

**Construction of an Inpatient Unit at
The Lawson Clinic, Nos. 742, 746, 746A and 748 Pacific Highway,
Gordon**

Ku-ring-gai Local Environmental Plan (Local Centres) 2012

Clause 4.6 Exceptions to Development Standards

Clause 4.3 Height of Buildings

Revised - April 2014

CLAUSE 4.6 EXCEPTIONS TO DEVELOPMENT STANDARDS

Introduction

This revised Clause 4.6 submission has been prepared to accompany the Development Application to Ku-ring-gai Council for the demolition of 3 x dwellings and the construction of an inpatient mental health care facility on the site at No. 742, 746, 746A and 748 Pacific Highway. The proposed development includes the consolidation of three lots (Lots 1 & 2 DP 851223 and Lot C DP 337904) and the realignment of the boundary between Lot A DP 350224 and the consolidated lots. Lot A DP 350224 contains a Heritage Item (Windsor House).

The objectives of Clause 4.6 are:

- (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.*

In accordance with subclause 4.6(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. The proposal seeks a minor variation to the development standard contained in Clause 4.3 (Height of Buildings) pursuant to the Ku-ring-gai Local Environmental Plan 2012 (KLEP 2012). The Building Height Map prescribes a building height of 11.5m from the subject site as demonstrated in **Figure 1** below.

