



APPENDIX B – REQUEST TO VARY A DEVELOPMENT STANDARD

Proposed Alterations and Additions to Existing School, including increase in student numbers

Mackillop Catholic College 91 Sparks Road, Woongarra

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Contents

1	Introduction	5
1.1	Commission and Reason for Variation Request	5
1.2	Development Plans	5
1.3	The Guide	5
2	The Site and Context	6
2.1	Site Location	6
2.2	Site Description	6
2.3	Site Context and Surrounding Development	7
3	Proposed Development	8
3.1	Summary of Proposed Development	8
4	Planning Instrument, Development Standard and Proposed Variation	9
5	Justification for the proposed variation	12
5.1	How is compliance with the development standard unreasonable or unnecessary in the circumstances of this particular case? (cls 4.6(3)(a))	12
5.1.1	The proposed development will not cause adverse impacts by exceeding the height of the existing development on the site	12
5.1.2	The Location of building adjoins parcels of land subject to a 12m height of building development control	15
5.1.3	The scale of built form is suitable and consistent with the character of future developments	16
5.1.4	The consolidation of built form provides improved outcomes for students and staff	17
5.1.5	The objectives of the development standard are achieved notwithstanding the non-compliance	18
5.2	Are there sufficient environmental planning grounds to justify contravening the development standard? (cls 4.6(3)(b))	18
5.2.1	Design and amenity	18
5.2.2	Planning Principle – General Impact	18
5.3	Is there any other relevant information relating to justifying a variation of the development standard?	20
6	Conclusion	20

Figures

Figure 1:	Site Location plan with the site boundary, outlined in yellow (source: ePlanning portal).	6
Figure 2:	Aerial Image of the existing site, outlined in yellow (source: NearMap dated 22 May 2024).	7
Figure 3:	Aerial Image of the site, outlined in yellow, indicating surrounding development (source: NearMap dated 22 May 2024).	7
Figure 4:	Extract of proposed site plan (source: Stanton Dahl Architects).	8
Figure 5:	CCLEP Land use zoning map (Source: ePlanning Spatial Viewer).	10
Figure 6:	CCLEP Height of Buildings Map (Source: ePlanning Spatial Viewer).	10
Figure 7:	Visual representation of the proposed variation, viewed from internal playground (Source: Stanton Dahl Architects).	11
Figure 8:	Height plane diagram of the proposed variation viewed from Mataram Road (Source: Stanton Dahl Architects).	11
Figure 9:	Height plane diagram of the proposed variation, viewed from the College's library (Source: Stanton Dahl Architects).	12
Figure 10:	Height plane section of the proposed variation, viewed from the Mataram Road (Source: Stanton Dahl Architects).	12
Figure 11:	Overshadowing diagram March 21at 9am, 12pm and 3pm (source Stanton Dahl Architects).	13

Figure 12: Overshadowing diagram June 21 at 9am, 12pm and 3pm (source Stanton Dahl Architects).	14
Figure 13: Overshadowing diagram September 21 at 9am, 12pm and 3pm (source Stanton Dahl Architects).	15
Figure 15: Section of Block T indicating the transition of height and land fall along Mataram Road (source Stanton Dahl Architects).	16
Figure 15: Markup indicating the location of the proposed development (red dashed) and the adjoining 12m HoB standard (Source: Nearmap, accessed 18 June 2024).	16
Figure 16: Demolition plan and proposed site plan indicating the consolidation of buildings and the creation of play areas (source Stanton Dahl Architects).	17

Table

Table 1	Checklist for Written Requests (Section 3.1 of the Guide)	5
Table 2	Planning Instrument, Development Standard and Proposed Variation	9
Table 3	Objectives of Clause 4.3 of the CCLEP	18
Table 4	Revised planning principle: criteria for assessing impact on neighbouring properties	19

1 Introduction

1.1 Commission and Reason for Variation Request

EPM Projects (EPM) has been commissioned by Catholic Schools Broken Bay (CSBB) to prepare a request to vary a development standard pursuant to clause 4.6 of the *Central Coast Local Environmental Plan 2022* (CCLEP), for a proposed development comprising of alterations and additions to an existing educational establishment at Mackillop Catholic College, Lot 71 DP 1281317 on Mary Mackillop Drive, Woongarra (the site).

The variation request addresses the proposed development's exceedance of a 9.5m height of building development standard applicable to the site pursuant to the clause 4.3 of the CCLEP. Block T has a maximum height of 13.7m to the south-eastern corner of the eave, which exceeds the height of buildings development standard by 4.2m or 44%.

The Clause 4.6 variation request has been prepared to address the relevant tests under clause 4.6(3) namely that compliance with the development standard is unreasonable and unnecessary in the circumstances of the case and that there are sufficient environmental planning grounds to justify contravention of the height of buildings development standard.

1.2 Development Plans

The request has been prepared in relation to the following Architectural plans:

- Mackillop Catholic College, Issue DA02, prepared by Stanton Dahl Architects, dated 11/7/2024 as accompanying the Statement of Environmental Effects prepared by EPM.

1.3 The Guide

This request to vary a development standard has been prepared generally in accordance with the *Guide to Varying Development Standards* (the Guide), prepared by the NSW Department of Planning and Environment, dated November 2023. **Table 1** below provides a checklist from Section 3.1 of the Guide to demonstrate that the requirements for a written variation request have been met.

Table 1 Checklist for Written Requests (Section 3.1 of the Guide)		
Variation Request Requirements	Addressed?	Comments
The control to which the variation relates must be a development standard as defined in the Environmental Planning and Assessment Act 1979 (EP&A Act)	Yes	The height of building control requested to be varying is a development standard as defined by the EP&A Act.
If the variation relates to the subdivision of land, the variation must be consistent with any relevant limits identified in clause 4.6(6) of the Standard Instrument LEP.	N/A	The variation request does not relate to the subdivision of land.
The development standard being varied must not be specifically excluded from the operation of clause 4.6. Exclusions are listed in clause 4.6(8) and in some circumstances, within the development standard.	Yes	The height of building control is not excluded from the operation of clause 4.6 of the CCLEP.
The written request must be lodged as part of the DA.	Yes	This written request forms part of a DA for a proposed development at the site (see Section 3).
The written request must satisfy the 2 tests set out in clause 4.6(3): ▪ clause 4.6(3)(a) – compliance with the development standard is unreasonable and unnecessary in the circumstances	Yes	The two (2) tests are addressed at Section 5 of this report.

