

Clause 4.6 Exceptions to development standards Written Request – Height of Buildings

Alterations to Building A, B and C, construction of a two-storey building, car parking area, outdoor play area and associated site works to an existing school (Hartford College).



33 Banks Avenue, Daceyville
Lot 3875 Deposited Plan 752015

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Clause 4.6 Written Request to Vary a Development Standard

Bayside Local Environmental Plan 2021

Applicant's name	Hartford College
Site address	33 Banks Avenue, Daceyville (Lot 3875 in DP 752015)
Proposal	Alterations to Building A, B and C, construction of a two-storey building referred to as Building D, at grade parking, outdoor play area and associated site works to an existing school (Hartford College).
Environmental Planning Instrument	<i>Bayside Local Environmental Plan 2021</i>
Development standard to be varied	Clause 4.3 – Height of buildings

Introduction

This Report contains a written request to vary the building height development standard in accordance with Clause 4.6 of the *Bayside Local Environmental Plan 2021* (BLEP 2021) which provides the framework for consideration of proposed variations to development standards.

This variation sought under Clause 4.6 of the BLEP 2021 has been prepared having regard to appropriate case law, including but not limited to *Initial action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118*.

Clause 4.3 of the BLEP 2021 provides that the height of a building is not to exceed the maximum height specified on the Height of Buildings Map. The site is identified on BLEP 2021 Height of Buildings Map - Sheet HOB_011 as having a maximum building height of 8.5m.

The proposed development exceeds the maximum height standard when measured in accordance with the BLEP 2021 definition of building height, which is:

building height (or height of building) means—

- (a) in relation to the height of a building in metres—the vertical distance from ground level (existing) to the highest point of the building, or*
 - (b) in relation to the RL of a building—the vertical distance from the Australian Height Datum to the highest point of the building,*
- including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like.*

Clause 4.6 provides flexibility to vary the BLEP 2021 development standards where it can be demonstrated the development standard is unreasonable or unnecessary in the circumstances of the case, and where there are sufficient environmental grounds to justify the contravention. Clause 4.6 provides the following:

- (2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*
- (3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating—*
 - (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
 - (b) that there are sufficient environmental planning grounds to justify contravening the development standard.*

The justification for the contravention of the building height controls applicable under the BLEP 2021 is set out below.

Definition of development standard

Section 1.4 ‘Definitions’ of the *Environmental Planning and Assessment Act 1979* (the Act) provides the following definition of a development standard.

development standards means provisions of an environmental planning instrument or the regulations in relation to the carrying out of development, being provisions by or under which requirements are specified or standards are fixed in respect of any aspect of that development, including, but without limiting the generality of the foregoing, requirements or standards in respect of—

- (a) the area, shape or frontage of any land, the dimensions of any land, buildings or works, or the distance of any land, building or work from any specified point,*
- (b) the proportion or percentage of the area of a site which a building or work may occupy,*
- (c) the character, location, siting, bulk, scale, shape, size, height, density, design or external appearance of a building or work,*
- (d) the cubic content or floor space of a building,*
- (e) the intensity or density of the use of any land, building or work,*

- (f) the provision of public access, open space, landscaped space, tree planting or other treatment for the conservation, protection or enhancement of the environment,*
- (g) the provision of facilities for the standing, movement, parking, servicing, manoeuvring, loading or unloading of vehicles,*
- (h) the volume, nature and type of traffic generated by the development,*
- (i) road patterns,*
- (j) drainage,*
- (k) the carrying out of earthworks,*
- (l) the effects of development on patterns of wind, sunlight, daylight or shadows,*
- (m) the provision of services, facilities and amenities demanded by development,*
- (n) the emission of pollution and means for its prevention or control or mitigation, and*
- (o) such other matters as may be prescribed.*

Emphasis added.

The proposed variation to the building height under Clause 4.3 of the BLEP 2021 satisfies the definition for a development standard under the Act, meaning the provisions of Clause 4.6 of the BLEP 2021 apply.

Height of Buildings Standard

Clause 4.3 of BLEP 2021 prescribes a maximum building height for land to which the plan applies. The relevant provisions of clause 4.3 are reproduced below:

- (1) The objectives of this clause are as follows—*
 - (a) to ensure that building height is consistent with the desired future character of an area,*
 - (b) to minimise visual impact of new development, disruption of views, loss of privacy and loss of solar access to existing development,*
 - (c) to nominate heights that will provide an appropriate transition in built form and land use intensity.*
- (2) The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.*

...

