

# CLAUSE 4.6 VARIATION REQUEST

Campbelltown Sports and Health  
Centre of Excellence

Part Lot 4099, DP 1206283  
Goldsmith Ave, Campbelltown

June 2018

**GDS Planning Pty Ltd**

Suite 3A, 261-275 Pennant Hills Road  
Thornleigh NSW 2120  
PO Box 498 Pennant Hills NSW 1715  
Phone: +61 2 9980 1000  
Email: [info@gdsland.com.au](mailto:info@gdsland.com.au)  
[www.gdsland.com.au](http://www.gdsland.com.au)



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TITLE: *Clause 4.6 Variation Request – Height (May 2018)*

*Campbelltown Sports Centre of Excellence (CoE) – Part Lot 4099, DP 1206283 Goldsmith Ave, Campbelltown*

PROJECT: *218.049 Campbelltown Sports CoE - DA*

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*Cover page: 3D View Peter hunt Architect 11 June 2018*

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## 1. INTRODUCTION & BACKGROUND

### 1.1 SUMMARY

This submission has been prepared on behalf of Campbelltown City Council's Sport, Recreation and Leisure Department in support of a development application (DA) to Campbelltown City Council for the construction of a community sports centre of excellence and health facility at Part Lot 4099, DP 1206283 Goldsmith Avenue, Campbelltown (the site). The facility includes gymnasiums, a social club room, an indoor 15 metre recovery/program pool, an indoor sports hall, a community health centre and health clinic, and office and administration areas.

Clause 4.6 of the Campbelltown Local Environmental Plan 2015 (the LEP) provides the flexibility to allow consent to be granted to a DA, even though the proposed development may vary, or depart from a development standard prescribed by the LEP.

This submission requests Council to grant consent to the subject DA, despite the proposed variation to the 9 metre maximum height standard which applies to the site. The LEP defines building height (or height of building):

*(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. (emphasis added)*

The proposed building has a maximum height of 10 m, measured from the proposed floor level to the top of the indoor sports hall roof. When measured from the highest point of the building to the lowest existing ground level immediately below that point, the proposal has a maximum overall building height of 13.6 m. This represents a 4.6m departure (51%) from the 9 m height limit. The section of the proposed facility which exceeds the height standard to its maximum extent is limited to the southern-most portion of building, where the land falls away towards the railway, as shown in Figures 1 and 2.

Bulk earthworks and site preparations, however, will be undertaken as part of a separate application and once complete will create a level building platform for the development. Following these earthworks, a new engineered ground level will be provided. This is shown as the 'future ground level' in Figure 2 below. The proposed development will then have a maximum overall height of 10 m when measured from the engineered ground level to the highest point of the building. This will represent a 1 m departure (11.1%) from the 9 m height limit.

It should be noted that if the building was provided with a flat roof, the development would essentially comply with the 9 m height control. The proposed curved roof lines, however, are an important roof feature and contribute to the overall design of the building. The curved roof lines do not result in any additional floor space area and are not capable of being modified to include additional floor space. The increased building height will also not result in any unreasonable overshadowing or amenity impacts. The additional building height is therefore considerable acceptable for the proposed development.

