

29 January 2014

Our Ref: 14-126 Lismore Base Hospital Stage 3B & Hospital Carpark

RE: WRITTEN CLAUSE 4.6 VARIATION REQUEST TO CLAUSE 4.3 OF THE LISMORE LOCAL ENVIRONMENTAL PLAN 2012

1. Introduction

This written Clause 4.6 variation request accompanies the State Significant Development Application (SSDA) to the Department of Planning and Environment. The SSDA relates to the Stage 3B redevelopment of Lismore Base Hospital (LBH) and hospital carpark. Specifically, this clause 4.6 variation request relates to the proposed hospital carpark, which is located directly opposite LBH and on the southern side of Uralba Street. The site comprises a series of allotments and street addresses, as set out below.

- Part of Lot 1 DP 1178195 (University Centre/67 Uralba Street);
- Lot 394 DP 755718 (69 Uralba Street);
- Lot 14 DP 1073227 (24 Dalziell Street);
- Lot 15 DP 1073227 (26 Dalziell Street); and
- Lot 16 DP 1073227 (28 Dalziell Street).

2. Relevant Environmental Planning Instrument

The Environmental Planning Instrument to which this variation relates is the Lismore Local Environmental Plan 2012 (LLEP).

3. Relevant Development Standard

The variation sought is to the building height development standard that applies to the site pursuant to Clause 4.3 of the Lismore Local Environmental Plan 2012 (LLEP). The maximum building height prescribed for the site is 8.5 metres pursuant to Height Of Buildings Map - Sheet HOB_005AB in the LLEP.

4. Extent of Variation Sought

As will be discussed further in this written request, Clause 5.12 of the LLEP operates so that the LLEP does not "*restrict or prohibit, or enable the restriction or prohibition of, the carrying out of any development, by or on behalf of a public authority, that is permitted to be carried*

out with or without development consent, or that is exempt development, under State Environmental Planning Policy (Infrastructure) 2007" (iSEPP).

In our view, the building height development standard therefore ceases to apply to the proposed hospital carpark given:

- It is permitted under Clause 57(1) if the iSEPP; and
- The 8.5 metre height standard that applies to the site "restricts" the proposed carpark.

Notwithstanding our view, advice received from the Department of Planning and Environment has advised that Clause 4.6 still applies and that a written request to justify the variation of the development to the height standard is required. To this end, below is the required written request, which aptly justifies the variation of the carpark to the height standard in the LLEP.

The extent of the "variation" to the 8.5 metre LLEP height limit varies across the site, with the greatest variation at the core. The maximum variation at this point to the topmost point of the lift and stair overrun is 13.1 metres.

5. Matters for Consideration under Clause 4.6 of the LLEP

The following sections of this letter address the relevant matters for consideration under Clause 4.6 of the LLEP.

Subclause 3 of Clause 4.6 states that "*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.*

Each of the above matters is addressed below.

5.2 Compliance with the Standard is Unreasonable or Unnecessary

As noted earlier in Section 4 of this request, 5.12 of the LLEP operates so that the LLEP does not "*restrict or prohibit, or enable the restriction or prohibition of, the carrying out of any development, by or on behalf of a public authority, that is permitted to be carried out with or without development consent, or that is exempt development, under State Environmental Planning Policy (Infrastructure) 2007" (iSEPP).*

The building height development standard therefore cannot be strictly imposed on the proposed hospital carpark given:

- It is permitted under Clause 57(1) if the iSEPP. Refer to Sections 6.10 and 6.11 of the EIS for this SSDA for further details regarding permissibility; and
- The 8.5 metre height standard that applies to the site "restricts" the proposed carpark.

Strict compliance with the standard would thwart the underlying purpose of Clause 5.12 of the LLEP which is to not restrict certain public infrastructure development such as the proposal.

For the reasons set out above, compliance with the height standard under the LLEP for this development is not required and is therefore considered to be unreasonable and unnecessary. Clause 4.6(3)(a) is therefore satisfied.

5.3 Sufficient Environmental Planning Grounds to Justify the Contravention

The EIS prepared for this SSDA provides a holistic environmental planning assessment of the proposed development and concludes that subject to adopting a range of reasonable mitigation measures, there are sufficient environmental planning grounds to support the development. We refer to the detailed assessment in the EIS in this regard to demonstrate that there are sufficient environmental planning grounds to justify the development and therefore, the contravention. A height-compliant development would clearly result in a lesser built form, but the only marked "change" in environmental planning terms relates to visual impact. Notwithstanding this, we have provided robust justification throughout the EIS and accompanying documentation to support the overall height, bulk and scale of the carpark and contend that the outcome is appropriate on environmental planning grounds.

