

5 STATUTORY FRAMEWORK

5.1 STATE PLANNING CONTROLS

5.1.1 Environmental Planning and Assessment Act 1979

Application is being made for the proposed recreational flight school in accordance with Part 4 section 78A of the *Environmental Planning and Assessment Act 1979*.

5.1.2 Environmental Planning and Assessment Regulation 2000

The proposed development has been assessed against the provisions Schedule 3 of the Environmental Planning and Assessment Regulation 2000 to determine whether the proposal is deemed a designated development.

The proposed development is not deemed to be a designated development given the proposed thresholds do not exceed the quantities or other determining factors stated under *2 Airport Facilities*, as discussed in the table below.

Table 5-1 Consideration of the proposal as a designated development

Schedule 3 – Designated Development	
2 Airport Facilities	
<i>Aircraft facilities (including terminals, buildings for the parking, servicing or maintenance of aircraft, installations or movement areas) for the landing, taking-off or parking of aeroplanes, seaplanes or helicopters:</i>	
<i>(a) in the case of seaplane or aeroplane facilities:</i>	
<i>(i) that cause a significant environmental impact or significantly increase the environmental impacts as a result of the number of flight movements (including taking-off or landing) or the maximum take-off weight of aircraft capable of using the facilities, and</i>	It is considered that the proposed development would not result in a significant increase in environmental impacts due to increased flight movements or increased take-off weights. The application is supported by a number of specialist reports that indicate the development would not have a significant environmental impact. The subject land is dedicated to an Air Transport Facility use. The site is an existing airport that provides an alternative to landing at Merimbula Airport. Aircraft associated with the proposal are approximately 600kgs as opposed to existing aircraft utilising the site (Cessna's approx. 1500kgs)
<i>(ii) that are located so that the whole or part of a residential zone, a school or hospital is within the 20 ANEF contour map approved by the Civil Aviation Authority of Australia, or within 5 kilometres of the facilities if no ANEF contour map has been approved, or</i>	Not applicable as discussed above.
<i>(b) in the case of helicopter facilities (other than facilities used exclusively for emergency aeromedical evacuation, retrieval or rescue):</i>	

(i) that have an intended use of more than 7 helicopter flight movements per week (including taking-off or landing), and	Not applicable given the proposed development does not involve the use of helicopters.
(ii) that are located within 1 kilometre of a dwelling not associated with the facilities, or	Not applicable given the proposed development does not involve the use of helicopters.
(c) in any case, that are located:	
(i) so as to disturb more than 20 hectares of native vegetation by clearing, or	Not applicable given the proposal will not disturb an area of more than 20ha
(ii) within 40 metres of an environmentally sensitive area, or	Not applicable, given the subject land is not mapped as environmentally sensitive land or within 40 metres of such land.
(iii) within 40 metres of a natural waterbody (of other than seaplane or helicopter facilities)	Not applicable, there are no natural waterbodies within 40 metres of the subject land.

5.1.3 Biodiversity Conservation (Savings and Transitional) Regulation 2017

A new framework for the consideration and assessment of biodiversity impacts for developments was introduced as the *Biodiversity Conservation Act 2016 (BC Act)*, gazetted on 25th August 2017. The BC Act replaced some of the existing legislation including the *Threatened Species Conservation Act 1997*.

The NSW Government established transitional arrangements related to biodiversity assessment for the various categories of development consent or approval that are underway or have been made already. These are set out in the *Biodiversity Conservation (Savings and Transitional) Regulation 2017*.

All development applications that were submitted before the commencement would be considered under previous legislation. Local development outside of Western Sydney areas have three months from 25 August 2017 to submit a development application under the previous legislation.

As the Development Application has been submitted within the transition period, the biodiversity assessment has been undertaken in accordance with the *NSW Threatened Species Conservation Act 1995 (TSC Act)*.

5.1.4 State Environmental Planning Policy (Infrastructure) 2007

The State Environmental Planning Policy (Infrastructure) 2007, referred to as ISEPP, contains provisions that facilitate the development and redevelopment of land for the purposes of infrastructure and service delivery.

Division 1 Air transport facilities

Part 3 Division 1 contains the provisions that are relevant to air transport facilities. Clause 23 provides for the following types of infrastructure development permitted with consent;

23 Development permitted with consent

Development for any of the following purposes may be carried out with consent on land within the boundaries of an existing air transport facility, if the development is ancillary to the air transport facility:

- (a) passenger terminals,
- (b) facilities for the receipt, forwarding or storage of freight,
- (c) hangars for aircraft storage, maintenance and repair,
- (d) premises for retail, business, recreational, residential or industrial uses.

