

24 March 2023  
Ref No: 4063-1050

The General Manager  
Bellingen Shire Council  
PO Box 117  
BELLINGEN NSW 2454

**Attention: Michael Coulter**


Dear Michael,

**Stage 2 RFBI Bellingen Affordable Housing Project - Request to Vary LEP Clause 4.3  
Development Standard Pursuant to Clause 4.6 of the Bellingen Local Environmental Plan  
2010**

With reference to the above Development Application (PAN-271802), please find attached an amended request for a variation to a Development Standard contained within Clause 4.3 – Height of Buildings pursuant to Clause 4.6 of the Bellingen Local Environmental Plan 2010. The amended request rectifies an error in the calculation of the maximum Building height.

Should you have any queries please contact me on 02 6687 7666.

Yours sincerely



**Simon Waterworth**

Director / Principal Town Planner

# **Stage 2 RFBI Bellingin Affordable Housing Project - Request to Vary LEP Clause 4.3 Development Standard Pursuant to Clause 4.6 of the Bellingin Local Environmental Plan 2010**

## **Introduction**

This proposal is for Stage 2 of an affordable housing development in Watson Street, Bellingin.

The Stage 1 proposal approved on the 12 September 2022 (DA2022/00086) by the Northern Regional Planning Panel includes construction of 23 one-bedroom units with basement carparking within the newly approved 'Lot 1' adjoining to the east.

Stage 2 now proposes to construct new residential flat buildings (affordable housing) on 'Lot 2' and will include construction of three 3-storey buildings to accommodate 12 one-bedroom dwellings and 6 two-bedroom dwellings. Both stages require the demolition of existing buildings on the site; for Stage 2 this involves one residence and a building associated with the former Bellorana Aged Care Hostel.

## **Variation**

A variation to the provisions of Clause 4.3 (Height of Buildings) of the Bellingin Local Environmental Plan (BLEP) 2010, facilitated by Clause 4.6 (Exceptions to Development Standards) of the BLEP 2010, is sought regarding the proposed building height. This is because the proposed maximum building height of 12.6 m exceeds the 10 m height control that applies to the entire Bellingin Shire as shown on the BLEP 2010 Height of Buildings Map.

Clause 4.6 of the BLEP 2010 allows for a level of flexibility and therefore variation / contravention of the development standards based on a written request from the applicant 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.

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.

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

Bellingin Local Environmental Plan (BLEP) 2010

## **What is the zoning of the land?**

R1 General Residential

## **What are the objectives of the zone?**

- *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.*
- *To ensure that any non-residential land uses permitted within the zone are compatible with the amenity of the area.*

- *To ensure that the height and scale of buildings are compatible with a low-density residential character.*

**What is the development standard and clause being varied?**

Height of Buildings – pursuant to Clause 4.3 of the BLEP 2010. The subject site has a 10 m building height development standard/control.

**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.

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

The proposed maximum building height is 12.6 m above ground level (refer to **Figure 1** at the end of this report).

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

The maximum height proposed is 2.6 m over the building height control standard. This is equivalent to a 26 per cent increase above the development standard and is not considered significant (refer to discuss below). Furthermore, the majority of the proposed building (i.e. below the roofline) is below the maximum building height.

**Is the development standard a performance-based control?**

No, it is prescriptive.

**CI4.6(3)(a): Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case?**

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, flood restrictions and an efficient use of infill land resources that are situated in an established and central location of the township.

The SEE (at Section 3) provides an analysis of the building design. A single or even double storey is not the most efficient use of land resources in this context, nor would it be financially viable. Such an option would also forgo the worthy opportunity to provide a greater number of affordable housing units for the Bellingen community which is desperately needed.

The proposed three-storey development:

- makes efficient use of the site;
- is in keeping with the adjoining Bellingen Heritage Conservation Area and heritage items in the vicinity of the site;
- 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 Bellingen*. Strict compliance with the 10 m standard is not necessary to achieve the objective. The Proposal responds to its setting, as discussed in detail in the Statement of Heritage Impact prepared for the project. The proposed maximum height is not a significant departure from the standard and this element features the roof of the buildings only. The buildings have been setback and are suitably articulated and restrained. No unreasonable amenity impacts, such as overshadowing of private open space or visual bulk, would result.

