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## REVISED Clause 4.6 Variation Request to the Height of Buildings Development Standard under Clause 4.3 of Blue Mountains LEP 2015

Demolition of demountable buildings, demolition of one (1) sports court, removal of 10 trees, construction of new two (2) storey classroom building and associated works.

St Columba's Catholic College

168 Hawkesbury Road, Springwood

Prepared for: Catholic Education Diocese of Parramatta  
September 2022

Printed: 27 September 2022  
File Name: 20695A St Columba's Catholic College/Reports/20695A.cl4.6 HOB.docx  
Project Manager: A Cropley  
Client: St Columba's Catholic College / Catholic Education Diocese of Parramatta  
Project Number: 20695A

## Document Control

Version	Prepared By	Reviewed By	Issued To	Date
Draft	A Cropley	S Earp	Client	13 December 2021
Final	A Cropley		Council	13 January 2022
Revised	A Cropley		Client	21 September 2022
Final	A Cropley	R Player	Council	27 September 2022

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# 1 Introduction

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## 1.1 Commission

DFP has been commissioned by St Columba's Catholic College (the college) and Catholic Education Diocese of Parramatta (CEDP) to prepare a written request ("Variation Request") pursuant to clause 4.6 of *Blue Mountains Local Environmental Plan 2015* (the LEP) for the construction of a new two (2) storey classroom building (the Proposal) at St Columba's Catholic College, 168 Hawkesbury Road, Springwood (the Site).

This Variation Request replaces the previous Variation Request dated 13 January 2022 and has been prepared to reflect the proposed development as amended.

The Proposal, as amended comprises:

- Demolition of eight (8) demountable classroom blocks;
- Demolition of one (1) sports court;
- Removal of 10 trees;
- Site excavation;
- Construction of a two (2) storey classroom building comprising creative hub (fabrication, visual arts, workshops) on the ground floor and inquiry hubs on the first floor;
- New hard and soft landscaping;
- Associated stormwater works; and
- Upgrades to existing access road / fire trail along the eastern edge of the college campus.

The Proposal as amended exceeds the height of building development standard under clause 4.3 of the LEP having a maximum height of 11.41m above the existing ground level, which exceeds the 8m height of buildings development standard by 3.41m. This is equivalent to 42.6%.

Notwithstanding the contravention of the development standard, the Proposal as amended is considered to be consistent with the objectives of the development standard and the objectives of the zone within which the development is to be carried out and there are sufficient environmental planning grounds to justify the contravention in this instance including:

- The height of the proposed development will not have an adverse impact on the heritage significance of the site. The main building (former seminary) is retained as the most prominent building on site and the maximum height of the new two (2) storey classroom building is similar to the height of the eaves of the main building (former seminary). This is consistent with the revised Conservation Management Plan prepared by Cracknell & Lonergan Architects. In response to Council's feedback, the proposed two (2) classroom building has been set back 17.25m from the main building, which enables the retention of two (2) significant trees and increases the heritage curtilage around the main building.
- The proposed development (and in particular its height) will not have any impacts on views to or from the heritage item. The new two (2) storey classroom building is not visible in the key approach to the site from the south. The new building allows for views to and from the main building (former seminary) and drama room (former recreation hall).
- The proposed new classroom building has been sited to ensure that the northern façade of the main building still receives solar access during the winter months.
- The proposed classroom building has been carefully located on site with regard to bushfire, heritage and biodiversity considerations. In response to Council feedback, the proposed two (2) storey classroom building has been setback an additional 5.98m from

# 1 Introduction

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the main building (former seminary). The new proposed classroom building is located on a part of the site that has been previously cleared and no additional areas of bushland are required to be removed to facilitate the proposed development. The new proposed classroom building has a two (2) storey consolidated building form to minimise impacts.

- Maintaining the development standard would require the gross floor area of the first floor to be located elsewhere on the site so as to achieve the required educational outcomes for the existing student population. Such an outcome would not achieve the same balanced outcomes in regard to bushfire, heritage, biodiversity or view considerations as the current amended proposal.

This written request has been prepared to provide a detailed assessment in accordance with the statutory requirements of clause 4.6 so that the consent authority can exercise its power to grant development consent, notwithstanding the contravention to the height of buildings development standard.

## 1.2 Material Relied Upon

This revised Variation Request has been prepared by DFP based on the Architectural Drawings prepared by Alleanza Architecture and other supporting drawings and reports which are appended to the Statement of Environmental Effects (SEE) report prepared DFP dated 13 January 2021.

This Variation Request should be read in conjunction with the detailed environmental planning assessment contained in the SEE and documents appended thereto.

## 2 The Nature of the Variation

Clause 4.3 and the Height of Buildings Map of the LEP designate a maximum building height of 8m for the Site (see **Figure 1**).

