

Assessment of Clause 4.6 variation request to building heights

SPP-17-00049 – Riverstone High School alterations and additions

The proposal generally satisfies the 9 m as required by SEPP (SRGC) with the exception of the proposed 2-storey Learning Hub which proposes a variation of up to 20%. This building has a proposed height of 10.74 m which exceeds the height development standard by 1.74 m.

The existing buildings on site are already between 10.9 m and 13.5 m in height and so this proposed variation will not be out of context with its immediate surrounding buildings on the school site.

The objective of Clause 4.6

The objective of Clause 4.6 is to provide an appropriate degree of flexibility in applying certain development standards and to achieve better outcomes for and from the development by allowing flexibility in particular circumstances.

- Clause 4.6 requires consideration of the following:
 1. Has the applicant submitted a written request 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?*
 2. 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?
 3. Has the concurrence of the Director-General been obtained?

The applicant's written request has adequately justified that compliance with the height development standard is unreasonable and unnecessary in this instance. A copy of the applicant's written request is held at **attachment 7**.

There are sufficient environmental planning grounds to justify varying this development standard. As previously outlined, the Education and Childcare SEPP permits the height variation as complying development in all residential zones to a maximum of 22 m and 4-storeys, where setback requirements are met. The setback of 39.7 m from McCulloch Street meets the requirement. The variation will not have an unreasonable impact on neighbouring properties or the character of the area.

In accordance with Clause 64 of the *Environmental Planning and Assessment Regulations 2000*, a consent authority, in this case the Sydney Central City Planning Panel, has assumed concurrence from the Secretary (formerly the Director General) of the NSW Department of Planning and Environment.

In addition, we provide an assessment of the Clause 4.6 variation request, in line with the 5 part test set out by the Land and Environment Court.

5-part test assessment of Clause 4.6 variation request

The Land and Environment Court have established the following 5-part test for a consent authority to take into consideration when deciding whether to grant concurrence to a variation to a development standard:

1. The objectives of the standard are achieved notwithstanding non-compliance with the standard

- Height

The objectives of Clause 4.3 Height of buildings are as follows:

- (a) *To establish the maximum height of buildings for development on land within the Alex Avenue and Riverstone Precincts*
- (b) *To protect the amenity of adjoining development and land in terms of solar access to buildings and open space*
- (c) *To facilitate higher density development in and around the local centre, the neighbourhood centres and major transport routes while minimising impacts on adjacent residential, commercial and open space areas*
- (d) *to provide for a range of building heights in appropriate locations that provide a high quality urban form.*

- Maximum height

The maximum height limit on the site is 9 m. The increased height has no impact on the existing scale of the development buildings, the development is lower in height than existing development on the site, which measures between 10.9 m and 13.5 m in height. The proposal is consistent with the existing built form. The Education and Childcare SEPP permits complying development to a maximum height of 22 m and 4-storeys in all residential zones.

- Solar access to buildings and open space of adjoining development and land

The additional shadow impacts are negligible and are within the site.

- Facilitates higher density development in and around the local centre, the neighbourhood centres and major transport routes while minimising impacts on adjacent residential, commercial and open space areas

Not applicable

- Range of building heights in appropriate locations that provide a high quality urban form

The proposal is consistent with the existing built form on-site, maintaining an overall 2-storey height and respecting the adjacent residential properties. The additional height does not result in any additional yield. The proposed number of storeys is suitable given its proximity to transport and the retail and commercial centre.

The objectives of the development standard are achieved as the development is representative of the building height anticipated on this site.

2. The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary

The purpose of the standard is still considered relevant to the proposal. However, 100% compliance in this circumstance is considered unreasonable. The proposed building

height is permitted under complying development provisions for educational establishments at Schedule 2 in the Education and Childcare SEPP.

3. The underlying objective or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable

The purpose of the development standard would not be defeated if compliance was not required. However, 100% compliance is considered unreasonable as the variation is acceptable based on merit. The objectives of the standard, as outlined above, will still be achieved despite the variations.

4. The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable

Variations to the development standards of building height have been permitted on the site under previous development consent.

5. The compliance with the development standard is unreasonable or inappropriate due to existing use of land and current environmental character of the particular parcel of land. That is, the particular parcel of land should not have been included in the zone

The development is on a site where the existing use of land is as an educational establishment, which building heights up to 13.5 m. Full compliance with the development control would be able to be achieved. However, to restrict building height to 9 m where the Education and Childcare SEPP permits a building height of up to 22 m, and where setbacks are complied with, would result in a situation where compliance would be unreasonable in the circumstances.

Based on the above assessment, the requested variation under Clause 4.6 is considered reasonable, well founded and is recommended for support.

Conclusion

The variation will not have unreasonable impacts on neighbouring properties or the character of the area. The proposal is also consistent with the objectives of the development standards and the R2 Low Density Residential zone.

In accordance with Clause 64 of the *Environmental Planning and Assessment Regulation 2000*, a consent authority, in this case the Panel, has 'assumed concurrence' from the Secretary (formerly the Director-General) of the Department of Planning and Environment, if the consent authority has first considered (in relation to a clause 4.6 request) whether contravention of the development standard raises any matter of significance for state or regional environmental planning; and the public benefit of maintaining the development standard. (Refer to planning system circular PS 17-006 'Variations to development standards'.)

The proposal meets the Land and Environment Court's 5 part test. It also meets the requirements of Schedule 2 – complying development under the *SEPP (Education and Educational Establishments and Child Care Facilities) 2017*, which permits development of 4-storeys in height, and a maximum height limit of 22 m.

We recommend that the Panel approve the variation as it meets the 5-part test assessment and in our view is considered reasonable and well-founded.