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Clause 4.6 Variation to Building Height

Pendle Way, Pendle Hill

10 April 2018

CC160182

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1 Introduction

In accordance with Clause 4.6 of the Holroyd Local Environmental Plan (LEP) 2013 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 real property description encompasses the following lots in Pendle Hill:

- Lot 1 DP 983604;
- Lot B DP 339083;
- Lot 2 DP 122493;
- Lots 66 – 70 Section 7A DP 963;
- Lot 42 – 52 Section 7A DP963;
- Lot 62 – 71 Section 6A DP 963;
- Lot 1 DP 122494;
- Lot 1 DP 440881;
- Lot 1 DP 395923; and
- Lot 1 DP 122493.

The property address is Pendle Way, Pendle Hill.

1.2 Proposed Development

The proposed development will involve alterations and additions to the Pendle Hill public school including associated landscaping as shown in proposed site plan below in Figure 1.



Figure 1: Extract from Site Plan

The proposed development comprises a built form of two (2) to three (3) 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 controls of 12 metres.

Due to the slope of the site the natural ground and building height varies across the elevations. Table 1 below outlines the extent of the height variations.

Table 1: Height variations across the building and elevations

Elevation	Height	Variation from LEP Maximum	% Variation from LEP Maximum
South elevation	10.123m	1.123m	12.5%
South elevation	11.531m	2.531m	28.1%
North elevation	7.988m	0m	N/A
North elevation	9.752m	0.752m	8.3%
West elevation	9.525m	0.525m	5.8%
West elevation	10.236m	1.236m	13.7%
East elevation	11.736m	2.736m	30.4%
East elevation	7.925m	0m	N/A
Average	9.85m	0.85m	9.4%

The maximum extent of departure is 2.735 metres. This represents a variation of approximately 30.4% to the Holroyd LEP maximum height control. However due to the slope of the site the height varies across the development with an average departure of 0.85m or 9.4% based on the heights at each end of each elevation.

Figure 2 below shows the 3D render of the proposed new school building which shows the architectural style and variation in height due to roof design and slope of the site.



Figure 2: Extract from architectural plans – 3D Render

To further outline the proposal and the variations in building height, the elevation plans are included in Appendix A.

1.3 Summary of Planning Instrument and Development Standard to be Varied

EPI applicable:	Holroyd Local Environmental Plan (LEP) 2013
Zoning:	R2 Low Density Residential
Development Standard to which the Objection Relates:	Building height under Clause 4.3 Height of Buildings.
Numeric Value of the Development Standard:	9 m
Percentage and numeric variation of the proposed development to the development standard:	Numeric Variation: 2.736m (at the south east corner – adjoining Arnett Street) Percentage Variation: 30.4% Refer to table above that shows the extent of the variations in height. The average is about 9.4% variation.

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 Holroyd LEP 2013 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 architectural design adds to the amenity of the school and neighbourhood;
- The design does not present an attempt to attain additional development yield on site given compliance with the applicable FSR controls;
- The design incorporates a sloped roof which is characterised by maximum heights only on one side of the development, which is reflected in Table 1 above; and
- The design allows for an increase in landscaped areas and open space (outdoor learning and play spaces) which is required in a school environment.

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 had special use/ purpose zones in which height and FSR restrictions were not applicable. In addition, should have the development 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 limits for the site, the development has been designed with consideration of the site and surrounding development;
- 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 proposed development has an FSR of 0.275:1, and complies with the maximum FSR identified in the LEP of 0.5:1;
- The proposal will not cause adverse privacy impacts on nearby residential developments. The development proposes the inclusion of strategically angled windows along the eastern façade. This will reduce opportunities for overlooking onto neighbouring properties;
- View lines are minimized and only occur at the back of the classrooms resulting in greater privacy for the neighbouring developments;
- The building has a setback of between 6.6m and 8.8m from the adjoining boundaries; and
- Substantial tree planting is proposed to further mitigate height issues and will create a buffer zone between the proposed building and others existing.

