

Date: 2<sup>nd</sup> May 2020  
Our Ref: 180555

General Manager  
Richmond Valley Council  
Locked Bag 10  
CASINO NSW 2470

Attention: Ms Debbie Pinfold

Dear Madam,

**Re: Development Application 2020/0201  
122 Canterbury Street, Casino**

Further to Council's request for information letter dated 26 May 2020, please find attached the prescribed variation request pursuant to Clause 4.6 of the RVLEP to the building height standard.

In respect to trade waste and food preparation, we have received information from the school that the canteen will be preparing food for sale. They have a grease trap in their current canteen which will be decommissioned, and a new grease trap will be required. They will have appliances such as an oven, combi-oven, stove top etc so mechanical ventilation will be required.

The Science labs will have fume cupboards, as will at least one Prep room. They will have a facility for the disposal of toxic materials. An acid bay in a chemical storeroom will also be required.

The project architect has advised their consultant team will be able to provide more detailed information during the construction documentation phase to Council on these matters.

We trust this information addresses Council's information request. Should you have any questions, please do not hesitate contacting Damian Chapelle of this office.

Yours sincerely,

**NEWTON DENNY CHAPELLE**



**DAMIAN CHAPELLE**  
Town Planner. BTP CPP.

## **CLAUSE 4.6 REQUEST TO VARY DEVELOPMENT STANDARD (BUILDING HEIGHT)**

### **A. DETAILS**

**Applicant Name:** Newton Denny Chapelle for and on behalf of Casino Parish  
**Property Details:** 122 & 128 Canterbury Street, Casino  
Lot 1 DP 1145157, Lots 3, 4, 7 & 9 Sec 9 DP 758236 & Lot 4  
DP 823664, Parish of North Casino, County of Rous  
**Project:** Educational Building

### **B. INTRODUCTION**

#### **B.1. Proposed Development**

The proposal for which consent is sought incorporates the following key components.

1. Demolition of three 2 storey buildings, single storey toilet and classrooms and canteen buildings with associated landscaped and paved areas;
2. Construction of a two storey building containing general learning areas, common learning space, labs, amenities and canteen.

The building will contain the following elements:

#### Ground Floor – 1,317m<sup>2</sup>

- 11 x General Learning Areas;
- 2 x Learning Commons;
- Tiered Seating;
- Male & female WC's (inclusive of disabled access amenities);
- Canteen; and
- Storerooms.

#### First Floor – GFA 825m<sup>2</sup>

- 2 x General Learning Areas;
- 1 x Learning Commons;
- 2 x Wet Labs;
- 1 x Stand Up Lab;
- Prep Rooms;

- Breakout Deck;
- Tiered Seating;
- Disabled access amenities; and
- Storerooms

The proposed building exceeds the established building height control under Clause 4.3 of the Richmond Valley Local Environmental Plan 2012 (RVLEP2012). Accordingly, an application is made to vary the development standard under Clause 4.6 of RVLEP2012.

**B.2. What is the name of the Environmental Planning Instrument (EPI) that applies to the land?**

Comment: Richmond Valley Local Environmental Plan 2012 applies to the land.

**B.3. What is the zoning of the land & What are the objectives of the zone?**

Comment: The subject site is zoned R1 – General Residential pursuant to the Richmond Valley Local Environmental Plan 2012 (RVLEP).

The R1 General Residential zone contains several objectives relevant to the subject proposal. The relevant objectives are below with the proposal's response:

- *To provide for the housing needs of the community.*
- *To provide for a variety of housing types and densities.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To ensure that housing densities are generally concentrated in locations accessible to public transport, employment, services and facilities.*

**B.4. What is the Development Standard being varied?**

Comment: The development standard being varied is the Height of Buildings control as specified within Clause 4.3 of RVLEP2012.

**B.5. What is the numeric value of the Development Standard in the relevant BLEP?**

**B.6. What is the proposed numeric value of the Development Standard in your Development Application?**

**B.7. What is the percentage variation (between your proposal and the relevant RVLEP)?**

Comment: The numerical standard is 8.5m (as measured from the natural surface level to the highest point of the building). The proposed building has a height of 10m, which is a variation of 17.6%.

The height variation is only sought for the portion of the building located above the learning commons. In this regard, the application proposes that 20% of the roof will exceed 8.5m, with the remaining 80% of the roof being fully compliant.