Shadow diagrams have been prepared for the proposal, which show that the proposed height variation will result in a very minor increase in shadows cast and will not affect adjoining properties. Regarding the heritage impact, the height of the proposal presents the most significant potential detrimental impact to surrounding conservation area. However, the height of the development will be offset by the adjoining development to the east and double storey school buildings at the St Mary's Primary School. It is not expected that the height of these new additions will detrimentally impact on the St Mary's Catholic Church or Hall as the new units do not directly adjoin the school premises and the scale and design of the church is such that it dominates views from Park Street.

Reduction of the height of the proposed affordable housing buildings to be consistent with residential dwellings on the south side of Watson Street has been considered. However, the proposed development is consistent with the scale of existing buildings on the northern side of Watson Street and will be compatible with the approved Stage 1 proposal. The proposed works will not result in a significant variation to the prescribed maximum building height.

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

**CI4.6(3)(b): 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 development. 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 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. One of the main reasons for the contravention is the requirement to keep the floor level above the general flood planning Level. 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 boosted affordable housing supply. The development 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 R1 General Residential 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 provide for the housing needs of the community and a variety of housing types and densities.*

The Proposal directly achieves this by adding to the variety and size of housing currently available and by prioritising affordability, particularly at a time of severe shortage of affordable housing options throughout the Bellingen Shire and regional Australia generally. Compliance with the existing height restriction would severely limit the capability of the development to achieve this objective of the zone.

- *To ensure that the height and scale of buildings are compatible with a low-density residential character.*

Strict compliance with the 10 m standard is not necessary to achieve this objective. The development is site responsive and, as determined in the Statement of Heritage Impact, double story buildings are the “main dominate pattern of development on the northern side of Watson Street”. It is only the roof that contravenes the restriction, and the design incorporates design features which ensure that the development is compatible (i.e., building separation, articulation, fabric, setback).

**Clause 4.6(4)(a)(ii) - Is the proposed development in the public interest because it is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out?**

The proposal for redevelopment of a site within proximity of the main street/commercial area of Bellingen with a three-storey affordable housing development, represents an important and worthwhile opportunity for revitalisation and provision of much needed housing diversity. The proposal will have significant socio-economic benefits, with minimal environmental impact.

The existing buildings on the site are not currently in use, as they are no longer fit for purpose and require redevelopment. This is an underutilisation and an inefficient use of valuable land that also detracts from the valued heritage streetscape and public realm/ pedestrian experience. The proposal represents an improvement in the appearance of the site and overall streetscape, whilst harmonising with the local heritage character. The development provides for greater housing supply and choice in an established location that has excellent access to goods, services, and facilities.

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 2013.

The design has considered 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 on adjoining sites. As discussed 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 R1 General Residential zone.

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.

### **Are there any matters of significance for State or regional environmental planning?**

The contraventions of the height standard do not raise any matter of State or regional planning significance.

### **Conclusion**

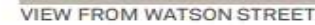
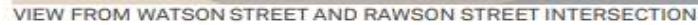
Based on these considerations, the proposal and associated variation remain consistent with the objectives and intent of the BLEP 2010. The variation is acceptable and supported by both the physical and environmental planning context of the site. It is a reasonable request that would on balance result 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.

This Clause 4.6 variation request is well founded as it demonstrates that the proposal provides an acceptably better planning outcome with no significant adverse environmental impacts. In summary, the variation is justified because:

- Compliance with the height standard is unreasonable and unnecessary in the circumstances of the proposed development and existing site/built form context.
- There are sufficient environmental planning grounds to justify the contravention, which results in an acceptable and better planning outcome than a strictly compliant development in the circumstances of this case.
- The proposal remains consistent with the objectives of the clause 4.3 height of buildings standard and the R1 General Residential zone.
- The proposed development is in the public interest.
- There are no matters of State or regional planning significance, and no notable public benefits in enforcing compliance with the height standard in this case.

The consent authority is therefore justified and able to vary clause 4.3 of the BLEP 2010 as it applies to the proposed affordable housing development (Stage 2).

**DEVELOPMENT ENVELOPE**  
**BELLINGEN LOCAL ENVIRONMENTAL PLAN 2010 |**  
 MAP HOB\_001, (K) 10m

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CLIENT  
RFB  
Suite 2, Level 2, 2  
Park Street Sydney  
NSW 2000

PROJECT DETAILS  
BELLORANA  
[STAGE 2]  
15-23 Watson St.  
Bellingen NSW 2454

DRAWING TITLE  
BUILDING HEIGHT  
PLAN (LEP)

SCALE	APPROVED	NORTH
1:3.33, 1:3.32	DB	
STATUS	DRAWN BY	
DA	JSN	
PROJECT No	DRAWING No	REV
2141A	DA-1061	A

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