

Clause 4.6 Variation: Building Height

RETENTION OF HERITAGE ITEM AND
CONSTRUCTION OF HOTEL
198-204 LEURA MALL,
LEURA

16 AUGUST 2022





CLAUSE 4.6 VARIATION REQUEST: HEIGHT OF BUILDINGS

The Variation

This statement comprises a written request under clause 4.6 of the *Blue Mountains Local Environmental Plan 2015* (BMLEP), that accompanies a proposal that contravenes the height of buildings development standard contained in clause 4.3 of the BMLEP.

The proposed development will comprise a 1-3 storey hotel that predominantly complies with the permitted maximum 8m building height. However as illustrated below a small portion of the roof structure and lift overrun exceed the 8m limit. The architectural plans include a height plane analysis which show that the entire development is under the 8m height limit with the exception of a small part of the upper level roof form and part of the lift/fire stair.

The extent of departure is 804mm (10%) to the main building volume and this is limited to point encroachments to the ridge, noting the lower building is 588mm at the ridge . The departure is 980mm (12.25%) to the building in the south-eastern corner to the ridge of the roof form and associated lift over-run.

The 3D height plane shows that the actual extent of departure across the site is confined to the portion of the site where the topography drops away and in the rear portion of the site. The 3D height plane is shown at Figure 1 and section at Figure 2.

Figure 1: 8m Height Plane Analysis Drawing 15 (Source: PTI Architecture).

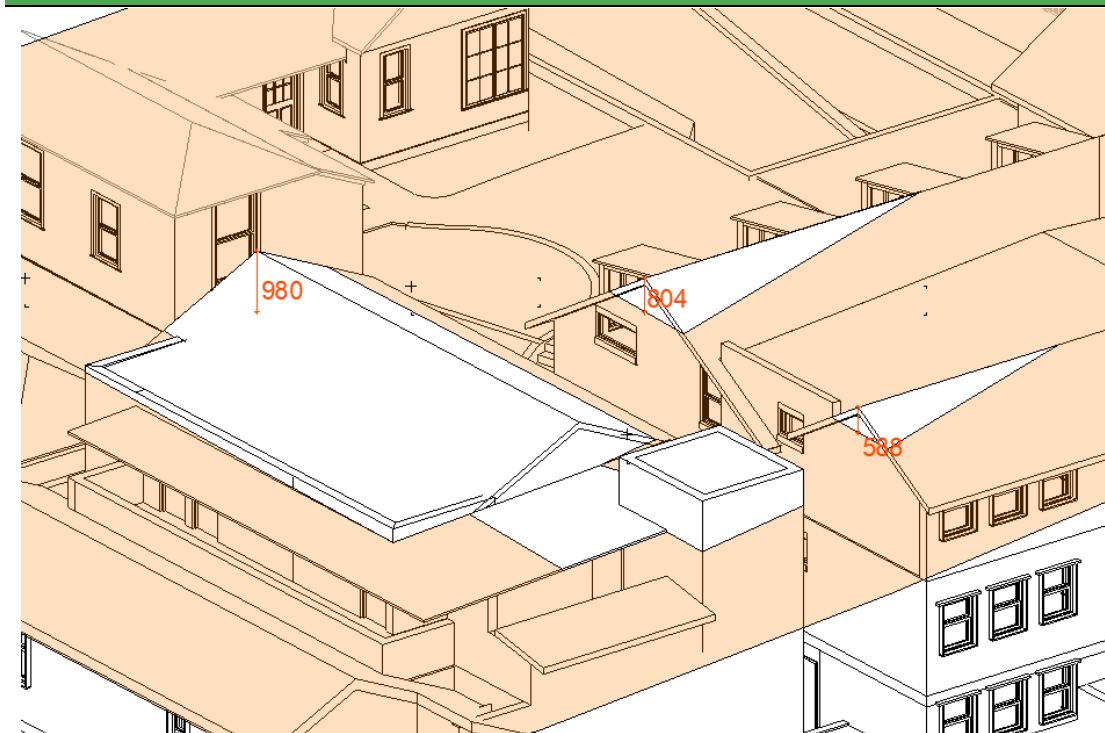
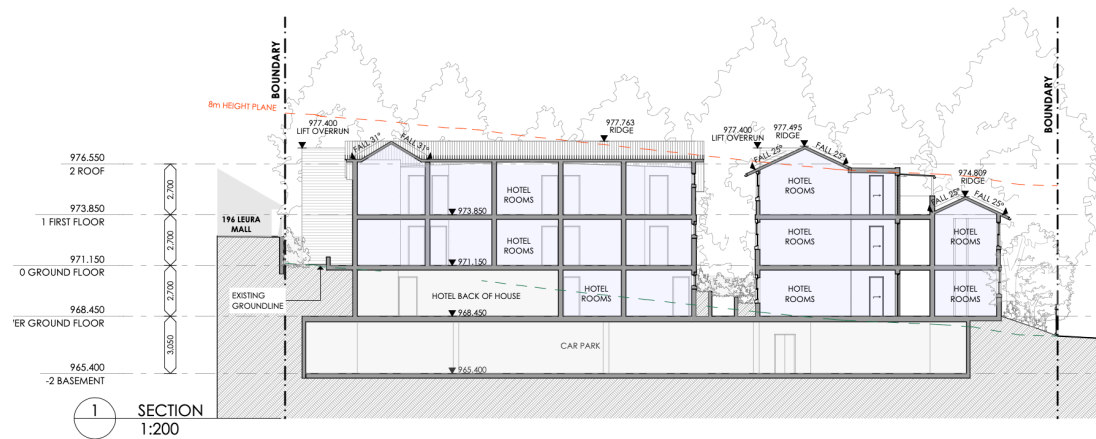


