
CLAUSE 4.6 VARIATION REQUEST

CLAUSE 4.6 REQUEST FOR VARIATION TO BUILDING HEIGHT DEVELOPMENT
STANDARD

39 BEAMES AVENUE, ROOTY HILL





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TABLE OF CONTENTS

	PAGE
1 INTRODUCTION	1
2 REVIEW OF CASE LAW	2
2.1 WEHBE V PITTWATER COUNCIL [2007] NSW LEC 827	2
2.2 RANDWICK CITY COUNCIL V MICAUL HOLDINGS PTY LTD [2016] NSWLEC 7	3
3 SITE & PLANNING CONTEXT	3
4 CLAUSE 4.6 VARIATION REQUEST & ASSESSMENT	6
4.1 CLAUSE 4.6(3)(A)	7
4.2 CLAUSE 4.6(3)(B)	14
4.3 CLAUSE 4.6(4)(A)(I)	14
4.4 CLAUSE 4.6(4)(A)(II)	14
4.5 CLAUSE 4.6(4)(B)	15
4.6 CLAUSE 4.6(5)	16
4.7 CLAUSE 4.6(6)	16
4.8 CLAUSE 4.6(7)	16
4.9 CLAUSE 4.6(8)	16
5 CONCLUSION	16

FIGURE	PAGE
FIGURE 1: EXTRACT OF BLACKTOWN LOCAL ENVIRONMENTAL PLAN 2015 HEIGHT LAYER	1
FIGURE 2: EXTRACT OF PROPOSED DEVELOPMENT LONG SECTION	2
FIGURE 3: AERIAL VIEW OF THE SUBJECT SITE	4
FIGURE 4: VIEW OF THE SUBJECT PROPERTY FROM BEAMES AVENUE	4
FIGURE 5: PERSPECTIVE/PHOTOMONTAGE OF THE AMENDED DEVELOPMENT TO THE REAR	9
FIGURE 6: REAR ELEVATION AND PRIVACY TREATMENT TO FIRST FLOOR BALCONY	10
FIGURE 7: WESTERN ELEVATION VIEW OF THE DEVELOPMENT	10
FIGURE 8: PERSPECTIVE/PHOTOMONTAGE OF THE AMENDED DEVELOPMENT VIEWED FROM BEAMES AVENUE	12
FIGURE 9: PERSPECTIVE/PHOTOMONTAGE OF THE AMENDED DEVELOPMENT VIEWED FROM REAR	12



1 INTRODUCTION

This Clause 4.6 Variation Request has been prepared to accompany the Amended Development Application submission to Blacktown City Council seeking consent for demolition of existing structures, tree removal, construction of a 3-storey primary school educational establishment over a car parking level with associated excavation and earthworks, stormwater, landscaping works, pedestrian crossing and school zone works over 3 construction stages at 39 Beames Avenue, Rooty Hill.

The Clause 4.6 Variation Request relates to the height of buildings principal development standard prescribed under Clause 4.3(2) of the *Blacktown Local Environmental Plan 2015*, which states that:

"The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Building Map."

The height of building map indicates a maximum building height of 9 metres prescribed for the subject site as illustrated in the reproduced height of buildings map below:

