
Clause 4.6 Request to vary a Development Standard

For:

Lots 1 & 2 DP 862730
CASINO WAR MEMORIAL SWIMMING POOL

Prepared for:

Richmond Valley Council

Updated April 2021

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1. Introduction

This is a written request (the Request) to seek a variation to a development standard in accordance with the provisions of Clause 4.6 Exception to Development Standards of the *Richmond Valley Local Environmental Plan 2012* (RVLEP 2012).

This request relates to Clause 4.3 Height of Buildings of the RVLEP 2012.

This Request has considered the detailed guidance within the NSW Department of Planning, Industry and Environment (DPIE) guideline *Varying Development Standards: A Guide, August 2011* (DPIE Guide) and planning system circular PS 20-002 *Varying Development Standards, May 2020*, and addresses the findings and established principles (as relevant) of the following judgements of the NSW Land and Environment Court (NSW LEC):

- *Winten Property Group Limited v North Sydney Council [2001] NSWLEC 46*;
- *Wehbe v Pittwater Council [2007] NSWLEC 827*; and
- *Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 and [2015] NSWCA 248*.

The following sections of this Request critically analyse the proposed encroachment of the waterslide above the maximum height limit control, its impact and reasonableness.

This analysis demonstrates that an exception to the building height development standard is warranted in this instance and will provide for a significantly better planning outcome than a compliant development.

2. Planning Overview

The *Standard Instrument (Local Environmental Plans) Order 2006* was introduced to create a common format for local environmental plans across NSW and all councils have now adopted local environmental plans based on the Standard Instrument (SI).

The SI includes various development standards as a means to achieving environmental planning objectives and these standards can be numerical or performance based.

The DPIE Guide recommends that any Request to vary a development standard should confirm the planning context and relevant controls to assist the consent authority's assessment.

Clause 4.6 of the SI allows a consent authority to consider and grant consent to a development even in the circumstance where that development would contravene a development standard. Importantly, on land where a SI applies and Clause 4.6 is relevant, the powers *State Environmental Planning Policy No.1 – Development Standards* do not apply.

The DPIE Guide confirms that the NSW planning system allows for flexibility in planning controls, in certain circumstances, through the provisions of Clause 4.6 of the SI.

The DPIE Guide recommends that any Request to vary a development standard should confirm the planning context and relevant controls to assist the consent authority's assessment.

This submission will address the requirements of Subclauses 4.6(3) & (4) in order to demonstrate to the consent authority that the exception sought is consistent with the exercise of “*an appropriate degree of flexibility*” in applying the development standard, and is therefore consistent with objective 1(a).

Table 1 provides a summary of the relevant planning context and provides a key numerical overview of the proposed variation.

Information Requirement	Comment
Relevant Applicable Planning Instrument	Richmond Valley LEP 2012
Zoning of the Land	RE1 – Public Recreation
Objectives of the Zone	Objectives of zone • <i>To enable land to be used for public open space or recreational purposes.</i> • <i>To provide a range of recreational settings and activities and compatible land uses.</i> • <i>To protect and enhance the natural environment for recreational purposes.</i>
Development Standard to be varied	Building Height
Nature of the Development Standard	A numerical height control
Relevant Development Standard Clause	Clause 4.3 Height of Buildings of RVLEP 2012
Objectives of the Development Standard	Objectives of this clause are as follows— • <i>to establish the maximum height limit for buildings,</i> • <i>to ensure that the height of buildings complements the streetscape and character of the area in which the buildings are located,</i> • <i>to minimise visual impact, disruption of views, loss of privacy and loss of solar access to existing development.</i>
Development Standard Numeric Control for the Site	Maximum building height of 8.5 metres.
Proposed Numeric Control	Maximum Building Height of waterslide – 13.8metres