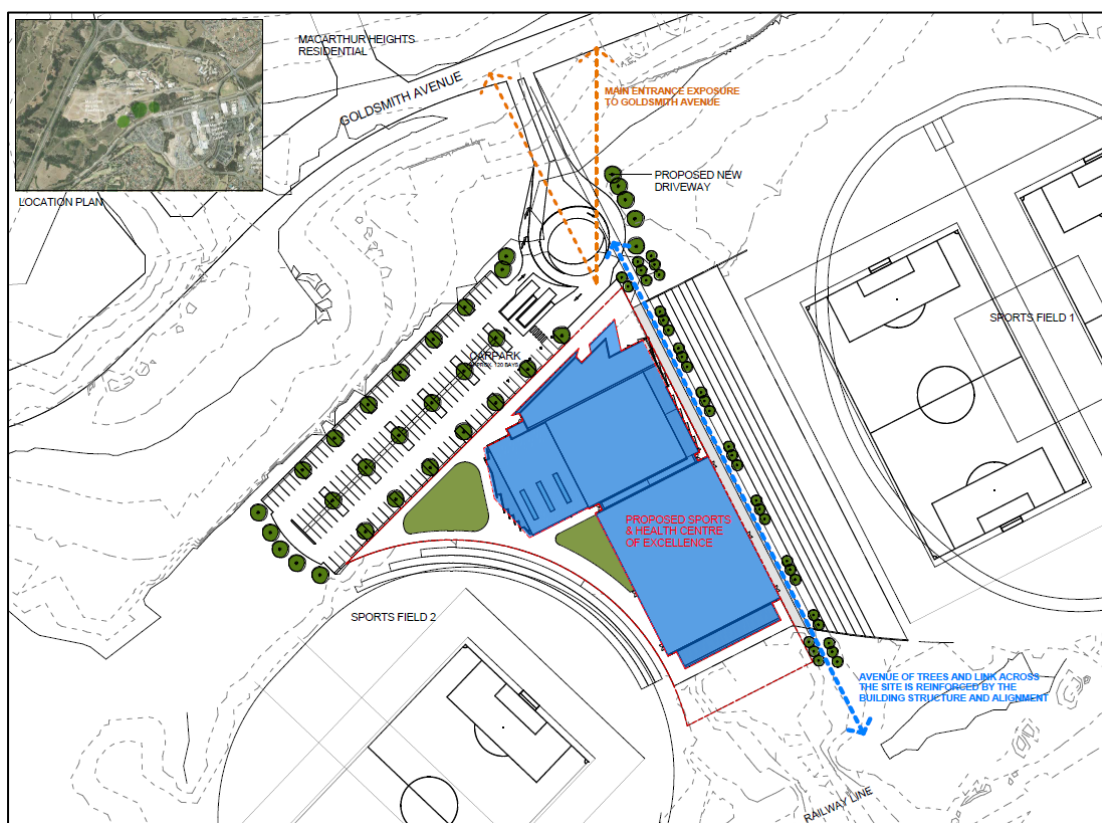


Figure 1: Site plan

Source: Peter Hunt Architect

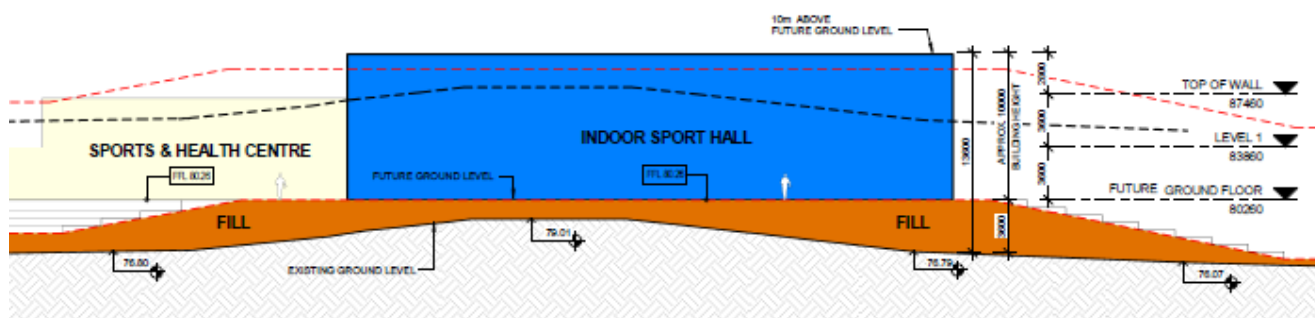


Figure 2: Extract from Building Height Sections showing the maximum overall height

Source: Peter Hunt Architect

## 1.2 ZONE OBJECTIVES

The site is in the R3 Medium Density zone as shown in the Statement of Environmental Effects (SEE) submitted with the DA. The zone's objectives, quoted below, are addressed in Table 3.

- To provide for the housing needs of the community within a medium density residential environment.

- *To provide a variety of housing types within a medium density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To provide for a wide range of housing choices in close proximity to commercial centres, transport hubs and routes.*
- *To enable development for purposes other than residential only if that development is compatible with the character and scale of the living area.*
- *To minimise overshadowing and ensure a desired level of solar access to all properties.*



## 2. PURPOSE OF CLAUSE 4.6

The objectives of clause 4.6 are to achieve better outcomes for and from development by allowing an appropriate degree of flexibility in the application of those development standards. Clause 4.6 allows development consent to be granted to the subject DA even though the proposal exceeds the maximum height standard of clause 4.3 of the LEP.

Prior to granting consent to the contravention of the height standard, the consent authority must consider the variation in terms of the requirements of clause 4.6.

### 4.6 Exceptions to development standards

(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.

(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.

To address clause 4.6 a series of questions has been developed based on an examination of decisions by the NSW Land & Environment Court (NSWLEC) concerning, inter alia, requests to vary development standards pursuant to clause 4.6 of LEP's based on the Standard Instrument (Local Environmental Plans) Order 2006:



- Gejo Pty Ltd v Canterbury-Bankstown Council [2017] NSWLEC 1712
- Katerinis v Canterbury-Bankstown Council [2017] NSWLEC 1479 (Gray C)
- Mt Annan 88 Pty Ltd v Camden Council [2016] NSWLEC 1072 (Brown C)
- Moskovich v Waverley Council [2016] NSWLEC 1015 (Tuor C), and
- Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 1009 (Pearson C)
- Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 (Pain J),
- Wehbe v Pittwater Council [2007] NSWLEC 827 (Preston CJ)\*

\*Referred to by some of the other cases.

The method embodied by these questions aims to ensure this written request fully addresses the matters that must be considered by an applicant in making the request; and the obligations of the consent authority in deciding whether to approve the request and grant consent to the DA.

This written request has been prepared to address each of these matters and provides the required justification and environmental planning grounds to support the proposed variation to the maximum building height standard.

