

Appendix E - Clause 4.6 Variation Report (GHD, September 2020)



Coffs Harbour City Council

West Woolgoolga Sports Complex

Clause 4.6 Building Height Variation Report

September 2020

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1. Introduction

1.1 Overview

Coffs Harbour City Council (Council) adopted the Coffs Harbour Sports Facility Plan in 2016, which proposed a number of new sports fields and associated facilities across the Coffs Harbour Local Government Area (LGA). One of the proposed sports field is the development of the West Woolgoolga Sports Complex (WWSC) on land described as Lot 357 on DP822826 and Lot 201 on DP874273, Solitary Islands Way, Woolgoolga.

In line with the Sports Facility Plan, Council is proposing to establish the West Woolgoolga Sports Complex on land described as Lot 357 on DP822826 and Lot 201 on DP874273, Solitary Islands Way, Woolgoolga located within the LGA.

The West Woolgoolga Sports Complex will facilitate a range of indoor and sports including basketball and netball, and act as a function centre for the local community.

The complex comprises an indoor sports centre, amenities pavilion, sports fields, associated car parking and access road. The sports fields are not part of this development application and will be subject to a separate approvals process under relevant legislation. This development application is for the indoor sports centre, amenities pavilion, associated car parking, access road/ intersection upgrade and consolidation of lot boundaries, which require development consent under Part 4 of the *Environmental Planning and Assessment Act 1979* (EP&A Act). The proposal is permissible with consent under *Coffs Harbour Local Environmental Plan 2013*.

GHD Pty Ltd (GHD) was engaged by Coffs Harbour City Council to prepare a Statement of Environmental Effects (SEE) to accompany the development application (DA) for the proposal

1.2 Purpose of report

The proposal is seeking to exceed the maximum building height of 8.5 metres (m) prescribed by Clause 4.3(2) of *Coffs Harbour Local Environmental Plan 2013* (CHLEP 2013). This report seeks Council approval to vary this development standard.

1.3 Proposed development

Council is establishing a sports complex to implement the overall vision developed as part of the Coffs Harbour Sports Facility Plan 2016. The proposal involves the construction of:

- One (1) indoor sports facility which will incorporate:
 - Two (2) indoor basketball/ netball courts.
 - Three (3) multi-purpose function rooms with operable walls.
 - Meeting room.
 - Four (4) player's change rooms. Each change room includes an accessible toilet and shower.
 - One (1) referee's change room, containing two (2) accessible toilets and showers.
 - Male and female amenities blocks, both containing an accessible toilet.
 - Stage and associated green room, dressing room, loading area and store rooms. An accessible bathroom is located next to the dressing room with access from the dressing room.
 - Entry lobby/reception area, administration office and seating area.
 - Cafe area with seating.

- Kitchen, cold store room and dry store room.
- Eight (8) store rooms in addition to the two (2) store rooms associated with the stage
- First aid room.
- Changing room.
- Sensory room.
- Parent's room.
- Plant and control rooms.
- Bin storage room.
- One (1) amenities pavilion which will incorporate:
 - Two (2) player's change rooms with operable walls, allowing for transformation into four (4) change rooms. Each change room includes an accessible toilet and shower.
 - One (1) referee change room, which includes two (2) accessible toilets and two (2) accessible showers.
 - Three (3) accessible bathrooms in addition to those in the change rooms
 - Officials room.
 - First aid room.
 - Kiosk.
 - Three (3) store rooms.
 - Plant room.
- Car parking areas.
- A new access road running in an east – west direction along the northern boundary of Lot 357 on DP822826 and Lot 201 on DP874273, before turning south and connecting to a new signalised intersection with Solitary Islands Way and Centenary Drive.

The proposal also includes the consolidation of Lot 357 DP822826 and Lot 201 DP874273 to create one single lot.

1.4 Background

The variation is required in order for the building to meet the functional specifications for indoor sports including basketball and netball games.

1.5 Limitations

This report has been prepared by GHD for Coffs Harbour City Council and may only be used and relied on by Coffs Harbour City Council for the purpose agreed between GHD and Coffs Harbour City Council.

GHD otherwise disclaims responsibility to any person other than Coffs Harbour City Council arising in connection with this report. GHD also excludes implied warranties and conditions, to the extent legally permissible.