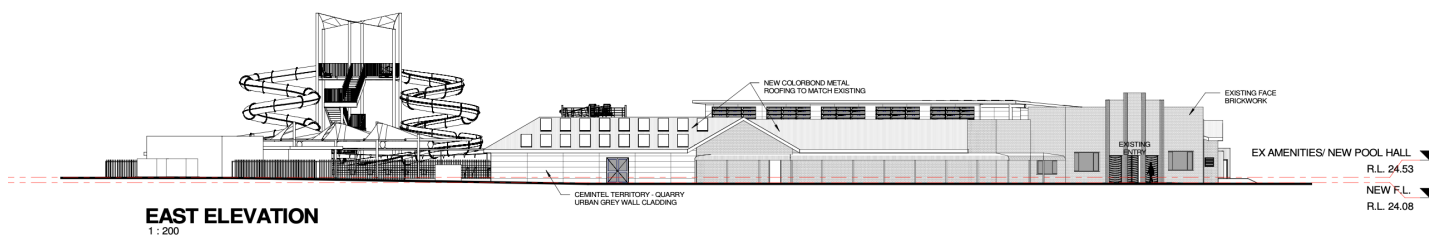
Percentage Variation Between the proposal and the Planning Instrument	An increase of 5.3metres represents a 62% increase above the RVLEP 2012 building height development standard of 8.5 metres.
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3. PROPOSED DEVELOPMENT

This proposal seeks to redevelop the existing Casino War Memorial Swimming pool complex and carry out Stage 2 redevelopment works comprising demolition, alterations, addition & refurbishment of the existing Centre including a new indoor 25 metre program pool /learn to swim pool, new store, plant & family change, adult change room including the refurbishment of existing entry/control/gym/kiosk and removal of one (1) tree – Poinciana.

The proposed Stage 2 works are to include the following:

- Partial demolition of existing building;
- New indoor program pool/learn to swim pool;
- New family amenities/Adult change room;
- New covered walkway;
- New plant room;
- New store room;
- Refurbishment of control/kiosk, administration;
- New swim club;
- New gym and swim squad room;
- New twin flume waterslide;
- Solar Photovoltaic roof panels;
- Removal of one (1) tree – Poinciana.



The height variation request is due to the following:

- To accommodate the construction of a new twin flume water slide within the rear portion of the site.

As further demonstrated within this report, the setbacks, building form, height, scale and siting of the twin flume water slide is considered appropriate and proportioned to the larger recreational land holding. The width and size of the site is capable of accommodating the water slide structure than that envisaged under Council's controls without resulting in any adverse amenity impacts upon adjoining properties and the locality as a whole.

4. LEGISLATIVE CONTEXT

4.1. Clause 4.6 Exceptions to Development Standards

Clause 4.6 of the RVLEP 2012 sets out key assessment criteria which enables Council to consider and grant development consent for a development that contravenes a development standard.

The overarching objectives of this clause are contained in subclause (1) as detailed below:

- (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.*

Subclauses (3), (4) and (5) of Clause 4.6 are relevant and development consent can only be granted subject to their consideration.

4.1.1. Clause 4.6(3)

Clause 4.6(3) requires that development consent must not be granted for a 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 that:

- (a) compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
- (b) there are sufficient environmental planning grounds to justify contravening the development standard.*

4.1.2 Clause 4.6(4)

(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.

4.1.3. Clause 4.6.5

Clause 4.6(5) requires that 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.*

4.2. Relevant Judgments - NSW Land and Environment Court

The following key Land and Environment Court (NSW LEC) judgments provide guidance on key considerations in the assessment of a Clause 4.6 variation Request. These judgments focus on the degree to which a consent authority may be satisfied about the matters in Clause 4.6 and therefore further refine the requirements for variation Requests:

- *Winten Property Group Limited v North Sydney Council [2001] NSWLEC 46;*
- *Wehbe v Pittwater Council [2007] NSWLEC 827; and*
- *Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 and [2015] NSWCA 248.*
The key findings and established principles (as relevant) of the above judgements of the Land and Environment Court are summarised below. *Winten Property Group Limited v North Sydney Council (2001)*

4.2.1. Winten Group Ltd v North Sydney Council (2001)

The *Winten Property Group Ltd v North Sydney Council (2001)* case posed the following questions to be addressed when considering objections to development standards:

- Is the planning control in question a development standard?
- If so, what is the underlying object or purpose of the standard?
- Is compliance with the standard consistent with the aims of the policy, and in particular, does compliance with the standard tend to hinder the attainment of the objects specified in Section 5(a)(i) and (ii) of the *Environmental Planning & Assessment Act 1979*?
- Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case? (A related question is: would a development which complies with the standard be unreasonable or unnecessary?)
- Is the objection well founded?