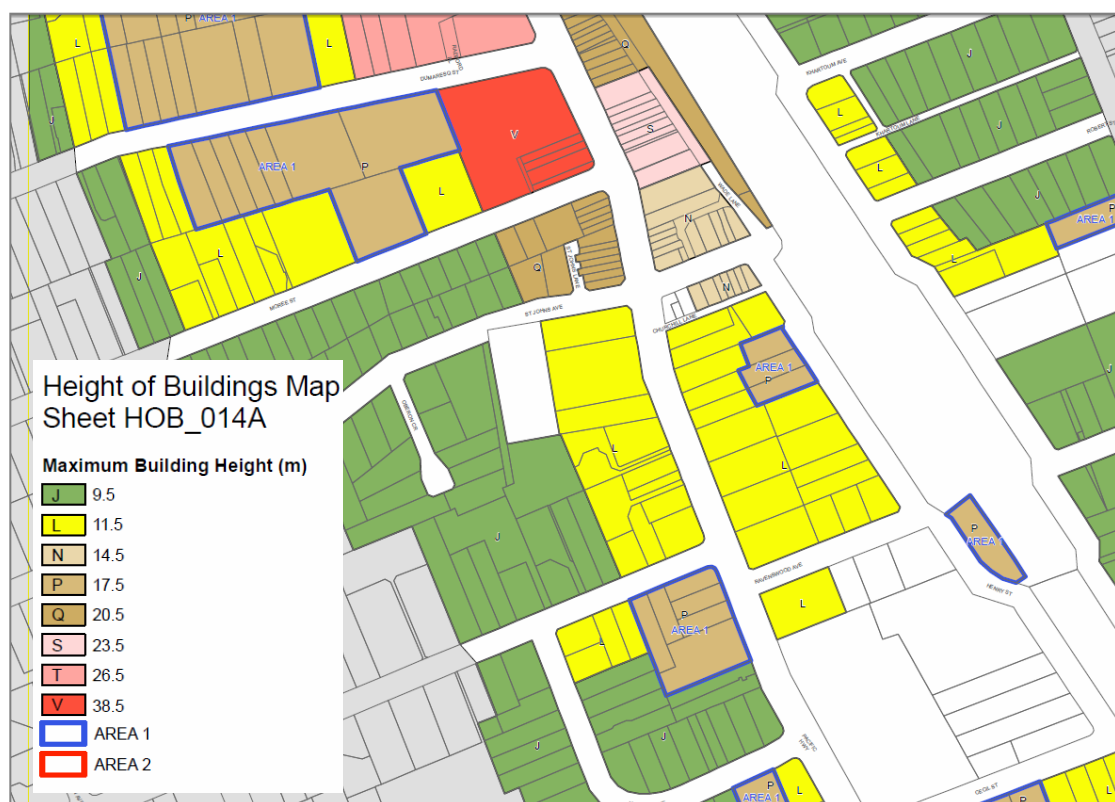


Figure 1: Height of Buildings Map

Source: Ku-ring-gai LEP (Local Centres) 2012

THE PROPOSAL

The proposed development, which is three (3) storeys with a basement level, will be generally below this limit. However, at the south-western corner of the building, the proposed development will exceed 11.5m maximum height above ground level over a confined area. The level of exceedance is up to 1 metre. This is due to a combination of the sloping nature of the existing ground and an attempt to minimise the amount of cut and fill required. To minimise the impact of this variation to the maximum building height, the south-western corner of the building has been set back on Levels 1 and 2, to decrease the area of the building which exceeds the maximum building height and to increase the separation distance between the structure and the adjoining residential property to the rear (No. 22 St John's Avenue).

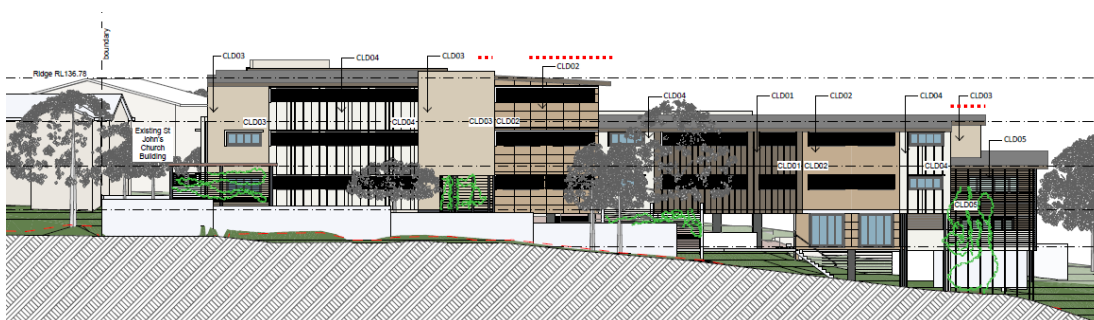


Figure 2: Western elevation of the proposed development showing the extent of the roofline which results in breaching the height standard (identified in red) Source: Architectural Plans Elevation Architecture

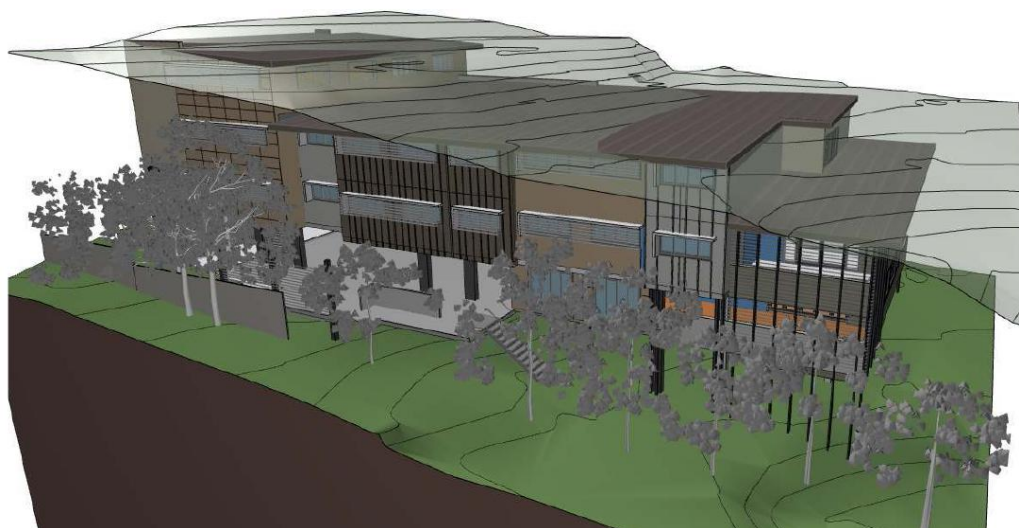


Figure 3: Perspective of the proposed development as viewed from the south west demonstrating that the roof form is the only portion of the development which exceeds the height standard. Source: Architectural Plans Elevation Architecture

In accordance with Clause 4.6, development consent must not be granted for development that contravenes a development standard unless the consent authority is satisfied 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.