The ancillary aspects of the proposed development include premises for retail, business, recreational, residential and industrial uses and hangars for aircraft storage, maintenance and repair. Pursuant to clause 23 of the ISEPP, the ancillary aspects of the proposal are permitted on the subject land with the consent of the authority.

5.1.5 State Environmental Planning Policy No 33 – Hazardous and Offensive Development

An assessment of the proposed development against State Environmental Planning Policy No 33 – Hazardous and Offensive Development is included as an attachment to this report and summarised below.

SEPP 33 requires that consideration be given to the current circulars or guidelines relating to such development as published by the Department of Planning, when determining if the proposal is so classified. The relevant guidelines contained within *Applying SEPP 33: Hazardous and Offensive Development Application Guidelines* include two tests, one for hazard potential and one for pollution potential (offensiveness).

Airports are not identified as potentially offensive or potentially hazardous in Appendix 3 of the Guidelines, but the proposed development includes the storage of light aircraft fuel on-site. Other industries that use and store petroleum onsite are identified as potentially offensive or potentially hazardous industries in Appendix 3 of the Guidelines. This is not conclusive within itself and further assessment is included below.

Potentially hazardous industry

For the purposes of SEPP 33, hazardous materials are defined by the Guidelines as “substances falling within the classification of the *Australian Code for the Transportation of Dangerous Goods by Road and Rail*”. The storage of light aircraft fuel is required, either aviation gasoline or 98 octane petrol. These are classified under the ADG Code as Class 3, UN 1203, gasoline or petrol, flammable liquid, packing group II.

The Storage Screening Threshold in Table 1 indicates the threshold for Class 3 packing group II to be 5 tonnes. Where the storage threshold is exceeded, as in this case (60 tonnes), the matrix in Figure 9 of the Guidelines shall be considered. The proposed storage of up to 60 tonnes of light aircraft fuel would need to be located at least 10 metres from the site boundary to remain below the storage screening threshold for potentially hazardous development. The storage area would be located not less than 14 metres from the site boundary and therefore complies.

The Transportation Screening Threshold in Table 2 indicates the threshold for Class 3 packing group II to be 750 movements per year and 45 movements per week. The proposed bulk fuel deliveries described in Section 3.2 of the SEPP 33 assessment report indicate the movements to be a maximum of 50 per year and 2 per week.

Consequently, the proposed development is not considered to be potentially hazardous and a Preliminary Hazard Analysis (PHA) is not required to be prepared for the proposal.

Potentially offensive industry

In deciding if a proposal is ‘potentially offensive industry’ consent authorities need to determine whether, in the absence of safeguards, the proposal would emit a polluting discharge which would cause a significant level of offence. As discussed in Sections 2 and 3 of this report, there are no identified polluting discharges that would be likely to result from the proposed development.

In accordance with the Guidelines, a proposal can generally be considered as not offensive industry if it does not require a licence from the EPA. The relevant threshold for petroleum product storage in Schedule 1 of the Protection of the Environment Operations Act 1997 is 2,000 tonnes. The proposed quantity for the subject proposal would be only 60 tonnes and therefore does not require an EPL.

Accordingly, it is concluded that the proposed development is not ‘offensive development’ as defined by the SEPP.

5.2 BEGA VALLEY LOCAL ENVIRONMENTAL PLAN 2013

5.2.1 Land Zoning

The subject land is zoned SP2 Infrastructure under the provisions of the Bega Valley Local Environmental Plan (LEP) 2013, as indicated in the Figure 5-1 below.