### 3. DEVELOPMENT STANDARD TO BE VARIED

#### 3.1 CLAUSE 4.3 HEIGHT OF BUILDINGS

This clause 4.6 variation request relates to a departure from the numerical standard set out under clause 4.3 of the LEP, which specifies a maximum height of buildings.

This development standard falls within the scope of the “development standards” definition in section 1.4 of the Environmental Planning and Assessment Act 1979 (EP&A Act) which states (inter alia):

***development standards** means provisions of an environmental planning instrument or the regulations in relation to the carrying out of development, being provisions by or under which requirements are specified or standards are fixed in respect of any aspect of that development, including, but without limiting the generality of the foregoing, requirements or standards in respect of:*

*(a) the area, shape or frontage of any land, the dimensions of any land, buildings or works, or the distance of any land, building or work from any specified point*

The provisions of clause 4.3 relating to the maximum permitted height of a building, state:

#### **4.3 Height of buildings**

*(1) The objectives of this clause are as follows:*

*(a) to nominate a range of building heights that will provide a transition in built form and land use intensity across all zones,*

*(b) to ensure that the heights of buildings reflect the intended scale of development appropriate to the locality and the proximity to business centres and transport facilities,*

*(c) to provide for built form that is compatible with the hierarchy and role of centres,*

*(d) to assist in the minimisation of opportunities for undesirable visual impact, disruption to views, loss of privacy and loss of solar access to existing and future development and to the public domain.*

*(2) The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.*

On the ‘Height of Buildings Map’ the site is in an area with a maximum height designated of ‘J’ (height of buildings map – sheet HOB\_008B) as shown in Figure 3 below. A maximum building height of 9 metres therefore applies. The development as proposed has a maximum building height of 13.6metres when measured from the existing ground level, which is 4.6 m (51%) greater than the maximum permissible height. Following completion of the future bulk earthworks and site preparations (subject to a separate approval), the development will have a maximum building height of 10 m which is 1 m greater than the 9 m height limit. This will represent a 11.1% variation.

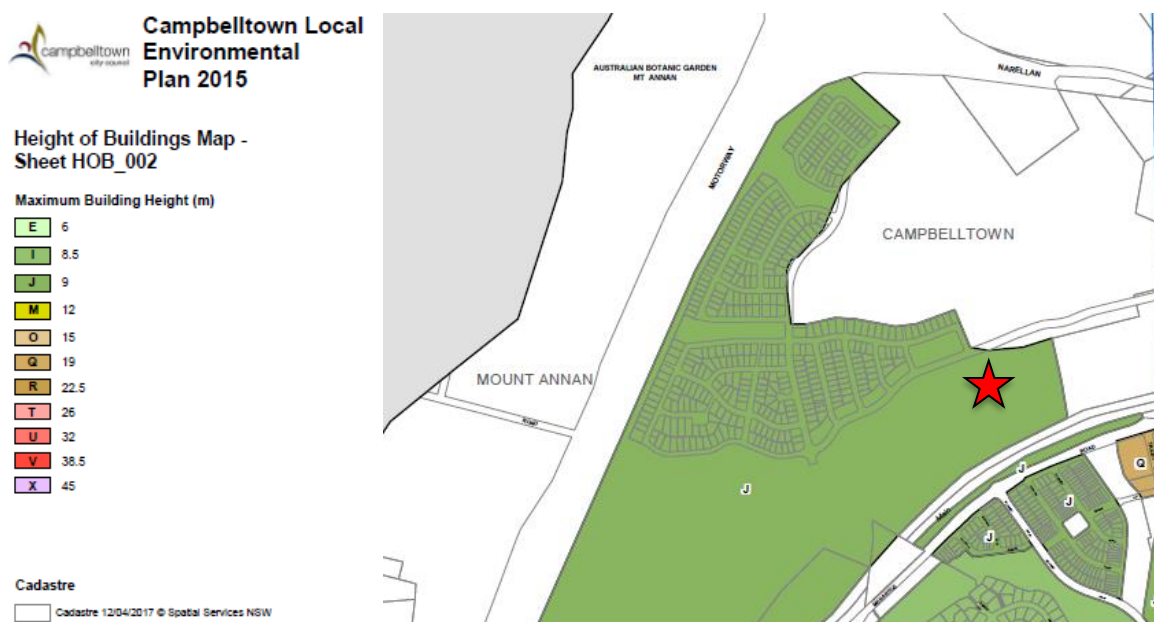


Figure 3: Campbelltown LEP 2014 Height of Buildings Map Extract (approximate location of proposed development shown by a red star)

Source: Department of Planning & Environment

### 3.2 REASONS FOR NON-COMPLIANCE WITH DEVELOPMENT STANDARDS

There are a number attributes of both the site and proposed development which contribute to the height standard being exceeded:

- The site and the area generally between Goldsmith Avenue and the railway is within the flood plain of Bow Bowing Creek.
- The existing University gymnasium and car park are situated on an existing filled area, which narrows into a levee bank that extends southwards to a culvert near the railway, through which Bow Bowing Creek flows. This levee/embankment appears to be designed to direct flood water toward the culvert and control flood flows during periods of heavy rainfall. On the levee, a track runs southwards to the railway, which intersects with another track which runs parallel with Bow Bowing Creek.
- The proposed building will be located on the site of the existing gymnasium. Further bulk earthworks/site preparations will be required (subject to a separate application) and once completed will create an enlarged, level building platform for the proposed development. This eliminates the need to extend the building over the 'edge' of the existing levee.
- In the southern section of the building (the sports hall), the difference in level from the top of the levee (79.01m) to the land below (76.79m) is about 2.2 m. An additional 1.4 m of fill will be required to achieve a minimum floor level of 80.26 m AHD. This is due to a need for the floor level to be a minimum of 500 mm above the 100-year flood level being RL79.76 m.
- The proposed building's floor plate is larger than the existing embankment, particularly for the southern part of the building containing the proposed sports hall. In those areas where the building extends

beyond the existing levee, and due to the site falling generally toward the creek, these factors cause the building to be up to 13.6m above the existing ground level. The future bulk earthworks, however, will create an enlarged levee, which will create a level building platform for the development. The future bulk earthworks will provide a consistent floor level throughout the proposed complex without the need for a suspended slab. Once the future earthworks have been completed, the building will have an overall maximum height of 10 m above the new existing ground level, representing a 1 m departure from the building height standard.

- Sufficient headroom is required in the sports hall to accommodate various sporting activities.
- The architecture requires a consistent ground floor level throughout the facility, to optimise accessibility for all members of the community.
- The proposed curved roof lines provide an important roof feature and contributes to the overall design of the building. If the building was provided with a flat roof, the development would essentially comply with the 9 m height control. The curved roof lines do not result in any additional floor space area and are not capable of being modified to include additional floor space.

In summary, it is a combination of the proposal's architecture and the existing site conditions which result in a departure from the height standard. The architecture is necessary to enable the facility's intended use. The site conditions, however, will be altered once the approved bulk earthworks have been completed. The degree of departure from the height standard will therefore be significantly decreased once the site preparation works have been undertaken.

## 4. ASSESSMENT OF CLAUSE 4.6 “EXCEPTIONS TO DEVELOPMENT STANDARDS”

The provisions of clause 4.6 “Exceptions to development standards” under the LEP provide the consent authority with flexibility to vary a standard applying to development and when departure from the standard achieves better planning outcomes.

The provisions of clause 4.6(1) - (3) of the CLEP 2015 state:

### *4.6 Exceptions to development standards*

*(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.*

*(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.*

The use of clause 4.6 in this circumstance is to allow flexibility to the maximum building height development standard. Applying flexibility in these circumstances will create a better planning outcome for the subject site that is consistent with the desired future character of the locality.

### 4.1 CLAUSE 4.6(1)(A) AND (B)

The provisions of clause 4.6(1)(a) and (b) have been considered in the preparation of this request as set out in Table 1.

Table 1 Clause 4.6(1) Assessment

Objective	Comment
4.6(1)(a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,	<p>Despite the variation to the LEP height standard, an appropriate degree of flexibility would be applied as:</p> <ul style="list-style-type: none"> <li>A ‘better’ planning outcome would be achieved by approval. The development embodies considerable public benefit by expanding and updating health and sporting facilities for the Campbelltown community. This benefit could not be realised if compliance with the height standard was insisted upon, for the reasons summarised in the next bullet point.</li> </ul>

	<ul style="list-style-type: none"> <li>• The site's and the proposed development's circumstances render compliance with the development standard both unreasonable and unnecessary, due to: <ul style="list-style-type: none"> <li>○ the architecture is required to enable the intended community, health and sporting uses of the building;</li> <li>○ the curved roof lines contribute to the overall design of the building and provide an important architectural feature,</li> <li>○ objectives of the standard being irrelevant to the site and the proposed development; and</li> <li>○ the inappropriate application of the zone and hence the development standard to the site.</li> </ul> </li> <li>• There being sufficient environmental planning grounds to justify approval.</li> <li>• The proposed development being in the public interest, as it is consistent with applicable objectives of the zone and of the development standard.</li> </ul>
<p>4.6(1)(b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.</p>	<p>The true benchmark of acceptable performance is not compliance with a numerical standard. The NSW planning regime which endorses a performance-based approach to assessment. It is the performance or results from the development which matter. Development standards are the means to achieve ends, they are not ends in themselves, to paraphrase Chief Justice Preston in the judgement made for <i>Wehbe v Pittwater Council</i>.</p> <p>The proposed development will result in a better development outcome for the development itself and for the general locality, when compared with a compliant development.</p> <p>As detailed above, variation to the height standard is unavoidable. As examined below, the centre will also provide significant community benefit. Environmental effects of the centre's proposed height are benign; and the architecture, including the size and height of the building, arguably create a local landmark that provides variety of built form in the local landscape.</p> <p>The degree of flexibility in varying the standard is deemed to be appropriate.</p>

## 4.2 CLAUSE 4.6(2)

Clause 4.6(2) states that development consent may be granted for development even though the development would contravene a development standard. However, this does not apply to a development standard that is expressly excluded under clause 4.6(8) of the LEP.