The Height of Buildings Map (Figure 1) prescribes a maximum building height of 8.5m at the subject site.



Figure 1: An extract of BLEP 2021 Height of Building Map. The subject site is outlined by the yellow dashed border.
Source: <https://www.planningportal.nsw.gov.au/spatialviewer/>

Proposed Variation

The proposed development seeks consent for alterations to Buildings A, B, and C, construction of a two-storey building known as Building D which incorporates a chapel, library, meeting rooms and five (5) classrooms. Site works are also proposed which seek to provide a new playground and at grade car park which provides for 15 car parking spaces. The new building and works on site generally comply with the 8.5m building height limit provided by development standard under clause 4.3 of BLEP 2021, except for the second floor architectural roof feature of the chapel which has a building height of 10.48m (RL 32.19). The roof ridge at the eastern building elevation of Building D also contravenes the building height development standard by 450mm, as it provides a maximum building height of 8.95m.

A breakdown of the metrics and percentage departure to the development standard associated with the proposal have been provided within the table below. The contravention is also expressed diagrammatically at Figure 2.

Table 1 – Proposed height variations to Clause 4.3 of BLEP 2021

LEP building height standard	Location of height breach	Proposed Height	Percentage (%) of Contravention to Clause 4.3
8.5m	Chapel entry signal	10.48m	1.98m or 23.29%
	Roof ridge of Building D	8.95m	450mm or 5.29%



Figure 2: Portions of the protruding above the 8.5m building height plane (shown in red) are identified in blue above.

Source: Sam Crawford Architect, December 2023.

Clause 4.6(3)(a) compliance with the development standard is unreasonable or unnecessary in the circumstances

Clause 4.6(3) of BLEP 2021 provides that development consent must not be granted to development that contravenes a development standard unless the consent authority is satisfied the applicant has demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances. In *Wehbe V Pittwater Council (2007) NSW LEC 827*, Preston CJ set out the following 5 different ways in which an objection (variation) may be well founded.

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;*
5. *The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard that would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.*

(Emphasis added)

It is generally understood that Clause 4.6(3) can be satisfied if it is established that a development satisfies one or more of the above points. In this instance point 1 is investigated and considered well founded for the proposed development.

The objectives of the height of buildings development standard under clause 4.3 of BLEP 2021 are provided below, and followed by a response on how that objective is achieved notwithstanding noncompliance with the standard:

(a) to ensure that building height is consistent with the desired future character of an area,

CPS response: The site is a corner allotment and is afforded three street frontages, with a primary eastern frontage of 90.19m to Banks Avenue, a secondary southern frontage of 116.565m to Gwea Avenue and a small tertiary western frontage of 8.52m to Haig Avenue. The site consists of a range of buildings for separate uses which includes the Hartford College, located within the central portion of the allotment, which is the subject of this development application (DA) and is comprised of three attached buildings (Buildings A, B and C). Beyond the school to the northern portion of the site is a two-storey brick building used by the Catholic Archdiocese for Marist Brothers accommodation which has a building height of RL 31.80 (sitting 0.75m above the 8.5m building height limit). The Foley Gardens Self-Care Retirement Village is located to the west of the Hartford College and is comprised of a two-storey building, which is separated from the other development on the land by a 1.8m high fence.



Figure 3: Street view of the Banks Road frontage of Hartford College on the subject site.

Source: CPS site inspection 06.09.2022



Figure 4: Street view of the Banks Road frontage of the Marist Catholic Brothers Monastery on the subject site.
Source: CPS site inspection 06.09.2022



Figure 5: Street view of the Gwea Avenue frontage of the Foley Gardens Self-Care Retirement Village on the subject site.
Source: CPS site inspection 06.09.2022

The surrounding area is largely characterised by neighbouring educational establishments, recreational parks and residential dwellings, as well as seniors living and aged care housing (Figure 6). The wider locality to the north and east has a low density to medium density residential profile, while the southern and western wider area incorporates additional parks and numerous golf courses, including Bonnie Doon, Eastlake and The Lakes.



Figure 6: Southern Cross Care Daceyville Residential Aged Care.