The services undertaken by GHD in connection with preparing this report were limited to those specifically detail in the report and are subject to the scope limitations set out in the report.

The opinions, conclusions and any recommendations in this report are based on conditions encountered and information reviewed at the date of preparation of the report. GHD has no responsibility or obligation to update this report to account for events or changes occurring subsequent to the date that the report was prepared.

The opinions, conclusions and any recommendations in this report are based on assumptions made by GHD described in this report (see Section 1.6). GHD disclaims liability arising from any of the assumptions being incorrect.

GHD has prepared this report on the basis of information provided by Coffs Harbour City Council and others who provided information to GHD (including Government authorities), which GHD has not independently verified or checked beyond the agreed scope of work. GHD does not accept liability in connection with such unverified information, including errors and omissions in the report which were caused by errors or omissions in that information.

1.6 Assumptions

This report has been prepared based on the following information:

- *Coffs Harbour Local Environmental Plan (LEP) 2013*
- *West Woolgoolga Sports Complex Statement of Environmental Effects (GHD, September 2020)*
- *Plans contained in Appendix A of West Woolgoolga Sports Complex Statement of Environmental Effects (GHD, September 2020).*

2. Description of variation

2.1 Coffs Harbour Local Environmental Plan 2013

The proposed development is required to comply with *Coffs Harbour Local Environmental Plan 2013* (Coffs Harbour LEP). Under Coffs Harbour LEP the site is zoned RE1 Public Recreation.

2.1.1 Objectives of zone

The objectives of RE1 Public Recreation are:

- *To enable land to be used for public open space or recreational purposes*
- *To provide a range of recreational settings and activities and compatible land uses*
- *To protect and enhance the natural environment for recreational purposes*

2.2 Development standard

2.2.1 Clause 4.3 – Height of Buildings

Clause 4.3 requires buildings to have a maximum height of 8.5 m in the RE1 zone. The objectives of the clause are:

- (a) *to ensure that building height relates to the land's capability to provide and maintain an appropriate urban character and level of amenity,*
- (b) *to ensure that taller development is located in more structured urbanised areas that are serviced by urban support facilities,*
- (c) *to ensure that the height of future buildings has regard to heritage sites and their settings and their visual interconnections,*
- (d) *to enable a transition in building heights between urban areas having different characteristics,*
- (e) *to limit the impact of the height of a building on the existing natural and built environment,*
- (f) *to encourage walking and decreased dependency on motor vehicles by promoting greater population density in urban areas.*

Figure 1 shows the Coffs Harbour LEP Height of Buildings map.

