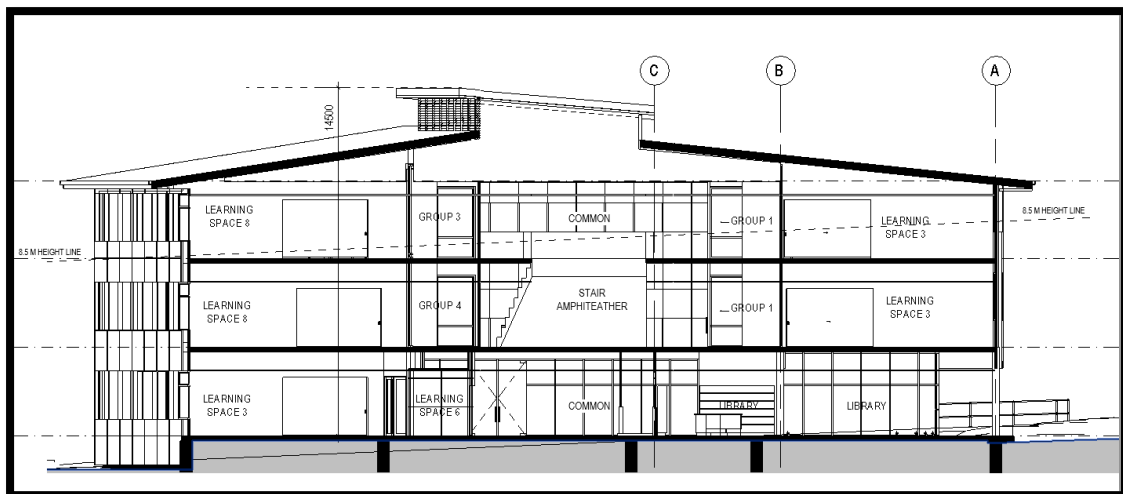




ANNEXURE 1: CLAUSE 4.6 VARIATION – HEIGHT OF BUILDING

As shown on the section plan below, the proposal exceeds the maximum height of 8.5, with the highest point of the roof having a height of 14.5m. The ceiling of the lowest point on the uppermost level is 10.5m.



Clause 4.6 of the Hornsby LEP 2013 provides that development consent may be granted for development even though the development would contravene a development standard. This is provided that the relevant provisions of the clause are addressed, in particular subclause 3-5 which provide:

(3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:

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

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

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

(i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and

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

(b) the concurrence of the Director-General has been obtained.

(5) In deciding whether to grant concurrence, the Director-General must consider:

(a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and

(b) the public benefit of maintaining the development standard, and

(c) any other matters required to be taken into consideration by the Director-General before granting concurrence.

Each of these provisions is addressed in turn.

Clause 4.6(3)

In accordance with the provisions of this clause it is considered that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case as the underlying objectives of the control are achieved. The objectives of the building height development standard is stated as:

(a) to permit a height of buildings that is appropriate for the site constraints, development potential and infrastructure capacity of the locality.

The proposed building remains consistent with the objective of the height control based on the following:

- a) The development proposal will align with the desired future character of the area;
- b) The proposed built form relates to the context in terms of scale and topography, with the upper levels being recessed from the building edge to downplay visual dominance, ensuring that the visual impact of the encroachment is minimised;

- c) The development proposal is consistent with the intent of the maximum height control and will provide an attractive building that will address both Pembroke Street and Norfolk Road;
- d) The non-compliance is partially a result of Hornsby Council utilising the standard LEP template that replaced the former Special use zoning of the site with the low density R2 zoning that applies opposite the site. Prior to this LEP, a height control did not apply to the site; and
- e) The development is consistent and compatible with the emerging 5 -6 storey built form emerging on the southern side of Pembroke Street where a height limit of 17.5m applies;
- f) The development is compatible with the likely future height of buildings on the western side of Norfolk Road with the Epping Planning review recommending a 12m height limit apply to these properties;
- g) The variation will not have any adverse amenity impacts. In this regard, it is noted:
 - o The variation will not lead to the reduction in solar penetration on site or to adjoining properties nor will it lead to excessive sunlight loss or overshadowing
 - o The proposed variation will not lead to view loss or interrupt on views to and from the site
 - o The proposed variation will not lead to a reduction in privacy afforded to existing residents or future residents of the proposal
- h) The proposal has been designed to ensure that privacy impacts are mitigated that the proposal will not obstruct existing view corridors with appropriate side setbacks provided to promote view sharing opportunities
- i) Detailed shadow analysis demonstrates that properties to the south still achieves adequate solar access to open space and living areas with this development only casting shadow to the front setback areas;
- j) The on-compliance to the height control has no unacceptable impact on the setting of any items of environmental heritage or view corridors;
- k) The proposal adjoins the Epping high density residential zone, that is located on the southern side of Pembroke Street and contains 5-6 storey residential flat buildings and the proposal represents an appropriate built form on the site; and
- l) The infrastructure of the area is capable of supporting the expanded school.

The unique circumstances of the case that warrant support of the departure are:

- The need to provide appropriate floor to ceiling heights within the development whilst providing accessible entries to all rooms; and
- The desire to maximise open space provision on the site to benefit students.

As outlined above the proposal remains consistent with the underlying objectives of the control and as such compliance is considered unnecessary or unreasonable in the circumstances. The above discussion demonstrates that there are sufficient environmental planning grounds to justify the departure from the control.

Clause 4.6(4)

In accordance with the provisions of Clause 4.6(4) Council can be satisfied that this written request has adequately addressed the matters required to be demonstrated by Clause 4.6(3). As addressed the proposed development is in the public interest as it remains consistent with the objectives of the building height control. In addition, the proposal is consistent with the objectives of the R2 zone, being:

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

The proposal ensures that the low-density nature of the zone is retained and there is not a significant change to the character of the locality. In addition, the proposal complements and enhances the local streetscape by virtue of the careful siting of the development and the landscape embellishment works within the front setback.

It is understood that the concurrence of the Director-General can be assumed in the current circumstances.

Clause 4.6(5)

As addressed it is understood the concurrence of the Director-General may be assumed in this circumstance, however the following points are made in relation to this clause:

- a) The contravention of the building height control does not raise any matter of significance for State or regional environmental planning given the nature of the development proposal; and
- b) There is no public benefit in maintaining the development standard as it relates to the current proposal given feature design element improves presentation of the development. The departure from the building height control is acceptable in the circumstances given the underlying objectives are achieved and it will not set an undesirable precedent for future development within the locality.

Strict compliance with the prescriptive building height requirement is unreasonable and unnecessary in the context of the proposal and its particular circumstances.

The proposed development meets the underlying intent of the control and is a compatible form of development that does not result in unreasonable environmental amenity impacts.

The proposal will not have any adverse effect on the surrounding locality, which will be characterised by residential development of comparable height and character. The proposal promotes the economic use and development of the land consistent with its zone and purpose. Council is requested to invoke its powers under Clause 4.6 to permit the variation proposed.

The objection is well founded and taking into account the absence of adverse environmental, social or economic impacts, it is requested that Council and the Planning Panel support the development proposal.