CONSISTENCY WITH THE OBJECTIVES OF THE DEVELOPMENT STANDARD (HEIGHT OF BUILDINGS)

In accordance with subclause 4.3(1), the objectives of this clause in relation to the height of buildings are as follows:

- “(a) to ensure that the height of development is appropriate for the scale of the different centres within the hierarchy of Ku-ring-gai centres,*
- (b) to establish a transition in scale between the centres and the adjoining lower density residential and open space zones to protect local amenity,*
- (c) to enable development with a built form that is compatible with the size of the land to be developed.”*

Objective (a)

To ensure that the height of development is appropriate for the scale of the different centres within the hierarchy of Ku-ring-gai centres.

This objective ensures that the height of developments within the designated centres of Gordon, Lindfield, Pymble, Roseville, St Ives and Turramurra is appropriate to the centre's place in the hierarchy of centres. Within the Gordon Centre, whilst the height standard of the subject site is 11.5m, the height of the lands to the south of the site (Nos. 730 – 736 Pacific Highway) is 17.5m whilst lands to the north of the site have a height limit of 20.5m (Nos. 756 – 782 Pacific Highway) and 38.5m (Gordon Centre). The contravention of the height standard on the site by a maximum of 1m to allow for a maximum height over a section of the building of 12.5m will have no impact on the scale of development in Gordon relative to its hierarchy.



Figure 4: Photomontage showing the relationship of the proposed development from the Pacific Highway
Source: Architectural Drawings prepared by Elevation Architecture

Objective (b)

To establish a transition in scale between the centres and the adjoining lower density residential and open space zones to protect local amenity.

The lands to the north and south of the site have a maximum building height standard of 11.5m, the same as the subject site. The lands to the northwest (St John's Cemetery), though at a lower level, have no building height standard pertaining to them. As outlined in the Heritage Impact Statement, the proposed development will not negatively impact the cemetery (refer to **Figure 5** below) as the portion of the development adjoining the cemetery complies with the control.



Figure 5: Photograph of the site from St John's Cemetery Source: HIS prepared by NBRS + Associates

The lands to the west of the site are zoned **R2** (low density residential development) and have a maximum building height of 9.5m. Every effort has been made in the design of the development to minimise the impact of the proposed building on this adjoining residential property; the setbacks at ground level have been increased to allow for the provision of a landscape strip and the Second Level is provided for only the northern portion of the development and therefore does not impose on adjoining R2 interface. Having regard to the marginal excess of the building height limit (up to 1m), the portion of the development which exceeds the building height which is minimal and the negligible impact of this variation, it is considered that the proposed variation is not inconsistent with this objective.

Objective (c)

To enable development with a built form that is compatible with the size of the land to be developed.

The scale of the proposed hospital, with a Gross Floor Area of 3,048.6m² on a site of 4,715m², resulting in a total FSR on the site of 0.64:1 and the majority of the building height complying with the 11.5m maximum building height, is considered appropriate to the size of the land to the development. The building storey controls set out in the Ku-ring-gai DCP (Part 7C.11 Building storeys) state that sites with a maximum building height of 11.5m must have a maximum of 3 storeys above basement. The proposed development complies with this translation from height in metres to height in storeys.

In order to assess the compatibility of the proposal relative to its surroundings, reliance is placed on the Land Environment Court Planning Principle of 'compatibility with context' in *Project Venture Developments v Pittwater Council* [2005] NSWLEC 191. To test whether a proposal is compatible with its context, the following two questions can be asked:

- **Are the proposal's physical impacts on surrounding development acceptable? The physical impacts include constraints on the development potential of surrounding sites.**

The site is zoned for R4, high density residential development and as such, with a Maximum Building Height of 11.5m, a three storey Residential Flat Building would normally be permissible on the site. It is argued, that the physical impacts of the proposed inpatient mental care facility are no greater and likely significantly less than those which would arise from a Residential Flat Building. This is particularly the case as the proposed design does not have any openings on the western elevation and only emergency egress from the building to this elevation. This western boundary features fencing and dense landscape screening which ensures that the neighbouring properties are not physically impact upon.

