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## Clause 4.6 Variation to Building Height

425 Hume Highway, Yagoona

19 April 2018

CC160185

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## 1 Introduction

In accordance with Clause 4.6 of the Bankstown LEP 2015 an objection to the building height standard is proposed.

This objection should be read in conjunction with the statement of environmental effects prepared by Barker Ryan Stewart, the architectural plans prepared by Conrad Gargett Ancher Mortlock Woolley.

## 1.1 Location of Property

The site encompasses the following lots, Lot 30 DP 1108849; Lot 1 DP 785952; and Lot A DP 179581. The site address is 425 Hume Highway, Yagoona.

## 1.2 Proposed Development

The proposed development will involve alterations and additions to Yagoona Public School. The proposal seeks development consent for sixteen (16) new learning facilities and a landscaped open space area to occupy the southern section of the site. The location of the facilities are shown on Figure 1 below.







Figure 2: 3D Render from Architect

The proposed development comprises a built form of two (2) storeys in height, which results in parts of the building exceeding the maximum building height limit control of 9 metres but are within the complying development control of at least 12 metres.

The maximum extent of departure is 0.91 metres. This represents a variation of approximately 10.1 % to the Bankstown LEP maximum height control.

### 1.3 Summary of Planning Instrument and Development Standard to be Varied

EPI applicable:	Bankstown Local Environmental Plan (LEP) 2015.
Zoning:	SP2 Infrastructure (Educational Establishment)
Development Standard to which the Objection Relates:	Building height under Clause 4.3 Height of buildings.
Numeric Value of the Development Standard:	9.0 m
Percentage and numeric variation of the proposed development to the development standard:	Numeric Variation: 0.91 m Percentage Variation: 10.1% There is however a variation in maximum building height attributed to the sloped roof. The south, east and west elevations of the building generally exhibit a height of 7.6 m which complies with the development standard. The proposed height variation of 9.91m is primarily characterised by a ridge line in the centre of the building.

This application has been prepared in accordance with the NSW Department of Planning and Environment guidelines and has incorporated relevant principles identified in the following Land and Environment Court decisions.

- Winten Property Group Limited v North Sydney Council [2001] NSWLEC 46
- Wehbe v Pittwater Council [2007] NSWLEC 827
- Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 1009
- Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90
- Four2Five Pty Ltd v Ashfield Council [2015] NSWCA 248
- Moskovich v Waverley Council [2016] NSWLEC 1015

## 2 Clause 4.6 Assessment

### 2.1 Overview

Clause 4.6(1) and (2) of the Bankstown LEP state:

- (1) *The objectives of this clause are as follows:*
  - (a) *to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
  - (b) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*
- (2) *Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*

This objection to the building height development standard addresses sequentially each of the following sub-clauses:

- (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) *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 Secretary has been obtained.*
- (5) *In deciding whether to grant concurrence, the Secretary 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 Secretary before granting concurrence.*

## 2.2 Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case?

### 2.2.1 Is a development which complies with the standard unreasonable or unnecessary in the circumstances of the case?

Strict compliance with the development standard is considered unnecessary in the circumstances of the case because the proposed height variation will result in a better design outcome than a development that complies with the building height limit.

Strict compliance with the building height standard is further unnecessary in this instance as:

- The building will not cause any significant overshadowing impacts on open space, playground areas or public or private spaces;
- The design does not present an attempt to attain additional development yield on site given that no applicable FSR controls exist and that the proposed FSR is only 0.3:1;
- The architectural design adds to the streetscape and amenity of the school and neighbourhood;
- The design incorporates a sloped roof to account for the topography of the site, which is characterised by maximum heights only on the central part of the development;
- The design allows for an increase in landscaped areas and open space (outdoor learning and play spaces) which is required in a school environment; and
- The variation is relatively minor in nature considering the adjoining development to the east has a maximum height of 13m and is in the range of 3 storeys.

As outlined below, the clause 4.6 variation confirms that the proposed building height variation will not cause adverse view loss, privacy, overshadowing or visual impacts.

Strict compliance with the building height standard is therefore not considered necessary in this instance.

### 2.2.2 Would the underlying objective or purpose be defeated or thwarted if compliance was required?

A development that strictly complied with the building height standard would result in an increase in building footprint and a resulting loss in playground space, landscaping and outdoor learning areas. The spread of home base rooms into other areas of the site would result in an inferior design outcome for the site and school.

With a relatively small allowance in building height, this building allows for further development opportunities to cater for additional staff and students in the future as required.

