact on a Commonwealth marine area?</i> No.</p>
<p><i>Any impact on Commonwealth land?</i> No.</p>

Given that the project would not impact on matters of National Environmental Significance the EPBC Act does not apply and approval from the Commonwealth Minister for the Environment, Heritage and the Arts is not required.

3.2.2 NSW Threatened Species Conservation Act 1995 (TSC Act)

The site of the proposed works are not located within proximity to any mature tree clusters or vegetation. No requirements.

3.2.3 SEPP 55 – Remediation of Land

SEPP 55 requires a consent authority to be satisfied that the carrying out of a particular development is suitable on the land dependent upon its' known historical use. The proposed works do not require any significant site works or excavation. The proposal is the installation of fencing and gates only. On this basis, it is considered highly unlikely that the site is contaminated.

3.3 Local Planning Instruments and Development Control Plan

3.3.1 Blacktown Local Environmental Plan 2015 (BLEP 2015)

Blacktown LEP 2015 is the local planning instrument that sets down the primary local legislation that guides the location, siting and general development controls for local development across the local government area.

The aims of the BLEP 2015 are as follows:

1.2 Aims of Plan

(1) This Plan aims to make local environmental planning provisions for land in Blacktown in accordance with the relevant standard environmental planning instrument under section 33A of the Act.

(2) The particular aims of this Plan are as follows:

(a) to recognise the role of the urban renewal precincts as the major locations for higher density residential and employment development for the city,

(b) to ensure that appropriate housing opportunities are provided for all current and future residents through diversity of housing choice,

(c) to provide land for community facilities, public purposes and recreational pursuits,

(d) to encourage development opportunities for business and industry so as to deliver local and regional employment growth,

(e) to minimise risk to the community by restricting development in sensitive areas that are subject to flooding and other hazards,

(f) to provide for infrastructure to maintain and meet demands arising from housing and employment growth,

(g) to conserve and enhance Blacktown's built, natural and cultural heritage,

(h) to conserve, restore and enhance biological diversity and ecosystem health, particularly threatened species, populations and communities.

The site, being an educational establishment furthers the aims of the LEP as it contributes to the economic and social wellbeing of the community that, in turn, contributes to Blacktown's overall standing as a multi-functional centre that encourages education, employment and economic growth in an environmentally and socially responsible manner.

The subject site is zoned part SP2 (Educational Establishment) and part R2 Low Density Residential pursuant to the provisions of BLEP 2015. The landuse table for the SP2 and R2 zones state:

Zoning and Permissibility

Zone SP2 Infrastructure

1 Objectives of zone

- To provide for infrastructure and related uses.*
- To prevent development that is not compatible with or that may detract from the provision of infrastructure.*
- To ensure that development does not have an adverse impact on the form and scale of the surrounding neighbourhood.*

2 Permitted without consent

Environmental protection works; Flood mitigation works

3 Permitted with consent

Roads; Signage; **The purpose shown on the Land Zoning Map**, including any development that is ordinarily incidental or ancillary to development for that purpose

4 Prohibited

Any development not specified in item 2 or 3

Zone R2 Low Density Residential

1 Objectives of zone

- *To provide for the housing needs of the community within a low density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To enable certain activities to be carried out within the zone that do not adversely affect the amenity of the neighbourhood.*

2 Permitted without consent

Home occupations

3 Permitted with consent

Bed and breakfast accommodation; Boarding houses; Building identification signs; Business identification signs; Centre-based child care facilities; Community facilities; Dual occupancies; Dwelling houses; Emergency services facilities; Environmental facilities; Environmental protection works; Exhibition homes; Exhibition villages; Flood mitigation works; Group homes; Health consulting rooms; Home-based child care; Home businesses; Places of public worship; Public administration buildings; Recreation areas; Respite day care centres; Roads; Seniors housing; Veterinary hospitals; Water reticulation systems

4 Prohibited

Any development not specified in item 2 or 3

The site, being an educational establishment is the purpose shown on the zoning map for the SP2 zone. Educational Establishment is not listed under No. 2 or 4 of the R2 zone table and is therefore considered to be “any other development not specified in item 2 or 4”. It is permissible in the R2 zone. The proposed works, being ancillary and incidental to the school are also permissible.