#### **B.8. Is the Planning Control a Development Standard?**

The maximum height of building control prescribed under Clause 4.3 of the RVLEP 2012 is a development standard capable of being varied under Clause 4.6 of RVLEP 2012.

#### **B.9. What is the Underlying Object or Purpose of the Standard?**

The objectives of the height standard as per RVLEP 2012 are as follows:

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

*[1] The objectives of this clause are as follows—*

- a. to establish the maximum height for buildings,*
- b. to ensure that the height of buildings complements the streetscape and character of the area in which the buildings are located,*
- c. to minimise visual impact, disruption of views, loss of privacy and loss of solar access to existing development.*
- To minimise conflict between land uses within the zone and land uses within adjoining zones.*

The underlying object or purpose of the development standard is therefore to provide a built form that is compatible with the site, the scale and character of surrounding development and avoids detrimental impacts on the amenity of the locality.

#### **C. CI 4.6 RVLEP CONSIDERATION**

##### **C.1. Clause 4.6(3)(a) – Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case**

Strict compliance with the maximum height of building standard is unreasonable and unnecessary in the circumstances of the application based on the following:

- The proposal is consistent with the objectives of the development standard as provided in clause 4.3 of the RVLEP 2012 – refer to **Table 1** below.
- The extent of non-compliance (i.e. additional 1.5m) does not result in consequential environmental impacts. The height difference has an inconsequential shadowing impact at mid-winter to any key buildings and no impact upon the public domain.

- No other amenity impacts (privacy, views or outlook) will arise from the additional height proposed.
- Having regard to the recognised educational and religious nature of the locality, the proposal represents an appropriate built form set by the surrounding buildings inclusive of St Mary's Church.

Considering the above, in the circumstances of this application, it is neither reasonable or necessary to require compliance with the height of building standard under the RVLEP

Each of the matters listed within the 'five-part test' outlined in *Wehbe v Pittwater [2007] NSWLEC 827* and Varying development standards: A Guide is listed and responded to as follows:

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

Comment: The underlying objectives of the building height control as listed within Clause 4.3 of the RVLEP 2012 have been achieved as summarised in **Table 1** below.

**Table 1 – Assessment of Consistency with Development Standard Objectives**

Objective	Comment
(a) to establish the maximum height for buildings	The proposal has had due regard to the building height established for the subject land. The building does not represent the tallest structure on the site and therefore will not dominate the streetscape or view paths around the site.
(b) to ensure that the height of buildings complements the streetscape and character of the area in which the buildings are located	<p>At a high level – the proposed building successfully mitigates environmental impacts such as overshadowing, privacy and view loss, consistent with this objective.</p> <p>The building height exceedance responds to the conditions of the site, in part arising from the desire to provide an educational building to create an inspirational, light filled connection of all the learning spaces. The nature of an education building is such that certain height parameters must be met in order for the building to be 'fit for purpose'. The building has been designed such that only a portion of the building (&lt;20%) is located above the nominated 8.5m height control and this element provides adequate natural light to the learning commons area which will be used for teaching. All other parts of the building are compliant with the height control.</p> <p>The proposed building when set against the existing buildings which form the St Mary's campus is commensurate in scale and height. This is deemed to be reflective of the immediate character of the locality achieved through the historic use of the land for the Church and educational built form. To this end, the campus already provides a clear differentiation to the smaller scale form of residential and commercial structures which adjoining the development site.</p>

	<p>The siting of the development with encompassing a setback to the west of the St Mary's Church retains the Church as the key built form and focal point when viewed from the public domain on Centre Street. This reinforces a positive streetscape character and meets the broad objectives established under this building height objective.</p>
<p>(c) to minimise visual impact, disruption of views, loss of privacy and loss of solar access to existing development.</p>	<p>The site is removed from areas with particular visual or scenic values with respect to the Church structure, being setback some 12m, being 4m further than the existing school buildings. The building has therefore been designed to provide a proportioned and articulated building which is suited to its strategic location.</p> <p>The building is located within the school campus in a manner which will not result in any loss of solar access or reduction in privacy from surrounding non-educational buildings.</p> <p>Importantly, the proposal will not impact upon the amenity of the St Mary's Church which is located to the south-east of the building and as such will not be subjected to adverse overshadowing impacts.</p>

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

Comment: This test is not applicable in the circumstances of the case. The objectives of the development standard are relevant to the development.