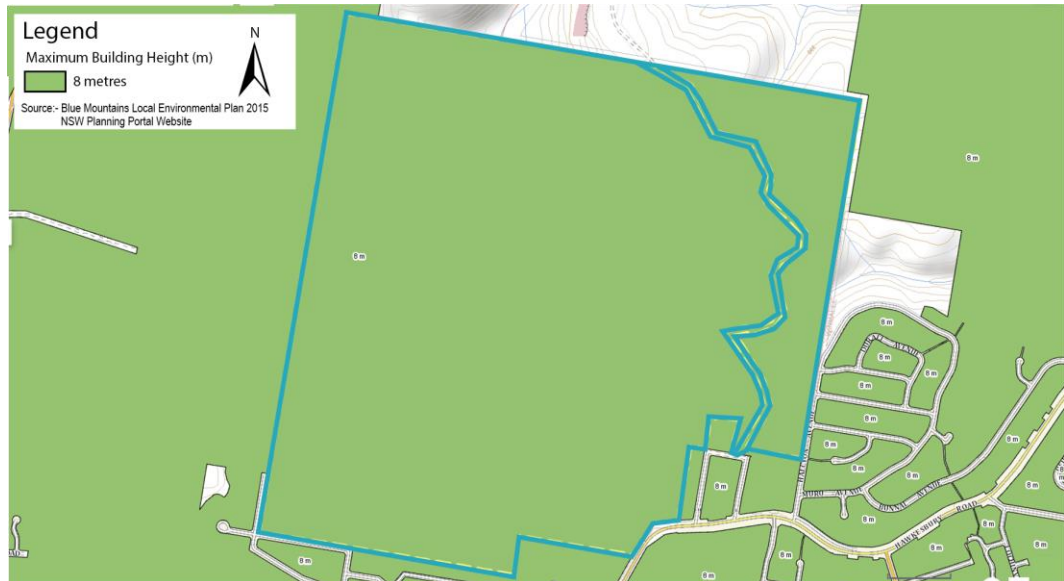


Figure 1 Extract of Height of Buildings Map (Blue Mountains LEP)

The LEP defines **height of building** as:

*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.*

The proposed development as amended does not comply with the 8m height of buildings development standard having a maximum height of 11.41m above the existing ground level. Therefore, the proposed two (2) storey classroom building exceeds the maximum height of buildings development standard by 3.41m, which is equivalent to a variation of 42.6%.

The extent of the non-compliance is shown in extracts of the sections prepared by Alleanza Architecture at **Figure 2 and Figure 3**.

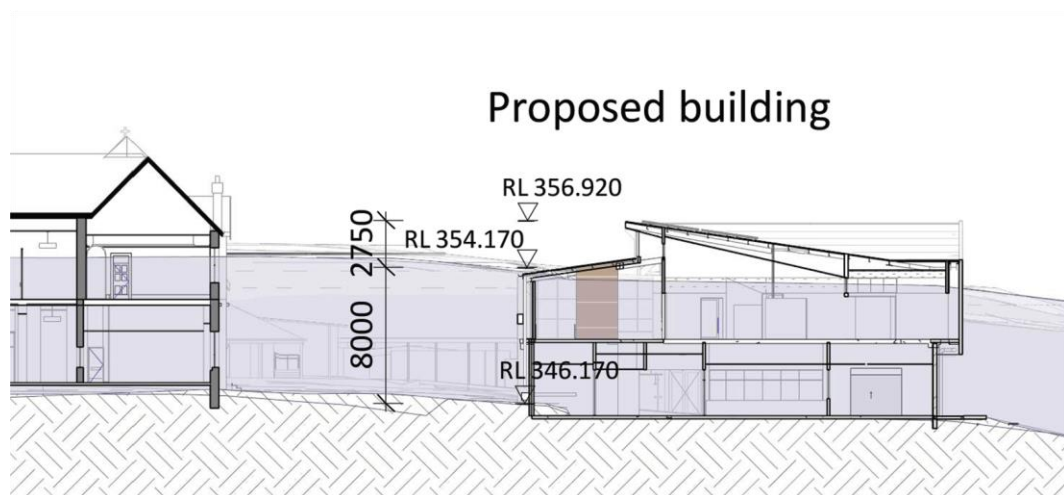


Figure 2 Section 3 – Height Analysis (Drawing DA18 prepared by Alleanza Architecture)



