

PRECAUTIONARY CLAUSE 4.6 SUBMISSION
SAMUEL GILBERT PUBLIC SCHOOL

Clause 4.6 - Exceptions to development standards - Height of Building

This precautionary Clause 4.6 Submission relates to proposed Alterations and Additions to the existing Samuel Gilbert Public School, Ridgescrop Drive, Castle Hill.

This submission is to be read in conjunction with the following:

- Architectural Plans prepared by Fulton Trotter Architects and specifically Drawings SD-1613 - P2 and SD-N-3101 - P11 prepared by Fulton Trotter Architects and dated 13/3/19.

The proposed development seeks approval for the expansion of Samuel Gilbert Public School to increase the capacity of the school to a maximum of 1000 students and to upgrade the existing core facilities to suit this increased population.

The subject application is identified as State Significant Development and is permissible under SEPP (Educational Establishments & Child Care Centres) 2017.

The proposal includes the construction of proposed Buildings N & P which are located adjacent to the frontage with Ridgescrop Drive. Building N is proposed to have a maximum building height (as defined) of 15.7m whilst Building P will have a maximum building height of 14.16m.

Clause 4.3 of The Hills Local Environmental Plan 2012 ordinarily provides for a maximum building height for the subject site of 9.0m.

Notwithstanding the above, reference is made to Clause 42 of the SEPP and which is specifically applicable to State Significant Development for the purpose of a school and states that:

Development consent may be granted for development for the purpose of a school that is State significant development even though the development would contravene a development standard imposed by this or any other environmental planning instrument under which the consent is granted.

On the basis of Clause 42 of SEPP (Educational Establishments & Child Care Centres) 2017 it is considered that compliance with the requirements of Clause 4.3 of The Hills LEP 2012 is not required.

This Clause 4.6 submission is therefore provided on a precautionary basis and is to form part of the merit assessment of the subject application particularly in relation to the proposal's building height.

This Clause 4.6 variation has been prepared having regard to recent decisions of the Land & Environment Court of NSW.

It is submitted that the variation is well founded and is worthy of the support of the applicable consent authority.

The following is an assessment of the proposed variation against the requirements of Clause 4.6.

1. What are the objectives of Clause 4.6 and is the proposal consistent with them.

The objectives of Clause 4.6 of the LEP are:

- (a) *to provide an appropriate degree of flexibility in applying certain development standards to particular development, and*
- (b) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

It is my opinion, as is demonstrated by the responses to the questions below, that the proposed variation is consistent with the objectives of this clause.

2. Is the standard to be varied a Development Standard to which Clause 4.6 applies.

Clause 4.3 is contained within Part 4 of the LEP and which is titled Principal Development Standards. It is also considered that the wording of the Clause is consistent with previous decisions of the Land & Environment Court of NSW in relation to matters which constitute development standards.

It is also noted that both Clause 4.3 and Clause 4.6 do not contain a provision which specifically excludes the application of Clause 4.6 in this circumstance.

On this basis it is considered that Clause 4.3 is a development standard for which Clause 4.6 applies.

3. Is compliance with the development standard unreasonable or unnecessary in the circumstances of this case.

It is my opinion consistent with the findings in *Wehbe v Pittwater Council* [2007] 156 LGERA 446, that compliance with the requirements of Clause 4.3 is both unreasonable and unnecessary in the circumstances of this case because the objectives of the development standard are achieved notwithstanding non-compliance with the standard.

In forming this opinion, it is noted that:

- The proposal relates to architecturally designed buildings and which incorporate significant levels of vertical and horizontal articulation together with a range of building materials and finishes which will result in a high-quality built form which will make a positive contribution to the streetscape of the locality.
- The proposed Buildings N & P whilst both having a three storey appearance when viewed from the street will form part of an existing educational facility which by its very nature will always have a different appearance, particularly in relation to building scale than nearby low density residential dwelling houses. It is not considered unusual for a modern educational facility to be different in terms of its built form to surrounding low density residential development.
- The modified proposal will provide for improved opportunities as a result of an increased setback and removal of originally proposed retaining walls for the provision of replenishment (screening vegetation) which will assist in screening the subject buildings when viewed from the public domain.
- The proposal will not result in any unreasonable amenity impacts upon adjoining properties as a result of its height, this is particularly the case in relation to overshadowing and a loss of privacy.

On this basis it is my opinion that strict compliance with the standard is unreasonable and unnecessary in the circumstances of this case.

4. Are there sufficient environmental planning grounds to justify contravening the development standard.

It is considered that a contravention of the development standard is justified on environmental planning grounds given that the proposal, as demonstrated by the plans and reports accompanying this application, is within the environmental capacity of the subject site and is consistent with the Objects of the Environmental Planning & Assessment Act 1979 as set out at Clause 1.3 and in particular:

- (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,*

The proposal seeks to carry out alterations and additions to the existing Samuel Gilbert Public School so as to allow for the increase in the existing school population from approximately 780 students to 1000 students so as to meet current educational demands.

The subject site is identified as comprising a number of significant trees together with remnant vegetation including Sydney Turpentine Ironbark Forest (STIF) and which is identified as an Endangered Ecological Community. The provision of a building having additional height allows for a reduction in the overall building footprint which will assist in the promotion of a better environment together with the proper management, development and conservation of the State's natural resources.

