



Appendix K

Request to Vary LEP Development Standards Pursuant to Clause 4.6

Request to Vary LEP Development Standards Pursuant to Clause 4.6

The Proposal is for a three storey (with basement car park) shop top housing development. A variation to the provisions of Clause 4.3 (Height of Buildings) of the Bellingen Local Environmental Plan (BLEP) 2010, facilitated by Clause 4.6 (Exceptions to Development Standards) of the BLEP 2010, is sought in regard to the proposed building height. This is because the proposed maximum building height of 11.697 m (near the southeast corner) exceeds the 10 m height control that applies to the entire Bellingen Shire as shown on the BLEP 2010 Height of Buildings Map. Such a variation would have no unreasonable or adverse impact on the surrounding area or adjoining properties, and the objective of Clause 4.3 of the BLEP 2010 would still be achieved.

Clause 4.6 of the BLEP 2010 allows for a level of flexibility and therefore variation/ contravention of the development standards on the basis of a written request from the applicant that seeks to justify the variation/ 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 section outlines the variation request and provides justification as to why it is acceptable and supported by sound planning principles.

What is the name of the environmental planning instrument that applies to the land?

Bellingen Local Environmental Plan (BLEP) 2010

What is the zoning of the land?

B2 Local Centre

What are the objectives of the zone?

- *To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.*
- *To encourage employment opportunities in accessible locations.*
- *To maximise public transport patronage and encourage walking and cycling.*
- *To preserve the dominance of Hyde Street as the retail centre of Bellingen.*

What is the development standard and clause being varied?

Height of Buildings - pursuant to Clause 4.3 of the BLEP 2010.

What are the objectives of the development standard?

- *To restrict the height of buildings in a manner that preserves the character and amenity of localities in Bellingen.*

What is the numeric value of the development standard in the environmental planning instrument?

Maximum Building Height of 10 m (Height of Building Map, Sheet HOB_001). Map accessible online here:

https://www.legislation.nsw.gov.au/maps/f81cfb89-7a1e-6d3f-be80-c31840f80ccd/0600_COM_HOB_001_240_20100622.pdf

What is the proposed numeric value of the development standard in the development application?

The Proposed maximum building height (near the southeast corner of the site/ building) is 11.697 m (refer to plans at **Appendix A** of SEE).

What is the percentage variation (between the proposal and the environmental planning instrument)?

The maximum height proposed is equivalent to a 16.97 per cent variation to the development standard and is not significant. Furthermore, the majority of the proposed building is below the maximum building height, which occurs near the southeast corner of the site, further lessening the proportion of variation overall.

How would strict compliance hinder the attainment of the objects specified in Section 5(a) (i) and (ii) of the Act?

S5(a)(i) To encourage the proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment,

S5(a)(ii) To encourage the promotion and co-ordination of the orderly and economic use and development of land

The Proposal for redevelopment of a prominent and significant site within the main centre of Bellingen with a three storey, shop top housing development, represents an important and worthwhile opportunity for the revitalisation of the site, the provision of additional retail and housing supply, and will have multiple benefits for the township. These include the orderly and economic use and development of land in a centrally established location, and the ability to carry out a development that will have socio-economic benefits, with minimal environmental impact.

The current site is run-down and an inefficient use of land that also detracts from the valued heritage streetscape and public realm/ pedestrian experience. The Proposal will significantly enhance the site and overall streetscape, whilst harmonising with the local heritage character. The development and associated improvements to the pedestrian experience and public realm will benefit the entire street and surrounding businesses with improved access, appeal and trade.

The development provides for additional retail space and commercial activity, urban design and public realm improvements, and greater housing supply and choice in an established location that has excellent access to goods, services and facilities.

These aspects contribute toward the achievement of the objectives of the *Environmental Planning and Assessment Act 1979* (EP&A Act). The development will have aesthetic and socio-economic benefits for the local community and retail precinct of Bellingen.

The design has taken into account the relevant matters to be addressed and sought to resolve them in the most effective and suitable manner, which results in the proposed building height. Whilst the height exceeds the development standard of the BLEP 2010, this is not significant. The height has been restrained as much as practical and is consistent with other built form scales in the principal street. As discussed in the options analysis within the SEE, this development could not viably progress if strict compliance with the height standard was imposed and this would hinder the achievement of the objectives of the EP&A Act.

Is the development standard a performance based control?

No, it is prescriptive.

How and why would strict compliance with the standard, in this particular case, be unreasonable or unnecessary?

