

Clause 4.6 Variation Request Height of Buildings

235 Grose Vale Road, North Richmond

Prepared for
St John of God Health Care
October 2020



1 Introduction

This Clause 4.6 Variation Request has been prepared on behalf of St John of God Health Care (the applicant) to support a State significant development application (SSDA) submitted to the Department of Planning, Industry and Environment (DPIE) relating to the land at 235 Grose Vale Road, North Richmond (the site).

The proposed development involves refurbishment of some existing buildings, demolition of some existing buildings and construction of new 1–2-storey hospital facilities, including an increase in beds from 88 to 112.

This report has been prepared to request a variation to the maximum building height standard under clause 4.3 of Hawkesbury Local Environmental Plan (LEP) 2012. The request is being made pursuant to clause 4.6 of the LEP.

2 Clause 4.6 Exceptions to development standards

Clause 4.6 of the LEP enables contravention of the floor space ratio standard subject to the consent authority considering a written request from the applicant justifying the contravention. The clause reads as follows:

Clause 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 Director-General has been obtained.

(5) In deciding whether to grant concurrence, the Director-General 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 Director-General before granting concurrence.

3 Development standards to be varied

The development standard to be varied is clause 4.3(2) of Hawkesbury LEP 2012, which reads as follows:

4.3 Height of buildings

...

(2) The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.

As shown in the Height of Buildings Map extract at Figure 1, the site is subject to a maximum building height of 10m.

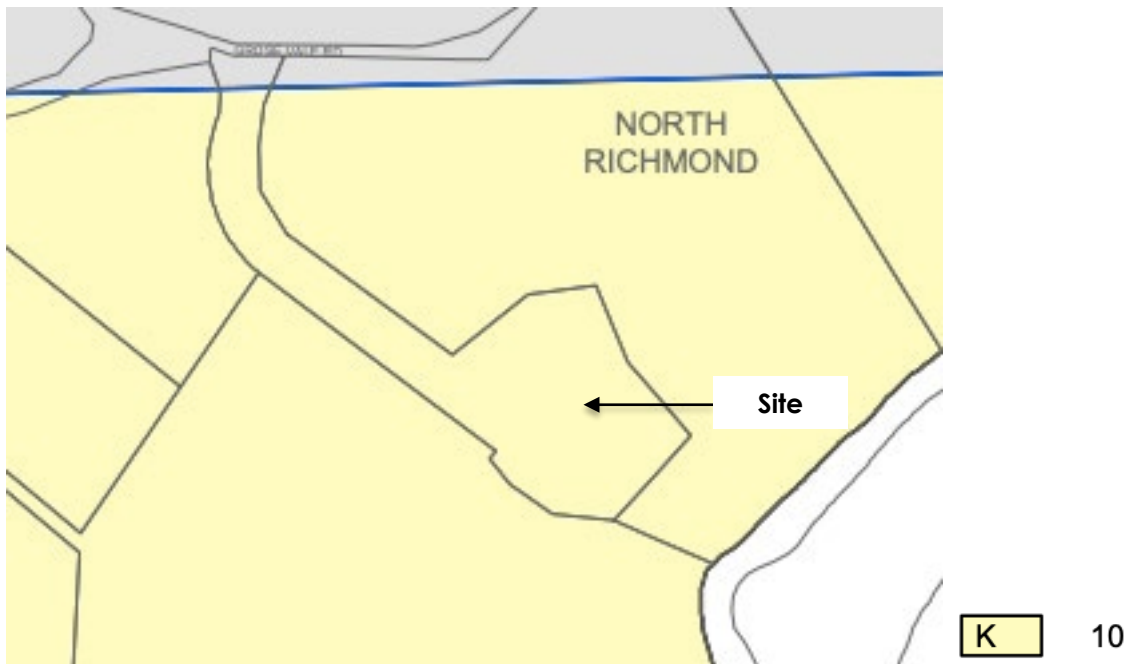


Figure 1 – Height of Building Map Extract
Source: Hawkesbury LEP 2012

4 Extent of variation to the development standard

The proposal breaches the height limit at the roofs of residential pavilions 1, 2, 3 and 4.

The breach is smallest at pavilion 1, occurring only at the very southern end of the roof apex (a breach of approximately 0.4m). The breach increases in extent as the land slopes to the south. A small area around the roof apex of pavilion 2 and approximately half of the roof area of pavilion 3 breaches the limit. The breach culminates in a maximum breach of approximately 3.4m at the southern end of pavilion 4.

The vast majority of the breach is roof. The only non-roof breaches occur at a minor portion of the façade of the southeastern upper level lounge area of pavilion 4 and at the upper portion of the structural columns at the southern end of pavilion 4.