Figure 2: Section Drawing 9 (Source: PTI Architecture).



The non-compliance is a function of the site's topography, the need to provide lift access to all areas of the development and the necessity to provide a sloped gable roof design to ensure that the proposal is consistent with, and does not adversely affect the significance of, the existing heritage building on the site. .

It is the combination of these elements, and the approach to sensitively place the additional built form at the rear owing to the heritage curtilage and response to context and character, that leads to the minor departure to the height limit.

A means of achieving strict compliance could be to adopt a flat roof element- but this would be a poor response to both the heritage item itself and the character of the locality that primarily features pitched roof elements and many examples of dormer room in roof style building forms- hence a pitched roof is a much better design response.

Clause 4.6 of the LEP provides that development consent may be granted for development even though the development would contravene a development standard. This is, provided that the relevant provisions of the clause are addressed, in particular subclause 3-5 which provide:

(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.

Each of these provisions are addressed in turn below.

Clause 4.6(3)- Compliance Unreasonable or Unnecessary

In accordance with the provisions of this clause it is considered that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case given the fact that the underlying objectives of the control are achieved.

The objectives of the building height development standard are stated as:

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

(a) to ensure that the bulk of development is not excessive and relates well to the local context,

(b) to protect privacy and the use of private open space in new development or on adjoining land,

(c) to nominate heights that will provide a transition in built form and land use intensity,

(d) to ensure an appropriate height transition between new buildings and heritage items.

The development seeks to depart from the height control noting that the proposal achieves the objectives of the clause and is a more appropriate outcome on the site because of the following:

- In relation to objective (a) the bulk of the development is suitable and is not excessive. The proposal will provide a high quality urban form that relates well to the context of the site in terms of the natural topography and adjoining and adjacent development as well as the heritage building and curtilage. This is achieved through separation of buildings across the site and the adoption of recessive colours and finishes and fundamentally the provision of a pitched roof form to the new buildings to provide an appropriate relationship to context and character. This relates to the heritage item Culgoa on the site as well as responding to the context and character of the immediate locality within Leura Precinct 3 which features a series of pitched roof elements and dormer windows within this precinct and it is appropriate to adopt a comparable form.
- In relation to objective (b) the exceedance of the building height control will have no unacceptable impact on the visual privacy and use of private open space of the proposal or adjoining properties given the design and orientation of the development limits overlooking to adjoining residential properties and the physical separation to those properties.
- In relation to objective (c) the height is carefully placed to the rear of the curtilage of the cottage and the transition to adjoining properties in terms of built form and land use intensity is appropriate.
- In relation to objective (d) the proposal has been sensitively designed to provide an appropriate height transition between the new building and the heritage item- and is the rationale for the location of the additional height in the south-eastern corner and lower height to the reception building adjacent to Culgoa. The height breach is also a function of the pitched roof form proposed vs a flat roof form and this is a more appropriate and desirable response to the heritage item that is facilitated by the breach.
- The exceedance of the height limit does not result in unacceptable reduction of solar access of neighbouring developments noting that the shadow impact is limited to a portion of the dwelling to the south of the site at 8 Craigend Street which continues to achieve substantial solar access to its POS. There is also a minor impact from 2pm to 3pm to the adjoining ancillary church building at 37A Megalong Street. These impacts are limited and acceptable.
- The proposed development will permit the site to develop to its full zoning potential whilst remaining compatible with the character of the streetscape. This is achieved by retaining the heritage item currently located at the front of the site, and by proposing a hotel-built form that complements the item.

- The overall height of the development is appropriate for the site and its context, given that:
 - the development site has a large area and is capable of accommodating a larger scale development;
 - the development is well landscaped along all boundaries and internally;
 - the portions of the building exceeding the maximum height limit are located towards the rear of the site, and therefore the breach of the height limit will not be visible from the street.
 - the development will not result in the unacceptable overshadowing of any neighbouring properties (as per the shadow diagrams).