Source: CPS site inspection 06.09.2022

Neighbouring the subject site to the north is St Michael's Catholic Primary School and Church, which has a frontage to both Banks Avenue and Haig Avenue (Figure 8). The building on this allotment immediately adjacent the subject site is a two storey brick building with a pitched roof and has a building height of RL 32.90 and sits 2.7m above the 8.5m building height limit (Figure 7), which is a 31.7% variation to the building height development standard. To the western rear of the site, is a two-storey brick building with a building height of RL32.26 and belongs to the Our Lady of the Sacred Heart (OLSH) Convent at 4 Haig Avenue (Figure 9), this building sits 2.3m above the 8.5m building height limit, which reflects a 27% departure from the building height development standard. The existing RLs of both these buildings sit above the proposed building height of Building D and the existing variations within the locality are far greater than what is proposed for the subject building, and as such, the proposed development will be compatible with the existing buildings in the locality. This is also demonstrated diagrammatically at Figure 10, and demonstrates that the proposal will have a less imposing presence on the streetscape than 4 Haig Avenue and 29 Banks Avenue.



Figure 7: Two storey building located at Banks Avenue frontage which belongs to St Michael's Catholic Church. This building sits 2.7m above the 8.5m building height limit, demonstrating a departure of 31.7% to the development standard.
Source: CPS site inspection 06.09.2022



Figure 8: School building fronting Haig Avenue belonging to St Michael's Catholic Primary School.
Source: Google Streetview dated February 2021.



Figure 9: Our Lady of the Sacred Heart (OLSH) Convent at 4 Haig Avenue which exceeds 8.5m by 2.3m which is a variation of 27% to the development standard.

Source: CPS site inspection 06.09.2022

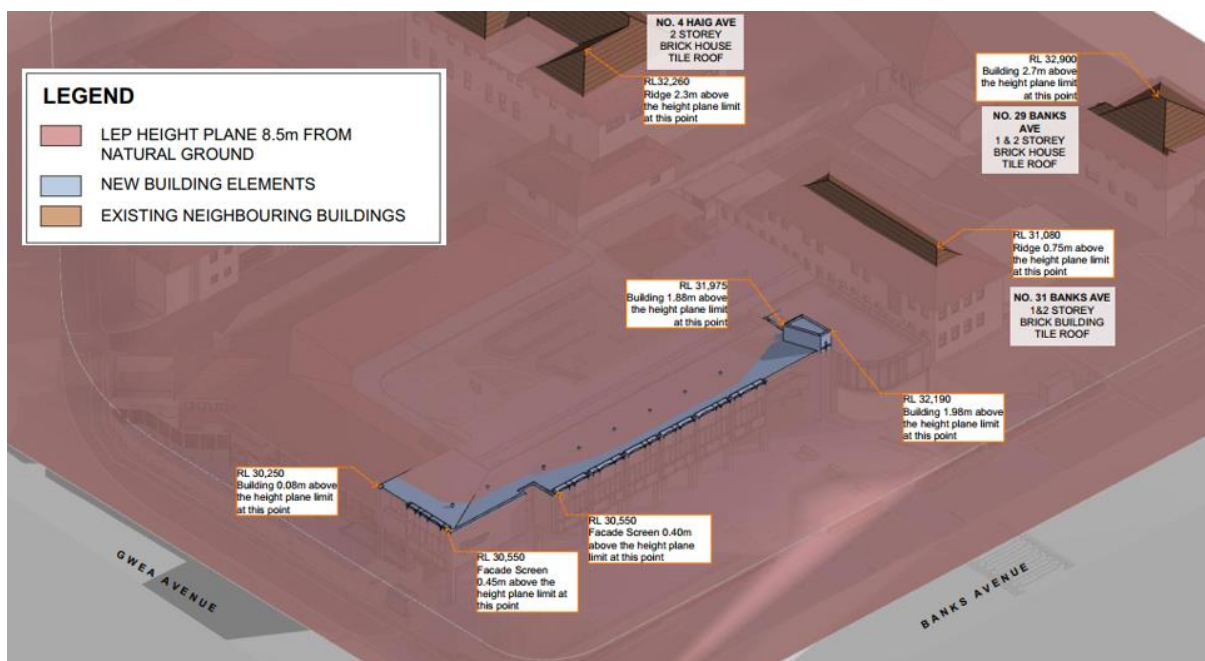


Figure 10: 3D Height Plane which illustrates how the neighbouring buildings at 4 Haig Avenue and 29 Banks Avenue and the existing buildings on the subject site exceed the 8.5m building height limit provided by BLEP 2021.