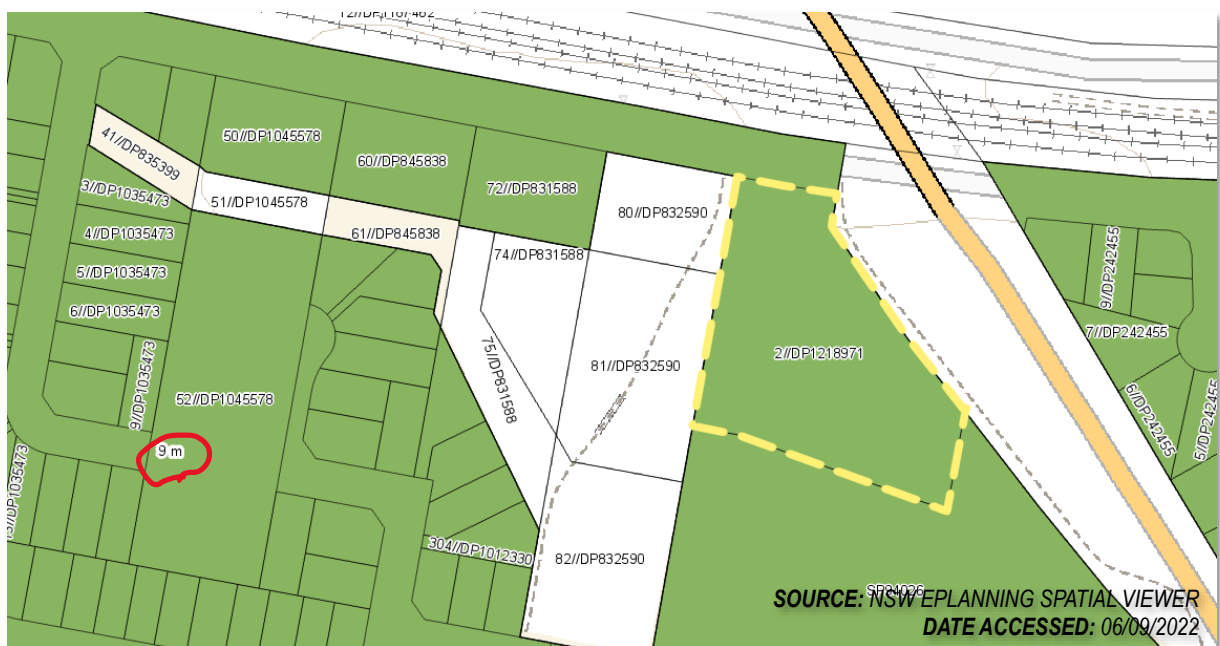


FIGURE 1: EXTRACT OF BLACKTOWN LOCAL ENVIRONMENTAL PLAN 2015 HEIGHT LAYER

The amended development proposes a varied building height along the site to a maximum height of RL 57.75 metres at the upper level that achieves a building height of 8.32 metres on the northern end and 10.79 metres on the southern end of the 3 storey part of the building. This is the overall maximum building height for the 3 storey component measured at the southern 15 metres rear setback line. However, it is noted that the rear of the development now appears as 2 storeys and this portion of the development has a maximum building height of 7.5 metres, well below the 9 metre maximum building height development standard under the LEP.

The proposed building height is an exceedance by a maximum of 1.79 metres or equivalent to 19.9% of the development standard as illustrated and shaded orange in the figures below:

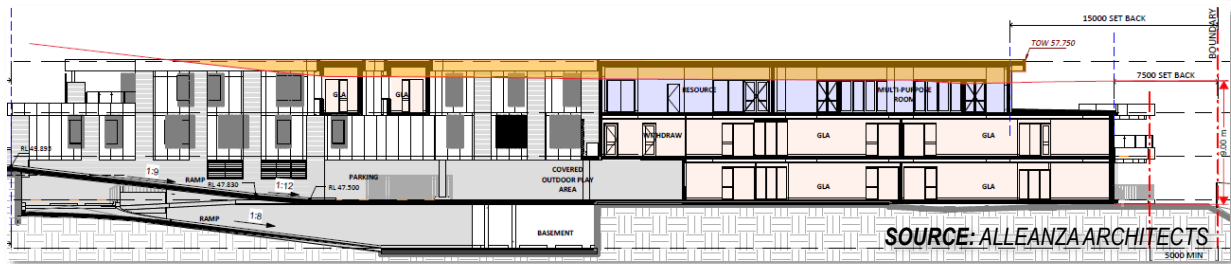


FIGURE 2: EXTRACT OF PROPOSED DEVELOPMENT LONG SECTION

Pursuant to Clause 4.6 of the LEP, justification for the contravention of the height of buildings (HOB) development standard is provided in within this Clause 4.6 Variation Request. This request has been prepared having regard to the matters for consideration prescribed in Clause 4.6 of the LEP, noting that Clause 4.3 of the LEP not excluded from consideration under Clause 4.6(8) of the LEP.

The variation request has also been prepared having regard to the findings and decisions in various case law including:

- *Wehbe v Pittwater Council [2007] NSW LEC 827;*
- *Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 1009;*
- *Randwick City Council V Micaul Holdings Pty Ltd [2016] NSWLEC 7;*
- *Initial Action v Woollahra Municipal Council [2018] NSWLEC 118;*
- *Brigham v Canterbury-Bankstown Council [2018] NSWLEC 1406;*
- *Turland v Wingecarribee Shire Council [2018] NSWLEC 1511;*
- *Rebel MH Neutral Bay Pty Ltd v North Sydney Council [2019] NSWCA 130*

This Clause 4.6 Variation Request meets the objectives of Clause 4.6(1):

- (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.*

and demonstrates for the purpose of Clause 4.6(3):

- (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.*

2 REVIEW OF CASE LAW

The main principles adopted by the Land and Environment Court of NSW (L&EC) in considering Clause 4.6 variation requests to development standards have been established in the proceedings of *Wehbe v Pittwater Council [2007] NSW LEC 827* and *Randwick City Council v Micaul Holdings Pty Ltd [2016] NSWLEC 7*.

The relevant principles of those proceedings are as follows:

2.1 WEHBE V PITTWATER COUNCIL [2007] NSW LEC 827

In these proceedings, Justice Preston set out the following five ways in which compliance with a development standard could be established as being unreasonable or unnecessary:



1. *Are the objectives of the development standard are achieved notwithstanding non-compliance with the standard;*
2. *Is the underlying objective or purpose not relevant to the development with the consequence that compliance is unnecessary;*
3. *Would the underlying objective or purpose be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable;*
4. *Has the development standard been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard; or*
5. *Is "the zoning of particular land" "unreasonable or inappropriate" so that "a development standard appropriate for that zoning was also unreasonable or unnecessary as it applied to that land".*

2.2 RANDWICK CITY COUNCIL V MICAUL HOLDINGS PTY LTD [2016] NSWLEC 7

In these proceedings, Preston CJ approved the following four stage test to ensure that the Court was satisfied that the variation request should be granted:

1. *That compliance with the development standard must be unreasonable or unnecessary in the circumstances of the case;*
2. *That there are sufficient environmental planning grounds to justify contravening the development standard;*
3. *That the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3); and*
4. *That 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.*

3 SITE & PLANNING CONTEXT

The subject site comprises 1 land parcel legally described as Lot 2 in DP DP1218971 and is more commonly known as 39 Beames Avenue, Rooty Hill.

