

GYDE

Clause 4.6

Variation Request

Height of Buildings (clause 4.3)

203-223 Leura Mall, Leura

submitted to Blue Mountains City Council
on behalf of Pathways Residences

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1. EXECUTIVE SUMMARY

The proposal involves the restoration of 'The Ritz' estate, at 203-223 Leura Mall, Leura, to allow its use as a high-quality, fit for purpose residential care facility (RCF). The proposal includes retention and conservation of the main heritage building, 1914 wings, manager's residence and cottage and construction of new three-storey wings to the south and west of the original Ritz building, including basement parking and extensive restoration of the estate's landscape setting.

The Ritz nursing home previously operated approximately 150 beds but was closed in 2017 due to noncompliance with aged care facility standards. The current proposal seeks to provide a replacement residential care facility that acknowledges the heritage significance of the site and is in accordance with today's standards. To meet the expectations and needs of consumers for privacy, dignity and amenity, dorm style accommodation is being converted to single rooms.

The site is within the 'Southern Tourist Precinct' of the Leura town centre and is zoned R1 – General Residential under the *Blue Mountains Local Environmental Plan 2015* (BMLEP 2015). The proposed RCF and ancillary facilities are permissible with consent in the R1 zone.

The purpose of this Clause 4.6 variation request is to address a variation to Clause 4.3 'Height of Buildings' under the BMLEP 2015, which establishes a maximum building height of 8 metres on the site.

The existing Ritz building currently has a maximum height of 14.9 metres (RL 986.2) when measured from the established existing ground level to the small dormer structure on the rooftop of the main building, and therefore exceeds the 8-metre height standard by 6.9 metres (i.e., a 86.25% variation).

No works are proposed to the manager's residence or education cottage above the 8m height plane. As such, a variation to the height standard is not requested for these buildings. However, due to the poor structural soundness and condition of 'The Ritz' and the need to comply with BCA and fire rating requirements, significant restoration and/or replacement works are required to the main building and its wings.

To retain the integrity of the existing heritage building, the proposed replacement works will be constructed to the same height as the existing built form. The small dormer structure on the rooftop of the main building, however, will not be reinstated meaning that the proposed development will have a reduced maximum height of 13.3m (i.e. 1.6m lower) and will exceed the height standard by a maximum of 5.3m (i.e., a 66.25% variation). The heritage constraints of the site mean that the height exceedances cannot be reduced.

The new extensions to the south and west of the original Ritz building exceed the 8m height by 1.1m (13.75%) to 4.65m (58.12%). However, these elements are well below the overall existing maximum height. The portion with the greatest exceedance of the 8m height standard is located at the northern end of the new west wing in a part of the site that does not adjoin any neighbouring property.

Thus, the elements that contravene the 8m building height standard include the roof of the existing Ritz building and its existing wings, the roof area of the new west extensions, a lift overrun, roof top services and screening, some habitable areas and the terrace area at the northern end of the new western wing. The portions of the building that contravene the height of buildings standard do not result in any detrimental amenity impacts on surrounding properties.

The shadows cast by these buildings that exceed the height departure cast minimal additional overshadowing compared to the existing and/or compliant scheme. Specifically, the shadows do not fall on any internal living areas and will maintain a minimum of 3 hours of solar access to at least 50% of the neighbouring private open space areas in mid-winter. There are also no significant view lines or vistas from the public domain or from surrounding residential properties that would be affected as a consequence of the departure in height.

The proposed roof-top plant and equipment have been integrated into the design of the roof. Screening of the air conditioning condenser units is proposed to address any potential visual or noise impacts. The roof area will be accessible for maintenance purposes only and will not be used as communal open space. This will ensure that the privacy of adjoining neighbours is preserved.

Council has previously granted development consent (X/662/2001) for alterations and additions to 'The Ritz', including a new 2-storey residential wing extending to the south of the Ritz main building. The roof ridge of the existing southern wing is RL 981.93. The previously approved building height is reflected in the current development with the proposed flat roof heights of the new south and west wings being RL 980.15. In previously approving the existing south wing, it has been established that extensions of this height (i.e. RL 980.15) are acceptable in the southern part of the site adjacent to the lower density heritage conservation area.

The elements that exceed the height of building standard, especially those elements immediately adjacent to the southern boundaries, provide an appropriate transition to the low density residential dwellings to the south. In lieu of proposing a building that provides a minimum 2m side setback to the south-west boundary and then steps up in height as it moves away from the boundary, the proposed development provides a generous 9.2m side setback to the wall at each level.

When viewed from the Leura Mall street frontage and from the neighbouring properties to the south, the elements located above the height standard do not display excessive bulk because the new extensions read as 2-storeys buildings from these locations. This is because the lower ground floor is below the existing ground level and is generally not visible when viewed from the east or south.

Sightlines from the property to the south-east (225 Leura Mall) will also be significantly obscured by the existing mature trees. While the existing trees along the common boundary with 24 Wascoe Street are recommended for removal, it is proposed that replacement trees with a mature height of 6m be provided within the 9.2m setback area. The generous setbacks and landscaping will ensure that the privacy of adjoining residents is maintained.

From the residential dwellings to the west, the height exceedances will be significantly screened by the vegetation that will be retained and supplemented along the Wascoe Street frontage. Street trees on the western side of Wascoe Street further assist in screening views from private properties to the site.

The accompanying Heritage Impact Statement recognises that while a cleared site would allow a lower scale development across the site, the proposal seeks to conserve the heritage components and gardens and provide adequate separation with new buildings to the south and west to compensate for the loss of built volume resulting from the heritage constraints.

This request demonstrates that there are no environmental impacts as a consequence of this contravention of the maximum building height standard and that there are sufficient environmental planning grounds to justify the variation. The development as a whole satisfies the objectives of the R1 General Residential zone and is in the public interest. Strict adherence to the building height standard in this instance is therefore unreasonable and unnecessary.

2. INTRODUCTION

This written request has been prepared in accordance with clause 4.6 of the *Blue Mountains Local Environmental Plan 2015* (BMLEP 2015) to justify a variation to the 'Height of buildings' development standard proposed in a development application submitted to Blue Mountains City Council for the rejuvenation of a vacant and disused residential care facility (The Ritz) at 203-223 Leura Mall, Leura (site).

The objectives of clause 4.6 are to provide an appropriate degree of flexibility in applying development standards to achieve better outcomes for, and from, development.

As the following request demonstrates, a better planning outcome would be achieved by exercising the flexibility afforded by clause 4.6 in the particular circumstances of this application.

This request has been prepared having regard to the Department of Planning and Environment's Guidelines to Varying Development Standards (August 2011) and various relevant decisions in the New South Wales Land and Environment Court and New South Wales Court of Appeal (Court).

