



## Clause 4.6 – Exceptions to Development Standards Request to Vary Clause 4.3 – Height of Buildings

**Address:** Tweed Heads South Public School, 10 Heffron Street, Tweed Heads South

**Proposal:** Redevelopment and upgrade of the school buildings and associated works

**Date:** 3 February 2021

### 1.0 Introduction

This is a written request to seek an exception to a development standard pursuant to Clause 4.6 – Exceptions to Development Standards of Tweed Local Environmental Plan (TLEP) 2014. The development standard for which the variation is sought is clause 4.3 Height of Buildings under TLEP 2014.

### 2.0 Description of the planning instrument, development standard and proposed variation

#### 2.1 *What is the name of the environmental planning instrument that applies to the land?*

The Tweed Local Environmental Plan (TLEP) 2014.

#### 2.2 *What is the zoning of the land?*

The land is zoned R2 Low Density Residential.

#### 2.3 *What are the Objectives of the zone?*

The objectives of the R2 zone are:

- *To provide for the housing needs of the community within a low density residential development.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

#### 2.4 *What is the development standard being varied?*

The development standard being varied is the height of buildings development standard.

#### 2.5 *Is the development standard a performance based control? Give details.*

No, the height of buildings development standard is a numerical control.

#### 2.6 *Under what clause is the development standard listed in the environmental planning instrument?*

The development standard is listed under Clause 4.3 of TLEP 2014.

## 2.7 What are the objectives of the development standard?

The objectives of Clause 4.3 are:

- (a) to establish the maximum height for which a building can be designed,
- (b) to ensure that building height relates to the land's capability to provide and maintain an appropriate urban character and level of amenity,
- (c) to ensure that taller development is located in more structured urbanised areas that are serviced by urban support facilities,
- (d) to encourage greater population density in less car-dependant urban areas,
- (e) to enable a transition in building heights between urban areas comprised of different characteristics,
- (f) to limit the impact of the height of a building on the existing natural and built environment,
- (g) to prevent gross overshadowing impacts on the natural and built environment."

## 2.8 What is the numeric value of the development standard in the environmental planning instrument?

Clause 4.3 establishes a maximum height of buildings control for the site as illustrated in the extract of the Height of Buildings Map included in Figure 1 below.

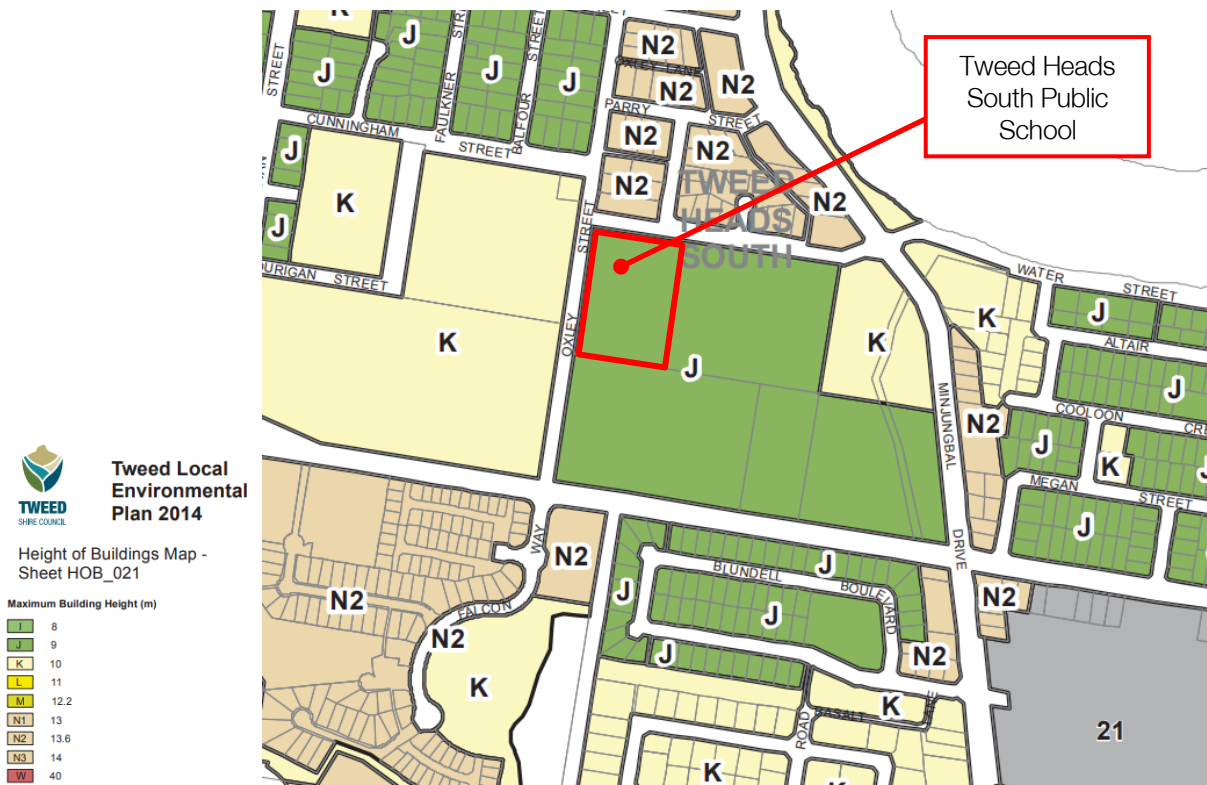
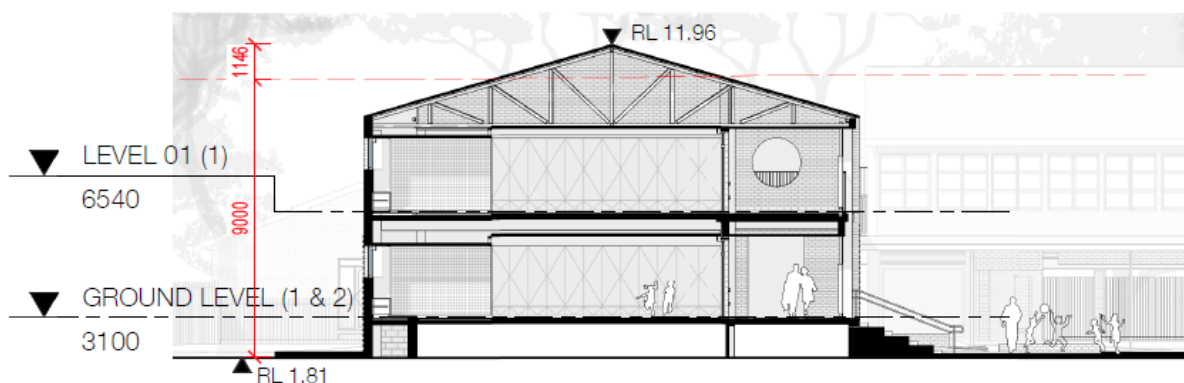