### 2.2.3 Has the development standard been virtually abandoned or destroyed by Council's own actions departing from the standard?

No.

### 2.2.4 Is the zoning of the land unreasonable or inappropriate?

No, although in the past many schools that had special use/ purpose zones, like Yagoona, had no FSR or height restrictions. In addition, should the development have been able to be complying development under the State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017 (SEPP – EE&CCF) then the height would have been a maximum of 12 - 22m (depending on setback) and no variation would have been required.



### 2.3 Are there sufficient environmental planning grounds to justify contravening the development standard?

The development demonstrates sufficient planning and environmental outcomes to permit the variation. In particular the following should be considered:

- Although the proposed development exceeds the maximum height limit for the site, the development has been designed with consideration of the site and surrounding development some of which is up to 13m or 3 storeys;
- The new learning facility is consistent with built form of developments on and surrounding the site;
- There is no expected view loss from surrounding developments as a result of this proposal;
- There are no significant overshadowing impacts on existing school buildings, nearby developments, public areas or private open space. This is evident in Figure 3 below;
- The proposal will not cause adverse privacy impacts on nearby residential developments with the bordering Mulla Road, Hume Highway and railway creating an effective buffer zone between the development and existing residential properties; and
- View lines are minimized from classrooms resulting in greater privacy for the neighbouring developments.

SHADOW TESTING FROM 9AM - 3PM ON WINTER SOLSTICE  
Note: No over-shadow on neighbouring properties is recording from 9am to 3pm on Winter Solstice



Figure 3: Extract from Shadow Diagram

## **2.4 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?**

### **2.4.1 What are the Objectives of the Development Standard?**

The objectives of Clause 4.3 relating to building height are:

- (a) to ensure that the height of development is compatible with the character, amenity and landform of the area in which the development will be located,*
- (b) to maintain the prevailing suburban character and amenity by limiting the height of development to a maximum of two storeys in Zone R2 Low Density Residential,*
- (c) to provide appropriate height transitions between development, particularly at zone boundaries,*
- (d) to define focal points by way of nominating greater building heights in certain locations.*

The proposal is considered to generally satisfy the height objectives for the following reasons:

- There are no adverse impacts of the proposal on the school, streetscape or amenity of the area;
- The height of the building will present an architectural element for the school;
- The proposed development is located directly adjoining an R4 High Density Residential zone to the east, with a maximum height limit of 13m, thereby this proposal provides a transition between that zoning and the railway and low density residential area to the west;
- The proposal will not significantly inhibit neighbouring properties solar access during the winter solstice, if at all;
- The proposal has been designed with the slope of the site and this is one of the reasons for the relatively minor height variation and the differences in height variation across the building footprint;
- The height will reduce the hard stand footprint of the building which is in keeping with the character of the local area; and
- It is an important expansion of public infrastructure which is consistent with surrounding landform, scale and intensity.

### **2.4.2 Objectives of the Zone**

Under the provisions of the Bankstown LEP the site is zoned SP2 Infrastructure (Educational Establishment). The zone objectives 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.*

Having regard for the height variation, the proposed development is considered to remain consistent with the zone objectives for the following reasons:

- The facility provides additional education infrastructure for a growing community that is consistent with the nearby high density residential zoning;
- The land use and design are consistent with surrounding developments and provide an attractive architectural and landscape solution for the site;
- The development will provide permanent, high quality educational services to meet day to day infrastructure needs of the Yagoona community; and
- The building proposed allows for further development opportunities on surrounding school land to cater for the provision of future staff and students in the future.

### 2.4.3 Objectives / Aims of the LEP

The objectives / aims of the Bankstown LEP are:

- (a) *to manage growth in a way that contributes to the sustainability of Bankstown, and recognises the needs and aspirations of the community,*
- (b) *to protect and enhance the landform and vegetation, especially foreshores and bushland, in a way that maintains the biodiversity values and landscape amenity of Bankstown,*
- (c) *to protect the natural, cultural and built heritage of Bankstown,*
- (d) *to provide development opportunities that are compatible with the prevailing suburban character and amenity of residential areas of Bankstown,*
- (e) *to minimise risk to the community in areas subject to environmental hazards by restricting development in sensitive areas,*
- (f) *to provide a range of housing opportunities to cater for changing demographics and population needs,*
- (g) *to provide a range of business and industrial opportunities to encourage local employment and economic growth,*
- (h) *to provide a range of recreational and community service opportunities to meet the needs of residents of and visitors to Bankstown,*
- (i) *to achieve good urban design in terms of site layouts, building form, streetscape, architectural roof features and public and private safety,*
- (j) *to concentrate intensive trip-generating activities in locations most accessible to rail transport to reduce car dependence and to limit the potential for additional traffic on the road network,*
- (k) *to consider the cumulative impact of development on the natural environment and waterways and on the capacity of infrastructure and the road network,*
- (l) *to enhance the quality of life and the social well-being and amenity of the community.*

