

# CLAUSE 4.6 VARIATION – HEIGHT OF BUILDINGS

## DOMREMY COLLEGE – 121 FIRST AVENUE, FIVE DOCK

### 1. INTRODUCTION

This request seeks to vary the maximum height of buildings development standard prescribed for the subject site (Lot 1 in Deposited Plan 128043) under clause 4.3 of the *Canada Bay Local Environmental Plan 2013 (CBLEP 2013)*.

The Height of Buildings Map accompanying clause 4.3 of the CBLEP 2013 sets a maximum height of building control of 8.5m for the site, refer **Figure 1**.

Figure 1 – Extract of CBLEP 2013 Height of Buildings Map



### 2. PROPOSED VARIATION

A small portion of the proposed educational facility exceeds the maximum 8.5m height control for the site. The variation relates to architectural features associated with the theatrette roof and library pop-out windows, skylights and roof plant.

***“building height (or height of building) means:***

*(a) in relation to the height of a building in metres—the vertical distance from ground level (existing) to the highest point of the building, or*

*(b) in relation to the RL of a building—the vertical distance from the Australian Height Datum to the highest point of the building,*

*including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like.”*

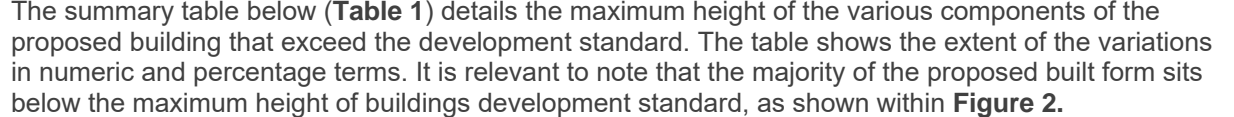


Table 1 – Proposed Building Heights and Variations

| Component               | Building Control (m) | Maximum Height (m) | Maximum Variance (m & %) |
|-------------------------|----------------------|--------------------|--------------------------|
| Central theatrette roof | 8.5m                 | 9.87m              | 1.37m (16.1%)            |
| Library pop-out window  | 8.5m                 | 9.35-10m           | 0.85 -1.2m (10-14.1%)    |
| Skylights               | 8.5m                 | 9.2m               | 0.7m (8.2%)              |
| Roof plant              | 8.5m                 | 9.7-10.26m         | 1.09-1.76m (12.8-20.7%)  |

### 3. NSW LAND AND ENVIRONMENT COURT CASE LAW (TESTS)

The case law that has been considered in the preparation of this clause 4.6 variation are as follows:

- *Wehbe v Pittwater Council* [2007] NSWLEC 827
- *Four2Five Pty Ltd v. Ashfield Council* [2015] NSWCA 248 ('Four2five No 3')

### 4. ASSESSMENT OF CLAUSE 4.6 VARIATION

#### 4.1. Consistency with Objectives of Height Control

Clause 4.3 of the CBLEP 2013 outlines objectives for the height of buildings development standard. These objectives are outlined in **Table 2**. This table demonstrates that the proposal with the variation is consistent with the objectives of the development standard.

Table 2 – Assessment of Consistency with Development Standards Objectives

| Objective  | Comment  |
|--|--|
| <i>(a) To ensure that buildings are compatible with the desired future character in terms of building height and roof forms.</i> | Existing built forms within the site include a range of one to three storey buildings concentrated towards the centre of the site. Buildings comprise heritage buildings with hipped roof forms interspersed with contemporary buildings with flat roof forms. The proposed two-storey development is consistent with this scale and height, and will be a high-quality addition to the site and area more generally.  |
| <i>(b) To minimise visual impact, disruption of views, loss of privacy and loss of solar access to existing development.</i>     | The proposed development will not adversely impact on surrounding residential development noting the following: <ul style="list-style-type: none"> <li>• There are no views across the site that will be impacted by the proposal.</li> <li>• The siting of the proposed development towards the rear of the site ensures that important views towards the heritage listed buildings along First Avenue are maintained.</li> <li>• The design and articulation of the development ensures that scale and massing will not dominate or overwhelm the public domain or neighbouring dwellings. The existing</li> </ul> |

| Objective | Comment  |
|-----------|--|
|           | <p>vegetation within the south-eastern corner of the site will also filter views towards the proposed development.</p> <ul style="list-style-type: none"> <li>• The separation provided by the surrounding roadways will ensure there is no loss of privacy for neighbouring residents.</li> <li>• As detailed in the shadow diagrams (21 June) that accompany the DA, shadows cast by the development will be limited to the site and Fairlight Street during the morning period. During the late afternoon period, shadows will extend beyond the surrounding roadways and fall across the built form of 55 Ingham Avenue and the front gardens of 50 and 52 Ingham Avenue. The level of overshadowing to 55 Ingham Avenue is considered acceptable given it is limited to the late afternoon period and the north-facing windows and private open space will continue to receive sunlight throughout the remainder of the day.</li> </ul> |

