



## **REQUEST UNDER CLAUSE 4.6 OF CAMDEN LEP 2010**

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**St Yosip Parish, New Church, Hall and  
Early Learning Centre, 320 Dwyer Road,  
Leppington**

## CONTACT INFORMATION

THE PLANNINGHUB *by Hawes & Swan*

ABN 27 605 344 045

Suite 3.09, Level 3,  
100 Collins Street,  
Alexandria New South Wales 2015

[www.theplanninghub.com.au](http://www.theplanninghub.com.au)

Author(s):



Lachlan Rodgers  
Senior Town Planner

Approved by:



Mairead Hawes  
Director

## DOCUMENT INFORMATION

Prepared For:

Apostolic Catholic  
Assyrian Church of the  
East

Project Name:

St Yosip Parish, New  
Church, Hall and Early  
Learning Centre, 320  
Dwyer Road, Leppington

Job Reference:

20-084

Date Approved:

5 August 2020 V.3

## 1.0 The Proposal

This request is written in support of a development application (DA) that proposes the demolition of existing structures, the construction of a church, hall and child care centre and associated works at 320 Dwyer Road, Leppington.

This Clause 4.6 Request relates to a variation proposed to Council's Maximum Building Height control as prescribed by Camden Local Environmental Plan (LEP) 2010.

### 1.1 Relevant Case Law

Clause 4.6 of the Camden Local Environmental Plan (LEP) 2010 allows the consent authority to grant consent for development even though the development contravenes a development standard imposed by the LEP.

*(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.*

*Further Clause 4.6(4) provides that:*

*(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 clause aims to provide an appropriate degree of flexibility in applying certain development standards to achieve better outcomes for and from development.

Assistance on the approach to justifying a contravention to a development standard is also to be taken from the applicable decisions of the NSW Land and Environment Court (the Court) and the NSW Court of Appeal in:

1. *Wehbe v Pittwater Council* [2007] NSW LEC 827;

2. Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 1009;
3. Randwick City Council V Micaul Holdings Pty Ltd [2016] NSWLEC 7;
4. Bringham v Canterbury-Bankstown Council [2018] NSWLEC 1406;
5. Initial Action v Woollahra Municipal Council [2018] NSWLEC 118; and
6. Turland v Wingecarribee Shire Council [2018] NSWLEC 1511.

The common ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary are summarised by Preston CJ in *Wehbe v Pittwater Council* (2007) 156 LGERA 446 [42]-[51] and repeated in *Initial Action* [17]-[21]. Although *Wehbe* concerned a SEPP 1 objection, the common ways to demonstrate that compliance with a development standard is unreasonable or unnecessary in *Wehbe* are equally applicable to cl 4.6 (*Initial Action* [16]):

1. The objectives of the development standard are achieved notwithstanding noncompliance with the standard;
2. The underlying objective or purpose of the development standard is not relevant to the development, so that compliance is unnecessary;
3. Underlying objective or purpose would be defeated or thwarted if compliance was required, so that compliance is unreasonable;
4. The development standard has been abandoned by the council; or
5. The zoning of the site was unreasonable or inappropriate so that the development standard was also unreasonable or unnecessary (note this is a limited way of establishing that compliance is not necessary as it is not a way to effect general planning changes as an alternative to strategic planning powers).

The five ways to demonstrate compliance is unreasonable/unnecessary are not exhaustive, and it may be sufficient to establish only one way (*Initial Action* [22]).

The environmental planning grounds relied on in the written request under cl 4.6 must be sufficient to justify contravening the development standard. The focus is on the aspect of the development that contravenes the development standard, not the development as a whole. Therefore, the environmental planning grounds advanced in the written request must justify the contravention of the development standard and not simply promote the benefits of carrying out the development as a whole (*Initial Action* [24]).

## 1.2 Relevant Development Standard

The relevant development standard to which this objection relates to is Clause 4.3 Height of Buildings. Clause 4.3 Height of Buildings sets out the following:

(1) *The objectives of this clause are as follows:*

- (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 the visual impact, disruption of views, loss of privacy and loss of solar access to existing development,*

- (c) *to minimise the adverse impact of development on heritage conservation areas and heritage items.*

(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.*

#### Comment

The applicable maximum building height for the site is 9.5m. The development proposes a maximum building height of 11.4m for a small portion of the proposed church. All other buildings fully comply with the 9.5m building height control.

### 1.3 Is the Planning Control in Question a Development Standard?

'Development Standards' are defined under Section 1.4(1) 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: ...*

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

#### Comment

The maximum building height control under Clause 4.3 of the Camden LEP 2010 is clearly a development standard.

