PROPOSED SPORTS AND RECREATION CENTRE AT
ST PETER'S ANGLICAN COLLEGE
61 TRAIN STREET, BROULEE (LOT 1 DP 1037342)

CLAUSE 4.6 VARIATION REQUEST

PREPARED FOR: ANGLICAN DIOCESAN SERVICES

RYGATE REF: U19767

REVISED: FEBRUARY 2023

RYGATE & WEST
INCORPORATING BULLOCK & WALTERS
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INTRODUCTION

This Variation Request is made under Clause 4.6 of Eurobodalla Local Environmental Plan 2012 in support of a development application for the erection of the Sports and Recreation Centre proposed as a component of the St Peter's Anglican College Campus Masterplan proposal. The College campus is situated at 61 Train Street, Broulee.

The variation is in respect of the maximum building height as specified in Clause 4.3 of Eurobodalla LEP 2012.

The Variation Request is set out in two parts. Part A follows the format set out in the NSW Department of Planning and Infrastructure's document *Varying development standards: A Guide (August 2011)* while Part B addresses the specific requirements of Clause 4.6 of Eurobodalla LEP 2012.

This document was revised In February 2023 to account for a more detailed ground levels provided by an updated survey and revisions to the building design.

DOCUMENTS USED IN THE PREPARATION OF THIS REPORT

The following plans and documents were used in the preparation of this report:

1. Architectural plan set prepared by Cox Architecture - St. Peters Anglican College - Sports and Recreation Centre, Community Hub, Junior Classroom and Extension to Performing Arts Centre, Rev 4, dated 03/02/2023, in particular:
    a. Floor plan - DA-SR-21-01 Rev 5
    b. Roof plan - DA-SR-21-02 Rev 4
    c. Elevations - DA-SR-30-01 Rev 4
    d. Elevations - DA-SR-30-02 Rev 4
    e. Sections - DA-SR-40-01 Rev 4
2. St Peter's Anglican College Broulee - Visual Impact Assessment Images - prepared by Cox Architecture, dated January 2023;
3. St Peter's Anglican College Broulee – Perspectives - prepared by Cox Architecture, dated February 2022;
4. Detail survey by CEH Consulting Drawing No A0-D222482 dated 01/09/2022.

PART A: QUESTIONS AND ANSWERS BASED ON THE FORMAT SPECIFIED IN *Varying development standards: A Guide (August 2011)*

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

Eurobodalla Local Environmental Plan 2012

What is the zoning of the land?

The land is zoned R2 Low Density Residential under Eurobodalla Local Environmental Plan 2012.

What are the objectives of the zone?

The objectives of the R2 Low Density Residential zone are:

- *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 encourage residential development that is consistent with the character of the neighbourhood.*

What is the development standard being varied?

The development standard being varied is the Height of Buildings.

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

The development standard is listed under Clause 4.3 of Eurobodalla Local Environmental Plan 2012.

What are the objectives of the development standard?

The objectives of the Height of Buildings development standard are:

a) *to ensure that buildings are compatible with the height, bulk and scale of the existing and desired future character of the locality,*
b) *to minimise visual impact, disruption of views, loss of privacy and loss of solar access to existing development.*

What is the numeric value of the development standard in your development application?

The numeric value of the development standard is 8.5 metres.

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

The proposed maximum building height above existing ground level is 17.35 metres which exceeds the 8.5 metre height development standard by 3.35 metres.

The elements of the building that exceed the 8.5 metre height plane are shown below at Figures 1 and 2. The figures show the elevations of the building, with the 8.5 metre height limit shown as a blue line across the face of the various elevations.