4.2.2 Wehbe v Pittwater Council (2007)

This case expands on the findings of *Winten Property Group Limited v North Sydney Council (2001)* case and establishes a five-part test 'Wehbe tests' to ascertain whether strict compliance with a development standard is unreasonable or unnecessary, as follows:

1. The objectives of the standard are achieved notwithstanding non-compliance with the standard;
2. The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;
3. The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;
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; or
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.

It is noted that the DPI&E Guide was formulated on the basis of the findings of the *Winten Property Group Limited v North Sydney Council (2001)* case and the Wehbe Tests.

4.2.3 Four2Five Pty Ltd v Ashfield Council (2015)

The outcome of these cases (initially heard and then upheld at appeal) concluded that in addition to considering the Wehbe Tests, Requests must also demonstrate that:

- the grounds for departing from the development standard must be particular to the circumstances of the proposed development on the subject site; and
- compliance with the development standard is unreasonable or unnecessary, in addition to demonstrating that the proposal was consistent with the objectives of the development standard and/or land use zone.

5. Assessment of the Variation to building height development standard

The RVLEP 2012 identifies an 8.5 metre (approximately 3 storeys) maximum building height control for the subject site. This maximum building height limit is the same as for the existing adjacent low-density residential areas being of 8.5 metres.

The maximum building height constitutes the built form baseline from which any variation request

is measured and assessed.

The proposal seeks to increase the maximum 8.5 metre height control by 5.3 metres to accommodate the construction of a new twin flume water slide within the site. An increase of 5.3metres represents a 62% increase above the RVLEP 2012 building height development standard of 8.5 metres.

The following assessment comprehensively considers the provisions of CI 4.6 which has also been informed by an analysis of the relevant case law.

5.1. Clause 4.6(3)(a) – Compliance is Unreasonable or Unnecessary

Strict compliance of the 8.5 metre height control is considered to be unreasonable or unnecessary as the benefits of constructing the recreational water slide for the community far outweighs the negligible impacts of the increase to the building height and the objectives of the development standards are achieved, notwithstanding non compliance with the standard.

Objective	Comment
<i>to establish the maximum height limit for buildings,</i>	As discussed, the height of the water slide structure is 13.8m. The remainder of the built form, including the new indoor pool complex is located within the height limit development standard. Most importantly, the non-compliant component of the waterslide structure being the platform and shade structure does not result in any significant negative environmental impact on the surrounding public domain or/and neighbouring properties in terms of overshadowing, bulk and scale and privacy, as demonstrated in the below assessment. The breach of the standard does not affect consistency with this objective. The breach of the standard allows for rationalisation of community services/facilities and their integration within the site's recreational design. The proposed water slide structure located towards the rear of the subject site achieves a built form which is appropriate to the site's context, its functionality, useability and ensures minimal impact upon the heritage façade of the swimming pool complex with the intent of attracting local youth to use and support the recreational facility. Despite the nature and scale of the water slide proposed the proposal will not conflict with the underlying aims for built form in the zone or the site's relationship to the hierarchy of height limit for surrounding land.
<i>to ensure that the height of buildings complements the streetscape and character of the area in which the buildings are located,</i>	The height variation relates to the proposed waterslide structure. Despite the proposed variation, it is submitted that the development reflects the intended scale of development at the site in that the variation relates only to the waterslide structure standing in isolation towards the rear of the site and the scale of the structure is not substantially different to that of a compliant scheme particularly when perceived from the street. It is noted that the planning instrument envisaged a low scale of development, however taking into consideration the sites zoning, location adjacent to the town centre and usage potentially supports a greater scale of development. In this

