

Clause 4.6 Exceptions to Development Standards Report

Bulli Hospital Aged Care Centre for Excellence



Located at 22 Hospital Road, Bulli
Lot 1 DP 175787 and Part Lot 1 DP 165903

**Prepared for Johnstaff Pty Ltd
(on behalf of Health Infrastructure and IRT)
by TCG Planning**

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1 Introduction

This Variation Statement to clause 4.6 'Exceptions to Development Standards' is provided pursuant to Wollongong Local Environmental Plan (WLEP) 2009 in relation to the proposed development which pertains to land identified as No.22 Hospital Road, Bulli (currently two separate allotments) and includes the consolidation of those two allotments. The proposal includes the construction of two connected buildings. The first main building incorporates a three (3) to four (4) storey hospital including urgent care, outpatient and inpatient facilities, and the second two (2) to three (3) storey building contains a residential aged care facility. The subject site is located within the R2 Low Density Residential Zone pursuant to WLEP 2009.

2 Relevant Clauses of WLEP 2009 and Variation Sought

Clause 4.6 'Exceptions to Development Standards' of WLEP Plan 2009 provides the opportunity to contravene a development standard with approval of the consent authority and concurrence by the Director-General. A development standard is defined by the Environmental Planning and Assessment (EPA) Act, 1979 as:

"Provisions of an environmental planning instrument or the regulations in relation to the carrying out of development, being provisions by or under which requirements are specified or standards are fixed in respect of any aspect of that development".

The objectives of Clause 4.6 are as follows:

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

This report justifies the variation to **Clause 4.3 Height of Buildings**, specifically sub-clause (2) of WLEP 2009, in accordance with Clause 4.6 of that Plan, as the application of these requirements is considered unreasonable or unnecessary for this particular development.

Clause 4.3 Height of Buildings

The objectives of this clause are as follows:

- (a) to establish the maximum height limit in which buildings can be designed and floor space can be achieved,*
- (b) to permit building heights that encourage high quality urban form,*
- (c) to ensure buildings and public areas continue to have views of the sky and receive exposure to sunlight.*

The clause provides the following:

- (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.*

Building height (or height of building) is defined in the Dictionary to WLEP 2009 as follows:

- (a) in relation to the height of a building in metres—the vertical distance from ground level (existing) to the highest point of the building, or*

(b) in relation to the RL of a building—the vertical distance from the Australian Height Datum 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.

Refer to **Figure 1** below for an extract from the Height of Buildings Map.