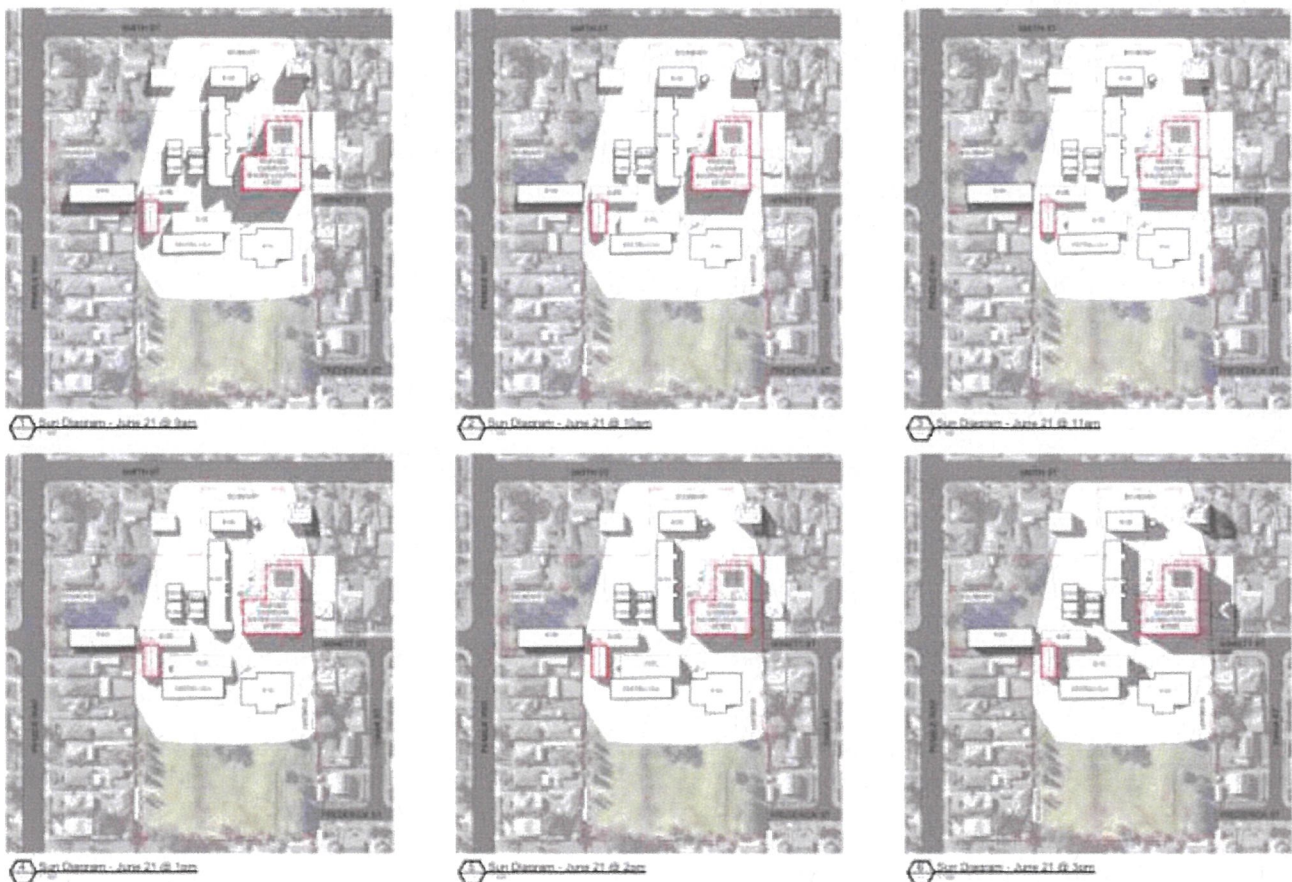


Figure 3: Extract from Shadow Diagram

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 minimise the visual impact of development and ensure sufficient solar access and privacy for neighbouring properties,*
- (b) *to ensure development is consistent with the landform,*
- (c) *to provide appropriate scales and intensities of development through height controls.*