## 2 The Nature of the Variation

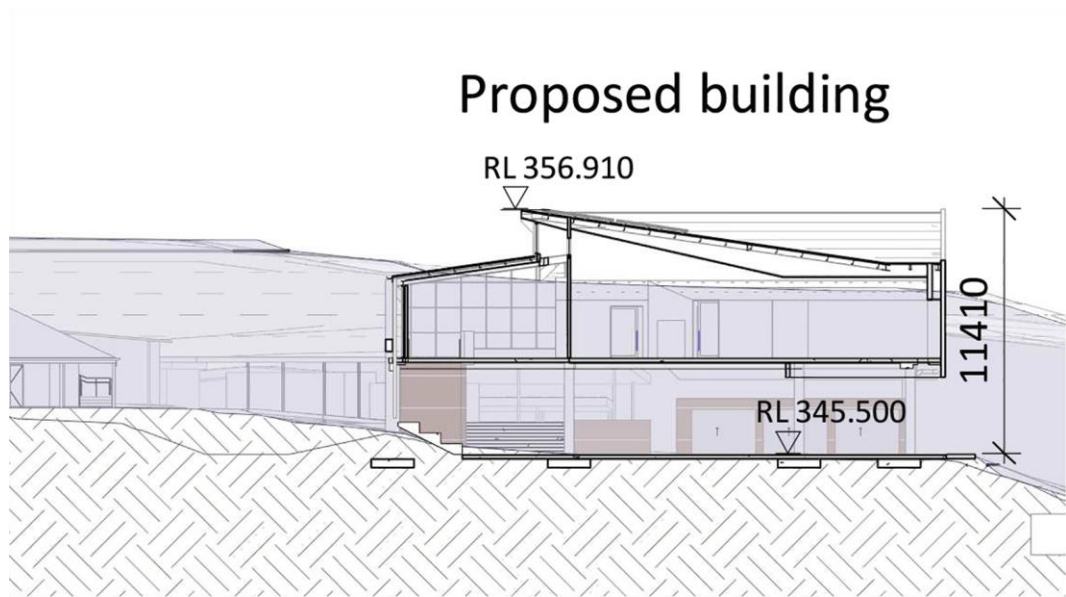


Figure 3 Section 4 – Height Analysis (Drawing DA18 prepared by Alleanza Architecture)

A height plane diagram has been prepared by Alleanza Architecture at **Figure 4**.

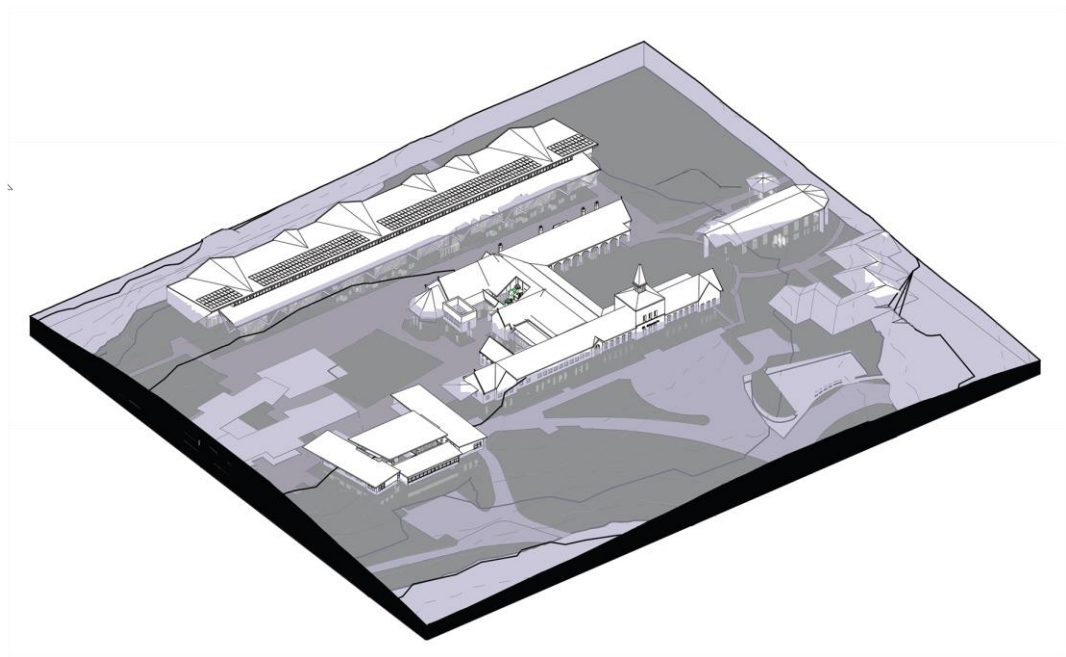


Figure 4 Height Plane Diagram (Drawing DA18 prepared by Alleanza Architecture)

## 3 Clause 4.6 Assessment

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### 3.1 Clause 4.6(1) - Objectives

Clause 4.6(1) of the LEP states the objectives of the clause 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.*

In the Judgment of *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 (“Initial Action”), Preston CJ ruled that there is no provision that requires the applicant to demonstrate compliance with these objectives or that the consent authority be satisfied that the development achieves these objectives. Furthermore, neither clause 4.6(3) nor clause 4.6(4) expressly or impliedly requires that development that contravenes a development standard “*achieve better outcomes for and from development*”.

Accordingly, the remaining subclauses of clause 4.6 provide the preconditions which must be satisfied before a consent authority may grant development consent to a development that contravenes a development standard imposed by an environmental planning instrument. These preconditions are discussed hereunder.

### 3.2 Clause 4.6(2) – Consent May be Granted

Clause 4.6(2) provides that:

- (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 control in clause 4.3 of the LEP is a development standard, defined in Section 1.4 of the EP&A Act as follows:

*“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:*

- (c) *the character, location, siting, bulk, scale, shape, size, height, density, design or external appearance of a building or work,*

The height of buildings development standard is not expressly excluded from the operation of clause 4.6 (see **Section 3.7** and **Section 3.9**).

### 3.3 Clause 4.6(3) – Consent Authority to Consider Written Justification

Clause 4.6(3) relates to the making of a written request to justify an exception to a development standard and states:

- (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.*

This report and information referred to herein, constitute a written request for the purposes of clause 4.6(3) and the following subsections address the justifications required under that subclause.