5.12 Infrastructure development and use of existing buildings of the Crown

(1) This Plan does not restrict or prohibit, or enable the restriction or prohibition of, the carrying out of any development, by or on behalf of a public authority, that is permitted to be carried out with or without development consent, or that is exempt development, under State Environmental Planning Policy (Infrastructure) 2007.

(2) This Plan does not restrict or prohibit, or enable the restriction or prohibition of, the use of existing buildings of the Crown by the Crown.

The proposed works are permissible on the subject site.

3.3.2 Blacktown Development Control Plan 2015 (BDCP 2015)

The Blacktown DCP 2015 provides the detailed provisions relating to matters of significance to Blacktown LGA required to be considered by Council when exercising its environmental assessment and planning functions under Part 4 of the *Environmental Planning and Assessment Act 1979*. This development does not require formal assessment under Part 4 of the Act and therefore the provisions of the DCP do not technically apply. Further, in this case, the works are security measures only. They do not involve building works or any change to the overall development and landuse of the site.

On this basis it is our view that no assessment against the provisions of the DCP is required. If the BDCP was applied there would be no provisions that would prohibit this form of development.

4.0 STAKEHOLDER AND COMMUNITY CONSULTATION

4.1 Requirements

Under Clause 37 of SEPP (Infrastructure) 2007, Council and occupiers of adjoining land, are required to be notified of the proposed works.

37 Notification of carrying out of certain development without consent

(1) This clause applies to development to which clause 36 (1) (a) applies.

(2) Before development to which this clause applies is carried out, the proponent of the development must:

(a) give written notice of the intention to carry out the development to the council for the area in which the land is located (unless the proponent is that council) and to the occupiers of adjoining land, and

(b) take into consideration any response to the notice that is received within 21 days after the notice is given.

In this case the planning pathway determined for this proposal is development without consent. The planning pathway relies on clause 36(1)(d) - *security measures, including fencing, lighting and security cameras* and on this basis clause 37 is not applicable.

4.2 Stakeholder and Community consultation

Not required, as per section 4.1 above.

4.3 Government agency and other stakeholder consultation

The following confirms that consultation with Blacktown City Council in accordance with Clauses 13-15 of the SEPP is not required. Additionally, it is noted that the site is not bushfire prone or subject to mine subsidence.

On this basis, consultation with the Rural Fire Service and Mine Subsidence Board is not required.

Consultation with council - clause 11 - impacts on local heritage
Are the works likely to have an impact on a local heritage item (that isn't also a State heritage item) or a heritage conservation area that is not minor or inconsequential? No.
Consultation with Council - clause 12, flood liable land
Will the works be located on flood liable land and will they alter flooding patterns more than to a minor extent? No.
Consultation with other public authorities – clause 13
Will the proposal be located on land adjacent to land reserved under the National Parks and Wildlife Act 1974? No.
Will the proposal be adjacent to a marine park declared under the Marine Parks Act 1997? No.
Will the proposal be adjacent to a foreshore area within the meaning of the Place Management NSW Act 1998? No.
Is the land bushfire prone? No.
Will the development be located immediately adjacent to a rail corridor? No.
Will the development increase the amount of artificial light in the night sky? No.
Is the development on land in a mine subsidence district? No.

5.0 ENVIRONMENTAL ASSESSMENT

5.1 NSW Environmental Factors

Clause 228 of the *Environmental Planning and Assessment Regulation, 2000* details those factors which must be taken into account concerning the impact of an activity on the environment. The Table below provides a consideration of the factors that have to be considered under Clause 228.