5.4 Public Interest

Subclause 4(ii) of Clause 4.6 of the LLEP requires consideration of the proposal's consistency with both the objectives of the standard, and the objectives of the zone, which apply to the site to determine if the development is in the public interest.

Consistency with objectives underpinning the standard is provided below.

(a) to establish a maximum height for buildings,

As noted earlier in this request, in the circumstances of this case, the maximum height prescribed for the site cannot be applied to restrict the development pursuant to Clause 5.12 of the LLEP.

(b) to provide for taller buildings in the city centre and to enable a transition in building height in response to varying urban character and function,

The subject site is not located in the city centre. The proposed development will not restrict the ability for taller buildings to be provided in the city centre and for a "transition" in building height to also occur in the city centre. Objective (b) will therefore not be compromised a result of the proposed development.

Further to the above, the height of buildings at LBH (current and proposed), opposite the proposed carpark, are taller than the proposed hospital carpark. The carpark has been carefully designed to achieve a balance between responding to the taller buildings directly opposite the site at LBH, but also, to ensure that an appropriate transition in height is provided across the carpark site to respond to topography, urban form and to minimise any adverse environmental impacts on surrounding land. This transition in building height can be seen in the following elevation plans.

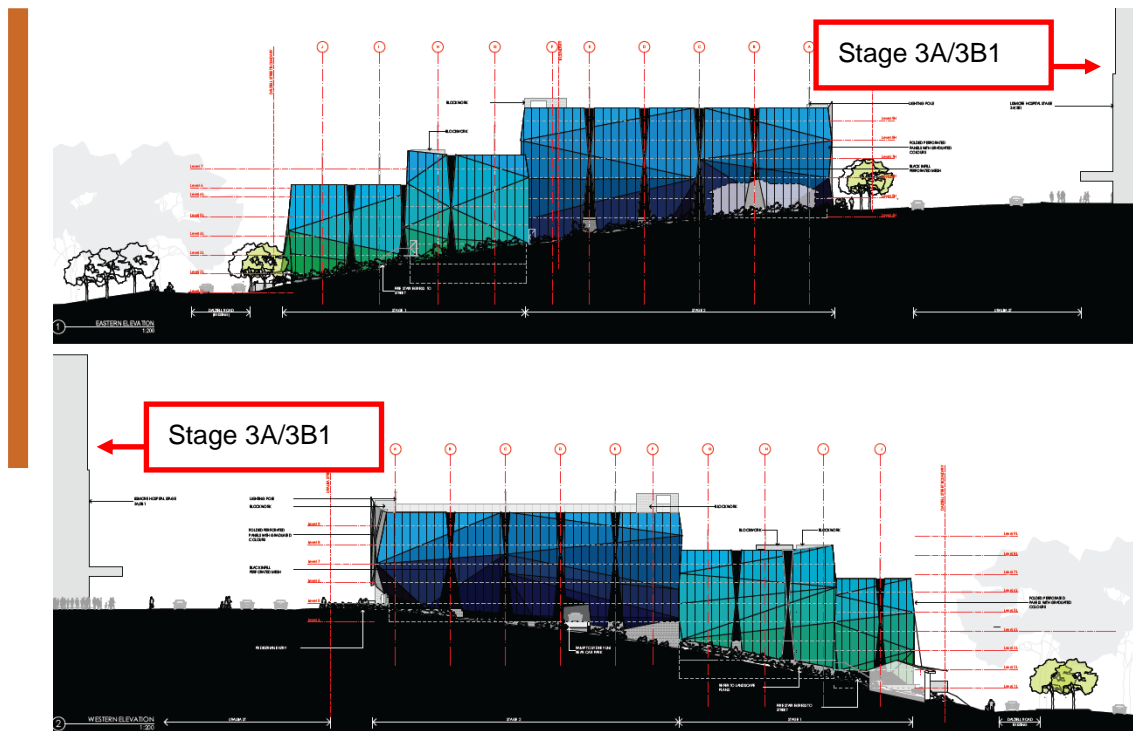


Figure 1 Eastern and Western Elevation Extracts (Source: Fitzpatrick)

(c) to protect the amenity of neighbouring properties and public places, with particular regard to visual bulk, scale, overshadowing, privacy and views.

The EIS provides a detailed analysis of visual bulk, scale, overshadowing, privacy and views and concludes that there will be no adverse environmental impact resulting from the proposed carpark. A summary of key points is below:

Bulk and Scale

The additional building height will result in a more substantial built form than that currently envisaged under the LLEP. However, the proposed development is not of a type that is typically envisaged on the land under the R1 zoning, with the iSEPP prevailing in this instance and providing a mechanism for permissibility for this type of public infrastructure.