Clause 4.6 requires that a consent authority be satisfied of three matters before granting consent to a development that contravenes a development standard (see *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, *RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130, *Al Maha Pty Ltd v Huajun Investments Pty Ltd* (2018) 233 LGERA 170; [2018] NSWCA 245) at [23], *Baron Corporation Pty Limited v Council of the City of Sydney* [2019] NSWLEC 61 at [76]-[80] and *SJD DB2 Pty Ltd v Woollahra Municipal Council* [2020] NSWLEC 1112 at [31]). These three matters are:

1. That the applicant has adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case [clause 4.6(3)(a)];
2. That the applicant has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard [clause 4.6(3)(b)]; and
3. That 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 [clause 4.6(4)]

This request also addresses the requirement for the concurrence of the Secretary as required by clause 4.6(4)(b).

It should be noted that in the recent decision of *SJD DB2 Pty Ltd v Woollahra Municipal Council* [2020] NSWLEC 1112 the Court held at para 73 that "*it should be noted cl 4.6 of [LEP] is as much a part of [LEP] as the clauses with development standards. Planning is not other than orderly simply because there is reliance on cl 4.6 for an appropriate planning outcome.*"

3. STANDARD TO BE VARIED

The standard that is proposed to be varied is the Height of Buildings development standard which is set out in clause 4.3(2) of the *Blue Mountains Local Environmental Plan 2015* (BMLEP) as follows:

(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.

On the 'Height of Buildings Map' the site is located in an area with a height designated of 'I'. The numerical value of the 'Height of Buildings' development standard applicable in this instance is 8 metres (refer to Figure 1).

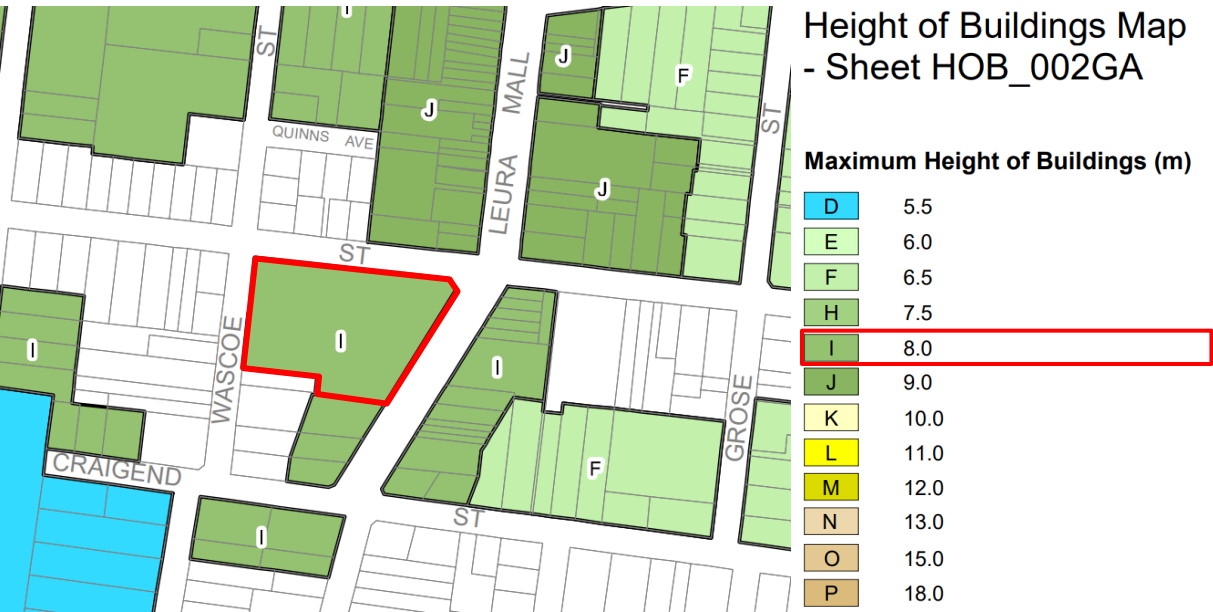


Figure 1: Extract of Height of Buildings Map (Source: NSW Legislation)

The 'Height of Buildings' development standard is not identified under sub-clause 4.6(8). The development standard to be varied is therefore not excluded from the operation of clause 4.6 of the LEP.

4. EXTENT OF VARIATION

4.1. Measuring ground level (existing)

The building height is to be measured in accordance with the BMLEP 2015 definition:

building height (or height of building) means—

(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.

To determine the height of the building, an existing ground level must therefore be nominated. In most cases, the maximum building height is measured between the highest surveyed part of the proposed development and the lowest surveyed level of the site vertically beneath.

Where there is an existing building, however, this method cannot always be applied. In such circumstances, case law provides appropriate guidance on the correct interpretation of 'ground level (existing)'.

In *Bettar v Council of the City of Sydney [2014] NSWLEC 1070* (Bettar) at para 34 the applicant argued that the existing ground level of the site was the level of the footpath at the site boundary and that the site level should be determined by extrapolating this level across the site. The Court adopted this approach, which has become known as the 'extrapolation approach', on the basis that *"the level of footpath at the boundary bears a relationship to the context and the overall topography that includes the site and remains relevant once the existing building is demolished"* (Bettar at para 41).

In the case in Bettar the land was totally built out and excavated. For developments where the land is not totally built out or excavated, later case law suggests that the extrapolation approach may still be used but only in some circumstances.

In *Stamford Property Services Pty Ltd v City of Sydney & Anor [2015] NSWLEC 1189* (Stamford), the Court agreed with the Council's method of determining the 'ground level (existing)'. This method required that the proposed height be measured from the ground level of the site where it was known and from the footpath level at the site boundaries extrapolated across the site (i.e. the methodology adopted within Bettar) where the ground level was unknown.

In these proceedings, the Court confirmed that the definition of 'ground level (existing)' from which building height should be measured:

- is not to be based on the floor levels of an existing building located on a site.
- is not to be based on artificially modified site levels associated with excavation.
- is not to include the basement floor or the soil beneath the basement following construction of the building or pre-existing excavation works.

- is to be based on the existing surveyed surface of the ground; or where access to the ground surface is restricted by an existing building or pre-existing excavation, natural ground levels should be determined by known boundary levels which are based on actual and surveyed levels in the public domain (footpaths) and unmodified levels around the perimeter of the property.

Based on this, the 'ground level (existing)' must relate to the levels of the site, and not to the building presently located on the site or the artificially modified levels of the site because of excavation.

Case law has established that the 'extrapolation method' is not limited to sites which have been fully built on and that it is possible to also use the 'extrapolation method' to determine the existing ground level (i.e., either in combination with other methods or across the entire site) on sites which have not been fully built on. The key principle, however, is that the height plane must relate to its surrounds. Based on this combination of extrapolated and surveyed existing ground levels, a height plane diagram has been prepared by PBD Architects.