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

- There are no adverse visual impacts of the proposal on the school, streetscape or amenity of the area;
- The proposal will not inhibit neighbouring properties solar access for more than 1-2 hours during the winter solstice;
- The design of the building adjoining neighbouring properties includes architectural and landscaping elements to reduce the potential for adverse privacy impacts;
- The height of the building will present an attractive architectural element to the school and surrounds;
- 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 and thereby increasing the availability of outdoor play and learning areas; 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 Holroyd LEP 2013 the site is zoned R2 Low Density Residential. The zone objectives are:

- *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.*
- *To allow residents to carry out a range of activities from their homes while maintaining neighbourhood amenity.*

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 residential zoning;
- The updated facilities at the school are available for use by the community outside of school hours which enables additional space for community uses such as sporting and other recreational activities, both passive and active;
- Substantially meets and maintains the required FSR of low density residential zoning, 0.75:1 compared to the maximum requirement of 0.5:1;
- The land use and design are consistent with surrounding developments and provide an attractive architectural and landscape solution for the site; and
- The development will provide permanent, high quality educational services to meet day to day needs of the Pendle Hill community.

2.4.3 Objectives / Aims of the LEP

The objectives / aims of the Holroyd LEP are:

- (a) to provide a clear framework for sustainable land use and development in Holroyd,
- (b) to provide for a range of land uses and development in appropriate locations to meet community needs, including housing, education, employment, recreation, infrastructure and services,
- (c) to promote ecologically sustainable development by facilitating economic prosperity, fostering social well-being and ensuring the conservation of the natural environment,
- (d) to concentrate intensive land uses, increased housing density and trip-generating activities in close proximity to centres and major public transport nodes in order to retain the low-density character of other areas,
- (e) to promote the efficient and equitable provision of public services, infrastructure and amenities,
- (f) to protect the environmental and cultural heritage of Holroyd including:
 - (i) identifying, conserving and promoting cultural heritage as a significant feature of Holroyd's landscape and built form as a key element of its identity, and
 - (ii) effectively managing the natural environment (including remnant bushland and natural watercourses) to ensure its long-term conservation.

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

- The high-quality development will contribute to the education and employment needs of the community by increasing the student/ staff level without acquiring additional land;
- The proposal promotes social well-being and equity principles through an increase in the opportunity for education in the area. Reduced travel times for students and parents are associated with positive social impacts;
- Provides an increase to public education facilities close to transport and other services;
- Provides additional spaces for community use outside of school hours;
- The proposal is designed in conjunction with environmental design principles aimed at promoting the conservation of the environment within the Cumberland Council Local Government area (LGA);
- The non-compliance has no unacceptable impact on the setting of any items of cultural or environmental heritage; and
- Promotes a high standard of urban design which would be reduced by any proposal that aims to redistribute development across the entirety of the site to meet numerical compliance.

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 Cumberland Council LGA.

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

The contravention would not hinder the attainment of the objects of the act which 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 the objects of the Act including:

- The orderly use and development of land is promoted by increasing the combined staff and student numbers from 350 persons (324 students and 26 staff) to 611 persons (575 students and 36 staff);
- The development promotes social welfare through an increase in available public education facilities;
- The proposal facilitates economic development through an increase in paid staff from 26 to 36 persons;
- The proposal will 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. Any potential impacts have been addressed through building design and landscaping.

The height of the development varies across the building footprint and only has an average variation of 9.4% as shown in Table 1 above. The sloped roof design and slope of the site, contribute to the height variation, but also contribute to the attractive design of the building. 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.

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 unique circumstances of the case because the proposed height variation will result in better design excellence outcomes than a development that complies with the building height limit and will also provide more outdoor play and learning space.