Source: Sam Crawford Architects, July 2024.

To the south of the site, on the opposite side of Gwea Avenue is a large sporting recreational facility, incorporating rugby, football, soccer and hockey fields. Rowland Park, to the east of the site at Banks Avenue, includes further sporting fields, a playground and additional public recreational spaces.

The site is located within the Daceyville Garden Suburb Local Heritage Conservation Area (HCA). Bayside Development Control Plan 2022 describes the character of the area as being *made up of Federation Arts and Crafts cottages constructed between 1910 and 1920, with some commercial buildings. Existing housing stock is a combination of single-storey cottages, semi-detached dwellings, and town houses.*

The proposal seeks to provide a two-storey building to Banks Avenue consistent with the buildings to the north and west of the subject site and the two storey buildings already upon the site (Marist Catholic Brothers Monastery and Foley Gardens Self-Care Retirement Village). The majority of Building D complies with the 8.5m building height limit except for the ridge of the eastern elevation, resulting in a maximum building height of 8.95m (refer to Figure 2). This nominal contravention relates to 5.29% of the overall portion of the building and has been provided as an architectural screen to the building elevation. This feature provides visual interest to the façade and enhances the architectural integrity of the building.

The chapel, which is an integral part of Building D and Hartford College will have a maximum building height of 10.48m. The height of the chapel will sit 1.98m above the maximum building height and will have a length of 2.61m and a width of 4.14m. This building element relates to approximately 8m² of the built form of Building D, which is less than 1% of the overall area of Building D.

As Hartford College is Catholic school, a cross will be located at the uppermost portion of the eastern elevation of the chapel. The architectural intent of the chapel column siting above the resultant-built form of Building D is to act as a physical wayfinding element into the school and to identify the religious affiliation of the school, for which Hartford College's values are derived from.

The façade of Building D will have a brick face, accented with steelwork in a pale eucalypt colour and white concrete slabs. The finishes of the building are compatible with the locality, noting that the buildings within the Daceyville suburb are predominately brick construction (Figure 11).



Figure 11: Proposed development as viewed from Banks Avenue.
Source: Sam Crawford Architects dated December 2023.

Notwithstanding the adjoining buildings, the two-storey built form of Building D is consistent with the built form of buildings at Daceyville Public School located to the northeast of the site, which is also two storeys in height and would also exceed the building height limit (refer to Figure 12).



Figure 12: Daceyville Public School building neighbouring the site which also exceed the 8.5m building height standard.
Source: Google Streetview dated February 2021.

Based on the above, the building height of the proposed development is consistent with the character of the area despite the limited contravention to development standard 4.3 of BLEP 2021.

(b) to minimise visual impact of new development, disruption of views, loss of privacy and loss of solar access to existing development,

CPS response: The placement of Building D will minimise the visual impact of the built form on the streetscape, as a landscaped front setback will be provided to Banks Avenue along with an average building setback of 14m from Banks Avenue. The introduction of canopy trees and ground cover within the front setback and road reserve will contribute to the garden setting of the HCA.

The location of the building is well removed from neighbouring residential buildings and will not impact upon the privacy of neighbouring buildings.

The strategic design of Building D also results in the overshadowing impacts of the building falling within the site and the road reserve of Gwea Avenue and Banks Avenue. Accordingly, the overshadowing of the building will not reduce the solar access to neighbouring development as demonstrated within Figure 13 below.