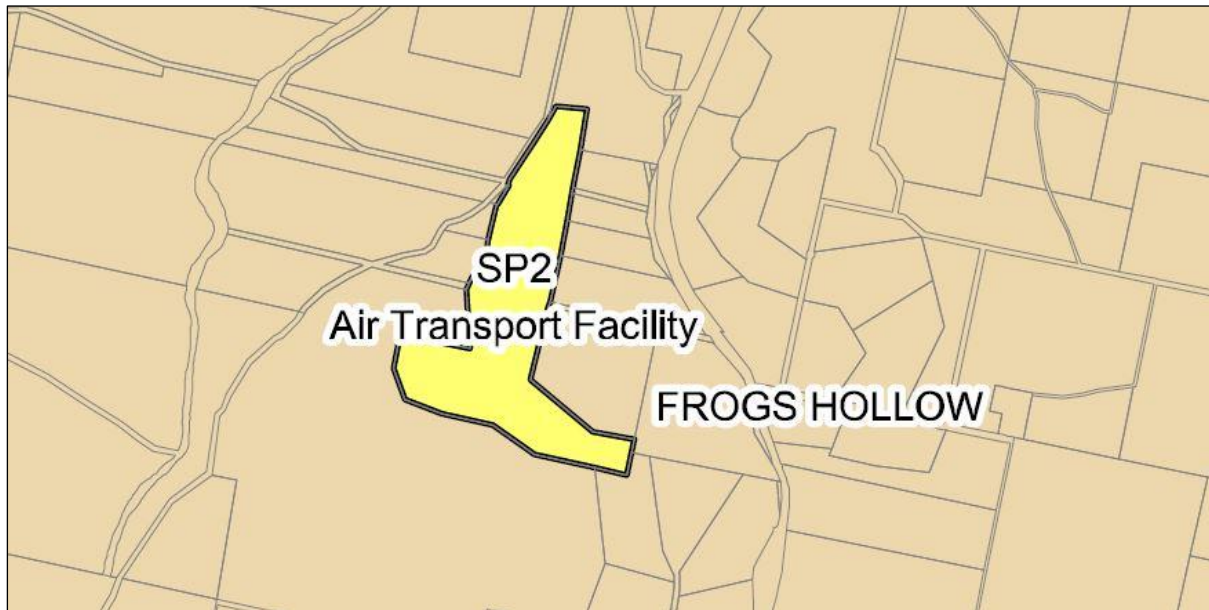


Figure 5-1 Land zoning (Source: Bega Valley LEP 2013 maps)

5.2.3 Defined Land Use

The proposed recreational flight school falls within the land use definition of an **airport**, which is defined in the LEP2013 as follows:

***airport** means a place that is used for the landing, taking off, parking, maintenance or repair of aeroplanes, and includes associated buildings, installations, facilities and movement areas and any heliport that is part of the airport.*

The proposal would also include an ancillary **Educational Establishment**, that would **incorporate premises for retail, business, recreational, residential and industrial uses and hangars for aircraft storage, maintenance and repair.**

5.2.4 Permissibility of the proposed land use

The proposed development is permitted in the SP2 Infrastructure zone with the consent of the Council. Ancillary development is permitted under the provisions of Clause 23 of the State Environmental Planning Policy (Infrastructure) 2007.

5.2.5 Objectives of the Bega Valley Local Environmental Plan 2013

The Bega Valley Local Environmental Plan 2013 (LEP) guides development within the Bega Valley local government area (LGA). The aims of the plan are:

- a) *to protect and improve the economic, natural and social resources of Bega Valley through the principles of ecologically sustainable development, including conservation of biodiversity, energy efficiency and taking into account projected changes as a result of climate change, to promote development that is consistent with the principles of ecologically sustainable development and the management of climate change,*
- b) *to provide employment opportunities and strengthen the local economic base by encouraging a range of enterprises, including tourism, that respond to lifestyle choices, emerging markets and changes in technology,*
- c) *to conserve and enhance environmental assets, including estuaries, rivers, wetlands, remnant native vegetation, soils and wildlife corridors,*
- d) *to encourage compact and efficient urban settlement,*
- e) *to ensure that development contributes to the natural landscape and built form environments that make up the character of Bega Valley,*
- f) *to provide opportunities for a range of housing choice in locations that have good access to public transport, community facilities and services, retail and commercial services and employment opportunities,*
- g) *to protect agricultural lands by preventing land fragmentation and adverse impacts from non-agricultural land uses,*
- h) *to identify and conserve the Aboriginal and European cultural heritage of Bega Valley,*
- i) *to restrict development on land that is subject to natural hazards,*
- j) *to ensure that development has minimal impact on water quality and environmental flows of receiving waters.*

It is considered that the proposed recreational flight school is consistent with the aims of the plan given the proposal will contribute to the social welfare of the Bega community whilst accommodating a productive, sustainable economic activity in the zone. The proposed development will facilitate the establishment of a development that is consistent with the principles of the plan.

