

# Application to vary a standard under Clause 4.6

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## 1 – INTRODUCTION

This application is made in respect to a proposed Health Services Facility (Medical Centre and Private Hospital) at No. 201 Queen Street, Grafton NSW 2460; and No.174 Arthur Street, Grafton NSW 2460 and is to be read in conjunction with the accompanying Development Application.

The proposed height for the Health Services Facility exceeds the maximum requirements under Clause 4.3 of the Clarence Valley Local Environmental Plan 2011 (Clarence Valley LEP 2011). Clause 4.3 requires that the maximum building height is not to extend more than 9m above the existing ground level. The maximum proposed height of the development measures 15.89m (top of roof) and 17.92m (lift overrun) in height.

The overall height of the building has been determined by the floor to floor and ceiling heights needed for a Health Service facility, the natural fall of the land and the need to achieve appropriate flood immunity for such a facility. The overall development has a varying roof plane which reduces the perceived height of the building. This varying roof height is purposely lower towards existing heritage element of the site, where the building structures are more visible to the residential areas of Queen Street and then higher at the interface to the adjoining Grafton Base Hospital.

This application seeks to justify a variation to this provision in this instance to demonstrate to the Northern JRPP, 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 CVLEP2011 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 Clarence Valley LEP 2011. 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 Clarence Valley LEP 2011.

The site is subject to a maximum height of 9m and the proposed Health Services Facility provides a maximum roof height of 15.89m and a maximum lift overrun of 17.92m above the natural ground level. Without this increased height, the use of a Health Service Facility would be drastically restricted and would limit or prevent the delivery of the specialist services to the wider Grafton and Clarence Valley Shire community.

Due to floor to floor and ceiling heights needed, the natural fall of the land and the need to achieve appropriate flood immunity the variation is confined to the Hospital component of the development. As illustrated on **Figure 1 & 2**, the encroachment relates to building B & C which ultimately form the Hospital Component of the development.

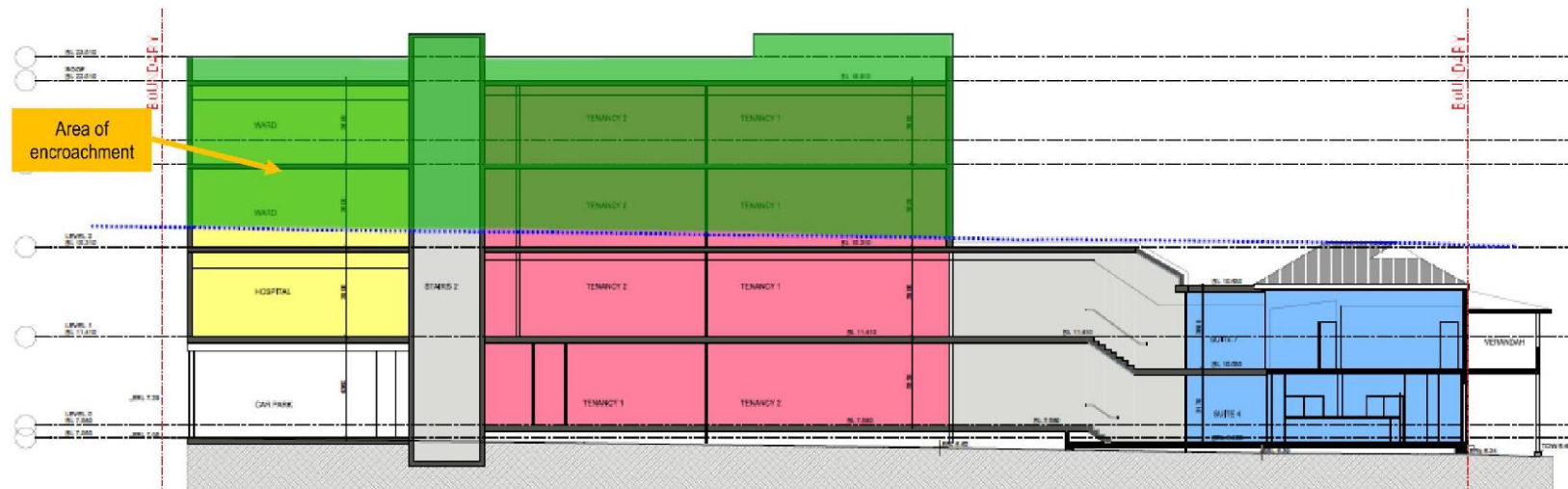


Figure 1: Highlighted area of encroachment.

