



Clause 4.6 Variation Request

Clause 4.3 - Height of
Buildings

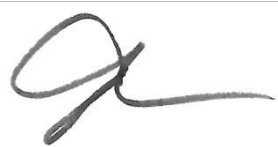

No. 2 Sir Warwick Fairfax Dr, Harrington Park

Submitted to Submitted to Camden Council

On Behalf of School Infrastructure NSW (NSW Department of Education)

DECEMBER 2019

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APPENDICES

Appendix No	Document Title	Prepared by
1	Architectural Plans	SARM Architects
2	Heritage Impact Statement	City Plan Heritage

1. EXECUTIVE SUMMARY

The proposed development is for alterations and additions to Harrington Park Primary School at 2 Sir Warwick Fairfax Drive, Harrington Park (the site). The development primarily involves the demolition of several existing buildings and the construction of one single-storey building and two two-storey buildings at the site. The buildings will be positioned in the northern and central parts of the site, generally in the locations of the buildings to be demolished.

This Clause 4.6 request has been prepared to justify a variation to Clause 4.3 - Height of Buildings of *Camden Local Environmental Plan 2010*, which prescribes a maximum building height of 9.5m for the site.

This request relates only to the two two-storey buildings including the administration/library building and learning block building. While the mass of these buildings is predominately contained below or in line with the 9.5m height standard, both buildings incorporate raised roof elements with high-level clerestory windows which partly exceed the height standard. The raised roof element of the administration/library building reaches a maximum height of 10.11 metres above existing ground level and the proposed learning block reaches a maximum height of 10.88 metres.

The site is affected by flooding from the Nepean River and Narellan Creek local catchment. The site's flooding constraint is the principal reason for the breach of the height control, with the new buildings required to be raised above the Probable Maximum Flood (PMF) level.

The "non-compliant" roof elements do not significantly contribute to the height, bulk and scale of the proposed buildings. Further, these elements will facilitate a number of positive external and internal amenity features, including a high level of climatic amenity to the buildings.

The proposed variation will not cause any unreasonable environmental impacts and there are sufficient environmental planning grounds to justify the variation. The development as a whole satisfies the objectives of the R2 – Low Density Residential zone and is in the public interest.

2. INTRODUCTION

This is a formal request that has been prepared in accordance with Clause 4.6 of the *Camden Local Environmental Plan 2010* to justify a variation to the Height of Buildings development standard proposed in a development application submitted to Camden Council for alterations and additions to Harrington Park Primary School at the site.

The objectives of Clause 4.6 are to provide an appropriate degree of flexibility in applying development standards to achieve better outcomes for, and from, development.

As the following request demonstrates, a better planning outcome would be achieved by exercising the flexibility afforded by Clause 4.6 in the particular circumstances of this application.

This request has been prepared having regard to the Department of Planning and Environment's Guidelines to Varying Development Standards (August 2011) and various relevant decisions in the New South Wales Land and Environment Court and New South Wales Court of Appeal (Court).

Clause 4.6 requires that a consent authority be satisfied of three matters before granting consent to a development that contravenes a development standard (see *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 and *RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130):

1. That the applicant has adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case [Clause 4.6(3)(a)];
2. That the applicant has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard [Clause 4.6(3)(b)];
3. 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 [Clause 4.6(4)]

This request also addresses the requirement for the concurrence of the Secretary as required by Clause 4.6(4)(b).

3. STANDARD TO BE VARIED

The standard that is proposed to be varied is the Height of Buildings development standard which is set out in Clause 4.3 of the *Camden Local Environmental Plan 2010* (CLEP) as follows:

4.3 Height of buildings

(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.*

The numerical value of the development standard applicable in this instance is 9.5m (refer **Figure 1**)



Figure 1: Extract of Height of Buildings Map (Source: NSW Planning Portal)

The development standard to be varied is not excluded from the operation of Clause 4.6 of the CLEP.

4. EXTENT OF VARIATION

As shown in **Figure 2 - Figure 4**, the two-storey administration/library building has an overall maximum height of 10.11m (RL 84.70m AHD) when measured from ground level, exceeding the prescribed maximum height by 0.61m (6.42%). The exceedance is limited to part of the raised roof element at the centre of the building, which extends less than half the length of the overall building (see western elevation at **Figure 3**).