Table 1 Checklist for Written Requests (Section 3.1 of the Guide)

Variation Request Requirements	Addressed?	Comments
clause 4.6(3)(b) – there are sufficient environmental planning grounds to justify contravention of the development standard.		
The written request must include sufficient information for the consent authority to understand the relevant aspects of the proposed development and the totality of the proposed variation to the development standard.	Yes	The variation has been prepared in accordance with the Guide and includes sufficient information for Council to understand the relevant aspects of the proposed development and the totality of the proposed variation to the development standard

2 The Site and Context

2.1 Site Location

The site is located at 85-97 Sparks Road and 1 Mary Mackillop Drive, within the Central Coast Council LGA (**Figure 1**).

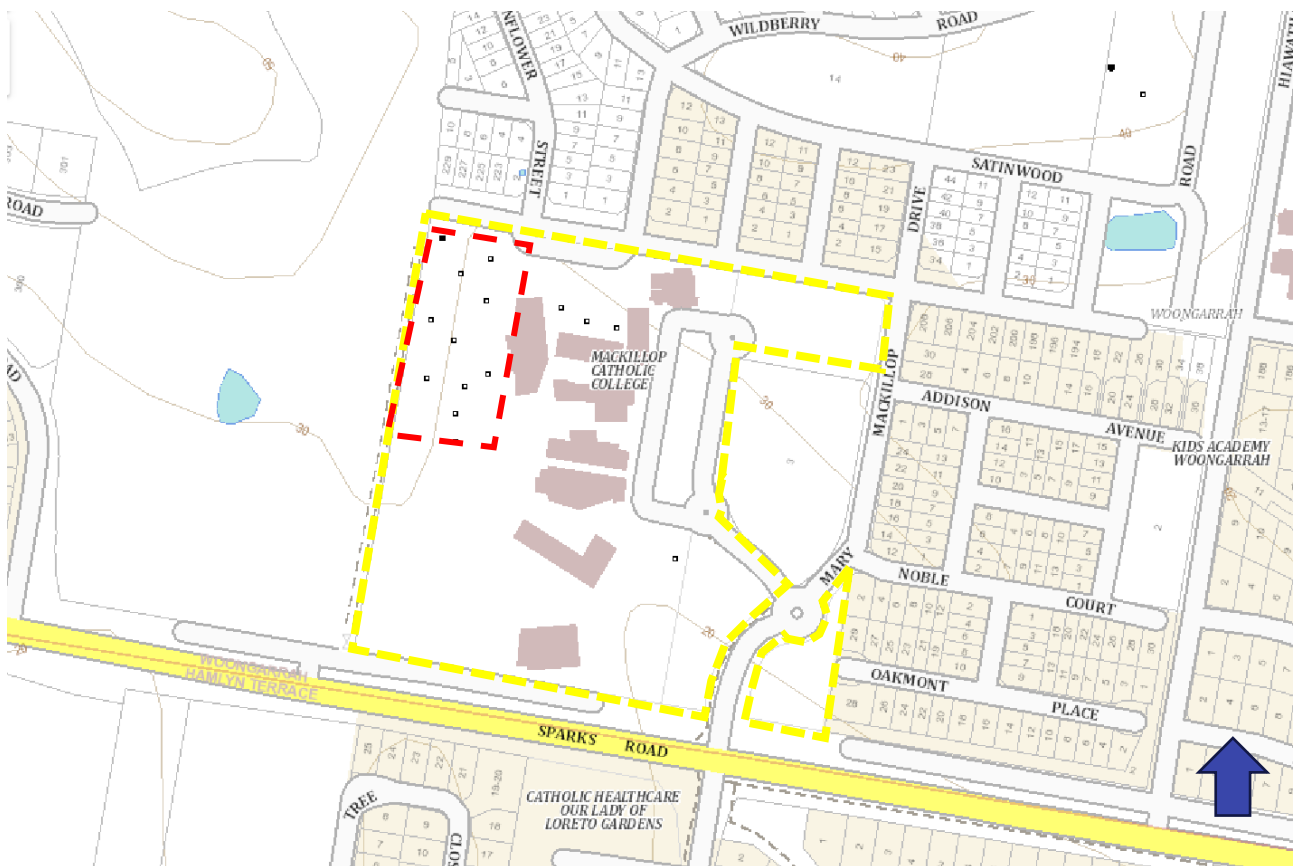


Figure 1: Site Location plan with the site boundary, outlined in yellow with the location of the works identified in red (source: ePlanning portal).

2.2 Site Description

The site is legally described as Lots 71 and 72 in Deposited Plan (DP) 1258149. An aerial image of the site is shown at **Figure 2**.

The site is irregular in shape with 350 metres frontage to Sparks Road to the south, and to Mataram Road to the north. Mary MacKillop Drive and Minnesota Road intersect the site. The majority of school infrastructure is located on Lot 71, 1 Mary Mackillop Drive.

The site contains sloping land, with a fall of more than 16 metres, generally from the northwest to the southeast, with undulations throughout.

The site comprises existing school buildings for K-12 education including, administration facilities, library, multi-purpose hall, indoor and outdoor learning spaces, sports courts, at grade and elevated pathways, vehicle circulation, carparking and play space as well as a church (corner Mataram & Minnesota Roads) and a presbytery (northwestern corner of the site).



Figure 2: Aerial Image of the existing site, outlined in yellow (source: NearMap dated 22 May 2024).

2.3 Site Context and Surrounding Development

To the east of the site is a medical centre and beyond it is low density residential development. The land to the north and west of the site is undergoing a substantial transformation from bushland to a low density residential subdivision including road corridors, dwelling lots and residual bushland. The southern boundary has frontage onto Sparks Road, which is a state classified road. Further to the south, is low density residential development and an aged care facility. **Figure 3** below shows the surrounding development.



Figure 3: Aerial Image of the site, outlined in yellow, indicating surrounding development (source: NearMap dated 22 May 2024).