4.2. Proposed height exceedances under BMLEP 2015

There are three distinct areas of the proposed development that exceed the 8-metre height limit for the site, including:

- The existing Ritz Hotel building;
- New South Wing; and
- New West Wing.

Specific details of the above areas and the extent to which they exceed the height limit are provided below in this section.

Existing Ritz Building

The proposed development seeks to retain the existing significant heritage buildings on the site comprising the main building and its south and west wings ('The Ritz'), and therefore, retains the existing building heights, including the exceedances above the standard.

No works are proposed to the Manager's Residence or the Education Cottage above the 8m height plane. As such, a variation to the height standard is not requested for these buildings. However, due to the poor structural soundness and condition of 'The Ritz' and the need to comply with BCA and fire rating requirements, significant restoration and/or replacement works are required to the main building and its wings.

Where the existing Ritz Hotel, Manager's Cottage and Education Cottage are located or where the existing ground level cannot be surveyed because of existing built form, the extrapolation method has been used to determine the existing ground level.

As shown in Figure 2, the existing built form has a maximum height of 14.9 metres (RL 986.2) when measured from the established existing ground level to the small dormer structure on the rooftop of the main building and exceeds the 8-metre height standard by 6.9 metres.

The proposed development seeks to undertake new and "like-for-like" works to 'The Ritz'. The works proposed above the height standard, include replacement/reconstruction of roof areas, dormer windows and the attic space, new roof tiles, a lift overrun, acoustic screen fencing to the edge of the building and a new connection between the main building and its existing west wing.

To retain the integrity of the existing heritage building, the proposed works will be constructed to the same height as the existing built form. The small dormer structure on the rooftop of the main building, however, will not be reinstated meaning that the proposed development will have a reduced maximum height of 13.3m (i.e. 1.6m lower). The proposed development exceeds the height standard by 5.3 metres (i.e., 66.25% variation).

In addition to undertaking works to 'The Ritz', the proposed development seeks to demolish the existing built form in the southern part of the site and construct new extensions to the building known as "new South Wing A", "new South Wing B", "new West Wing A" and "new West Wing B". The location of the new work is shown in Figure 3.

Figure 4 to Figure 13 provide plan extracts and height plane diagrams detailing the height encroachments proposed by 'The Ritz' and the proposed new wings. The plan extracts demonstrate that the new wings have an overall maximum height of 12.65 metres (RL 980.35) when measured from the existing ground level to the top of the of the parapet wall to room L1.37 of 'new West Wing B'. At this point the proposed new built form exceeds the 8 metre 'Height of Buildings' development standard that applies to the site by a maximum of 4.65 metres (i.e., 58.12% variation).

In relation to the new wings, the other elements located above the 8m building height standard include:

New South Wing

- New South Wing A - roof area, southern lift overrun (Lift 1) and minor point encroachments by habitable area at the upper floor level.
- New South Wing B - air conditioning (AC) condensers/services and acoustic screening.

New West Wing

- New West Wing A - portions of the roof area, parapet wall, some PV panels and some minor habitable areas at the upper floor level.
- New West Wing B - roof area, AC condensers and services, habitable areas and the roof top terrace at the northern end of the wing.

The extent of the proposed development's encroachments is summarised in the following table:

Table 1: Extent of variations to the 8m height standard

ELEMENT	ENCROACHING ELEMENT/ USE	MAXIMUM HEIGHT PROPOSED	EXTENT OF VARIATION	NEW OR EXISTING
The Ritz main building (alterations to existing building including new roofing material)	Maximum to ridgeline	13.3m (RL986.20)	5.3m (66.25%) (This is less than the existing building which has a maximum height exceedance of 6.9m (86.25%))	Existing

ELEMENT	ENCROACHING ELEMENT/ USE	MAXIMUM HEIGHT PROPOSED	EXTENT OF VARIATION	NEW OR EXISTING
The Ritz Hotel old south wing	Maximum to ridgeline	11.3m (RL984.23)	3.3m (41.25%)	Existing
The Ritz Hotel west south wing	Maximum to ridgeline		4.95m (61.88%)	Existing
New South Wing A	Southern lift overrun (Lift 1)	8.9m (RL 986.55)	0.9m (11.25%)	New
	Parapet wall	8.55 (RL980.35)	0.55m (6.87%)	
New South Wing B	AC condensers and screening	9.1m (RL982)	1.1m (13.75%)	New
New West Wing A	PV panels	8.95m (RL980.7)	0.95m (11.97%)	New
	Parapet wall	9.85m (RL908.35)	1.85m (23.12%)	
New West Wing B	Room L1.37	12.65m (RL980.35)	4.65m (58.12%)	New
	Northern terrace (at top of planter)	10.05m (RL977.70)	2.05m (25.62%)	
	Roof	9.4m (RL980.15)	1.4m (17.5%)	
	AC condensers and screening	11.06m (RL982.06)	3.06m (38.25%)	

Based on height plane diagrams and plan extracts below, the restored/rebuilt elements of 'The Ritz' exceed the height standard by a maximum of 5.3m and the new extensions exceed the height standard by a maximum of 4.65m.

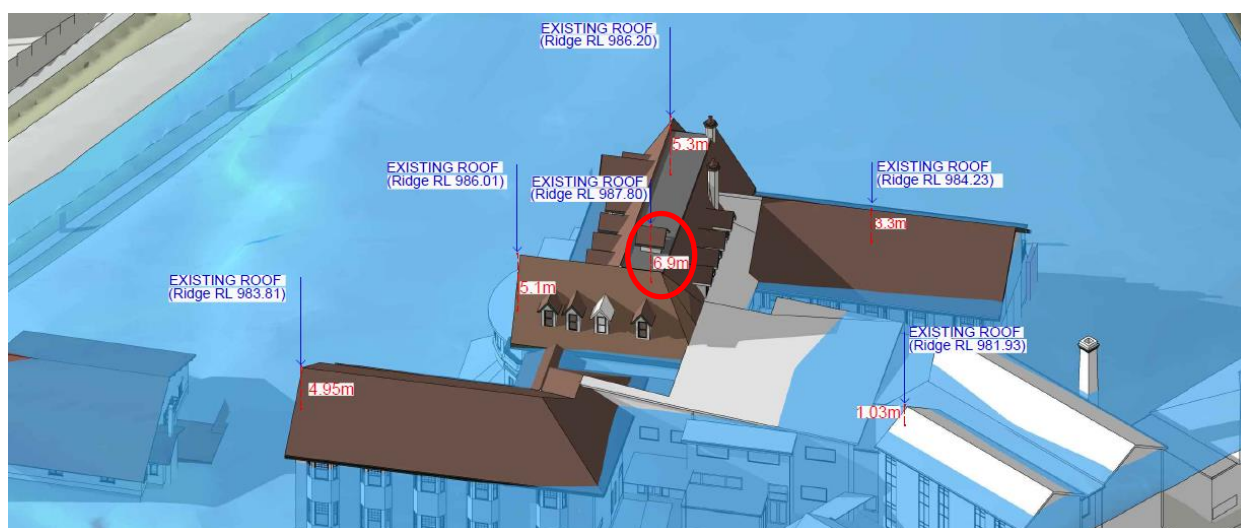


Figure 2: Extract from Height Plane Diagram DA540 - South West View, with the built form above the blue height plane representing the existing development greater than 8m in height (Source: PBD Architects)