Clause 228 Factors	
a) Any environmental impact on a community?	The proposed works are minor and ancillary to the overall use and function of the site as a school. There are no anticipated environmental impacts as a result of the works.
b) Any transformation of a locality?	No. The proposed works are minor and incidental. They will not transform the locality.
c) Any environmental impact on the ecosystems of the locality?	No.
d) Any reduction of the aesthetic, recreational, scientific or other environmental quality or value of a locality?	None.
e) Any effect on a locality, place or building having aesthetic, anthropological, archaeological, architectural, cultural, historical, scientific or social significance or other special value for present or future generations?	There are no localities, places or buildings in proximity to the site that have special significance or value as defined above.
f) Any impact on the habitat of protected fauna (within the meaning of the <i>National Parks and Wildlife Act 1974</i>)?	None.
g) Any endangering of any species of animal, plant or other form of life, whether living on land, in water or in the air?	Due to the small scale of the development, the work will not result in the endangering of any species of animal, plant or other form of life.
h) Any long-term effects on the environment?	There are no adverse long term effects.

<p>i) Any degradation of the quality of the environment?</p> <p>Due to the small scale of the proposal, effects on the quality of the environment are negligible.</p>
<p>j) Any risk to the safety of the environment?</p> <p>The proposal will have no impact on the safety of the environment and none is expected or likely.</p>
<p>k) Any reduction in the range of beneficial uses of the environment?</p> <p>None.</p>
<p>l) Any pollution of the environment?</p> <p>None anticipated.</p>
<p>m) Any environmental problems associated with the disposal of waste?</p> <p>No. A Waste Management Plan will be prepared as part of the Construction Management Plan for the works on site. It will address the collection, storage and disposal of waste from the site during the works. The measures included in this WMP will ensure that all possible controls are in place in relation to the disposal of waste from the property.</p>
<p>n) Any increased demands on resources, (natural or otherwise) that are, or are likely to become, in short supply?</p> <p>None anticipated.</p>
<p>o) Any cumulative environmental effect with other existing or likely future activities?</p> <p>There will be no adverse cumulative environmental effects as a result of the proposed works.</p>
<p>(p) Any impact on coastal processes and coastal hazards, including those under projected climate change conditions.</p> <p>Not applicable to this proposal. The site is not located within a coastal area.</p>

5.2 Summary of mitigation measures

The following table provides a summary of environment mitigation measures for impacts identified in the assessment section. It details the issue, timing, mitigation measure requirements and responsibility for ensuring each of the actions are carried out.

These controls are to be included in the Construction Environment Management Plan (CEMP) for implementation during the works.

Review of Environmental Factors
 Toongabbie Christian College, Toongabbie
 Security Upgrade – Installation of security fencing and gates

Aspect	Mitigation Measure	Timing	Responsibility
Run Off	Implement ESC Plan	Prior to site prep and works	Head contractor/builder
Waste Management	Prepare a Waste Management Plan Implement Waste management Plan during all phases of work onsite, following the DET waste management guidelines.	Pre - construction Various phase of works	Head contractor/builder Ongoing – School is responsible
Construction Management Plan (CMP)	To cover all phases of the project plus security to prevent entry to work areas as they proceed around the site.	Prior to commencement of any demolition or site preparation works.	Head contractor/builder
Engineers certification		Prior to use of the fencing and gates	Builder

6.0 CONCLUSION

The proposed installation of new security fencing and gates as part of Toongabbie Christian College Security Upgrade Plans is unlikely to have any significant adverse impact on the environment. The proposed works are minor and incidental in nature and are aimed at ensuring adequate safety and security is provided to the children and staff.

The REF assessment has considered the principles of ecologically sustainable development, as defined in Schedule 2 of the *EP&A Act*, namely the precautionary principle, intergenerational equity, conservation of biological diversity and ecological integrity, improved valuation, pricing and incentive mechanisms. Supporting plans confirm that the proposal is acceptable and satisfies the stated ESD principles. Items in section 5.2 are to be adopted and satisfied to ensure acceptable impacts.

The proposal has been assessed against the various Commonwealth, State and Local legislation that applies to this site and to the specified works and have been found to comply with relevant provisions and controls. The application has considered the Code of Practice for Part 5 development. Where any potential environmental impact, that cannot be anticipated at this time, mitigation measures are outlined in this report that will be implemented through the Construction Management Plan to ensure adequate measures are put in place which address such matters. No EIS or SIS is required to be prepared for the proposed security fencing.