The subject site has an overall site area of 7,534m² by survey and comprises a irregular allotment with boundaries as follows:

- A northern frontage to Beames Avenue measuring 20.255 metres;
- An eastern side boundary facing the Francis Road overpass measuring 102.065 metres;
- A southern rear boundary measuring 101.495 metres;
- A western side boundary measuring 95.84 metres.

An existing single storey dwelling house, covered alfresco, brick garage, in-ground swimming pool and detached shed structures currently occupy the subject site. An aerial image and photographs illustrating the site and existing structures are provided below:



FIGURE 3: AERIAL VIEW OF THE SUBJECT SITE



FIGURE 4: VIEW OF THE SUBJECT PROPERTY FROM BEAMES AVENUE



The subject Development Application seeks consent for demolition of existing structures, tree removal, construction of a 3-storey primary school educational establishment over a car parking level with associated excavation and earthworks, stormwater, landscaping works, pedestrian crossing and school zone works over 3 construction stages at the subject site known as 39 Beames Avenue, Rooty Hill.

The amended DA specifically proposes the following works over 3 construction stages:

DEVELOPMENT & CONSTRUCTION	
STAGE 1	<ul style="list-style-type: none"> Demolition of the existing detached shed, swimming pool and surrounding structures; Removal of 12 trees; Alterations to the existing dwelling house to convert into an administration and staff room building; Installation of 8 temporary classroom structures and 2 sanitary facility structures; Realignment of the existing driveway further towards the eastern boundary of the site; Construction of a car parking area comprising 14 car parking spaces, 1 loading zone and bicycle parking facilities; Ancillary landscaping and stormwater management works; Use of the site as a primary school comprising a total of 8 classrooms allowing for a student population of 200 students and 10 FTE staff; Construction of a raised pedestrian crossing within the Beames Avenue road reserve; Construction of a footpath within the northern verge of Beames Avenue; and Establishment of a School Zone with associated sign posting and road pavement line marking in Beames Avenue between Brussels Crescent and Sol Place as shown on the plans.
STAGE 2	<ul style="list-style-type: none"> Demolition of the existing administration building (converted dwelling house); Construction of part of a 3 storey school building over a basement and lower ground floor car parking level comprising a total of 38 car parking spaces (5 accessible) and 1 loading zone; Construction of administration and staff rooms, sanitary facilities and 3 classrooms on the ground floor level; Construction of 6 classrooms and sanitary facilities on level 1; Expansion of the primary school to comprise a total of 15 classrooms allowing for a student population of 450 students and 20 FTE staff; and Demolition of the Stage 1 car parking area at the completion of Stage 2.
STAGE 3	<ul style="list-style-type: none"> Decommissioning of the temporary demountable classroom buildings and 2 sanitary facility structures and removal from the site; Construction of the remaining part of the 3 storey school building over car parking levels comprising a final total of 62 car parking spaces (5 accessible), 1 loading zone, drop off and pickup area and sanitary facilities on the lower ground floor level; Construction of 6 additional classrooms at the rear of the lower ground floor level; Construction of an additional 6 classrooms on the ground floor level; Construction of a library and multi-purpose hall on level 2; and Expansion of the primary school to comprise a final total of 21 classrooms allowing for a student population of 630 students and 30 FTE staff.

Pursuant to the definitions contained in the LEP dictionary, the development is defined as a 'school' which is a type of 'educational establishment':

“ *school means a government school or non-government school within the meaning of the Education Act 1990.* ”



- “ **Educational establishment** means a building or place used for education (including teaching), being—
- (a) a school, or
 - (b) a tertiary institution, including a university or a TAFE establishment, that provides formal education and is constituted by or under an Act.
- ”

A detailed description of the proposed development has been provided within the Statement of Environmental Effects accompanying the DA and should be referred to in conjunction with this request.

4 CLAUSE 4.6 VARIATION REQUEST & ASSESSMENT

1. **What is the name of the environmental planning instrument that applies to the land?**
Blacktown Local Environmental Plan 2015
2. **What is the zoning of the land?**
The site is zoned R2 Low Density Residential.
3. **What are the objectives of the zone?**
 - To provide for the housing needs of the community within a low-density residential environment.
 - To enable other land uses that provide facilities or services to meet the day to day needs of residents.
 - To enable certain activities to be carried out within the zone that do not adversely affect the amenity of the neighbourhood.
4. **What is the development standard being varied?**
Height of Building
5. **What clause is the development standard listed in the environmental planning instrument?**
Clause 4.3
6. **What are the objectives of the development standard?**
 - (a) to minimise the visual impact, loss of privacy and loss of solar access to surrounding development and the adjoining public domain from buildings,
 - (b) to ensure that buildings are compatible with the height, bulk and scale of the surrounding residential localities and commercial centres within the City of Blacktown,
 - (c) to define focal points for denser development in locations that are well serviced by public transport, retail and commercial activities,
 - (d) to ensure that sufficient space is available for development for retail, commercial and residential uses,
 - (e) to establish an appropriate interface between centres, adjoining lower density residential zones and public spaces
7. **What is the numeric value of the development standard?**
9 metres
8. **What is proposed numeric value of the development standard?**
10.79 metres (maximum)
9. **What is the percentage variation proposed?**
19.9%



4.1 CLAUSE 4.6(3)(A)

DEMONSTRATE THAT COMPLIANCE WITH THE DEVELOPMENT STANDARD IS UNREASONABLE OR UNNECESSARY IN THE CIRCUMSTANCES OF THE CASE.

