

**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 2015

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.

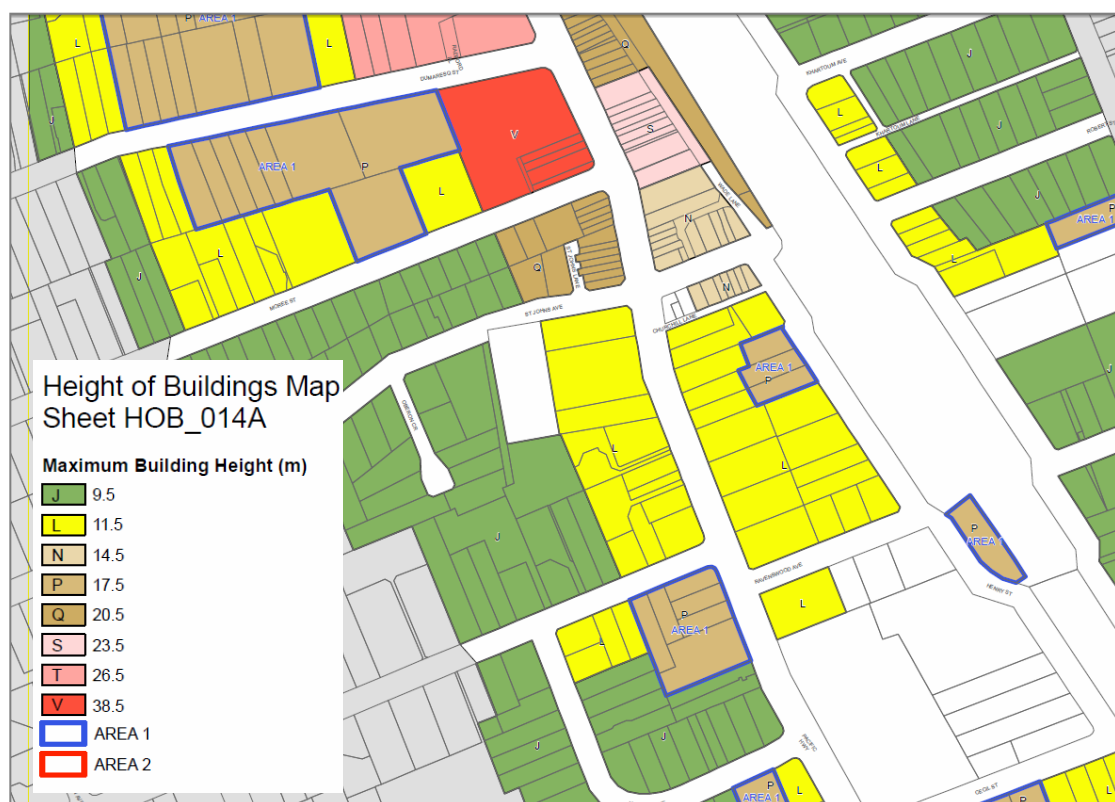


Figure 1: Height of Buildings Map

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 (11.5m). As shown on the accompanying Height Overruns Plans (Drawing No DA-05.03 DA7) and Roof Plan (Drawing No. DA-05.29 DA7) the extent of the non compliance is minimised (refer the following figures). The maximum non compliance of 690mm occurs at the lift overrun (refer figure 2 - Drawing No. DA-04.02 DA7) which is recessed back from the western and southern boundaries of the roof that has a total area of only 8sqm as indicated on the Figure 4 (refer Drawing No. DA 05.29 DA7).