Figure 1: Extract of TLEP 2014 Height of Buildings Map

## 2.9 What is the proposed numeric value of the development standard in the development application?

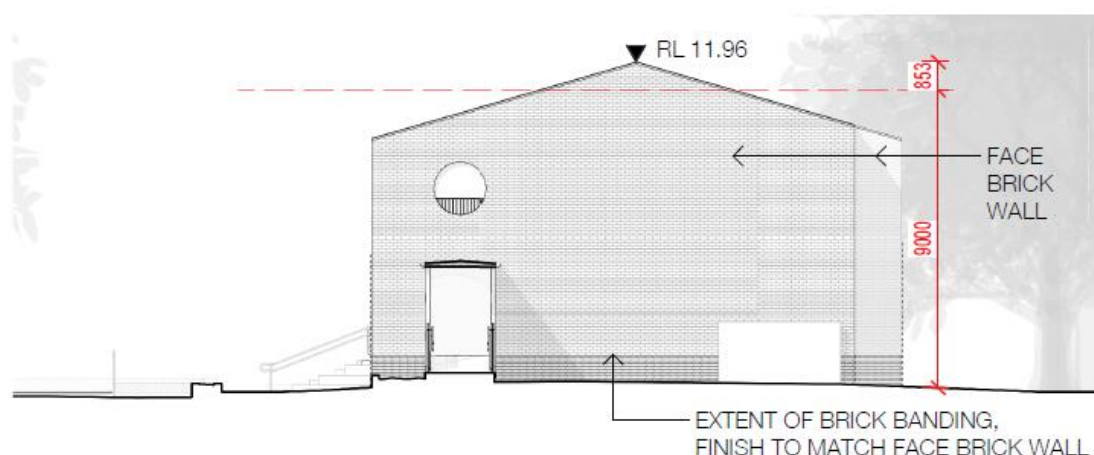
The proposed building (Building 1) has a height of 10.146m.

The extent of non-compliance with the height standard is illustrated in the extracts of the architectural sections and elevations prepared by SJB Architects and included in Figures 2 and 3.



4 BUILDING 1 SECTION  
1 : 200

Figure 2. Building 1 - Extract of Section Plan prepared by SJB Architects.



6 BUILDING 1 NORTH ELEVATION  
1 : 200

Figure 3. Building 1 - Extract of Southern Elevation prepared by SJB Architects.

## 2.10 What is the percentage variation (between the proposal and the environmental planning instrument)?

The proposed Building 1 exceeds the maximum height of buildings development standard of 9m by approximately 12.7% (1146mm) at the highest point and 10.3% (853mm) at the lowest point of the exceedance.