3 Proposed Development

3.1 Summary of Proposed Development

The proposed development aims to consolidate, upgrade and expand the existing learning facilities at the existing College. The consolidation facilities will be constructed in three stages (3) and intends to resolve some of the topographical challenges for access and use of available play space. The proposed development include:

- Demolition of classroom buildings and ancillary structures
- Construction of one (1) three storey (Block T) and two (2) two storey classroom buildings (Blocks V and W)
- Construction two (2) new amenities buildings
- Creation of new outdoor play areas
- Tree removal and landscape works
- Ancillary enabling works and access upgrades, including works over an existing easement
- Increase in the staff and student population from 1,555 to 1,830 (net increase of 275 students)
- Increase in staff numbers from 136 to 170 (net increase of 34 staff)

The proposed variation relates to the height of the proposed new building (Block T) which would provide a three storey classroom building and are discussed in further detail below.

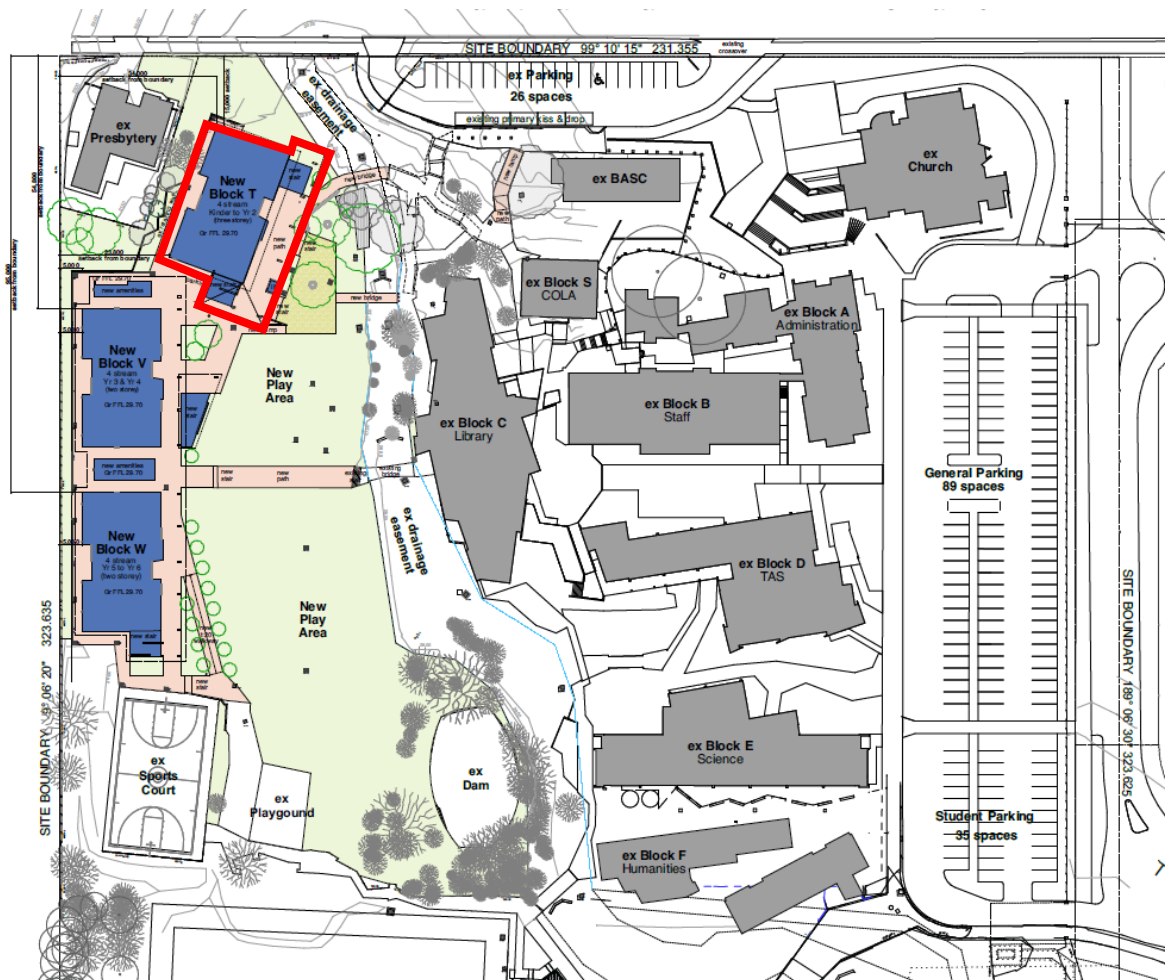


Figure 4: Extract of proposed site plan identifying the location of Block T (source: Stanton Dahl Architects).

4 Planning Instrument, Development Standard and Proposed Variation

In accordance with the Guide, **Table 2** provides a summary of the planning instrument applicable to the proposed development, the development standard proposed to be varied and details of the variation.

Table 2 Planning Instrument, Development Standard and Proposed Variation	
Questions and matters to address	Discussion
What is the environmental planning instrument/s you are seeking to vary?	<i>Central Coast Local Environmental Plan 2022</i>
What is the site's zoning?	R1 Low Density Residential (the R1 zone). Please refer to Figure 5 below.
Identify the development standard to be varied.	The variation request is for the development standard imposed under clause 4.3(2) of the CCLEP: 4.3 Height of buildings (1) <i>The objectives of this clause are as follows—</i> (a) <i>to establish a maximum height of buildings to enable appropriate development density,</i> (b) <i>to ensure that the height of buildings is compatible with the character of the locality.</i> (2) <i>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.</i>
Identify the type of development standard.	Numerical development standard.
What is the numeric value of the development standard in the environmental planning instrument?	9.5m. Please refer to Figure 6 below.
What is the difference between the existing and proposed numeric values? What is the percentage variation (between the proposal and the environmental planning instrument)?	The proposal exceeds the maximum 9.5 m height of building (HoB) development standard as follows: <u>Block I</u> 13m northeastern corner of projecting eave, a variation of 37%, difference of 3.5m 13.7m southeastern corner of projecting eave a variation of 44%, difference of 4.2m
Visual representation of the proposed variation	Please refer to Figures 7, 8, 9 and 10 below.

