



Clause 4.6 Variation – Height of Buildings (Clause 4.3)

Proposed Saints Peter and Paul Assyrian Primary School (Master Plan and Built Form Approval)

17-19 Kosovich Place, Cecil Park
Lot 2320 & 2321 DP 1223137

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PART A PRELIMINARY

1.1 INTRODUCTION

This Clause 4.6 Variation request has been prepared in support of the State Significant Development Application (SSDA) for the Master Plan and built form approval of Saints Peter and Paul Assyrian Primary School at 17-19 Kosovich Place, Cecil Park (Lots 2320 and 2321 DP 1223137).

This Clause 4.6 Variation has been submitted to assess the non-compliance of the development with *Clause 4.3 Height of Buildings of Fairfield Local Environmental Plan 2013* (FLEP2013). This Clause 4.6 Variation has been prepared in accordance with the requirements of Clause 4.6 of FLEP2013 which has the following aims and objectives:

- (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.*

The proposed variation relates to *Clause 4.3 Height of Buildings* of FLEP2013. In summary, the following variation is proposed:

FLEP2013 Clause	FLEP2013 Development Standard	Proposed Development Non Compliance	Percentage of Variation
Clause 4.3 Height of Buildings	Maximum 9m building height	The proposal seeks development consent for a 12.8m maximum building height	42.22%

In accordance with Clause 4.6 of FLEP2013 the Consent Authority is required to consider the following:

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 request has been prepared in accordance with the aims and objectives contained within Clause 4.6 and the relevant development standard.

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PART B THE STANDARD BEING OBJECTED TO

2.1 CLAUSE 4.3 (HEIGHT OF BUILDINGS) OF FAIRFIELD LOCAL ENVIRONMENTAL PLAN 2013

The development standard requested to be varied is *Clause 4.3 Height of Buildings* of FLEP2013 which provides as follows:

4.3 Height of Buildings

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

(a) *to establish the maximum height for buildings,*

(b) *to ensure that the height of buildings complements the streetscape and character of the area in which the buildings are located,*

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

(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.*

Note. See Part 7 for exceptions to the maximum height of buildings in the Cabramatta, Canley Heights, Canley Vale, Fairfield and Villawood Town Centres.

The FLEP2013 map referred to in subclause (2) above, identifies the site as being subject to a 9m maximum building height.

The site is not subject to any of the exceptions provided under Part 7.

Pursuant to Clause 4.6, the proposed development seeks exception to the 9m building height standard prescribed by Clause 4.3.

The site is zoned *RU4 Primary Production Small Lots* under the provisions of FLEP2013 where Schools, being the proposed use of the site, are permitted with development consent.

This DA therefore relies upon what is reasonably concluded to be the underlying objectives of the standard and the RU4 zone.

2.2 THE OBJECTIVES/UNDERLYING PURPOSE OF THE CLAUSE

A key determination of the appropriateness of a variation to a development standard is the proposal's compliance with the underlying objectives and purpose of the development standard. Therefore, while there is a specified numerical control for maximum building height, the objectives and underlying purpose behind the development standard are basic issues for consideration in the development assessment process.

Part C of this Clause 4.6 Variation addresses the proposed variation to the Clause 4.3 development standard.

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2.3 PROPOSED VARIATION TO STANDARDS

The proposed development seeks the Master Plan and built form approval of Saints Peter and Paul Assyrian Primary School. Specifically, the proposal includes a three (3) stream, co-educational primary school with an ultimate population of 665 students and staff. The primary school will accommodate students from Kindergarten to Year 6.

Key components of the proposed school include:

- Site preparation works including bulk earthworks and soil remediation;
- Site infrastructure to service the school;
- Class rooms, contained within a double-storey building;
- Administration offices;
- Library;
- Multi-purpose hall;
- Outdoor open space including play areas, a 'Civic Heart', sports court and sports field;
- Car parking, kiss-and-ride and driveways to service staff, parents and service vehicles;
- Landscaping including riparian planting.

The proposed development will result in a building exhibiting a maximum building height of 12.8m. The proposed 12.8m building height represents a breach of 3.8m (42.22%) under Clause 4.3 of FLEP2013.