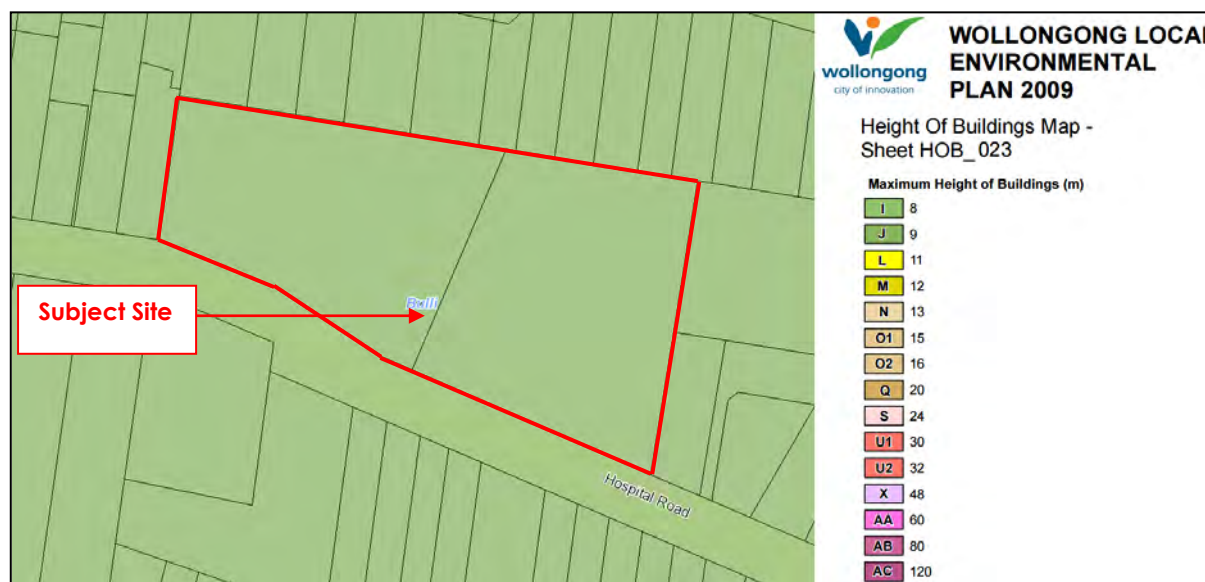


Figure 1 – Extract from Height of Buildings Map pursuant to WLEP 2009 showing the subject site and surrounding maximum height limits, being 9m (Source: Wollongong City Council online mapping www.wollongong.nsw.gov.au and www.legislation.nsw.gov.au, October 2016)

Proposal and Extent of Variation Sought to Height of Buildings

The proposed development comprises the construction of a building incorporating various building elements within two main building structures connected by a central building core, with varying heights proposed across the site, as described in this request. The proposed overall maximum height of buildings on the site is 16.5 metres, measured from existing ground level at the north-eastern edge of the plant room (at the rear of the hospital).

The maximum height of buildings permitted on the subject site is 9 metres, as provided in accordance with *Clause 4.3 Height of Buildings* and as provided on the Height of Buildings Map pursuant to Wollongong LEP 2009. Subclause (2) of clause 4.3 provides that 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. The proposed overall height of the proposed building on the site therefore does not comply with the specified maximum height of buildings.

As detailed in the Architectural Roof Features Statement prepared by Billard Leece Partnership (Appendix 31 of the Environmental Impact Statement), the topography of 22 Hospital Road results in “.....a site cross fall of 17m from a high point of approx. 40m on the West boundary to approx. 23m on the East boundary and generally 7m cross fall from the Southern boundary (Hospital Road) to the Northern boundary. The extreme cross fall of this site impose some difficulty in remaining below the 9m limit across the entire site, while providing a floor plate size that is suitable for the intended usage. This results in three main elements of non-compliance in the proposed facility.”

As also detailed in the Architectural Roof Features Statement this elevation highlights the four areas where the building exceeds the 9m height limit in a significant manner. The areas are:

1. Lift and stair shaft;
2. Plant room at Level 3 (Roof);
3. Stair overrun and Level 3 (Roof), including part of main building signage; and
4. 2nd floor clinical areas of the hospital (eastern) wing.

With respect to the stair overrun and main building signage in the south-eastern corner of the building it is noted that this part of the building is defined as an architectural roof feature, which meets the requirements of clause 5.6 of WLEP 2009 and therefore may exceed the 9m height limit. Billard Leece Partnership confirm that:

"The stair at the south-eastern corner of the proposed facility exceeds the 9m limit by approx. 3m on the western edge, and up to 4m along the eastern edge. This is due to the requirement for this stair to access the Level 3 roof area for maintenance and egress purposes. There is no public or health staff access to the roof via this stair; it is secured to by a keyed door accessible only by authorised maintenance staff. The stair is also uses as a decorative element, continuing the vertical steel elements from the floors below. The vertical steel elements also provide the location for the main building signage identifying the facility. The intended use of the facility requires clear unambiguous signage. This location is the most visible location from the main public access, and provides an identifying feature that leads towards the Main Entry at the ground level. The Stair overrun does not provide any usable floor space; and does not result in the overshadowing of any neighbouring properties."

Accordingly, this component of the building is identified as an architectural roof feature and the Clause 4.6 Exceptions to Development Standards Report is not required to address the height exceedance of this feature.

Architectural Drawing DA-20-0401 DA-ELEVATION–HOSPITAL ROAD prepared by Billard Leece Partnership (**Figure 2**) shows a view taken along the boundary of Hospital Road, and indicates the 9m height line along the Southern site boundary.