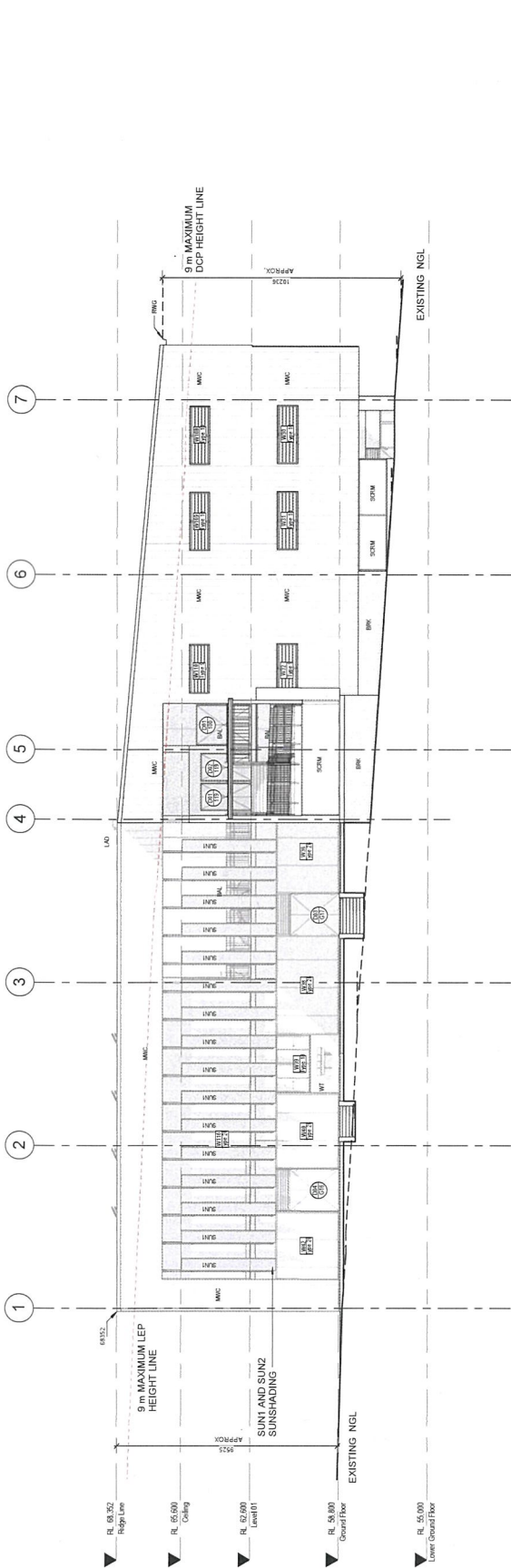
The development will have both social and economic benefits to the local community through increased access to education and employment, improved facilities for out of hours activities, achieves energy efficiency via intuitive design and construction, and will deliver flexible learning facilities for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

The development will future proof the school by providing the required 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 and play grounds for the school, and also allows for future building expansion on open space as population growth may require.

