

Sportz Central Upgrade - Request to Vary LEP Height Development Standard Pursuant to Clause 4.6

The Proposal involves upgrade, alterations and additions to the existing Coffs Harbour Sportz Central Facility (recreation facility) at 74-74A Bray Street, Coffs Harbour. This involves extending the eastern sports hall to the south towards Bray Street, to provide a court to the appropriate standard, and a minor extension to the north into the carpark to provide complaint amenities for the facility. The proposed height of the extension varies from the existing roof height by an increase of 2.9m. The maximum height of the extension is 12.9 metres from ground level. For the purpose of calculating maximum building height, the exhaust fans/vents have been excluded based on the definition in the LEP (being similar to chimneys and flues).

A variation to the provisions of Clause 4.3 (Height of Buildings) of the Coffs Harbour Local Environmental Plan (LEP) 2013, facilitated by Clause 4.6 (Exceptions to Development Standards) of the LEP 2013, is sought regarding the proposed building height. This is because the overall proposed maximum building height of approximately 12.9 m above natural ground level exceeds the 8.5m height control that applies to the site as shown on the LEP 2013 Height of Buildings Map. Such a variation would have no unreasonable or adverse impact on the surrounding area or adjoining properties (which are distant from the development site), and the objectives of Clause 4.3 of the LEP 2013 would still be achieved.

Clause 4.6 of the LEP 2013 allows for a level of flexibility in applying certain development standards and therefore variation/ contravention of the development standards on the basis of a written request from the applicant that seeks to justify the variation/ contravention of the development standard by demonstrating:

- (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
- (b) that there are sufficient environmental planning grounds to justify contravening the development standard.*

This section outlines the variation request and provides justification as to why it is acceptable and supported by sound planning principles.

What is the name of the environmental planning instrument that applies to the land?

Coffs Harbour Local Environmental Plan (LEP) 2013

What is the zoning of the land?

RE1 Public Recreation

What are the objectives of the zone?

- *To enable land to be used for public open space or recreational purposes.*
- *To provide a range of recreational settings and activities and compatible land uses.*
- *To protect and enhance the natural environment for recreational purposes.*

What is the development standard and clause being varied?

Height of Buildings - pursuant to Clause 4.3 of the Coffs Harbour LEP 2013. The subject site has an 8.5 m building height development standard/control.

What are the objectives of the development standard?

The objectives of Clause 4.3 of the Coffs Harbour LEP 2013 are:

- *to ensure that building height relates to the land's capability to provide and maintain an appropriate urban character and level of amenity,*
- *to ensure that taller development is located in more structured urbanised areas that are serviced by urban support facilities,*
- *to ensure that the height of future buildings has regard to heritage sites and their settings and their visual interconnections,*
- *to enable a transition in building heights between urban areas having different characteristics,*
- *to limit the impact of the height of a building on the existing natural and built environment,*
- *to encourage walking and decreased dependency on motor vehicles by promoting greater population density in urban areas.*

What is the numeric value of the development standard in the environmental planning instrument?

Maximum building height of 8.5 m (Height of Building Map, Sheet HOB_006D). Map accessible online at following website address:

https://eplanningdlprod.blob.core.windows.net/pdfmaps/1800_COM_HOB_006D_020_20191031.pdf

What is the proposed numeric value of the development standard in the development application?

The proposed maximum building height is 12.9 m above ground level (refer to plans at Appendix A of SEE).

It is noted that the definition of maximum building height in the CHLEP 2013 includes *plant and lift overruns*, but excludes *communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like*. Accordingly, the proposed vents are excluded by this definition.

What is the percentage variation (between the proposal and the environmental planning instrument)?

The maximum height proposed is 4.4 m over the building height control standard. This is equivalent to a 51 per cent variation to the development standard. The existing built form on the site already exceeds the building height limit with the current maximum height above natural ground level being approximately 10 metres. The variation is required as the halls need to comply with required international standard clearances for sports such as Basketball and Netball.

Is the development standard a performance based control?

No, it is prescriptive.

CI4.6(3)(a): Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case?

Yes. The existing roofline of the facility already exceeds the building height limit for the site as does other development in the area i.e Orara High School. The addition is to ensure the facility has a complaint hall and amenities.