It will be a matter for the consent authority to consider this written request prior to granting development consent to the DA and as discussed in the Judgment of *AI Maha Pty Ltd v*



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*Huajun Investments Pty Ltd [2018] NSWCA 245* ('Al Maha') the consent authority or the Court must, in determining the DA, clearly enunciate that it has satisfied itself of the matters in clause 4.6(4). In the case of a consent authority, this might be by way of a statement in the reasons for approval authored by the consent authority.

### 3.4 Clause 4.6(4)(a) – Consent Authority to be Satisfied

Clause 4.6(4) provides that consent must not be granted for development that contravenes a development standard unless:

- (4) *Development consent must not be granted for development that contravenes a development standard unless:*
  - (a) *the consent authority is satisfied that:*
    - (i) *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
    - (ii) *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
  - (b) *the concurrence of the Secretary has been obtained.*

The following subsections of this written request address these matters.

#### 3.4.1 Clause 4.6(4)(a)(i) - Written request to adequately address the matters in cl4.6(3)

Clause 4.6(4)(a)(i) requires the consent authority to be satisfied that this written request adequately address the matters in clause 4.6(3) as follows:

- (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.

#### Compliance is Unreasonable or Unnecessary

In his Judgment of *Randwick City Council v Micaul Holdings Pty Ltd [2016] NSWLEC 7* ('Micaul') Preston CJ confirmed that an established means of demonstrating that compliance with a development standard is unreasonable or unnecessary is to establish that a development would not cause environmental harm and is consistent with the objectives of the development standard.


It is considered that the potential adverse impacts of the proposed development can be appropriately mitigated or minimised as described in **Table 1**.

**Table 1 Environmental Impact Mitigation and Management**

Issue	Discussion
Heritage	<p>The site is identified as a local heritage item (WL001 'St Columba's College (Building; Grounds; Gates; Elmhurst) under Schedule 5 of the LEP. An amended Statement of Heritage Impact has been prepared by Cracknell &amp; Lonergan Architects that provides an assessment of the impacts of the proposed development on the heritage significance of the item. It includes a review against the relevant provisions of the LEP, DCP, Heritage NSW guidelines and revised Conversation Management Plan.</p> <p>The SOHI notes that the proposed new classroom building replaces existing demountable buildings that are outdated, worn and temporary and do not have any heritage significance. The SOHI provides the following assessment of the proposed height, bulk and scale of the new classroom building:</p> <p><i>The Proposed Building is rectilinear in plan and parallel to the Drama Room and Main Building.</i></p>

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Table 1 Environmental Impact Mitigation and Management

Issue	Discussion
	<p><i>It is carefully designed - its built form respectful through it's typology, massing, scale and materiality.</i></p> <ul style="list-style-type: none"> <li><i>the Proposed Building relates proportionally: its height does not exceed that of the Main Building height</i></li> <li><i>the building's bulk is articulated by north and south components, the north component of the Proposed Building is marginally higher than the south component optimising the north light and views whilst the south side is lower in scale and form, addresses the Main Building and height enable the Proposed Building to be subservient to the Main Building.</i></li> <li><i>the distance between the Proposed Building and the Main Building is appropriate and allows adequate curtilage to the Main Building so as not to diminish the Main Building's prominence or it's integrity as a heritage building.</i></li> <li><i>the significant visual links the site affords, views, buildings' setting and curtilage are carefully considered so as the heritage buildings retain their heritage significance- aesthetic and historical.</i></li> <li><i>the Asset Protection Zone distance is achieved.</i></li> </ul> <p>The SOHI concludes that the height of the proposed classroom building is appropriate and that the proposed development will not have an adverse impact on the significance of the heritage item.</p>
Visual Impacts / Views	<p>The key approach to the site is from the south along the main driveway. The proposed new classroom building is located to the north of the main building (former seminary) and therefore does not obscure any views along this main axis.</p> <p>In addition, the proposed development is consistent with Policies 10 and 11 under Section 5.6 Significant Views and Orientation of the revised CMP which state as follows:</p> <p><b>Policy 10</b>  <i>Views of the main building (former seminary) from the south are of high significance. New development on the site should not inhibit these views. Consideration should be given to relocating and/or redesigning the car park and providing appropriate landscaping to frame these views.</i></p> <p><b>Policy 11</b>  <i>The impact of new development on views from the lookout tower of the main building (former seminary) should be carefully considered. In general the height of new buildings should not exceed the level of the eaves of the main building (former seminary).</i></p> <p>The height of the proposed classroom building is generally below the level of the eaves of the main building (<b>Figure 5</b>).</p>  <p><b>Figure 5</b> Extract of east elevation (Alleanza Architecture)</p> <p>The ground floor of the proposed new classroom building has been designed to provide views across the site including distant views to the east and west, slot views and through to the quadrangle.</p> <p>In order to reduce the potential visual impact of the proposed new classroom building, the building form is modulated through the use of an articulated roof form and a mix of building materials.</p>

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**Table 1 Environmental Impact Mitigation and Management**

Issue	Discussion
<b>Solar Access / Overshadowing</b>	The proposed two (2) storey classroom building will not impact on the solar amenity of any adjoining residential property. The separation distance of approximately 17.25m between the proposed new classroom building and the main building ensures that the northern façade of the main building will still receive sunlight during the winter.