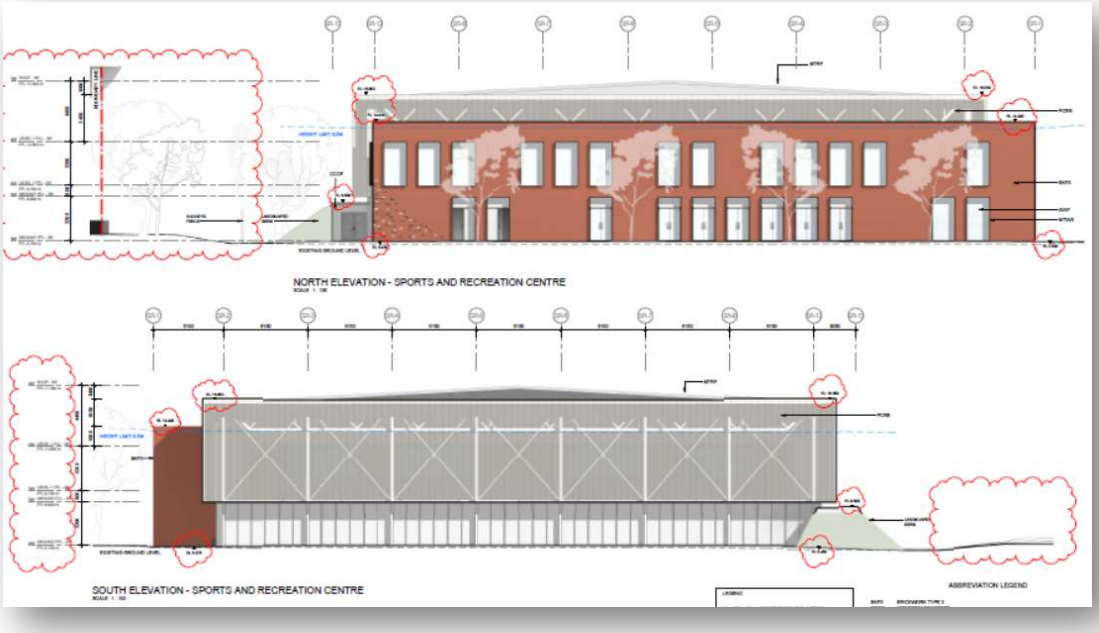


Figure 1: North and south elevations of the Sports and Recreation Centre (Source: Cox Architecture 2023)

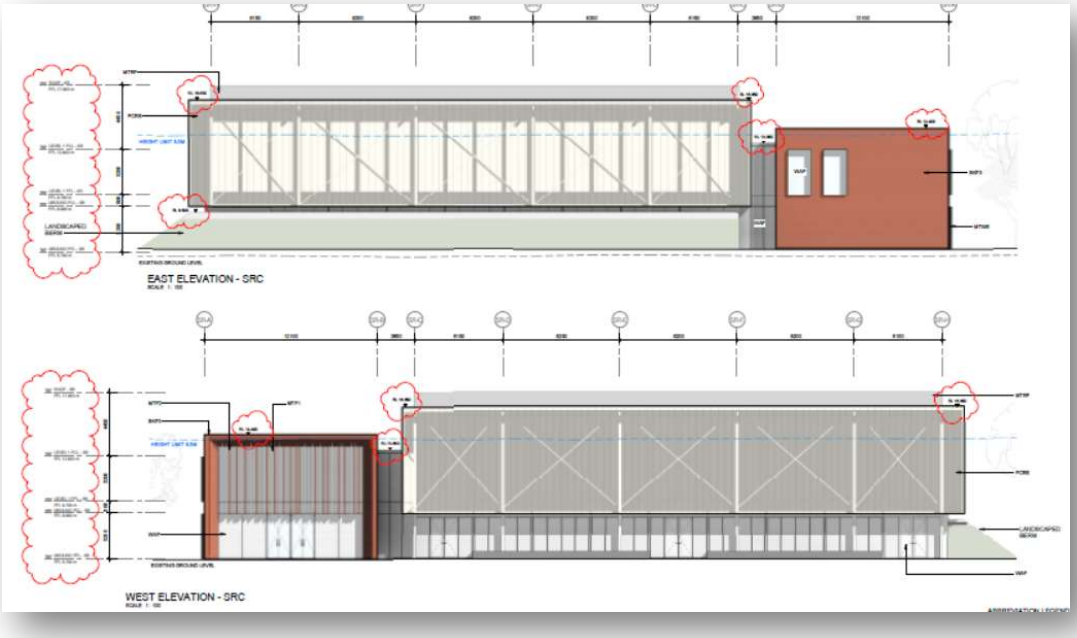


Figure 2: East and west elevations of the Sports and Recreation Centre (Source: Cox Architecture 2023)

The building consists of two envelopes: the larger, higher section that encloses the playing area and the smaller, lower section containing the smaller activity rooms, uniform shop, classrooms and offices.

The larger envelope is clad in translucent sheeting while the smaller is clad in solid walling of red brick.

There is little (0.125 metre, or 125 mm) difference in existing ground level across the footprint of the building, so the site is essentially flat.

The larger section of the building is higher, with the ridge of the roof being the highest point and with the greatest exceedance (3.337 metres, or 39.3%) over the height limit.

The top of the walls of this section of the building exceed the height limit by between 2.275 and 2.4 metres (or between 26.8% and 28.2%).

The top of the parapet walls of the smaller brick-clad section of the building exceed the height limit by between 0.4 and 0.45 metres (4.7% and 5.3% respectively). The roof of this section of the building is lower, being concealed behind and at a lower height than the parapet.