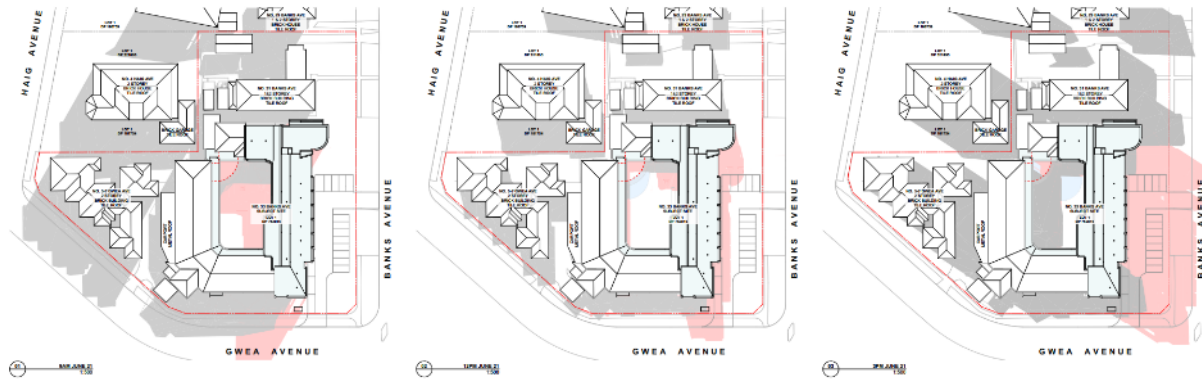


Figure 13: Shadow diagrams from 9am to 3pm June.
Source: Sam Crawford Architects dated December 2023.

The proposal will enhance the existing streetscape and public domain and will result in a development that is consistent with the HCA. The aspects of Building D that exceed the height limit are not inconsistent with the remainder of the building proposed or the existing development on site, and will not reduce any view afforded within the area. Accordingly, the development is able to satisfy this objective.

(c) to nominate heights that will provide an appropriate transition in built form and land use intensity.

CPS response: As established above, the two storey structure of Building D is generally compliant with the 8.5m building height, with the exception of the chapel tower and the roof ridge at the eastern elevation of Building D. The form of Building D is consistent with and compatible with other two storey buildings along Banks Avenue and the building itself will have a finished RL lower than other existing buildings within the Banks Avenue streetscape.

The site is located on a corner allotment and as a result, the built form on the site can set a good precedent for the area and can be considered a building to which the transition of built form should be scaled upon.

The development to the north, west and east of the site also comprise of educational facilities, places of worship and aged care facilities which provide two storey buildings with a similar intensity of development upon their respective sites.

Therefore, the building height proposed will provide an appropriate transition in built form and land use intensity of neighbouring development and the development satisfies the above objective.

The discussion provided above, demonstrates compliance with development standard 4.3 of BLEP 2021 is unreasonable and unnecessary in the circumstances, given the development satisfies the objectives of the standard. Further, the proposal also demonstrates that the areas of contravention relate to small areas of the building and when considered in the totality of the development, the contravention is nominal and as such, compliance with the standard is unnecessary in the circumstances.

Clause 4.6(3)(b) There are sufficient environmental planning grounds to justify contravening the development standard

Further environmental planning grounds are provided below to justify contravening development standard clause 4.3 of BLEP 2021.

Regard is made to section 1.4 of the Act, which defines the “environment” as *all aspects of the surroundings of humans, whether affecting any human as an individual or in his or her social groupings*.

When considering the definition of “environment” in application to the proposal, the social grouping that is most affected by the development is secondary school aged students. The site is within the Bayside Local Government Area (LGA) however, the site is located less than 300m from the border of the Randwick City Council LGA as demonstrated within Figure 14. As such, the catchment for Hartford College relates to land within both the Bayside LGA and Randwick LGA.