Furthermore, the proposed development is considered to be consistent with the objectives of the height of buildings development standard under the LEP as described in **Table 2**.

**Table 2 Assessment against the objectives of the height of buildings development standard**

Objective	Assessment
(a) <i>to ensure that the bulk of development is not excessive and relates well to the local context,</i>	Existing buildings within the St Columba's Catholic College campus exceed the 8m height of buildings development standard including the Main Building, Library, Clonard Building and Sciences Building ( <b>Figure 4</b> ). The Main Building remains the tallest and most prominent building at the site. The proposed two (2) storey classroom building has been designed so that its height, scale and massing are recessive and subservient to the height, scale and massing of the Main Building and therefore relates well to the local context.
(b) <i>to protect privacy and the use of private open space in new development or on adjoining land,</i>	N/A. There is no private open space located within the vicinity of St Columba's Catholic College.
(c) <i>to nominate heights that will provide a transition in built form and land use intensity,</i>	N/A. St Columba's Catholic College is in an isolated location. The building height control applying to the site therefore does not provide or require a transition in built form and land use intensity for adjoining properties or the public domain.
(d) <i>to ensure an appropriate height transition between new buildings and heritage items.</i>	The proposed two storey classroom building provides an appropriate height transition between the main building (heritage item), the new building, and the surrounding bushland.

#### Sufficient Environmental Planning Grounds

In the Judgment of *Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 1009* ("Four2Five") Pearson C indicated there is an onus on the applicant to demonstrate, through the written request, that there are "*sufficient environmental planning grounds*" such that compliance with the development standard is unreasonable or unnecessary. Furthermore, that the environmental planning grounds must be particular to the circumstances of the proposed development rather than public benefits that could reasonably arise from a similar development on other land.

In Initial Action, Preston CJ indicated that it is reasonable to infer that "*environmental planning grounds*" as stated in under cl4.6(3)(b), means grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in section 1.3 of the EP&A Act.

#### Master Planning Options

The key objective of the proposed development is to replace eight (8) existing demountable buildings with a new permanent, fit-for-purpose, contemporary teaching facility for St Columba's Catholic College. The proposed new classroom building needs to meet the Catholic Education Diocese of Parramatta's current design aspirations and area standards including:

- *Create a tapestry formal and informal learning spaces with a diversity of learning spaces and promote student exposure to nature and the outdoors;*
- *Create a campus with strong visual connections between informal and formal, internal and external learning settings*

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- Visually and physically connected to the outdoors to allow observation and movement between indoor and outdoor settings
- Design and spatial organisation of the buildings should be informed by site conditions such as topography, orientation and climate
- Buildings to have a northern orientation to avoid direct exposure to western or northern sunlight
- Create well considered, central and logical gathering spaces to assist with way-finding.

Three (3) concept master planning options were considered for the new classroom building as set out in the Architectural Design Report prepared by Alleanza Architecture (**Figure 7**).