5.2.6 Objectives of the SP2 Infrastructure Zone

The proposal site is located on land zoned as SP2 Infrastructure. The objectives of the zone are:

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

It is considered that the proposed recreational flight school is consistent with the objectives of the zone given the proposed activity would establish a related use. The proposal would not be incompatible or detract from the provision of infrastructure.

5.2.7 Clause 4.3 Height of buildings

The land is subject to the provisions of clause 4.3 of the BVLEP 2013 according to the Height of Buildings Map. Development on the subject land is restricted to a maximum height of 10 metres.

The proposed buildings associated with the development would have a height not exceeding 6 metres, as evidenced by the accompanying design plans, and would therefore comply with the provisions of clause 4.3.

5.2.8 Clause 5.10 - Heritage Conservation

Consent for any aspect of the proposed development is not required under clause 5.10 of the BVLEP 2013.

As discussed in section 3.7 of the report, the subject land does not contain Items of Environmental Heritage subject to listing in Schedule 5 of the Local Environmental Plan. As discussed in section 3.8 of this report, it is considered that the potential to impact Aboriginal cultural heritage items is low given the historic land disturbance that has occurred in the proposed area of development.

5.2.9 Clause 5.11 - Bush Fire Hazard Reduction

As discussed previously in section 3.6.2 of this report, the subject land is mapped as bush fire prone land. Bushfire hazard reduction work is permitted on the subject land in accordance with the provisions of this clause.

5.2.10 Clause 6.2 - Earthworks

The proposed development will involve earthworks during construction of the proposed buildings. These earthworks should be considered as an ancillary aspect of the proposed development and not as a separate matter under the provisions of this clause.

5.2.11 Clause 6.3 Flood planning

As discussed previously in section 3.6.1 of this report, the subject land is not mapped as flood prone land.

5.2.12 Clause 6.5 Terrestrial biodiversity

Small areas of the south-western sector subject land are mapped as having biodiversity sensitivities according to the Terrestrial Biodiversity LEP Map, as indicated in the figure on the following page. The proposed development is therefore subject to the provisions of clause 6.5 of the BVEP 2013.

As discussed previously in section 3.6 of this report, an assessment of the impact of the proposed development has been conducted by NGH Environmental. Due to the disturbance history and degraded biodiversity values of the land, it is unlikely there would be any impact on threatened species.



Figure 5-2 Biodiversity (Source: NSW Planning Portal, 2017)

5.2.13 Clause 6.6 Riparian land and watercourses

Parts of the subject land are mapped as a watercourse, according to the Riparian Land and Watercourses LEP Map, as indicated in the figure below. The proposed development is therefore subject to the provisions of clause 6.6 of the BVEP 2013.

The area of development is located well away from the riparian land and would not directly impact on this sensitive area. The creeklines are located approximately 150 metres east and west of the subject land. It is considered that the proposed development would not adversely impact aquatic and riparian habitats or the free passage of fish and other aquatic organisms within/along the waterway. The potential to compromise bank stability is also low given the separation to the riparian zone.

Any chemicals and fuels would be stored as indicated on the accompanying plans and separated from the identified riparian areas. All chemicals would be appropriately stored and used within the workshops and any spills would be immediately attended to in accordance with the manufacturers guidelines. The aviation fuels would be stored in double-walled tanks with bunding to accommodate any spills or leaks.

The effluent disposal area would be restricted to the area of the runways and is therefore outside of the mapped riparian areas. Provided that the onsite sewage management system is established in accordance

with AS 1574 and the geotechnical design contained within the site-specific wastewater disposal assessment, the potential for groundwater and surface water contamination would be low.

The risk of waterway contamination as a result of the proposed development can be managed by the environmental controls detailed throughout this report.

