

## CLAUSE 4.6 VARIATION REQUEST: ADDENDUM REPORT

### NORTHERN REGIONAL PLANNING PANEL

<b>PANEL REFERENCE &amp; DA NUMBER</b>	PAN-225655, 1012/22DA
<b>PROPOSAL</b>	Eco-tourist facility over \$5 million
<b>ADDRESS</b>	Lot 21 DP 869885 97 Sealy Lookout Drive, Coffs Harbour 2450
<b>APPLICANT</b>	Clark Webb on behalf of Bularri Muurlay Nyanggan Aboriginal Corporation
<b>OWNER</b>	Bularri Muurlay Nyanggan Aboriginal Corporation
<b>DA LODGEMENT DATE</b>	26/05/2022
<b>APPLICATION TYPE</b>	Development Application (Integrated Development)

## Building height

### Clause 4.6 Exceptions to Development Standards

A Clause 4.6 variation request was submitted with the application seeking approval to vary the maximum building height development standard required by Clause 4.3 of the *Coffs Harbour Local Environmental Plan 2013* (CHLEP).

Clause 4.6 – Exceptions to Development Standards, subclause (2) provides that development consent may be granted for development even though the development would contravene a development standard imposed by the CHLEP or any other environmental planning instrument (if such standard is not expressly excluded from operation of this clause). Key subclauses of **Clause 4.6** are the following:

*(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*

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

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

### Applicant's Variation Request

The applicant has provided a written request, titled "Clause 4.6 Request for Variation to Height of Building Standard", Version 02, dated 17 May 2022, prepared by Keiley Hunter Town Planning and submitted with development application no. 1012/22DA.

The development standard under Clause 4.3 'Height of Building' of CHLEP is 8.5m.

The table below provides a summary of the LEP provision proposed to be varied and the variation proposed:

LEP Provision	Standard	Proposed development	Variation	Percentage variation
Clause 4.3	8.5m	9.95m	1.45m	17%

The proposed development seeks to vary, pursuant to Clause 4.6 of the CHLEP, the application of a development standard specified in Clause 4.3 'Height of Building', which requires that the height of a building must not exceed the maximum height shown on the land on the Height of Buildings Map. In this instance, the subject site has a 8.5m height control. The development is proposed to be 9.95m, which exceeds the development standard by 1.45m or 17%. Refer area of non-compliance in Figure 1 below.