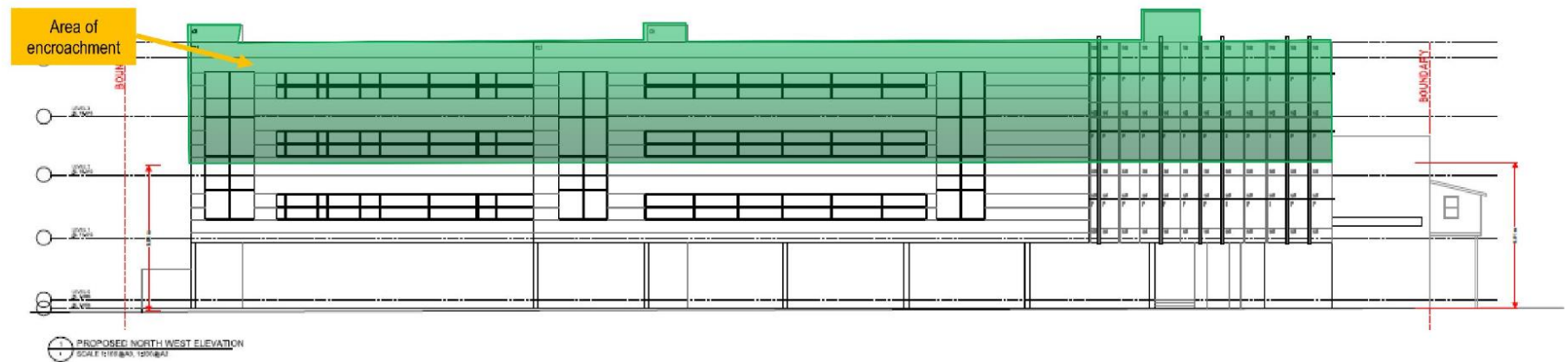


Figure 2: Highlighted area of encroachment.

The appearance of the building elevations to both Arthur Street and Queen Street is broken up through the use of building articulation, clear entrances and windows. The variation in materials and colour also assists in breaking up the overall vertical and horizontal bulk and scale of the building.

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 height of the proposed development is comparable to that of existing building heights on the adjacent lot (Grafton Base Hospital and associated buildings);
- The highest elements of the buildings (lift overruns) are set back from the street so as to reduce impact on pedestrian amenity;
- The proposal provides for significant visual amenity at street level, including the retention and renovation of the heritage-listed Albion Hotel, such that any perceived impact of bulk and scale is reduced when viewed from the streetscape.
- The adjacent development (Grafton Base Hospital) is of a similar medical use and nature to that proposed on the site and thus no land use conflicts will occur.
- Physical development on the site and the adjoining property to the North West (Grafton Base Hospital) is separated by an internal vehicle access driveway and car parking area. Therefore, the additional building height does not result in any overlooking issues.
- Physical development on the site and the adjoining properties to the South East are separated by landscaped setbacks, and windows on this level are fixed highset windows to allow natural light into the hospital only. Therefore, the additional building height does not result in any additional overlooking issues.
- The additional height does not result in significant overshadowing issues above and beyond that created by a compliant-height development in relation to allowing solar access to the adjoining properties to the South East for the morning period mid-winter.
- All required car parking can be appropriately accommodated onsite.
- It is consistent with the State Environmental Planning Policy (Infrastructure) 2007 objectives (discussed in more detail below).
- It will contribute to health services and private medical facilities available to service the local area and broader Clarence Valley Shire.
- The adjoining Grafton Base Hospital site has no mapped height limit under the CVLEP 2011.