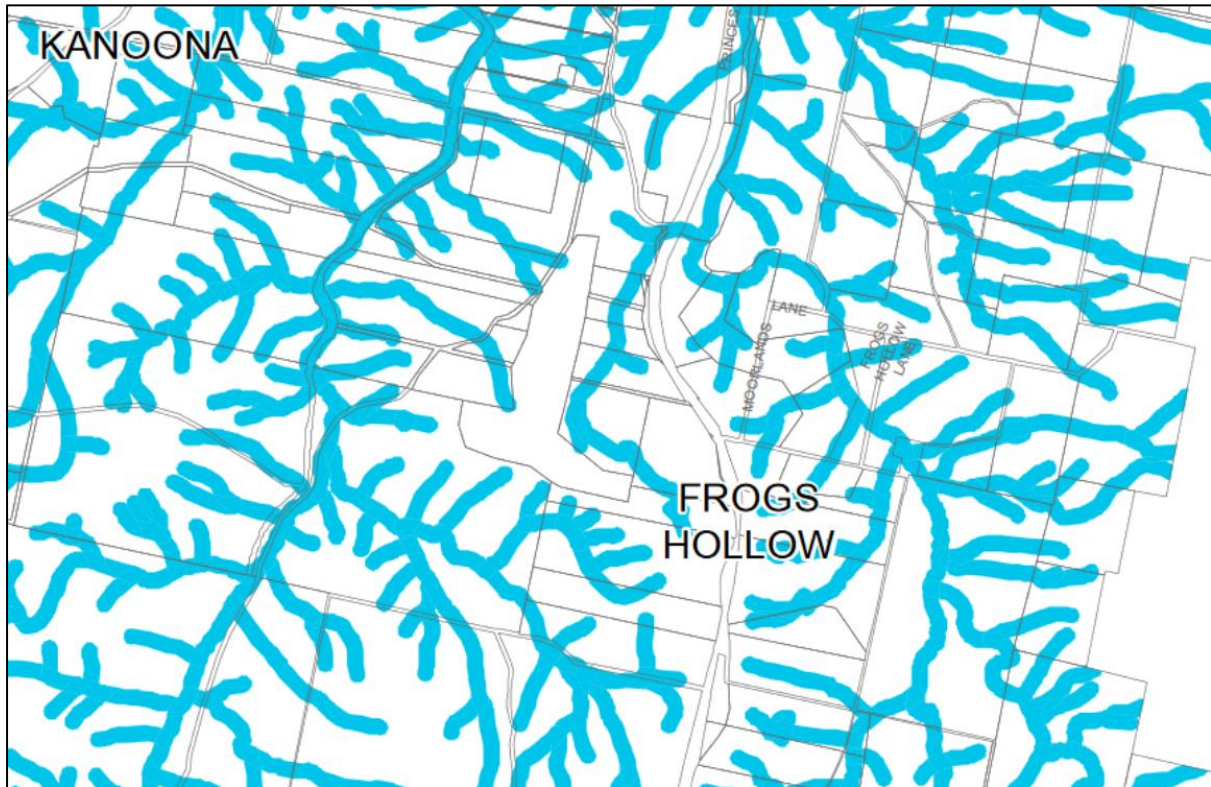


Figure 5-3 Riparian land and waterways (Source: BVLEP 2013)

5.3 BEGA VALLEY DEVELOPMENT CONTROL PLAN 2013

The Bega Valley Development Control Plan (DCP) 2013 contains provisions relevant to the proposed development. The relevant provisions are discussed in the table below.

Table 5-2 Relevant DCP 2010 Provisions

Development Control Plan – Consideration of Relevant Clauses	
Section 5 General Development	
5.7 On-site Sewerage Management	<p>The subject land is not served by a reticulated sewerage network and would therefore rely on an on-site sewage management system.</p> <p>The hydraulic load of the proposed sewage management system would exceed 2,000L/day. A wastewater assessment prepared by a qualified engineer is provided with the accompanying development application.</p> <p>As indicated in the report, a number of collection tanks and individual sewer treatment units would be attached to the buildings. The wastewater would be treated to a secondary standard with disinfection. Treated wastewater would then be pumped to a series of storage tanks for land use application and static fire-fighting water supply.</p> <p>The proposed effluent disposal area would be limited to the area of the runways. The area would be irrigated in accordance with the requirements of AS 1547. The wastewater assessment report considered the site</p>

	characteristics including geology and soils, drainage and proximity to watercourses and to neighbouring development. The assessment concluded that the runway area would be suited to the effluent disposal as an established grass surface is present and access to the area is restricted and therefore exposure to treated effluent would be controlled.
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5.4 OTHER RELEVANT 79C MATTERS FOR CONSIDERATION

Section 79C of the *Environmental Planning and Assessment Act 1979* states that in determining a development application, a consent authority is to take into consideration other relevant matters. These matters are listed in the table below.