It would be both unreasonable and unnecessary to pursue strict compliance with the building height standard for the proposed development. It has been determined that in order to facilitate the proposed redevelopment, the most effective utilisation of the site requires a proposal that balances financial viability, respect for heritage and an efficient use of infill land resources that are situated in an established and central location of the township.

The SEE (at Section 1.4) provides an analysis of alternative options, including those that would be under the height standard applicable to Bellinghen. Single or double storey options are not the most efficient use of land resources in this context or financially viable. Such options also forgo the worthy opportunity to provide a greater diversity of housing options/ supply.

The proposed three-storey, shop top housing development:

- makes efficient use of the site;
- is in keeping with the Bellinghen Heritage Conservation Area;
- provides for significant ESD initiatives;
- supports the revitalisation of the site and delivers more housing supply and choice in a well serviced and accessible location, consistent with planning objectives; and
- is financially viable.

The objective of the building height development standard is *to restrict the height of buildings in a manner that preserves the character and amenity of localities in Bellinghen*. Strict compliance with the 10 m standard is not necessary to achieve the objective. The Proposal responds to the important heritage character and built form scale within Hyde Street. The proposed maximum height is not a significant departure from the standard and this element is toward the rear laneway (and southeast corner), with the facade to Hyde Street being lower at a maximum of approximately 10.2 m above ground level. The laneway is not a principal frontage and provides for adequate separation from properties to the south. Furthermore, the upper level of the building has been setback and is suitably articulated and restrained. No unreasonable amenity impacts, such as overshadowing of private open space or visual bulk, would result.

In addition to this, the presentation to Hyde Street is acceptable as there are other built form scales in the street, including heritage buildings, that exceed the 10 m standard. The design response ensures that the building reads as a two-storey form when viewed from the principal street frontage. This is consistent with the streetscape character. Supportive heritage advice has been received from Council as the design achieves a harmonious relationship with existing built form in Hyde Street. Given the Proposal can achieve these outcomes and appropriately respects the Heritage Conservation Area and adjacent built form, it would be unreasonable to impose strict compliance with the height standard.

Enforcing the height standard would result in a largely imperceptible change to the scale of the building. However, such an imposition would severely compromise the design, impact internal dwelling amenity, and hinder the viability of the development, foregoing the much-needed improvements to the site and streetscape generally.

Approving the height variation is considered an environmentally, socially and economically responsible decision and is consistent with the objective of the height standard under the BLEP 2010.

Are there sufficient environmental planning grounds to justify contravening the development standard?

There are sufficient environmental planning grounds to justify contravening the height development standard for this Proposal. Approval of a variation to the building height standard is integral to its success and the functional design needs of the building. In this instance, a variation is justified as the objectives of the standard would still be achieved notwithstanding noncompliance with the standard. The standard's primary objective relates to ensuring building height preserves the character and amenity of the area. The development would revitalise the site, enhance the public realm and appropriately integrates into the streetscape in terms of height, massing and character as assessed within the SEE.

There would be no significant environmental, heritage, visual or off-site amenity impacts. The objective of the building height standard would be upheld by the Proposal. The development will achieve positive outcomes for the community and locality in terms of economic investment, additional retailing (and associated employment), boosted housing supply/ diversity, and public realm improvements. The development, through the provision of a variety of apartments located in an established and serviced area directly addresses the need for increased housing supply, diversity, choice and opportunities for more affordable dwellings. This is further reinforced as the development utilises an infill site, having excellent access to goods, services and facilities. These aspects directly support the objectives and direction of the *North Coast Regional Plan 2036*.

Considering the objectives of the B2 Local Centre zone in which the Proposal is located, the Proposal and height variation are further justified as it would attain the primary objectives for this zone without any unreasonable detriment to the locality or other surrounding land uses as follows:

- The zone is to allow for a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area. This Proposal directly achieves this.
- The Proposal supports employment opportunities in an accessible setting and would stimulate economic activity.
- Given the setting of the site within the centre of Bellingen and on Hyde Street, the development would facilitate walking, cycling and use of public transport.
- The retail component and intent of the Proposal would preserve and support Hyde Street as the retail centre of Bellingen.

Based on these considerations, the Proposal and associated variation remain consistent with the objectives and intent of the BLEP 2010. The variation is acceptable and supported by both the physical and environmental planning context of the site. It is a reasonable request that would on balance result in a positive development outcome and one that would be in the public interest. Approval of such a variation would not result in undesirable outcomes or cumulative impacts, and is justified on its merits and sound planning grounds.