The following assessment outlines that compliance with the development standard would be unreasonable and unnecessary in the circumstances of the case, particularly referencing the test established in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 (the Initial Action case) which confirmed the approach as held in *Randwick City Council v Micaul Holdings Pty Ltd* [2016] NSWLEC7 (the Micaul case) as follows:

In the Initial Action case, Preston CJ concluded:

- 13 *Clause 4.6(4) establishes preconditions that must be satisfied before a consent authority can exercise the power to grant development consent for development that contravenes a development standard.*
- 14 *The first precondition, in cl 4.6(4)(a), is that the consent authority, or the Court on appeal exercising the functions of the consent authority, must form two positive opinions of satisfaction under cl 4.6(4)(a)(i) and (ii). Each opinion of satisfaction of the consent authority, or the Court on appeal, as to the matters in cl 4.6(4)(a) is a jurisdictional fact of a special kind: see Woolworths Ltd v Pallas Newco Pty Ltd (2004) 61 NSWLR 707; [2004] NSWCA 442 at [25]. The formation of the opinions of satisfaction as to the matters in cl 4.6(4)(a) enlivens the power of the consent authority to grant development consent for development that contravenes the development standard: see Corporation of the City of Enfield v Development Assessment Commission (2000) 199 CLR 135; [2000] HCA 5 at [28]; Winten Property Group Limited v North Sydney Council (2001) 130 LGERA 79; [2001] NSWLEC 46 at [19], [29], [44]-[45]; and Wehbe v Pittwater Council (2007) 156 LGERA 446; [2007] NSWLEC 827 at [36].*
- 15 *The first opinion of satisfaction, in cl 4.6(4)(a)(i), is that the applicant's written request seeking to justify the contravention of the development standard has adequately addressed the matters required to be demonstrated by cl 4.6(3). These matters are twofold: first, that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case (cl 4.6(3)(a)) and, secondly, that there are sufficient environmental planning grounds to justify contravening the development standard (cl 4.6(3)(b)). The written request needs to demonstrate both of these matters.*
- 25 *The consent authority, or the Court on appeal, must form the positive opinion of satisfaction that the applicant's written request has adequately addressed both of the matters required to be demonstrated by cl 4.6(3)(a) and (b). As I observed in Randwick City Council v Micaul Holdings Pty Ltd at [39], the consent authority, or the Court on appeal, does not have to directly form the opinion of satisfaction regarding the matters in cl 4.6(3)(a) and (b), but only indirectly form the opinion of satisfaction that the applicant's written request has adequately addressed the matters required to be demonstrated by cl 4.6(3)(a) and (b). The applicant bears the onus to demonstrate that the matters in cl 4.6(3)(a) and (b) have been adequately addressed in the applicant's written request in order to enable the consent authority, or the Court on appeal, to form the requisite opinion of satisfaction: see Wehbe v Pittwater Council at [38].*
- 26 *The second opinion of satisfaction, in cl 4.6(4)(a)(ii), is that the proposed development will be in the public interest because it is consistent with the objectives of the particular development standard that is contravened and the objectives for development for the zone in which the development is proposed to be carried out. The second opinion of satisfaction under cl 4.6(4)(a)(ii) differs from the first opinion of satisfaction under cl 4.6(4)(a)(i) in that the consent authority, or the Court on appeal, must be directly satisfied about the matter in cl 4.6(4)(a)(ii), not indirectly satisfied that the applicant's written request has adequately addressed the matter in cl 4.6(4)(a)(ii).*



27 The matter in cl 4.6(4)(a)(ii), with which the consent authority or the Court on appeal must be satisfied, is not merely that the proposed development will be in the public interest but that it will be in the public interest because it is consistent with the objectives of the development standard and the objectives for development of the zone in which the development is proposed to be carried out. It is the proposed development's consistency with the objectives of the development standard and the objectives of the zone that make the proposed development in the public interest. If the proposed development is inconsistent with either the objectives of the development standard or the objectives of the zone or both, the consent authority, or the Court on appeal, cannot be satisfied that the development will be in the public interest for the purposes of cl 4.6(4)(a)(ii).

This Clause 4.6 Variation Request and the assessment that follows establishes that the objectives of the development standard are achieved notwithstanding non-compliance with the numerical component of the development standard as set out in the 5-part test established in *Wehbe v Pittwater Council* [2007] NSW LEC 827 (the Wehbe case).

The local surrounding area is characterised by a drainage canal and residential development to the south, a road and overpass to the east, public recreation park to the west and railway corridor to the north. The LEP permits a maximum HOB of 9 metres for the subject site and adjoining land to the south as well as the Beames Avenue roadway to the north. Land adjoining the site to the east and west are not subject to a height limit.