As can be seen from the section drawing at Figure 3 below, the reason for the overall maximum height of the building is due to the following:

1. **Minimum clear height for playing surface**. A minimum clear height of 8300mm (8.3 metres) required between the playing surface and the underside of the roof structure is required for netball (as per Netball Australia's *National Facilities Policy, Version 02: March 2016 – Technical Manual*, page 16).
2. **Depth of roof structure**. The span of the roof is 43.05 metres. The roof structure is required to span this distance. Advice from the Project Engineers ACOR has given the following design parameters to achieve this span:
    a. Minimum depth of roof truss– 1.9 metres
    b. Minimum fall – 3 degrees
    c. Minimum overall depth of roof structure - 3.35 metres
3. **Minimum floor level**. Existing ground levels within the building footprint range from 5.45 to 5.575 metres (AHD). The proposed finished floor level is 5.7 metres (AHD). Given the large footprint of the building, the depth required for the floor structure, and the need to avoid stormwater ingress, this is considered to be a reasonable minimum.

These factors result in the proposed maximum building height of 17.35 metres (AHD)

(5.7 + 8.3 + 3.35 = 17.35 metres).

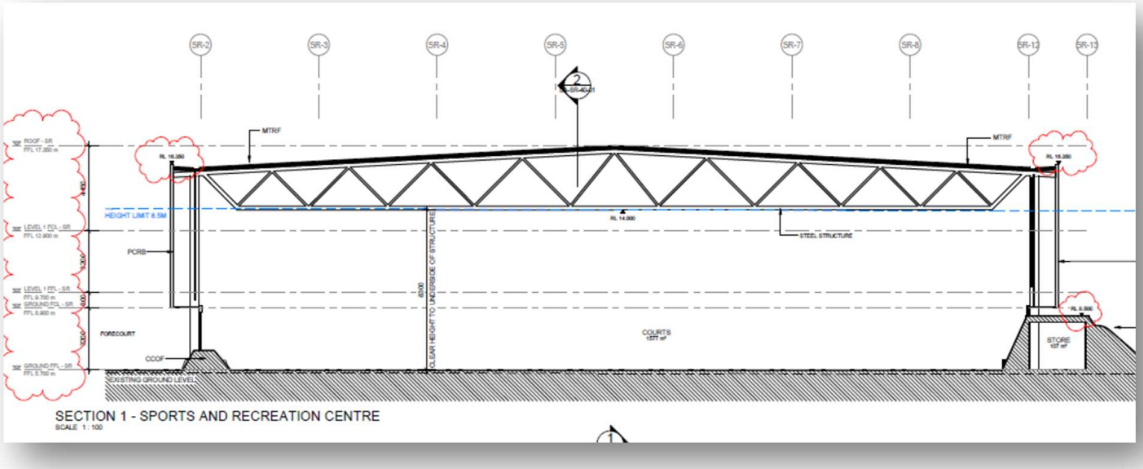


Figure 3: Section view of the Sports and Recreation Centre (Source: Cox Architecture 2023

Figure 3 above shows a sectional view of the proposed building with the floor height, 8.3 metres of clear space between the floor surface and underside of the roof structure (trusses), and the depth of the roof structure and cladding.

The variations to the 8.5 metre building height limit are detailed in the table below.

St Peter's Anglican College Broulee – Sports and Recreation Centre – building heights					
Point on building	SW corner	NW corner	NE corner	SE corner	Ridge
Existing ground level (m AHD)	5.575	5.5	5.45	5.45	5.513
Height limit (m)	8.5	8.5	8.5	8.5	8.5
8.5m height RL (m AHD)	14.075	14.0	13.95	13.95	14.013
Proposed RL (m AHD)	16.35	14.4	14.4	16.35	17.35
Proposed building height over existing ground level	10.775	8.9	8.95	10.9	11.837
Height exceedance (m)	2.275	0.4	0.45	2.4	3.337
Height exceedance (%)	26.8%	4.7%	5.3%	28.2%	39.3%

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

The percentage variation is a maximum of 39.3%.

How is strict compliance with the development standard unreasonable or unnecessary in this particular case?

The judgment in *Wehbe v Pittwater Council* [2007] NSWLEC 827 identified a 'five part test' that could be applied to establish whether compliance is unreasonable or unnecessary. The elements of the "five part test" are discussed below:

1. Compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard.

As set out below, the proposal will achieve the objectives of the development standard despite numerical non-compliance with the development standard.

Objective (a) to ensure that buildings are compatible with the height, bulk and scale of the existing and desired future character of the locality,

The proposed building is located on a school campus. While it is located in the low density residential suburb of Broulee, the St Peter's campus has a distinctly different landscape and built form character as compared with the adjoining residential subdivision.

The College Campus is an extensive site of nearly 11 hectares, while residential properties in the vicinity are generally around an average of 750 square metres (0.075 hectare). Thus the scale of the site cannot be realistically compared with the surrounding residential development.

The College Campus has a very high proportion of open site compared with that occupied by buildings. This is characteristic of education campuses with their extensive playing fields and grounds.

While most buildings on the Campus are of single storey and somewhat less than the 8.5 metre height limit, it is normal for some buildings to be considerably larger. The building in question is one of these, where the height is due to the functional requirements of the playing courts contained within.