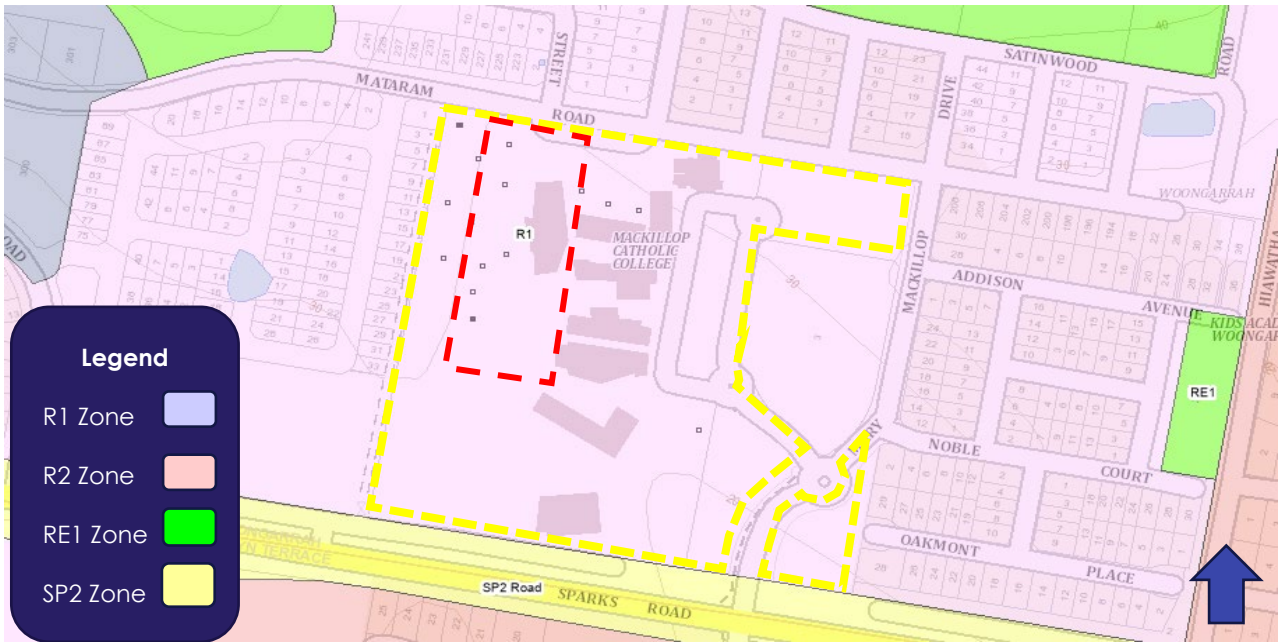
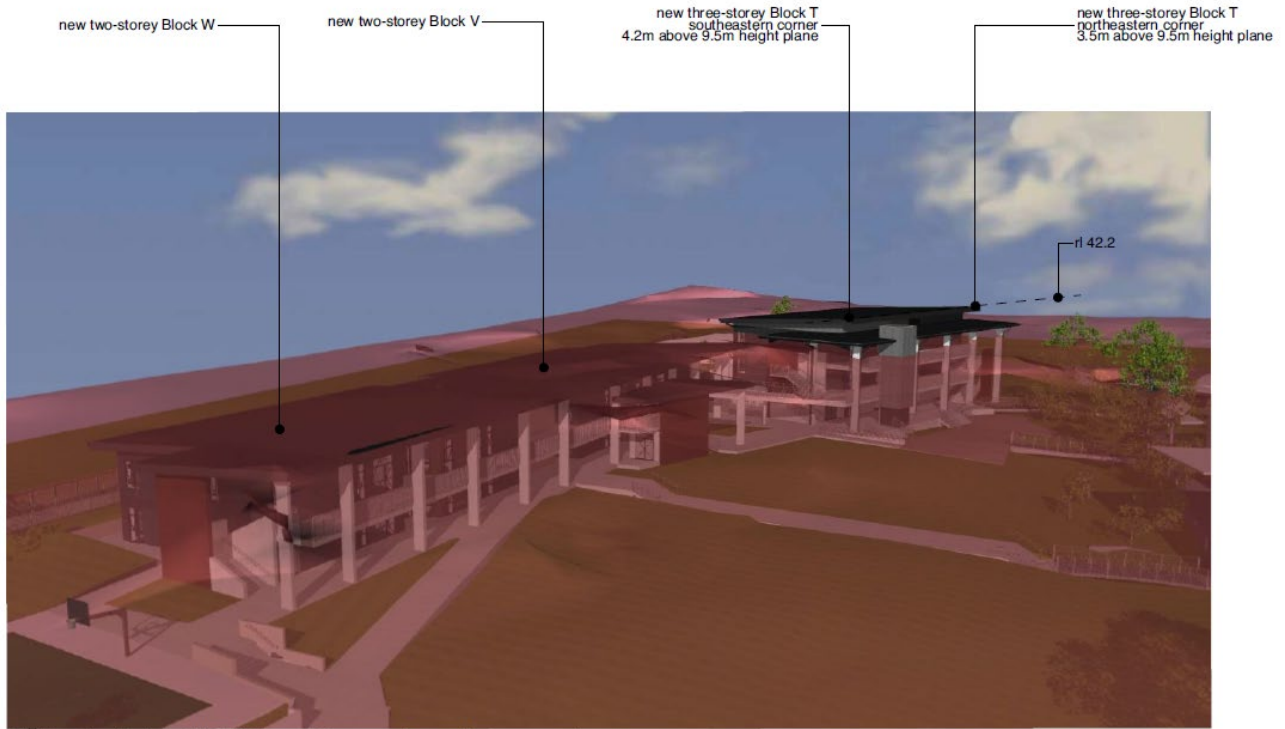


Figure 5: CCLEP Land use zoning map (Source: ePlanning Spatial Viewer).



Figure 6: CCLEP Height of Buildings Map (Source: ePlanning Spatial Viewer).



01 9.5m height limit Plane Diagram from Playground

Figure 7: Visual representation of the proposed variation, viewed from internal playground (Source: Stanton Dahl Architects).



01 9.5m height limit Plane Diagram from Street

Figure 8: Height plane diagram of the proposed variation viewed from Mataram Road (Source: Stanton Dahl Architects).