Due to the consolidation of a number of lots, the question as to the impact on the development potential of No. 744 Pacific Highway is raised and addressed in the SEE. It is demonstrated therein, supported by the architectural plans prepared by Elevation Architecture for this site, that the proposed development on the subject site will not isolate No. 744 Pacific Highway or otherwise constrain the development potential of this site.

It is further argued, that the physical impacts on surrounding development which will result from this specific variation from the development standards (to allow for a 1m excess of the 11.5m building height over a limited area of the building) will be negligible. As can be seen from the shadow diagrams accompanying this DA, the overshadowing resulting from the portion of the building which exceeds 11.5m will have no impact on the residential amenity of the adjoining properties.

- **Is the proposal's appearance in harmony with the buildings around it and the character of the street?**

The site of the proposed development contains a Heritage Item of Local Significance: Windsor House, whilst part of the site and the lands to the north which contain St John's Church and associated buildings, is designated a Heritage Conservation Area. As outlined in the Heritage advice HIS which accompanies this DA, the proposal will be relatively discreet when viewed from the public domain and will not affect significant views to or from the heritage items.

CONSISTENCY WITH THE OBJECTIVES OF THE R4 HIGH DENSITY RESIDENTIAL ZONE

In accordance with **Clause 2.3**, the objectives of the **R4** zone are as follows:

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

- *To provide for high density residential housing close to public transport, services and employment opportunities.”*

Whilst the land use table for R4 provides that health service facilities, hospitals and medical centres are not permissible within the R4 Residential zone, the proposed use of the land for a hospital / inpatient unit is not incompatible with the objectives of the zone generally. Specifically it would provide facilities and services for local residents not otherwise available.

CONSISTENCY WITH THE AIMS OF THE KLEP 2012

In accordance with **Clause 1.2(2)**, the aims of the KLEP 2012 are as follows:

- “(a) to establish a hierarchy of centres for Ku-ring-gai,*
- (b) to guide the future development of land and the management of environmental, social, economic, heritage and cultural resources in Ku-ring-gai for the benefit of present and future generations,*
- (c) to facilitate the development of the centres to enhance Ku-ring-gai’s economic role and cater to the retail and commercial needs of the local community,*
- (d) to provide a variety of housing choice within and adjacent to the centres,*
- (e) to protect, enhance and sustainably manage the biodiversity, natural ecosystems, water resources and ecological processes within the catchments of Ku-ring-gai,*
- (f) to recognise, protect and conserve Ku-ring-gai’s indigenous and non-indigenous cultural heritage,*
- (g) to encourage a diversity of employment in Ku-ring-gai,*
- (h) to achieve land use relationships that promote the efficient use of infrastructure,*
- (i) to facilitate good management of public assets and promote opportunities for social, cultural and community activities,*
- (j) to protect the character of low density residential areas, and the special aesthetic values of land in the Ku-ring-gai area.”*

It is considered that the proposed development, notwithstanding the variation sought to the Building Height, is compatible with these aims and will allow for the development of social and mental health resources to meet the needs of the local community and those in the wider area.

CONSISTENCY WITH THE AIMS OF STATE ENVIRONMENTAL PLANNING POLICY (INFRASTRUCTURE) 2007

As the development of a hospital is not permissible in the R4 High Density Residential Zone in the KLEP 2012, development consent is being sought under the SEPP (Infrastructure) 2007. The aim of this Policy is to facilitate the effective delivery of infrastructure across the State by: -

- “(a) improving regulatory certainty and efficiency through a consistent planning regime for infrastructure and the provision of services, and*
- (b) providing greater flexibility in the location of infrastructure and service facilities, and*
- (c) allowing for the efficient development, redevelopment or disposal of surplus government owned land, and*
- (d) identifying the environmental assessment category into which different types of infrastructure and services development fall (including identifying certain development of minimal environmental impact as exempt development), and*

- (e) *identifying matters to be considered in the assessment of development adjacent to particular types of infrastructure development, and*
- (f) *providing for consultation with relevant public authorities about certain development during the assessment process or prior to development commencing.”*

Under **Part 3 (Development Controls), Division 10 (Health services facilities)** of the SEPP, **Clause 57(1)** states that the development for the purpose of health services facilities may be carried out by any person with consent on land in a prescribed zone (with R4 being such a prescribed zone.)