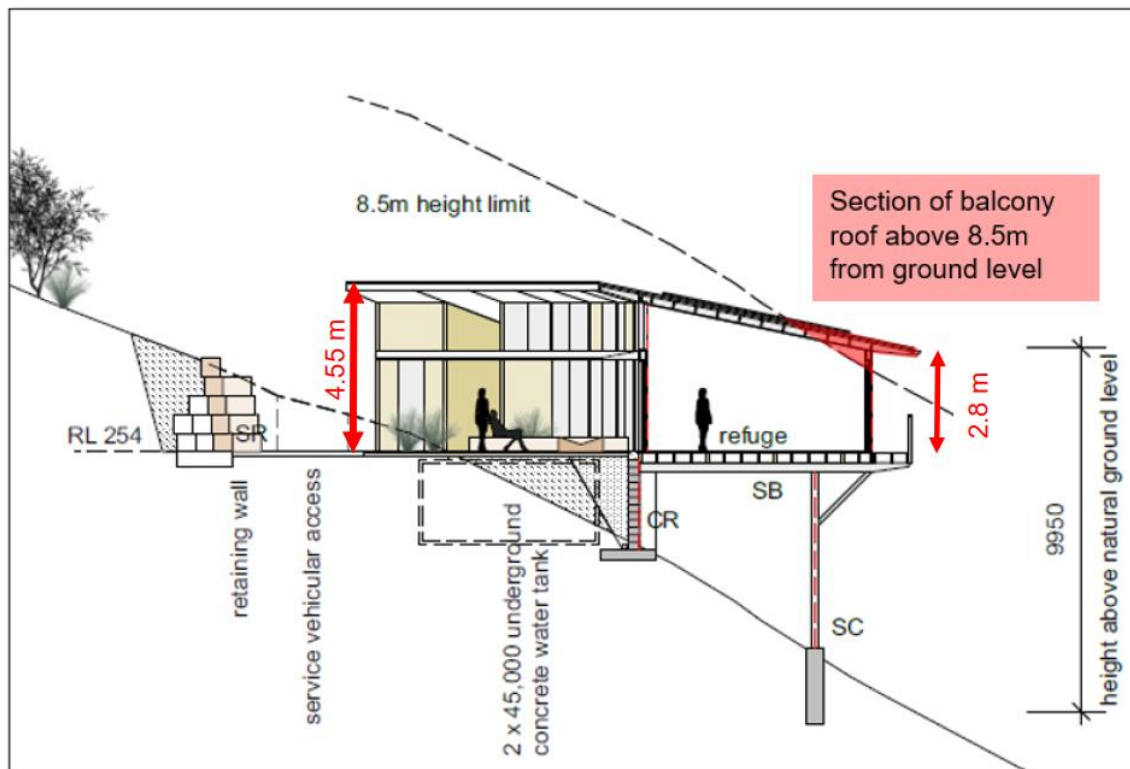


Figure 1: Area of non-compliance with height control shaded in red (source: Keiley Hunter Town Planning)

**Clause 4.6(3) –**

The applicant's written request provides that justification for the variation can be assessed as the request has adequately addressed the following matters required by Clause 4.6(3):

*(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*

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

The applicant's Clause 4.6 Variation Request puts forward the view that the exceedance of the building height is considered minor in terms of the percentage of the exceedance (17%) and the small proportion of the site that is occupied by the building footprint. As demonstrated in Figure 1 above, the non-compliance affects a small part of the skillion roof of the communal building. The applicant states that the exception will enable a better design outcome in terms of sustainable building design by providing shelter (roof) over the balcony of the communal building.

With regard to environmental planning grounds to justify the contravention, the Clause 4.6 Variation Request provides the following environmental planning grounds in support of the contravention:

1. The height exceedance is unavoidable due to the steeply sloping part of the land on which the communal building is located.
2. The height exceedance occupies a very small area of the land and will not be visually perceptible in the landscape.
3. The proposed development does not rely on any other exceptions or variations to Council's standards and controls.
4. The site is relatively isolated and well separated from adjoining dwellings.
5. The height exceedance has resulted from good urban design in terms of sheltering the balcony area.
6. The minor height exceedance will not adversely impact view lines of surrounding dwellings.
7. The communal building is single storey and has been carefully sited within the land to meet bushfire APZs and road and accessway grades.

**Consideration –**

It is considered that compliance with the height standard is unnecessary in the circumstances, given the small extent of the roofline that doesn't comply with the height standard (refer to Figure 1) in the context of the large size of the site. There are sufficient planning grounds to justify the height non-compliance. The location for the communal building is limited due to the provision of bushfire APZs and access roads on the sloping site. The building has sufficient separation from neighbouring properties for the height exceedance to not adversely impact on these properties.

**Clause 4.6(4) –**

*(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*

*(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,*

The Clause 4.6 Variation Request states that the public interest is well served by the proposed development for a high quality eco-tourist facility centred around local Aboriginal culture and the environment, social and economic benefits that this development will provide.

*Objectives of the height of buildings standard –*

The objectives of the **height of buildings** standard at Clause 4.3 of the CHLEP are discussed as follows:

*(a) to ensure that building height relates to the land's capability to provide and maintain an appropriate urban character and level of amenity,*

The applicant's Clause 4.6 Variation Request considers that the maximum proposed building height of 9.95m is well within the land's capability due to the small area of height exceedance and small building footprint relative to the 3.59 hectare lot size. The actual height of the single storey communal building from the floor to the apex of the roof is 4.55m and at the height breach location, the height from the floor to the roof is only 2.8m. The applicant states that the height exceedance will not be perceptible from the streetscape or public domain. The surrounding area is sparsely settled with three rural dwellings within 200m of the site and therefore the applicant considers that the small area of height exceedance will not have an adverse impact on any surrounding properties.