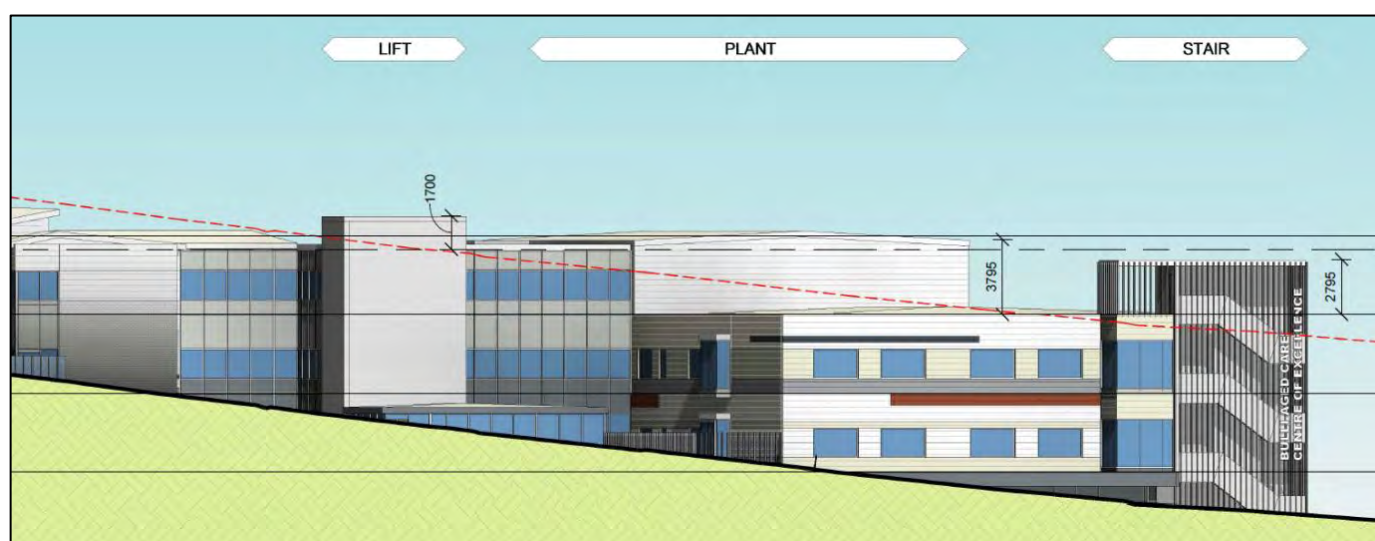


Figure 2: Extract of Architectural Drawing DA-20-0401 DA-ELEVATION – HOSPITAL ROAD (prepared by Billard Leece Partnership) indicating the relationship of the maximum building height limit to the proposed development.

3 Clause 4.6 - Exceptions to Development Standards

Clause 4.3 Height of Buildings of WLEP 2009 contains a development standard in the form of a maximum height of buildings as provided on the Height of Buildings Map associated with the LEP. A written justification for the proposed variation to the height of buildings is therefore provided in Table 1, in accordance with Clause 4.6 to allow for a building of up to 16.5m in height.

In preparing this **Clause 4.6 Exceptions to Development Standards Variation Report**, consideration has been given to Land and Environment Court Judgements *Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 1009 (and appeal at NSWLEC 90)* and *Wehbe v Pittwater Council [2007] NSWLEC 827*, namely that the objection is well founded, that compliance with the standard is unreasonable or unnecessary in the circumstances of the case, and that there are sufficient environmental planning grounds to justify contravening the development standard.

Table 2 Compliance with WLEP 2009 - Contravention of Clause 4.3 Height of Buildings		
Clause 4.6 Exceptions to Development Standards	Response/Justification	Consistent/ Complies
(1) Objectives a) to provide an appropriate degree of flexibility in applying certain development standards to particular development, and b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.	Flexibility is sought for the application of the maximum height of buildings provided in Clause 4.3 of the WLEP 2009, to achieve an improved outcome for the site. The particular circumstances for this are as follows: ▪ The subject site has a varied topography and slope constraints which presents challenges to the building design. The greatest variation which is sought is for the rear portion of the proposed hospital component of the development (identified as Building 1) in the south eastern portion of the site. The location of this building is on the area of the site containing the most significant slope constraints. At this position the land falls to a height of 23m, (from a high point of 40m in the west). ▪ The variation to the height requirements is considered appropriate given the unique nature of this land use proposal for the development of the site. The hospital building requires increased floor to ceiling heights and specific floor plate sizes to accommodate its functions, with this also contributing to the exceedance of the height. ▪ The proposal provides variation in building height across the site, with reduced heights adjoining the residential development to the west. ▪ The development incorporates design measures (including setbacks and stepping down levels, variation in materials and in the building appearance) to minimise the impacts of height and bulk. ▪ The building has been located centrally on the site to provide minimal impact on any adjoining sites. ▪ There are no anticipated privacy, overshadowing or other amenity impacts associated with the proposed building height. Hence, it is considered that the objective of this clause is addressed.	Justified
(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	This subclause is not relevant to the subject proposal.	N/A