7.0 CERTIFICATION

7.1 Forward

This Review of Environmental Factors (REF) has been prepared for the applicant and assesses the potential environmental impacts which could arise from the installation of new security fencing and gates within the Toongabbie Christian Colleges grounds.

This REF has been prepared in accordance with the relevant provisions of the Environmental Planning and Assessment Act 1979 (EP&A Act), the Environmental Planning and Assessment Regulation 2000 (the Regulation), State Environmental Planning Policy (Infrastructure) 2007 (SEPP Infrastructure), the Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act) and other State and Local Environmental Planning Instruments.

On the basis of the consideration of key environmental aspects and the information presented in this REF, it is concluded that by adopting the mitigation measures identified in this assessment, it is unlikely that there would be any significant adverse environmental impacts associated with the proposal.

7.2 Certification

This REF provides a true and fair review of the Proposal in relation to its potential effects on the environment. It addresses to the fullest extent possible, all matters affecting or likely to affect the environment as a result of the Proposal. The information contained in this REF is neither false nor misleading.

Name of the person(s) who prepared the REF:

Andrew Martin

Position and Qualifications of the person(s) who prepared the REF:

Andrew Martin
Bachelor of Applied Science
Environmental Health and Building (UWS)
Masters of Environmental Planning (Macquarie Uni)

Signature: 

Date: 30th April 2019

REFERENCES AND RELEVANT GUIDELINES

- Environmental Planning and Assessment Act 1979 (as amended)
- Environmental Planning and Assessment Regulation 2000 (as amended)
- Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act)
- State Environmental Planning Policy (Infrastructure) 2007
- State Environmental Planning Policy 55 - Remediation of Land
- Blacktown Local Environmental Plan 2015 (BLEP 2015)
- Blacktown DCP 2015 (BDCP)
- NSW Code of Practice (For Registered Non-Government Schools)

APPENDICES

- Appendix A: Planning Pathway Advice - Letter prepared by McCullough Robertson, Lawyers, dated 8 November 2018.
- Appendix B: Assessment against NSW Code of Practice for Part 5 Activities (For Registered Non-Government Schools)

APPENDIX A
Planning Pathway Advice
Letter prepared by McCullough Robertson, Lawyers

Partner Patrick Holland
Direct line 02 8241 5610
Email pholland@mccullough.com.au
Our reference PSH:164551-20

Lawyers
**McCullough
Robertson**

8 November 2018

Clive Furnass
Paynter Dixon
Level 2, 2 Richardson Place
Riverside Corporate Park
NORTH RYDE SYDNEY 2113

Dear Clive

Toongabbie Christian College internal security gates and fences

We refer to your emails dated 23 October 2018 and 1 November 2018 and thank you for your instructions regarding the proposed security upgrade at Toongabbie Christian College (**TCC**).

1 Background

1.1 We have:

- (a) reviewed the Toongabbie Christian College – Security Upgrade plans (**Security Upgrade Plan**) dated 22 October 2018 and amendments provided on 1 November 2018; and
- (b) conducted a search of the NSW Planning Portal to determine any planning restrictions over the land.

1.2 We understand that:

- (c) TCC is located at 28-30 Metella Road, Toongabbie NSW, being Lot 1 in Deposited Plan 1207960 (**Site**);
- (d) the Site is zoned SP2 Infrastructure, is not within a heritage conservation area, does not contain any heritage items and is not bush fire or flood prone area under the *Blacktown Local Environmental Plan 2015* (**Blacktown LEP**);
- (e) TCC proposes to install internal fencing and gates within four different “zones” within the Site (labelled Zone A to D on the Security Upgrade Plan) comprising 16 gates in total numbered 1 through to 16 along with the ancillary fencing (**development**);
- (f) the gates and fencing are to be constructed in “high diplomat style” fencing built to a height of approximately 1.8 metres above ground level; and
- (g) the gates are a combination of one bi-fold gate (gate number 1), six swing gates (gate numbers 2, 3, 4, 5, 7 and 12) and five sliding gates (gate numbers 6, 8, 9, 10 and 11). We note that from the updated plans provided on 1 November 2018, we have not been provided with amended fencing and gate details for the additional gates 13 to 16.