### 4.6 Exceptions to development standards

(8) This clause does not allow development consent to be granted for development that would contravene any of the following:

(a) a development standard for complying development,

(b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,

(ba) clause 4.1D, 4.2A, 4.2B or 4.2C,

(c) clause 5.4,

(ca) clause 6.1 or 6.2.

Subclause 4.6(8) does not allow development consent to be granted for development that would contravene various development standards. These include development standards for complying development, BASIX commitments, various miscellaneous permissible uses (such as those that limit the maximum floor area requirements for home business, neighbourhood shops or secondary dwellings), or standards relating to public infrastructure.

The maximum building height is not excluded by 4.6(8) and is capable of being varied, subject to a written request demonstrating the variation proposed satisfies the tests of clauses 4.6 (3) & (4).

## 4.3 CLAUSE 4.6(3)(A) AND (B)

The excerpt below is from *Wehbe v Pittwater Council* [2007] NSWLEC 827 and is commonly used by applicants to establish that compliance with a standard is “unreasonable or unnecessary” - the first hurdle in the clause 4.6 test.

*42 An objection under SEPP 1 may be well founded and be consistent with the aims set out in clause 3 of the Policy in a variety of ways. The most commonly invoked way is to establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard: see SCMP Properties Pty Limited v North Sydney Municipal Council (1983) 130 LGRA 351 at 379; Hooker-Rex Estates v Hornsby Shire Council, unreported, LEC No 10506 of 1982, 27 July 1983, Bignold J, pp 16, 18 and 20; Gergely & Pinter v Woollahra Municipal Council (1984) 52 LGRA 400 at 406-407, 412-413; Hooker Corporation Pty Limited v Hornsby Shire Council (1986) 130 LGRA 438 at 441; North Sydney Municipal Council v Parlbay, unreported, LEC No 10613 of 1985, 13 November 1986, Stein J at p 5; Legal and General Life of Australia Ltd v North Sydney Municipal Council (1989) 68 LGRA 192 at 202; Leighton Properties Pty Ltd v North Sydney Council (1998) 98 LGRA 382 at 386; Fast Bucks v Byron Shire Council (1999) 103 LGRA 94 at 97; City West Housing Pty Ltd v Sydney City Council (1999) 110 LGRA 262 at 282-283; Memel Holdings Pty Ltd v Pittwater Council (2000) 110 LGRA 217 at 220-221; Winten Property Group Ltd v North Sydney Council (2001) 130 LGRA 79 at 88[25] - 89[28] and Design 23 Pty Ltd v Sutherland Shire Council (2003) 125 LGRA 380 at 387 [20]-[21].*



43 The rationale is that development standards are not ends in themselves but means of achieving ends. The ends are environmental or planning objectives. Compliance with a development standard is fixed as the usual means by which the relevant environmental or planning objective is able to be achieved. However, if the proposed development proffers an alternative means of achieving the objective, strict compliance with the standard would be unnecessary (it is achieved anyway) and unreasonable (no purpose would be served).

44 However, although this way is commonly invoked, it is not the only way to establish that compliance with a development standard is unreasonable or unnecessary: *North Sydney Municipal Council v Parlbay*, unreported, LEC No 10613 of 1985, 13 November 1986, Stein J at p 5; *Legal and General Life of Australia Ltd v North Sydney Municipal Council* (1989) 68 LGRA 192 at 202; *Fast Bucks v Byron Shire Council* (1999) 103 LGERA 94 at 97; *City West Housing Pty Ltd v Sydney City Council* (1999) 110 LGERA 262 at 282-283. Other ways are explained in the authorities.

More recent decisions of *Four2Five Pty Ltd v Ashfield Council* [2015] NSWCA 248 and *Moskovich v Waverley Council* [2016] NSWLEC 1015 provide further guidance in this regard.

The decision in *Four2Five* found that consistency with a development standard's objectives should not be used to demonstrate that variation from the standard is unreasonable or unnecessary. This is due to this matter being specifically addressed by clause 4.6(4)(a)(ii).

In *Moskovich*, the Court found that variation of a standard could be found unreasonable or unnecessary, when the development would achieve the same or a better outcome than would a complying development. The test of 'consistency' with a standard's objectives was found to differ from the test of 'achievement' of those objectives and that the latter test is more onerous than the former. This case also indicated that the *Wehbe* tests are not exhaustive, so other means can be used to show that compliance is unreasonable or unnecessary.

IN *Four2Five v Ashfield Council*, the decision stated the clause 4.6 request must be specific to the circumstances of a proposal, and not just to development in the area generally. Therefore, the matters addressed in Table 2 are specific to the circumstances of the proposal, to the objectives of the R3 Medium Density Residential zone and to the objectives of the maximum building height standard.