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PART C PROPOSED VARIATION TO CLAUSE 4.3 HEIGHT OF BUILDINGS

Pursuant to Clause 4.6 of FLEP2013, exception is sought from the 9m height of buildings standard applicable to the site pursuant to Clause 4.3 of FLEP2013. Clause 4.6(4)(a)(ii) requires that such a request must establish that the proposed contravention is consistent with the objectives of the standard and the zone.

3.1 OBJECTIVES OF THE STANDARD

The objectives of the standard as stated in FLEP2013 are:

(a) to establish the maximum height for buildings,

As described in this report, the development exceeds the 9m maximum building height established by FLEP2013. However, it should be noted that the two (2) storeys of the proposed built form complies with the number of storeys set by *Fairfield Development Control Plan* (FDCP). Additionally, the height non-compliance is limited to a portion of the building only, being the roof form over the western elevation on the downslope area of the site.

The additional building height for a portion of the development results from the steeply sloping topography of the site, combined with the need to maintain level access to all school facilities.

As described below, the proposed development (including those sections comprising additional building height) exhibits a positive visual impact, contributes to a desirable character for the site and streetscape, and maintains neighbouring amenity.

(b) to ensure that the height of buildings complements the streetscape and character of the area in which the buildings are located,

As noted above, the additional building height adjacent to the western elevation corresponds with the downslope portion of the site and is a result of the steeply sloping topography in this region. Through the proposed earthworks and building design, the resulting built form offers a functional and aesthetically-pleasing built form outcome. The additional building height is required in order to maintain level access to all school facilities and to create uniform rooflines, building lines and floor levels. This in turn contributes to a uniform streetscape. An alternative design with a completely compliant building height would result in disconnected building elements, a disjointed streetscape and dysfunctional internal level changes.

The proposal therefore contributes to a positive streetscape outcome and an enhanced visual character for the site.

(c) to minimise the visual impact, disruption of views, loss of privacy and loss of solar access to existing development

The proposed additional building height would contribute to a positive visual outcome for the site, as viewed from the street, internal areas of the site and surrounding properties. As described above, additional building height is required on the downslope area of the site to create continuous floor levels and rooflines, promote connectivity for the various elements of the school, and provide level access. The resulting built form is contained within the two (2) storey limit established by FDCP and the visual appearance of the development's bulk and scale would be generally consistent with the remainder of the building and other buildings within the school, as well as established built form on surrounding sites.

The proposal similarly provides a suitable amenity impact, including with respect to the protection of the views, privacy and solar access of neighbouring properties. The additional building height is located

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away from the boundaries of any surrounding residential properties and is buffered by 'compliant' elements of the development, deep soil landscaping, the upper slopes of the site and considerable separation distances. As a result, the non-compliant sections of the building will not protrude above the remainder of the school and therefore will not be visually prominent, will not obstruct any views, will not give rise to overlooking and will not cause overshadowing.

The proposal therefore results in a positive visual impact and protects neighbouring amenity.

3.2 OBJECTIVES OF THE ZONE

The site is zoned *RU4 Primary Production Small Lots* under the provisions of FLEP2013 where Schools, being the proposed use of the site, are permitted with development consent.

The proposal is consistent with the RU4 zone objectives in that:

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

Whilst the proposal is not for primary industry, it is noteworthy that the site is not currently used for primary industry and that surrounding properties in Kosovich Place are now used for rural-residential or institutional purposes, not primary industry. The proposal therefore does not supplant any current primary industry uses and in any case would not compromise the continued operations of any primary industry uses on nearby land.

In accordance with the zone objective, the proposed school provides a compatible land use. This is suggested by the inclusion of Schools as a permissible use in the RU4 zone pursuant to FLEP2013, the inclusion of the RU4 zone as a Prescribed Zone pursuant to *State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017* (E-SEPP), and the technical studies supporting the EIS. Notably, the proposed school has been demonstrated to provide a suitable use of the site with respect to traffic, noise and neighbouring amenity.

The compatibility of the proposed land use and suitability of the site for the proposed development is further considered in the accompanying EIS and its appendices.