BRISBANE Level 11, 66 Eagle Street Brisbane QLD 4000 GPO Box 1855 Brisbane QLD 4001 T +61 7 3223 8888 F +61 7 3229 9949
SYDNEY Level 32, 19 Martin Place Sydney NSW 2000 GPO Box 467 Sydney NSW 2001 T +61 2 8241 5600 F +61 2 8241 5699
MELBOURNE Level 27, 101 Collins Street Melbourne VIC 3000 GPO Box 2524 Melbourne VIC 3001 T +61 3 9067 3100 F +61 3 9067 3199
NEWCASTLE Level 2, 16 Telford Street Newcastle NSW 2300 PO Box 394 Newcastle NSW 2300 T +61 2 4914 6900 F +61 2 4914 6999
W mccullough.com.au E info@mccullough.com.au ABN 42 721 345 951

Oliver Furness

Lawyers
McCullough
Robertson

2 Request for advice

- 2.1 We have been asked to consider whether the development would be exempt development under the *State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017 (ESEPP)*.
- 2.2 In our opinion, the section referred to in your email (**clause 38(1)(f) of the ESEPP**) is not relevant to this development.
- 2.3 We are of the view that the development is best characterised as "security fencing" or "security measures", and therefore our opinion is that clause 38(1)(f) and its reference to "gates" should not be interpreted to accommodate the present circumstances.
- 2.4 "Security measures" or "security fencing" is permissible under the ESEPP as either:
- (a) exempt development on the basis of clause 38(3) and Schedule 1; or
 - (b) development that is permitted without consent on the basis of clause 36(1)(d).

We have considered the applicability of each of the above in our advice below.

3 Exempt development

- 3.1 Clause 38(3) of the ESEPP provides as follows:
- (3) *Development for a purpose specified in Schedule 1 that is carried out by a person other than a public authority is exempt development if:*
- (a) *it is carried out on land within the boundaries of an existing school, and*
 - (b) *it meets the development standards for the development specified in Schedule 1.*
- 3.2 Schedule 1 provides that the erection of security fences is exempt development if the standards for fences set out in Schedule 1 are met.
- 3.3 There are also general requirements for exempt development which are set out in clause 17 of the ESEPP.
- 3.4 Accordingly, for the development to be exempt under the ESEPP it must:
- (a) be on land within the boundaries of an existing school;
 - (b) meet the general requirements in clause 17 of the ESEPP; and
 - (c) meet the development standards specified in Schedule 1.
- 3.5 We have addressed these issues separately below.
- Is the Site within the boundaries of an existing school?**
- 3.6 We have assumed that the Site is within the boundaries of an existing school on the basis that development consents would have been provided historically that demonstrate the development approved in each of the consents as being for 'school use' (*Bankstown City Council v Bennett and Anor* [2012] NSWLEC 38).

Does the Development meet the general requirements in Clause 17 of the ESEPP?

