

Central Coast
5 Pioneer Avenue
Tuggerah NSW 2259
Ph. 02 4305 4300
Fax. 02 4305 4399
coast@adwjohnson.com.au

Hunter Region
7/335 Hillsborough Road,
Warners Bay NSW 2282
Ph. 02 4978 5100
Fax. 02 4978 5199
hunter@adwjohnson.com.au

Clause 4.6 – Request to Vary Height Standard under Ballina LEP 2012

Proposed New High School for Ballina

Property:

37-49 Swift Street, Ballina
Lots 477 & 478 DP 729251, Lot 1 DP 1083219
and Lot 392 DP 755684

Applicant:

NSW Department of Education

Date:

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Document Control Sheet

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Limitations Statement

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1.0 Introduction

The NSW Department of Education is seeking Development Consent from the NSW Department of Planning and Environment for a State Significant Development, being a new high school for Ballina (located at 37-49 Swift Street, Ballina (Lots 477 and 478 DP 729251, Lot 1 DP 1083219, and Lot 392 DP 755684)) to cater for 1,000 students from the existing Ballina High School and secondary students from Southern Cross K-12 School.

The following Aerial photograph identifies the location and context of the subject site:



Figure 1: Aerial Photograph of site location and context.

The subject site currently contains the existing Ballina High School, which has been established on the site since 1931.

The following plan shows the extent of existing development on the site and the pattern of surrounding development:



Figure 2: Aerial Photograph of site and surrounds.

The proposed development, the subject of this Development Application, will positively contribute to the improved learning environment and amenity of the school and aesthetic presentation of the buildings within the streetscape, whilst remaining sympathetic to surrounding educational, residential and commercial development.

The proposed development will result in an appropriate, continued and significantly improved educational establishment on the site and provides a vital investment in education and provision of services to the community.

The proposed development however will result in a building height that exceeds the standard under BLEP 2012. This report has been prepared in support of the proposed departure from the development standard in accordance with clause 4.6 of BLEP 2012.

This report should be read in conjunction with the prepared Environmental Impact Statement.

2.0 Methodology

The mechanism that permits Council to consider a variation to a Development Standard is Clause 4.6 of the BLEP 2012:

4.6 Exceptions to Development Standards

- (1) The objectives of this clause are as follows:
 - (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,
 - (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.
- (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.
- (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.
- (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,
 - (b) the concurrence of the Secretary has been obtained.
- (5) In deciding whether to grant concurrence, the Secretary must consider:
 - (a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and
 - (b) the public benefit of maintaining the development standard, and

(c) any other matters required to be taken into consideration by the Secretary before granting concurrence.

The Land & Environment Court has over the years developed a basis for the consideration of objections to development standards, initially in the context of SEPP 1 and then more recently with the introduction of clause 4.6 in standard template LEPs.

This document has been prepared in consideration of the most recent case on clause 4.6, *Starby Pty Limited V The Hills Shire Council* (2016) NSWLEC 1140.

This report is structured to present the relevant planning background and context in the first instance and then addresses the relevant Clause 4.6 considerations.

3.0 Variation Sought

The standard to which exception is sought under Clause 4.6 of Ballina LEP 2012 is established by Clause 4.3 of the BLEP 2012 which prescribes a maximum building height for the site of 8.5m (refer **Figure 3** below).

The proposed development has a maximum building height of 15.726m from the existing ground level. However Clause 4.3A – Exceptions to height of buildings, aligns building height and flood planning provisions, and allows the maximum height of development on land to which this clause applies to be measured from the minimum level AHD permitted for that land on the Building Height Allowance Map. In this case, the minimum level AHD permitted for the subject site on the Building Height Allowance Map is 2.0m AHD. As such, when measured from that minimum level, the proposed development has a maximum building height of 15.526m.