The provisions of clause 4.6(3)(a) and (b) have been considered in the preparation of this request as set out in Table 2.

Table 2 Clause 4.6(3) Assessment

Objective	Comment
4.6(3)(a) - that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and;	<p>To establish whether compliance with the height standard is unreasonable or unnecessary, <b>at least one</b> of the following questions must be answered affirmatively, to demonstrate strict compliance with the standard is unreasonable or unnecessary in the circumstances of the case.</p> <p>1. Does the development achieve, or contribute to, the objectives of the standard, to a standard equal to or better than a development that would have complied with the standard?</p>

	<p>As discussed in response to question 5 below, it is arguable as to whether the R3 Medium Density Residential Zone and the 9-metre maximum building height standard should apply to the site.</p> <p>In these circumstances, it is considered unnecessary to demonstrate whether the standard's objectives are achieved by the proposal, compared to a compliant development.</p> <p><b>2. Is the underlying objective or purpose (of the standard) irrelevant to the development, making compliance unnecessary?</b></p> <p>Although the zone and standard's aptness for the site is arguable, their relevance to the proposed development is considered.</p> <p>The standard's objectives are:</p> <ul style="list-style-type: none"> <li><i>(a) to nominate a range of building heights that will provide a transition in built form and land use intensity across all zones,</i></li> <li><i>(b) to ensure that the heights of buildings reflect the intended scale of development appropriate to the locality and the proximity to business centres and transport facilities,</i></li> <li><i>(c) to provide for built form that is compatible with the hierarchy and role of centres,</i></li> <li><i>(d) to assist in the minimisation of opportunities for undesirable visual impact, disruption to views, loss of privacy and loss of solar access to existing and future development and to the public domain,</i></li> </ul> <p>At a local scale the building is removed from residential buildings near the site, due to it's open space setting. The intensity and character of the proposed development differs in comparison with surrounding residential development.</p> <p>At an urban-wide scale, the nature and intended use of the building does not relate to proximity to business centres and transport. The site's suitability for the proposed development relates to the site having been used for sporting and leisure and the proposal being a facility allied to the nearby university campus. It is also well-situated to serve a growing residential community.</p> <p>The intent of the objectives is to reduce height and density, the greater the distance from urban centres, where height and intensity of development are comparably higher, than the height and intensity established for (mainly) residential development in the R3 zone.</p> <p>Moreover, it's often apt for institutional buildings, such as schools, universities, and community buildings not to conform with the overall built form control that applies across Campbelltown's residential areas. This is for reason that they can be local landmarks in the urban landscape, as they are typically taller and larger than surrounding residential development.</p> <p>In these circumstances, the relevance of the standard's objectives is arguable, and compliance is unnecessary.</p>
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	<p><b>3. Would the underlying purpose or objective (of the standard) be defeated or thwarted if compliance was required, making compliance unreasonable?</b></p> <p>This question is irrelevant to the proposal.</p> <p><b>4. Has the development standard been virtually abandoned or destroyed by the Council's actions (decisions) in departing from the standard, making compliance unnecessary and unreasonable?</b></p> <p>This question is irrelevant to the proposal.</p> <p><b>5. Is the zoning of particular land unreasonable or inappropriate so that a development standard applying to the zone is also unreasonable or unnecessary as it applied to that land, noting that this does not permit a general enquiry into the appropriateness of the development standard for the zoning?</b></p> <p>Given the site's use has and will continue to be primarily for community and sporting purposes and the land being in public ownership, it is questionable whether the R3 residential zone and the attendant 9 metre building height standard are appropriately applied to the site.</p> <p>It is more common to find such land zoned RE1 Public Recreation in the locality. In nearby locations where urban development has been established, four public reserves are zoned RE1 Public Recreation and no building height standard is applied to them:</p> <ul style="list-style-type: none"> <li>• John Kidd Reserve</li> <li>• Harvey Brown Reserve</li> <li>• Barber Reserve, and</li> <li>• Robinson Park.</li> </ul> <p>The site is likely not presently zoned RE1 Public Recreation as it's in a greenfield area. It is common for greenfield areas to be zoned to permit the main intended uses when land is first released for development. As per the R3 zoning, it is intended that the land be primarily developed with medium density housing and other compatible and complementary uses. This intent has been promoted and confirmed by recent urban subdivision on other parts of the lot (Lot 4099, DP 1206283) the subject of this request, such as to the west of the site of the existing gym and open space.</p> <p>When land is developed, land is typically dedicated to Council when required for public purposes. This process subdivides the land, culminating in registration of subdivision plans that create public roads, lots for housing, other permitted uses and those required for public purposes. Once lots approved for various public purposes are registered, they have been properly identified and dedicated to Council, allowing them to be suitably rezoned.</p> <p>Taking this process into account, there is sufficient certainty that the site will no longer be capable of accommodating development, other than that proposed by this DA and another for the adjoining sports fields (DA 1768/2015) for recreation and community uses.</p>
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	<p>Residential development patterns have been established in the area zoned R3 in the site's vicinity, with roads having been constructed where housing will be built. Such road patterns associated with residential subdivision have not been established on the site of the proposed facility and the proposed sports fields located on either side of the subject building. A large portion of the subject site is also flood prone making it less likely to be developed for housing purposes.</p> <p>The subject land is not capable of being and is not intended to be developed for housing, is beyond reasonable doubt.</p> <p>Based on what appears to have occurred in the area relating to other community uses and public open space, it is reasonable to expect that the land will be rezoned, and the maximum height standard removed from the site. It therefore follows that the land on which the proposed building is to be situated is likely to be zoned RE1 and the 9-metre height limit removed in the future. Development applications have been lodged to confirm the continued community and recreational use of the site, being the playing fields either side of the subject proposed building.</p> <p>In these circumstances, compliance with the height limit is considered unnecessary.</p> <p><b>6. Are there other circumstances of the case in which strict compliance with the standard is unreasonable or unnecessary?</b></p> <p>In addition to the suitability of the zoning and height standard which applies to the site, section 3.2 details other circumstances making compliance with the standard unreasonable. These include the building being of a height required to suit its intended purpose, and the site being subject to future earthworks which will modify it from its existing 'natural' form.</p> <p>It should also be noted that if the building was provided with a flat roof, the development would essentially comply with the 9 m height control. The proposed curved roof lines, however, are an important roof feature and contribute to the overall design of the building. The curved roof lines do not result in any additional floor space area and are not capable of being modified to include additional floor space. The increased building height will also not result in any unreasonable overshadowing or amenity impacts.</p> <p>In these circumstances, strict compliance with the standard is considered unreasonable.</p> <p><b><u>Conclusion:</u></b> To summarise, compliance with the maximum building height standard of 9 metres is considered unreasonable and unnecessary, because:</p> <ul style="list-style-type: none"> <li>• The building height proposed is necessary to allow its use as intended, as a community and sporting facility.</li> <li>• The development standard's objectives are irrelevant to the site and the proposed development.</li> <li>• It is arguable whether the zone and height standard should apply to the site.</li> <li>• The existing height control and zoning are inappropriately applied to the subject land.</li> </ul>
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	<ul style="list-style-type: none"> <li>Planning controls for the site should be amended, so they are the same as those applied to other public open space in the locality.</li> </ul>
<p><i>4.6(3)(b) that there are sufficient environmental planning grounds to justify contravening the development standard.</i></p>	<p>There are sufficient environmental planning grounds to justify contravention of the 9m building height standard, for the following reasons:</p> <ul style="list-style-type: none"> <li>The building is sufficiently distant from residential development in the locality to prevent overshadowing of this housing, or other deleterious effects on local amenity.</li> <li>This distance, when the development will be viewed from nearby streets and housing (existing and future) diminishes the apparent bulk and scale of the building.</li> </ul>

