



## **Clause 4.6 exception to development standard request**

### **Introduction and overview**

The application seeks development consent for the proposed extension of the Fernleigh Awabakal Shared Track (FAST) between Belmont and Belmont South. The proposed track comprises a shared pathway design, which includes standard footpath construction, as well as boardwalk elements. The proposal also includes a viewing platform adjacent to Belmont Lagoon, and a new bridge over Cold Tea Creek.

The site is subject to several land use zones and building heights, however the relevant maximum building height that applies is 5.5 metres in relation to the C2 Environmental Conservation zone.

The development exceeds the 5.5 metre maximum building height prescribed by clause 4.3 of the *Lake Macquarie Local Environmental Plan 2014* for the viewing platform and bridge. The viewing platform is a maximum of 9.25 metres high, and the bridge is a maximum of 7.5 metres high. All other elements of the development comply with the relevant maximum building height.

Accordingly, a written request in accordance with clause 4.6 of the *Lake Macquarie Local Environmental Plan 2014 (LM LEP 2014)* has been prepared to support the departures and justify the variation of the development standard.

The written request justifies why compliance with maximum building height is unreasonable and unnecessary in the circumstances of the case, and demonstrates there are sufficient environmental planning grounds to justify contravening the development standard.

### **Background of variation and design**

Following the review of the development as part of the amended EIS, it is acknowledged the viewing platform and bridge elements of the proposal exceed the maximum building heights. This written request has been prepared in response to this investigation.

The design of the viewing platform and bridge reflects the cultural significance of the traditional land owners, the Awabakal people and the Belmont Lagoon's songline story, [When the Moon Cried](#). This design has been resolved through collaboration between Council's design team and the Local Aboriginal Land Council. The abstract moon shaped viewing platform refers to the moon, and the tear dropped shaped bridge references the songline and the cultural and ecological scar the man-made channel created when it was dug in World War II.

This infrastructure will help in restoring the area's strong connection to country.

## Proposal

The application seeks development consent for the proposed extension of the Fernleigh Awabakal Shared Track (FAST) between Belmont and Belmont South. The proposed track comprises a shared pathway design, which includes standard footpath construction, as well as boardwalk elements. The proposal also includes a viewing platform adjacent to Belmont Lagoon, and a new bridge over Cold Tea Creek.

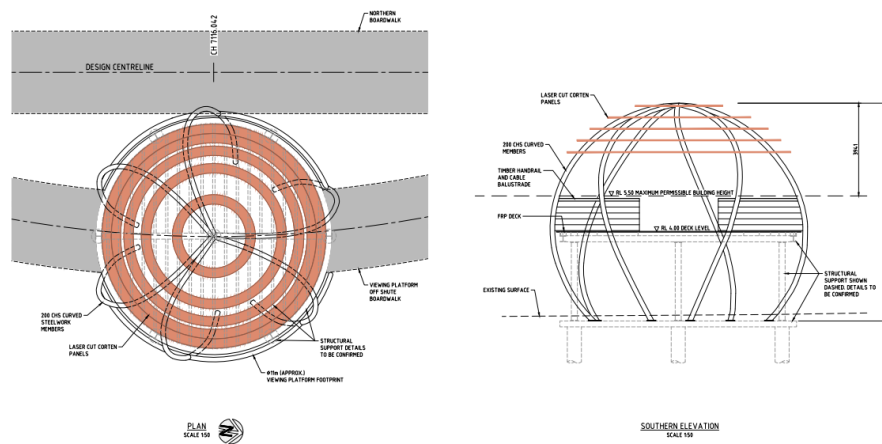
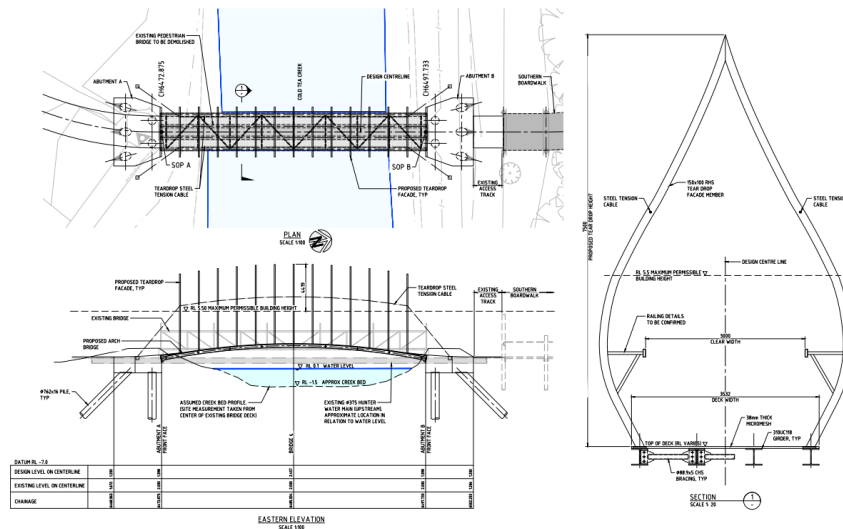