	sense it is logical that a variation is more appropriate at this site than it maybe elsewhere in town. It is considered that the requirement for strict compliance with the control would be counterproductive to achieving the aims to complement and support the type of development envisaged within the recreational zone whilst maximizing the use of the facility particularly when the scale of development will not be perceptibly different to a strictly compliant proposal.
to minimise visual impact, disruption of views, loss of privacy and loss of solar access to existing development.	Visual Impact The proposed development will not negatively impact upon the visual amenity and character of the surrounding area in that: - The proposed water slide design is unique to the site and will not impact the public entry heritage façade at the street frontage as it is located towards the rear of the site; - The platform and shade structure is not visually substantive as sight lines and view lines penetrate through the form; - The platform and shade structure constitutes an architectural roof feature; - it is situated within the recreational/community precinct; - it is surrounded by other recreational/community uses and therefore will not give rise to any adverse impacts in the surrounding locality; - some on-site landscape works and planting are proposed to integrate the structures within the site; - it is sufficiently separated from adjoining properties. View Loss - The non-compliant element of the water slide is not likely to impinge on any significant views as the site adjoins existing recreational facilities being tennis club, bowling greens, parkland. - The platform and shade structure is not visually substantive as sight lines and view lines are able to penetrate through its form. Loss of Privacy - The water slide structure is non habitable and appropriately located within the rear portion of the recreational facility. - The water slide structure will only be accessible during operating hours of the swimming pool complex and its usage managed within the site. - Its configuration mitigates cross view to adjacent residential properties preventing overlooking. Overshadowing Impacts - The site neighbour's recreational facilities. The additional shadow impact of the waterslide structure will be minor and will not have any negative impacts on these facilities. - There is no overshadowing of the public domain or adjacent residential buildings.

	The shadows cast are not substantiative and will not significantly reduce solar access to existing or potential future development.
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The proposal is considered to be a positive contribution to the Casino local community and more importantly the existing aquatic facility. It is considered to be an ancillary component being of benefit not only to the locality but the existing region as a whole. It is considered that the proposal will have minimal adverse impact upon the surrounding environment as it only relates to the subject site.

The height exceedance associated with the proposed development is necessary to permit the water slide to function as an added recreational element within the facility that will meet the needs of the youth within the community. It should be noted that, not supporting the proposed height exceedance will limit the recreational opportunities within the facility for the community as a whole.

Having regard to the above, it is our opinion that compliance with the height of buildings development standard is unnecessary in the circumstances of the case as the development meets the objectives of the standard as described above.

On this basis, the requirements of Clause 4.6(3)(a) are satisfied.

5.2. Clause 4.6(3)(b) – Grounds to Justify Contravening the Development Standard

The development, including the height non-compliance, will provide for a future outdoor recreational facility for the locality consistent with an approved Concept Plan. In this context there are sound planning grounds and significant benefits to justify contravening the building height development standard.

The proposed increase in height is considered to result in an appropriate built form outcome for the following reasons:

- The proposal is consistent with the objectives of the development standard.
- The resultant waterslide structure is an open structure that is appropriate in form and material treatment;
- The location of the waterslide structure will not impact upon the heritage façade of the swimming pool complex as it is located at the rear of the site;
- The water slide will provide an improved recreational element to the complex in terms of relationship with useability and provision for the local youth population and enhancing the range of facilities available to the community;
- The waterslide structure will encourage patronage of the facility and subsequently enhance quality of life for the community;

- The proposal seeks to improve the existing sporting complex facility catering to a growing number of different recreational elements to support the diverse local community;
- The proposed increase to the identified height requirement is:
 - appropriate in terms of the context and functionality of the provision of a waterslide structure;
 - appropriate in the context of the recreational environment and will not be perceived as an increase in approved bulk or scale;
 - consistent with the intent and useability of the recreational structure;
 - extends to essentially a platform, shade structure and climbing structure as a result it's visual bulk is minimised;
 - will not lead to any adverse impacts upon the existing streetscape, adjoining properties and amenity of the existing locality.
- the proposed increase in height appropriately responds to the use of the site as a recreational facility for the local population. The majority of the local community would not find the proposed waterslide structure offensive, jarring or unsympathetic to its location as it is compatible within the context of the site.
- Strict compliance with the development standard would result in an inflexible application of the control that would not deliver any additional benefits to the community.
- There are no streetscape or amenity impacts associated with incorporating the waterslide structure within the recreational complex the benefit of permitting this element is considered to constitute sufficient environmental planning grounds to support the variation.
- The discussion provided throughout this variation request demonstrates that the additional height will not result in any adverse environmental impacts, in terms of amenity impacts on existing and potential future neighboring development, nor will there be any adverse streetscape impacts given the relatively minor nature of the departure as a whole. It is submitted that there are sufficient environmental planning grounds to support the variation on the basis that there are tangible public benefits associated with the inclusion of the waterslide structure and an absence of significant environmental impacts.
- The current proposal is consistent with the development outcomes as identified within the Concept Masterplan for the site.

