

Application to vary a standard under Clause 4.6

1 – INTRODUCTION

This application is made in respect to a proposed Hospital at No. 15 Mcgettigans Lane, Ewingsdale and is to be read in conjunction with the accompanying Development Application.

The proposed height for the hospital development exceed the maximum requirements under Clause 4.3 under of the Byron Local Environmental Plan 2014 (BLEP2014). Clause 4.3 requires that the maximum building height is not to extend 9m above the existing ground level, where the maximum proposed height achieves 9.9m in height.

The encroachment above the maximum building height is only evident on the north eastern corner of the main health care building. The overall height of the building has been determined by the floor to floor and ceiling heights needed for these facilities and the natural fall of the land. All other buildings are below the maximum 9m building height requirement. The overall development has a varying roof plane which reduces the perceived height of the building.

This application seeks to justify a variation to this provision in this instance to demonstrate to Council, as the consent authority, that it could allow the proposed development on the site.

2 – JUSTIFICATION UNDER CLAUSE 4.6

Clause 4.6 of the BLEP2014 provides a mechanism to vary development standards under the local planning instrument.

- 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. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*

Comment: The proposal seeks a variation to Clause 4.3 under the BLEP2014. This clause is not expressly excluded from the operation of Clause 4.6.

- 3) *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*

Comment:

In the instance of this development it is considered both unreasonable and unnecessary to comply with the maximum height requirements under Clause 4.3 of the BLEP2014.

The site is subject to a maximum height of 9m and the proposed hospital provides a maximum height of 9.9m above the natural ground level. This small encroachment of 0.9m (10% variation) above the 9m building height is associated with the National Construction Code requirements for floor to ceiling heights for medical treatment rooms.

This extended floor to ceiling height will permit essential ceiling mounted equipment such as radiology equipment and lights. Without this essential equipment, the use of the operating theatres would be drastically restricted and limit the services provided to the wider Byron community.

Due to the natural slope of the land, only a small portion of one of the buildings proposed on site is located above the 9m maximum building height line. As illustrated on Figure 1, the encroachment is only a small portion of the corner of the main medical building. The small encroachment will not generate any significant overshadowing nor will it create a bulk and scale to the development that is inconsistent with the existing and future intended large lot residential development in the area.

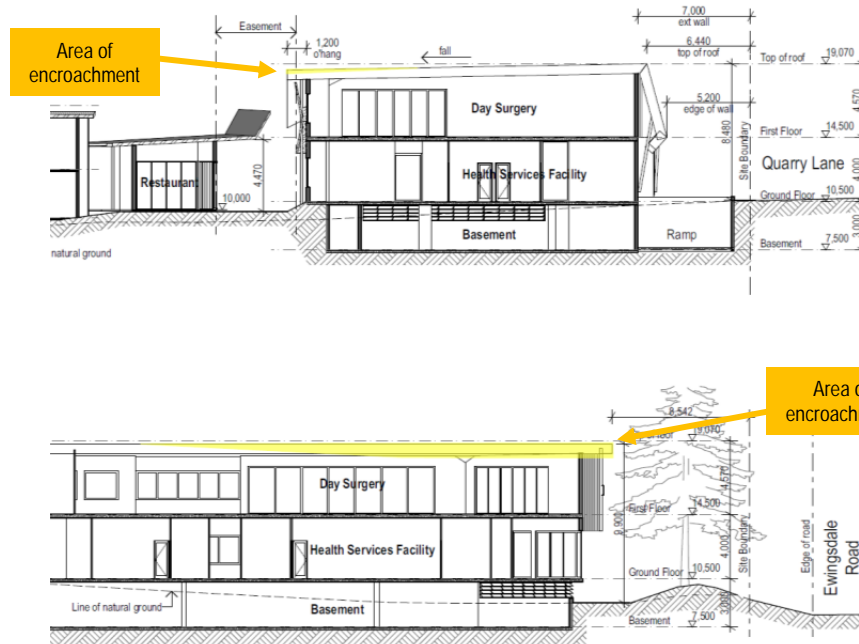


Figure 1: Highlighted area of encroachment.

The appearance of the building elevations to each street is broken up through the use of building articulation, feature walls and windows. The variation in materials and colour for the upper level component also assists in breaking up the overall vertical and horizontal bulk and scale of the building.