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

Comment: The RVLEP 2012 includes objectives for the R1 General Residential zone. These objectives are identified in **Table 2**. This table demonstrates that the variation is consistent with the objectives of the zone. Strict compliance with the building height development standard would not be antipathetic to the achievement of these objectives

**Table 2 – Assessment of Consistency with R1 Zone Objectives**

Objective	Comment
To provide for the housing needs of the community.	The proposed building height does not impact upon the delivery of housing within the Casino locality.
To provide for a variety of housing types and densities.	The proposed building and associated built form is located within an existing educational campus and as such the designed building height will not impact upon the delivery of housing within the Casino locality.
To enable other land uses that provide facilities or services to meet the day to day needs of residents.	The proposed building height variation has been designed to meet the operational need for an educational building upon the St Marys High School campus. The proposal will directly meet the zone objective.

To ensure that housing densities are generally concentrated in locations accessible to public transport, employment, services and facilities.	The proposed building height has no material impact upon the delivery of housing.
To minimise conflict between land uses within the zone and land uses within adjoining zones.	<p>The portion of the proposed building height variation will generate no conflicts with adjoining land uses when regard is made to the location of the building on the educational campus and the setbacks to the cadastral boundaries.</p> <p>The building is setback from all property boundaries with a public interface, with carparking, driveways and landscaping located within the setback area. The portions of the building exceeding the nominated height standard are then set within the central portion of the structure (with the outer areas all compliant with the 8.5m control). The portions of the building exceeding the 8.5m limitation are setback from property boundaries as follows:</p> <ul style="list-style-type: none"> <li>○ Centre Street - 27m; and</li> <li>○ Canterbury Street- 36m.</li> </ul>

**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**

Comment: Richmond Valley Council has previously supported Clause 4.6 variations, where contraventions of the building height standard were demonstrated to be supportable. This is demonstrated within the 2016/17 Standards Variation Register attached to this request.

**5. The compliance with 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.**

Comment: This test is not applicable in the circumstances of the case. It's assumed the site's land use and built form controls reflect Council's planning intent for the area.

**C.2. 6.1.2. Clause 4.6(3)(b) – Are there sufficient environmental planning grounds to justify contravening the development standard?**

The proposed development is supportable on environmental planning grounds for the following reasons:

- The nature of an education building is such that certain height parameters must be met in order for the building to be 'fit for purpose'. The building has been designed such that only a portion of the building (<20%) is located above the nominated 8.5m height control. All other parts of the building are compliant with the height control. Removing the proposed glazing and modifying the roof form for height compliance would not achieve the operational brief for the education building associated with the learning commons and thus be inconsistent with the 'other land use' objective of the RVLEP 2012;
- The proposal establishes a finished floor level to adhere with flood planning for the site and thus contributes to the overall building height. Reducing the floor level would result in potential nuisance impacts for the use of the educational building.
- The addition of an extra 1.5m (from the RVLEP 2012 control of 8.5m) does not give rise to any consequential environmental impacts (e.g. shadowing, view loss or visual impacts).
- The variation enables the continued appreciation of the St Marys Church building. The new building retains the pattern of development of the existing development, being a large double story school building within the centre of the school. The proposed building height allows a superior relationship between the proposal and adjoining buildings (in terms of the established/desired building height and scale)

As such, given the high level of compliance with other key development standards, the alignment with the desired future character of the area (both in terms of built form and land use) and the appropriate mitigation of environmental impacts, the variation to the development standard is supportable on environmental planning grounds.

**C.4. Clause 4.6(5)(b) – Is there a public benefit of maintaining the development standard?**

The proposed development achieves the objectives of the building height development standard and the land use zoning objectives despite the non-compliance. It has been demonstrated that the proposed variation arises from the:



- Desire to create purpose designed educational building.
- Opportunity to provide a strong design statement through the elevated roof form which underpins the glazing introduced to access natural light into the general learning areas; and
- The level nature of the site combined with the location of the proposed building height variation will not result in an adverse environmental impact on the neighbourhood amenity and streetscape.

Overall it is considered that the strict maintenance of the standard in this instance is not in the public interest as the current proposal will result in the delivery of high quality educational building within Casino which achieves superior design outcomes and the strategic objectives of Council. As such, there would be no public benefit in maintaining the development standard in this case.

**C.5. Clause 4.6(5)(c) – Are there any other matters required to be taken into consideration by the Secretary before granting concurrence?**

Concurrence can be assumed. Nevertheless, there are no additional matters that need to be considered within the assessment of the Clause 4.6 Request and prior to granting concurrence, should it be required.