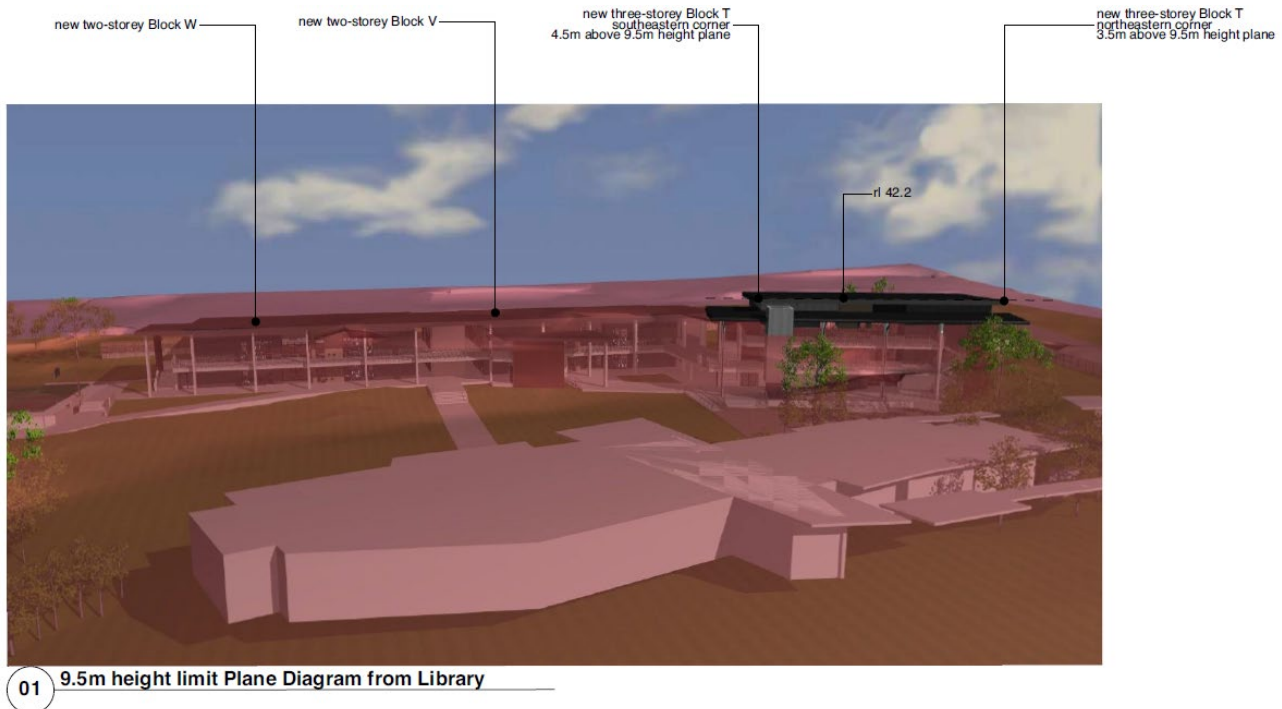


Figure 9: Height plane diagram of the proposed variation, viewed from the College's library (Source: Stanton Dahl Architects).

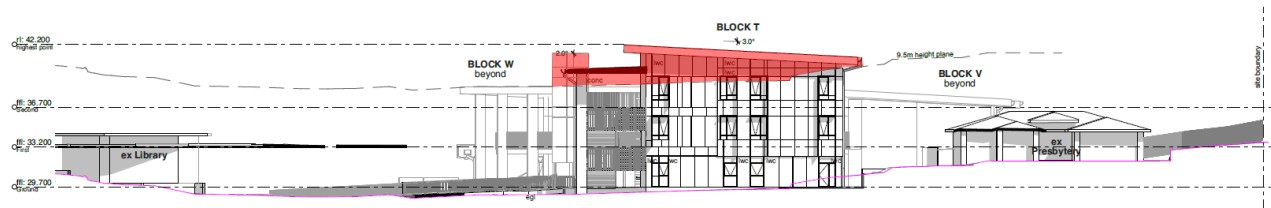


Figure 10: Height plane section of the proposed variation, viewed from the Mataram Road (Source: Stanton Dahl Architects).

5 Justification for the proposed variation

In accordance with the Guide and clause 4.6 of the CCLEP, the following subsections detail how compliance with the height of buildings development is standard unreasonable or unnecessary, and the environmental planning grounds which justify the variation.

5.1 How is compliance with the development standard unreasonable or unnecessary in the circumstances of this particular case? (cls 4.6(3)(a))

5.1.1 The proposed development will not cause adverse impacts by exceeding the height of the existing development on the site

Overshadowing

Stanton Dahl Architects have provided a shadow diagram analysis (**Appendix A** of the SEE) of Blocks T, V and W. The analysis has provided a representation of the extent of overshadowing in the post development scenario at:

- 9am, 1pm and 3pm on March 21
- 9am, 1pm and 3pm on June 21
- 9am, 1pm and 3pm on September 21

The diagrams identify that the development will cause minimal overshadowing to west adjoining neighbours at 9am but would otherwise not cause overshadowing to adjoining development.



Figure 11: Overshadowing diagram March 21at 9am, 12pm and 3pm (source Stanton Dahl Architects).