Strict compliance with the numerical development standard is unnecessary and unreasonable in this case as the objectives of the development standard are achieved, notwithstanding non-compliance with the numerical component of the development standard, in the following ways:

Objective (a): to minimise the visual impact, loss of privacy and loss of solar access to surrounding development and the adjoining public domain from buildings

The proposed development comprises a centralised taller built form above a lower ground floor level car park on the site in order to minimise visual and acoustic privacy impacts and overshadowing impacts to surrounding and adjoining residential developments, particularly to the south of the site. Alternate options were considered including sprawled buildings, however ultimately the development has proceeded as proposed based on excavation limitations, site topography and environmental impacts sprawled buildings would have on the subject site and adjoining properties.

As detailed earlier, the site is adjoined by a drainage canal and residential development positioned 20 metres to the south; a road and overpass to the east that has a height of approximately 12 metres above the subject site levels; public recreation park to the west containing trees that are up to 20 metres in height; and a railway corridor to the north. The site itself contains significant and dense vegetation to the rear south-eastern corner with heights up to 20 metres. This local context negates the need for consistency with a particular streetscape or urban character given that the land is adjoined by taller natural and built forms that provide a vertical context. However it is noted that existing residential development in the local context comprises predominately single and 2 storey buildings of various typologies.

Notably, the land to the east containing the road and overpass and land to the west containing the public park are not operational or developable land and are therefore not subject to a height limit under the LEP. The residential development to the south is separated from the site by a 20 metre setback from the sites southern boundary and comprises a drainage channel and canal as well as building setbacks providing physical separation from the development to that site.



Furthermore, the proposed development is stepped to the rear of the site to ensure that it responds to the most sensitive land use being the residential development to the south and achieves a 2 storey built form with a maximum height of 7.5 metres for a depth of 15 metres into the site, which is well below the maximum HOB.

The height breach to the southern side of the development having the direct interface with residential development is related to the upper level containing the multi-purpose room to the south and classrooms to the north. Whilst still marginally exceeding the height limit to the rear, the southern portion of the built form closest to the southern residential townhouse complex is well below the 9 metre HOB limit and proposes no breach as detailed above.

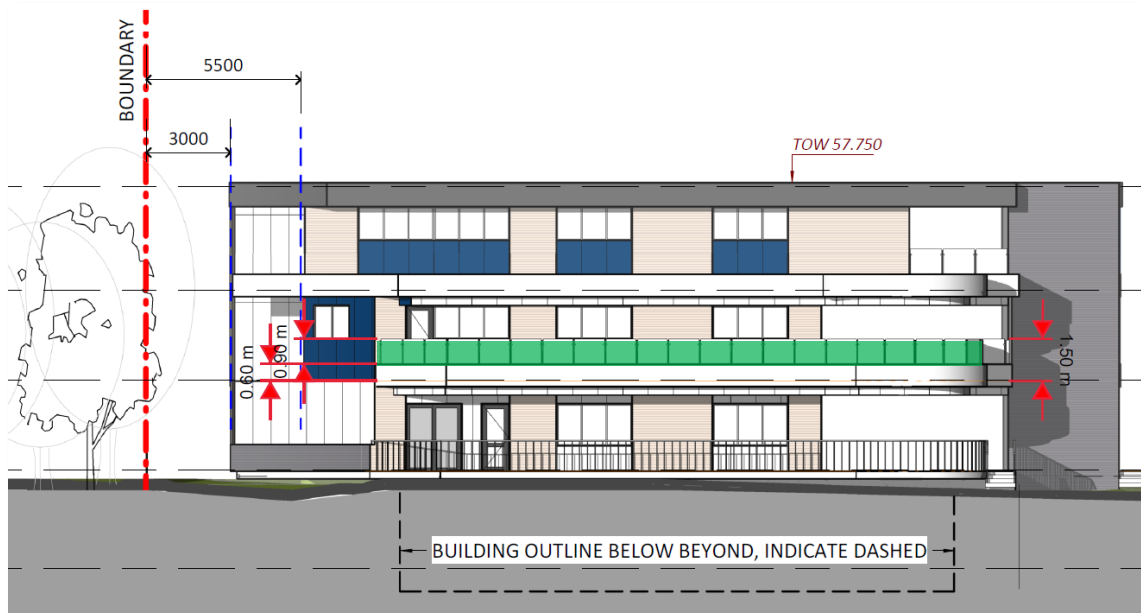
Given the above and the siting of the built form, the development will not create any adverse amenity impacts for adjoining properties by way of visual impact, loss of privacy or loss of solar access. This is because the actual breached built form is positioned at least 30 metres away from the townhouse complex to the south. The assessment provided within the accompanying Statement of Environmental Effects and additional information submission detail the potential for any visual and acoustic privacy impacts along with mitigation measures that would ensure that the proposal is acceptable and would have acceptable impacts on adjoining properties.