### 2.0 The Contravention

The proposal results in the following variation to Council's Maximum Building Height Control as demonstrated in the table below:

Table 1: Variation to Council's Maximum Building Height Control		
	Control	Proposed
Maximum Building Height	9.5m	11.4m
Variation	-	1.9m 20%

The principle reasons for the exceedance in maximum building height limit is the built form response to the natural characteristics of the site and the large floor plates and high ceiling levels required for the

proposed church. The proposed church has a congregation area accommodating 600 persons, a mezzanine area for the Church choir and a lower level for bible study, administration and amenities. The nature of the sloping site where the Church is situated accentuates the proposed height of the development. With consideration of site boundary setbacks and the viewing of the Church from the street level being significant, the impact of the exceedance in maximum building height is minimised.

The proposed variation accommodates a minimal percentage of the total building volume proposed, as detailed in **Figure 1** and **2** below. Both the hall and early learning centre comply with the maximum height control of 9.5m.



**Figure 1:** Plan detailing the portion of the development that exceeds the height limit (Source: PMDL Architecture)



**Figure 2:** 3D Height plane detailing the portion of the development that exceeds the 9.5 height limit (Source: PMDL Architecture)

## 2.1 Impacts of the Contravention

There are no adverse impacts as a result of the proposed contravention. The proposed exceedance does not result in any visual impacts and has been designed to best respond to the rural landscape and minimise impact on the scenic quality of the existing locality whilst also demonstrating the proposed community use of the site.

### Visual Impacts due to Bulk and Scale

Whilst it is noted the proposed development exceeds the Camden LEP's maximum building height control for the site, the proposed church have been sited and designed to minimise impacts on adjoining properties, the existing character of the area and the public domain whilst also ensuring usability and functionality. The area of exceedance is significantly setback from the Dwyer Road frontages and adjoining properties to minimise visual impacts.

The proposed development has been designed to incorporate a high degree of articulation and visual interest that will positively contribute to the character of the area and identify the uses proposed. The

high degree of articulation ensures the visual bulk of the development is reduced and assists in the integration of the development into the surrounding area.

As detailed in **Figure 1** the proposed variation accommodates a minimal percentage of the total building volume proposed and given the significant setbacks to the area of exceedance the visual impacts have been minimised.

### **3.0 Justification of the Contravention**

#### **3.1 The Site Context**

Site context is a key consideration when determining the appropriateness and necessity of a development standard. The site and its surroundings consist of a mix of agricultural and rural residential land uses. The site is identified as being located in the future growth precinct of Catherine Fields North under State Environmental Planning Policy (Sydney Region Growth Centres) 2006. The Catherine Fields North precinct is yet to be rezoned however it is identified as an area for growth and transition from the current rural character to a more suburban and urban character. The site is likely to be rezoned from RU4 to a residential or mixed-use zone.

The proposed development represents the early stages of transition in the precinct comprising of land uses that are permissible in the current and likely future zoning and provides a built form that is visually unobtrusive in the current landscape due to its siting and design. The proposed development has been designed to best respond to the rural landscape and minimise impact on the scenic quality of the existing locality whilst also demonstrating the proposed community use of the site.

#### **3.2 Public Interest**

Clause 4.6(4)(a)(ii) of Camden LEP 2010 requires that development consent must not be granted for development that contravenes a development standard unless the consent authority is satisfied that the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out.

The proposed development has been assessed against the objectives for the RU4 Primary Production Small Lots zone below. Despite the proposed variation to the maximum building height development standard, the proposal is considered in the public interest as it satisfies the objectives of the zone and the objectives of the development standard and will provide a range of uses that will service the needs to residents on the area.

#### **3.3 Consistency with RU4 Primary Production Small Lots Zone**

The consistency of the proposal against the objectives of the RU4 Primary Production Small Lots zone is outlined below.

- ***To enable sustainable primary industry and other compatible land uses.***



The proposed development comprises of the redevelopment of a site currently used for residential and storage purposes to community land uses that have been designed to ensure they are compatible with the existing landscape. The proposed development will not impact on the existing primary industry uses in the area.

- ***To encourage and promote diversity and employment opportunities in relation to primary industry enterprises, particularly those that require smaller lots or that are more intensive in nature.***

The proposed development comprises of the redevelopment of a site not currently used for primary industry and will provide community land uses that provide a service and employment opportunities for the existing and future community in the precinct.

- ***To minimise conflict between land uses within this zone and land uses within adjoining zones.***

The proposed development has been site and designed to minimise land use conflict with surrounding land uses and adjoining zones. This has been achieved through the incorporation of large setbacks and designing the proposed development to respond to the natural topography of the site.