Table 5-3 Relevant 79C matters

Other relevant 79C matters for consideration	
<ul style="list-style-type: none"> any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority.....: 	There are no known proposed instruments applicable to the development proposal.
<ul style="list-style-type: none"> any planning agreement.....: 	There are no known planning agreements applicable to the development proposal.
<ul style="list-style-type: none"> the suitability of the site for the development....: 	<p>Based on the evidence provided and discussions in this report, the site is considered suitable for the development.</p> <p>It is considered that the proposal positively contributes to the public interest and is a development that is consistent with the objectives of the zone.</p> <p>The proposal will be consistent with the existing land use character of the subject land and would not adversely affect the surrounding rural landscape.</p>
<ul style="list-style-type: none"> any submissions.....: 	Council will undertake appropriate public consultation and consider any submissions as a result of public notification.
<ul style="list-style-type: none"> the public interest.....: 	<p>The public interest is supported with this application as the proposal is in accordance with the publicly endorsed planning policies and guidelines.</p> <p>The proposed pedigree import facility will allow compatible and sustainable development on the site within the desired character of the locality.</p> <p>The proposed development is compatible and in accordance with Local Environmental Plan objectives for the land.</p> <p>The proposal will create positive economic impacts through the demand for goods, services and trades during the construction phase and provide employment during operation.</p>

6 ENVIRONMENTAL ASSESSMENT

Table 6-1 Statement of Environmental Effects

<i>Primary Matters</i>	<i>Likely Impacts</i>	<i>Safeguards and Mitigation Measures</i>
Context and Setting	<p>Minimal. The proposed development is consistent with the established nature of land use of the subject land, but would involve an increase in the intensity of the use of the land. The application is supported by a noise impact assessment and traffic impact assessment which indicate that the development would operate without adversely impacting the surrounding receivers.</p> <p>The design of the proposed buildings incorporates elements, such as a low scale and sympathetic colour scheme, to minimise the visual impact of the development on the rural backdrop.</p>	<p>Implement the recommendations of the noise impact assessment report and the traffic impact assessment report.</p> <p>Provide a consistent mid tone-grey colour scheme throughout the development.</p>
Access and Traffic	<p>Minimal. The subject land has adequate legal and physical access arrangements to support the proposal. Minor works such as tree removal and linemarking would be required to the access point to support Stage 1 of the development. Upgrades to the access point would also be required at Stages 2 and 5 of the development, in line with the increasing traffic impact of the staged proposal.</p> <p>The traffic impact assessment report indicates that the traffic associated with the proposed development would not have an adverse impact on the operation of the highway. The anticipated turning traffic volumes are compatible with the volume of through traffic.</p>	<p>Implement the staged access upgrade works as outlined in the traffic impact assessment report.</p> <p>An all-weather internal road will be constructed to Council's standards.</p>
Infrastructure	<p>Positive. The proposed development, being located outside of Council's development servicing area, makes provision for the disposal of stormwater and the treatment and disposal of wastewater.</p> <p>The proposal will connect to existing electrical and telecommunication networks in accordance with the service provider.</p>	<p>Proposed infrastructure will incorporate design solutions to minimise any potential impact on the environment.</p>

Primary Matters	Likely Impacts	Safeguards and Mitigation Measures
Heritage	Nil. The subject land is not located within a conservation area and does not contain an item of environmental heritage. An assessment of the likelihood of encountering Aboriginal objects concluded this to be low based on the disturbance history of the site.	Not applicable.
Construction	Minimal. Development of the facility would be undertaken over nine stages, which would minimise the impact of noise and traffic construction impacts on the surrounding area. Further, sensitive receivers are located a substantial distance from the land and would be unlikely to be affected. All construction works would be carried out to the relevant BCA and Australian Standards.	Ensure construction is undertaken within approved construction hours.
Land Resources	Minimal. The proposed development is compatible with the zone objectives and is consistent with the desired type of development on the subject land.	The proposed development would incorporate the environmental controls detailed in this report, to reduce impacts to the land.
Soil and Water	Minimal. The proposed development would involve earthworks during construction of the buildings and would also need to be supported by an onsite sewage management system.	Mitigation measures, such as sediment fencing, will ensure the environment is protected against soil erosion and loss of soil from the construction site. Provided that the onsite sewage management system is established in accordance with AS 1574 and the geotechnical design contained within the site-specific wastewater disposal assessment, the potential for soil and water contamination would be low.
Air and Microclimate	Minimal. The intensity of the airport development would be such that impacts to the ambient air and microclimate would be minimal. Sensitive receivers are also located a considerable distance from the subject land.	Not applicable.