## 5. CLAUSE 4.6(4) CONSIDERATIONS

Clause 4.6(4) of the LEP states:

- (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.*

As demonstrated in Table 3, the proposed development is consistent with the objectives of the maximum building height development standard (except those irrelevant to the site and the proposal) and the R3 Medium Density Residential zone. The proposed development is therefore considered to be in the public interest.

Table 3: Clause 4.6(4) Assessment

Matter of Consideration	Comment
4.6(4)(a)(ii) <i>Is the proposed development consistent with objectives of the <u>development standard</u> and therefore in the public interest?</i>	<p>Although it is arguable whether the standard should apply to the land, consistency with maximum height standard's objectives (clause 4.3 of the LEP), is outlined below:</p> <p><i>(a) to nominate a range of building heights that will provide a transition in built form and land use intensity across all zones,</i></p> <p><u>Comment:</u> In the circumstances outlined in table 2, the proposal's building height is not inconsistent with this objective, as the development's height would not unduly compromise the intended transition of development height and intensity across Campbelltown's urban areas.</p> <p><i>(b) to ensure that the heights of buildings reflect the intended scale of development appropriate to the locality and the proximity to business centres and transport facilities,</i></p> <p><u>Comment:</u> Given the distance from the proposed development to residential development in the locality, the additional height of the proposal relates well to the scale of intended built form and emerging character of the locality, while noting, arguably, the standard should not apply to the subject land.</p> <p><i>(c) to provide for built form that is compatible with the hierarchy and role of centres,</i></p>