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

Comment: As noted above the site is zoned R1 – General Residential under the Clarence Valley Local Environmental plan 2011. A Health Services Facility (Medical Centre and Private Hospital) is permitted within the R1 zone through the State Environmental Planning Policy (Infrastructure) 2007 (SEPP Infrastructure). The objectives of the R1 General Residential Zone are:

- *To provide for the housing needs of the community.*
- *To provide for a variety of housing types and densities.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

The proposal seeks to establish a Health Services Facility (Medical Centre and Private Hospital) on the site. The location of these proposed uses is consistent with the emerging medical precinct, which includes the existing Grafton Base Hospital and ancillary services immediately adjacent to the site.

The proposed development is considered to comply with the objectives of the R1 – General Residential zone, providing additional facilities and medical services to meet the day-to-day needs of the residents. The proposed Private Hospital and Medical Centre achieves good urban design and heritage retention outcomes which is in keeping with the established locality. The proposed development is in keeping with the character of the increasing medical precinct of Grafton and will add to the private hospital capabilities of the Clarence Valley Shire.

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.*

Each of the objectives has been addressed as follows:

- (a) to achieve building design that does not exceed a specified maximum height from its existing ground level to finished roof or parapet,*

The proposal does not comply with objective (a), as the proposed development exceeds the specified maximum height. The subject site is mapped with a maximum building height of 9m. The proposal provides built form of varying height with a maximum roof height of 15.89m and lift overrun height of 17.92m.

The encroachment above the maximum building height relates to the overall floor to ceiling height for the safe and efficient operation of a Health Services Facility on site and the need to achieve an appropriate level of flood immunity for the Hospital. Without this increased height, the use of a Health Service Facility would be drastically restricted and limit/prevent the delivery of specialist services to Grafton and the wider Clarence Valley Shire Community.

- (b) to ensure the height of buildings complements the streetscape and character of the area in which the buildings are located,*

The development is located immediately adjacent to an established medical precinct and the encroachment above the maximum building height will not generate any significant impact on the amenity of the locality. Stage 1 of the development will see an extension to and fitout of the existing Albion Hotel. The retention of such a prominent character building facade on a landmark corner ensures that the streetscape will remain easily identifiable. The design of the Stage 1 and 2 extensions have been carefully curated to complement & enhance the existing streetscape.

- (c) to minimise visual impact, disruption of views, loss of privacy and loss of solar access to existing development.*

The design of the proposed development has attempted to minimize visual impact and potential loss of views as much as is practicable whilst still retaining a viable layout and operation. Solar access and potential overshadowing has been examined in great detail in order to mitigate impacts where possible.

Detailed shadow diagrams have been provided to show the hourly breakdown between 9am and 3pm mid-winter for each site, having particular regard to the existing areas of principle private open space. The individual building footprints and roof designs of buildings on the affected lots have been shown.

Please note that the shadows cast by all existing buildings and fences are shown in black, while the additional shadows cast by the proposed development on site are shown in yellow. Refer Drawings DA7000<sup>3</sup>, DA7001<sup>1</sup>, and DA7002<sup>1</sup>.

Due to the orientation and existing setbacks of the buildings at 203, 205, 205A and 207 Queen Street, there is significant shadow across these lots, particularly across 203, 205 and 205A Queen Street. These dwellings and the private open space areas are already impacted on by the shadow cast by the buildings themselves, as well as existing fencing, patios and the like.

It is also noted that were the Grafton Private Hospital be constructed to the permitted building height of 9.0m, the extent of the overshadowing would largely remain. That is, the difference in the amount of overshadowing between the proposed development and a permitted 9m building height with the same building footprint, between 9am and 3pm in mid-winter is largely negligible. This can be seen in the additional shadow diagrams provided (Drawing Nos. Da7003<sup>3</sup>, DA7004<sup>1</sup> and DA7005<sup>1</sup>).

As can be seen in these diagrams, a building of the same footprint but of a 9.0m height limit in accordance with the provisions of Clause 4.3 would still result in a similar extent of overshadowing across all four affected lots. This, coupled with the existing orientation of the dwellings, setbacks from side boundaries and existing fencing, means that much of the private open space areas, particularly that of the Rear dwelling of No. 205 and Unit 3 of No. 203 would be overshadowed regardless of any proposed height variation.