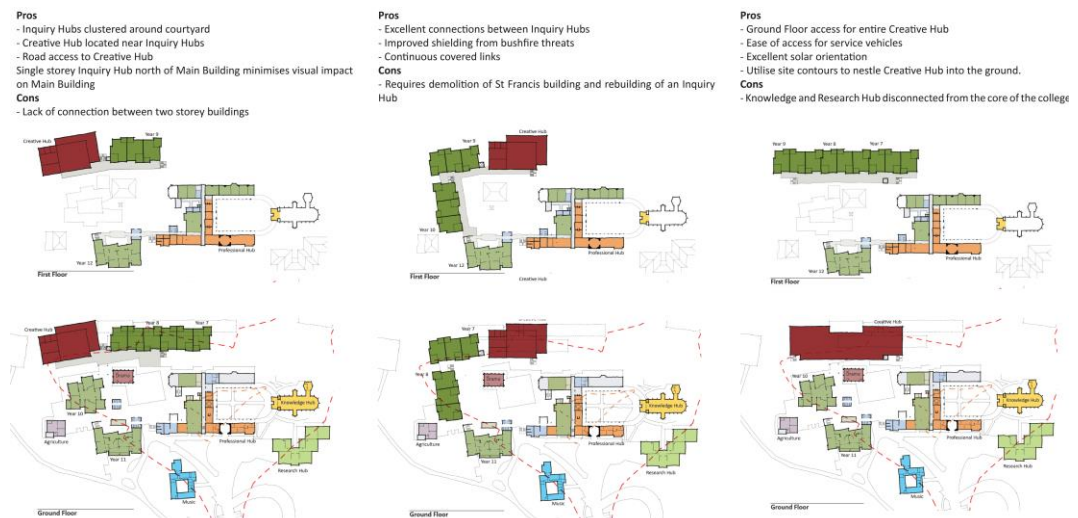
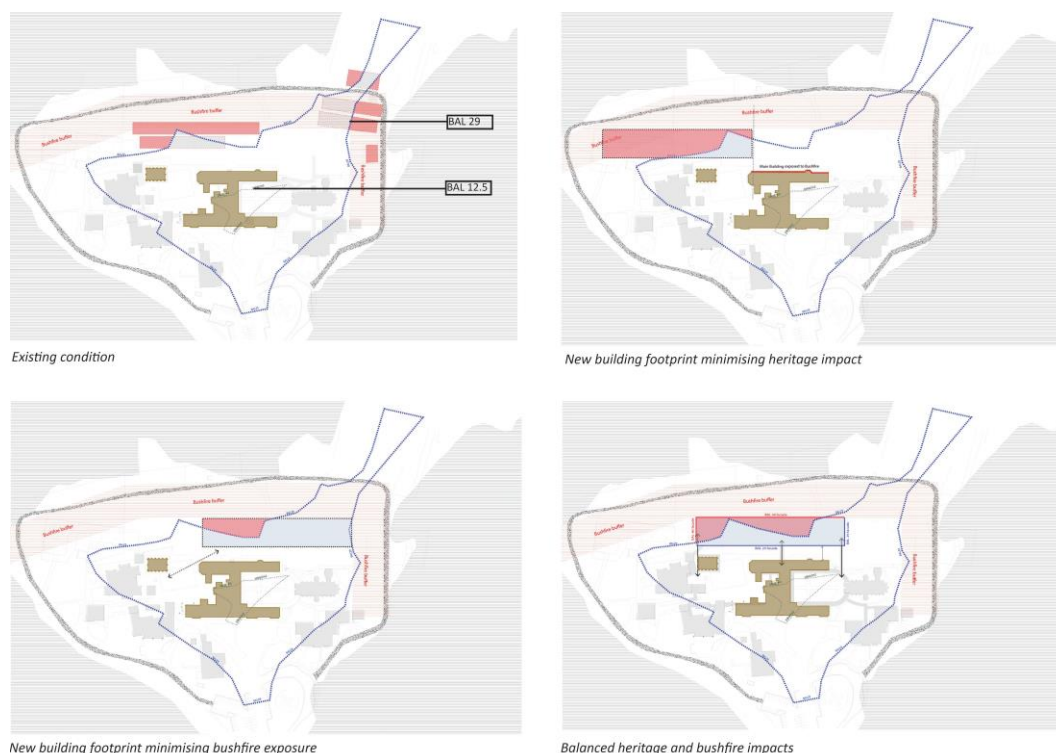


Figure 6 Three concept master planning options (Architectural Design Report Alleanza Architecture p. 14)

These three master planning options were further refined with regard to the bush fire, heritage and terrestrial biodiversity values of the site. The final location seeks to balance bushfire and heritage considerations (**Figure 8**).

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**Figure 7** Locating the new building in relation to bushfire and heritage considerations (Alleanza Architecture Architectural Design Report p. 15)

The new building is situated on a part of the site that has been previously developed and will not result in the removal of any areas of high biodiversity value including bushland. In addition, the location of the proposed new classroom building is considered to respect the existing curtilage of the main building (former seminary) and drama room (former Recreation Hall) by providing opportunities to consider these buildings in the round. The footprint of the proposed new classroom building has been consolidated. The Architectural Design Report prepared by Alleanza Architecture notes the following outcomes of the proposed site planning:

- Varied and flexible indoor and outdoor learning spaces with strong connections to surrounding natural and built environment
- Improved definition of communal hub and green spaces
- Redirected focus towards Main Building
- Enhanced permeability and connections to existing facilities
- Continuous covered circulation between buildings
- Increased external covered areas
- Improved legibility and way finding through clear visual connections
- Enhanced shielding of Main Building from bushfire threats

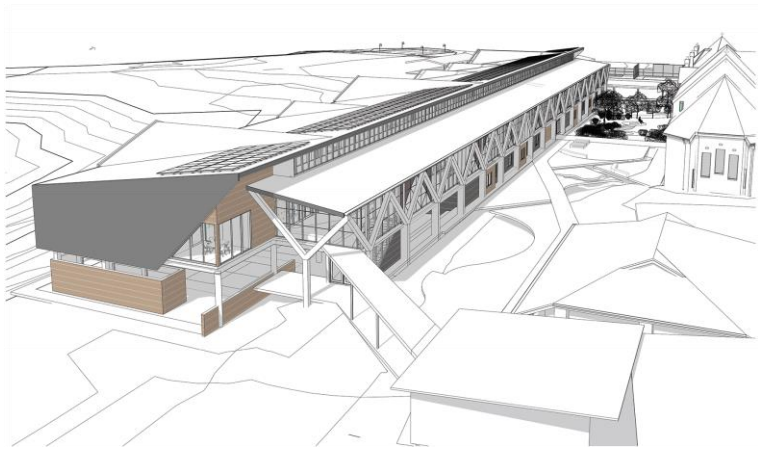
Following feedback from Council on 17 June 2022, the proposed two (2) storey classroom building has been setback a further 5.98m, which increases the separation distance between the proposed new classroom building and the main building to 17.25m.