The Campus of St Peter's Anglican College is an asset to the community of Broulee and is undoubtedly an element of the desired future character of this locality.

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

Visual impact

The building is proposed to be located in an area of the Campus previously occupied by a playing field and is located at its closest point a distance of 17 metres from the nearest point of the eastern property boundary with the adjoining residential properties. The location of the building is shown on the extract of the Front of Campus Site Plan at Figure 3 below.

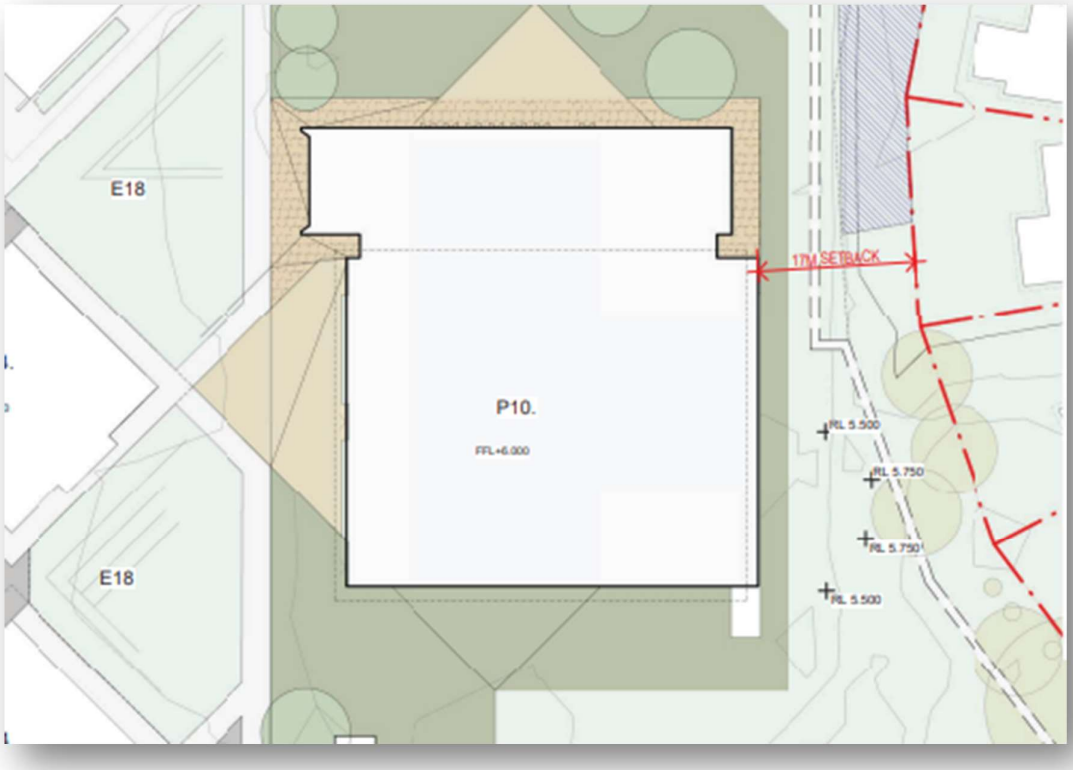


Figure 4: Extract from Front of Campus Site Plan (Drawing No DA-11-21) showing the proposed Sports and Recreation Centre (P10) and the minimum 17 metre setback to the property boundary (Source: Cox Architecture 2022)

The potential visual impact of the building is illustrated by the photomontage perspective views shown at Figures 4 – 9 below. These images are those from the Visual Impact Assessment Images prepared by Cox Architecture.

Figure 5: View from the eastern end of Caitlin Crescent (existing)

Figure 6: View from the eastern end of Caitlin Crescent (proposed)

Figure 7: View from Train Street (existing)

Figure 8: View from Train Street(proposed)

Figure 9: View from the site's eastern boundary adjoining 6 and 8 Zanthus Drive (existing)

Figure 10: View from the site's eastern boundary adjoining 6 and 8 Zanthus Drive (proposed)

The above photomontages clearly demonstrate that the building will be only barely visible from significant viewpoints in the public domain being Train Street and the eastern end of Caitlin Crescent.

The building will be significantly visible from the rear of some residential properties in Zanthus Drive, noting that the photomontage is taken from within the College campus. Views from the adjoining residential properties will be further screened by:

- Structures and landscaping in the rear yards of adjoining properties;
- Existing and proposed trees, landscaping and the proposed acoustic wall located within the College campus.

Figure 11: Aerial image with the property boundaries of Nos. 6, 8 and 10 Zanthus Drive shown as orange lines (Source: Nearmap 16/5/2022)

Figure 11 above shows:

- Existing canopy trees within the site adjoining 6 and 8 Zanthus Drive;
- Existing landscape screen planting within the site adjoining 8 and 10 Zanthus Drive;
- Existing landscaping and structures in the rear yards of 6, 8 and 10 Zanthus Drive.