Figure 1 - Proposed viewing platform

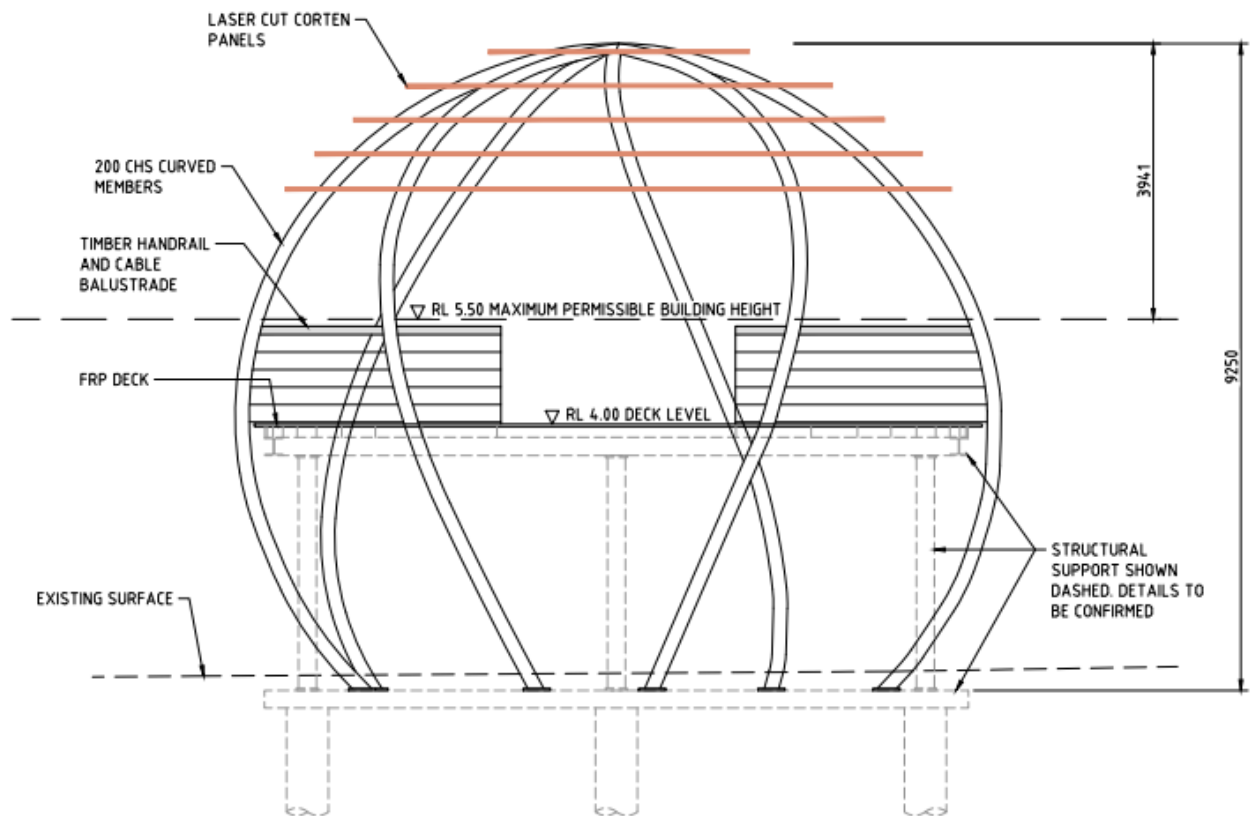


## Variation

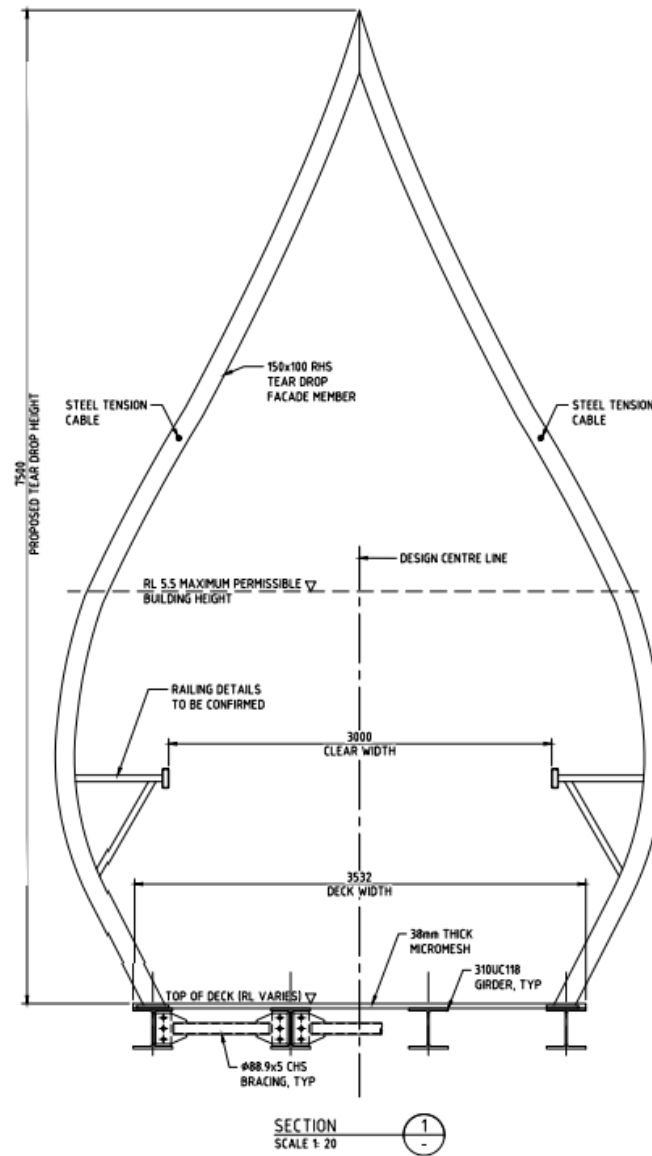
The application proposes to vary clause 4.3 Height of buildings of the *LMLEP 2014* which relates to the viewing platform and bridge.

The site is subject to several land use zones and building heights, however the relevant zone is the Environmental conservation C2 zone, which has a maximum building height of 5.5 metres.

The viewing platform is a maximum of 9.25 metres high, and the bridge is a maximum of 7.5 metres high, which represents variations of 3.75 metres (68%) and 2 metres (36%) respectively (refer to Figure 3 and Figure 4).



**Figure 3 - Viewing platform building height variation**



**Figure 4 - Bridge building height variation**

## Consideration of variation

Clause 4.6 requires the written request to demonstrate compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, there are sufficient environmental planning grounds to justify contravening the development standard. Details of this consideration are provided below.

### **Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case (clause 4.6(3)(a))**

Compliance with the maximum building height development standard is considered unnecessary in this instance as detailed below and as per established court principles and consideration of clause 4.6 requests (*Wehbe*).

- The building height is appropriate for its location as per the objectives of clause 4.3 of *LEP 2014*.

Whilst the subject land is subject to a maximum building height of 5.5 metres, lands to the west of the structures are subject to a height of 8.5 metres. The elements would therefore not appear out of context with the surrounding residential land uses.

- The viewing platform and bridge, inclusive of the elements that exceed the maximum building height integrates culturally significant elements into the proposal and highlight these features, as well as the unique biodiversity of the lagoon, to users of the track, and therefore supports the acknowledgement and protection of the conservation area adjoining the track. This outcome is consistent with the objectives of the C2 zone by encouraging activities that meet conservation objectives.
- The structures, and particularly the elements which vary the maximum building height, do not represent bulky or obtrusive elements in the landscape. The structures are not of a solid form, are visually permeable, and will enable views through and beyond. Further, the structures will be constructed of materials that are non-reflective and recessive to blend into the landscape.