The visual impact of the development has largely been addressed in Section 8.2.3 of this EIS under the heading "height bulk and scale". In summary, a combination of design, articulation and fragmentation of the building facade, materials, finishes, colours, setbacks and landscaping are all measures that have been incorporated to minimise the visual massing of the proposed carpark.

Further, the design of the proposed hospital carpark is contemporary and whilst it contrasts with the suburban character of the development on the southern side of Dalziel Street, it is complimentary to the development at LBH. In this context and given the emerging character of the land surrounding the carpark site, the visual impact of the development is considered to be appropriate.

Moreover, the carpark has been designed in a manner that it presents with the attributes of a commercial building rather than a utilitarian carpark building and in this

sense, it is considered to be a development of high quality and architectural excellence.

Overshadowing

As can be seen in the analysis below prepared by Fitzpatrick + Partners, the proposed carpark will result in some overshadowing, but due to the relatively fast moving nature of the shadow, the impact on surrounding land is not considered to be adverse.



Figure 2 Shadow Diagrams for Mid-Winter -- Proposed Carpark (Source: Fitzpatrick + Partners)

From approximately 12:15pm, there will be no overshadowing of the dwellings to the west of the site (on Dalziell Street). From 9:00am to about 2:00pm, there will be no overshadowing of the dwellings to the east of the site (on Dalziell/Dibbs Streets). There will be negligible overshadowing of properties on the southern side of Dalziell Street.

The additional height beyond that prescribed in the LLEP would result in additional overshadowing beyond that which would be cast from a fully height compliant development. However, given the proposed overshadowing is not considered to result unacceptable residential amenity impacts, the additional building height is not a concern in this regard.

Visual Privacy

The potential for overlooking, mainly from the upper levels of the carpark, is mitigated through siting and design of the building. Measures include;

- The use of setbacks for physical separation from adjoining boundaries to the east and west;
- Landscaping in these setback zones;
- The use of perforated cladding to the exterior of the whole building (to obstruct direct views out of the carpark); and
- Further to the above, the facade zone depth varies up to 600mm. This combined with the 300mm crash safety zone (whereby "crash barriers" are proposed), assists in limiting the direct overlooking by users of the carpark through incorporating a physical "no-go" zone and thereby increasing the physical separation between users and adjacent residences.

The additional height beyond that prescribed in the LLEP will not result in any adverse impact by way of overlooking.

Views

The land slopes away from Uralba Street and there are no residential properties to the rear of the carpark site that will lose any views as a result of the proposed carpark. The additional height beyond that prescribed in the LLEP will not impact on any views.

With regard to the above, and the more detailed analysis in the accompanying EIS, the objectives of the standard are either achieved, or not thwarted.

Consideration of consistency with the objectives for the R1 General Residential zone is addressed below:

(a) To provide for the housing needs of the community

The proposed development is permitted with consent under the iSEPP. It will not restrict the ability for the housing needs of the community throughout the wider R1 zone to be attained.

(b) To provide for a variety of housing types and densities

As above.

(c) To enable other land uses that provide facilities or services to meet the day to day needs of residents

The proposed hospital carpark will provide a facility to meet the day to day needs of users of LBH which includes residents in the Lismore LGA.

(d) To ensure that new development is compatible with the character, and preserves the amenity, of each residential area

Refer to the responses to the development standard objectives for discussion about preservation of residential amenity and the changing character of the land surrounding LBH, which includes the subject site.

The proposed development will not result in an outcome inconsistent with the zone objectives.

5.5 Matters of state or regional significance

A public policy decision has been made and is reflected in the Standard LEP Instrument via compulsory clause 5.12, that local environmental plans should not have the effect of restricting development authorised by the iSEPP. This appears to indicate that developments facilitated by the iSEPP are seen as having wider state or regional benefit that warrant transcending, where necessary and appropriate on their individual merits, local standards and provisions. Specific to the current circumstances, the regional benefits associated with this hospital development outweigh any localised impacts that may result from the variation to the local instrument development standard.

5.6 The public benefit or maintaining the standard

Pursuant to case law of *Ex Gratia P/L v Dungog Council* (NSWLEC 148), the question that needs to be answered is “Whether the public advantages of the proposed development outweigh the public disadvantages of the proposed development”.

There is no public benefit in maintaining strict compliance with the development standard given that there are no unreasonable impacts that will result from the height of the proposed carpark. Therefore, the benefits outweigh any disadvantage and as such the proposed modification to the approved development will have an overall public benefit. It will not only support patients, visitors and staff of LBH in terms of transport accessibility and ease of access (due to the close proximity of the carpark to LBH), but will assist with the ever increasing demand for parking in the locality as a result of ongoing redevelopment of LBH and the surrounding emerging "health precinct".