*(b) to ensure that taller development is located in more structured urbanised areas that are serviced by urban support facilities,*

This objective is not considered to be applicable to the proposed development.

*(c) to ensure that the height of future buildings has regard to heritage sites and their settings and their visual interconnections,*

The applicant's Clause 4.6 Variation Request notes that the site is not mapped as comprising an item of environmental heritage nor is it in proximity to any items of local environmental heritage. It is advised that the Aboriginal Cultural Heritage Assessment submitted with the application has found that the development will have a positive impact on cultural heritage and the minor height exceedance will have no impact on these values or connections.

*(d) to enable a transition in building heights between urban areas having different characteristics,*

This objective is not considered to be applicable to the proposed development.

*(e) to limit the impact of the height of a building on the existing natural and built environment,*

The applicant's Clause 4.6 Variation Request finds the height non-compliance to be consistent with this objective as the sparse settlement pattern and steeply sloping land characteristics mitigate any visual impact from the small area of height exceedance of the proposed building. There will be no overshadowing impacts to adjoining properties.

*(f) to encourage walking and decreased dependency on motor vehicles by promoting greater population density in urban areas.*

This objective is not considered to be applicable to the proposed development.

**Objectives of R5 Large Lot Residential zone –**

The objectives of the **R5 Large Lot Residential** 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.*

Although not specifically addressed by the applicant's Clause 4.6 Variation Request, the proposed non-compliance with the height standard is not considered to adversely impact on environmentally sensitive locations or the scenic quality of the surrounding area, given the minor nature of the non-compliance in the context of the large site. In addition, the proper and orderly development of urban areas in the future will not be impacted. The minor non-compliance is a breach of the height standard, however it is unlikely to set a precedent for other non-compliances within future development.

Therefore, the proposed height non-compliance will not hinder the proper and orderly development of urban areas in the future. The site has specific characteristics which constrain the development on the site, due to the gradient of the land and bushfire APZs. The non-compliance with the height standard will not cause conflict with land uses within the nearby areas of C2 Environmental Conservation zone.

**Consideration –**

Following review of the proposed development, consideration of the applicant's Clause 4.6 Variation Request, and the circumstances and context of the site, it is considered 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.

**Clause 4.6(5) –**

*(5) In deciding whether to grant concurrence, the Planning Secretary must consider—*

- (a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
- (b) the public benefit of maintaining the development standard, and*
- (c) any other matters required to be taken into consideration by the Planning Secretary before granting concurrence.*

The applicant's Clause 4.6 Variation Request states that the contravention of the height standard does not raise any matter of significance for State or regional environmental planning as it is for an eco-tourist facility with an estimated cost of development of over \$5 million, therefore it is classified as regional development under the *State Environmental Planning Policy (Planning Systems) 2021*.

In addition, the Variation Request suggests that the public benefit will not be adversely affected by allowing the variation to the height of building standard for this particular development on this particular property.

**Consideration –**

The non-compliance with the height standard is not considered to raise any matters of significance for State or regional environmental planning, given its minor nature and the circumstances of the development and site. Similarly, there is no significant public benefit in maintaining the development standard due to the compliance of the proposed development with the objectives of the height of buildings development standard and the objectives of the R5 zone, as discussed above.

**Conclusion –**

The applicant's Clause 4.6 Variation Request has satisfactorily demonstrated that compliance with the height of buildings development standard is unnecessary in the circumstances. In this regard, the applicant has demonstrated how the development achieves the objectives of the height of building clause, despite the building not satisfying the building height controls. The applicant has also satisfactorily demonstrated in their written submission that there are sufficient environmental planning grounds to justify contravening the development standard.

The proposed development is considered to be in the public interest because it is consistent with the objectives of the development standard and consistent with the objectives of the R5 zone.

In this regard, it is considered that the proposed development has a practical and efficient layout and will not result in unacceptable impacts for adjoining properties.