Clause 57(4) of the SEPP does not preclude a consent authority from refusing to grant consent for development by reference to its own assessment of the compatibility of the development with the surrounding land uses, or otherwise limit the matters to which a consent authority may have regard in determining a development application for development of this kind. The minimal variation to the building height of the proposed development does not render the proposal incompatible the surrounding land uses or with the other objectives and controls of Council for the area.

ADDITIONAL CONSIDERATIONS

The variation allows for a better planning outcome

The proposal seeks to vary the height development standard over a limited area to minimise the extent of excavation required on the site. Given the sloping nature of the site, it is necessary to allow for some excavation on the site. However in an attempt to minimise the amount of cut and fill required and to minimise the export of waste soil from the site, the design of the development is such that, to allow the building to generally follow the topography of the site, a minor breach of building height (ranging up to a maximum of 1m) will occur over a small portion of the building. Overall, the proposed development is a preferred planning outcome. The proposed variation to the building height control allows for a better planning outcome which positively contributes to the Council's policies with regard to respecting the natural topography of a site, to maintaining subsurface and ground water flows, to minimising downstream impacts from erosion and sedimentation, to protecting adjoining buildings and structures from damage and to minimising excavated material going off site.

There are sufficient environmental grounds to permit the variation

The development demonstrates sufficient planning and environmental grounds to permit the variation, as demonstrated above. In addition to this, the following factors should be considered: -

- The development is within the 11.5 metre building height control when measured from the natural ground level over most of the building. Given the proposal is attempting to minimise the extent of excavation required on the site, it is considered that this minor variation from the standard is reasonable. The proposal results in a development which is generally compliant with the height control;
- The proposed bulk and scale will be generally compatible with adjoining developments and provides an appropriate height transition between the R2 and R4 zones;
- The development comprises a stepped building form which follows the topography of the site and transitions downwards to the adjacent R2 interface; and
- The departure from the maximum building height will not result in any significant adverse amenity impacts such as overshadowing, privacy impacts or any significant view loss to the

public domain or surrounding properties above that which is otherwise permissible under the existing controls.

The variation is in the public interest

As outlined in the SEE, the proposed development will address an urgent community need and install in Ku-ring-gai essential mental health infrastructure not currently provided by either the private or public sectors. The viability of the development is dependent on the provision of a unit with a capacity of 60+ beds. Below this threshold, the feasibility of constructing and operating the unit may become untenable.

CONCURRENCE OF THE DIRECTOR-GENERAL

In seeking the concurrence of the Director General, it is noted that: -

- the contravention of the development standard raises no matter of significance for State or regional environmental planning, and
- there is no public benefit of maintaining the development standard, and
- the proposed variation to the standard will facilitate the construction of a much needed mental health care facility;
- allowing this minor contravention of the maximum building height standard by up to 1m will reduce the need for extensive excavation on the site by allowing the development to follow, as much as possible the existing ground levels; and
- the design of the proposed development has been modified to set back from the adjoining properties, the section of the structure where the building height is exceeded thereby minimising the impact of the proposed development.

CONCLUSION

As clearly demonstrated in the discussion above, the development will be consistent with the surrounding residential neighbourhood, and will not have unreasonable adverse amenity impacts on surrounding properties or the public domain. The development will uphold the objectives of the building height development standard and will result in a better planning outcome in comparison to a development which uses excavation to meet the required building height control. Strict compliance with this development standard would result in more extensive excavation. For this reason and those stated in this report, strict compliance with the development standard is unreasonable and unnecessary and the use of Clause 4.6 to enable an exception to this development control is appropriate in this instance.

As outlined above, the proposed development will be in the public interest because notwithstanding the minor variation in the height, it is consistent with the objectives of the building height standard and the objectives for development within the R4 zone in which the development is proposed to be carried out, and with the objective of the Infrastructure SEPP under which consent for the proposed use it being sought.