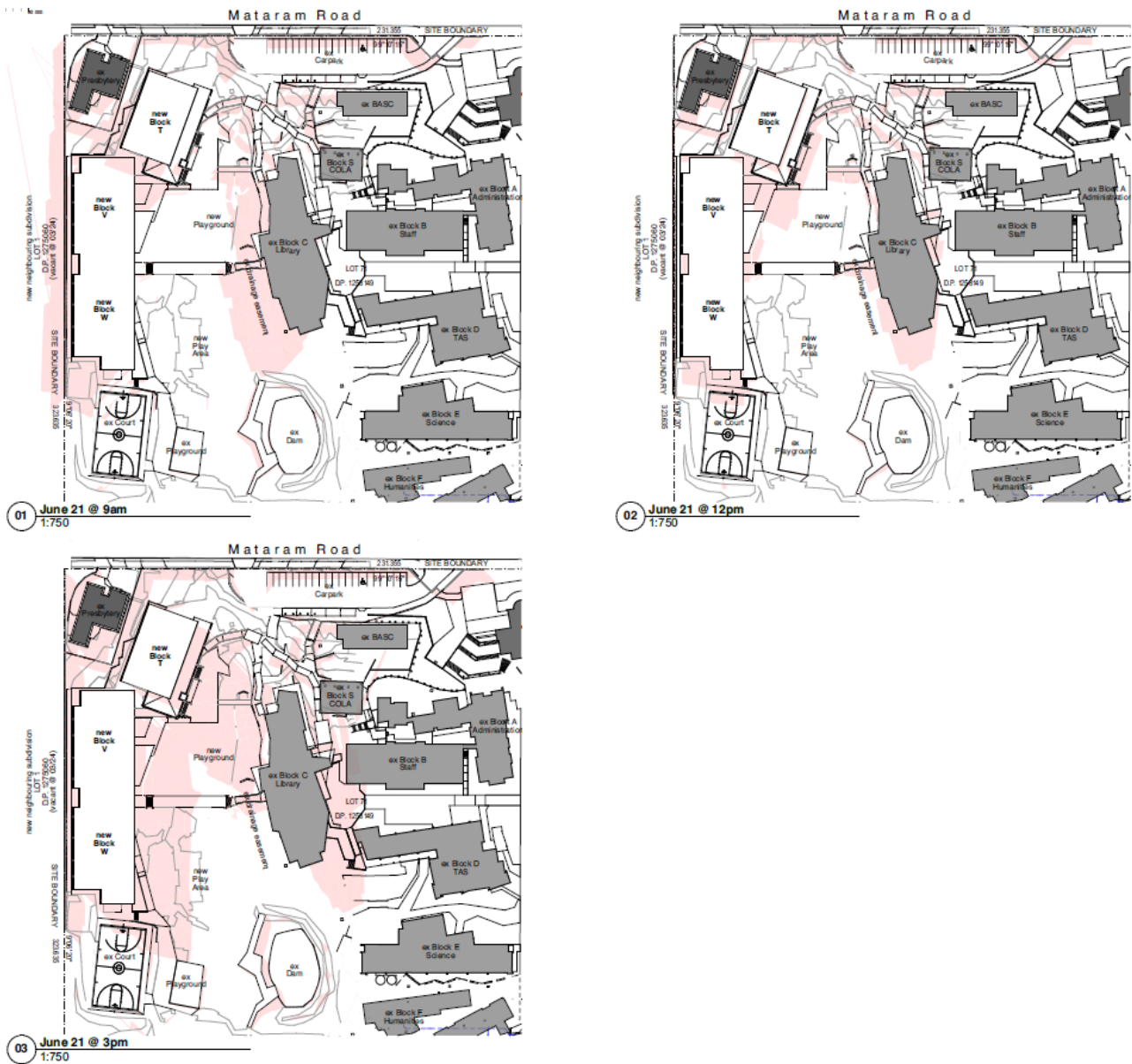


Figure 12: Overshadowing diagram June 21at 9am, 12pm and 3pm (source Stanton Dahl Architects).

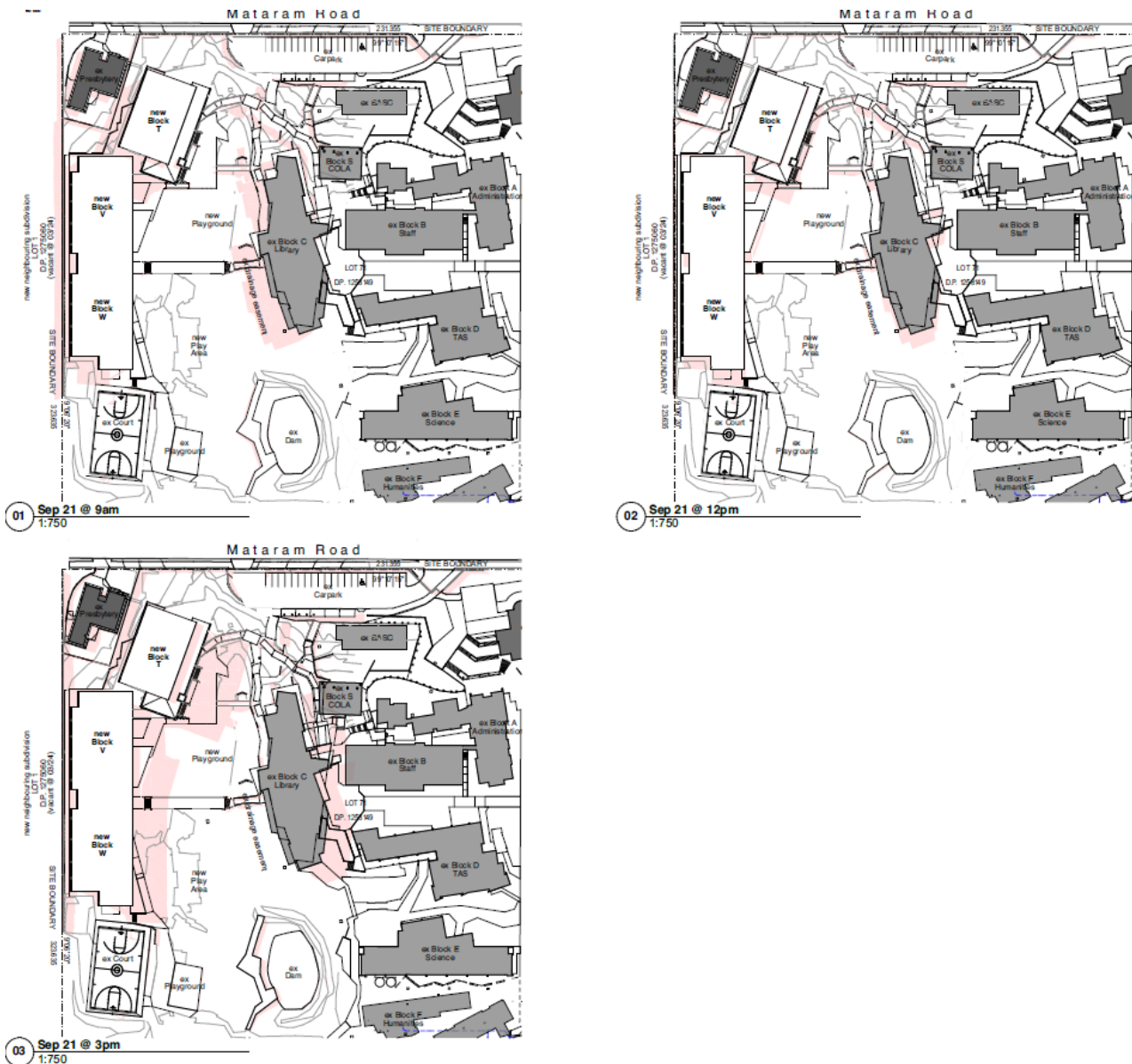


Figure 13: Overshadowing diagram September 21 at 9am, 12pm and 3pm (source Stanton Dahl Architects).

Visual Privacy

Block T is orientated towards the centre of the school site with the circulation spaces for students located on the eastern side of the building away from the residential properties. Block T is located a minimum of 24 metres away from the western site boundary. Therefore, it is considered that the proposed building will not result in any adverse impacts relating to visual privacy and overlooking.