As shown in **Figure 5 - Figure 6**, the two-storey learning block has an overall maximum height of 10.88m (RL 84.70m AHD) as measured from ground level (existing), exceeding the prescribed maximum height by 1.38m (14.53%). Again, the exceedance is limited to part of the raised roof element at the centre of the building. This non-compliant element extends the length of the building.

Importantly, the mass of both the non-compliant buildings is predominately contained below or in line with the 9.5m height standard. Refer to the Architectural Plans prepared by SARM Architects at **Appendix 1** for further detail.

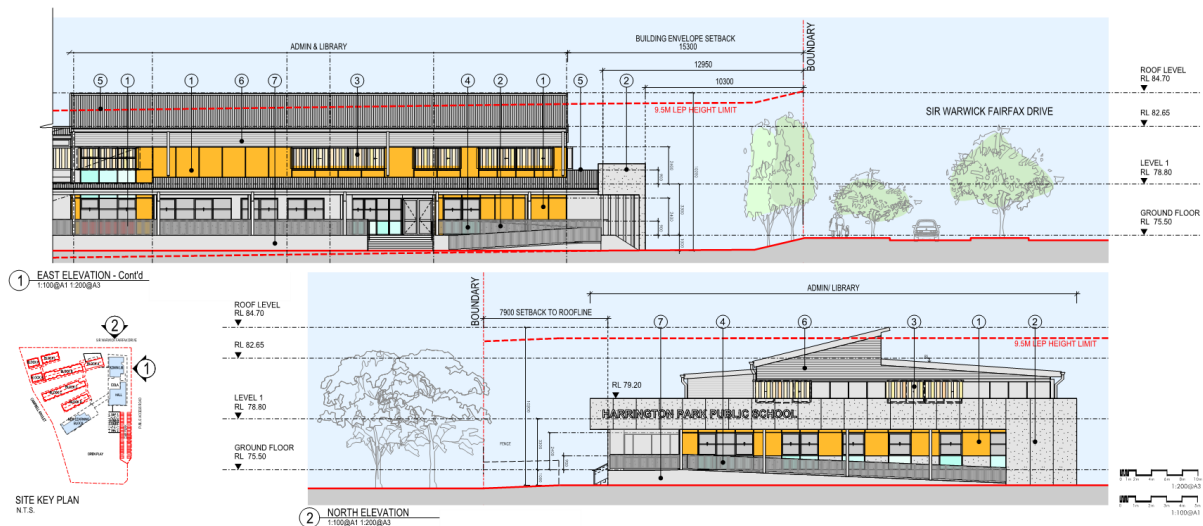


Figure 2: Northern and eastern elevations of proposed Administration/Library Building, 9.5m building height limit indicated by red dotted line (Source: SARM Architects)



Figure 3: Western and southern elevations of proposed Administration/Library Building, 9.5m building height limit indicated by red dotted line (Source: SARM Architects)

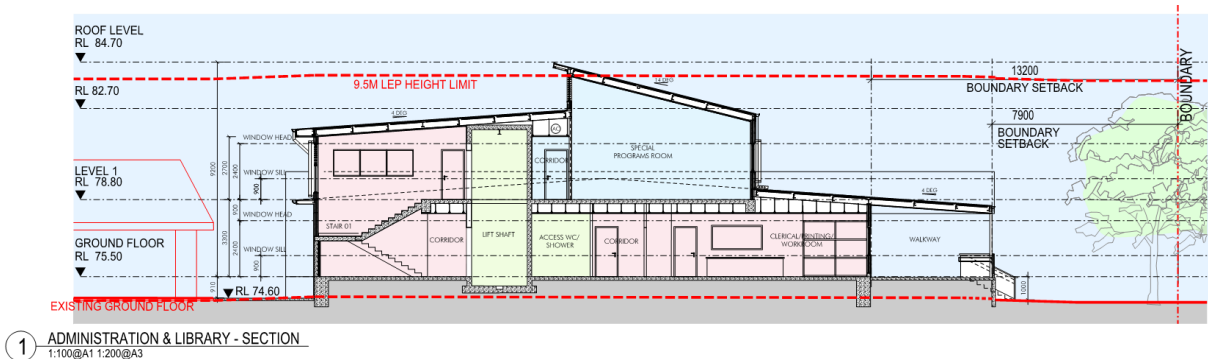


Figure 4: Section of proposed Administration/Library Building, 9.5m building height limit indicated by red dotted line (Source: SARM Architects)