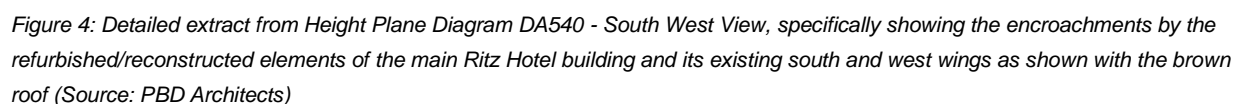
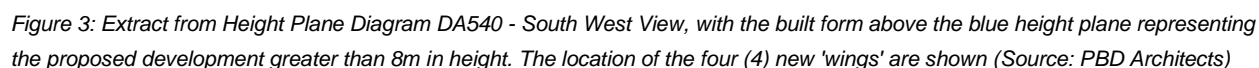




Figure 5: Detailed extract from Height Plane Diagram DA541 - South East View, specifically showing the encroachments by the refurbished/reconstructed elements of the main Ritz Hotel building and its existing south and west wings as shown with the brown roof (Source: PBD Architects)

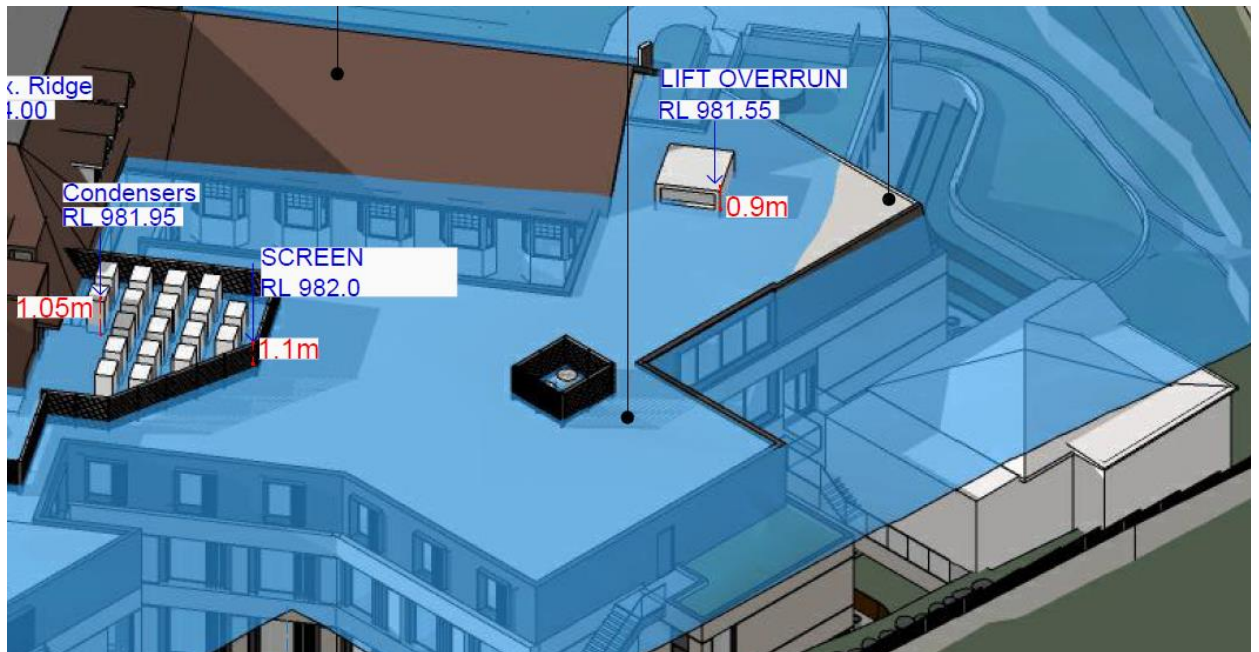


Figure 6: Detailed extract from Height Plane Diagram DA540 - South West View, specifically showing the encroachments by the new South Wing A and new South Wing B, which are both provided with a grey roof (Source: PBD Architects)

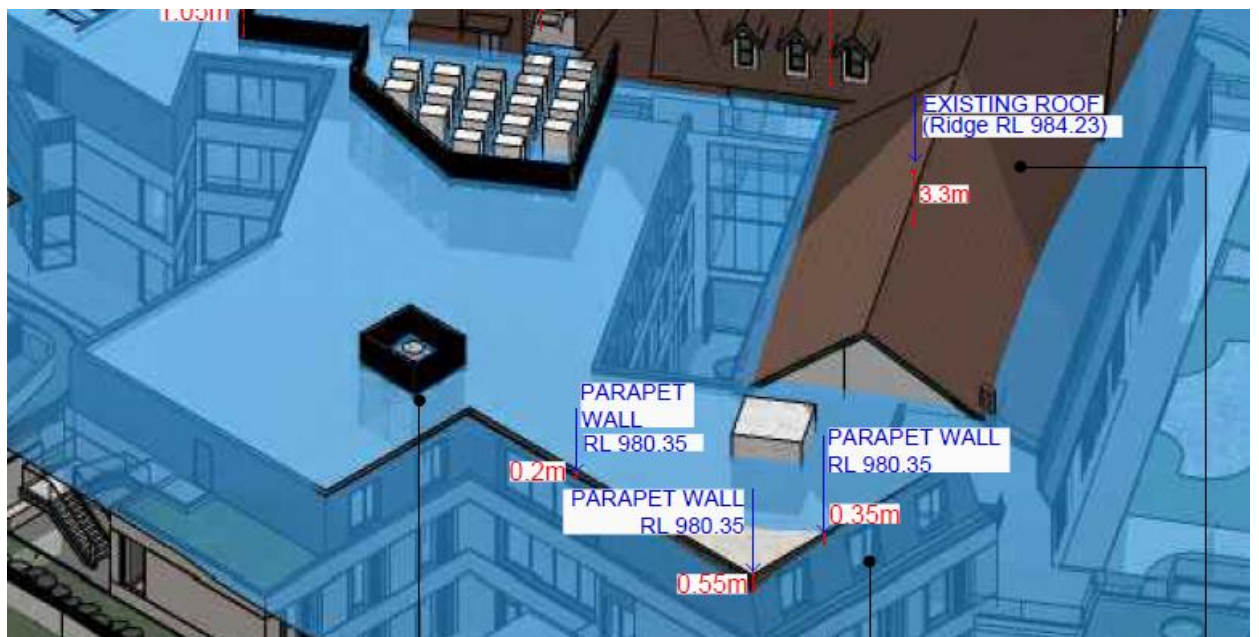


Figure 7: Detailed extract from Height Plane Diagram DA541 - South East View, specifically showing the encroachments by the new South Wing A and new South Wing B, which are both provided with a grey roof. The habitable area of new south wing A encroaches above the 8m height plane as shown (Source: PBD Architects)

