



Clause 4.6 Variation – Height of Buildings

Proposed Hospital Alterations & Additions – Warners Bay Private Hospital

42 Fairfax Road, Warners Bay
(Lot 1 in DP34935)

Prepared by Willowtree Planning Pty Ltd on behalf of
Ramsay Health Care

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1. Introduction

This Clause 4.6 Variation request has been prepared in support of a Development Application for the proposed alterations and additions to Warners Bay Private Hospital, located at 42 Fairfax Road Warners Bay (Lot 1 in DP34935).

This Clause 4.6 Variation has been submitted to address the proposed non-compliance with the Height of Buildings Development Standard (Clause 4.3) for the proposed alterations and additions to the existing hospital, consistent with the requirements of *Lake Macquarie Local Environmental Plan 2014* (LMLEP2014) which provides the following aims and objectives:

- (a) to ensure the height of buildings are appropriate for their location,*
- (b) to permit building heights that encourage high quality urban form.*

In summary the following variation is proposed:

LMLEP Clause	LMLEP 2014 Development Standard	Proposed Non Compliance	Variation Percentage
Clause 4.3 Height of Buildings	10m	12m	20%

In accordance with Clause 4.6 of the LMLEP 2014, Council 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 standards.

2. The Standards Being Objected to**2.1 Clause 4.3 (Height of Buildings) of the Lake Macquarie Local Environmental Plan 2014**

The development standard being requested to be varied is **Clause 4.3 (Height of Buildings)** of LMLEP 2014 which provides as follows.

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

- (a) to ensure the height of buildings are appropriate for their location,*
- (b) to permit building heights that encourage high quality urban form.*

(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.

Pursuant to Clause 4.6, the proposed development seeks exception to the 10m building height standard as identified in the Height of Building Maps.

The site is zoned R3 Medium Density Residential Zone whereby hospitals are permitted with development consent (pursuant to *State Environmental Planning Policy (Infrastructure) 2007*).

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 of the standard. Therefore while there is a specified numerical control for building height, the objectives and underlying purpose of the development standard are fundamental criteria for consideration in the development assessment process.

Section 3 of this Clause 4.6 Variation addresses the proposed variation to the Clause 4.3 development standard.

2.3 Proposed variation to standards

The proposed development seeks consent for alterations and additions to the existing hospital, to provide an additional 39 mental health beds and 56 additional on-site car parking spaces. The proposed development exhibits a maximum height of 12m which results in a breach of 2m under Clause 4.3 of LMLEP 2014. This breach pertains to the rear portion of the proposed hospital extension which will be sufficiently located from the street frontage and separated from adjoining properties, being Biddabah Public School and an existing seniors living development located at 44 Fairfax Road, Warners Bay. The proposed breach does not give rise to any amenity impacts to adjoining properties.

3. Proposed Variation to Clause 4.3 Height of Buildings

Pursuant to Clause 4.6 of LMLEP 2014, exemption to the 10m building height standard applicable pursuant to Clause 4.3 of LMLEP 2014. Clause 4.6(4)(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 the LMLEP 2014 are:

- (a) to ensure the height of buildings are appropriate for their location*

The subject proposal relates to a site that contains an existing private hospital which is operational. Therefore it is considered reasonable that the height of the proposal, being 12m is suitable within the context of the site and locality given the existing character afforded and relationship which exists with surrounding properties.

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The proposed extension to the existing hospital is sufficiently separated from the adjoining seniors living development to the north by 8.6m, while the development to the south consists of Biddabah Public School. Accordingly the site will not be highly visible from any sensitive receptors and a suitable transition in building height is provided.

Therefore the proposed additional 2m of height beyond the 10m limit will not cause any undue visual or amenity impacts when viewed from areas of public open space. Accordingly it is considered highly unnecessary to adhere to a lower building height.

(b) to permit building heights that encourage high quality urban form.

The proposed development will seamlessly integrate with surrounding development and the existing hospital development on the site. Through the provision of articulated facades and material and colour scheme, the proposal shall not result in unacceptable visual impacts. The provision of deep soil landscaping within all setbacks will soften the appearance of the built form and hardstand areas resulting in a further augmented visual product.

Additionally, the area of the building to which the proposed non-compliance relates, pertains to the rear portion of the building which does not extend beyond the seniors housing development at 44 Fairfax Road. To this end, it will not be highly visible within the streetscape nor will the interface with the public domain be adversely affected.