Figure 5: Northern, eastern, southern and western elevations of proposed Learning Block, 9.5m building height limit indicated by red dotted line (Source: SARM Architects)

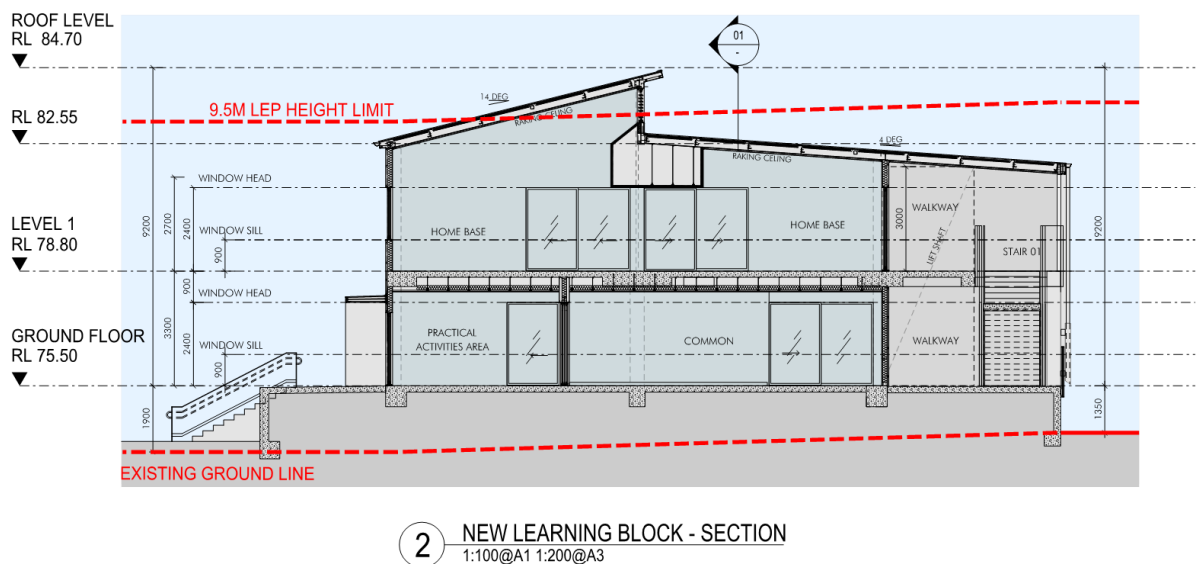


Figure 6: Section of proposed Learning Block, 9.5m building height limit indicated by red dotted line (Source: SARM Architects)

5. UNREASONABLE OR UNNECESSARY

In this section we demonstrate why compliance with the development standard is unreasonable or unnecessary in the circumstances of this case as required by clause 4.6(3)(a) of the LEP.

The Court has held that there are at least five different ways, and possibly more, through which an applicant might establish that compliance with a development standard is unreasonable or unnecessary and that it is sufficient to demonstrate only one of these ways to satisfy clause 4.6(3)(a) (Wehbe v Pittwater Council [2007] NSWLEC) and Initial Action Pty Limited v Woollahra Municipal Council [2018] NSWLEC 118).

The five ways of establishing that compliance is unreasonable or unnecessary are:

1. The objectives of the development standard are achieved notwithstanding non-compliance with the standard;
2. The underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary;
3. The objective would be defeated or thwarted if compliance was required with the consequence that 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 the standard is unreasonable and unnecessary; and
5. The zoning of the land is unreasonable or inappropriate

We have considered each of the ways as follows.

5.1. The objectives of the development standard are achieved notwithstanding non-compliance with the standard.

In the following table we have considered whether the objectives of the development standard are achieved notwithstanding the proposed variation.

Table 1: Achievement of Objectives of Clause 4.3 of LEP.