The 3D diagrams below illustrate the extent of the breach. The height plane is shown in red, with any breaches visible above the red plane. Full size diagrams are provided as part of the architectural drawings at Appendix 1 of the EIS.

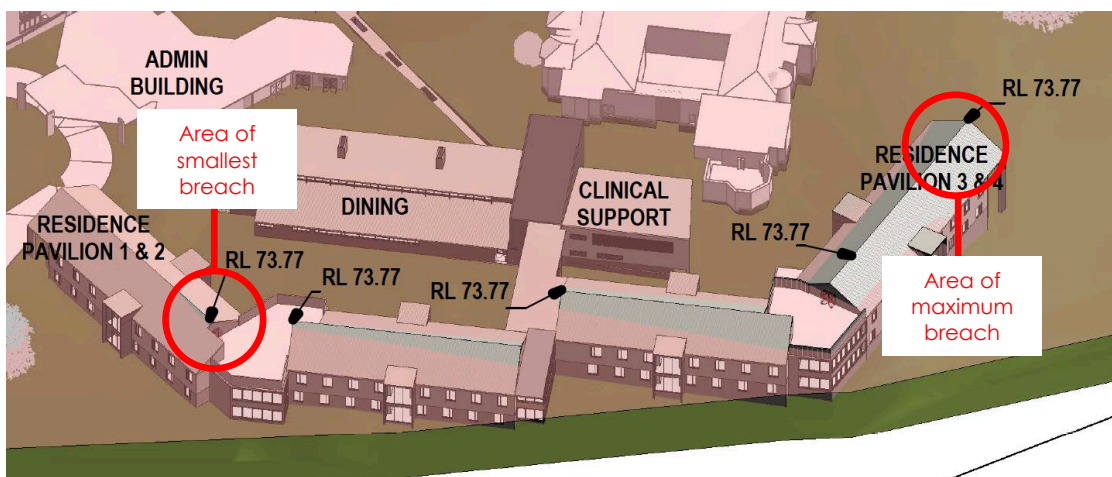


Figure 1: Height plane diagram looking east

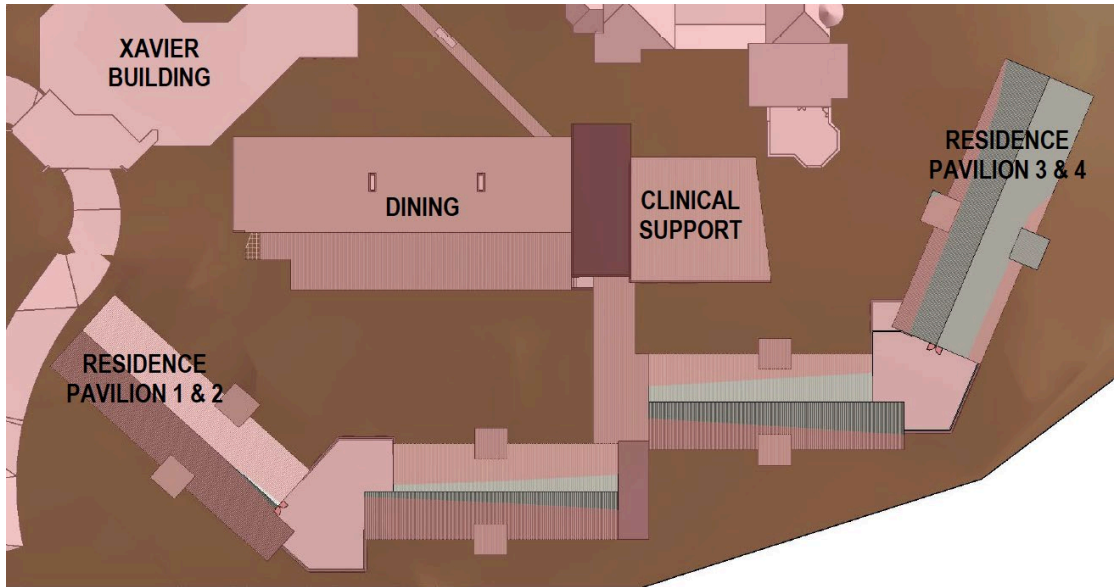


Figure 2: Height plane diagram directly above

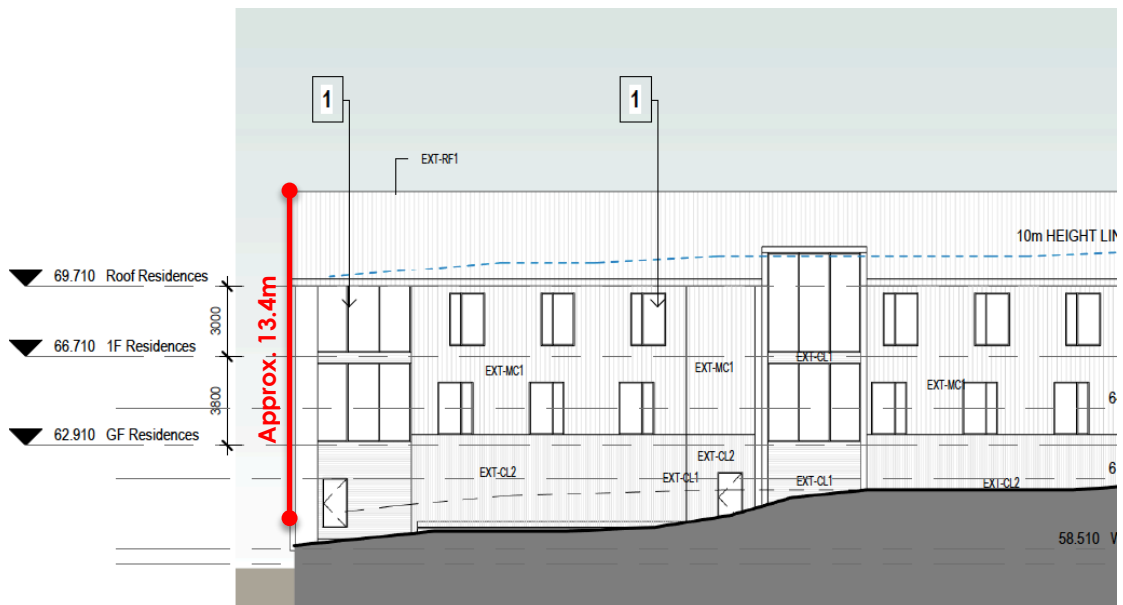


Figure 3: North elevation of pavilion 4

5 Assessment

Clause 4.6(3)(a) – Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case?

In *Wehbe v Pittwater Council* [2007] NSWLEC 827, Preston CJ set out five justifications to demonstrate that compliance with a development standard is unreasonable or unnecessary. These include:

- *the objectives of the development standard are achieved notwithstanding non-compliance with the standard*
- *the underlying objective or purpose of the standard is not relevant to the development*

- *the underlying objective or purpose would be defeated or thwarted if compliance was required*
- *the standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and/or*
- *the zoning of land was unreasonable or inappropriate, such that the standards for that zoning are also unreasonable or unnecessary.*

As per Wehbe justification no. 1, compliance with the with standard is unreasonable and unnecessary as the proposal is consistent with the objectives of the zone notwithstanding non-compliance with the standard (discussed further below).

Also, as per Wehbe justification no. 3, enforcing strict compliance would also thwart the objectives of the height of building standard, specifically the objective at cl. 4.3(1)(b), by requiring a flat roof form that does not relate well to the local rural context. The proposed additional height is confined primarily to roof space. Nearly full compliance could be achieved by utilising flat roof forms, but this would compromise the design intent of the proposal and result in a development that does not relate well to the local context, as rural areas are traditionally associated with pitched roof forms.