Table 2 Compliance with WLEP 2009 - Contravention of Clause 4.3 Height of Buildings

Clause 4.6 Exceptions to Development Standards	Response/Justification	Consistent/ Complies
<i>clause does not apply to a development standard that is expressly excluded from the operation of this clause.</i>		
(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:	This Table comprises the written request seeking to justify the contravention of the building height development standard.	Provided
(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and	<i>In Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 1009, para 61, Commissioner Person summarises the considerations from Wehbe v Pittwater Council [2007] NSWLEC 827 at [42] per Preston CJ, and notes in para 62 that clause 4.6 can be considered in a similar way to that of SEPP 1. In Wehbe at [44]-[48] Preston CJ identified other ways in which an applicant might establish that compliance with a development standard is unreasonable or unnecessary, namely that the underlying objective or purpose is not relevant to the development; that the objective would be defeated or thwarted if compliance was required; that the development standard has been virtually abandoned or destroyed by the Council's own actions in departing from the standard; or that the zoning of the land is unreasonable or inappropriate.</i> A response to each of these approaches is therefore provided as it relates to the current proposal: <i>The underlying objective or purpose is not relevant to the development</i> This is not applicable as the objective of the Development Standard is relevant to the development (and has been satisfied). <i>That the objective would be defeated or thwarted if compliance was required</i> This is not applicable as the objective of the Development Standard is relevant to the development (and has been satisfied). <i>That the development standard has been virtually abandoned or destroyed by the Council's own actions in departing from the standard</i> Development in the vicinity of Hospital Road is predominantly single dwelling houses, as well as the existing hospital building directly south of the subject site. Height of buildings in the general area at the foothills of the Illawarra Escarpment is often difficult to achieve given the slope constraints. Council's standard has been varied on a number of occasions where the slope of the land does not permit an appropriate built form which responds to the constraints of the site. Given the unique landuse afforded by this development, it is considered that inconsistency with Council's standard can effectively be abandoned by alternative and reasonable planning outcomes to achieve the State government objectives for the development of this site. <i>The zoning of the land is unreasonable or inappropriate.</i> The zoning of the land is appropriate, however as mentioned above, the numerical development standard applicable in the zone by Clause 4.3 for building height is unreasonable or inappropriate given the nature	Justified

Table 2 Compliance with WLEP 2009 - Contravention of Clause 4.3 Height of Buildings

Clause 4.6 Exceptions to Development Standards	Response/Justification	Consistent/ Complies
	and significance of the proposed development. Overall: Compliance with the applicable building height is considered to be unreasonable and unnecessary in the circumstances of the case as the consolidation of all allotments on the site provide the opportunity for an alternative (and satisfactory) site planning and built form outcome to that anticipated by the formal planning controls (as demonstrated below). It is therefore justified that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.	
(b) that there are sufficient environmental planning grounds to justify contravening the development standard.	<i>In Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 1009, Commissioner Person determined that it is necessary for applicants to show sufficient grounds <u>particular to the development</u> in the Clause 4.6 objection.</i> The variation to the development standard (height of buildings) will enable the feasible and appropriate development of the site incorporating: i) sloping topography of the site resulting in a cross fall within the site of 17m between the western boundary and the eastern boundary; and ii) provision of car parking on the site rather than beneath the building footprint in basement car parking; If the maximum building height was achieved on this site, it is anticipated that the resultant building footprint would reduce the building setbacks from adjacent development, thereby not achieving an orderly and economic development of land and potentially having a greater impact on amenity for adjacent residents. Further, the proposed use of the site is appropriate within the R2 Low Density Residential Zone and hence the specific measures introduced to meet the objectives of the standard and the zone (ie: high quality built form and modern architectural appearance) outweigh the necessity for the controls to be observed. The increased building heights proposed have been in response to the constraints of the site and to ensure the development provides visual and acoustic privacy for existing nearby residents as well as new residents within the residential care complex. The increased building height is not considered to create significant adverse impacts on adjoining sites in terms of visual impact, disruption of views, loss of privacy or any other impacts than if the maximum allowable building heights were met (as detailed in Section 10.2.11 of the EIS). The main section of the building where the building exceeds the height is located at the rear of the hospital where significant setbacks are afforded to adjacent residential properties due to the existence of the watercourse and landscaped buffer. Further, the ambulance station immediately adjoins this land to the east, providing a transition to residential dwellings at the eastern end of Hospital Drive. The Architectural Roof Features Statement prepared by Billard Leece (refer to Appendix 31 of the EIS), provides further justification for each of	Justified