Additional site-specific environmental planning grounds that support the proposed variation to the height of buildings development standard in this circumstance are detailed in the SEE, supported by the Architectural Plans prepared by Alleanza Architecture and other DA documentation, and is summarised in **Table 3**.



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**Table 3 Environmental planning grounds supporting the proposed variation**

Environmental Planning Ground	Discussion
Topography / Site Levels	<p>St Columba's Catholic College is located at a high point on the site, with the site sloping away in all directions towards the surrounding bushland. The site has been cleared for development with previous cut and fill to create flat areas for development.</p> <p>The proposed ground level of the new classroom building is RL345.5 which is lower than the existing ground level which ranges from RL 347.21 at the western end to RL 345.74 at the eastern end. This assists in reducing the height of the proposed new building in relation to the main building.</p>
Bush Fire	<p>The site is identified as bush fire prone land under Council's bush fire prone land map.</p> <p>In March 2020, preliminary discussions were held with NSW Rural Fire Service (RFS) to discuss suitable locations for the proposed development on site. A consolidated two (2) storey building form in a similar location to the existing demountable classrooms was the preferred option, as it would maintain the existing separation distance and asset protection zone (APZ).</p> <p>Following feedback from Council on 17 June 2022, the new proposed two (2) storey classroom building has been set back further from the main building (former seminary). The Bush Fire Assessment Report prepared by Bushfire Consulting Services Pty Ltd confirms that the proposed development is capable of complying with the relevant objectives and performance requirements of 'Planning for Bushfire Protection 2019'.</p>
Biodiversity	<p>The site is mapped as containing environmentally sensitive land under the LEP and <i>Biodiversity Conservation Act 2016</i> including:</p> <ul style="list-style-type: none"> <li>• Land zoned C2 Environmental Conservation;</li> <li>• Protected Area – Slope constraint area;</li> <li>• Protected Area – Vegetation constraint area</li> <li>• Protected Area – Ecological buffer area;</li> <li>• Endangered Ecological Communities;</li> <li>• Threatened Species;</li> <li>• Land within 60m of significant vegetation; and</li> <li>• Land within 20m of threatened flora.</li> </ul> <p>The proposed new classroom building is generally located on the footprint of the existing demountable building. This location means that no additional areas of bushland are required to be removed to facilitate the proposed two (2) storey classroom building and other works. This assists in protecting and maintaining the biodiversity values of the site.</p>
Building Design	<p>The proposed two (2) storey classroom building is rectangular in shape with a large footprint. However, the built form has been articulated through the use of flat and pitched roof area, Sections of extended walls to provide depth to the building and differing building materials (Figure 8).</p>  <p><b>Figure 8</b> South-west 3D view of the proposed classroom building</p>



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**Table 3 Environmental planning grounds supporting the proposed variation**

Environmental Planning Ground	Discussion
	The proposed classroom building has been designed so that the southern component of the building is lower than the northern component of the building. This design element of the proposed classroom building provides an appropriate transition in height and scale between the main building (former seminary) and drama room (former recreation hall).

In addition, in Micaul and Initial Action, Preston CJ clarified that sufficient environmental planning grounds may also include demonstrating a lack of adverse amenity impacts. As summarised in **Table 1**, the proposal satisfactorily manages and mitigates adverse amenity impacts.

Accordingly, it is considered that there are sufficient environmental planning grounds to justify the contravention of the height of buildings development standard in this instance.

### 3.4.2 Clause 4.6(4)(a)(ii) – Public Interest

Pursuant to clause 4.6(4)(b) and as discussed by Preston CJ in Initial Action, if the development is consistent with the objectives of the development standard and the objectives of the zone, the consent authority can be satisfied that the development will be in the public interest.

The proposed development is contained within the part of the site zoned RE2 Private Recreation (the RE2 zone) under the LEP.

An assessment of the proposal against the objectives of the height of buildings development standard is provided at **Table 2** and an assessment of the proposed development against the objectives of the RE2 Private Recreation Zone expressed in the Land Use Table to clause 2.3 of the LEP is provided in **Table 4**.

**Table 4 Assessment against the objectives of the RE2 Zone**

Objective	Assessment
<ul style="list-style-type: none"> <li>To enable land to be used for private open space or recreational purposes.</li> </ul>	N/A
<ul style="list-style-type: none"> <li>To provide a range of recreational settings and activities and compatible land uses.</li> </ul>	The site is an existing educational establishment and includes a range of playing fields and sports courts. This use is compatible with the RE2 zone.
<ul style="list-style-type: none"> <li>To protect and enhance the natural environment for recreational purposes.</li> </ul>	The proposed classroom building is located on a previously cleared area of the site. No additional areas of bushland are proposed to be removed to facilitate the development or to provide an increased asset protection zone. The proposed development will not have an adverse impact on the natural environment.
<ul style="list-style-type: none"> <li>To encourage the development of land in a manner that meets the private recreational needs of the community.</li> </ul>	The proposed development comprises the removal of eight (8) demountable classrooms and the construction of a new two (2) storey classroom building that provides a contemporary fit-for-purpose teaching facility for existing students at the school. The proposed development is considered to meet the current and future educational needs of the school.

