

Clause 4.4 – Floor Space Ratio

The LEP maps the subject land as having a floor space ratio of 0.65:1. The floor space ratio of the proposed Stage One development is 0.54:1 and the floor space ratio of the complete development (Stages One and Two) will be 0.58:1.

Figure 9: LEP Floor Space Ratio Map extract – approximate location of subject land shown by red circle



Therefore, in regards to building bulk and scale as measured via floor space ratio, the development proposal has a significantly smaller floor space ratio than is permitted in this locality.

Clause 4.6 – Exceptions to Development Standards

The proposal includes a variation to the development standard relating to the height of buildings. The maximum building height for the subject land is 8.5 metres measured from the existing ground level to the highest point of the building, including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like. This proposal includes some minor areas where small areas of the roof of the building project into the 8.5 m height plane, by a maximum of 300mm. There is also an area of the roofline which includes screening panels around the air conditioning units and plant located on the roof of the building. These screens project into the 8.5m height plane by up to 700mm. The areas where this occurs are clearly shown in the plan set.

The provisions of clause 4.6 set out the matters to be considered when a development standard is sought to be varied. The provisions of this clause are as follows:

4.6 Exceptions to development standards

(1) The objectives of this clause are as follows:

- (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,
- (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.

- (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.*
- (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 Secretary has been obtained.*
- (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*
 - (b) the public benefit of maintaining the development standard, and*
 - (c) any other matters required to be taken into consideration by the Secretary before granting concurrence.*
- (6) *Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living if:*
- (a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or*
 - (b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.*
- Note. When this Plan was made, it did not include Zone RU4.*
- (7) *After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).*
- (8) *This clause does not allow development consent to be granted for development that would contravene any of the following:*
- (a) a development standard for complying development,*
 - (b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,*
 - (c) clause 5.4,*
 - (ca) clause 6.1, 6.2 or 6.3.*

The variation under the provisions of clause 4.6 is able to be considered by Council, as it is not a matter which is excluded from the provisions of this clause.

In considering this variation to clause 4.3, the relevant objectives of the height of building clause are noted as follows:

(1) The objectives of this clause are as follows:

(a) to ensure that buildings are compatible with the height, bulk and scale of the existing and desired future character of the locality,

The entire standard residential area of Wauchope has a height limit of 8.5 metres. The vast majority of the proposed building is within that height requirement. The building bulk and scale has been visually reduced by the wide variation in setbacks, building articulation and street setbacks. In addition, the building will be screened via extensive landscaped areas. The floor space ratio, used as an indication of building density, is less than that permitted for this locality. Therefore, whilst there are minor areas of building height variation, the majority of the roof area is within the required building height of 8.5m, and the building bulk and scale is appropriate for the residential area.

(b) to minimise visual impact, disruption of views, loss of privacy and loss of solar access to existing development,

The shadow diagrams demonstrate that the areas which exceed the 8.5m height plane, do not contribute to any overshadowing on adjoining properties. This includes the screening of plant and equipment at the southern area of the building. This section of the building is well setback from the southern boundary, and thus the approximate 700mm over height area associated with the screening panels, does not impact on overshadowing on neighbouring lands.

The areas of increased height are associated with small areas of the roof and screening of the roof mounted plant and equipment. Therefore, these areas that exceed the 8.5m height plane will not result in any loss of privacy to the adjoining properties such as may occur from overlooking.

The areas of height variation will not impact on view lines. The most significant views within the township of Wauchope are generally considered to be views to Bago bluff, as well as any elevated view areas. The small areas of the roof which exceed the 8.5m height plane will not create an adverse impact on views for residential areas in this locality. It is noted that screening of roof mounted plant and equipment provides a far better visual presentation, then in situations where the screening does not occur.

(c) to minimise the adverse impact of development on heritage conservation areas and heritage items,

There are no heritage items or heritage conservation areas in this locality. Thus the minor height variation will not adversely impact on heritage matters.

(d) to nominate heights that will provide a transition in built form and land use intensity within the area covered by this Plan.

This objective notes that height controls are a means of nominating a land use intensity suitable for residential areas. The footprint of this development proposal is far less than the floor space ratio permits on the subject land and adjoining residential locality. The roof areas which exceed the height limit by up to 300mm do not adversely impact on the built form and landuse intensity in this locality. The screen areas which exceed the height limit by up to 700mm are setback from the property boundary and are not visually prominent from outside the property. These screened areas also do not contribute to any landuse intensity.

Thus, the proposed minor variation to the height of the development is not inconsistent with the objectives of the building height clause.

In considering this variation, Council is required to consider if compliance with the development standard is unreasonable or unnecessary in the circumstances of the case. In this matter, it has been demonstrated that the majority of the building is below the 8.5m height limit. The variation to the standard is only up to 300mm in regards to the roof itself, with a variation up to 700mm in regards to the screening of rooftop plant and equipment. The roofline and the screening of the airconditioning units, does not impact on overshadowing, does not create elevated areas of overlooking, and does not adversely impact on viewlines. The building bulk is already reduced via the building design which separates the building into different wings or houses, as well as the incorporation of a large landscaped area of the property. Thus, it is considered that the standard has been substantially complied with, and the minor variation is reasonable. Therefore, in this case, compliance with the development standard is unnecessary, as the objectives of clause 4.3 have been met.

Having regard to the matters noted above, it is considered that there are sufficient environmental planning grounds to justify contravention of the development standard. This is based on the matters outlined, including that the proposal largely complies with the building height standard, that the height variation does not result in any increase in floor space ratio and thus the height variation is not resulting in any increased intensity of the landuse, the site is a large area of 2.2 hectares and the area of height variation is a small percentage of the property area, and the height variation does not adversely impact on overshadowing, views or perceptions of building bulk.

For these reasons, the variation is considered reasonable, and consistent with the relevant objectives.