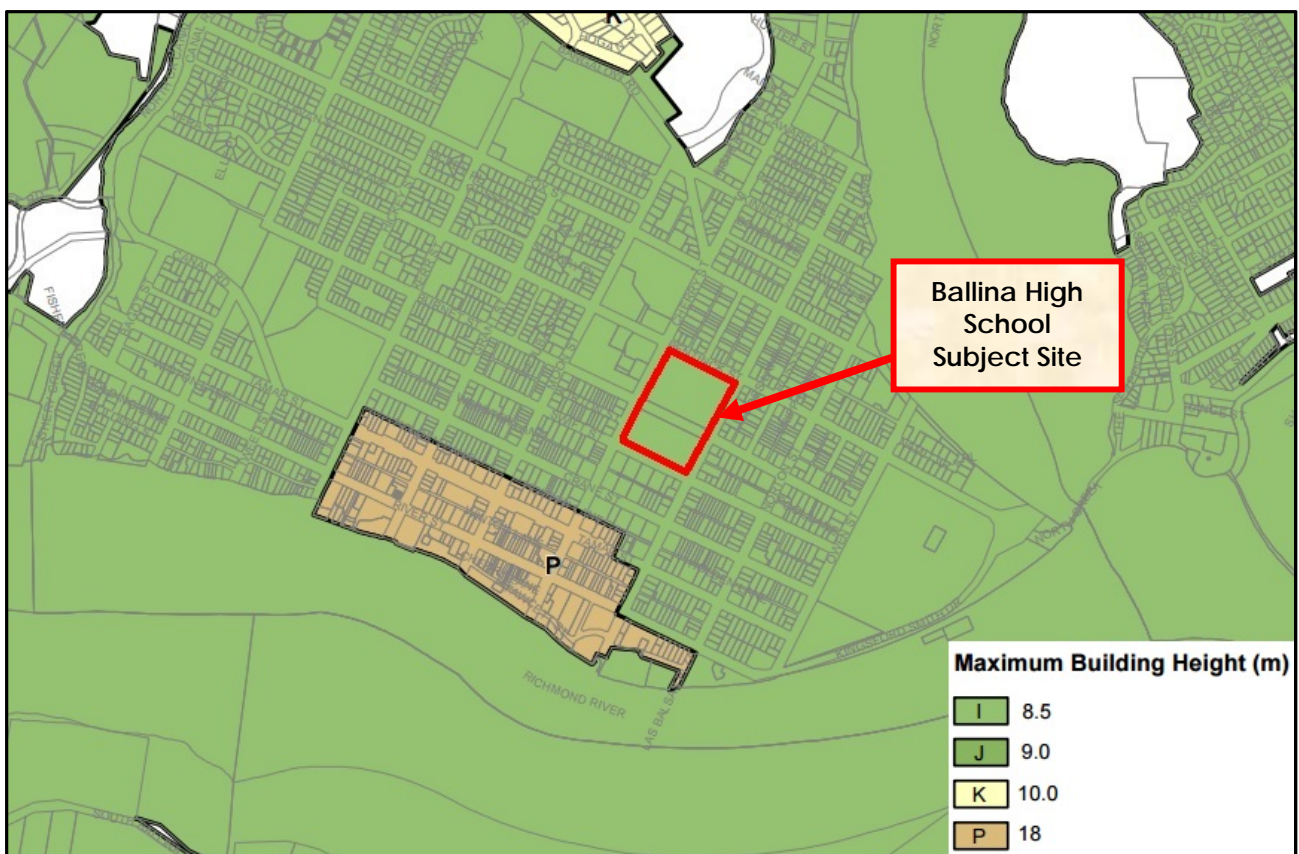


Figure 3: Extract from Ballina LEP 2012 Maximum Height of Buildings Map.

4.0 Relevant Planning Context

4.1 ZONE

The subject site is zoned R3 Medium Density Residential and RE1 Public Recreation under BLEP 2012. However, the proposed new high school development is only located within the R3 zoned land within the southern portion of the site. An extract from the LEP showing the zoning of the site in the context of surrounding zones is provided below:

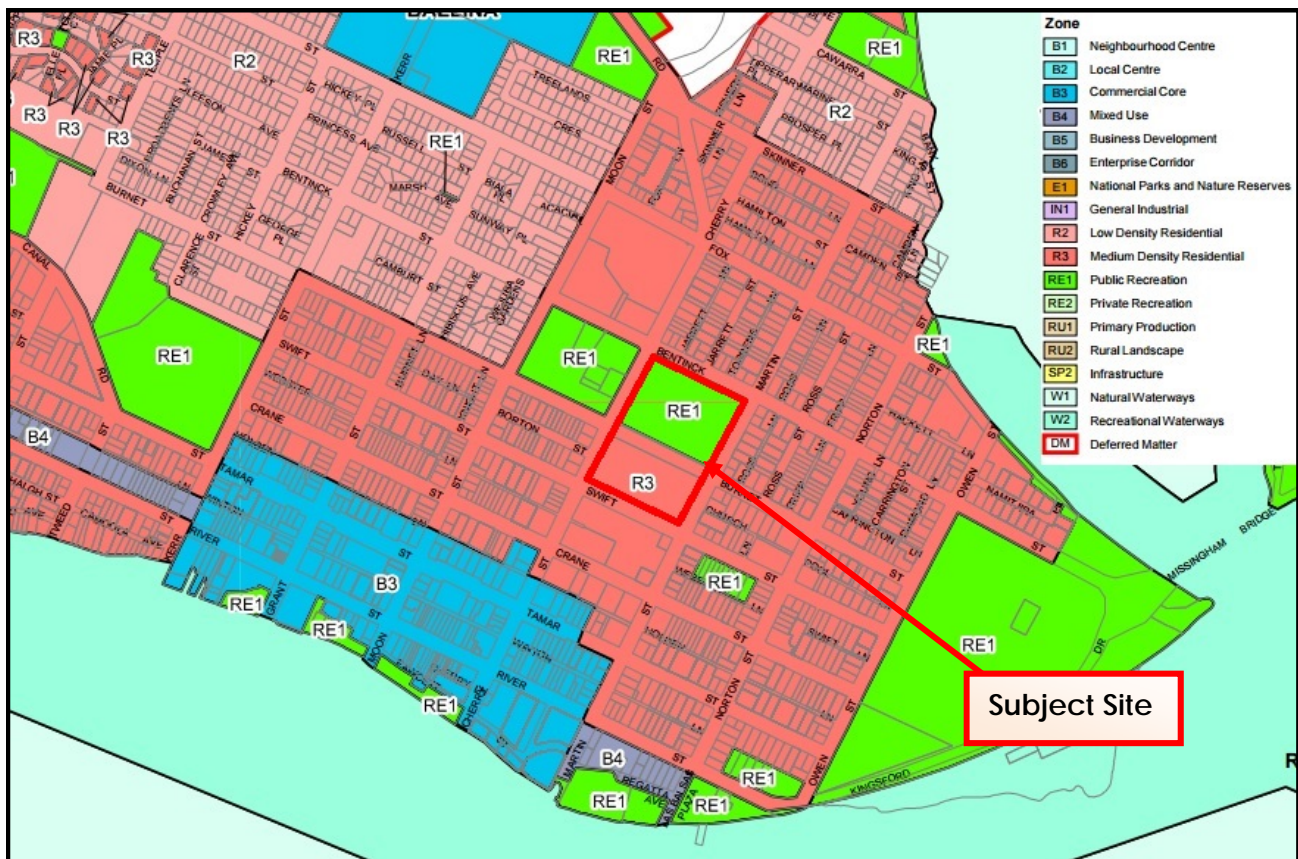


Figure 4: Extract from Ballina LEP 2012 Zone Map.

4.2 MAXIMUM BUILDING HEIGHT

The subject site has a maximum building height of 8.5m under the BLEP 2012, see **Figure 3**.

4.3 BALLINA MAJOR REGIONAL CENTRE STRATEGY 2015-2035

The Ballina Major Regional Centre Strategy (BMRCS) 2015-2035 provides a long term strategic planning framework for Ballina, and addresses the following six key themes:

- Open space and healthy living
- Economic development
- Character, culture and amenity
- Community facilities and infrastructure
- Environment
- Housing

The proposed development will contribute to the character, culture and amenity of Ballina by significantly improving training and employment opportunities for youth within the region, providing opportunity for the new high school to become a community hub contributing to the social cohesion of the community, and improving the aesthetic and amenity of the site and locality. In keeping with this theme of community and cohesion, the proposed new high school building has been designed over three levels, creating a dynamic learning environment within the building that encourages collaboration between learning stages and faculties due to their close proximity within the one building rather than being spread out across the site.

4.4 FAR NORTH COAST REGIONAL STRATEGY 2006-2031

The Far North Coast Regional Strategy (FNCRS) outlines the planning objectives for the Far North Coast Region from 2006 – 2031. **Figure 5** below is an extract from the strategy and shows that the subject land is identified as being ‘existing urban footprint’ located within the developing major regional centre of Ballina.

The objectives of the FNCRS relate primarily to housing, employment and environment to accommodate the projected population increases, and includes objectives that will ensure appropriate facilities, services and infrastructure to service the growing the population.

The proposed development is considered to be consistent with the aims and objectives of the Far North Coast Regional Strategy, contributing to the provision of innovative and high quality education options and opportunities for the current and future population of the region.



Figure 5: Extract from the Far North Coast Regional Strategy Map.