- *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 proposal does not relate to primary industry enterprises, but does create employment opportunities. During the construction phases, the development is estimated to generate the equivalent of 43 full time positions in consultancy and construction activities for a 26 month period, and is also estimated to create up to 45 operational jobs.

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

As described above, the proposed school is compatible with surrounding land uses, including rural-residential properties within Kosovich Place. This is suggested by the inclusion of Schools as a permissible use in the RU4 zone pursuant to FLEP2013, the inclusion of the RU4 zone as a Prescribed Zone pursuant to *State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017* (E-SEPP), and the technical studies supporting the EIS. Notably, the proposed school has been demonstrated to provide a suitable use of the site with respect to traffic, noise and neighbouring amenity.

Of primary relevance given the purpose of this Clause 4.6 to justify a non-compliance with a development standard, the proposed additional building height would not create conflict between the site and any surrounding uses. The non-compliant sections of the building will not protrude above the

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remainder of the school and therefore will not be visually prominent, will not obstruct any views, will not give rise to overlooking and will not cause overshadowing. Neighbouring amenity will thereby be protected as a result of the non-compliance.

The compatibility of the proposed land use and suitability of the site for the proposed development is further considered in the accompanying EIS and its appendices.

Additionally, the proposal is highly compatible with the adjoining *E2 Environmental Conservation* zone as confirmed through detailed biodiversity assessment. Through the implementation of the Vegetation Management Plan, the riparian corridor within the E2 zone adjacent to the site's western boundary will be rehabilitated.

- *To ensure that development is sympathetic to the rural environment and minimises risks from natural and man-made hazards.*

The proposal has been sympathetically designed to integrate with the current rural character of the surrounding context whilst also responding to the future suburban character designated for this growing area of Western Sydney.

The consolidation of buildings on one region of the site is enabled through the two (2) storey form of the school, which in turn allows over half the site to be retained as open space. Combined with new landscaping and significant vegetation planting, this maximization of open space through minimized building footprints, is integral to enabling the site to integrate with the currently rural character of the immediate surrounds. Thereby the proposed additional building height is an important contributing factor in promoting the integration of the development in its environment.

The concentration of built form in the north-eastern section of the site also responds to environmental constraints. Namely the site is constrained by bushfire, flooding, riparian areas and contamination, and the design and siting of the development offers a functional response to the creation of a safe, amenable and innovative learning environment that simultaneously allows for natural process and the integrity of the environment to be maintained. The proposed additional building height is required to allow for this concentration of development outside of the various hazard zones, and thereby is essential to minimising risks to future students and staff from hazards.

Topography is another environmental 'characteristic' of the site, and it is specifically in response to the sloping topography of the land that additional building height is required on the downslope areas of the building footprint.

The proposal, including its additional building height, thereby specifically respond to the characteristics of the environment, in order to allow the school to integrate with the rural environment and minimise potential risks from hazards.

3.3 ESTABLISHING IF THE DEVELOPMENT STANDARD IS UNREASONABLE OR NECESSARY

Compliance with the standard would be unreasonable and unnecessary given that the additional building height is limited to the roof form over the downslope area of the building footprint and that the built form (including the non-compliant section) retains a two (2) storey form (consistent with FDCP). The additional building height would not be visually-prominent and would not result in any amenity impacts for neighbouring properties.

The standard is unreasonable and unnecessary in the circumstances of the case on the following basis:

- The additional building height is limited to a portion of the building only, and even where the additional building height is proposed, the two (2) storey form of the building is retained

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(consistent with FDCP). The visual appearance of the development's bulk and scale would thereby be generally consistent with the remainder of the building and other buildings within the school, as well as established built form on surrounding sites.