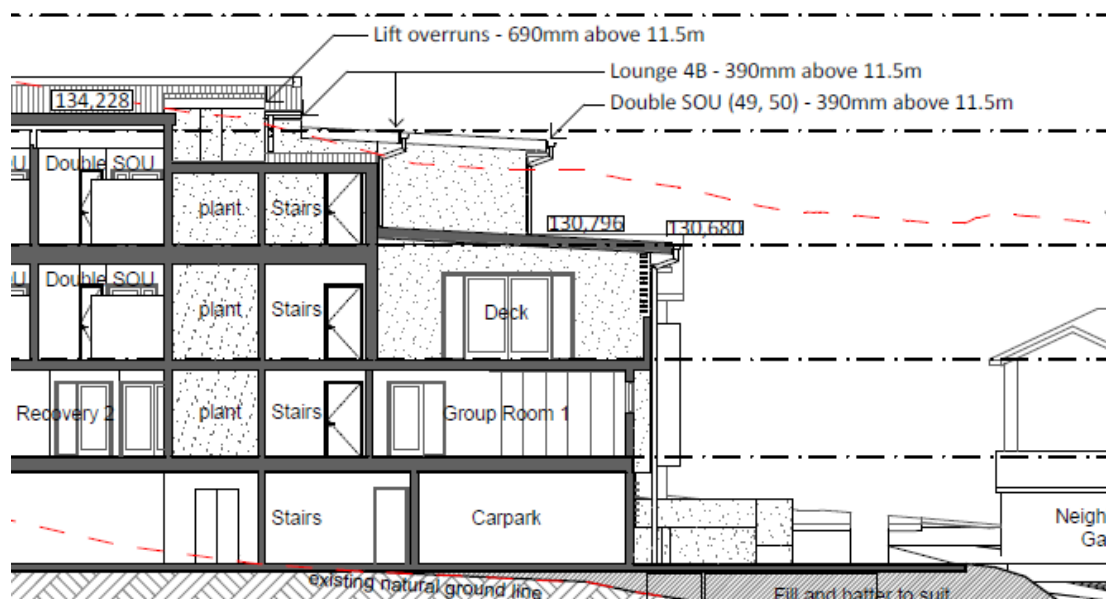


Figure 2: Section indicating the non complaint parts of the roof (Drawing No. DA-04.02 DA7)

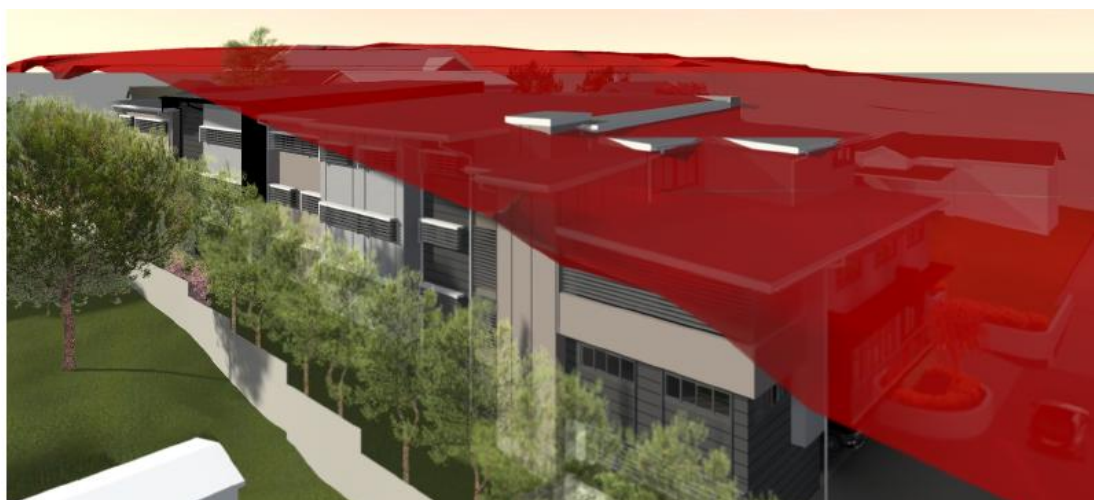


Figure 3: Height Overrun indicating the height non compliance by red plane (Drawing No. DA-05.03 DA7)