Table 2 Compliance with WLEP 2009 - Contravention of Clause 4.3 Height of Buildings

Clause 4.6 Exceptions to Development Standards	Response/Justification	Consistent/ Complies
	the areas of height exceedance, having regard to the function of the building and the desired architectural outcome: Lift & Stair Shaft The Lift Shaft exceeds the 9m limit by up to 2.5m along the Eastern edge. This is due to the required lift overrun for lift machinery, to allow the lift to adequately service all levels of the building; and to allow sufficient headroom for the building's main circulation stair. The proposed building would not be viable without lift & stair access to all levels. The Lift & Stair Shaft overrun is not used for signage; is not usable as floor space; and does not result in overshadowing of any other property. Plant Room The Plant Room roof exceeds the 9m limit by up to 1.7m along the West edge, and up to 3.8m along the South edges, and up to 7.5m on the North & East edges. This is due to the required plant & mechanical equipment for the viable operation of the facility. The floor plate size to provide a viable Health Care facility for the surrounding community results in the Level 3 roof area being the only suitable location for the plant & equipment spaces. The remainder of the Level 3 Roof to the south of the Plant Room is constructed as lightweight steel roof over lightweight steel structure, and is thus not suitable for modification to usable space. Access to this area is required for maintenance and is provided by the stairThe Plant Room is not used for signage; is not usable as floor space (except for plant & machinery); and does not result in overshadowing of any other property. Clinical areas of 2nd Floor, LHD Wing (Eastern portion of the design) The floor plate of the 2nd Floor Clinical areas is located approx. 8 to 9m above the original ground level of the site, with the walls and roof rising a further 4m. The walls and roof of the 2nd Floor Clinical areas are thus 12m to 13m above the original site levels in the area. The clinical areas of 2nd Floor provides 34 beds for the Inpatient Unit, and is part of the primary function of the Centre. The proposed facility would not be viable without these beds. It is thus requested that the non-compliance of the 2nd Floor Clinical areas be permitted to allow viable operation of the facility.	
(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	This statement provides a discussion in support of the justification for varying the development standards as indicated in (3) above. In our opinion, there is sufficient justification provided to support a variation to the height of building requirements.	Satisfied
(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	<u>Wollongong LEP 2009</u> <u>Objectives of the Standard (Clause 4.3)</u> (a) to establish the maximum height limit in which buildings can be designed and floor space can be achieved, (b) to permit building heights that encourage high quality urban form,	Justified

Table 2 Compliance with WLEP 2009 - Contravention of Clause 4.3 Height of Buildings		
Clause 4.6 Exceptions to Development Standards	Response/Justification	Consistent/ Complies
the zone in which the development is proposed to be carried out, and	(c) to ensure buildings and public areas continue to have views of the sky and receive exposure to sunlight. Despite the exceedance of the allowable height of buildings, the proposed development will be in the public interest as it still meets the objectives of clause 4.3 as: ▪ The proposed architecturally designed building provides an attractive visual appearance with suitable built form by maintaining the lower scale built form on the western part of the site adjacent to single residential dwellings and also adjacent to Hospital Road. ▪ The development incorporates stepping in height from the rear section of the hospital through to a reduced height adjacent to the road and in the western section of the building containing the residential aged care facility. This enables adjacent residential buildings to the north and west to retain their views of the skyline and achieve solar access. ▪ The development incorporates design measures (including setbacks and stepping down levels) to minimise the impacts of scale and bulk on the sloping site. ▪ The development provides appropriate separation between the elevated building form on the western portion of the site to nearby residential buildings to the west. Development to the south of the site is separated from the proposal by Hospital Road, with additional front setbacks also provided. ▪ The proposal will have minimal impact on overshadowing of adjacent residential development as depicted within the Shadow Analysis prepared by Billard Leece Partnership; and will continue to provide acceptable spatial separation between buildings. Hence the proposed development achieves the objective of the height of buildings development standard. <u>Objectives of Zone R2 Low Density Residential</u> ▪ To provide for the housing needs of the community within a low density residential environment. ▪ To enable other land uses that provide facilities or services to meet the day to day needs of residents. The proposed development is also consistent with the objectives of the R2 Low Density Residential zone as it will: • Provide housing opportunities for aged persons with immediate access to health and emergency services; • Provide housing within a low density setting to meet the shortage of aged care in the Illawarra; • Provide modern health and medical facilities in an accessible location close to public transport and major road links, as well as near commercial precincts; • Provides a suitable built form and land use development to meet the needs of the residents. Overall, the development of the site as proposed will facilitate the ongoing viability and economic development of medical and hospital facilities, as well as provide housing for an ageing population in the Illawarra Region and hence is in the public interest. Furthermore, it is considered that the proposed development meets the	