Clause 4.6(3)(b) – Are there sufficient environmental planning grounds to justify contravening the development standard?

As noted in *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118* by Preston CJ at [23], "The adjectival phrase 'environmental planning' is not defined, but would refer to grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s 1.3 of the EPA Act."

In accordance with the objects in s 1.3 of the EPA Act, the proposed development promotes the "good design and amenity of the built environment" promotes the "proper construction of buildings, including the protection of the health and safety of their occupants."

The proposed development not only adheres to the objectives under section 1.3 of the EPA Act; there are also sufficient environmental planning grounds to justify contravening the FSR standard, as described below:

- The additional height allows for better design in the form of pitched, rather than gabled, roofs, which are better suited to the rural context.
- The breach is largely a function of the sloping nature of the land combined with the need to maintain safe, level access. From a clinical operations perspective, a change in levels to match the slope of the land would impede easy access and disrupt operational flows.
- The additional height does not adversely impact the heritage significance of Belmont House. The heritage impact statement at Appendix 6 of the EIS has identified that "the new buildings have been carefully designed to be recessive to Belmont House in form, scale and material selection". In fact, the additional height, together with the decluttering of existing buildings, allows for a greater heritage curtilage around Belmont House. Compared to a single storey design with greater spread across the site, the proposal allows for better views to and from the heritage item.