The design of the building will assist in reducing its visual impact. It does this by breaking up the massing of the building into two components with varying wall materials and opacity, with the higher and more voluminous part of the building being clad in translucent sheeting that allows views into the roof and wall structure, thereby reducing its apparent bulk. This treatment also retains more light in the landscape so that the building is not oppressive.

Disruption of views

In considering the effect of the proposal on views, it is appropriate to consider the view assessment principles established by the NSW Land and Environment Court in a case known as *Tenacity Consulting v Warringah Shire Council [2004]*.

This planning principle employs a four stage process to assess the impact of a proposal on the views enjoyed by other properties.

The four steps and relevant comments are set out below.

1. **The first step is the assessment of the views that may be affected.**

Comment: The views most likely to be affected are views from the adjoining residential properties across the grounds and buildings of the College campus, extending to the forested borders beyond the more open College grounds.

These views do not contain any iconic views, water views or the like.

2. **The second step is to consider from which part of the property the views are obtained.**

Comment: Generally the views are obtained from the rear yards of the adjoining residential properties and from rooms that directly adjoin the rear yards. Most of the properties have fences on the rear boundary and existing landscaping which would screen some views, especially views obtained from a sitting position.

3. **The third step is to assess the extent of the impact. The extent of view loss is usually assessed qualitatively as negligible, minor, moderate, severe or devastating.**

Comment: For most of the adjoining properties, the view loss would be no more than negligible. Some properties may particularly value the enclosed view into the existing playing field and for these properties a higher level of view loss – perhaps moderate – might be appropriate. There is a question as to whether the loss of views of the existing College playing field that is to be occupied by a new building can be validly considered in this regard.

4. **The fourth step is to assess the reasonableness of the proposal that is causing the impact.**

Comment: The construction of a building that complied with the 8.5 metre height limit would result in the same level of view loss as will be caused by the proposed building. This is due to the ground levels of the adjoining residential properties being similar to the levels within this part of the Campus

and the fact that views from those properties are generally gained from ground level or very close to it.

Consequently, the additional height of the proposed building will not result in any additional loss of views compared with that arising from a complying building, and therefore the generally negligible loss of views is considered to be reasonable.

There is no loss or disruption of views from any part of the public domain, as is demonstrated by the photomontages taken from Train Street and Caitlin Crescent.

Loss of privacy

The proposed building is located a minimum of 17 metres from the rear boundaries of any of the adjoining residential properties. Generally a distance of 12 metres is accepted to be the maximum extent of the "privacy sensitive zone" and the proposed building will be well beyond the "privacy sensitive zone".

Consequently there will be no adverse impact on the privacy of adjoining residential properties and the proposed variation to building height will not have any additional impact on privacy.

As noted above in the section on visual impact, the existing trees and other landscaping along the College's eastern boundary and within the rear yards of the adjoining residential properties will further assist in improving privacy outcomes.

Loss of solar access

Shadow diagrams have been prepared for the proposed building to identify the extent of shadowing. These have been prepared for the winter solstice (June 21) which is when the winter sun is lowest and shadows are their longest.

The shadow diagrams have been prepared for hourly intervals from 9am to 3pm. All shadows from the building are contained within the College campus property until just before 3pm as shown on the two shadow diagrams below. The first shadow diagram at Figure 10 shows the shadows cast at 2pm which do not reach the property boundary with adjoining residential properties. The second shadow diagram at Figure 11 shows the shadows cast at 3pm which just extend over the property boundary into the western extent of some of the adjoining residential properties in Zanthus Drive.

The standard adopted in the Eurobodalla Residential Zones Development Control Plan in terms of retaining acceptable solar access is for any affected property to receive at least 3 hours of sunlight between 9am and 3pm on the winter solstice. The shadow diagrams show that solar access within the period of 9am to 3pm is virtually unaffected by the shadows cast by the proposed Sports and Recreation Centre.