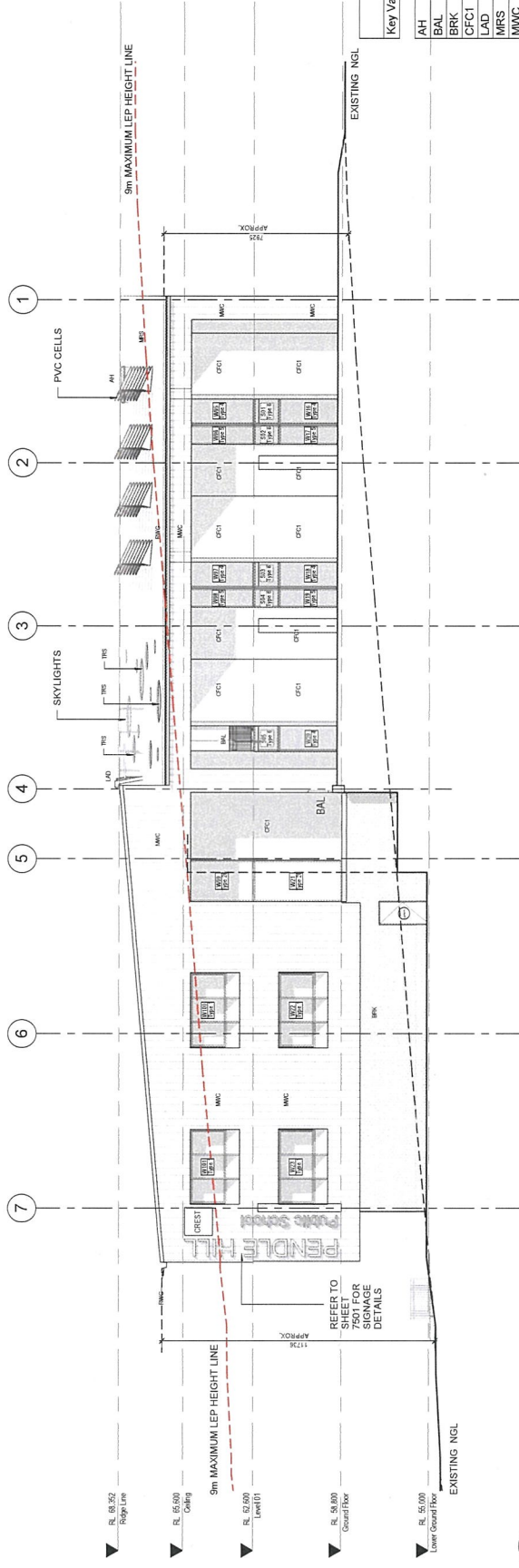
The clause 4.6 objection has determined that there are sufficient environmental planning grounds to warrant the variation; the proposed development is consistent with relevant objectives and is in the public interest.