Objective	Discussion
(1)(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 built form reflects a more modern architecture of contemporary learning facilities which is in keeping with the existing built form on the school site and is considered an appropriate scale for the surrounding residential context. The additional height provides for greater articulation and contributes to the buildings' contemporary minimalist design to reflect the existing characteristics of the site. In particular, the non-compliant roof element of the administration/library is positioned at the northern extent of the building to help address the street corner without significantly contributing to the height, bulk and scale of the building.
(1)(b) to minimise the visual impact, disruption of views, loss of privacy and loss of solar access to existing development,	The new learning block will be located in the central-western part of the site and separated from existing nearby development by existing and proposed buildings and vegetation. The administration/library building will be setback between approximately 10.3 metres to 12.95 metres from Sir Warwick Fairfax Drive and screened by existing trees within the site and the adjoining road reserve. As such, it is not anticipated that the buildings' non-compliant roof elements will not result in any adverse visual, view loss or solar access impacts to existing development. The non-

Objective	Discussion
	compliant roof elements do not form usable space and will have no privacy impacts.
(1)(c) to minimise the adverse impact of development on heritage conservation areas and heritage items.	<p>A Heritage Impact Statement has been prepared by City Plan Heritage and is provided at Appendix 2. That statement notes that the new buildings "adopt a contemporary minimalist design so as to reflect the existing characteristics of the site and to prevent the new buildings from detracting from the SHR item in proximity". It concludes that the proposed development will not have an adverse impact on the heritage values of the nearby State listed 'Harrington Park'.</p> <p>It is considered that the non-compliant elevated roof forms contribute to this contemporary minimalist design.</p>

As demonstrated in **Table 1** above, the objectives of the Height of Buildings development standard are achieved notwithstanding the proposed variation.

In accordance with the decision in *Wehbe v Pittwater Council* [2007] NSWLEC and *Initial Action Pty Limited v Woollahra Municipal Council* [2018], therefore, compliance with the Height of Buildings development standard is demonstrated to be unreasonable or unnecessary and the requirements of clause 4.6(3)(a) have been met on this way alone.

For the sake of completeness, we consider the other recognised ways as follows.

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

We do not rely on this reason.

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

We do not rely on this reason.

5.4. The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence the standard is unreasonable and unnecessary; or

We do not rely on this reason.

5.5. The zoning of the land is unreasonable or inappropriate.

We do not rely on this reason.

6. SUFFICIENT ENVIRONMENTAL PLANNING GROUNDS

In this section we demonstrate that there are sufficient environmental planning grounds to justify contravening the Height of Buildings development standard as required by Clause 4.6(3)(b) of the LEP.

We note that in *Initial Action Pty Ltd v Woollahra Council* [2018] NSWLEC 118, Preston CJ observed that in order for there to be 'sufficient' environmental planning grounds to justify a written request under clause 4.6 to contravene a development standard, the focus must be on the aspect or element of the development that contravenes the development standard, not on the development as a whole.

We also note that in *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90, Pain J observed that it is within the discretion of the consent authority to consider whether the environmental planning grounds relied on are particular to the circumstances of the proposed development on the particular site.

As discussed in Section 4, the elements of the development which contravene the Height of Buildings development standard are the raised roof elements of the administration/library and learning block buildings.

Specific environmental planning grounds to justify the breach of the standard are summarised as follows:

- Raising of the buildings above the Probable Maximum Flood (PMF) level of RL 75.50m AHD is necessary to meet Council's requirements and to ensure the longevity and ongoing operation of the school and the safety of its students, staff and visitors.
- To achieve the required PMF level, the Finished Floor Level (FFL) of the new Administration/Library Building will be raised between approximately 0.9m and 1.0m above existing ground level. This building will exceed the prescribed maximum height by 0.61m. The FFL of the Learning Block will be raised between approximately 1.35m and 1.9m above existing ground level. This building will exceed the prescribed maximum height by 1.38m. The non-compliances are therefore a direct result of raising the buildings above the PMF.
- The height exceedances are limited to the raised roof elements of the two-storey buildings. These non-compliant elements facilitate a number of positive external and internal amenity features. Specifically, the raised roofs:
 - Accommodate high-level clerestory windows at level 1 of the buildings, providing natural light and ventilation;
 - Although adding additional height, provide for greater articulation and contribute to the buildings' contemporary minimalist design so as to reflect the existing characteristics of the site; and
 - Facilitate the provision of adaptable and functional spaces to cater for a range of activities.
- The non-compliant roof elements do not significantly contribute to the height, bulk and scale of the proposed buildings. The exceedances will not result in any adverse amenity, overshadowing, streetscape or heritage impacts.