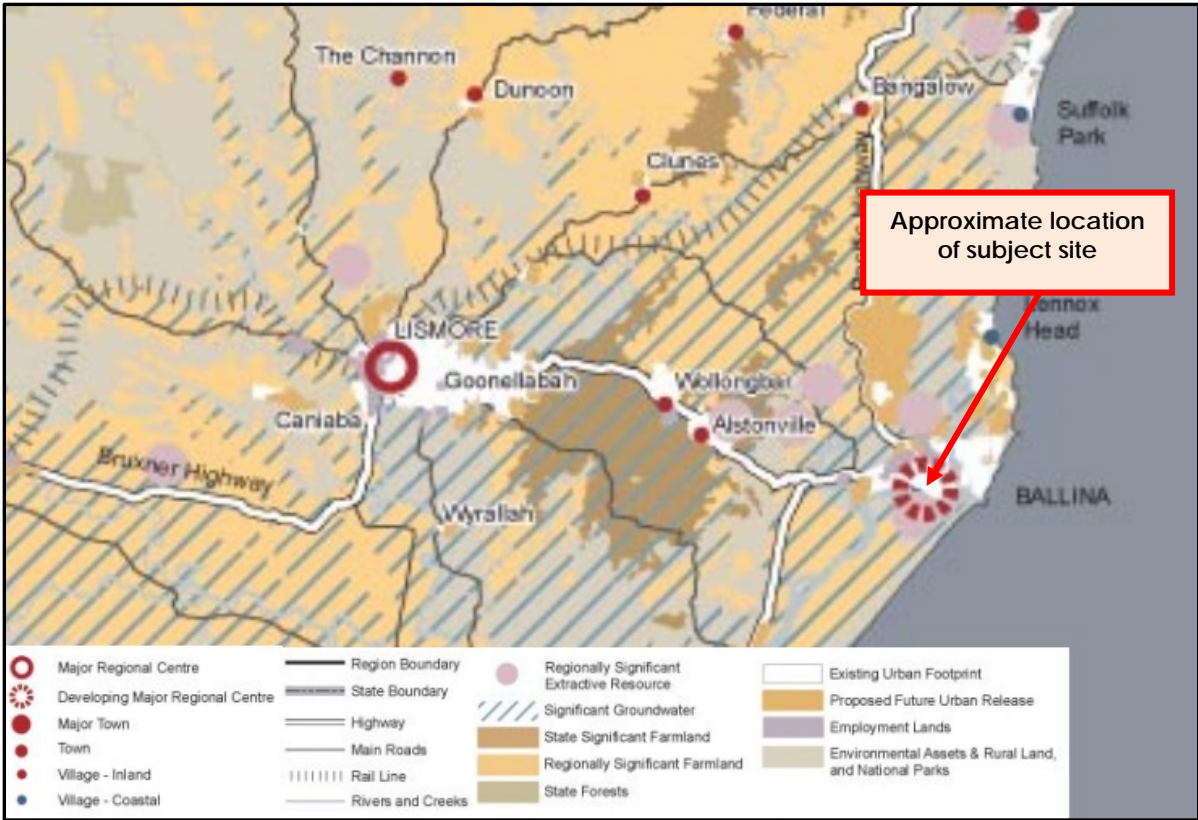


Figure 6: Extract from the Far North Coast Regional Strategy Natural Resources Map.

5.0 Matters for Consideration under Clause 4.6

The relevant matters to be dealt with under Clause 4.6 for the purpose of the variation are addressed below. This response has taken into consideration the information and observations outlined above.

5.1 ZONE OBJECTIVES

The site is zoned R3 Medium Density under NLEP 2012. The objectives of the zone are addressed below:

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

The proposed development does not impact on this objective being achieved. Indeed schools are required to support housing in the locality.

- *To provide for the housing needs of the community within a medium density residential environment.*
- *To provide a variety of housing types within a medium density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

The proposed new high school will provide a high quality educational facility to meet the education needs of the surrounding community.

- *To provide development that is compatible with the character and amenity of the surrounding neighbourhood.*

The proposed new high school will positively contribute to the amenity of, and diverse character of land uses within, the surrounding neighbourhood.

- *To encourage housing and infrastructure that supports the ageing population.*
- *To provide for development that meets the social and cultural needs of the community.*

The proposed new high school will support and attract a diverse population, responding to community and cultural needs.

- *To encourage development that achieves the efficient use of resources such as energy and water.*

Consistent with this zone objective, the proposed development incorporates water and energy efficient measures.

The proposed development is consistent with the objectives of the R3 Zone, particularly in providing a quality education facility that meets the day to day needs of the local

residents and surrounding community, and contributes to the diversity and vibrancy of land uses within the locality and the social and cultural fabric of the community.