The amended development now ensures that the 2 storey built form to the rear is in keeping with the 2 storey character of the 2 storey townhouse development to the south. A copy of the rear perspective/photomontage of the amended development has been reproduced below to illustrate the clear 2 storey appearance of the building to the southern end:



FIGURE 5: PERSPECTIVE/PHOTOMONTAGE OF THE AMENDED DEVELOPMENT TO THE REAR

The 2nd and 3rd storeys of the development have maintained windows facing the south of the site. However, the amended plans now include privacy screen treatment to the second floor level comprising a 600mm solid balustrade with a 900mm privacy screen above (shaded green below) for the south facing balcony that provides access to the southernmost classrooms on that level as seen below:

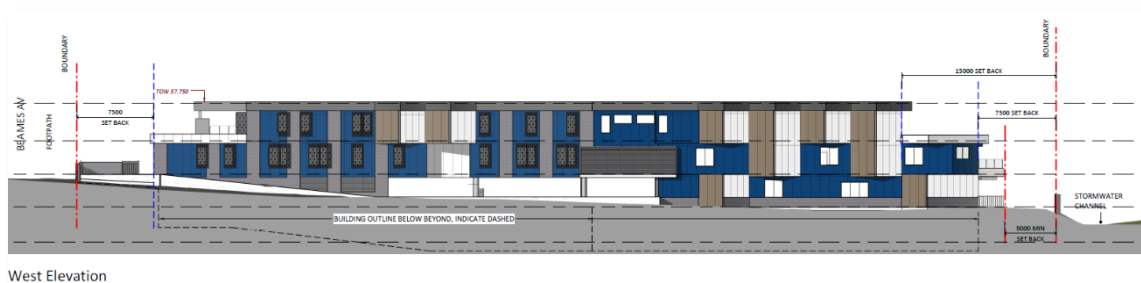


South Elevation

FIGURE 6: REAR ELEVATION AND PRIVACY TREATMENT TO FIRST FLOOR BALCONY

The proposed privacy treatment therefore provides an overall 1.5 metre privacy screening above the finished floor level to the south facing edge towards the townhouse complex to the south which will prevent overlooking directly onto the southern townhouse complex.

The third floor south facing balcony has been deleted and made to be a non-trafficable roof with the third floor further setback a minimum of 15 metres from the southern boundary. South facing windows for the third floor are all highlight windows with minimum sill heights of 1.8 metres that will prevent any overlooking from within the multi-purpose room to the townhouse complex to the south. The amended increased southern setbacks now provide a minimum separation distance of 22.5 metres on ground and first floor and 30 metres on the second floor from the townhouse complex to the south as seen below:



West Elevation

FIGURE 7: WESTERN ELEVATION VIEW OF THE DEVELOPMENT

Therefore, the application proposes fixed privacy treatment that will prevent negative privacy and noise impacts associated with overlooking into the neighbouring townhouses to the south.

Amended shadow diagrams are enclosed which demonstrate that the proposed development would have no impact on the closest dwelling to the south with the proposed development causing no overshadowing onto the dwelling's northern façade.



As a result of the amendments made to the application, it is considered that the amenity and safety concerns have been resolved and it is therefore considered that the proposal will have a positive impact on the aesthetic quality and character of the surrounding neighbourhood.

The accompanying amended Architectural Plans illustrate that there is no significant or detrimental visual impact, loss of privacy and loss of solar access to surrounding development and the adjoining public domain from the development in accordance with objective (a).

Given the above, the development achieves objective (a) of the development standard.

Objective (b): to ensure that buildings are compatible with the height, bulk and scale of the surrounding residential localities and commercial centres within the City of Blacktown

The amended proposal is compatible with the bulk and scale of the residential locality to the south of the site and within the wider City of Blacktown. Land to the south of the site is zoned R2 Low Density Residential with a height limit of 9 metres which generally allows for 3 storey-built forms, albeit that existing buildings are a maximum of 2 storeys in height. It is further noted that buildings for existing educational establishments in residential areas are restricted to a 22 metre height limit for development carried out as Complying Development under the Transport & Infrastructure SEPP which ultimately forms part of the local context and desired future character.

The proposed development includes a maximum 3 storey built form over a lower ground floor car parking level and will appear as a 2 storey building from the street to the north and residential properties to the south. The 3 storey built form is only visible at the centre of the site and when viewing the development from the east (Francis Road overpass) and west (recreational land). From the south, the development will appear as a 2 storey built form given that the third floor is setback at least 15 metres from the rear southern boundary of the site and 7.5 metres further than the first floor level. Given the local natural and built environment context detailed earlier, the development provides a height, bulk and scale that is compatible with the eastern and western neighbouring land.

Whilst lower compliant buildings could be proposed, there would be multiple buildings that would sprawl over more of the site and provide longer and less condensed buildings that would be inconsistent with objective (b) and be incompatible with the bulk and scale of the surrounding residential locality. This is further against the objectives for development to be designed in a sensitive manner and reduce any potential environmental impacts particularly to the significant vegetation to the south of the site.

The amended development now ensures that the 2 storey built form to the rear is in keeping with the 2 storey character of the 2 storey townhouse development to the south. Overall, the development has been amended to be more sympathetic to the overall low density residential character of development in the locality and surrounding the site by appearing as a 2 storey development to the street and rear and providing increased setbacks, articulation and fixed privacy treatments that integrate into the overall design and aesthetic quality of the development. A copy of the perspectives/photomontages of the amended development are reproduced below:



FIGURE 8: PERSPECTIVE/PHOTOMONTAGE OF THE AMENDED DEVELOPMENT VIEWED FROM BEAMES AVENUE



FIGURE 9: PERSPECTIVE/PHOTOMONTAGE OF THE AMENDED DEVELOPMENT VIEWED FROM REAR

Given the above, the development achieves objective (b) of the development standard.