**D. CONCLUSION**

The above information demonstrates that, given the planning context and proposed use of the building, the proposed building height represents a suitable building form for the site. Strict compliance with the height development standard is unreasonable and/or unnecessary in the circumstances of the case.


Based on the reasons outlined in this document it is concluded that the request is well founded and that the circumstances of the case warrant flexibility in the application of the development standard within the framework afforded by Clause 4.6 of RVLEP2012.

Accordingly, it is considered that the proposed variation to the height of buildings development standard is considered appropriate and well founded and can be supported under the provisions of Clause 4.6 Exceptions to development standards.



**DAMIAN CHAPELLE**  
Town Planner. BTP. CPP.

Date: 2<sup>nd</sup> June 2020

Richmond Valley Council Standards Variation Register 2016-17 – Present			 <b>Richmond Valley Council</b>												
Council DA reference number	Lot number	DP number	Apartment/Unit number	Street number	Street name	Suburb/Town	Postcode	Category of development	Environmental planning instrument	Zoning of land	Development standard to be varied	Justification of variation	Extent of variation	Concurring authority	Date DA determined dd/mm/yyyy
DA2017/0019	7	581715		3925	Bruxner Highway	Woodview	2470	14: Other	Richmond Valley LEP 2012	RU1	Variation to Clause 4.1 Minimum lot size	Richmond Valley LEP 2012	>10%	Council	25/08/2016
DA2017/0100	1	876258		535	Benns Road	Shannonbrook	2470	12: Industrial	Richmond Valley LEP 2012	RU1	Variation to Clause 4.3 Building Height	Richmond Valley LEP 2012	<10%	Council	22/12/2016
DA2017.0175	1, 3, 102	732284, 570139, 860152			Dargaville Drive	Casino	2470	12: Industrial	Richmond Valley LEP 2012	IN1	Variation to Clause 4.3 Building Height	Richmond Valley LEP 2012	>10%	Council	21/06/2017
DA2017.0130	1	1193927		17	Memorial Airport Drive	Evans Head	2473	14: Other	Richmond Valley LEP 2012	R1	Variation to Clause 4.1 Minimum lot size	Richmond Valley LEP 2012	>10%	Council	29/08/2017
DA2017.0196	232	785642			Llewellyns Road	Casino	2470	14: Other	Richmond Valley LEP 2012	RU1	Variation to Clause 4.1 Minimum lot size	Richmond Valley LEP 2012	<10%	Council	14/09/2017
DA2018.0014	21	710393		50	Charolais Avenue	North Casino	2470	14: Other	Richmond Valley LEP 2012	R5	Variation to Clause 4.1 Minimum lot size	Richmond Valley LEP 2012	<10%	Council	21/09/2017
DA2018/0202	1	1240949		74	Dargaville Drive	Casino	2470	12: Industrial	Richmond Valley LEP 2012	IN1	Variation to Clause 4.3 Building Height	Richmond Valley LEP 2012	>10%	Council	25/07/2018
DA2018/0201	37	1021682		5	Wallum Drive	Doonbah	2473	3: Residential - New second occupancy	Richmond Valley LEP 2012	R5	Clause 4.1B Minimum lot sizes for dual occupancies	Richmond Valley LEP 2012	>10%	Council	2/08/2018
DA2019/0054	144	755624		44	Ocean Drive	Evans Head	2473	7: Residential - Other	Richmond Valley Local Environmental Plan 2012	R1	Clause 4.1 Minimum Lot Size	Minor variation only and lots have suitable future dwelling envelopes	2 lots each varied by 10%	Council	24/01/2019
DA2019/0223	2 & 10	331732 & 1185560		141 & 143	Canterbury	Casino	2470	9: Mixed	Richmond Valley Council Local Environmental Plan 2012	R1 & B3	Clause 4.1 Minimum Lot Size	Dwelling on residential lot complies with DCP & the proposal facilitates the use of the land as a medical centre providing an essential service to the community.	10%	Council	10/09/2019
DA2020/0034	1 & 2	913055		135	River	Woodburn	2478	13: Subdivision only	Richmond Valley Council Local Environmental Plan 2012	RU5	Clause 4.1 Minimum Lot Size	Dwelling on residential lot complies with DCP & the proposal facilitates the use of the land as a medical centre providing an essential service to the community.	10%	Council	19/11/2019