## 3.0 Assessment of the Proposed Variation

### 3.1 Overview

Clause 4.6 Exceptions to development standards establishes the framework for varying development standards applying under a local environmental plan.

Objectives to Clause 4.6 at 4.6(1) 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.”*

Clause 4.6(3)(a) and 4.6(3)(b) require that a consent authority must not grant consent to a development that contravenes a development standard unless a written request has been received from the applicant that seeks to justify the contravention of the standard by demonstrating that:

- “(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.”*

Clause 4.6(4)(a)(i) and (ii) require that development consent must not be granted to a 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”*

Clause 4.6(4)(b) requires that the concurrence of the Secretary be obtained, and Clause 4.6(5) requires the Secretary in deciding whether to grant concurrence 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.”*

This application has been prepared in accordance with the NSW Department of Planning, Infrastructure and Environment (DPI&E) guideline *Varying Development Standards: A Guide*, August 2001, and has incorporated as relevant principles identified in the following judgements:

- *Winten Property Group Limited v North Sydney Council [2001] NSWLEC 46;*
- *Wehbe v Pittwater Council [2007] NSWLEC 827;*
- *Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 1009 (‘Four2Five No 1’);*
- *Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 (‘Four2Five No 2’);*
- *Four2Five Pty Ltd v Ashfield Council [2015] NSWCA 248 (‘Four2Five No 3’);*
- *Micaul Holdings Pty Limited v Randwick City Council [2015] NSWLEC 1386;*
- *Randwick City Council v Micaul Holdings Pty Ltd [2016] NSWLEC 7;*
- *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118;*
- *RebelMH Neutral Bay v North Sydney Council [2019] NSWCA 130;*
- *Baron Corporation v The Council of the City of Sydney [2019] NSWLEC 61;* and
- *Al Maha Pty Ltd v Huajun Investments Pty Ltd [2018] NSWCA 245.*

### **3.2 *Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case?***

#### **3.2.1 Is a development which complies with the standard unreasonable or unnecessary in the circumstances of the case?**

A development that strictly complies with the height standard is unreasonable in the circumstances as the proposed building height responds to the specific circumstances of the site, which in this case relate to the flooding affectation. This requires elevated floor levels, including a 500mm freeboard above the 1:100 year flood event (refer to Section 3.3.1).

#### **3.2.2 Would the underlying objective or purpose be defeated or thwarted if compliance was required?**

The underlying objective or purpose of the development standard would not be defeated or thwarted if compliance was required.

#### **3.2.3 Has the development standard been virtually abandoned or destroyed by the Council's own actions in departing from the standard?**

The development standard has not been abandoned.

#### **3.2.4 Is the zoning of the land unreasonable or inappropriate?**

The zoning of the land is appropriate for the site.

### **3.3 *Are there sufficient environmental planning grounds to justify contravening the development standard?***

#### **3.3.1 Circumstances of the Site**

##### Flood Affectation

The variation to the height control is a direct outcome of the site being located within the Tweed Valley Floodplain. This requires any new building to provide a minimum floor level of 2.6m AHD + 500mm freeboard so that it is above the 1 in 100 flood events. This results in the ground floor of the proposed Building 1 being elevated up to 1.29m above the existing ground level on site.

##### Roof form and Existing Character

The roof of the new two (2) storey building has shallow pitch of 16 degrees which responds to the other school buildings on site and roof pitch of surrounding residential dwellings to the north and south. To achieve compliance with the height control, the roof pitch would need to be lowered to less than 5 degrees and replaced with a single skillion roof. A skillion roof form is not consistent with the predominant school buildings that are being retained. A skillion roof is also a less sustainable option as natural ventilation and cooling of the building would be reduced due to the limited roof space between the ceiling and roof.

The proposed building (Building 1) is located behind existing buildings to the north and east and will be screened by existing mature vegetation including large eucalyptus gum trees along the western elevation. The minor non-compliance will not be perceptible from the from the public domain or adjoining properties, except for filtered views to the west from Oxley Lane through the existing vegetation.

While the height control has been considered, other factors relating to the site, have informed the most appropriate built form outcome to the site. In this regard, the approach to the design, height and form of the proposed building has been driven by the flooding affectation and the scale and form of the existing buildings and their setting within the school.

**3.4 Is the proposed development in the public interest because it is consistent with the objectives of the particular standard and the objectives for development in the zone?**

**3.4.1 Objectives of the Height of Building standard**

The proposal remains consistent with the objectives of the height of buildings standard outlined in Clause 4.3 despite the non-compliance, as demonstrated below:

*“(a) to establish the maximum height for which a building can be designed,*

The building responds to the maximum height control, as well as the site constraints relating to flooding, which requires an elevated floor level to be provided and increased building height as a result.

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

The proposed building is of consistent bulk, scale and form to that of the existing school buildings that will be retained as part of the redevelopment of the school. The additional height above the 9m height control is attributed to the pitched roof form and is appropriate in that it is in keeping with the character of the school and surrounding development within the site.