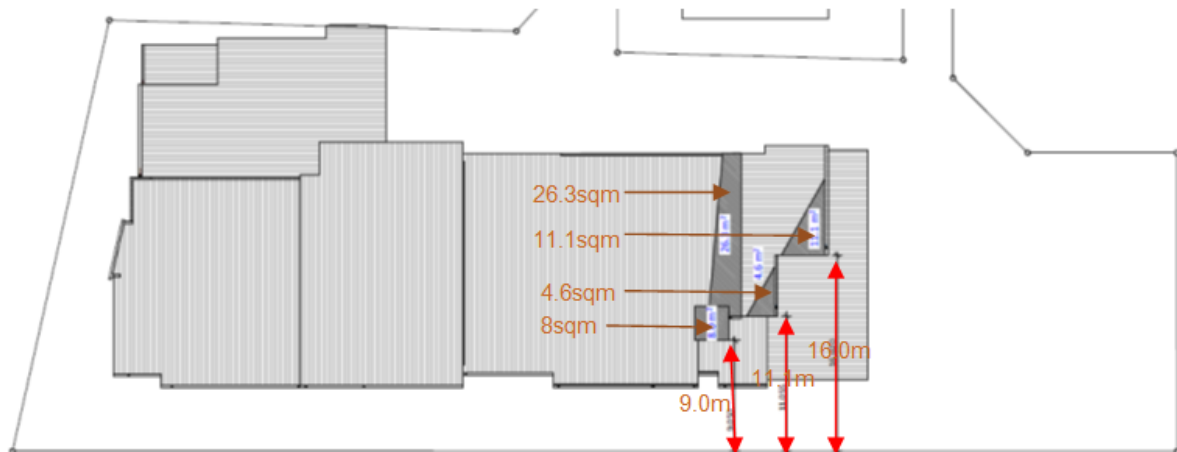


Figure 4: Roof Plan indicating the non compliant parts of the roof (Drawing No. DA-05.29 DA7)

It is important to note that this part of the roof is provided with a setback of approximately 9m from the western boundary and 35.5m from the southern boundary of the site to minimise any visual impact. Other minor non compliances of up to 390mm occur at the southern parts of the roof on lounge 4B and double SOU (Bed Nos.49 and 50) which are recessed back from the southern and western boundaries of the roof. These parts of the roof are provided with a setback of approximately 11m and 16m respectively from the western boundary to minimise any visual impact. Also, these parts are provided with significant setbacks (approximately 31.5m and 27.5m respectively) from the southern boundary of the site.

In addition to the above it is important to note that the non compliant parts of the roof have a total area of 50sqm which is only 3.7% of the total roof area (1,337.4sqm). The rest of the roof area remains compliant as indicated in the above figure (Roof Plan Drawing No. DA-05.29 DA7). Overall, the building is lower than the height limit for the majority of its length and has a setback greater than required. There are no openings/balconies at the western elevation to minimise the impact to the adjoining properties.

The presentation of the southern end of the building is designed to be recessive and comprise passive uses and is therefore sensitive to the surrounding residential uses. In addition, the southern portion of the development is designed to mitigate overlooking and overshadowing impacts on the neighbouring properties. It also comprises architectural design techniques to break up the presentation of the building. Overall, the design of the building takes into account the zone interface and provides a building which suitably transitions between the neighbouring dwellings and the potential future three storey developments along the Pacific Highway frontage.

Given this, the proposal has been designed with every effort to minimise the visual impact of the building from the surrounding properties in terms of setbacks from the boundaries, landscaping and the format and massing of the building.

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 690mm to allow for a maximum height over a section of the building of 12.1m will have no impact on the scale of development in Gordon relative to its hierarchy.



Figure 5: 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 (HIS), the proposed development will not negatively impact the cemetery (refer to figure below) as the portion of the development adjoining the cemetery complies with the control.



Figure 6: Photograph of the site from St John's Cemetery Source: HIS prepared by NBRIS + 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 the adjoining R2 interface.