For the reasons above, there are considered to be sufficient environmental planning grounds to

justify varying the development standard. In particular, the proposed construction of the waterslide provides for a significantly important useable and functional recreational feature and the proposed design outcome results in a site responsive built form without any consequent impacts on the amenity of neighboring sites, when compared to a strictly height compliant scheme.

5.3. Wehbe Tests

Wehbe Test 1: *The objectives of the standard are achieved notwithstanding non-compliance with the standard*

The proposed variation to the building height development standard will achieve the objectives of the development standard as outlined within this report, notwithstanding the non-compliance with the standard as outlined in this report.

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

The underlying objective and purpose of the height development standard, (including built form, minimise impacts, respect existing character and overshadowing) is considered relevant to the development.

However (as discussed above) it is considered that the localised increase in height to permit the construction of the waterslide structure will facilitate a useable element within the existing sporting facility while resulting in an improved interface that is respectful of the surrounding urban character, including a substantially positive design and acceptable amenity impacts.

Therefore, the increase in height represents a useable recreational element within the sporting complex and therefore better achieves the objectives of the development standard.

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

The provision of a waterslide that strictly complied with the development standard would result in a recreational structure significantly inferior in it's useability and would not encourage the local population to make use of the facility and the complex as a whole.

Wehbe Test 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*

The proposed increase in height is in response to specific contextual issues associated with the proposed construction of the waterslide and this recreational site. As such is not considered to result in the development standard being virtually abandoned or destroyed.

Wehbe Test 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

The land has been zoned appropriately and the controls applicable to the site are generally acceptable, despite the proposed increase in height. As discussed in this report, the proposed development is consistent with the objectives of the zone.

For the reasons outlined in in this report, the proposed variation in height is considered to be appropriate. The waterslide's design response better achieves the intended use and the objectives of the zone than a strictly height compliant scheme.

5.4. Clause 4.6(4) – Consistency with Objectives

This Request has adequately addressed the matters required to be demonstrated by subclause (3), as outlined in Section 5 of this submission. The proposed development is consistent with the objectives of the RE1 – Public Recreation zone as outlined in Table 3 and the building height development standard as outlined in Table 4.

In addition, the proposed development is a more useable development to a strictly height compliant scheme and therefore better achieves the objectives of the building height development standard and the zone. The proposal is therefore in the public interest.

RE1 Public Recreation Zone	
Objectives	Achievement of Objectives
<i>To enable land to be used for public open space or recreational purposes.</i>	The proposed variation to the building height development control enables this objective to be better met encouraging a mutli-use sporting facility.
<i>To provide a range of recreational settings and activities and compatible land uses.</i>	The proposal maintains compatible land uses with the surrounding area.
<i>To protect and enhance the natural environment for recreational purposes.</i>	The proposed variation to the building height development control enables this objective to be better met through a better response for the community and visitors to utilise site.

CLAUSE 4.3 HEIGHT OF BUILDINGS DEVELOPMENT STANDARD	
OBJECTIVES	ACHIEVEMENT OF OBJECTIVES
<i>To establish the maximum height for buildings</i>	The variation of the building height development control will ensure the development provides a varied and interesting

	built form which provides for an appropriate sized and functional waterslide structure.
<i>To ensure that the height of buildings complements the streetscape and character of the area in which the buildings are located,</i>	The proposed scale is appropriate for the site and the variation of the building height standard is warranted having significant positive visual, and usage impacts. The proposal would not have an adverse impact on the character and scale of the nearby low density residential area nor impact the existing heritage façade of the complex as it is located at the rear of the site.
<i>To minimise visual impact, disruption of views, loss of privacy and loss of solar access to existing development.</i>	The variation to the building height control would not have an adverse impact on sky exposure and daylight to the site or to key areas of the adjoining public domain. The proposed water slide design is unique to the site and will not impact the public entry heritage façade at the street frontage as it is located towards the rear of the site as such minimising its visual impact to the street; Furthermore, the additional height would not have any adverse impacts on existing (or likely future) neighboring residential properties.