5.1.2 The Location of building adjoins parcels of land subject to a 12m height of building development control

Figure 14 and **Figure 15** below identifies that the proposed development would be wholly located in land that is subject to the 9.5m height of building development under the CCLEP but is adjacent to land subject to a 12m height of building (HoB) development standard under the CCLEP. As shown in the elevation drawings provide by Stanton Dahl Architects at the highest point the Block T would be 13.7m above ground level and Block W would have a negligible intrusion above the 9.5 metre height plane.

Block T would be positioned in proximity to the boundary between land subject to the 12 metre and 9.5 metre height of building controls. As a result, despite being 4.2 metres above the applicable HoB standard, Block T at its highest point would only result in a minor HoB exceedance to the adjacent land's HoB control.

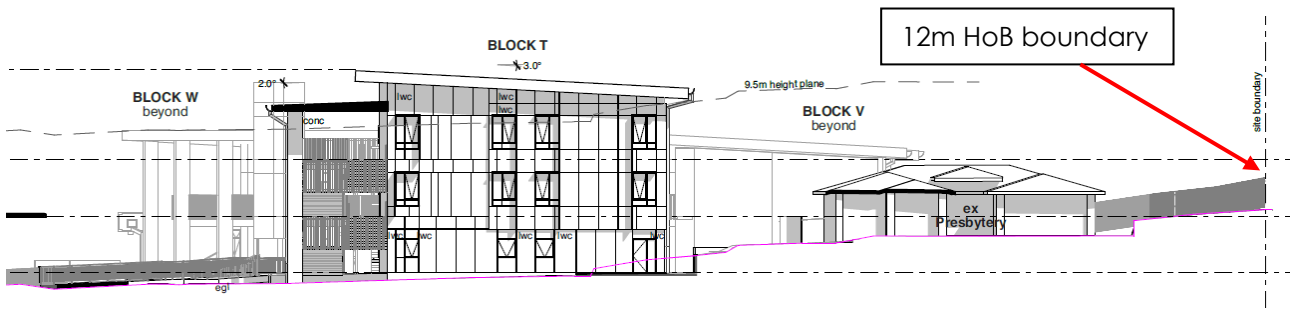


Figure 14: Section of Block T indicating the transition of height and land fall along Mataram Road (source Stanton Dahl Architects).



Figure 15: Markup indicating the location of the proposed development (red dashed) and the adjoining 12m HoB standard (Source: Nearmap, accessed 18 June 2024).

5.1.3 The scale of built form is suitable and consistent with the character of future developments

Consideration has been given to the residential development underway on the western boundary through the arrangement and siting of the development, with particular consideration given to the visual impact of Block T. The three (3) storey built form of Block T has intentionally been located to the northern section of the site where it is set back from both the northern and western boundaries.

The fall of the land and setback provided allows the building to create a statement to Mataram Road, whilst minimising the visual impact on the surrounding developments. Along the western boundary, the Block W and V have been proposed as 2 storey buildings and lowered into the site to minimise the scale against the neighbouring residences (**Figure 16**).

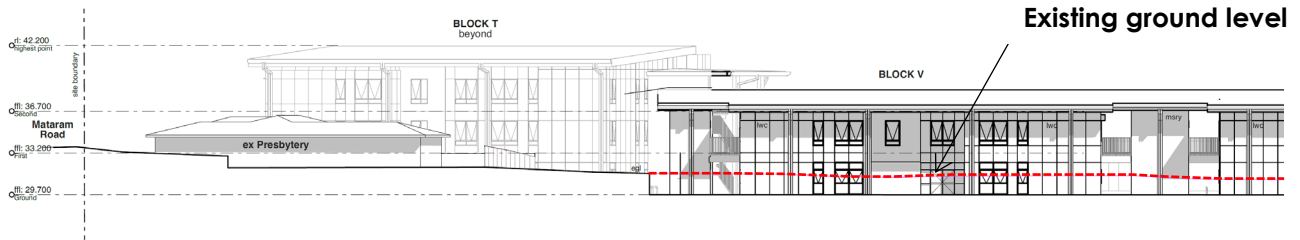


Figure 16: Extract of western elevation showing the relative heights of Blocks T and V (Source: Stanton Dahl Architects)

The positioning of Block T transitions height from the College's entrance and as shown in **Figure 14** at the northern lot boundary the fall off land the from west to east at Mataram Road would also exaggerate the scale of the residential development west of the College. This further allows Block T to provide a clear focal point at the campus entry without being an overbearing element in the streetscape.

5.1.4 The consolidation of built form provides improved outcomes for students and staff

The new buildings have been located along the western boundary of the site and connect into the existing kiss and drop area off Mataram Road to the north. Their position and associated external elements have been designed to consolidate the footprint of the learning areas, providing a large primary school play space and connection to the landscape. This is intended to improve collaboration between year groups and efficiency of supervision by staff who can utilise the building's opening onto the eastern verandas (which connect into the play spaces) for passive surveillance and efficient circulation. The design maximises the area of open play space for primary school students.



Figure 17: Demolition plan and proposed site plan indicating the consolidation of buildings and the creation of play areas (source Stanton Dahl Architects).

5.1.5 The objectives of the development standard are achieved notwithstanding the non-compliance

Table 3 below demonstrates that the objectives of clause 4.3 height of buildings of the CCLEP are achieved despite the height of building non-compliance on the site.

Table 3 Objectives of Clause 4.3 of the CCLEP	
Questions and matters to address	Discussion
4.3 Height of buildings The objectives of this clause are as follows:	
(a) to establish a maximum height of buildings to enable appropriate development density,	The height exceedance would occur at an existing educational establishment that would reduce the overall number of buildings located within the campus.
(b) to ensure that the height of buildings is compatible with the character of the locality,	The existing school campus is located in an urban release area designated by the CCLEP and adjoins land subject to a 12m HoB standard. The three storey built form of Block T has been sited in consideration of the existing residential character of the area and is setback from the Mataram Road in alignment with the adjoining Presbytery. The building would function as an entry point for the primary College, supporting the established use of the adjoining kiss and drop facilities thereby maintaining the character and function of the existing frontage.

5.2 Are there sufficient environmental planning grounds to justify contravening the development standard? (cls 4.6(3)(b))

5.2.1 Design and amenity

The proposed development demonstrates sound architectural design and maintains amenity within the locality. The proposed siting and scale of the development have been designed in a manner to not encroach forward of the adjoining Presbytery, thus avoiding any solar access impacts and not being visually prominent within streetscape or locality.