APPENDIX A

Elevations



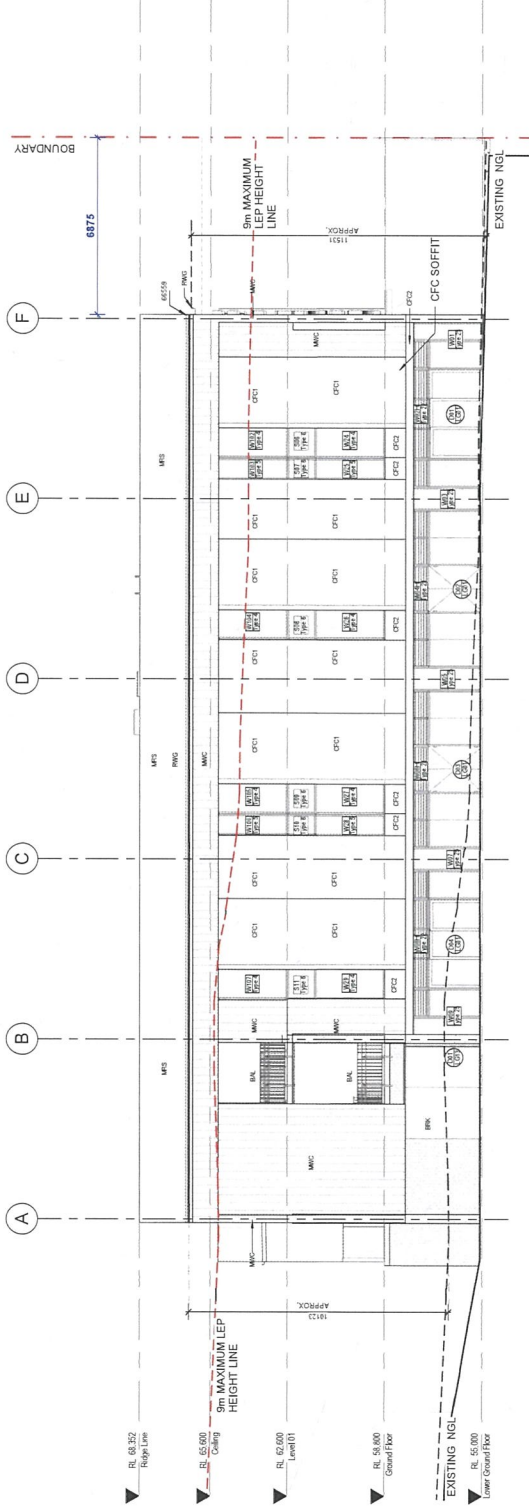
1 West Elevation
1:100



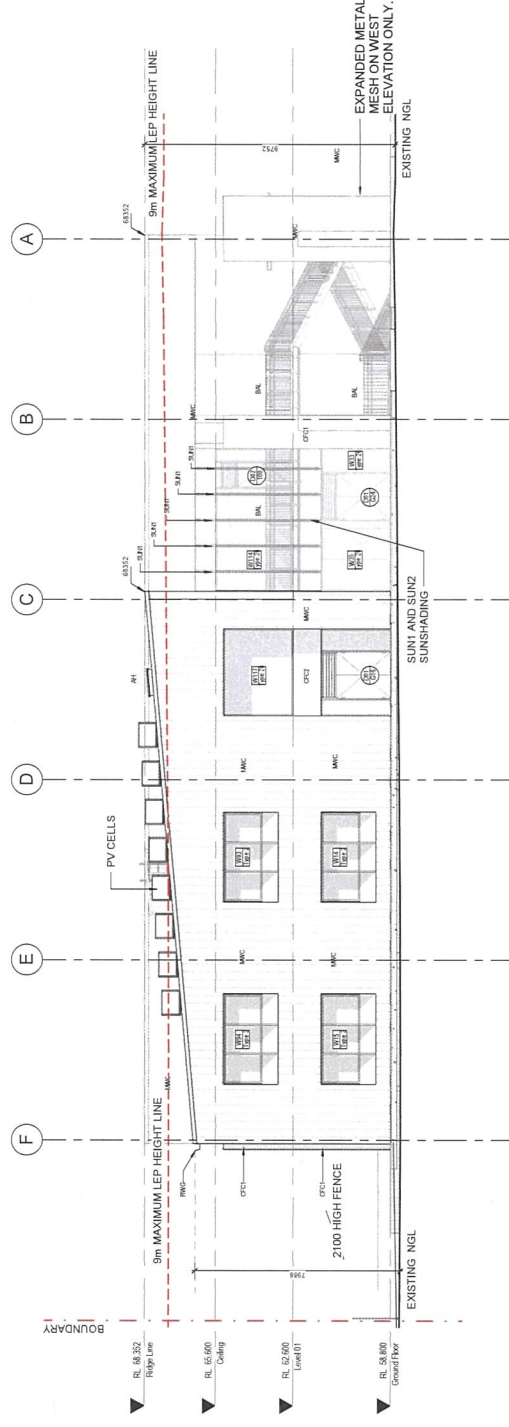
2 East Elevation
1:100

Key Value	Legend - Keynote	Keynote Text
AH	ACCESS HATCH	
BAL	BALUSTRADE, TYPE	
BRK	BRICKWORK	
CFC1	COMPRESSED FIBRE CEMENT, COLOUR 1	
LAD	LADDER	
MRS	ROOF SHEETING, METAL, TYPE	
MWC	WALL CLADDING OR LINING, METAL	
RWG	RAIN WATER GUTTER	
SCRM	SCREEN, MESH	
SUN1	SUNSHADE, TYPE 1	
TRS	TRANSLUCENT ROOF SHEETING	
WT	WASH TROUGH	

NOTE: REFER TO BUILDING FABRIC SCHEDULE



1 South Elevation
1:100



2 North Elevation
1:100

Key Value	Legend - Keynote	Keynote Text
AH	ACCESS HATCH	
BAL	BALUSTRADE, TYPE	
BRK	BRICKWORK	
CFC1	COMPRESSED FIBRE CEMENT, COLOUR 1	
CFC2	COMPRESSED FIBRE CEMENT, COLOUR 2	
MRS	ROOF SHEETING, METAL, TYPE	
MWC	WALL CLADDING OR LINING, METAL	
RWG	RAIN WATER GUTTER	
SUN1	SUNSHADE, TYPE 1	

NOTE REFER TO BUILDING FABRICS SCHEDULE