Objective (c): to define focal points for denser development in locations that are well serviced by public transport, retail, and commercial activities

The application does not propose a denser development than would otherwise be expected for a school. As detailed above, lower compliant buildings could be proposed with the same density achieved across the site, albeit that such built forms would pose greater impact on the environment and the locality and would be inconsistent with the objectives of the development standard and zone.

The proposed is well serviced by public transport, retail and commercial activities. The proposed school is located where access to collector roads and public transport routes is readily available. The proposed site provides sufficient buffering from adjoining developments to minimise possible impacts, such as noise and invasion of privacy.

The subject site has easy and direct access to Francis Road and Beames Avenue. The subject site is in close proximity to Rooty Hill train station which is situated on Beames Avenue and is approximately 800 metres away from the subject site in an easterly direction. The subject site is also in close proximity with various bus stops in the Rooty Hill area including:



- Bus stop ID 2766120 is situated on Francis Road approximately 450 metres walking distance to the south-east from the subject site and includes bus service 723 with a weekday service frequency of 30 minutes between 5:00am to 9:30am and 3:30pm to 6:30pm and 1 hour between 9:30am to 3:30pm and 6:30pm to 9:00pm. The stop is also serviced by bus service 738 with a weekday service frequency of 30 minutes between 6:00am to 9:45am and 3:30pm to 6:30pm and irregular services during other times.
- Bus stop ID 2766171 is situated on Charlotte Road approximately 450 metres walking distance to the south from the subject site and includes bus service 728 with a weekday service frequency of 30-45 minutes between 6:00am to 6:30pm and 1 hour between 6:30pm to 10:30pm.
- Bus stop ID 2766110 is situated on North Parade approximately 950 metres walking distance to the south from the subject site and includes bus service 728 with a weekday service frequency as detailed above.

Given the above, the development achieves objective (c) of the development standard.

Objective (d): to ensure that sufficient space is available for development for retail, commercial and residential uses

The proposed educational establishment ensures that sufficient space is available for the development of commercial, retail, and residential uses. The proposed development has been sited and designed to ensure that the built form and spacing of the site will be consistent with the desired future character for the locality, whilst also respecting and being compatible with the existing character to be retained within the locality. The proposed development of residential zoned land for educational purposes ensures the development is appropriately located in closest proximity to housing and will avoid using commercial and retail zoned land for the same purpose.

Given the above, the development achieves objective (d) of the development standard.

Objective (e): to establish an appropriate interface between centres, adjoining lower density residential zones and public spaces.

The proposed development includes a maximum 3 storey built form over a lower ground floor car parking level and will appear as a 2 storey building from the street to the north and residential properties to the south. Notably, the breach to the HOB development standard does not provide opportunity for increased yield or development potential on the site and contains limited occupiable floor space exceeding the height limit which is predominately a consequence of raised floor levels for flooding purposes, minimum floor to ceiling height requirements and a preference for a single consolidated building on the land.

The proposed development is stepped to the rear of the site to ensure that it responds to the most sensitive land use being the residential development to the south and achieves a 2 storey built form with a maximum height of 7.5 metres for a depth of 15 metres into the site, which is well below the maximum HOB. The proposed development establishes an appropriate interface between the development and the adjoining low density residential zone to the south and public spaces to the west and east.

The proposal allows for a centralisation of the building to the western side of the site in order to provide a built form that is compatible with the local context and sensitive to nearby other land uses.



As detailed earlier, the site is adjoined by a drainage canal and residential development 20 metres to the south; a road and overpass to the east that has a height of approximately 12 metres above the subject site levels; public recreation park to the west containing trees that are up to 20 metres in height; and a railway corridor to the north. The site itself contains significant and dense vegetation to the rear south-eastern corner with heights up to 20 metres. This local context negates the need for consistency with a particular streetscape or urban character along Beames Avenue given that the land is adjoined by taller natural and built forms that provide a vertical context.

The building takes into consideration the landscape setting to ensure a positive impact is achieved on the quality and character of the neighbourhood. The 2/3 storey built form responds to the existing and desired future context given that 4 storey, 22 metre high school buildings are permitted within the zone under the Complying Development provisions of the Transport & Infrastructure SEPP. The development adopts and translates positive elements from the site and surrounding neighbourhood and will have a positive impact on the quality and sense of identity of the neighbourhood.

Given the above, the development achieves objective (e) of the development standard.

4.2 CLAUSE 4.6(3)(B)

DEMONSTRATE THAT THERE ARE SUFFICIENT ENVIRONMENTAL PLANNING GROUNDS TO JUSTIFY CONTRAVENING THE DEVELOPMENT STANDARD.

Considering that the development achieves the objectives of the development standard and the objectives of the land use zone, and furthermore achieves a satisfactory level of compliance with the other applicable State and Council Planning Policies, the proposal is meritorious, and the contravention of the development standard is justified.