The development design is consistent with the existing development product and the intended density for the area as described in Council's growth strategies, development control documents and recent development approvals. This development is important as part of the growing entry precinct to Byron Bay but also as the gateway to Ewingsdale. With this there is an opportunity to meld the characteristics of both communities and create a village that both can relate to as well as re-establishing the green corridor from Ewingsdale Road into the Ewingsdale enclave

Upholding the maximum building height requirement in this regard would seem unnecessary and unreasonable in the case, considering:

Upholding the maximum height standard is considered unnecessary and unreasonable in the circumstances, given that:

- the bulk and scale of the development is appropriate for the site, considering the growing medical precinct of the area;
- it will not result in any detrimental overshadowing;
- all required car parking and landscaping areas can be appropriately accommodated onsite
- it is consistent with the BLEP2014 zone objectives (discussed in more detail below)
- it will contribute to medical facilities availability and diversity in the local area

b) that there are sufficient environmental planning grounds to justify contravening the development standard.

Comment: As noted above the site is zoned R5 Large Lot Residential. A hospital development is permitted with consent in the R5 zone under the LEP. The objectives of the zone are:

- To provide residential housing in a rural setting while preserving, and minimising impacts on, environmentally sensitive locations and scenic quality.
- To ensure that large residential lots do not hinder the proper and orderly development of urban areas in the future.
- To ensure that development in the area does not unreasonably increase the demand for public services or public facilities.
- To minimise conflict between land uses within this zone and land uses within adjoining zones.

The proposal seeks to establish a hospital on a large 5,616.5m² allotment that will significantly contribute to the current and future medical hub. The proposed development considered to comply with the objectives of the R5 – Large Lot Residential zone, providing additional health services that achieves good urban design outcomes which is in keeping with the established scale of the locality. The proposed development is in keeping with the character of increasing health precinct of Ewingsdale and will add to the professional services within the area of Ewingsdale.

The proposed development is not considered to impact upon the existing large lot residential properties in proximity to the site. The development is at least 200m from the closest dwelling and is considered the siting of the development and the access will ease congestion into Byron Bay itself. Given the close proximity to the highway, the site has the opportunity to reduce congestion along Ewingsdale Road.

With regard to the above, it is considered that there are sufficient planning grounds to justify the contravention of the standards and that compliance with these standards would seem unnecessary in the case.

4) *Development consent must not be granted for development that contravenes a development standard unless:*

(a) *the consent authority is satisfied that:*

(i) *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*

Comment: The matters required to be addressed under subclause (3) have been demonstrated above.

(ii) *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, and*

Comment: The objectives of the Clause 4.3 Height of Buildings are:

- (a) to achieve building design that does not exceed a specified maximum height from its existing ground level to finished roof or parapet,
- (b) to ensure the height of buildings complements the streetscape and character of the area in which the buildings are located,
- (c) to minimise visual impact, disruption of views, loss of privacy and loss of solar access to existing development.

It is contended that the proposal is consistent with the abovementioned objectives of the standard and that the integrity of Clause 4.3 would not be impacted upon via the approval of the proposed development. The following matters are considered relevant to assessing the merits of the proposed departure from the development standard and its consistency with the objectives of the standard:

- The small encroachment above the maximum building height relates to the overall floor to ceiling height for the medical procedure rooms.
- Solar diagrams have been prepared to demonstrate the proposal will not result in any detrimental overshadowing on adjoining land and therefore maintain residential amenity, considering the character for the area.
- The development is located in an area that is becoming an established medical hub and the encroachment above the maximum building height will not generate any additional demand on services.

The proposal is considered to not be inconsistent with the objectives of Clause 4.3.

It is considered that the proposal would be in the public interest because it is consistent with the objectives of the particular standards and the objectives for development within the zone in which the development is proposed to be carried out. It will also add to the supply of medical facilities to assist in the aging and growing population of the greater Byron area.

(b) *the concurrence of the Secretary has been obtained.*

Comment: In accordance with Varying development standards: A Guid August 2011, Council has the assumed concurrence of the Secretary of NSW Department of Planning and Environment to approve proposed variations to Clause 4.3.