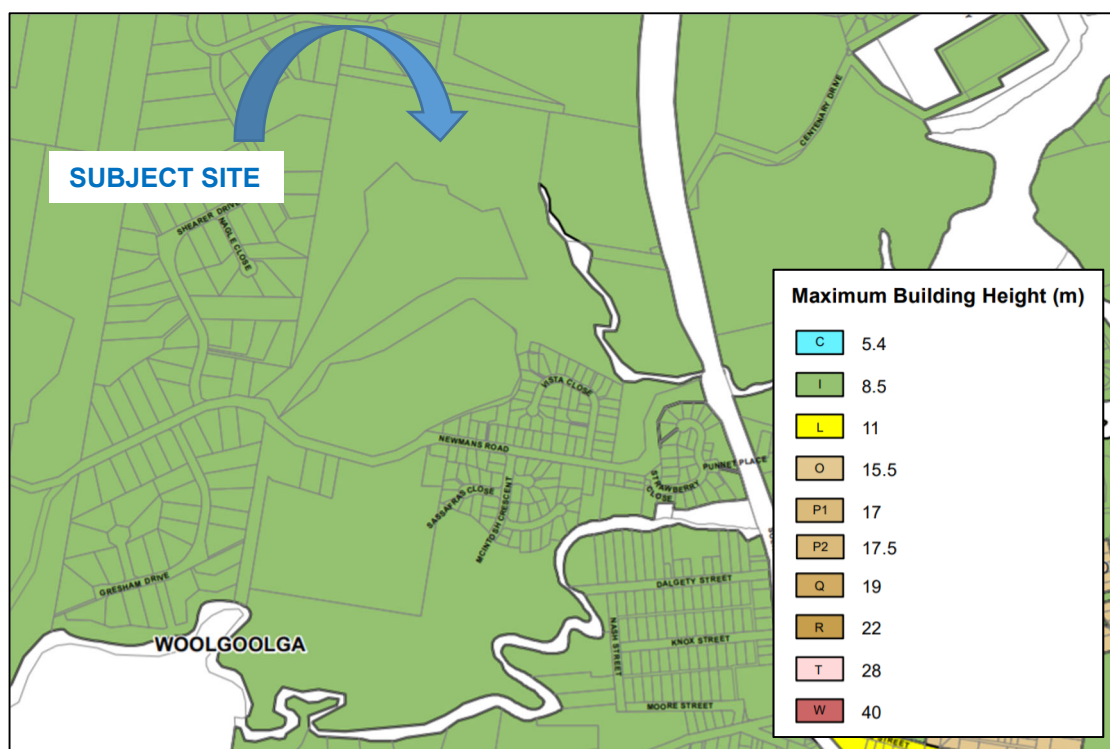


Figure 1: Height of Buildings map

Source: Coffs Harbour Local Environmental Plan 2013 Height of Buildings map HOB_005F

2.2.2 Numerical value

The numerical value of the maximum building height provided for under Clause 4.3(2) is 8.5m.

This is defined in the LEP as the “vertical distance between ground level (existing) and 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.”

Based on the above definition the proposed maximum building height of the sports complex is 12.5m. This is highlighted in the below table as percentage variation between the proposed building height and the height permitted under Coffs Harbour LEP.

Proposed Building Height	Max Height under cl 4.3(2)	Variation percentage
12.5m	8.5m	47%

3. Assessment of variation

3.1 Clause 4.6 Exceptions to development standards

Clause 4.6 of Coffs Harbour LEP states the following:

(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.*

(6) *Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living if:*

(a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or

(b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.

Note. When this Plan was made it did not include all of these zones.

(7) After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).

(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,

(c) clause 5.4.

Comment: Clause 4.6(3) requires a written request from the applicant to be made to Council that seeks to justify the contravention of the development standard by adequately demonstrating that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and that there are sufficient environmental planning grounds to justify contravening the development standard. Furthermore, Council must be satisfied that the proposed Multi-Purpose Centre will be in the public interest because it is consistent with the objectives of the particular standard and the objectives of the RE1 Public Recreation Zone.

The concurrence of the Secretary of the Department of Planning and Environment must also be obtained where delegated authority has not been provided to Council. In deciding whether to grant concurrence, the Secretary must consider whether contravention of the development standard raises any matter of significance for state or regional environmental planning; the public benefit of maintaining the development standard, any other matters required to be taken into consideration by the Director-General before granting concurrence. In this regard, no "other matters" have been highlighted which require consideration under subclause (5)(c).

3.2 Assessment of variation to development standard

The following assessment has been undertaken in accordance with the requirements of Clause 4.6 and in accordance with the Department of Planning Circular PS 17-006 *Variations to Development Standards*. It is noted that Clause 4.6 originates from the now repealed State Environmental Planning Policy (SEPP) No. 1 – Development Standards.

In *Winten v North Sydney (2001) NSWLEC 46* Justice Lloyd sets out the following five part test for considering SEPP No. 1 objections:

1. *Is the planning control in question a development standard?*
2. *What is the underlying object or purpose of the standard?*
3. *Is compliance with the standard consistent with the aims of the Policy and in particular does compliance with the development standard tend to hinder the attainment of the objects specified in Section 5(a)(i) and (ii) of the Environmental Planning and Assessment Act 1979?*

4. *Is compliance with the development standard unreasonable or unnecessary in the circumstance of the case?*
5. *Is the objection well founded?*

Consideration has also been given to the relevant test established by the NSW Land and Environment Court in the decision of Justice Preston in *Wehbe v Pittwater* [2007] NSW LEC 827 to determine whether compliance with a development standard is unreasonable or unnecessary based on the following:

Is compliance with the development standard unreasonable or unnecessary because the objective of the development standard are achieved notwithstanding compliance with the standard.

3.2.2 Is the planning control a development standard?

It is clear that the planning control is a development standard. As documented in Section 2.2, the development standard is a numerical control to limit building heights. The development standard in this instance is 8.5 metres.