- The additional height does not result in any adverse visual impacts. On the contrary, as noted above, the additional height allows for a better design more in keeping with the rural context and better views to and from Belmont House.
- The additional height does not result in any adverse privacy impacts. The additional height allows mainly for roof structure rather than habitable space. In any case, the hospital does not overlook any sensitive uses, being surrounded by rural grazing land.
- The additional height does not result in any unacceptable overshadowing impacts. Any additional overshadowing caused by the variation would be negligible and would fall on unoccupied rural land.

Overall, it is evident that the proposed additional height is justified on environmental planning grounds, providing for a better outcome than a compliant scheme.

Clause 4.6(4)(a)(ii) - Is the proposed development 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?

Consistency with development standard objectives

The particular development standard is clause 4.3 of Hawkesbury LEP 2012. The relevant objectives are addressed in the table below.

Objective	Consistency
(a) to protect privacy and the use of private open space in new development and on adjoining land,	The proposal would not result in any privacy impacts within the site or to adjoining property. The buildings are carefully positioned to maintain the privacy of the private residential rooms within the development. The development is surrounded by rural grazing land, and therefore there are no sensitive uses surrounding the site that the development would overlook. The nearest dwelling is some 300m away.
(b) to ensure that the bulk of development is not excessive and relates well to the local context,	The proposed new buildings are 1–2 storeys in height, consistent with other development in the area. As discussed above, the additional height actually improves the development's relationship to the context by enabling traditional pitched roof forms (rather than modern flat forms).
(c) to nominate heights that will provide a transition in built form and land use intensity,	This objective is not relevant as the site is located in the middle of a rural zone with a consistent height standard. There is no built form on adjoining land requiring a built form transition.
(d) to ensure an appropriate height transition between new buildings and heritage items.	As discussed above, the heritage assessment accompanying the EIS has found that the form and scale of the new buildings relate appropriately to Belmont House. In fact, the proposal will enhance the significance of Belmont House by decluttering the curtilage and allowing the house to be seen "in the round" as originally intended.

Consistency with RU1 Primary Production zone objectives

The proposed development's consistency with the RU1 Primary Production zone objectives is outlined in the table below.

Objective	Consistency
To encourage sustainable primary industry production by maintaining and enhancing the natural resource base.	This objective is not relevant as the proposal is not for primary industry production purposes.
To encourage diversity in primary industry enterprises and systems appropriate for the area.	As above.
To minimise the fragmentation and alienation of resource lands.	The proposal would not contribute to the fragmentation and alienation of resource lands.
To minimise conflict between land uses within this zone and land uses within adjoining zones.	The proposal would not result in any land use conflict.
To encourage agricultural activities that do not rely on highly fertile land.	This objective is not relevant as the proposal is not for agricultural purposes.
To ensure that development occurs in a way that does not have a significant adverse effect on water catchments, including surface and groundwater quality and flows, land surface conditions and important ecosystems such as waterways.	The proposal would not have adverse impacts on water catchments.
To promote the conservation and enhancement of local native vegetation including the habitat of threatened species, populations and ecological communities by encouraging development to occur in areas already cleared of vegetation.	The proposal has been designed and sited to minimise vegetation removal. The additional height does not require any vegetation removal.
To ensure that development retains or enhances existing landscape values including a distinctive agricultural component.	The proposal would contribute positively to the agricultural landscape through the addition of simple, contemporary forms with an agricultural aesthetic. The additional height allows for pitched roof forms that relate well to the agricultural context.
To ensure that development does not detract from the existing rural character or create unreasonable demands for the provision or extension of public amenities and services.	The proposal contributes positively to the rural character by replacing dated hospital facilities with attractive contemporary forms that relate appropriately to the context. The proposal would not result in unreasonable demands for provision or extension of public amenities or services.

6 Matters of significance for State or regional environmental planning

The proposed variation to the height of buildings standard does not raise any matter of State or regional planning significance.

7 Conclusion

This written request justifies the proposed height variation in the terms required under clause 4.6 of Hawkesbury LEP 2012. In summary, the proposed variation is justified for the following reasons:

- Compliance with the height standard is unreasonable and unnecessary in the circumstances because:
 - The proposed development achieves the objectives of the height standard notwithstanding the non-compliance; and
 - The relevant objective of the height of building standard would be thwarted if strict compliance were enforced because this would require a flat, rather than pitched, roof form that does not relate well to the local rural context;
- There are sufficient environmental planning grounds which justify the minor contravention to the development standard.
- The additional height allows for a better planning outcome than a compliant scheme, enabling a pitched roof form that relates well to the rural context.
- Despite the variation, the proposal is consistent with the RU1 zone objectives.
- There are no matters of State or regional planning significance and no notable public benefits in maintaining the FSR standard in this case.