Despite exceeding the statutory maximum building height development standard, the proposed development of the site will facilitate the orderly and economic development of the land for the purposes of an educational establishment, that will positively contribute to the achievement of the vision and strategic objectives of *A Plan for Growing Sydney* and *Blacktown Local Environmental Plan 2015*.

4.3 CLAUSE 4.6(4)(A)(I)

DEMONSTRATE THAT THE APPLICANT'S WRITTEN REQUEST HAS ADEQUATELY ADDRESSED THE MATTERS REQUIRED TO BE DEMONSTRATED BY SUBCLAUSE (3).

This Clause 4.6 Variation Request has adequately addressed the matters required to be demonstrated by subclause (3), as detailed throughout.

4.4 CLAUSE 4.6(4)(A)(II)

DEMONSTRATE THAT 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.

The proposed development will be in the public interest because it is consistent with the objectives of the particular standard as demonstrated earlier, and is consistent with the objectives of the R2 Low Density Residential Zone in the following ways:



- The development enables a land use other than residential land uses that will provide school and community facilities and services that will meet the day to day needs of local residents. The development provides a community benefit and successfully achieves this objective by meeting the day to day needs of the local community and local residents.
- The development enables educational and community activities to be carried out within the zone that will not adversely affect the amenity of the neighbourhood as demonstrated in the assessment provided within the accompanying Statement of Environmental Effects and this Clause 4.6 Variation Request.

The proposal, including the height exceedance caused, achieves the objects of the *Environmental Planning and Assessment Act, 1979* (the Act) in the following ways:

- Section 1.3(a) as the proposed development includes an educational establishment and community facilities that will promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the existing natural and other resources of the site;
- Section 1.3(b) as the accompanying Statement of Environmental Effects undertakes economic, environmental and social considerations in the assessment of the proposed development in order to facilitate ecologically sustainable development;
- Section 1.3(c) as the proposed development promotes the orderly and economic use and development of the land by achieving the objectives of the land use zone and development standard and not posing any adverse amenity impacts on adjoining development and the public domain;
- Section 1.3(e) as the proposed development protects the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats as detailed in the accompanying Biodiversity Impact Assessment prepared by Keystone Ecological, Tree Impact Assessment Report prepared by Mark Bury Consulting and Vegetation Management Plan prepared by Keystone Ecological;
- Section 1.3(f) as the proposed development promotes the sustainable management of built and cultural heritage (including Aboriginal cultural heritage) as demonstrated by the accompanying Aboriginal Archaeological Assessment prepared by Comber Consultants;
- Section 1.3(g) as the proposed development promotes good design and amenity of the built environment, providing adequate solar access opportunities, making the space functional and inviting achieving greater amenity for future occupants and adjoining residents; and
- Section 1.3(h) as the proposed development promotes the proper construction and maintenance of a building that will protect the health and safety of the staff and students that will attend the school.

For the reasons above and the assessment provided within this request and the accompanying Statement of Environmental Effects, there are sufficient environmental planning grounds to justify the contravention of the height of buildings development standard.

4.5 CLAUSE 4.6(4)(B)

DEMONSTRATE THAT THE CONCURRENCE OF THE PLANNING SECRETARY HAS BEEN OBTAINED.

Planning Circular PS 20-002, dated 5 May 2020, contains an assumed concurrence notice dated 18 February 2018 for all consent authorities for the purpose of determining a development application to which a Clause 4.6 Variation Request is made. The subject Clause 4.6 Variation Request does not exceed the limitations set by the assumed concurrence notice and therefore Council, the Local Planning Panel or Regional Planning Panel may assume the concurrence of the Planning Secretary.



4.6 CLAUSE 4.6(5)

PLANNING SECRETARY CONCURRENCE.

As detailed above, assumed concurrence has been issued by the Planning Secretary.

4.7 CLAUSE 4.6(6)

EXCLUDED SUBDIVISION.

The application of clause 4.6 to the height of buildings development standard is not precluded by the operation of Clause 4.6(6) of the LEP.

4.8 CLAUSE 4.6(7)

RECORD KEEPING.

This is an administrative matter for the Council.

4.9 CLAUSE 4.6(8)

EXCLUDED DEVELOPMENT AND CLAUSES.

The application of clause 4.6 to the height of buildings development standard is not precluded by the operation of Clause 4.6(8) of the LEP.

5 CONCLUSION

Having regard to the assessment of the proposal and Clause 4.6 Variation Request, the proposed development achieves the objectives of the development standard and the objectives of the land use zone, notwithstanding the contravention of the height control. Therefore, compliance with the development standard is unnecessary and unreasonable in these circumstances.

For the reasons provided within this request, there are sufficient environmental planning grounds to justify the contravention of the height of buildings development standard.

This request has appropriately demonstrated that the proposed development will be in the public interest because it is consistent with the objectives of the particular development standard that is contravened and the objectives for development for the zone in which the development is proposed to be carried out.

This Clause 4.6 Variation Request has been prepared in accordance with the requirements of Clause 4.6 of the *Blacktown Local Environmental Plan 2015* and has had regard to the findings of the various case law mentioned and discussed throughout. Accordingly, Council and the Local Planning Panel can exercise its power to grant development consent for the development that contravenes the development standard.

For the reasons outlined within this request, the subject variation is worthy of Council's support.