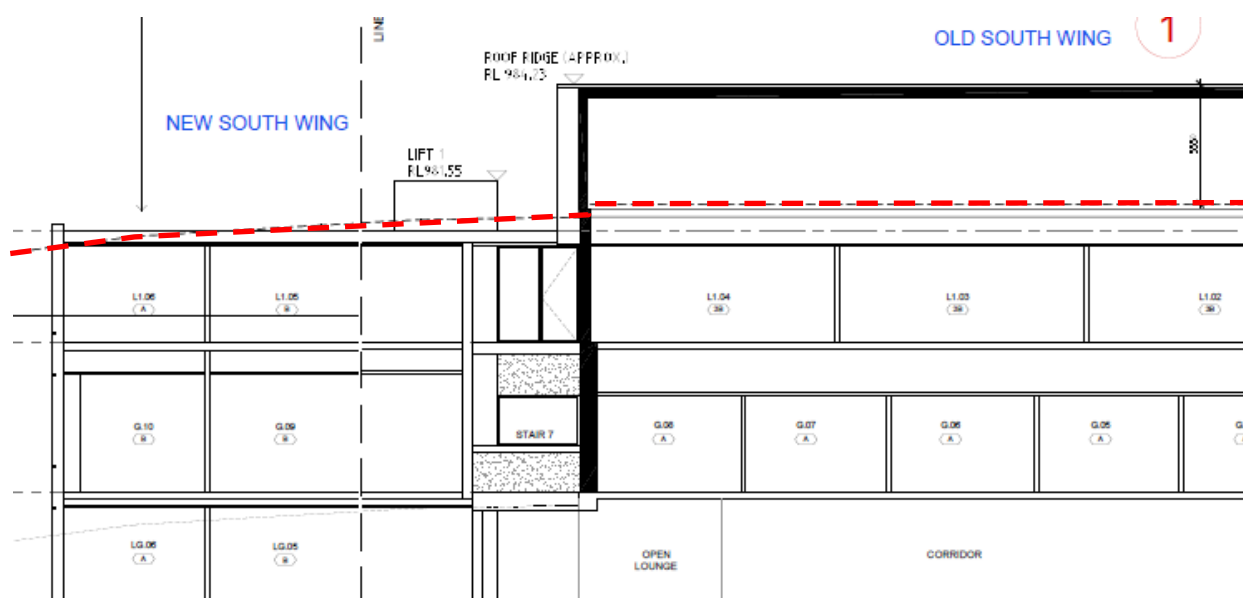


Figure 8: Extract of Section Plan (DA300) detailing the extent of the proposed new South Wing A above the 8m height limit (shown dotted in red). The existing old south wing (to be retained) is shown on the left (Source: PBD Architects)

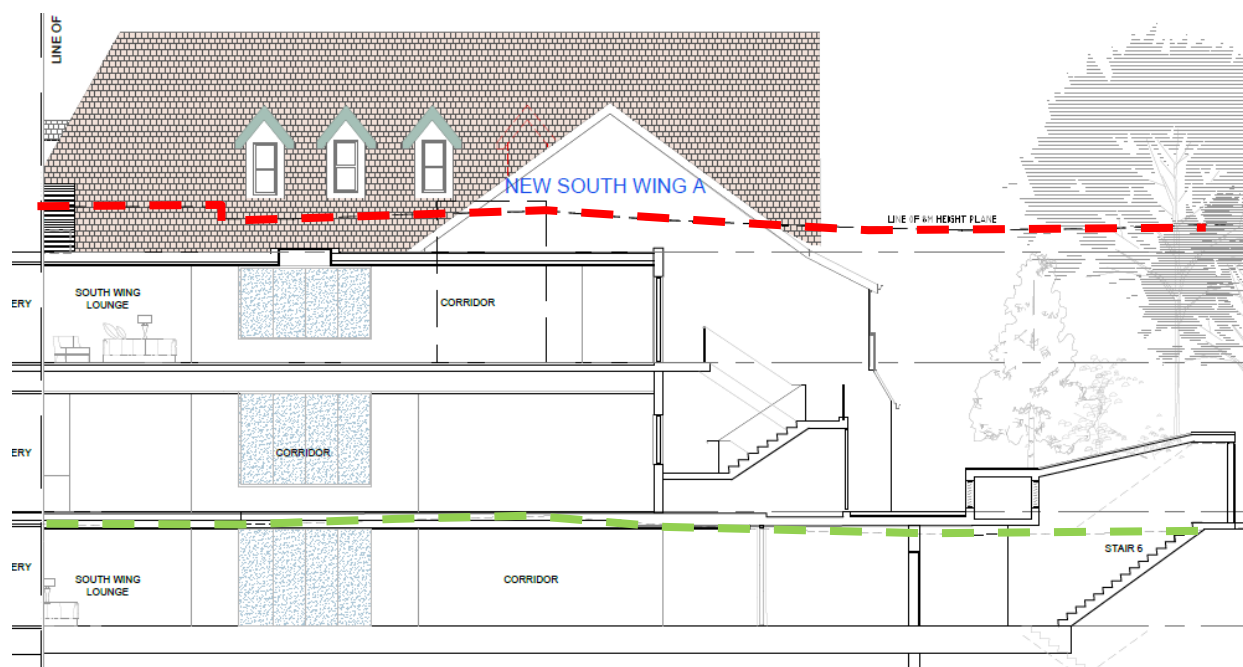


Figure 9: Extract of Section Plan (DA301) detailing the extent of the proposed new South Wing B above the 8m height limit (shown dotted in red). The main Ritz Hotel building is shown behind the new South Wing. New South Wing B appears as 2-storeys from the properties to the south as the lower ground level is below the existing ground level (dashed green) (Source: PBD Architects)