3.2 Objectives of the zone

The proposal is consistent with the R3 zone objectives in that:

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

The proposal seeks consent for alterations and additions to an existing hospital. It is considered that the proposed breach in building height will not inhibit the attainment of this objective as surrounding land will be capable of being developed for medium density residential purposes.

- *To provide a variety of housing types within a medium density residential environment.*

The proposal seeks consent for alterations and additions to an existing hospital. It is considered that the proposed breach in building height will not inhibit the attainment of this objective as surrounding land will be capable of being developed for medium density residential purposes including multi dwelling housing and residential flat buildings.

- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

The proposed development seeks to provide additional beds within the existing hospital that will serve the needs of the local community. It is considered that the proposal will make a vital contribution to ensure the provision of health care services that are in demand within the Hunter Region and Lake Macquarie LGA.

- *To maintain and enhance the residential amenity and character of the surrounding area.*

As demonstrated throughout the supporting Statement of Environmental Effects and the accompanying architectural plans, the proposed alterations and additions are of a suitable scale having regard to the surrounding land uses and desired future character of the locality. Given the location of the proposed extension to the existing hospital, it will not be highly visible within the

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streetscape, and therefore the residential character shall be retained. The extent of the proposal will not preclude future medium density residential development within the zone. The resultant visual, privacy, solar access and noise impacts associated with the development will be mitigated through the design measures proposed to retain the residential amenity afforded.

3.3 Establishing if the Development Standard is Unreasonable or Unnecessary

Compliance with this standard would be unreasonable given the desired medium density residential character of the site conveyed by the R3 Zoning. The proposed building height departure will have no undue material impact on the streetscape or surrounding sites and is consistent with the existing and desired character for the area.

The proposal exhibits a building height 2m above the prescribed limit which pertains to the rear of the plant of the proposed hospital extension. The proposed development is highly compatible with the established character of the site and its surrounds uses in terms of built form and land use.

Furthermore the built form proposed for the site clearly demonstrates the feasibility of developing the site in accordance with relevant environmental planning framework and providing a high-quality, desirable development on the site whilst preserving neighbouring amenity. The proposal is consistent with the controls of LMLEP 2014 and significantly increases the amenity and useability of the site whilst not resulting in any unacceptable impacts.

It is considered that the Clause 4.6 Variation is well founded in this case for the following reasons:

- The proposed redevelopment is consistent with the existing (and desired) character of the site and the surrounding area. The medium density character of the locality will not be impeded, nor will the ability for such development to be carried out. Overall, the proposal provides for increased on-site car parking which seeks to alleviate the existing reliance on on-street car parking and improve the amenity and function of existing and future residents within the locality.
- The development will significantly augment the health related use of the site through the provision of a contemporary design that will serve the needs of the community. This is achieved through the provision of 39 additional mental health beds over multiple levels and associated facilities that will contribute to a successful operation.
- The proposal is compatible with surrounding development and the environmental planning framework in terms of visual appearance, scale, design and land use as the breach to the 10m height limit will be limited to the rear of the site. In this respect, it will not be highly visible and represents a suitable transition from the front to the rear of the site.
- As a result of the building height breach, the proposal is able to negate reliance on any Asset Protection Zones (APZs) on adjoining properties or extensive clearing on the subject site. This is considered to provide a suitable outcome insofar as the EEC vegetation can be sufficiently retained and co-exist with the proposed development.
- In addition to the above, the increase in height and revised footprint reduces the extent of the proposed car park within the eastern portion of the site. This allows a 20m buffer to the EEC to be provided and suitable plant and tree species (commensurate with the EEC) planted in and around the area of the development within the site.
- The overall portion of the site which will be developed as a result of the proposed hospital extension, does not exceed the extent to which the seniors housing at 44C has been

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developed. This therefore reinforces that suitability of the development having regard to the site as both sites exhibit similar characteristics.

3.4 Sufficient Environmental Planning Grounds to Justify Contravening the Development Standard

The variation to the development standard for height of buildings is considered well founded in this instance as:

- The proposed development is consistent with the underlying objective or purpose of the standard as demonstrated in **Section 3.1**.
- The proposed development will not exhibit any adverse visual impact and will not adversely impact on the amenity of adjoining sites in relation to solar access, privacy or views. As noted in Section 3.3, the 2m breach pertains to the eastern most portion of the proposed hospital extension, and therefore will not be highly visible within the public domain or surrounding properties.
- The proposed development is compatible with the established essential service infrastructure including health, aged care and education facilities. The proposed extension will integrate with the existing hospital and not present as a segregated portion of development.
- Due to the ecological and bushfire constraints that apply to the site, the breach in height is justified on the basis that it negates the need for APZs to extend onto any adjoining land. This is considered to preserve the community land in particular, being 44c Fairfax Road which is currently owned and operated by Council. Furthermore, the EEC vegetation at the rear will be preserved as a suitable buffer of 20m will be achieved, that allows for planting which is commensurate with the ecological value of the site in and around the area of the development.
- The associated car parking area and turning head at the rear of the development has been located so as to not encroach on the ECC bushland and minimise disturbance to the natural land form. These siting factors have been facilitated by the height increase, which has consequently reduced the overall footprint of the building and car park in respect of the natural bushland at the rear of the site.
- Compliance with the remaining applicable development standard to the site (minimum 900sqm lot size) is achieved.
- The difference between the proposed development scheme and one that is compliant in terms of solar access impacts is considered minor. The degree of variation is shown in the attached shadow diagrams and **Figure 1** below. The dashed blue line represents a compliant scenario, while the orange dashed line represents the current proposal. As can be seen the difference is minor between the two scenarios and will have no undue impact on the amenity of the school as more than 50% of the school grounds will receive sunlight in mid-winter.
- Similarly, the difference between a compliant development in terms of building height and the current proposal will have a minor impact on views and visual amenity. **Figure 2** below provides a representation of a compliant scheme against the actual proposal, demonstrating that the increase in height is minor and that were the proposal compliant, there would be no material improvement to any view corridor or substantial change to the level of visual amenity afforded. It is therefore considered that the proposal is acceptable on the grounds of views

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and visual amenity. There will be no material impact on the visual amenity afforded within the streetscape and shown in **Figure 3**.

- The proposal makes suitable provision to protect the privacy of surrounding properties by including privacy film on the windows of the southern and northern elevations. This film will occupy the bottom 50% portion of the windows and obscure direct view to the adjoining residential properties and the school grounds.
- Sufficient setbacks will be provided to all property boundaries, thus offsetting the visual bulk and scale of the development and creating a suitable visual transition between the existing and proposed development.



Figure 1: Existing/Compliant/Proposed Shadows

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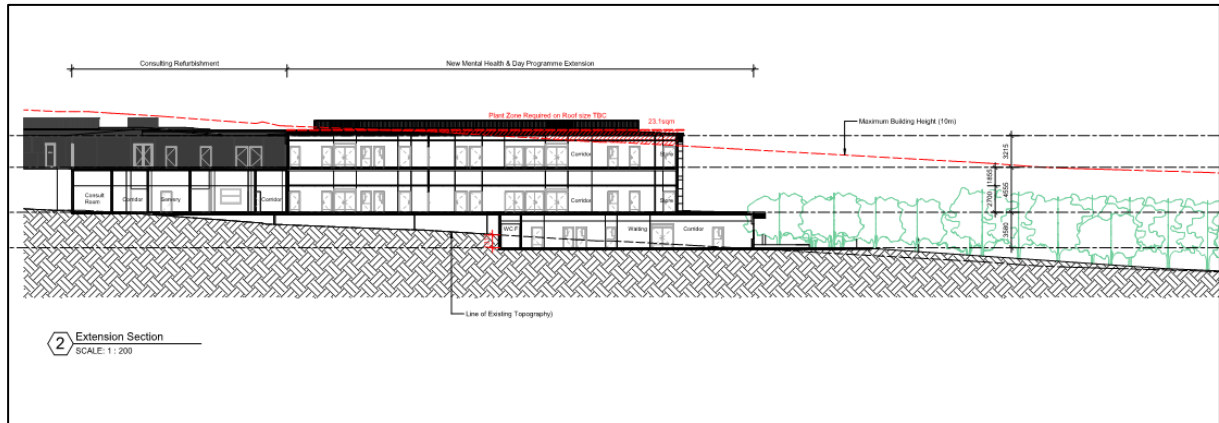


Figure 2: Existing vs Compliant Height (shown dashed)



Figure 3: Visual Perspective from Fairfax Road (post development)

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4. Conclusion

It is requested that Council support the proposed variation to Clause 4.3 of LMLEP 2014 for the following reasons:

- 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.
- The proposal will support the use of the site for employment-employment generating activities and therefore will positively contribute to the local and regional economies by supporting the role of health related uses, providing vital services to the community.
- No unreasonable environmental impacts are introduced as a result of the proposal.
- There is no public or material benefit in maintaining strict compliance with the standard.

Given the above justification provided above this Clause 4.6 Variation is well founded and should be favorably considered.