5) *In deciding whether to grant concurrence, the Secretary must consider:*

(a) *whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*

Comment: The proposal relates to a proposed hospital development in a semi-rural residential area. A variation is required to achieve the required building standards for floor to ceiling height for medical procedure rooms. The proposal does not raise any matters of State or Regional planning significance.

(b) *the public benefit of maintaining the development standard, and*

Comment: As the proposed development demonstrates consistency with the intent and objective of the development standard, the granting of a variance in this instance would not prejudice the future integrity of that standard nor impact upon the amenity of the locality.

The development of a hospital will provide additional medical services which are increasing in demand within the aging and growing population of the regional Byron area. The building bulk and scale is consistent to the growing medical hub. The building intends to use visual impact management measures to ensure the development recognises and respects the established amenity within the locality. It is considered these measures will retain the semi-rural residential character of the locality. The measures include the use of Timber post and rail fencing, weathered corrugated iron and stone wall feature fencing. These features are familiar and frequently used along Ewingsdale Road and Mcgettigans Lane. These recognisable features will also be offset by the use of native vegetation which will only compliment and add to the integration of the development.

It is considered in this regard that there is no public benefit in maintaining the development standards in this instance.

(c) *any other matters required to be taken into consideration by the Secretary before granting concurrence.*

Comment: There are no other matters required to be taken into consideration by the Secretary's delegate.

With regard to the above, it is considered that there are sufficient planning grounds to justify the contravention of the standards and therefore compliance with the standards would seem unreasonable and unnecessary in the case.

3 – FIVE (5) PART TEST

In accordance with the Department of Planning and Environment's 'Varying development standards: A Guide, 2011' written applications to vary development standards will not only address the above matters but may also address matters set out in the 'five part test' established by the NSW Land and Environment Court.

The 5 different ways in which an objection may be well founded and that approval of the objection may be consistent with the aims of the policy are discussed below.

1) *the objectives of the standard are achieved notwithstanding noncompliance with the standard;*

Comment: The objectives of the standard are achieved as outlined above. The proposed building heights is proportional to the growing medical hub and surrounding development. The hospital development will not result in any detrimental overshadowing or loss of privacy for adjoining land and there is adequate provision of car parking, access and communal open space and deep soil areas provided onsite.

2) *the underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;*

Comment: This development standard outlines the desire of Byron Shire Council to ensure that appropriately scaled large lot residential development is provided. The encroachment of the building height is not considered to impact on the large

lot residential development as this location is connecting to the growing medical hub established by the Byron Central Hospital. The development also includes good design outcomes which integrate materials and colours evident in the surrounding streetscape. It is considered the proposed hospital achieves a good level of amenity for future medical services and adjoining properties. It is unnecessary in the case to uphold this standard.

- 3) *the underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;*

Comment: Compliance with the standard would result in the development not being the required building standards for medical treatment rooms therefore compliance to the maximum height would result in the development being defeated or thwarted. The development will provide additional services and add to the growing medical hub servicing the greater Byron community.

- 4) *the development standard has been virtually abandoned or destroyed by the council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable;*

Comment: The requested variation is not founded on the argument that Council has abandoned or destroyed the function of the standard. Rather, the variation is justified given that the objectives of the zone and standards are achieved.

- 5) *the compliance with development standard is unreasonable or inappropriate due to existing use of land and current environmental character of the particular parcel of land. That is, the particular parcel of land should not have been included in the zone*

Comment: Upholding the development standard is considered both unnecessary and unreasonable. The proposed hospital development is consistent with the medical precinct becoming evident in the area. The increase in height is due to the building standards for floor to ceiling height for medical procedure rooms. This extended height allows essential medical equipment to be fixed to the ceiling including radiology equipment and lights. The general growth of the area as a medical precinct has captured this parcel of land.

In consideration of the Land and Environment Court five part test, it is considered that the proposal would be consistent with three of the tests and accordingly a departure from the standard is justified.

4 – CONCLUSION

Considering the matters raised under Clause 4.6 of the Byron LEP 2014 and the 'Five Part' test, it has been demonstrated that there are sufficient planning grounds to justify the contravention of the standards and therefore compliance with the standards would seem unnecessary in the case.

Support for the proposed variation is respectfully requested.