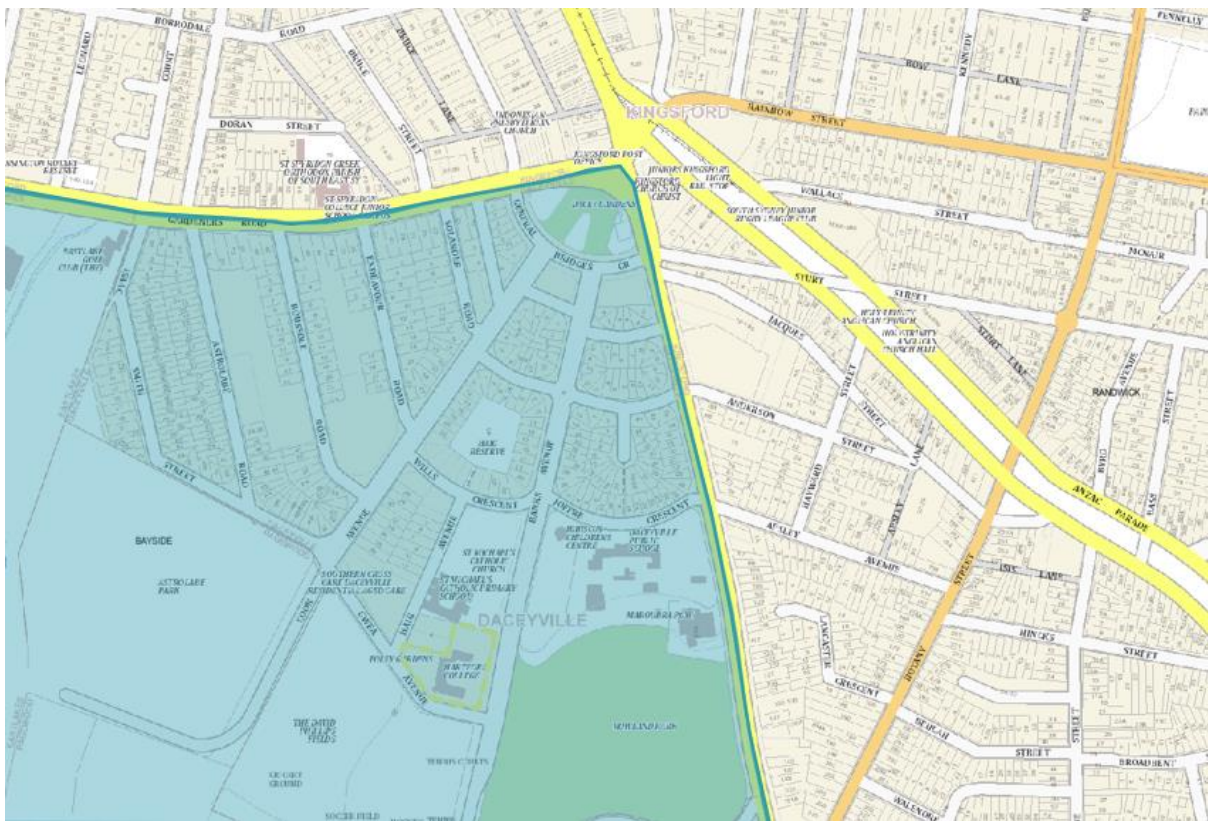


Figure 14: Subject site outlined in yellow within the Bayside LGA (shaded in blue) and Randwick City Council LGA (to the right of the image).

The Bayside LGA has a population of 182,987 people, which has grown by 4,995 people over the last year¹. In 2021, 31.8% of the Bayside LGA population were attending secondary school².

The Bayside 2032 Community Strategic Plan identifies that there will be 12,003 secondary school aged students by 2036, which is an increase of 5.6% of secondary school aged students within the Bayside

¹ Bayside Council Community Profile, profile id <https://profile.id.com.au/baysidensw/highlights?COIID=3070&Denominator=3070>

² <https://profile.id.com.au/baysidensw/age-by-education?COIID=3070&Denominator=3070>

LGA. These demographics demonstrate that there is a need for additional educational establishments to facilitate the growth within the LGA.

Further, the largest single religion in Bayside LGA area is Western (Roman) Catholic, with 22.3% of the population or 39,032 people³ as adherents.

The Randwick LGA has a population of 141,840 people, which has grown by 6,090 people over the last year⁴. In 2021, 5.5% of the Randwick LGA population were attending secondary school⁵ and 2.1% of these students attended Catholic secondary schools.

The Randwick City Council Community Local Strategic Planning Statement identifies that there will be a 33% increase (27,900 people) in school aged people by 2036. These demographics demonstrate that there is a need for additional educational establishments to support growth within the Randwick LGA.

Further, the largest single religion in Randwick LGA area is Western (Roman) Catholic, with 26.7% of the population or 35,882⁶ as adherents.

Based on the statistics above, providing educational establishments offering Catholic education, like Hartford College, is a well-placed and necessary piece of social infrastructure to address the growing demographic needs of both the Randwick and Bayside LGAs. The addition of Building D and the alterations and additions to the school will allow for 200 students to be educated on-site within modern buildings, assisting in educating the increasing number of secondary school-aged students in both the Bayside and Randwick LGAs.

In addition to the above, parts of the site are within the 1% AEP flood level and within the PMF (refer to Figure 15 and Figure 16). This affection means the development needs to achieve the minimum habitable floor level of 22.31m (AHD) (includes 0.5m freeboard). The existing ground level of the site below the height contravention ranges from RL 21.67 – RL 21.80, which is below the habitable floor level. Accordingly, the proposed finished ground levels must be raised to achieve compliance with clause 5.21 of BLEP 2021. Based on this requirement, if the building height were to be measured from the minimum habitable floor level of RL 22.31, the building would have a maximum RL 30.81. It should be noted that most of the building sits below RL 30.81, apart from the chapel tower element, which has a maximum RL 32.19.