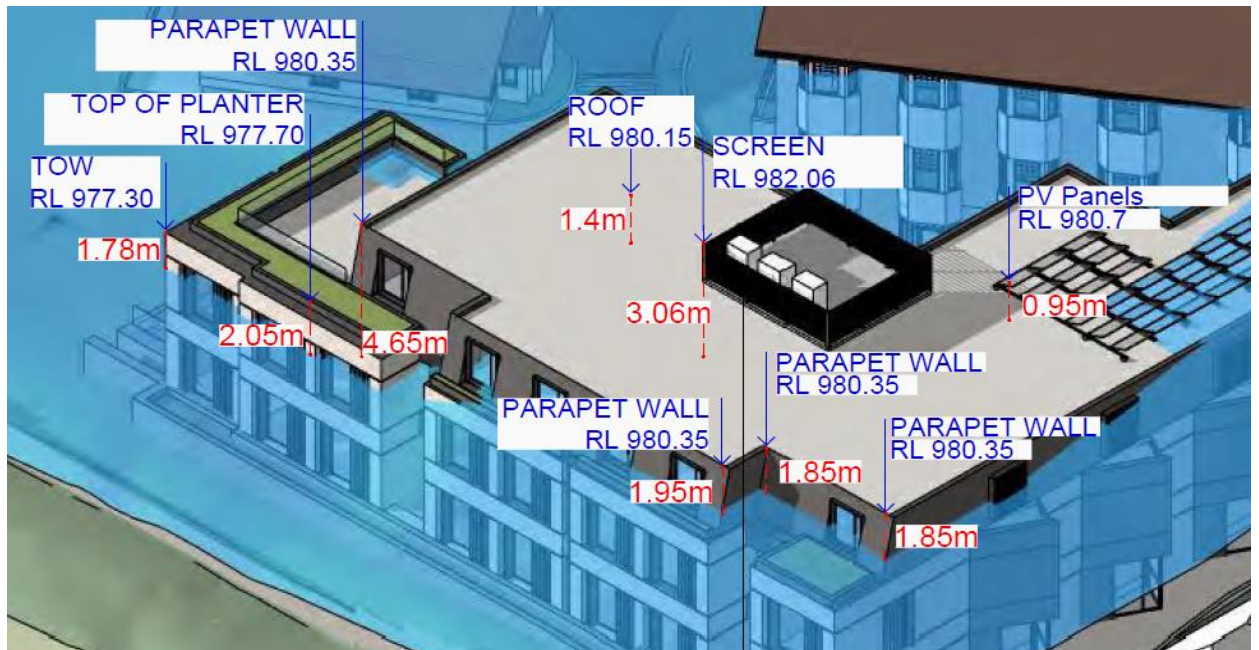


Figure 10: Detailed extract from Height Plane Diagram DA540 - South West View, specifically showing the encroachments by the new West Wing A and new West Wing B, which are both provided with a grey roof (Source: PBD Architects)

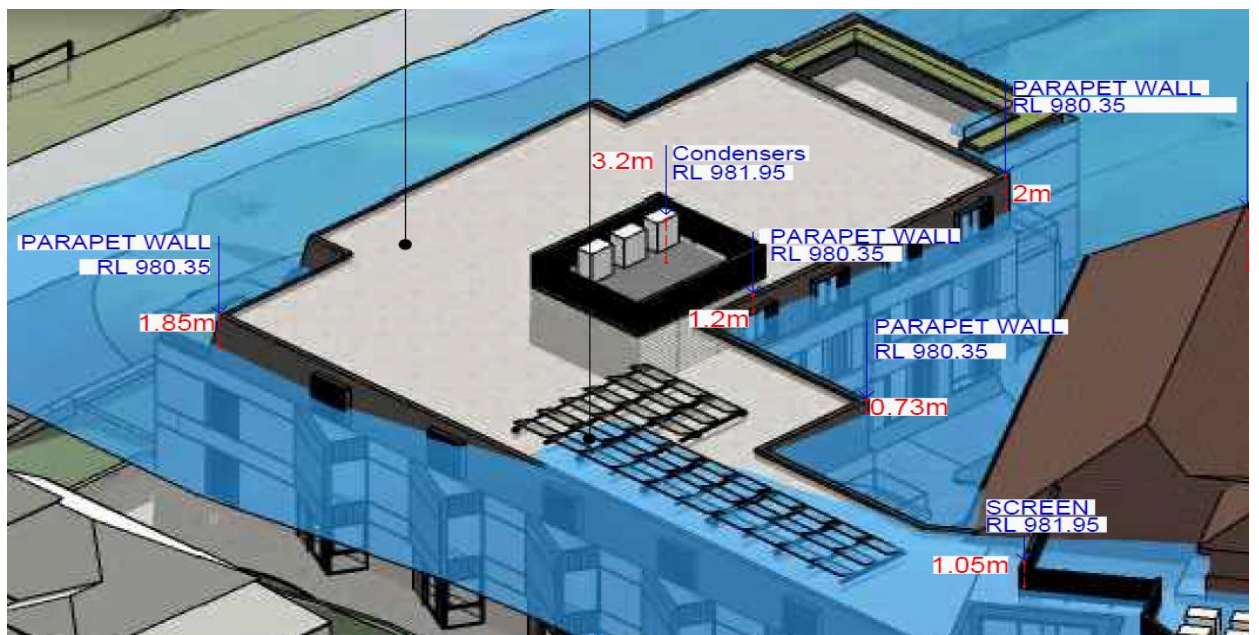


Figure 11: Detailed extract from Height Plane Diagram DA541 - South East View, specifically showing the encroachments by the new West Wing A and new West Wing B, which are both provided with a grey roof (Source: PBD Architects)

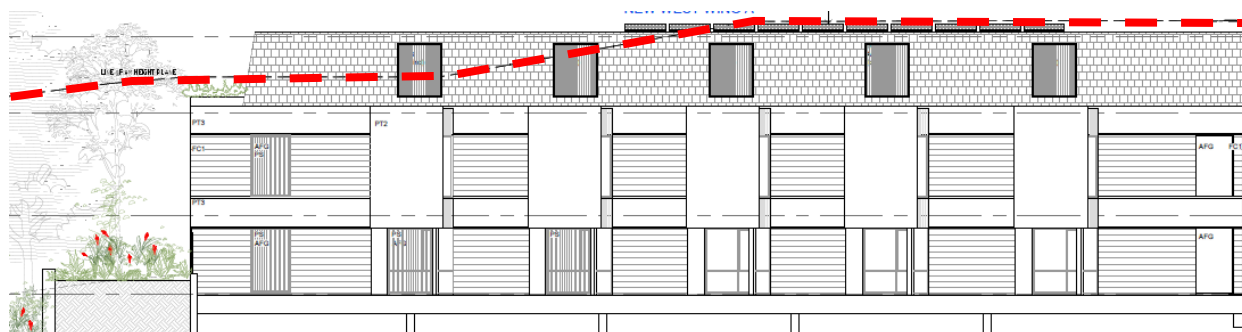


Figure 12: Extract of Section Plan (DA301) detailing the extent of the proposed new West Wing A above the 8m height limit (shown dotted in red) (Source: PBD Architects)