### **3.4 Consistency with Objectives of the Building Height Development Standard**

The consistency of the proposal against the objectives of the maximum building height standard is outlined below.

- ***to ensure that buildings are compatible with the height, bulk and scale of the existing and desired future character of the locality***

The proposed development has been designed to ensure it is compatible with the height, bulk and scale of the existing and desired future character of the locality. The proposed development has been designed to best respond to the rural landscape and minimise impact on the scenic quality of the existing locality whilst also demonstrating the proposed community use of the site.

- ***to minimise the visual impact, disruption of views, loss of privacy and loss of solar access to existing development***

The proposed development has been designed to best respond to the natural characteristics of the site to ensure there are no visual impacts, disruption of views, loss of privacy and loss of solar access to existing development. The proposed development has been designed to incorporate a high degree of articulation and visual interest that will positively contribute to the character of the area and identify the uses proposed.

The high degree of articulation ensures the visual bulk of the development is reduced and assists in the integration of the development into the surrounding area. The proposed development does not adversely

impact adjoining properties from a solar access or privacy perspective, refer to Shadow Diagrams provided in the Architectural Plans (**Appendix A**).

- ***to minimise the adverse impact of development on heritage conservation areas and heritage items***

There are no heritage items or conservation areas located in close proximity to the subject site. The development has been sited and design to ensure views to and from heritage items in the Camden LGA are retained.

#### **4.0 Is Compliance with the Development Standard Unreasonable or Unnecessary in the Circumstances of the Case (Clause 4.6(3)(a))?**

Clause 4.6(3)(a) of Camden LEP 2010 requires the departure from the development standard to be justified by demonstrating:

- ***Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case***

##### **Comment**

The proposed development provides a built form that respond to the rural landscape and minimise impact on the scenic quality of the existing locality whilst also demonstrating the proposed community use of the site. The numeric increase in building height for the proposed development is approximately 1.9m at worst case which is a result of designing the development to respond to the site's natural characteristics the proposed community use.

The proposed development, including the proposed building elements that exceed the height limits, will continue to achieve the objectives of the standard. It is therefore considered that the objectives of the development standard are met notwithstanding the breach of the height of buildings standard.

#### **5.0 Are there Sufficient Environmental Planning Grounds to Justify Contravening the Development Standard (Clause 4.6(3)(b))?**

Clause 4.6(3)(b) of Camden LEP 2010 requires the departure from the development standard to be justified by demonstrating:

- ***There are sufficient environmental planning grounds to justify contravening the development standard***

##### **Comment**

It is our opinion that there are sufficient environmental planning grounds to justify contravening the building height standard in this instance. These are as follows:

- The proposed development is consistent with the objectives of the zone and the objectives of the building height control.
- The proposal does not result in any adverse impact from adjoining properties.
- The height variation equates to a maximum 1.9m for a minor portion of the proposed church and is not visually prominent.

It is considered the objectives of the LEP height standard are achieved in this instance where the proposal produces a high quality-built form that ensures a high level of amenity for users and surrounding development. In addition, the proposed materials and finishes and landscaping strategy further reinforces how the development will integrate with the surrounding area.

Whilst the built form exceeds the building height control applicable to the site, it is considered that the proposed design does not unreasonably detract from the amenity of adjacent residents or the existing quality of the environment as demonstrated in Architectural Plans prepared by PMDL Architecture (**Appendix A**).

Strict compliance with the building height development standard would require the reduction in size and functionality of the proposed church and would not result in reduced impacts on adjoining properties or the wider precinct.

## **6.0 Conclusion**

The proposed contravention of the 9.5m maximum building height is based on the reasons outlined in this request that are summarised as follows:

- It is considered that this proposal represents an individual circumstance in which Clause 4.6 was intended and to be available to set aside compliance with unreasonable or unnecessary development standards.
- The proposed development will not create an undesirable precedent.
- The proposed development is consistent with the objectives of Clause 4.3 and Clause 4.6 of Camden LEP 2010 and therefore is in the public interest pursuant to clause 4.6(4).

In view of the above, it is considered that this written request has adequately addressed the matters required by Clause 4.6(3) of the Camden LEP 2010 and Council's support to contravene the maximum building height development standard of Clause 4.3 is therefore sought.

## CONTACT US

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SUITE 3.09 LEVEL 3  
100 COLLINS STREET  
ALEXANDRIA NSW 2015

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Email [INFO@THEPLANNINGHUB.COM.AU](mailto:info@theplanninghub.com.au)

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Phone 02 9690 0279

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Website [THEPLANNINGHUB.COM.AU](http://THEPLANNINGHUB.COM.AU)

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