The importance of compliance with a habitable floor level of RL 22.31 (AHD) means the development is safe for the occupation of students, staff, and visitors. This also ensures that the development can comply with clause 5.21 of BLEP 2021.

As such, the flood affection of the site provides grounds to justify contravention of development standard clause 4.3 of BLEP 2021.

³<https://profile.id.com.au/baysidensw/religion#:~:text=The%20largest%20single%20religion%20in,or%2039%2C032%20people%20as%20adherents.>

⁴ Randwick City Council Community Profile, profile id
<https://profile.id.com.au/randwick/highlights>

⁵ <https://profile.id.com.au/randwick/education>

⁶ <https://profile.id.com.au/randwick/religion>

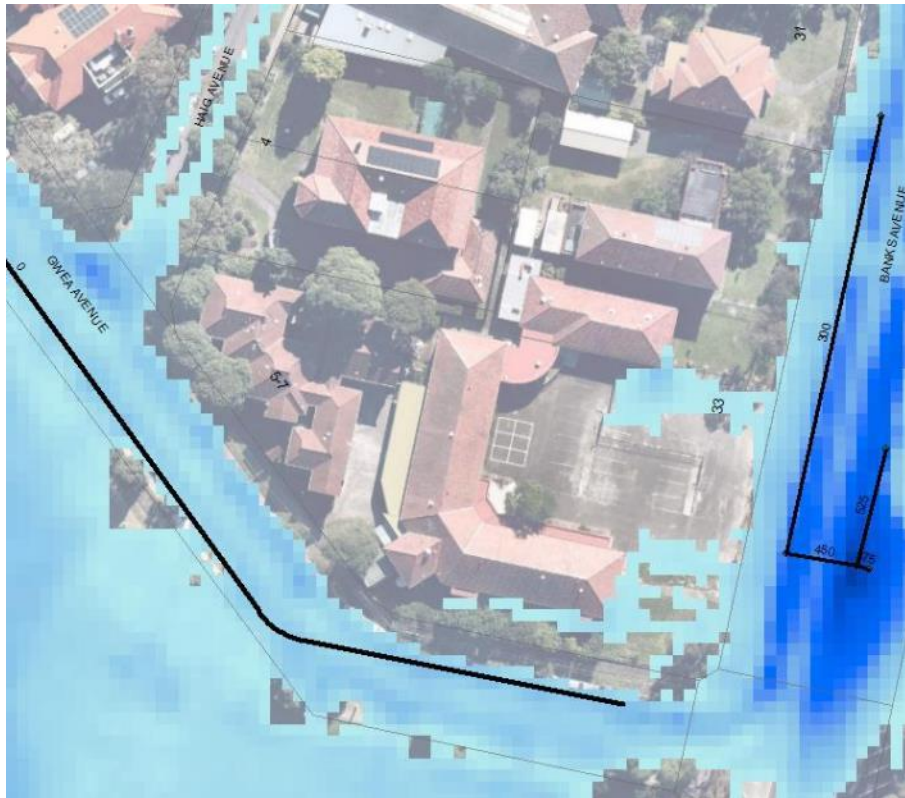


Figure 15: 1% AEP Flood Extent Map (dark blue indicates greater depth of water and pale blue indicates shallower depth, thick black line indicates approximate location of the existing drainage network)
Source: Flood Advice Letter prepared by Bayside Council dated 21 June 2023.