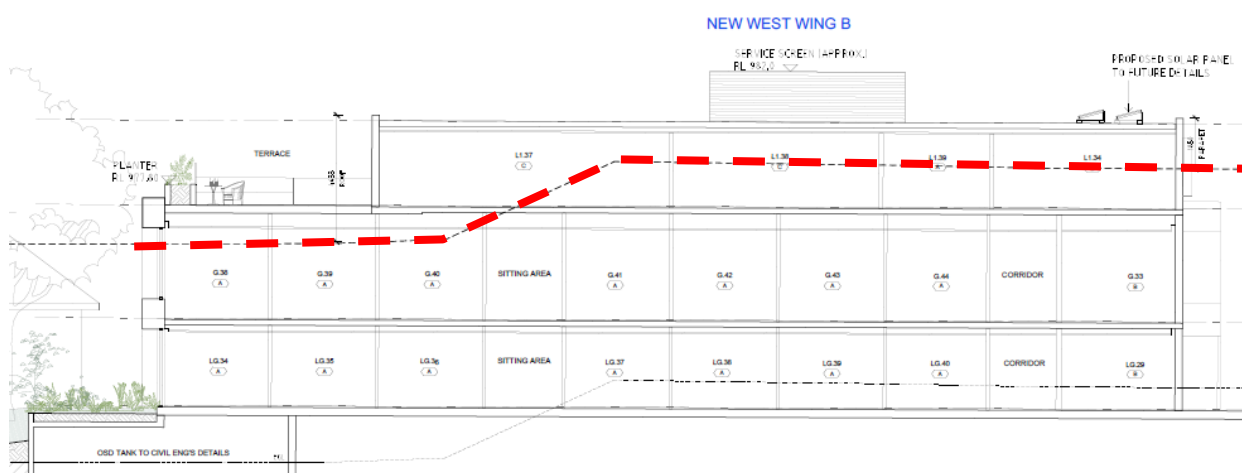


Figure 13: Extract of Section Plan (DA300) detailing the extent of the proposed new West Wing B above the 8m height limit (shown dotted in red) (Source: PBD Architects)

4.3. Comparative Standards

The 8m standard in the BMLEP 2015 is the relevant height standard for this DA. However, it is interesting to note the relevant non-discretionary height standard that specifically applies to RCF developments under the new Housing SEPP is 9.5m, potentially up to 11.5m including servicing equipment.

107 Non-discretionary development standards for hostels and residential care facilities—the Act, s 4.15

...

(2) The following are non-discretionary development standards in relation to development for the purposes of hostels or residential care facilities—

- (a) no building has a height of more than **9.5m**, excluding servicing equipment on the roof of a building,
- (b) servicing equipment on the roof of a building, which results in the building having a height of more than 9.5m—
 - (i) is fully integrated into the design of the roof or contained and suitably screened from view from public places, and
 - (ii) is limited to an area of no more than 20% of the surface area of the roof, and
 - (iii) does not result in the building having a height of more than 11.5m,

The height plane diagram at Figure 14 demonstrates that proposed new west wing B would exceed the 11.5m height standard for residential care facilities under the Housing SEPP by a maximum of 1.15 metres (i.e., 10% variation). New south wing A, new south wing B and new west wing A would comply with the 11.5m height standard, while the existing/reconstructed roof elements of The Ritz building would exceed by 1.45m-1.8m.



Figure 14: Extract from Height Plane Diagram DA542 - South West View, with the built form above the orange height plane representing the proposed development greater than 11.5m in height (Source: PBD Architects)

Section 87 of the Housing SEPP facilitates further height bonuses for seniors housing where residential flat buildings (RFBs) are permissible with consent and the site area exceeds 1,500m². In this case, RFBs are a permissible use in the R1 zone under the BMLEP 2015 if the site meets the minimum area requirement. Thus, if the development was assessed under the Housing SEPP, a building height of up to 11.8m would apply.

87 Additional floor space ratios

(2) Development consent may be granted for development to which this section applies if—

...

(c) the development will result in a building with a height of not more than 3.8m above the maximum permissible building height.

The proposed development would demonstrate minor encroachments when assessed under the Housing SEPP in the following areas:

- Existing Ritz Hotel building – 1.15-1.5m; and
- New West Wing A – 0.85m.

Refer to Figure 15.

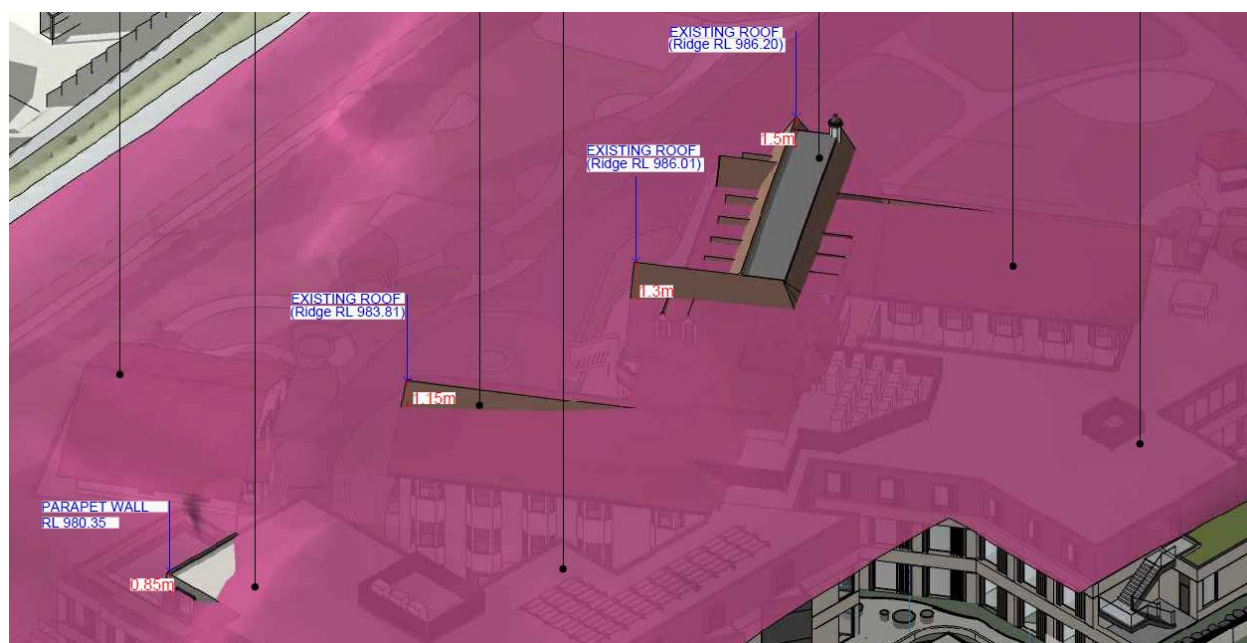


Figure 15: Extract from Height Plane Diagram DA544 - South West View, with the built form above the purple height plane representing the proposed development greater than 11.8m in height (i.e. 8m + 3.8m bonus) (Source: PBD Architects)

A summary of the proposed development's compliance with the height standards within the BMLEP 2015 and Housing SEPP is provided below:

Table 2: Compliance comparison between BMLEP 2015 and the Housing SEPP

ELEMENT	BMLEP 2015	HOUSING SEPP
Ritz Hotel building	X	X
New South Wing A	X	✓
New South Wing B	X	✓
New West Wing A	X	✓
New West Wing B	X	X

5. UNREASONABLE OR UNNECESSARY

In this section it is demonstrated why compliance with the development standard is unreasonable or unnecessary in the circumstances of this case as required by clause 4.6(3)(a) of the LEP.