- 3.7 For the development to be exempt development under the ESEPP, it must firstly comply with the general requirements set out in clause 17 of the ESEPP.
- 3.8 Clause 17 of the ESEPP provides that for development to be exempt it must:
- (a) *must meet the relevant deemed-to-satisfy provisions of the Building Code of Australia, or if there are no such relevant provisions, must be structurally adequate, and*
 - (b) *must not, if it relates to an existing building:*
 - (i) *cause the building to contravene the Building Code of Australia, or*
 - (ii) *compromise the fire safety of the building or affect access to any fire exit, and*
 - (c) *must be carried out in accordance with all relevant requirements of the Blue Book, and*
 - (d) *must not be designated development, and*
 - (e) *if it is likely to affect a State or local heritage item or a heritage conservation area—must involve no more than minimal impact on the heritage significance of the item or area, and be in accordance with any applicable heritage conservation management plan, and*
 - (f) *must be installed in accordance with the manufacturer's specifications, if applicable, and*
 - (g) *must not involve the removal or pruning of a tree or other vegetation that requires a permit or development consent for removal or pruning, unless that removal or pruning is undertaken in accordance with a permit or development consent, and*
 - (h) *must not involve the removal of asbestos, unless that removal is undertaken in accordance with How To Safely Remove Asbestos: Code of Practice (ISBN 978 0 642 33317 9) published by Safe Work Australia.*
- 3.9 While we have not been provided with information pertaining to the nature of TCC's fire safety protocols, any impacts on the first safety of the Site should be a major aspect for consideration.
- 3.10 We also recommend that, despite this not being indicated as such on the Security Upgrade Plan, any impacts on the vegetation on the Site should be considered – especially if this involves the removal of a tree that would require a permit.
- 3.11 Other than the above, however, we assume for the purposes of this advice that the development will meet the general requirements set out in clause 17 of the ESEPP.

Does the Development meet the development standards in Schedule 1 of the ESEPP?

- 3.12 In addition to the requirements of Clause 17 of the ESEPP (as set out in paragraph 3.8) for the development to be exempt under the ESEPP it must also meet the following development standards set out in Schedule 1 being that:
- (a) *Must be for infrastructure facility and erected along road frontage or non-road boundary; and*
 - (b) *Height must not exceed 3m above ground level (existing) (Our emphasis).*

Clive Furnass

Lawyers
McCullough
Robertson

- 3.13 The Security Upgrade Plan indicates that the proposed fencing and gates are within the height requirements.
- 3.14 "Infrastructure facility" is defined within the *State Environmental Planning Policy (Infrastructure) 2007 (ISEPP)* to be:
'development that is the subject of development controls under Part 3 (of the ISEPP).
- 3.15 As an "Educational Establishment" is included under Part 3 of the ISEPP, the Site would satisfy the definition of the infrastructure facility.
- 3.16 We note, however, that the proposed fencing and gates are not being erected along *direct road frontage* or along the Site's other *boundaries*. While some of the gates are fronting Octavia Street (gate 13, 14 and 15) the majority of the development is being **erected internally on the Site** (as opposed to the Site's boundaries) and therefore it may not meet the required development standard to be exempt development.

4 Development permitted without consent

- 4.1 Clause 36(1)(d) of the ESEPP provides as follows:
- (1) *Development for any of the following purposes may be carried out by or on behalf of a public authority without development consent on land within the boundaries of an existing school:*
...
(d) *security measures, including fencing, lighting and security cameras,*
...
- (2) *However, subclause (1) applies only to development that:*

(a) *does not require an alteration of traffic arrangements (for example, a new vehicular access point to the school or a change in location of an existing vehicular access point to the school), or*
...
- (3) *Nothing in this clause authorises the carrying out of development in contravention of any existing condition of the most recent development consent (other than a complying development certificate) that applies to any part of the school, relating to hours of operation, noise, car parking, vehicular movement, traffic generation, loading, waste management, landscaping or student or staff numbers.*
- 4.2 Accordingly, to be development permitted without consent under the ESEPP requires that it:
- (a) be on land within the boundaries of an existing school;
- (b) be a "security measure" (we note that the list at (1)(d) regarding types of measures is not an exhaustive list);
- (c) does not alter traffic arrangements at the Site; and
- (d) must not contravene any present conditions of the most recent development consent granted over the Site in regards to the specified aspects at clause 36(3) underlined above.
- 4.3 We are satisfied that this development is within the boundaries of an existing school (paragraph 3.6), and that the development is a "security measure". Therefore on the basis that the development is compliant with the most recent development consent and traffic arrangements are not altered, the development can proceed as it is permissible without development consent.