As outlined above the proposal achieves the objectives of the control and as such compliance is considered unnecessary or unreasonable in the circumstances. The above discussion also demonstrates that there are sufficient environmental planning grounds to justify the departure from the control.

Clause 4.6(3)- Environmental Planning Grounds

The environmental planning grounds that support the departure to the building height standard are as follows:

- The non-compliance is a function of the site's topography, the need to provide lift access to all areas of the development and requirement to provide a sloped gable roof design consistent with the existing heritage building rather than a flat roof. It is the combination of these elements, and the need to carefully place the additional built form at the rear owing to the heritage curtilage and response to context and character, that leads to the minor departure to the height limit.
- A means of achieving strict compliance could be to adopt a flat roof element- but this would be a poor response to both the heritage item itself and the character of the locality that primarily features pitched roof elements and many examples of dormer room in roof style building forms- hence a pitched roof is a much better design response that serves to break down the bulk and scale of the building having regard to the existing heritage item and to ensure its significance is maintained that also furthers Object (f) *to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage)*, in section 1.3 of the *Environmental Planning and Assessment Act 1979* (Act).
- The additional height proposed means that larger areas of landscaping, and reduced areas of site coverage, can be achieved to ensure a suitable design response to the site context and setting of Culgoa and the site more broadly. The permitted site coverage is 40% and the proposal is 33% to provide greater

areas of open space across the site that is facilitated by additional height at the rear.

- The topography of the site that falls to the rear of the site and the need to respond to this through appropriate finished floor levels for the hotel development and avoiding excessive and unnecessary cut and fill through the site;
- The development seeks to provide a built form compatible with the existing heritage building on the site. This means that rather than providing a contemporary flat roof that would be compliant with the maximum building height control, the development has provided a sloped gable roof form consistent with the heritage item, which results in an increased height and as referenced above this furthers Object (f) of the Act and also furthers the following Objects in section 1.3:

(c) to promote the orderly and economic use and development of land,

(g) to promote good design and amenity of the built environment,

Therefore this written request has demonstrated that sufficient environmental planning grounds exist to support the height departure because the height departure facilitates an improved environmental planning outcome for the development on the site.

Clause 4.6(4)

In accordance with the provisions of Clause 4.6(4) the consent authority can be satisfied that this written request has adequately addressed the matters required to be demonstrated by Clause 4.6(3) of the BMLEP. As addressed the proposed development is in the public interest, as it remains consistent with the objectives of the building height control. The proposed development is in the public interest as it remains consistent with the objectives of the R1 zone that are stipulated as:

- *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 building form and design does not unreasonably detract from the amenity of adjacent residents or the existing quality of the environment due to its scale, height, bulk or operation.*
- *To enhance the traditional streetscape character and gardens that contribute to the attraction of the area for residents and visitors.*
- *To provide opportunities for the development of a variety of tourist-oriented land uses within a predominantly residential area.*

This is because:

- The first and second objective is not relevant however the proposal provides for tourist accommodation- which is desired within the Leura Tourist Precinct within which the site resides and hence the tourist use is appropriate;
- The proposal provides for other land uses (hotel accommodation) with a built form and design that ensures amenity to adjacent residents is maintained given the extent of setbacks proposed and the suitable design response provided;
- The streetscape character is enhanced through the restoration works with regard to the landscape treatment of the front setback area and the proposal provides for an improved landscape garden setting to Culgoa;
- The proposal provides for a tourist-oriented land use within Leura Village and in a context that is not strictly residential- noting the commercial uses to the north, south and the Church to the East of the subject site.
- The proposal complements and enhances the local streetscape by virtue of the careful siting of the development.

Clause 4.6(5)

As addressed, it is understood that the concurrence of the Director-General may be assumed in this circumstance, however the following points are made in relation to this clause:

- a) The contravention of the building height control does not raise any matter of significance for State or regional environmental planning given the nature of the development proposal; and
- b) There is no public benefit in maintaining the development standard as it relates to the current proposal. The departure from the building height control is acceptable in the circumstances given the underlying objectives are achieved and it will not set an undesirable precedent for future development within the locality given the departure does not result in unreasonable amenity impacts to adjoining properties.

Strict compliance with the prescriptive building height requirement is unreasonable and unnecessary in the context of the proposal and its particular circumstances. The proposed development meets the underlying intent of the control and is a compatible form of development that does not result in unreasonable environmental amenity impacts.

The proposal will not have any adverse effect on the surrounding locality, which is emerging to be characterised by residential development of comparable character. The proposal promotes the economic use and development of the land consistent with its zone and purpose.

The objection is well founded and taking into account the absence of adverse environmental, social or economic impacts, it is requested that the consent authority support the development proposal.