Primary Matters	Likely Impacts	Safeguards and Mitigation Measures
Noise	<p>Minimal. Sensitive receivers are located a considerable distance from the site. The noise impact assessment report determined that the proposed development could comply with the requirements of the INP and operate within statutory limits, provided the recommendations within Section 4 of the report were implemented.</p> <p>Construction works will generate short-term noise.</p>	<p>Implement the recommendations of the noise impact assessment report.</p> <p>Noise generated during construction works shall comply with the NSW Industrial Noise Policy.</p>
Flora and Fauna	<p>Minimal. The site has a disturbance history that has degraded the biodiversity values present. The biodiversity assessment report indicates that the habitat on the site would be unlikely to support any threatened flora and fauna species known to occur in the region.</p> <p>The BA also concluded that the potential to affect bird flight paths or generate significant collision events was low, given the dominance of Noisy Miners at the site, which competitively exclude many woodland birds.</p>	<p>Ensure works are delineated to avoid impacts to other native vegetation on the site. Design the internal access road to avoid impacts to the identified HBTs. Implement a weed control program during construction to control the spread of African Lovegrass.</p>
Waste	<p>Minimal. Waste streams will be controlled by the implementation of sustainable design solutions to mitigate any potential impact on the environment.</p>	<p>The disposal of waste will be undertaken in accordance with the relevant standards and guidelines.</p>
Land Hazards	<p>The subject land is not located on a floodplain.</p> <p>Part of the subject land is classed as bushfire prone. Vehicle access is readily available to the subject land from the highway. A managed area would be maintained around the proposed squadron buildings. The development would be served with fire-fighting equipment and a static water supply for an emergency situation.</p>	<p>Maintain a managed area around the squadron buildings. Ensure that the fire-fighting equipment is designed and maintained in accordance with the relevant Australian Standard and maintain a static water supply for fire-fighting purposes.</p>
Contaminated Land	<p>Nil.</p>	<p>Not applicable</p>

Primary Matters	Likely Impacts	Safeguards and Mitigation Measures
Social and Economic Impacts	Positive. The proposed development will create positive social and economic impacts via the creation of employment within the Local Government area and through the demand for goods, services and trades during the construction phase and operations.	Not applicable.
Cumulative Impacts	The proposed development would operate in accordance with the environmental and operational controls as outlined in this report. The application is supported by a number of specialist reports which indicate that the development would operate without adverse impact to the surrounding receivers, provided the recommendations, where relevant, were implemented. It is considered that there will be no cumulative impacts from the proposed development.	Implement the proposed environmental and operational controls to minimise any potential impact on the environment and surrounding receivers.

7 CONCLUSION

The proposed development, being a recreational flight school, would be the first of its kind in Australia. The proposal would provide opportunity to build on the strong relationship between China and Australia to benefit both countries and their local communities.

The development proposal meets the requirements, aims, and objectives of the Bega Valley Local Environmental Plan 2013. Further consideration has been given to the environmental and amenity impacts that are relevant to the proposal and mitigation measures have been incorporated into the overall design to prevent or minimise any potential adverse impacts on the environment.

In Australia the recreational aviation sector is regulated by Recreational Aviation Australia (RAA), which is overseen by the Civil Aviation Safety Authority (CASA). The proposed facility will be operated in accordance with the RAA's Operations Manual to ensure strict compliance with the requirements of the governing body.

The public interest is supported by the development, which will provide substantial economic benefits, and further strengthen the image and prosperity of the Bega Valley.

ATTACHMENT 1 DEVELOPMENT PLAN SET

ATTACHMENT 2 LETTER FROM SAA

ATTACHMENT 3 FUEL HAZARD ANALYSIS REPORT

ATTACHMENT 4 AHIMS SEARCH RESULT

ATTACHMENT 5 BIODIVERSITY ASSESSMENT

ATTACHMENT 6 RAA OPERATIONS MANUAL

ATTACHMENT 7 TRAFFIC IMPACT ASSESSMENT

ATTACHMENT 8 ACOUSTIC ASSESSMENT

ATTACHMENT 9 ONSITE MANAGEMENT PLAN

WATERWATER

ATTACHMENT 10 FIRE PROTECTION AND WATER SUPPLY PLAN

ATTACHMENT 11 BCA FIRE SAFETY CAPABILITY ASSESSMENT