Further, Unit 3 of No. 203 has the primary private open space oriented to the north/north-eastern corner of the site, with an enclosed patio roof to boundary. This not only restricts existing solar access to this particular unit, but also means that the dwelling is further overshadowed by existing shadow from the fence line and adjoining development at no. 205.

It is noted that a building of 9m height would not be a viable option given the need for safe and efficient operation of a Health Services Facility on site and the need to achieve an appropriate level of flood immunity for the Hospital.

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 capacity of the Clarence Valley Shire in regard to the availability of private hospital beds and other specialist medical services not currently available.

In conclusion, it is contended that the integrity of Clause 4.3 would not be impacted upon via the approval of the proposed development, based upon the merit of the proposal.

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

Comment: In accordance with *Varying Development Standards: A Guide 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 Health Services Facility (Medical Centre and Private Hospital) immediately adjacent to an existing Hospital (Grafton Base Hospital). A variation is required to achieve the required building standards for floor to ceiling height for the safe and efficient operation of the 30-bed private hospital and to achieve an appropriate level of flood immunity for the Hospital component. 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 Health Services Facility will provide additional medical and private hospital services which are increasing in demand within the Grafton area. The building bulk and scale is consistent to the adjacent existing medical precinct.

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 Health Services Facility (Hospital and Medical Centre) 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 provided onsite.

It has been demonstrated that, were the Grafton Private Hospital be constructed to the permitted building height of 9.0m, the extent of the overshadowing would largely remain the same. That is, the difference in the amount of overshadowing between the proposed development and a permitted 9m building height with the same building footprint, between 9am and 3pm in mid-winter is largely negligible. This can be seen in the additional shadow diagrams provided (Drawing Nos. Da7003<sup>3</sup>, DA7004<sup>1</sup> and DA7005<sup>1</sup>).

As demonstrated, a building of the same footprint but of a 9.0m height limit in accordance with the provisions of Clause 4.3 would still result in a similar extent of overshadowing across all four affected lots. This, coupled with the existing orientation of the dwellings, setbacks from side boundaries and existing fencing, means that much of the private open space areas, particularly that of the Rear dwelling of No. 205 and Unit 3 of No. 203 would be overshadowed regardless of any proposed height variation.

Further, a building of this height would not be a viable option given the need for safe and efficient operation of a Health Services Facility on site and the need to achieve an appropriate level of flood immunity for the Hospital. The proposed Health Services Facility (Hospital and Medical Centre) is considered to still achieve the objectives of the standard, notwithstanding noncompliance with Clause 4.3.

**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 Clarence Valley Shire Council to ensure that appropriately scaled medical development is provided. The encroachment of the building height is not considered to impact on the adjoining development, which is of a similar nature. The development also includes good design outcomes which integrate existing heritage elements, materials and colours evident in the surrounding streetscape. It is considered the proposed Health Services Facility will achieve a good level of amenity and support a developing medical precinct. 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 meeting the operational capacity of the Health Services Facility, therefore compliance to the maximum height would result in the development being defeated or thwarted. The development will provide additional medical and private hospital services and add to the existing medical area servicing the greater Grafton community. It is not contended that the underlying object or purpose of Clause 4.3 would be thwarted if compliance was required.

- 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 and that the particulars of the development proposal are sufficiently unique to justify a variation to the standard.

- 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 Health Services Facility is consistent with the nearby medical nature of the area. The increase in height is due to the building standards for floor to ceiling height for the safe and efficient delivery of medical services and the need to achieve appropriate level of flood immunity for the Hospital.

The requested variation is not founded on the argument that the land should not have been included in the height limit area. Rather, the variation is justified given that the objectives of the zone and standards are achieved and that the particulars of the development proposal are sufficiently unique to justify a variation to the standard.

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

#### **4 – CONCLUSION**

Considering the matters raised under Clause 4.6 of the Clarence Valley LEP 2011 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.