It would be both unreasonable and unnecessary to pursue strict compliance with the building height standard for the proposed development. The design response is highly considered and suitable for the context. The development balances the scale/height of the building with the intend use and the existing roof line.

The use of the building influences its final form and height.

The height and scale of the proposed extensions are compatible with the subject site context and existing industrial built form character, which already exceeds the prescribed maximum building height standard.

The following 3D render/perspective of the facility shows the inclusion of the proposed extension when viewed from Bray Street and the rear of the complex and demonstrates its effective integration and compatibility with existing and previously approved built form.



Plate 1 - 3D render of Addition from Bray Street and the rear of the complex. DRA Architects

The CHLEP 2013 8.5 m maximum building height standard is largely a blanket control that affects most of the LGA outside the commercial zones. It was not established with the existing facility in mind and does not account for its particular activities and operational requirements. This is evidenced by the fact that the development already exceeds this standard.

Compliance with the development standard is also unreasonable and unnecessary in the circumstances as the relevant objectives of the development standard (at Clause 4.3(1) of the CHLEP 2013) are achieved notwithstanding non-compliance with the standard (as per the methods established in *Wehbe v Pittwater Council* [2007] NSWLEC 827). This is demonstrated in Table 1.

Table 1 – Consistency with Clause 4.3 (Height of Buildings) Objectives

Clause 4.3 (Height of Buildings) Objectives	Consistency
Objective (a) is <i>to ensure that building height relates to the land's capability to provide and maintain an appropriate urban character and level of amenity,</i>	<p>The proposed additions, whilst exceeding the height limited are within the lands capability to accommodate such an increase without impinging on the established urban character and amenity of the area. The character of the site and its impact on the surrounding area was largely established when the sporting complex was built some 30 plus years ago. The proposed additions are consistent with the existing built character which already exceeds the building height limit for the area. This character is also reflected in the adjacent built form of Orara High School which is located opposite the facility. The school is of two storey construction and was founded in 1970.</p> <p>The ability of the site to maintain and accommodate an increased height above that of the single storey dwellings that largely fill the adjoining residential areas, whilst not impacted on the amenity of the area, is attributed to the setting of the facility. The facility is surrounded by riparian vegetation and open space used for outdoor recreation activities. This setting essential provides a buffer to the built character of the adjoining streets and serves to mitigate and soften any impact the built form has on the character of the area and surrounding residential areas.</p> <p>These unique attributes ensures the site is capable of providing a facility that does not dominate the streetscape The additions have been integrated into the existing design whilst addressing the contemporary needs of energy efficiency, lighting and updated safety requirements.</p>
Objective (b) is <i>to ensure that taller development is located in more structured urbanised areas that are serviced by urban support facilities,</i>	<p>Whilst Sportz Central is geographically removed from the CBD and commercial zoned land that typically provides for 'taller development' (reflected in the height limit) it can be argued that it is located in a more structured urbanised area. This is due to the fact that immediately adjacent to the site is Orara High School and some 300m west along Bray Street is the Bray Street shopping complex and Wesleyan Methodist Church.</p> <p>The existing sporting complex is already serviced by 'urban support facilities' which is assumed to refer to public transport routes, shops, pedestrian and cycle paths etc... It is in keeping with the urban form of the area and the integrated nature of the addition, whilst higher in part than the existing roof, is not out of keeping with the established character of the area.</p>
Objective (c) is <i>to ensure that the height of future buildings has regard to</i>	<p>The proposed development is not located within a Heritage Conservation area nor does the site contain or is it in close proximity to any Heritage Items.</p>