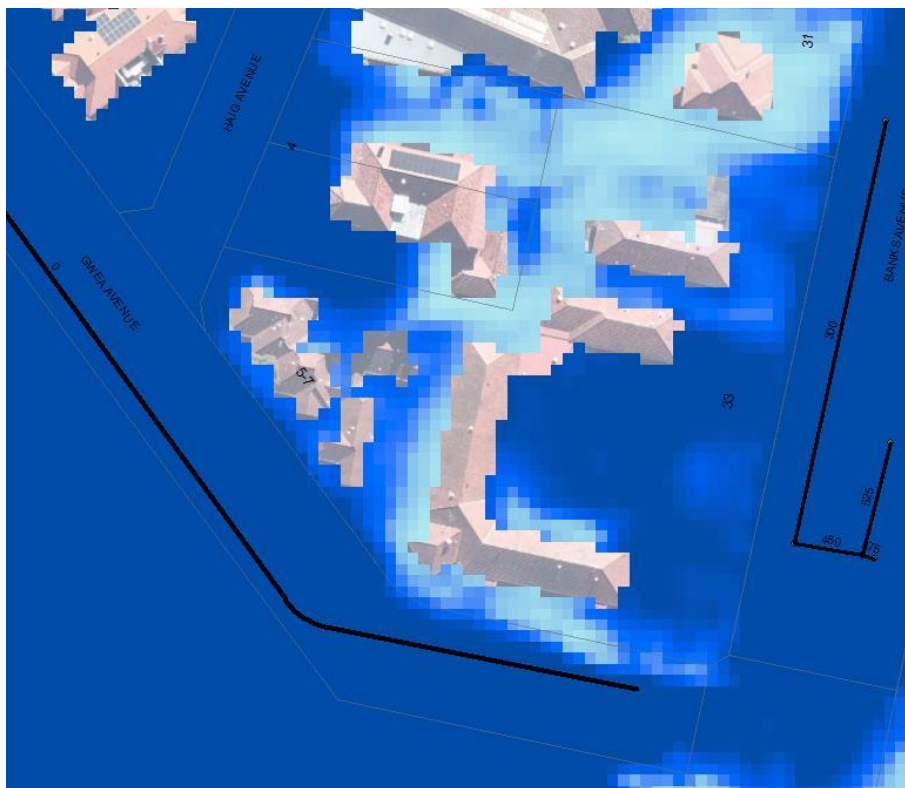


Figure 16: PMF Flood Extent Map (dark blue indicates greater depth of water and pale blue indicates shallower depth, thick black line indicates approximate location of the existing drainage network)
Source: Flood Advice Letter prepared by Bayside Council dated 21 June 2023.

Further to the above, the proposed height contravention will have no adverse or unreasonable impacts on the amenity of surrounding sites and the public domain.

The building elements that contravene the building height standard add to the overall design integrity of the development and provides visual interest to the building. The development site in its current form provides an expansive hardstand frontage to Banks Avenue, however proposed development provides a positive contribution to the streetscape and public domain through the introduction of landscaping within the front setback. The proposed arrangement better synthesises with the HCA compared to the existing development on the site and is positive development outcome.

The strategic design of Building D will not result in overshadowing impacts to neighbouring sites or reduce the solar access to neighbouring development as demonstrated within Figure 13. Overall, the development can be seen as a positive contribution to the area which will provide a public benefit in the form of an augmented educational establishment. The bulk and scale of the development is generally contained within the 8.5m building height limit and is of a similar scale to existing educational establishments within the immediate locality. The areas of the building that exceed the height limit do not appear out of place when viewed from the public domain and will not have an adverse or unreasonable impacts on the amenity of surrounding sites and the public domain.

For the reasons outlined above, it is evident that there are substantive environmental planning grounds which demonstrate why strict application of the development standard is not appropriate for this proposal.

Conclusion

The assessment herein, confirms that the proposal is both in harmony and compatible with the existing and desired future character of the surrounding locality, and will not result in significant or unreasonable physical impacts to surrounding sites; the proposal is therefore considered to be acceptable.

Despite the proposed contraventions of the building height standard, the development results in a built form that exhibits quality design and includes good architectural features, which is an appropriate design response to the locality. Aside from presenting a suitable appearance to surrounding areas that is compatible with the existing and desired character of the area, the proposed development will provide for higher levels of amenity within the subject site, without causing significant and unreasonable impacts on surrounding sites and the public domain, in terms of visual privacy, solar access and/or visual amenity compared to the existing development on the site. The proposal also provides the benefit of improved social infrastructure to meet the increasing enrolment demands for secondary schools in within the Bayside and Randwick LGAs.

As a result, compliance with the building height development standard is found to be unreasonable and unnecessary in the specific circumstances of this proposal, and there are sufficient environmental planning grounds to justify contravention of the building height development standard. Given the above, the applicant's statutory requirements pursuant to clause 4.6 of BLEP 2021 are satisfied, and the variation to the building height development standard can be approved.