- The variation, when considered in a permeable mass form, is minor.
- The structures, and particularly the elements which vary the maximum building height, present high-quality form.
- The bridge structure has specifically been designed to incorporate a 2.5 metre required clearances for cyclists, which has driven the height of the tear drop elements.
- Arguably, the building height development standard is not relevant to the proposal given the structures are not of a solid form and do not pose any bulk, scale, view impact, or other environmental impacts.

### **There are sufficient environmental planning grounds to justify contravening the development standard (clause 4.6(3)(b))**

It is considered there are sufficient environmental planning grounds to justify contravening the development standard as detailed below.

- The elements that vary the development standard do not pose any environmental impacts (i.e bulk, scale, view impact, overshadowing, etc).
- The variation does not present bulky or obtrusive elements in the landscape, and will enhance the user experience of the proposed track, whilst also providing an opportunity to integrate culturally significant elements into the proposal.
- This request demonstrates that despite exceeding the building height, the proposal and elements exceeding the building height limit, are in the public interest because they are consistent with the objectives of the development standard and the objectives for development of the zone. There is no public benefit in maintaining the development standard in this particular case and the variation should be supported.

Further, it is considered the removal of the elements above the building height to comply with the development standard would not achieve an improved planning outcome. Whilst a fully compliant outcome could be achieved, redesigning the structures would compromise shape and form, and detract from the design intent, which is a key element of the entire project.

### **Conclusion**

Based upon the consideration outlined in this request, it is considered appropriate to apply a degree of flexibility in the application of the maximum building height, and support the variation proposed.

It is understood the Hunter and Central Coast Regional Planning Panel have the legislative power to approve the variation.