The part of the roof which has maximum non compliance of 690mm is provided with a setback of approximately 9m from the western boundary and 35.5m from the southern boundary of the site to minimise any negative impact to adjoining properties including 3 Bushlands Avenue.

Other minor non compliances of 390mm occur at the southern parts of the roof on lounge 4B and double SOU (Bed Nos.49 and 50) which are recessed back from the southern and western boundaries of the roof. These parts of the roof are provided with a setback of approximately 11m and 16m respectively from the western boundary to minimise any visual impact. Also, these parts are provided with significant setbacks (approximately 31.5m and 27.5m respectively) from the southern boundary of the site. Overall, the building is lower than the height limit for the majority of its length and has a setback greater than required.

The shadow impact to adjoining properties including 3 Bushlands Avenue is minimised by reducing the non compliance to minimum (390mm - 690mm) and providing significant setback (9m -16m) from the western boundaries. Furthermore it should be noted that that the property at 3 bushlands Avenue will be able to receive more than 3 hours of sunlight after 10am and the proposed building will not overshadow the property after 12.00pm as indicated in the Solar Diagrams (refer to Drawing No. DA-05.05 DA7). Also, it is important to note that the proposed building will have similar shadow impact after 10am with negligible to minimal difference as a fully compliant building. There are no openings/balconies at the western elevation to further minimise the impact to the adjoining properties.

Having regard to the marginal excess of the building height limit (up to 690mm), the portion of the development which exceeds the building height which is minimal (only 3.7% of the total roof area) and minimum impact of this variation, it is considered that the proposed variation is consistent 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 3,070.9m² on a site of 4,715m², resulting in a total FSR on the site of 0.65:1 and the majority of the building height complying with the 11.5m maximum building height, is considered appropriate to the size of the land.

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 impacted upon.

The proposal includes significant landscaping including appropriate planting to the eastern boundary of the site to minimise the impact on the property at No. 744 Pacific Highway (although the subject site and 744 Pacific Highway is now in common ownership).

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 690mm 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 minimum impact on the residential amenity of the adjoining properties. The adjoining properties to the west will have more than 3 hours of solar access. Additionally, there are no openings/balconies are provided at the western elevation to further minimise the impact to these 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 HIS which was provided with the 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 compatible 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 with the surrounding land uses or with the other objectives and controls of Council for the area.

ADDITIONAL CONSIDERATIONS

The variation allows for a better developed 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 390mm to 690mm) will occur over a small portion of the building which has a total area of 50sqm only 3.7% of the total roof area (1,337.4sqm). The rest of the roof area remains compliant as indicated in Figure 4 (Roof Plan Drawing No. DA-05.29 DA7).

Please note that the maximum non compliance of 690mm occurs at the lift overrun (refer Figure 2 - Drawing No. DA-04.02 DA7) which is recessed back from the western and southern boundaries of the roof that has a total area of only 8sqm as indicated on the Figure 4 (refer Drawing No. DA 05.29 DA7). The building is lower than the height limit for the majority of its length and has a setback greater than required. In addition, there are no openings/balconies at the western elevation to minimise the impact to the adjoining properties.

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 justify the variation

The development demonstrates sufficient planning and environmental grounds to justify 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 the majority of the building. Given the proposal is attempting to minimise the impact on the adjoining properties; it is considered that this minor variation of 690mm (for the part of the structure which is recessed back from the building line) 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 64 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; and
- allowing this minor contravention of the maximum building height standard by up to 690mm 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 and the parts of the structure where the building height is exceeded recessed back from the western and southern boundaries of the roof thereby minimising the impact on the adjoining properties.

CONCLUSION

The non compliance is reduced from the originally submitted DA to a maximum 690mm and the non compliant part of the roof is only 3.7% of the total roof area which is further recessed back from the western and southern building lines. The rest of the roof area remains compliant.

Overall, the building is lower than the height limit for the majority of its length and has a setback greater than required and there are no openings/balconies at the western elevation. Thus it is 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. 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.