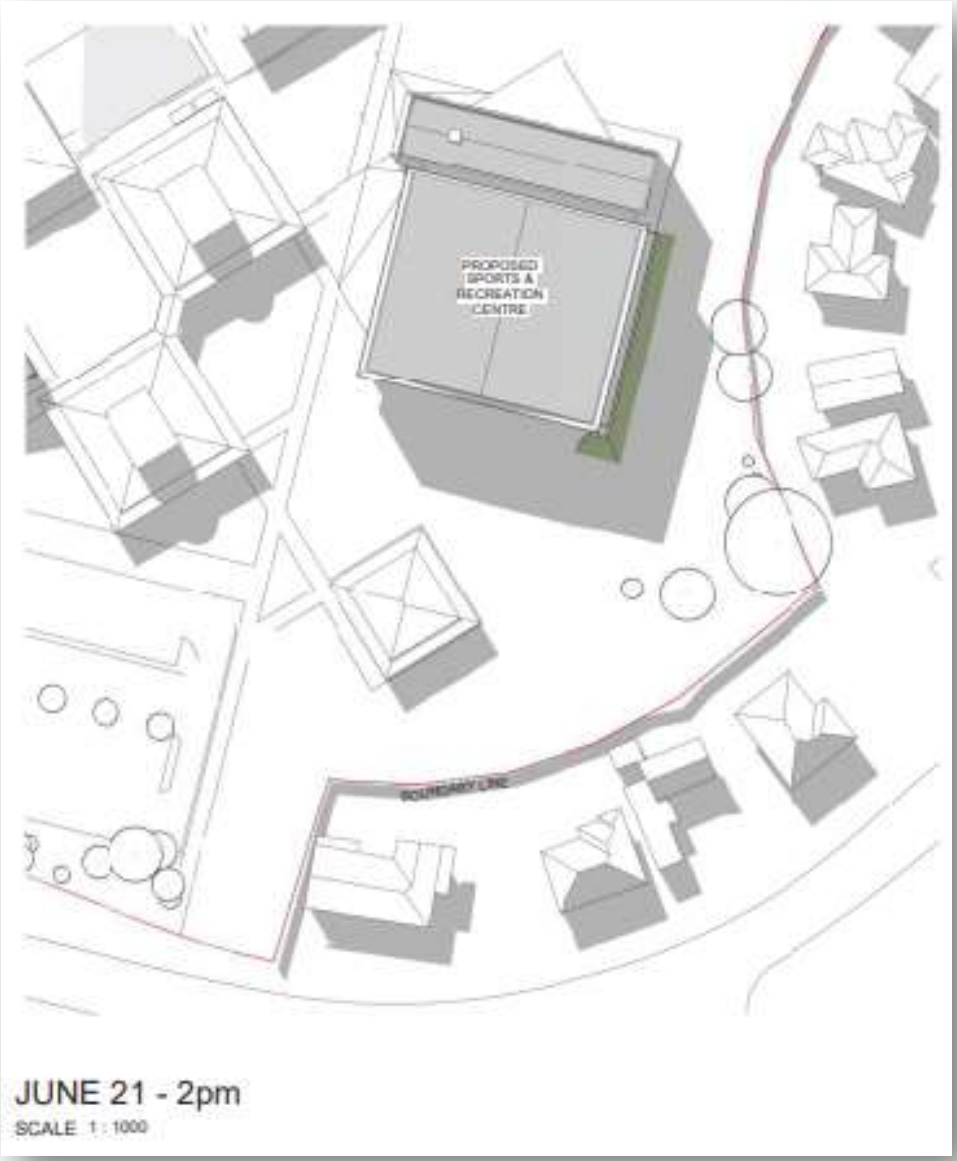


Figure 12: Shadow diagram – Winter solstice, 2pm

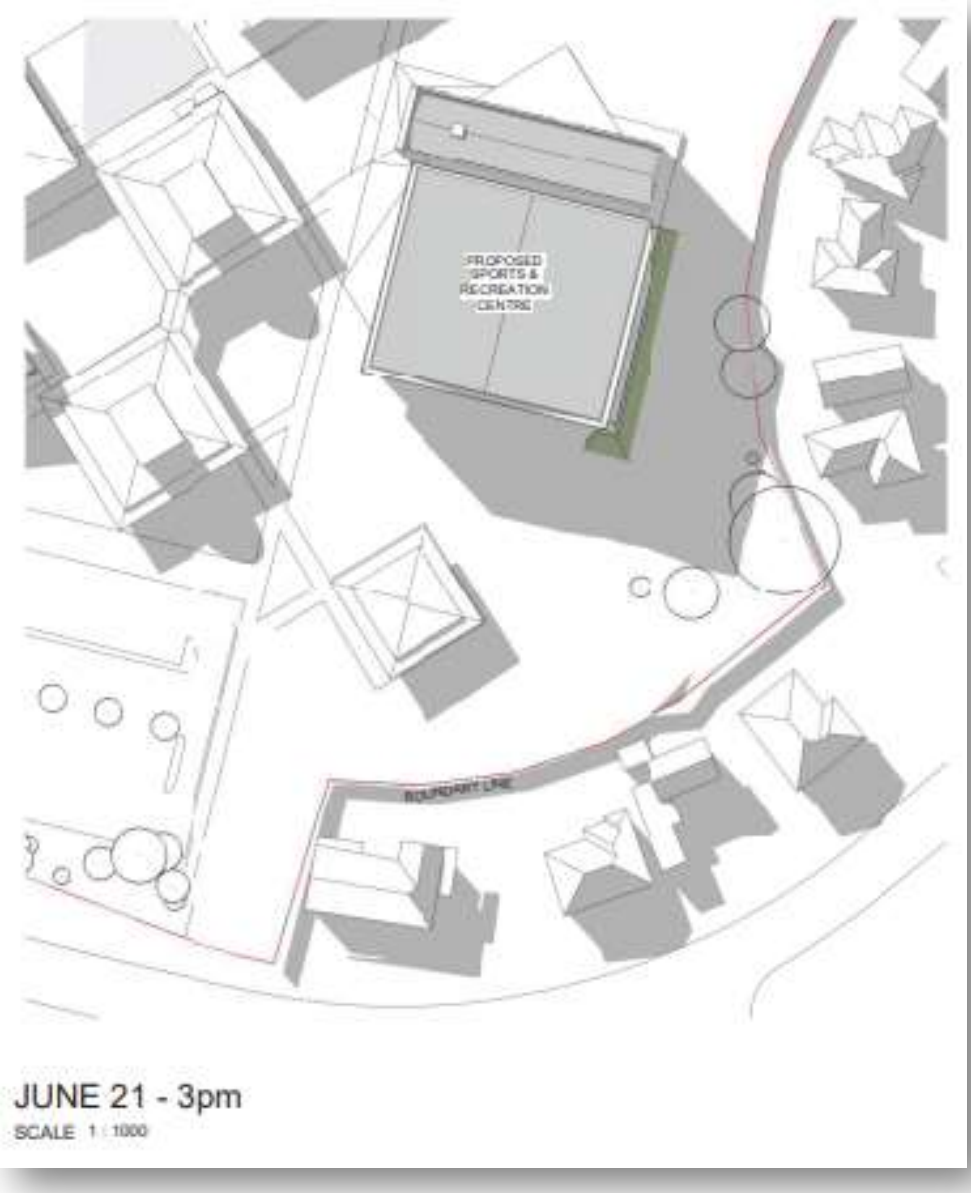


Figure 13: Shadow diagram – Winter solstice, 3pm

2. The underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary.

This aspect does not apply to the proposal.

3. The underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable.

This aspect does not apply to the proposal.

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.

This aspect does not apply to the proposal.

How would strict compliance hinder the attainments of the objects specified in section 5(a)(i) and (ii) (now section 1.3) of the Act?

The objects set out in sections 5(a) (i) and (ii) of the Act (prior to the 2017 amendments) are:

(a) to encourage:

(i) the proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment,

(ii) the promotion and co-ordination of the orderly and economic use and development of land.

Following the 2017 amendments, the corresponding objects in section 1.3 of the Act are:

(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,

(c) to promote the orderly and economic use and development of land,

It is submitted that strict compliance with the 8.5 metre height of buildings development standard would hinder the attainment of the above objects of the Act by preventing a proposed development that:

- is otherwise unobjectionable;
- will not have any significant adverse impact on the amenity of adjoining residential properties;
- will provide facilities that are currently not available to students of the College and the broader Broulee community.

Are there sufficient environmental planning grounds to justify contravening the development standard? Give details.

There are a range of environmental planning grounds that justify contravening the development standard, as set out below:

1. ***Headroom requirements*:** the height of the building is required to provide the necessary headroom for activities (like basketball and netball) that will be conducted in the higher section of the building. Headspace requirements are also relevant for the two storey section which has required ceiling heights of 3.2 metres for rooms on both levels, although the height exceedance for this section of the building is very minor (0.4 metres or 5%).
2. ***Roof structure spanning the playing court area***: the depth of the roof structure is required to span the 43 metre width of the playing surface. Sporting code requirements for clear runoff area preclude the use of columns midway along the span.
3. ***Bushfire protection****:* the Sports and Recreation Centre is classed as an assembly building (Class 9b under the Building Code of Australia) and is therefore a Special Fire Protection Purpose under the Rural Fires Act 1997. It is therefore required to meet demanding locational requirements in terms of its Asset Protection Zone. This requirement precludes an alternative location further west on the Campus.
4. ***Improved sport and recreation facilities for the College and community****:* the Sports and Recreation Centre will provide a consolidated set of sport and recreation facilities capable of being cost-effectively managed as a single facility. This will result in the provision of quality facilities that would be difficult to provide cost-effectively in otherwise than a single building envelope.

It is submitted that the above environmental planning grounds are sufficient to justify the variation to the development standard.

How will the proposal be in the public interest?

The proposal will be in the public interest because:

- it is consistent with the objectives of both the R2 Density Residential zone and of the Height of Buildings development standard;
- there are sufficient environmental planning grounds to justify the contravention of the development standard;
- the proposal will provide improved sport and recreation facilities to the College and to the Broulee community that are comprehensive and capable of cost-effective management; and
- the proposal is otherwise unobjectionable.