The proposed variation is considered to be consistent with relevant aims of the Bankstown LEP, for the following reasons:

- The high-quality development will contribute to the growing education and employment needs of the Canterbury Bankstown community;
- The development manages growth through the recognition that additions to existing buildings and sites may provide a better outcome for the community than the acquisition of new land;
- The development does not adversely impact the cultural significance of the local area;
- The proposal is designed in conjunction with environmental design principles aimed at promoting the conservation of the environment within the Canterbury Bankstown Local Government area (LGA);
- Provides an increase to education and employment facilities close to transport and other services;
- Potential to provide additional spaces for community use outside of school hours;
- Promotes a high standard of urban design and architectural form; and
- The proposal promotes social well-being and equity principles through an increase in the opportunity for education in the area, including reduced travel times for students and parents which are associated with positive social impacts.

## 2.5 Whether contravention of the development standard raises any matter of significance for State or regional environmental planning?

No, the contravention of the development standard in this case does not raise an issue of State or regional planning significance as it relates to local and contextual conditions within Canterbury Bankstown Council LGA.

## 2.6 Would the contravention raise any significant matter or hinder the attainment of the objects of the Act?

The objects of the Act are:

- (a) *to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,*
- (b) *to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,*
- (c) *to promote the orderly and economic use and development of land,*
- (d) *to promote the delivery and maintenance of affordable housing,*
- (e) *to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,*
- (f) *to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),*
- (g) *to promote good design and amenity of the built environment,*
- (h) *to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,*
- (i) *to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,*
- (j) *to provide increased opportunity for community participation in environmental planning and assessment.*

The proposed variation is consistent with a number of objects including:

- The orderly use and development of land is promoted by an increase in the combined student levels from 598 to 782 students;
- The development promotes social welfare through an increase in available public education facilities;
- The proposal facilitates economic development through the construction period of the project and expected increase to staffing levels;
- The proposal will potentially increase space available for community uses outside of school hours;
- The proposal does not impact the conservation of any threatened species or habitats;
- The development does not impact the cultural or Aboriginal heritage of the site or area;
- Effective design and amenity of the built environment is achieved through architectural elements and effective use of space; and
- The health and safety of staff and students who occupy the school grounds is facilitated by design that is in accordance with BCA standards.

## 2.7 Is there public benefit in maintaining the development standard?

No. For the reasons outlined above, the proposal is considered to be a better urban design outcome and will not cause adverse impacts on surrounding land or the environment. It is anticipated that the community will benefit from retaining existing open space areas in a reduced footprint design.

## 2.8 Is the objection well founded?

The objection has identified that the proposed height variation will result in a better urban design outcome than strict compliance with the development standard. The development does not lead to excessive bulk or negative visual appearance.

The objection has also determined that the height variation will not cause significant view loss, privacy, overshadowing or visual impacts.

The proposed height variation is minimal and will alter not the amenity of the local area. The site is bordered by Mulla Road, Hume Highway and the railway line, and is the buffer zone between surrounding residential high and low density development.

Further if the development had been considered under complying development under the SEPP – EE&CCF then based on the setback the maximum height could have been 12m or if Council had adopted the alternate adjoining height limit within the LEP the maximum height limit would have been 13m.

The proposed development complies with the objectives of the height clause, zoning, LEP and Act as detailed above and will not have significant adverse impacts on adjoining or nearby properties.

Accordingly, the objection is considered to be well founded.



### 3 Conclusion

Strict compliance with the development standard is considered unnecessary in the circumstances of the case because the minor proposed height variation will result in a better design outcome than a development that complies with the building height limit.

The development will have both social and economic benefits to the local community through increased access to education and employment, improved facilities for out of hours activities, achieves energy efficiency via intuitive design and construction, and will deliver flexible learning facilities for a growing community.

The development will future proof the school by providing additional classroom space and is an important commitment to the community through the expanding of an essential piece of public infrastructure. Higher buildings allow the maximisation of open space for the school, and also allows for future building expansion on open space as population growth may require.

The clause 4.6 objection has determined that there are sufficient environmental planning grounds to warrant the variation; the proposed development is consistent with relevant objectives and is in the public interest.