Clause 4.3 (Height of Buildings) Objectives	Consistency
<i>heritage sites and their settings and their visual interconnections,</i>	
Objective (d) is <i>to enable a transition in building heights between urban areas having different characteristics,</i>	As discussed previously the sites unique characteristics, allow for a smooth transition in building height between the site and the surrounding residential, single storey development that characterise the adjoin residential areas. The surrounding vegetation and open space geographically separates the development from the surrounding residential areas and serves to soften the transition in bulk and scale. .
Objective (e) is <i>to limit the impact of the height of a building on the existing natural and built environment,</i>	The proposed additions are compatible with and complement the existing facility by being similar in bulk, height and scale to the existing buildings on site and successfully integrating with the industrial character and built form context. The additions complement the character of the area and do not detract from the natural and built environment. The additions have been deliberately designed so that the bulk of the building fronts Bray Street thus not detracting from the natural reserve and open space area to the rear of the facility.
Objective (f) is <i>to encourage walking and decreased dependency on motor vehicles by promoting greater population density in urban areas.</i>	This objective is not relevant to the proposal as it relates to increase densities for residential accommodation facilitated by an increase in building height limits within urban centres. Nevertheless, the pedestrian pathways proposed as part of this development linking the development to the adjoining recreational areas, bike and footpaths as well as the adjoining school and bus stops ensures that the development facilitates and encourages a decreased dependency on motor vehicles.

The objectives of the building height development standard would be upheld as the design is site responsive and would have minimal environmental and amenity impact, while delivering significant socio-economic benefits for the local and regional community. Strict compliance with the 8.5 m standard is not necessary nor practical given the site context in order to achieve the objectives.

The proposed height of the addition to the site is increased by 2.9 metres. This new height factors in the following design considerations.

Current internal heights within both Court 1 and 2 do not provide the required international standard clearances for the sports catered for onsite with both Basketball and Netball requiring a clear height from finished floor of 7 metres. The proposed southern addition to Court 2 remedies this height requirement by introducing structure in the form of portal frames to match the architectural language in the existing. These frames elevate the proposed roof above the required 7 metres and provide the minimum clearance for the connection between the existing roof and the new.

To ensure the peak height of the roof is kept to a minimum the profile of the roof is as slimline as possible, utilizing insulated roof panels where possible. The pitch of the roof and direction have been calculated as allowed by structural requirements and result in an increase of natural light from the south whilst directing rainwater in an effort to limit or reduce the loads on the existing box gutter and downpipes.

The building is articulated and visually interesting. Given the site context and use of the building, it would be unreasonable to impose strict compliance with the height standard. Enforcing the height standard would render the project redundant as imposing the limit would compromise the design and impact internal functions and amenity.

Approving the height variation is considered an environmentally, socially and economically responsible decision and is consistent with the objective of the height standard under the LEP 2013.

CI4.6(3)(b): Are there sufficient environmental planning grounds to justify contravening the development standard?

There are sufficient environmental planning grounds to justify contravening the height development standard for this proposal. Approval of a variation to the building height standard is integral to its success and the functional design needs of the building. In this instance, a variation is justified as the objectives of the standard would still be achieved notwithstanding noncompliance with the standard. The standard's objectives primarily relate to ensuring building height is appropriate for the area in which the development is situated, that it does not adversely impact amenity and that taller developments are located in more structured urbanised areas and adequately serviced.

Approval of a variation to the building height standard is integral to the installation of an adequately sized and compliant hall designed for its intended purpose and function. As outlined previously, there are key design and height influencing matters that are specific to the proposal and necessitate exceedance of the 8.5m building height development standard as well as the existing 10m height of the building.

The scale of the modified development will effectively integrate into the existing built form context and scale on site. The proposal remains consistent with the form and bulk of the other buildings and ancillary infrastructure present at the site including the PCYC. The design response has taken into account operational and safety needs of the facility and requirements for the installation of the court. Whilst the height exceeds the development standard of the CHLEP 2013, this is not unreasonable in this context and would have no adverse consequences. The height has been restrained as much as practical and alternative options would not achieve the objectives of the proposal or optimal operational/safety outcomes. Strict compliance with the height standard would have implications for the operation of the facility and would contravene the intent of the project to provide compliant facilities.

There would be no significant environmental, heritage, visual, streetscape, privacy, solar access, or other amenity or environmental impacts. The relevant objectives of the building height standard would be upheld. The development will continue to achieve positive outcomes for the community and locality in terms of economic investment, improved sporting/recreation facilities for the community. There would also be substantial public realm improvements in terms of economic investment and the creation of value-adding and associated economic stimulus, whilst being of an adequate height to ensure practical, safe and effective operational standards.