3.2.3 What is the underlying object or purpose of the standard?

In order to determine the underlying object or purpose of the standard and to justify the proposal on environmental planning grounds in accordance with Clause 4.6, it is necessary to review the objectives of both Clause 4.3 and the RE1 Public Recreation zone.

Clause 4.3

(a) to ensure that building height relates to the land's capability to provide and maintain an appropriate urban character and level of amenity,

- Whilst it is common planning practice to establish a maximum building height for development to establish an appropriate form of development within any given zone, the intended building use and setting needs to be factored into any building height limit.
- At present the surrounding RU2 properties are vacant, however they may be developed in future. The proposed sports complex is situated in the centre of the site, far from the boundaries, so will not impact the amenity of any future development on the adjoining land.
- The impact of the building's height has been reduced by articulation in the facade. The mass and bulk of the proposed building has been broken up by the use of varying materials and variations in the roofline. A combination of timber, masonry, glazing, hanging vegetation and steel columns are proposed. The roofline is articulated with differing heights and angles, and uses verandas to break up the bulk of the building and provide visual interest. The entry to the building features steel columns and a wide veranda, and an outdoor plaza area.
- Views from the surrounding dwellings will predominately be obscured by existing mature vegetation surrounding the proposed development footprint. The proposal will be visible from Solitary Islands Way but due to the distance from the road, the scale of the building and the short time the development would be visible to people travelling along the road, the impact is not considered to be significant.
- Overall, the proposed facility has been designed to be integrative and complementary with surrounding development. Considering the majority of the site will continue to be open grassland and that all structures will use high quality materials and finishes, the proposed development will complement and enhance the site.

(b) to ensure that taller development is located in more structured urbanised areas that are serviced by urban support facilities,

The proposed building is not considered to be a tall building given its intended recreational use and will sit on the edge of the Woolgoolga urban area similar to that of the Woolgoolga High School. The site will be serviced with reticulated water, sewer and stormwater services.

(c) to ensure that the height of future buildings has regard to heritage sites and their settings and their visual interconnections,

There are no heritage items that would be impacted by the proposed building and as such would not impact upon the value of any heritage item.

(d) to enable a transition in building heights between urban areas having different characteristics,

The proposed building will sit in the centre of recreational land and is unlikely to offer a transition in building heights given the context of the site. At present the surrounding RU2 properties are vacant and used for primary production. This land may transition into residential land into the future. The proposed sports complex is situated in the centre of the site, far from common boundaries, so will not impact the amenity of any future development on the adjoining land.

(e) to limit the impact of the height of a building on the existing natural and built environment,

- The impact of the building's height has been reduced by articulation in the facade. The mass and bulk of the proposed building have been broken up by the use of varying materials and variations in the roofline. A combination of timber, masonry, glazing, hanging vegetation and steel columns are proposed. The roofline is articulated with differing heights and angles, and uses verandas to break up the bulk of the building and provide visual interest. The entry to the building features steel columns and a wide veranda, and an outdoor plaza area.
- Views from surrounding dwellings will predominately be obscured by existing mature vegetation surrounding the proposed development footprint. The proposal will be visible from Solitary Islands Way but due to the distance from the road, the scale of the building and the short time the development would be visible to people traveling along the road, the impact is not considered to be significant.
- Overall, the proposed facility has been designed to be integrative and complementary with surrounding development. Considering the majority of the site will continue to be open grassland and that all structures will use high quality materials and finishes the proposed development will complement and enhance the site.

(f) to encourage walking and decreased dependency on motor vehicles by promoting greater population density in urban areas.

Shared pathways are proposed to link the proposed facility with the wider Woolgoolga urban area which will reduce dependency on motor vehicles.

RE1 Public Recreation Zone

It is considered that the proposed development will be in the public interest because it is consistent with the objectives of the RE1 Public Recreation zone. This is demonstrated below.

To enable land to be used for public open space or recreational purposes

The proposed development will provide the community with facilities for a range of indoor and outdoor recreational activities as well as a function centre for local gatherings.

To provide a range of recreational settings and activities and compatible land uses

The site is appropriately zoned and will accommodate the sports complex and sporting fields.