These assessments demonstrate that the proposed development is consistent with the relevant objectives of the development standard to be varied and the relevant objectives of the zone within which the development is to be carried out. Accordingly, it follows that the proposed development is in the public interest.

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### 3.5 Clause 4.6(4)(b) –Concurrence of the Secretary

On 21 February 2018, the Secretary of the Department of Planning and Environment issued a Notice ('the Notice') under clause 64 of the *Environmental Planning and Assessment Regulation 2000* (the EP&A Regulation) providing that consent authorities may assume the Secretary's concurrence for exceptions to development standards for applications made under clause 4.6 of the *Standard Instrument – Principal Local Environmental Plan* (the SILEP) or SEPP 1 subject to certain conditions.

The LEP adopts cl4.6 of the SILEP and therefore, that prerequisite of the Notice is met.

Condition 1 of the Notice is not relevant in this instance as the request does not seek to vary a development standard relating to minimum lot size by more than 10% or in one of the zones specified by the notice.

Condition 2 of the Notice provides that concurrence may not be assumed by a delegate of the consent authority (i.e. a Council Officer) if the development will contravene a development standard by more than 10%. In that instance, the application must be determined by the relevant Local Planning Panel (LPP) unless:

- the proposed development is regionally significant development, in which case the relevant regional or Sydney district planning panel will be the consent authority and may assume concurrence (this also applies to State Significant Development which has been delegated to a regional or Sydney district planning panel); or
- a Minister is the consent authority.

The proposed development is regionally significant development and will be determined by the Sydney Western City Planning Panel (SWCPP).

### 3.6 Clause 4.6(5) - Concurrence Considerations

Clause 4.6(5) is not relevant in this instance as concurrence can be assumed pursuant to the Notice.

### 3.7 Clause 4.6(6) – Subdivision on Certain Land

Clause 4.6(6) is not relevant to the proposed development as it does not relate to subdivision of land.

### 3.8 Clause 4.6(7) – Keeping of Records

Clause 4.6(7) is an administrative clause requiring the consent authority to keep a record of its assessment under this clause after determining a development application.

### 3.9 Clause 4.6(8) – Restrictions on use of cl4.6

Clause 4.6(8) of the LEP states as follows:

- (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,*
  - (ba) *clause 4.1E (4) (Subdivision of land in certain environment protection zones),*
  - (bb) *clause 4.1G (3) (Lot consolidation in certain industrial and environment protection zones),*
  - (c) *clause 5.4,*

### 3 Clause 4.6 Assessment

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*(ca) clause 6.25 (2) (b) (Dwelling houses on land in Zone E2),*

*(cb) clause 6.26 (Shops in Zones B1 and B2).*

Clause 4.6(8) is not relevant to the proposed development as it is subject to a DA and does not constitute Complying Development, does not seek to vary any requirements of SEPP BASIX and does not relate to a standard under clauses 4.1E, 4.1G, 5.4, 6.25 or 6.26 of the LEP.

## 4 Conclusion

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The proposed development contravenes the height of buildings development standard under clause 4.3 of the Blue Mountains LEP 2015.

The height of buildings control under clause 4.3 of the Blue Mountains LEP is a development standard and is not excluded from the application of clause 4.6.

This written request to vary the development standard has been prepared in accordance with clause 4.6(3) of the LEP and demonstrates that strict compliance with the development standard is unreasonable and unnecessary because, notwithstanding the contravention of the height of buildings development standard, the proposed development is consistent with:

- the objectives of the development standard pursuant to clause 4.3 of the Blue Mountains LEP as it ensures that the main building (former seminary) is the most prominent building on the St. Columba's Catholic College site and provides an appropriate height transition between the new building and heritage items; and
- the relevant objectives of the RE2 Zone as it encourages the development of the site in a manner that meets the educational needs of the school as well as protecting the natural environment.

Therefore, the proposed development is in the public interest.

In addition, this written request outlines sufficient environmental planning grounds to justify the contravention of the height of buildings development standard including:

- the topography of the site;
- the proposed two (2) storey classroom building is subservient in height to the main building (former seminary) and is not visible in the key approach to the campus from the south;
- the proposed two (2) storey classroom building will not have an adverse impact on the heritage significance of the site or the main building (former seminary) or drama room (former recreation hall);
- the proposed two (2) storey classroom building has been carefully located on site with regard to bushfire, heritage and biodiversity considerations;
- A compliant proposal would require buildings to be located elsewhere on the site and such an outcome would not achieve the balanced response to bushfire, heritage and biodiversity considerations and the modern educational facilities required for the local community that the current proposal achieves; and
- a lack of significant adverse environmental amenity impacts.

Accordingly, this written request can be relied upon by the consent authority when documenting that it has formed the necessary opinions of satisfaction under cl4.6(4) of the LEP.

The consent authority can assume the concurrence of the Secretary pursuant to the Notice issued on 21 February 2018 and can exercise its power pursuant to cl4.6(2) to grant development consent to the proposed development notwithstanding the contravention of the development standard.