Considering the objectives of the RE1 Public Recreation zone in which the development is located, the height variation is further justified as the development remains consistent with the objectives for this zone as outlined in Table 2.

Table 2 – Consistency with RE1 Public Recreation Zone Objectives

RE1 Public Recreation Zone Objectives	Consistency
<i>To enable land to be used for public open space or recreational purposes.</i>	The proposal is consistent with enabling the land to be used for recreational purposes, including in this instance where a higher building height is necessary to support the provision of compliant sporting facilities.
<i>To provide a range of recreational settings and activities and compatible land uses.</i>	The proposal provides for value-adding by integrating into the existing facility as opposed to the provision of a new standalone building. The new addition, with the necessary higher building height, is compatible with the site's use but designed to be compliant with current industry standards. The new roof height ensures that the court meets international standard clearances for the sports catered for onsite with both Basketball and Netball requiring a clear height from finished floor of 7 metres.
<i>To protect and enhance the natural environment for recreational purposes.</i>	<p>The proposed building/structure height is compatible with the use of the site and reflects the industrial character typology and built form. The proposed development has been integrated into the existing facility so as to ensure it's isolated from other land uses and the additional building/structure height above the standard would not result in any adverse amenity impacts to other or more sensitive land uses. The extension of the facility, rather than construction of a new facility, ensures any impact on the existing natural environment is kept to a minimum. The development as proposed does not impact on the enjoyment of the site's natural environment or prevent recreational pursuits within those areas such as the Bray Street Reserve.</p> <p>The building height exceedance would not prejudice or adversely impact the use of the natural environment and would enhance the facility's recreational purpose.</p>

Based on these considerations, the Proposal and associated height variation remain consistent with the objectives and intent of the CHLEP 2013, including the objectives of the RE1 Public Recreation zone and the building height standard. The variation is acceptable and supported by both the land use/physical context and sufficient environmental planning grounds. It is a reasonable request that would on balance result in a positive development/planning outcome and one that would be in the public interest (as per clause 4.6 (4)(a)(ii) of the CHLEP 2013 – discussed further below) given its consistency with relevant planning objectives and associated links to socio-economic benefits. The consent authority can be confident that approval of the variation would not result in undesirable outcomes or adverse cumulative impacts, it would not undermine the objectives of the CHLEP 2013, and it is justified on its merits and sufficient planning grounds.

Overall, the proposal does not result in any significant amenity, social, or environmental impacts that could be avoided through a compliant form.

Clause 4.6(4)(a)(ii) - Is the proposed development in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out?

In the court case *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90, Commissioner Pearson stipulates that the consent authority can be satisfied that a proposed development will be in the public interest because it is consistent with:

a) the objectives of the particular standard, and

b) the objectives for development within the zone in which the development is proposed to be carried out.

As outlined in the previous sections, the proposed modification and variation are consistent with and uphold the objectives of the building height standard (Clause 4.3 of the CHLEP 2013) and the RE1 Public Recreation Zone, and in turn the development is in the public interest. Requiring strict compliance with the development standard in this context and case is not necessary in order to achieve acceptable planning outcomes that are in the public interest.

Are there any matters of significance for State or regional environmental planning?

The contraventions of the height standard do not raise any matter of State or regional planning significance.

Conclusion

This Clause 4.6 variation request is well founded as it demonstrates that the proposal provides an acceptably better planning outcome with no significant adverse environmental impacts. In summary, the variation is justified because:

- Compliance with the height standard is unreasonable and unnecessary in the circumstances of the proposed development and existing site/built form context.
- There are sufficient environmental planning grounds to justify the contravention, which results in an acceptable and better planning outcome than a strictly compliant development in the circumstances of this particular case.
- The proposal remains consistent with the objectives of the clause 4.3 height of buildings standard and the RE1 Public Recreation Zone.
- The modified proposal continues to be in the public interest.
- There are no matters of State or regional planning significance, and no notable public benefits in enforcing compliance with the height standard in this case.

The consent authority is therefore justified and able to vary clause 4.3 of the CHLEP 2013 as it applies to the proposed additions to Sportz Central.

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