Table 2 Compliance with WLEP 2009 - Contravention of Clause 4.3 Height of Buildings

Clause 4.6 Exceptions to Development Standards	Response/Justification	Consistent/ Complies
	majority of the aims of WLEP 2009 [Clause 1.2(2)] as follows: <i>(b) to encourage economic and business development to increase employment opportunities,</i> <i>(c) to encourage a range of housing choices consistent with the capacity of the land,</i> <i>(d) to improve the quality of life and the social well-being and amenity of residents, business operators, workers and visitors,</i> <i>(e) to conserve and enhance remnant terrestrial, aquatic and riparian habitats, native vegetation and fauna species,</i> <i>(g) to ensure that development is consistent with the constraints of the land and can be appropriately serviced by infrastructure,</i>	
<i>(b) the concurrence of the Secretary has been obtained.</i>	The Department of Planning and Infrastructure are the determining authority in this instance (being State Significant Development), therefore the concurrence of the Director General can be assumed in accordance with Planning Circular PS 08-003-Variations to Development Standards (Department of Planning, May 2008).	Addressed
<i>(5) In deciding whether to grant concurrence, the Secretary must consider:</i>		
<i>(a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and</i>	The contravention of this development standard does not raise any matter of significance for state or regional environmental planning. Refer to further discussion below in this table.	Addressed
<i>(b) the public benefit of maintaining the development standard, and</i>	The development is located on a large consolidated site bounded by existing single dwelling house developments to the north, east and west, and the existing Bulli Hospital to the south fronting Hospital Road. The site has challenging topography and site access requirements. The profile of this site lends itself to ensuring the development which occurs is consistent with the future vision for Bulli Hospital. The subject development, while varying the height of buildings required by clause 4.3 of WLEP 2009 on some parts of the site will not result in significant impacts on nearby residential properties. There will be no measurable public benefit by adhering to the height of building requirements of Clause 4.3, which are considered to be inappropriate for the proposed nature of the land use. The proposed variations in building height across the site provide a range in building form and appearance which is considered acceptable given the nature of the development. Due to the site constraints in relation to land instability, slope and potential contamination, the proposed non-compliance to other adjacent buildings are minor. Hence, the proposed development will not raise any matter of state or regional planning significance.	Satisfied
<i>(c) any other matters required to be taken into consideration by the Secretary before granting concurrence.</i>	It is considered that there are no environmental planning considerations that would hinder the Director-General from providing concurrence.	Addressed

Conclusion:

This Statement has addressed the provisions of Clause 4.6 of Wollongong LEP 2009 and demonstrates that the variation sought to the development standard of the LEP (Height of Buildings) is justifiable and should be given concurrence to, on the basis of (i) the unique nature of the proposed development incorporating a state funded major health infrastructure development; (ii) the constraints of the site including variations in ground levels, and (iii) achievement of environmental planning outcomes. The non-compliant building height proposed on part of the development does not create significant impacts on adjoining sites in terms of visual impact, disruption of views, or loss of privacy having regard to design outcomes in this location. The assessment of building siting and height also confirms that the buildings are appropriately placed to ensure that visual privacy is maintained to residential dwellings adjacent to the site and particularly to the north and west. The proposed development is not inconsistent with Council's vision for Bulli.

This report confirms that the proposed building height is appropriate having regard to site characteristics and streetscape integration. Further the proposed building height will not hinder the attainment of the objectives contained in Clause 4.3 of WLEP 2009.

On this basis, strict compliance with the height of building controls of WLEP 2009 is considered unnecessary and support for the variation to this development standard is sought.