7. PUBLIC INTEREST

In this section we explain how 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 as required by clause 4.6(4)(a)(ii) of the LEP.

In section 5 it was demonstrated that the objectives of the development standard are achieved notwithstanding the variation of the development standard.

The table below considers whether the proposal is also consistent with the objectives of the zone.

Table 2: Consistency with Zone Objectives.

Objectives of Zone R2 Low Density Residential Zone	Discussion
<ul style="list-style-type: none"> To provide for the housing needs of the community within a low-density residential environment. 	Not applicable to this proposal.
<ul style="list-style-type: none"> To enable other land uses that provide facilities or services to meet the day to day needs of residents. 	Forming part of the broader redevelopment proposal for the site, the proposal will facilitate the expansion of an existing school to accommodate an additional 225 (total 972) new students within 40 permanent classrooms to meet the day to day needs of residents.
<ul style="list-style-type: none"> To allow for educational, recreational, community and religious activities that support the wellbeing of the community. 	<p>Schools are recognised as providing a valuable social contribution to communities in terms of education, personal development and community interaction.</p> <p>The school currently accommodates 792 students and is used for various community uses including OSHC, church groups, cricket training, Zumba, pre-school soccer and the Music Bus (an external primary student music educational service).</p> <p>The proposal will provide extensive upgrades to the existing school to help meet the growing education needs for the increasing population of Harrington Park and surrounding suburbs. It will also provide further opportunity for large group community gatherings to enable celebrations, performances, demonstrations and formal activities.</p>
<ul style="list-style-type: none"> To minimise conflict between land uses within the zone and land uses within adjoining zones. 	<p>The proposal is within an existing school site. The existing school and proposed new buildings are entirely compatible with adjoining residential and recreational land uses.</p> <p>No adverse amenity impacts upon nearby residential land uses are anticipated, including with respect to noise.</p> <p>The existing off-street parking provision is compliant with DCP 2019 requirements. Further, adjoining on-street public parking is predominantly used by parents/guardians/custodians associated with student pick-up/drop-off coinciding with the starting and finishing times of the school, which are generally outside of the peak use of the sports reserve. As such, conflict associated with competing uses between the school and general public is expected to be minimal.</p>

As demonstrated in Table 2, the proposal is consistent with the objectives of the zone and in Section 5 it was demonstrated that the proposal is consistent with the objectives of the development standard. According to clause 4.6(4)(a)(ii), therefore, the proposal is in the public interest.

8. STATE OR REGIONAL ENVIRONMENTAL PLANNING

In this section we consider whether contravention of the development standard raises any matter of significance for State or regional environmental planning, the public benefit of maintaining the development standard, and any other matters required to be taken into consideration by the Secretary before granting concurrence required by clause 4.6(5).

There is no identified outcome which would be prejudicial to planning matters of state or regional significance resulting from varying the development standard as proposed by this application.

As demonstrated already, the proposal is consistent with the objectives of the zone and the objectives of the development standard and in our opinion, there are no additional matters which would indicate there is any public benefit in maintaining the development standard in the circumstances of this application.

Finally, we are not aware of any other matters required to be taken into consideration by the Secretary before granting concurrence.

9. CONCLUSION

This submission requests a variation, under clause 4.6 of the *Camden Local Environmental Plan 2010*, to the Height of Buildings development standard and demonstrates that:

- Compliance with the development standard would be unreasonable and unnecessary in the circumstances of this development because the objectives of the development standard are achieved notwithstanding the proposed variation; and
- There are sufficient environmental planning grounds to justify the contravention.

We submit that the consent authority can be satisfied to the above and that the development achieves the objectives of the development standard and is consistent with the objectives of the R2 Low Density Residential Zone notwithstanding non-compliance with the Height of Buildings standard and is therefore in the public interest.

We note that the concurrence of the Secretary can be assumed in accordance with Planning Circular PS 18-003.

On this basis, therefore, it is appropriate to exercise the flexibility provided by clause 4.6 in the circumstances of this application.

APPENDIX 1

Architectural Plans

APPENDIX 2

Heritage Impact Statement