- (b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,*

The proposal as detailed in the submitted EIS and accompanying reports seek to incorporate appropriate ecologically sustainable development principles.

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

As previously identified, the proposal seeks to carry out alterations and additions to the existing Samuel Gilbert Public School so as to allow for the increase in the existing school population from approximately 780 students to 1000 students so as to meet current educational demands.

It is considered that the carrying out of alterations and additions to an existing school so as to meet current demands is a more orderly and economic use of land as opposed to having to acquire additional lands for the establishment of a new school.

- (d) Not Applicable*

- (e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,*

The proposal subject to compliance with recommendations of the supporting plans and reports will not result in any unreasonable environmental or ecological impacts.

- (e) *to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),*

The proposal will not result in any impacts upon any built and cultural heritage (including Aboriginal cultural heritage).

- (f) *to promote good design and amenity of the built environment,*

It is considered that the proposal provides for a high quality built form outcome for the site.

- (g) *to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,*

The proposal will comply with all applicable building and health standards.

- (h) *to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,*

The proposal is considered to be consistent with this objective.

- (i) *to provide increased opportunity for community participation in environmental planning and assessment.*

The subject application has been notified and advertised to the surrounding community and their comments have been included within the assessment of the application.

In addition to the above it is noted that:

- The proposal relates to an existing school located upon a large isolated site.
- The proposal seeks to provide for the increase in the existing school population from approximately 780 students to 1000 students so as to meet current educational demands.
- The provision of a building having additional height allows for a reduction in the overall building footprint to be occupied by the school and which will allow for the maximisation of tree retention and the associated minimisation of impact upon the STIF EEC which exists upon the site, as well as the provision of appropriate on-grade open space.

On this basis it is considered that there are sufficient environmental planning grounds to warrant a variation of the development standard.

5. Is the proposed development 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 is in my opinion in the public interest because it will provide for the increase in the existing school population from approximately 780 students to 1000 students so as to meet current educational demands.

In relation to the objectives for the R2 - Low Density Residential zone the following assessment is provided:

- *To provide for the housing needs of the community within a low density residential environment.*

Overridden by SEPP (Educational Establishments & Child Care Centres) 2017 and which permits the proposed educational establishment.

- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

The proposal which seeks to carry out alterations and additions to the existing Samuel Gilbert Public School so as to allow for the increase in the existing school population from approximately 780 students to 1000 students so as to meet current educational demands is considered to be consistent with this objective.

- *To allow residents to carry out a range of activities from their homes while maintaining neighbourhood amenity.*

Not Applicable.

In relation to the Objectives of Clause 4.3 of the LEP the following comments are provided:

- (a) *to ensure the height of buildings is compatible with that of adjoining development and the overall streetscape,*

Consistent with the interpretation of compatibility by the NSW Land & Environment Court in Project Venture Management v Pittwater Council, it is submitted that compatibility is not about sameness but rather the ability for a development to exist in harmony with its surroundings.

It is my opinion that the proposed buildings despite their proposed heights are compatible with surrounding development and the overall streetscape for the following reasons:

- The proposal relates to architecturally designed buildings and which incorporate significant levels of vertical and horizontal articulation together with a range of building materials and finishes which will result in a high-quality built form which will make a positive contribution to the streetscape of the locality.
- The proposed Buildings N & P whilst both having a three storey appearance when viewed from the street will form part of an existing educational facility which by its very nature will always have a different appearance, particularly in relation to building scale than nearby low density residential dwelling houses. It is not considered unusual for a modern educational facility to be different in terms of its built form to surrounding low density residential development.
- The proposed buildings are provided with appropriate setbacks from the boundaries of the site and generous spatial separation from nearby residential dwellings.
- The modified proposal will provide for improved opportunities as a result of an increased setback and removal of originally proposed retaining walls for the provision of replenishment (screening vegetation) which will assist in screening the subject buildings when viewed from the public domain.
- The proposal will not result in any unreasonable amenity impacts upon adjoining properties as a result of its height, this is particularly the case in relation to overshadowing and a loss of privacy.

(b) to minimise the impact of overshadowing, visual impact and loss of privacy on adjoining properties and open space areas.

It is not considered as demonstrated by the submitted shadow diagrams that the proposal will result in unreasonable overshadowing of the adjoining properties.

Similarly, it is not considered that the proposal will result in an unreasonable loss of privacy to adjoining properties due to the spatial separation which exists and the proposal being located opposite the front yards rather than rear yards of adjoining and nearby dwellings.

It is considered that any visual impact associated with the proposal will be offset by the high-quality design, combined with the proposed materials and finishes together with the proposed landscaping.

6. Whether contravention of the development standard raises any matter of significance for state or regional environmental planning.

It is my opinion that contravention of the standard does not raise any matters of significance for State or Regional environmental planning.

7. What is the public benefit of maintaining the development standard.

It is my opinion that there is no public benefit in maintaining the development standard in this instance given that the proposal will allow for the increase in the existing school population from approximately 780 students to 1000 students so as to meet current educational demands in a manner which will not result in any unreasonable impacts.

Conclusion

It is therefore my opinion based upon the content of this submission that a variation of the maximum height of building control of Clause 4.3 of The Hills LEP 2012 is appropriate in this instance.

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