	<p><u>Comment:</u> The height of the proposed building does not affect compatibility of built form across Campbelltown's urban areas, regarding the hierarchy and role of centres.</p> <p><i>(d) to assist in the minimisation of opportunities for undesirable visual impact, disruption to views, loss of privacy and loss of solar access to existing and future development and to the public domain,</i></p> <p><u>Comment:</u> Again, the distance of the proposal from existing and planned housing and other development in the locality reduce it's potential to impact on the local amenity. Landscaping is proposed to soften the visual effect of the building. As the site is lower than nearby housing the development will have reasonable impacts on views to and from the site. The development also has no unreasonable impact on the privacy or solar access of other development in the locality.</p>
<p>4.6(4)(a)(ii) Is the proposed development consistent with objectives of the <u>zone</u> and therefore in the public interest?</p>	<p>Despite the inappropriateness of the zone's suitability for the site, consistency of the proposal the R3 Medium Density Residential zone's objectives is discussed as follows:</p> <ul style="list-style-type: none"> <li>• <i>To provide for the housing needs of the community within a medium density residential environment.</i></li> </ul> <p><u>Comment:</u> The proposed development, being on a site already used for recreational and community purposes, uses which are to be continued, will not compromise the ability to provide medium density housing on other land zoned for this purpose.</p> <ul style="list-style-type: none"> <li>• <i>To provide a variety of housing types within a medium density residential environment.</i></li> </ul> <p><u>Comment:</u> For the same reason as for the first objective, the proposal does not preclude a variety of housing types in the locality.</p> <ul style="list-style-type: none"> <li>• <i>To enable other land uses that provide facilities or services to meet the day to day needs of residents.</i></li> </ul> <p><u>Comment:</u> The proposal is consistent with this objective, as it provides a range of community needs for residents.</p> <ul style="list-style-type: none"> <li>• <i>To provide for a wide range of housing choices in close proximity to commercial centres, transport hubs and routes.</i></li> </ul> <p><u>Comment:</u> The development does not prevent provision of housing choice close to commercial centres, transport hubs and routes.</p> <ul style="list-style-type: none"> <li>• <i>To enable development for purposes other than residential only if that development is compatible with the character and scale of the living area.</i></li> </ul> <p><u>Comment:</u> As discussed, the siting and design of the proposal is compatible in character and scale with development in the area.</p>



	<ul style="list-style-type: none"> <li>• <i>To minimise overshadowing and ensure a desired level of solar access to all properties.</i></li> </ul> <p><u>Comment:</u> As noted, the development will not overshadow or impact solar access of any other property.</p>
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## 6. CLAUSE 4.6(5) CONSIDERATIONS

Clause 4.6(5) of the CLEP 2015 states:

*(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.*

The matters for consideration by the Secretary in clause 4.6(5) of the LEP have been addressed in Table 4 below.

Table 4: Clause 4.6(5) Assessment

Matter of Consideration	Comment
4.6(5)(a) whether <i>contravention of the development standard raises any matter of significance for State or regional environmental planning, and</i>	The non-compliance with the development standard does not raise any matters of significance for state or regional planning. The development meets relevant objectives of the R3 Medium Density Residential zone and results in no detrimental impacts. The proposed development is consistent with relevant objectives of the standard.
4.6(5)(b) <i>the public benefit of maintaining the development standard, and</i>	<p>The development satisfies stated objectives of the zone and the development standard, despite the applicability of some of the latter being contested. There is negligible public benefit in requiring strict compliance with the development standard, in the circumstances outlined.</p> <p>If any negative impact is perceived by members of the public, this would be outweighed by the benefits afforded the Campbelltown community by the development.</p>
4.6(5)(c) <i>any other matters required to be taken into consideration by the Secretary before granting concurrence.</i>	<p>All relevant matters have been considered and the variation proposed is acceptable, despite the degree of variation exceeding 10%. Per the directive of the Secretary of Planning &amp; Environment, of 21 February 2018, (Circular PS 18-003), concurrence of the Secretary may not be assumed by a delegate of Council.</p> <p>However, in this case the variation must be considered by the Sydney Western City Planning Panel, as the DA will be lodged by Council and the value of the development, being community infrastructure, exceeds \$5million.</p>

## 7. CONCLUSION

The applicant has submitted a written request to vary the 9-metre height of buildings standard, applied to the site by the Campbelltown Local Environmental Plan 2015. The request complements a development application for a community and sporting facility on Part Lot 4099, DP 1206283 Goldsmith Avenue, Campbelltown.

The request has been prepared in accordance with clause 4.6 of the LEP and the following conclusions are drawn from the assessment:

- **An appropriate degree of flexibility would be applied by approval of the requested variation.**
- **A 'better' planning outcome would be achieved by approval. The development embodies considerable public benefit by expanding and updating health and sporting facilities for the Campbelltown community. This benefit could not be realised if compliance with the height standard was insisted upon, for the reasons summarised in the next bullet point.**
- **The site's and the proposed development's circumstances render compliance with the development standard both unreasonable and unnecessary, due to:**
  - the architecture required to enable the intended community and sporting uses of the building,
  - the curved roof lines contribute to the overall design of the building and provide an important architectural feature,
  - certain objectives of the standard being irrelevant to the site and the proposed development, and
  - the inappropriate application of the zone and hence the development standard to the site.
- **There being sufficient environmental planning grounds to justify approval.**
- **The proposed development being in the public interest, the proposal is consistent with applicable objectives of the zone and of the development standard.**
- **No matters of regional or State significance, or other matters, prevent concurrence of the Secretary of the Department of Planning & Environment being assumed by the relevant consent authority.**

Based on this assessment, the requested variation of the maximum height development standard is reasonable and well founded.