The additional height above the 9m height control will not impact upon the amenity of surrounding area in relation solar access, overshadowing, visual and acoustic privacy.

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

The height of the proposed building is of consistent bulk, scale and form to the existing two (2) storey school buildings within the site, despite the additional height. Further, the two (2) storey scale of the proposed building (Building 1) is characteristic of two and three storey residential development.

*(d) to encourage greater population density in less car-dependant urban areas,*

The proposed redevelopment of the school seeks to increase student capacity to accommodate for future population growth. Increased bicycle parking is proposed to encourage students and parents to cycle to and from the school.

*(e) to enable a transition in building heights between urban areas comprised of different characteristics,*

The school site is restricted to a maximum building height of 9m. To the immediate north, on the opposite side of Heffron Street, the maximum building height is 13.5m and comprises 3 storey residential flat buildings, while to the west, the land occupied by recreation facilities are restricted to a maximum building height of 10m. To the south, the maximum building height varies from 9m up to 13.5m and comprises a variety of dwelling typologies. The proposed building is located along the western boundary and has a maximum height of 10.146m and is of bulk and scale that will provide an appropriate transition to the west and south where taller buildings up to 13.5m in height are permitted.

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

The proposed building (Building 1) is located behind existing buildings to the north and east and will be screened by existing mature vegetation including large eucalyptus gum trees along the western elevation. The minor non-compliance will not be perceptible from the public domain or adjoining properties, except for filtered views to the west from Oxley Lane through the existing vegetation.

*(g) to prevent gross overshadowing impacts on the natural and built environment."*

The proposal does not have unreasonable amenity impacts on the natural and built environment with regard to overshadowing. The shadow cast by the building will be predominantly be contained within the site, except for the morning between 9-10am where a small portion of the shadow cast falls onto Oxley Lane.

#### **3.4.2 Objectives of the zone**

The proposal remains consistent with the objectives of the R2 Low Density Residential zone as outlined below:

*To provide for the housing needs of the community within a low density residential environment.*

The proposal does not include a residential use.

*To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

The proposed redevelopment of the school will enhance the education services provided to the local community and provide additional opportunities for employment during construction and thereafter as part of the proposed increased student capacity.

#### **3.5 Whether contravention of the development stand raises any matter of significance for the State or regional Environmental Planning?**

The contravention of the development standard in this case does not raise an issue of State or regional planning significance as it relates to local and contextual conditions.

#### **3.6 How would strict compliance hinder the attainment of the objects specified in Section 1.3 (a), (b) and (c) of the Act?**

The objects set down in Section 1.3 (a), (b), and (c) 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,*

Strict compliance with the development standard would result in a roof form that does not appropriately respond to the existing school buildings and a floor level that doesn't meet the minimum floor level requirements for flood affected sites.

Further, strict compliance with the development would not result in discernible benefits to the amenity of adjoining sites. Further, strict compliance with the standard would hinder the promotion of the social and economic welfare of the community with the provision of a building that did not meet flood design requirements.

The development as proposed is consistent with the provisions of orderly and economic development and would not hinder the objects of the Act in Section 1.3(a), (b), and (c).

### **3.7 *Is there public benefit in maintaining the development standard?***

Generally speaking, there is public benefit in maintaining standards. However, there is public benefit in maintaining a degree of flexibility in specific circumstances. Further, there is also public benefit in designing a building that meets flood design requirements and has a roof form that is consistent with the existing built form within the site.

For reasons outlined in Section 3.2 and 3.3 in the specific circumstances of this case, there is no public benefit in maintaining the development standard.

### **3.8 *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 can be supported in the circumstances of the case.

The proposed development will satisfy the R2 Low Density Residential zone objectives and the objectives of Clause 4.3 Height of Building standard and does not hinder the attainment of the objects specified with Section 1.3(a), (b), and (c) of the Act.

## **4.0 Conclusion**

The proposed variation is based on the reasons contained within this formal request for an exception to the height of building standard.

Development standards are a means of implementing planning purposes for a development or area. The proposed building results in a scale and form that is commensurate with the built form and scale of the remaining school buildings on site and the surrounding low scale residential development.

The development will not result in unacceptable impacts with regard to the amenity of adjoining properties. A development strictly complying with the numerical standard would not significantly improve the amenity of surrounding development. In the context of the locality it would be unreasonable for strict compliance to be enforced.

The non-compliance is not considered to result in precedents for future development within the LGA given the particular site circumstances.

As demonstrated in this submission, it would be unreasonable for strict compliance with the height control to be enforced. It is concluded that the variation to the height of building development standard is well founded as compliance with the standard is both unnecessary and unreasonable in the circumstances of this case and sufficient environmental planning grounds have been demonstrated.