In this regard, the proposal is considered to 'promote good design and amenity of the built environment', consistent with the objects of the EP&A Act (s 1.3(g)). Similarly, the supporting design statement identifies that the proposal is consistent with the design quality principles for schools outlined by Schedule 8 of *State Environmental Planning Policy (Transport and Infrastructure) 2021*.

5.2.2 Planning Principle – General Impact

The principles for considering impact on neighbouring properties were established in the NSW Land and Environment Court (LEC) case *Pafbun v North Sydney Council* [2005] NSWLEC 444, (*Pafbun*) which were later refined by LEC Case *Davies v Penrith City Council* [2013] NSWLEC 1141 (*Davies*).

In *Pafbun*, the Commissioner considered, among other matters, whether non-compliance with a height control was justified. In *Pafbun*, the commissioner identified five common themes that were considered in previous case law. These themes are summarised as follows:

- The change in impact may be as important as the magnitude of impact
- in assessing an impact, one should balance the magnitude of the impact with the necessity and reasonableness of the proposal that creates it.
- in assessing an impact, one should take into consideration the vulnerability of the property receiving the impact
- skill with which a proposal has been designed is relevant to the assessments of its impacts
- an impact that arises from a proposal that fails to comply with planning controls is much harder to justify than one that arises from a complying proposal.

From these five themes, the LEC Commissioner established planning principles that are to be considered when assessing impacts to neighbouring properties. The principle established by Pafburn were refined by commissioner in Davies to delete the words "necessary and/or" so that the revised planning principle reads as follows:

Revised planning principle: criteria for assessing impact on neighbouring properties

The following questions are relevant to the assessment of impacts on neighbouring properties:

- How does the impact change the amenity of the affected property? How much sunlight, view or privacy is lost as well as how much is retained?
- How reasonable is the proposal causing the impact?
- How vulnerable to the impact is the property receiving the impact? Would it require the loss of reasonable development potential to avoid the impact?
- Does the impact arise out of poor design? Could the same amount of floor space and amenity be achieved for the proponent while reducing the impact on neighbours?
- Does the proposal comply with the planning controls? If not, how much of the impact is due to the non-complying elements of the proposal?

The principles provided by Davies can be applied to the subject site and demonstrate sufficient environmental planning grounds to justify the proposed variation. In the context of the proposed development and the above questions, the relevant neighbouring properties are taken to be those adjacent to the western boundary of the College campus and **Table 4** provides a summary of impact against the criteria established by Pafburn and refined by Davies. The assessment in Table 4 adequately demonstrates:

- Compliance with the development standard is unnecessary in the circumstances of the case; and
- There are sufficient environmental planning grounds to justify contravening the development standard.

Table 4 Revised planning principle: criteria for assessing impact on neighbouring properties	
Criteria for assessing impact on neighbouring properties	Discussion
How does the impact change the amenity of the affected property? How much sunlight, view or privacy is lost as well as how much is retained?	The proposed development would affect land zoned for residential use and is currently vacant. Notwithstanding, the proposed development's impacts to the west adjoining sites from overshadowing are demonstrated to be minimal by the submitted shadow diagrams and confined to minor overshadowing at the shared boundary. A retaining wall and fence have been installed adjacent to the shared boundary and as a result the existing site conditions in conjunction with the articulated façade of the proposed buildings western elevation would not create conditions that would lead to a loss of privacy from overlooking.
How reasonable is the proposal causing the impact?	The proposed development relates to an existing educational establishment. The proposal is intended to consolidate the sprawled and terraced siting of buildings across the college Campus to support a modern pedagogy at the primary school. The development is therefore considered reasonable in the context of the site and its existing use.
How vulnerable to the impact is the property receiving the impact? Would it require the loss of reasonable development potential to avoid the impact?	The existing character of the College primary school area is defined by small scale building stock of both permanent and demountable classrooms. These buildings are terraced and arrayed across the northwestern corner of the College adjacent to the west adjoining properties. These buildings were in situ prior

Table 4 Revised planning principle: criteria for assessing impact on neighbouring properties

Criteria for assessing impact on neighbouring properties	Discussion
	to the rezoning and subdivision of the adjoining residential allotments and as a result the neighbouring priorities are not considered to be sensitive to impacts from an existing use. The topography of the site generally slopes from west to east and positions the west adjoining Lots above the ground level of the College. Due to this arrangement and noting that the proposed development includes excavation to lower the natural ground level adjacent to the western boundary, no further migration measures are required to reduce impacts to the adjoining residential zoned land.
<i>Does the impact arise out of poor design? Could the same amount of floor space and amenity be achieved for the proponent while reducing the impact on neighbours?</i>	The design of Block T would provide improved outcomes for the College without causing adverse impacts to adjoining properties. The consolidated built form enables the school to maximise student play space. Accordingly, a reduction in the amount of floor space provided by the proposal is not required to improve the amenity of neighbours
<i>Does the proposal comply with the planning controls? If not, how much of the impact is due to the non-complying elements of the proposal?</i>	The proposed development is non-compliant with the CCLEP's HoB development standard. However, this non-compliance does not create an adverse impact on the locality or adjoining properties.

5.3 Is there any other relevant information relating to justifying a variation of the development standard?

The developer for the west adjoining allotments to the campus has introduced a retaining wall along the boundary raising the ground level for adjoining residential lots. This would also contribute to a significant reduction in the perceived scale of the school buildings for the future residents.

6 Conclusion

This written variation request relating to a proposed height of building non-compliance with the 9.5m height of buildings development standard under the CCLEP, has been prepared generally in accordance with the Guide and demonstrates that:

- compliance with the development standard is unreasonable or unnecessary in the circumstances, and
- there are sufficient environmental planning grounds to justify the contravention of the development standard.

The new buildings have been located along the western boundary of the site and connects into the existing kiss and drop area off Mataram Road to the north. This position consolidates the footprint of the learning areas and provides play space and connection to the landscape for the College. This is intended to improve collaboration between year groups and efficiency of supervision with the buildings

The exceedance of the height of buildings development standard does not result in any amenity impacts such as overshadowing or overlooking to the adjoining residential properties.

On balance, and in consideration of the adjoining 12m height of building standard the variation is a minor exceedance which will not create any adverse impacts and is consistent with the objectives of clause 4.3 of the CCLEP.