5.2 MAXIMUM BUILDING HEIGHT STANDARD OBJECTIVES

The maximum building height standard objectives are addressed below:

(a) to ensure that the height of buildings is compatible with the bulk, scale and character of the locality,

The height controls for the subject site have been designed to match the typical height for an R3 zone in Ballina, being 8.5m. Whilst this is a reasonable approach to setting controls for the site, noting that the surrounding properties are of the same zone and also carry the same height controls it is important to understand that the site is catering for a non-residential land use (school) and so the unique needs of a school will need to be considered.

The R3 zoning of the locality combined with the 8.5m height limit under the LEP permits residential flat buildings surrounding the school up to 2 and 3 storeys in height. The proposed development does not exceed three storeys and so whilst it has a greater height it is still comparable to the form of development permitted within the locality. In urban design terms it is widely accepted that a variation in height by one storey, for example at a zone or height change interface, is appropriate and can be regarded as being compatible (this is supported by the principles for in the Apartment Design Guide). Accordingly it is considered that the proposed height differentiation of the school relative to the surrounding development will not appear out character with the area and will sit comfortably within the streetscape. This is particularly the case taking into account the large separation distances and setbacks.

(b) to minimise adverse impacts on existing or future amenity of adjoining properties and the scenic or landscape quality of the locality, and

The subject site is very large (effectively a city block when combined with the adjoining open space) and additional height can be readily accommodated with large setbacks to mitigate any impacts. The site itself is separated from nearby property by the surrounding road system (with wide streets). The proposed school buildings are also setback from the street boundary. The overall separation distances and setbacks are significant and ensure that the proposed height is not visually imposing.

Shadow diagrams have also been prepared and demonstrate that there are no significant overshadowing impacts resulting from the proposed height of the school.

(c) to protect significant views from public places.

The site and surrounds is of flat topography, the site is not located on a prominent ridge line and there are no significant public or private view corridors that would be impacted by the proposed height.

3(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and

Compliance with the development standards in relation to maximum height of buildings under Clause 4.3 is both unreasonable and unnecessary in this particular instance for the reasons outlined above and summarised again as follows:

- The proposed development achieves the objectives of the zone and the standard;
- The proposed development is consistent with the strategic plans for this area as it meets the need expressed in the BMRCS for a school facility that contributes to and creates community and social cohesion;
- The proposed building height is compatible with surrounding development;
- The proposed development will have no significant adverse impacts on the receiving environment, particularly noting the extent of separation from neighbours and setbacks proposed; and
- Compliance with the standard would result in an unnecessarily spread out design that would not facilitate the intention of the innovative high school development, being to create a dynamic learning environment within the one building that encourages collaboration between learning stages and faculties.

3(b) that there are sufficient environmental planning grounds to justify contravening the development standard.

This report has established that there are sufficient environmental planning grounds to justify the proposed variation, noting in particular:

- The site is catering for a non-residential land use (school) and so the unique needs of a school need to be considered;
- The proposed development will continue to support the zone objectives;
- The proposed development is compatible with the built form envisaged for the R3 zoning of the locality;
- The proposed development to the fullest extent possible is environmentally responsible and will have no significant adverse impacts on the receiving environment;
- Compliance with the standard would result in an inferior design outcome on the subject site and impact on the delivery of the highest quality of education to students with resultant community impacts; and
- The proposed height allows for the efficient use of land consistent with the objects of the Act.

4(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**

See comments relating to clause 3 matters, in writing, above.

4(a)(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

The proposed development is in the public interest as it will make a quality contribution to the overall growth and revitalisation of the locality.

It will provide an innovative and high quality educational establishment that provides superior educational options and opportunities for the current and future population of

the region.

Importantly the proposal is consistent with the objectives of the zone and the building height development standard.

6.0 Conclusion

The proposed development will result in a building height that exceeds the development standard set by Ballina LEP 2012, however the proposed increased building height is considered acceptable noting the following:

- The proposed development achieves the objectives of the zone and the standard;
- The significant public benefit in providing an innovative and high quality educational establishment for the current and future population of the region;
- The proposed building height is compatible with the context of surrounding development;
- The proposed development will have no significant adverse impacts on the receiving environment. Overall amenity for the street will be improved with the provision of a modern high school building that has been appropriately designed and articulated to sit comfortably within the streetscape; and
- Compliance with the standard would result in an inferior design outcome that would not facilitate the intended dynamic learning environment proposed within the one building.

It is considered that the objection to the building height development standard is well founded and that in this instance should be supported.