- The additional building height responds to the sloping topography of the land, with a raised ground level (in turn resulting in a raised floor level and ultimately raised roof line) required on the downslope portion of the site to create consistent and functional levels.
- A positive visual outcome, accounting for views from the streetscape, surrounding sites and the internal areas of the school, would result. Additional building height is required on the downslope area of the site to create continuous floor levels and rooflines, promote connectivity for the various elements of the school, and provide level access. This in turn contributes to a uniform streetscape. An alternative design with a completely compliant building height would result in disconnected building elements, a disjointed streetscape and dysfunctional internal level changes.
- The non-compliant sections of the building will not protrude above the remainder of the school and therefore will not be visually prominent, will not obstruct any views, will not give rise to overlooking and will not cause overshadowing. The proposal therefore protects neighbouring amenity.
- The proposed school is compatible with surrounding land uses, including rural-residential properties within Kosovich Place. This is suggested by the inclusion of Schools as a permissible use in the RU4 zone pursuant to FLEP2013, the inclusion of the RU4 zone as a Prescribed Zone pursuant to *State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017* (E-SEPP), and the technical studies supporting the EIS. Notably, the proposed school has been demonstrated to provide a suitable use of the site with respect to traffic, noise and neighbouring amenity.
- The proposal has been sympathetically designed to integrate with the current rural character of the surrounding context whilst also responding to the future suburban character designated for this growing area of Western Sydney.
- The consolidation of buildings on one region of the site is enabled through the two (2) storey form of the school, which in turn allows over half the site to be retained as open space. This is integral to enabling the site to integrate with the currently rural character of the immediate surrounds. Thereby the proposed additional building height is an important contributing factor in promoting the integration of the development in its environment. It is envisaged that in the foreseeable future, when the local area is further developed, the school will remain a 'green oasis'.
- The concentration of built form also responds to environmental constraints. Namely the site is constrained by bushfire, flooding, riparian areas and contamination, and the design and siting of the development offers a functional response to the creation of a safe, amenable and innovative learning environment that simultaneously allows for natural process and the integrity of the environment to be maintained. The proposed additional building height is required to allow for this concentration of development outside of the various hazard zones, and thereby is essential to minimising risks to future students and staff from hazards.

Overall, the above justifications demonstrate that compliance with the standard would be unreasonable and unnecessary. The proposed variation is therefore well-founded and acceptable.

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3.4 SUFFICIENT ENVIRONMENTAL PLANNING GROUNDS TO JUSTIFY CONTRAVENING THE DEVELOPMENT STANDARD

The variation to the development standard for building height (Clause 4.3) is considered well-founded because, notwithstanding the proposed non-compliance with this standard:

- The proposed development is entirely consistent with the underlying objective or purpose of the building height standard, as demonstrated in **Section 3.1**.
- The proposed development fully achieves the objectives of FLEP2013 for the RU4 zone, as described in **Section 3.2**.
- Compliance with the standard would be unreasonable and unnecessary for the reasons outlined in **Section 3.3**.
- Given the natural topography of the land, additional building height is required on downslope areas in order to maintain level access to all school facilities and to create uniform rooflines, building lines and floor levels.
- The two (2) storeys of the proposed built form complies with FDCP.
- The additional building height would contribute to a positive visual outcome and uniform streetscape.
- The appearance of the bulk and scale of the development would be generally consistent with a fully-compliant offering as well as established development on surrounding sites.
- The proposal would protect neighbouring amenity, including with respect to views, privacy and solar access.
- The concentration of built form in one portion of the site (as allowed by the additional building height) maximises the area of open space. This is important in the effective integration of the school in its environment.
- Consolidated built form (and the additional building height) is also required to ensure the school buildings are sited completely outside of the hazard zones (bushfire, flooding, riparian areas and contamination).

For the reasons outlined above, it is considered that the proposed variation to the building height control is entirely appropriate and can be clearly justified having regard to the matters listed within FLEP2013 Clause 4.6.

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PART D CONCLUSION

It is requested that the Department of Planning and Environment (DPE) supports the proposed variation to *Clause 4.3 Height of Buildings* of FLEP2013 for the following reasons:

- Consistency with the objectives of the standard and zone is achieved.
- Compliance with the development standard is unreasonable and unnecessary in the circumstances of the case.
- There are sufficient environmental planning grounds to justify contravening the development standard.
- No unreasonable environmental impacts are introduced as a result of the proposal.
- There is no public benefit in maintaining strict compliance with the standard.

Given the justification provided above, this Clause 4.6 Variation is well founded and should be favorably considered by DPE. As each of the relevant considerations are satisfied for the reasons outlined elsewhere in this report, concurrence can be assumed under Clause 4.6(5).