Clive Furnass

Lawyers
**McCullough
Robertson**

5 Conclusion

- 5.1 Clause 38(1)(f) of the ESEPP and its reference to "gates" should not be interpreted to accommodate the present circumstances.
- 5.2 In our view, the Site is within the boundaries of an existing school subject to the existence of development consents granted over the Site enabling its use as a school.
- 5.3 The exempt development pathway presents issues due to the development standards contained in Schedule 1 of the ESEPP, whereby it is only exempt development to the extent that it relates to fencing that fronts roads or other non-road boundaries.
- 5.4 The development without consent pathway under clause 36 of the ESEPP is our recommended approval pathway. In our opinion, the proposed development is a "security measure", and so long as the development does not contravene the most recent development consent and does not alter the traffic arrangements of the Site, then the development is permissible as development without consent for the purposes of the ESEPP.
- 5.5 We advise that before the development can commence it will be necessary to undertake an assessment of the development pursuant to Part 5 of the *Environmental Planning & Assessment Act 1979* (EP&A Act). This assessment must be undertaken by or on behalf of TCC and must be prepared in accordance with the NSW Code of Practice for Part 5 Activities for Registered Non-Government Schools (Code of Practice). We attach a copy of the Code of Practice for your information.
- 5.6 It is important to note the following statement in section 1.3 of the Code of Practice:
- 'Compliance with the Code will be required under the EP&A Regulation by the RNS who intends to undertake any activities identified as 'development without consent' under the Education SEPP. A breach of the mandatory provisions of the Code will be an offence under the EP&A Act. The mandatory provisions of the Code are outlined in section 6 (Compliance).
- The requirement for the RNS to comply with this Code also applies to any works to be done on their behalf under the Education SEPP (e.g. by a contractor or subcontractor).
- 5.7 We advise responsibility for determining (approving) the Part 5 assessment should rest with the Principal of TCC.
- 5.8 Please contact Patrick Holland if you wish to discuss this advice.

Yours sincerely



Patrick Holland
Partner

APPENDIX B

NSW Code of Practice for Part 5 Activities (For Registered Non-Government Schools [RNS])

Purpose of the Code

The purpose of this Code is to ensure that the environmental assessment of these school developments is undertaken appropriately, and leads to good on-ground outcomes.

By following this Code, RNSs will:

- Classify their activities into the right assessment category
- Assess their activities in an appropriate level of detail, including community consultation
- Document the assessment process accurately and transparently
- Determine the assessment in a clear, practical and enforceable way and implement the activity with the best possible measures in place to protect the environment and the community.

Terms of Compliance

Compliance with the Code is required under the EP&A Regulation by an RNS who intends to undertake any activities identified as 'development without consent' under the Education SEPP. A breach of the mandatory provisions of the Code will be an offence under the EP & A Act. The mandatory provisions of the Code are outlined in section 6 (Compliance).

The requirement for the RNS to comply with this Code also applies to any works to be done on their behalf under the Education SEPP (e.g. by a contractor or subcontractor).

STAGE 1: CLASSIFICATION

The Planning Pathway for this proposal (security fencing in four parts of the subject site) has been established via the legal advice received from McCullough Robertson, Lawyers, dated 8 November 2019. A copy of the letter is Appendix A of this REF.

The advice concludes that:

- Clause 38(1)(f) of the ESEPP and its reference to "gates" should not be interpreted to accommodate the present circumstances.
- In our view, the Site is within the boundaries of an existing school subject to the existence of development consents granted over the Site enabling its use as a school.
- The exempt development pathway presents issues due to the development

standards contained in Schedule 1 of the ESEPP, whereby it is only exempt development to the extent that it relates to fencing that fronts roads or other non-road boundaries.

- The **development without consent pathway** under clause 36 of the ESEPP is our recommended approval pathway. In our opinion, the proposed development is a "security measure", and so long as the development does not contravene the most recent development consent and does not alter the traffic arrangements of the Site, then the development is permissible as development without consent for the purposes of the ESEPP.

On the basis of this advice, this REF has been prepared to satisfy the requirements of Part 5 of the EP&A Act 1979.