5.5. Clause 4.6(5)(a) – Matters of Significance for State of Regional Planning

The proposed exceedance of the maximum height development standard for the site does not raise any matters of State or Regional Planning significance as:

- the proposed waterslide structure development is not of a size or nature to have more than a local impact;
- the proposed height exceedance to the waterslide structure is considered to be appropriate in size and scale and is localised to facilitate the intend use of the waterslide structure;
- the increase in the height development standard is appropriate in the context of the use of the recreational facility element and broader recreational/community precinct;
- The proposed water slide design is unique to the site and will not impact the public entry heritage façade at the street frontage as it is located towards the rear of the site;
- the exceedance in height development standard of the proposed waterslide structure will have a positive impact with respect to the use of the swimming recreational

complex;

- there are no significant amenity or environmental impacts; and
- the site is not a site designated to be of State significance.

5.6. Clause 4.6(5)(b) – Public Benefit in Maintaining the Development Standard

As demonstrated in the previous sections of this report, the variation to the development standard would establish the best design response for the usage of the site and in response to the usability of the waterslide.

Conversely, a strictly compliant development would result in a substantially inferior and unusable structure and subsequently outcome.

In light of the significant public benefits arising from allowing a variation to the development height standard, it cannot be reasonably assumed that there is any public benefit in maintaining the existing building height development standard with regard to the construction of the waterslide structure.

5.7. How Would Strict Compliance Hinder the Attainment of the Objectives Specified in Section 5(a)(i) and (ii) of the Act?

Sections 5(a)(i) and (ii) of the *Environmental Planning and Assessment Act 1979* (EP&A Act) are quoted below:

The objects of the Act are:

(a) to encourage:

- (i) The proper management, development and conservation of natural and artificial resources, including agricultural land, natural area, forest, mineral, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment.*
- (ii) The promotion and coordination of the orderly and economic use and development of land.*

The development is wholly consistent with the objectives specified in Section 5(a)(i) and (ii) of the EP&A Act, as:

- The site is located within an existing recreational precinct and within a zone that permits the establishment of an outdoor recreational facility and ancillary waterslide structure;

- The redevelopment of the site for recreational purposes and including the construction of the waterslide structure will create a new vibrant facility, maximise the efficient use of the land and will contribute to maintaining/managing and reducing demand to develop more environmentally sensitive lands;
- The scale and size of the new waterslide structure is commensurate with its intended use, location and context within the site;
- The development promotes the orderly and economic use and development of the land as it delivers a redeveloped outdoor recreational facility within an established recreational environment without significant or unreasonable environmental impact;
- The proposal leads to an improved public domain interface and urban design built form outcome for residents and visitors alike as the water slide is located towards the rear of the site and the heritage façade is not impacted;
- The proposed water slide does not alter nor impact the appearance of the heritage facade when viewed from the street;
- No unreasonable environmental impacts are introduced as a result of the development of the water slide;
- There is no public benefit in maintaining strict compliance with the standards;
- The proposed development of the water slide is in the public and community's interest.

Strict compliance with the building height development standard would hinder the attainment of the objective of the EP&A Act, and as a result the construction of the waterslide.

5.8. Is the Objection Well Founded?

For the reasons outlined in previous sections, it is considered that the objection is well founded in this instance and that granting an exception to the development standard can be supported in the circumstances of the case.

6. Conclusion

Clause 4.6 allows for flexibility in the application of development standards in appropriate circumstance and this Request has been shown to satisfy the provisions of Clause 4.6 of the Richmond Valley LEP 2012.

It has been demonstrated that compliance with the 8.5 metre height development standard is

unnecessary and unreasonable given the specific circumstances of the proposal being the construction of the waterslide. In addition, clear planning grounds have been provided that justifies contravening the development standard.

The proposal is consistent with the objectives of the development standard and the RE1 Public Recreation zone. Given the high standard of the proposal and the potential public benefits to be gained, the development is considered to be in the public interest.

Overall, and for the reasons set out in this report, the proposed development represents an appropriate outcome for the site and it is therefore justified and reasonable that the development standard be varied as proposed.