PART B: SPECIFIC REQUIREMENTS OF CLAUSE 4.6 OF EUROBODALLA LEP 2012

Clause 4.6 Exceptions to development standards	
Clause provisions	**Comments on this proposal**
(1) The objectives of this clause 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.	The proposal is consistent with the objectives of the clause in that: • the environmental planning grounds and public interest issues outlined in PART A above support the application of the flexibility required to approve this proposal; • approval of the proposal will result in a better outcome than if the development did not proceed (again, as set out in PART A above).
(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.	The Height of Buildings development standard is not expressly excluded from the operation of this clause and so the development standard may be varied as proposed.
(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.	These matters are set out above in PART A of this Variation Request.
(4) Development consent must not be granted for development that contravenes a development standard unless— (a) the consent authority is satisfied that—	It is submitted that the applicant's request adequately addresses the matters required to be demonstrated by subclause (3). It is further submitted 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

(i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and (b) the concurrence of the Planning Secretary has been obtained.	development within the zone in which the development is proposed to be carried out. Council is able to assume the concurrence of the Planning Secretary as set out in the response to subclause (5) below.
(5) In deciding whether to grant concurrence, the Planning Secretary must consider— (a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and (b) the public benefit of maintaining the development standard, and (c) any other matters required to be taken into consideration by the Planning Secretary before granting concurrence.	NSW DPIE's Planning Circular PS 20-002 details when Councils can assume the Secretary's concurrence in varying a development standard. There are no matters of significance for State or regional environmental planning that are raised by the proposed variation to the Height of Buildings development standard.
(6) Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living if— (a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or (b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.	The land is not within any of the zones described in this subclause and the development is not for the purpose of subdivision. Accordingly the development standard may be varied as proposed.
(7) After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be	Noted.

addressed in the applicant's written request referred to in subclause (3).	

(8) This clause does not allow development consent to be granted for development that would contravene any of the following— (a) a development standard for complying development, (b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated, (c) clause 5.4, (caa) clause 5.5.	The development standard is not within any of the categories set out in this subclause and may therefore be varied as proposed.

ANNEXURE – NETBALL AUSTRALIA – NATIONAL FACILITIES POLICY p.16

2 COMPLIANCE

2.2 COMPLIANCE – SUMMARY DETAILS

Court dimensions

Length: 30.50m

Width: 15.25m

Court Thirds: 10.167m

Goal Circle Radius: 4.9m

Centre Circle: 900mm

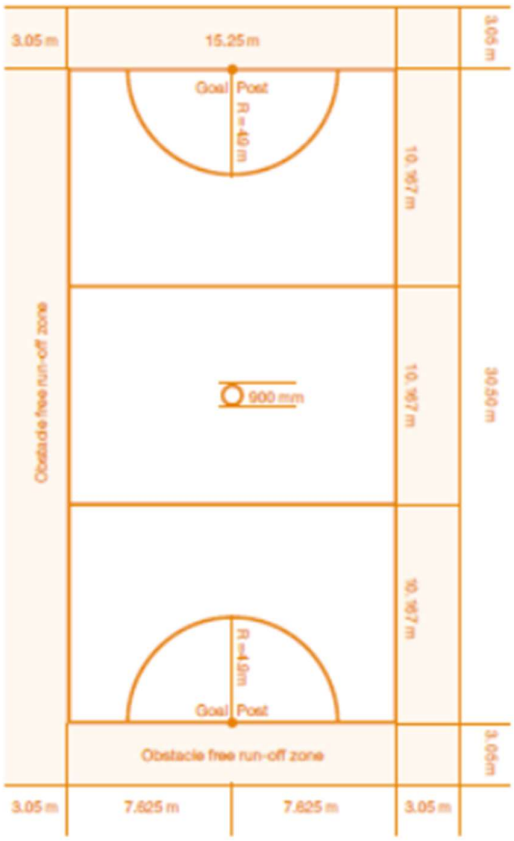
All Line Widths: 50mm

Gradient: 1% cross fall in both directions or 1% fall diagonally on one single constant plane.

Ceiling Height (court & run-off zones): Minimum 8.3m. This includes indoor & outdoor facilities.

All lines must be a textured water based acrylic, straight and have clean, crisp edges.

Important: All above measurements are to the outside edge of lines. All lines form part of the court.



Run-off dimensions

Minimum obstacle free space required:
On all sidelines and baselines: 3.05m
Between multiple courts: 3.65m

Run-off zones must be free of all obstacles and be of the same surface type and consistent level as the court.

Note: This is an International Netball Federation rule introduced to ensure the safety of players & umpires.

Court condition

The court must:

Have a firm consistent surface on a constant plane without gradient change

Have a consistent surface type over both the court and run-off zones

Not pose a trip or slip hazard in either the court or run-off zones

Comply with the current Slip Resistance Classification. See Section 9.12.1 'Acrylic Surface Types & Slip Resistance Testing'

Be fit for purpose.