To protect and enhance the natural environment for recreational purposes

The establishment and ongoing management of the sports complex on the site will ensure the protection and enhancement of the land for recreational purposes.

3.2.4 Is compliance with the standard consistent with the aims of the Policy and in particular does compliance with the development standard tend to hinder the attainment of the objects specified in Section 5(a)(i) and (ii) of the Act?

The objects of the Act are no longer contained in Section 5(a)(i) and (ii) of the Act, they are contained in Section 1.3:

1.3 Objects of Act

The objects of this Act are as follows—

(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.

Compliance with the development standard hinders the attainment of the objectives of the Act as it would not allow for a sports complex to be constructed with a roof high enough to allow for basketball and netball games to be played.

3.2.5 Is compliance with the development standard unreasonable or unnecessary in the circumstance of the case?

The development standard is considered to be unreasonable and unnecessary in the circumstance of this case. The variation is necessary for the use of the building for basketball and netball games.

An 8.5m height limit is considered to be unreasonable and unnecessary in this instance as the site is generally visually remote from any adjoining properties and any vantage points external to the site and would be set within the backdrop of the existing native vegetation surrounding the site.

Furthermore, the proposed building will not result in any undue visual impact, disruption of views, loss of privacy or loss of solar access for any existing development external to the site.

3.2.6 Is the objection well founded?

The height limit variation is well founded based on compliance with the standard being unreasonable or unnecessary as the development does not contravene the objects of the Act, the objectives of the RE1 zone and the objectives surrounding the building height standard (Clause 4.3).

It is considered there is sufficient planning grounds to justify contravening the development standard to support the proposed height variation. This is outlined above where it has been demonstrated that the objectives of the standards will still be achieved.

The proposed development remains consistent with the objectives of the zone, despite it being non-compliant in relation to building height.

The scale and form of the development is in line with typical recreational development.

3.2.7 Is compliance with the development standard unreasonable or unnecessary because the objective of the development standard are achieved notwithstanding compliance with the standard?

It is considered there is sufficient planning grounds to justify contravening the development standard to support the proposed height variation. This is outlined above where it has been demonstrated that the objectives of the standards will still be achieved.

The scale and form of the development is fitting for the size of the site and the distance from other development. The development itself has been architecturally designed and has an appealing presentation.

Despite the non-compliance with the standard this is considered not to adversely affect any environmental, social or economic factors at the site.

3.3 Public interest

As previously stated, Clause 4.6 (4) (a) (ii) requires that development consent must not be granted for development that contravenes a development standard unless the consent authority is satisfied that the proposed development will be in the public interest.

The proposed development is considered to be in the public interest as it is consistent with the objectives of the standard and the zone in which the development is proposed. As outlined above there has been a thorough assessment against the zone objectives and the objectives of the development standard.

As explained above a strict application of the height control is not considered necessary due to the site's isolation and the architecture proposed for the building. The proposed built form offers a striking and memorable feature to an otherwise simple undeveloped landscape.

Given the future use of the site for regular sporting activities and events for the local community, it is considered to be in the public interest.

4. Conclusion

The West Woolgoolga Sports Complex proposed over land described as Lot 357 DP822826 and Lot 201 DP874273, Solitary Islands Way, Woolgoolga will facilitate a range of indoor sports and act as a functional space for the local community.

The proposed building exceeds the maximum building height of 8.5m prescribed by Clause 4.3(2) of *Coffs Harbour Local Environmental Plan 2013*. This report seeks to use Clause 4.6 to enable Council to vary this development standard.

The need for a variation has arisen due to a number of factors, with the primary reason being the functional specifications for a range of indoor sports together with the architectural merit of the building.

The increased building height for the proposed building is considered justified on the following environmental planning grounds:

- It is compatible with the height, bulk and scale of the desired future character and development at the site.
- It will not result in any undue visual impact, disruption of views, loss of privacy or loss of solar access for any existing development external to the site due to the visually remote nature of the site.

Based on the above, it is hoped the proposed building will be viewed by Council as a structure that will positively contribute to the architectural merit of and in turn the long term sustainability of the site and Woolgoolga.

GHD

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Document Status

Revision	Author	Reviewer		Approved for Issue		
		Name	Signature	Name	Signature	Date
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