#### 4.2. Consistency with Objectives of R2 Zone

The site is zoned R2 Low Density Residential. The CBLEP 2013 includes the following objectives for the R2 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.”*

The proposal is consistent with the objectives of the R2 Zone as follows:

- The proposal involves a state-of-the-art educational facility that is compatible with the existing use of the site and surrounding residential environment.
- The proposal will increase the enrolment capacity of the College, deliver new facilities and encourage collaborative learning amongst students and teachers.
- The proposal is not expected to adversely impact on the surrounding low density residential environment.

#### 4.3. Unreasonable or Unnecessary

In the circumstances of the proposal, strict numerical compliance with the development standard is considered unreasonable and unnecessary. The proposal is consistent with the intent of Clause 4.3 and the objectives of the zone, and will result in a better environmental planning outcome than strict compliance would provide.

#### 4.4. Sufficient Environmental Planning Grounds

The proposal is justified on the following environmental planning grounds:

- The proposal is consistent with the objectives of the development standard as provided in clause 4.3 of the CBLEP 2013.



- The proposal is fully compliant with the maximum 0.5:1 floor space ratio (FSR) development standard that applies to the site. Therefore, the height variation does not seek to provide any additional density or gross floor area (GFA).
- The development is consistent in height to the existing buildings within the site.
- The predominant building height does not exceed 8.5m, with the architectural features, skylights and roof plant being minor exceptions.
- The proposed skylights will maximise solar access into the development, reducing reliance on artificial lighting.
- The visual impact associated with the additional height is negligible. The roof plant and skylights are sited behind the main parapet and will not be readily visible from the public domain. The roof of the theatrette and library pop-up window add visual interest and contrast to the facades of the development and result in a high-quality built form that will make a positive contribution to the surrounding context.
- The potential environmental impacts of the variation have been documented and detailed in the accompanying Statement of Environmental Effects.

#### **4.5. Public Benefit**

The driver of the variation is supporting the public interest. Accordingly, there can be no quantifiable or perceived public benefit in maintaining the standard.

The proposed variation to the height of buildings standard does not result in the loss of amenity to neighbouring properties by way of visual impact, overshadowing or loss of privacy. The proposed height is considered to be acceptable particularly when balanced against the benefits of the project which are:

- Improve educational facilities on the site, compatible with the surrounding low density environment.
- Improve school operations and facilitate an increase in student capacity.
- Enhance the overall school experience for staff and students by providing improved facilities and flexible and collaborate learning spaces.

### **5. CONCLUSION**

The proposed development results in minor exceedances to the 8.5m height of buildings development standard by 0.85m to 1.76m.

Strict compliance with the development standard is both unreasonable and unnecessary in the circumstances of the case for the following reasons:

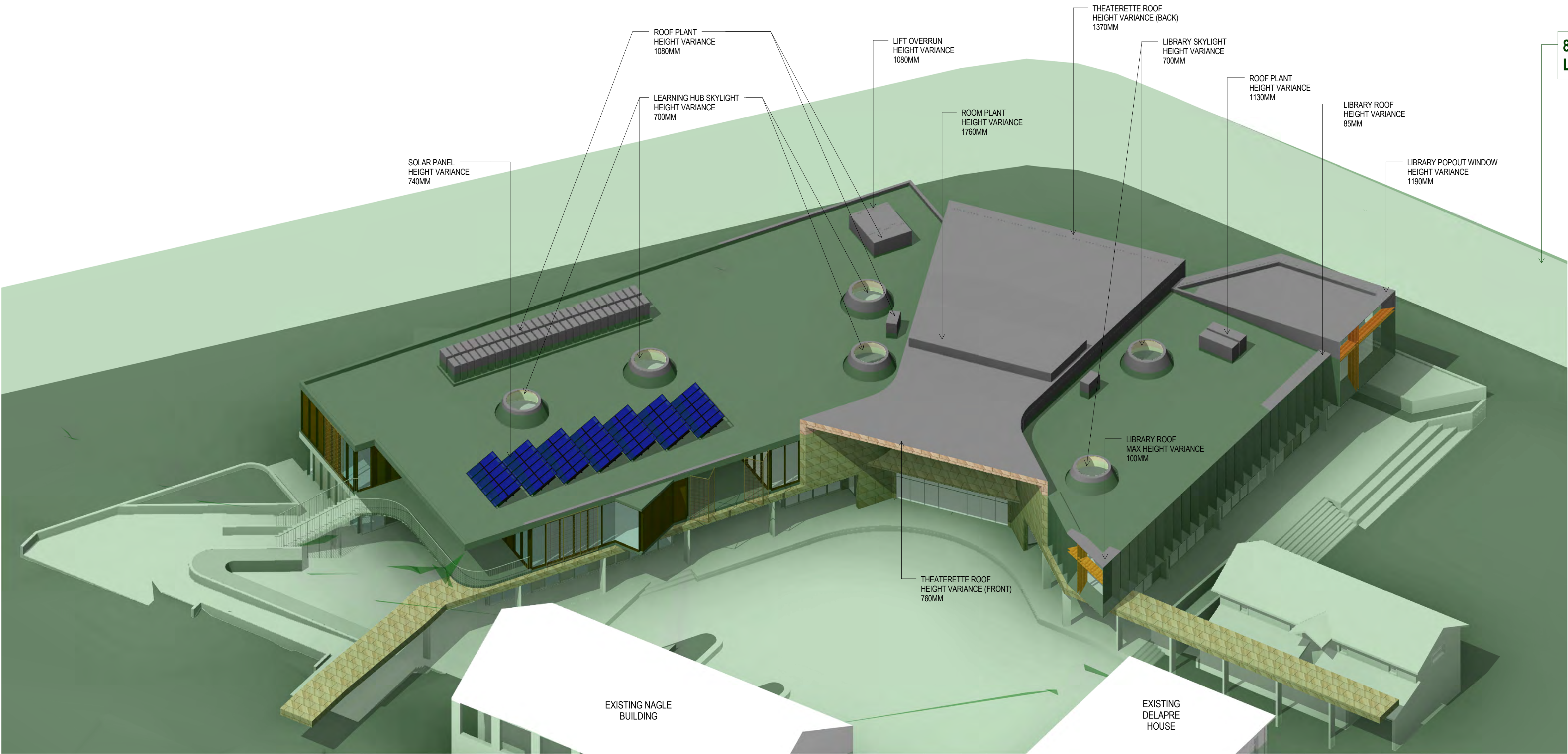
- The proposal is consistent with the objectives of clause 4.3.
- The architectural design of the proposed development provides a high-quality architectural design outcome for the site.
- The maximum FSR is not exceeded by the proposed development.
- There are no unreasonable environmental impacts from the negligible variation.

Based on the reasons outlined above, it is concluded that the request is well founded and that the particular circumstances of the case warrant flexibility in the application of the development standard.

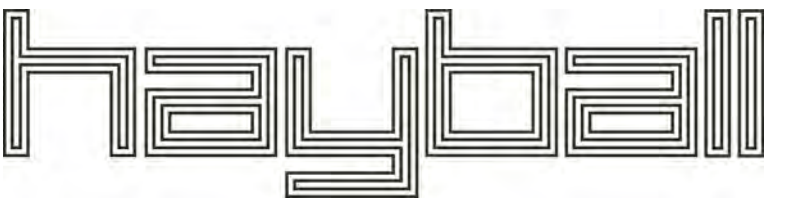


## ATTACHMENT A Height Plane Diagram





|     |                                    |            |
|-----|------------------------------------|------------|
| 1   | Issued for Development Application | 02.03.2018 |
| REV | DESCRIPTION                        | DATE       |



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ABN: 84006394261 NSW Nominated Architects: Tom Jordan 7521, Richard Leonard 7522, David Tordoff 8028

PROJECT TITLE  
**Domremy College Solais Project**

CLIENT TITLE  
Sydney Catholic Schools

PROJECT ADDRESS  
121 First Avenue Five Dock, Sydney NSW

DRAWING TITLE  
**HEIGHT PLANE DIAGRAM**

STATUS

**PRELIMINARY ISSUE**

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| <b>2128</b>    | <b>DA06.05</b> | <b>1</b> |

Bidders/Contractors shall verify job dimensions before any job commences. Figured dimensions shall take precedence over scaled work. Work shall also conform to the specification, other drawings and job dimensions. All shop drawings shall be submitted to the Architect/Consultant and manufacture shall not commence prior to the return of inspected shop drawings signed by the Architect/Consultant. © Copyright 2008 All rights reserved