Further, the works are classified as Class 1 'Minor School Development Works as they fall within the following category:

Minor School Development works

*Minor School works include minor alterations to school buildings and structures; internal works; fitouts; accessibility works; restoration, replacement and repair works; and **security measures such as fencing**. These works still require an REF, however, require a less detailed assessment given the likely minimal environmental impact. Due to their minor nature, these works will not require the same level of consultation than other school development works.*

Minor Class 1 works require RNSs to place the REF on their website to make the proposal and relevant parts of the assessment publicly available.

The REF can be placed on the relevant website and be publicly available.

STAGE 2: ASSESSMENT

The object of Stage 2 is for the RNS to assess the nature, scale and extent of the proposed activity's impact on the environment. There are three phases to this assessment, which are often interrelated or simultaneous:

1. Scoping
2. Assessment
3. Consultation

1. Scoping

The proposed works are fully described in Section 1.6 of the main body of this REF and the plans prepared by Paynter Dixon. It includes the following:

- description of the proposed activity, including its geographic location, current land use, landowners, neighbours and environmental characteristics
- justification for the need for the proposed activity
- information on potential environmental factors relevant to the development

It is concluded from the scoping of the works that the planning pathway and classification of the work is correct ie development without consent, Part 5 assessment and Class 1 Category – Minor Development. The type of isolated pad footings associated with the installation of posts where required for the fencing will have very limited impact.

2. Assessment

This entails an assessment and analysis of an activity's likely environmental impacts is the key goal of this phase.

The potential environmental impacts are addressed throughout the main body of the REF.

The assessment concludes that the proposed works are minor and will not result in any anticipated environmental impacts that would affect the environment by reason of those works.

3. Mandatory Consultation

For Class I Minor School Development Work it is a mandatory that the RNS make the REF available on its website.

It is noted that consultation pursuant to Clause 37 of the ESEPP is not required in this case as this development does not fall under the clause 36(1)(a). Rather the works fall under cl36(1)(d) – security measures.

STAGE 3: DOCUMENTATION

1. Mandatory Assessment Documentation

Documentation (as per Code of Practice)	REF – Relevant Section
Proposed Activity	Section 1.6
Certification	Section 7.2
Proponent, determining authorities and any required approvals	Section 1.2
Environment of the activity	Section 3.0
Impacts of the activity	Section 3.0 & 5.0
Mitigating measures that will apply to the activity	Section 5.2
Summary of Impacts	Section 6.0
Consultation	Section 4.0
Conclusions	Section 6.0
Whether and EIS and/or a SIS is required)	Section 6.0

STAGE 4: DETERMINATION

The object of Stage 4 is for a person authorised by the RNS to discharge the RNS' s duty to comply with this Code and produce a Decision Statement.

An authorised person is an individual authorised by the RNS to determine the proposal, and cannot be the same person who conducted the assessment. Their determination is to be based on the assessment and evaluation conducted by the RNS in Stage 2.

The evidence presented and assessed throughout the main body of this REF is considered adequate for the RNS to proceed with determination.

1. Mandatory determination documentation

Section 7.2 of this main body of this REF provides for the mandatory statement of the RNS.

2. Notification of Determination

The Code of Practice suggests that, in addition to placing the REF and Decision Statement on the RNS' s website, the RNS should notify the council and adjoining neighbours of its intention to proceed with the development proposal. This is not mandatory.

STAGE 5: IMPLEMENTATION

The object of Stage 5 is to ensure that the RNS implements the activity only after a determination in accordance with Part 5 of the EP&A Act and any conditions of that determination.

1. Other Approvals Required

There are no other approvals required as part of this development proposal.

In this regard it is noted that the works are located wholly on and within the TCC site and do not require works on a public road or public reserve.

2. Certification of Building Works

Not required for this development however builder will require engineers certificate for structural adequacy and wind loads.

3. Management Plans

No specific management plans required. A Construction Management Plan will be prepared for implementation by the Contractor. This will include mitigation measures identified in Section 5.2 of the main body of this REF.