The Court has held that there are at least five different ways, and possibly more, through which an applicant might establish that compliance with a development standard is unreasonable or unnecessary (see *Wehbe v Pittwater Council* [2007] NSWLEC 827).

The five ways of establishing that compliance is unreasonable or unnecessary are:

1. The objectives of the development standard are achieved notwithstanding non-compliance with the standard;
2. The underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary;
3. The objective would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable;
4. The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence the standard is unreasonable and unnecessary; and
5. The zoning of the land is unreasonable or inappropriate.

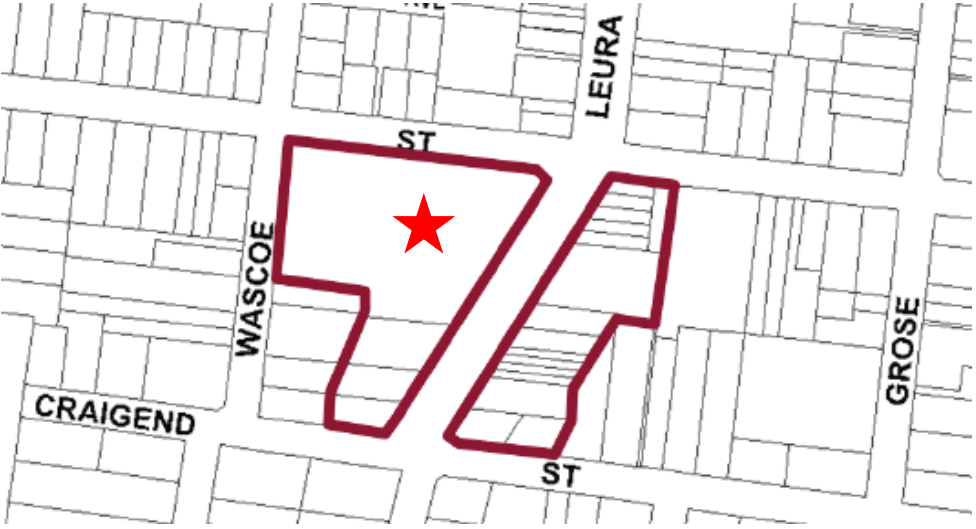
It is sufficient to demonstrate only one of these ways to satisfy clause 4.6(3)(a) (*Wehbe v Pittwater Council* [2007] NSWLEC 827, *Initial Action Pty Limited v Woollahra Municipal Council* [2018] NSWLEC 118 at [22] and *RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130 at [28]) and *SJD DB2 Pty Ltd v Woollahra Municipal Council* [2020] NSWLEC 1112 at [31].

In this case, it is demonstrated below that Test 1 has been satisfied.

5.1. The objectives of the development standard are achieved notwithstanding non-compliance with the standard

The following table considers whether the elements which contravene the development standard (i.e. the refurbished and reconstructed rooftop elements of 'The Ritz', the rooftop elements of the new south and west wings, a lift overrun, air conditioning condensers and associated acoustic screening, rooftop PV panels and portions of the upper floor level of the buildings) achieve the objectives of the development standard (Test 1 under *Wehbe*).

Table 3: Achievement of Objectives of Clause 4.3 Height of buildings development standard of BMLEP 2015.

Objective of height of buildings development standard	Discussion
(a) to ensure that the bulk of development is not excessive and relates well to the local context,	<p><u>The local context</u></p> <p>The site is located to the south-west of the core area of Leura Village in the Southern Tourist Precinct. This precinct serves as a transition between the main commercial area of Leura and the adjacent residential areas and is recognised as being distinct from the commercial and residential areas.</p> <p>The Southern Tourist Precinct includes part of the Leura South Local Heritage Conservation Area (LA106) and four (4) local heritage items, including the subject site. The boundaries of the Southern Tourist Precinct are shown in Figure 16.</p>  <p>Figure 16: Boundaries of the Southern Tourist Precinct (subject site is marked with a red star).</p> <p>The precinct provides a mix of land uses including arts and craft galleries, refreshment rooms and tourist accommodation. The buildings are typically residential in scale and character and include established gardens and mature vegetation. The vegetation in the precinct makes a significant contribution to the character of the area.</p> <p>The existing buildings on the subject site are a significant feature of the Southern Tourist Precinct. The site also includes significant vegetation around most of the perimeter of the site, which screens large portions of the site.</p>

Objective of height of buildings development standard	Discussion
	<p>The dwellings immediately to the south and west of the site, in Wascoe Street, are single storey detached cottages. The dwellings to the west are separated from the site by the Wascoe Street road reserve. Established street tree planting along the western side of Wascoe Street further separates the dwellings from the Southern Tourist Precinct.</p> <p><u>Existing Ritz Hotel building and wings ('The Ritz')</u></p> <p>The existing Ritz building exceeds the 8m height standard. The proposed works relate to the restoration or conservation of the building, and include replacement/reconstruction of the roof areas, dormer windows and the attic space, new roof tiles, acoustic screen fencing and a new connection between the main building and its existing west wing (see Figure 4 and Figure 5). Thus, the proposal is inherently consistent with the existing local context.</p> <p>The non-compliant elements are largely replacement works that will be constructed to the same height as the existing building. The new works are consistent and sympathetic with the existing heritage building, are a result of necessary restoration and are located in the centre of the site where they are well screened by the perimeter plantings. The bulk of the main Hotel building and the two wings, including the works located above the height standard, is therefore not excessive</p> <p><u>New south and west wings</u></p> <p>The new extensions to the building ("new South Wing A", "new South Wing B", "new West Wing A" and "new West Wing B") sit below the maximum height of the existing Ritz buildings. They have been designed to relate to the local context in the following manner:</p> <ul style="list-style-type: none"> ▪ The encroaching roof areas of the new wings are provided with a profile and pitch that is lower than the existing Ritz Hotel building (see section plans at Figure 8 and Figure 9). This ensures that the new extensions are subservient to the existing Ritz Hotel building. ▪ New south wing B is replacing an outdated and unsympathetic extension. Compared to the existing southern wing, new south wing B provides a flat and stepped roof form at its southern end, with greater setbacks than the existing built building, which reduces its bulk when viewed from the south (see Figure 17).

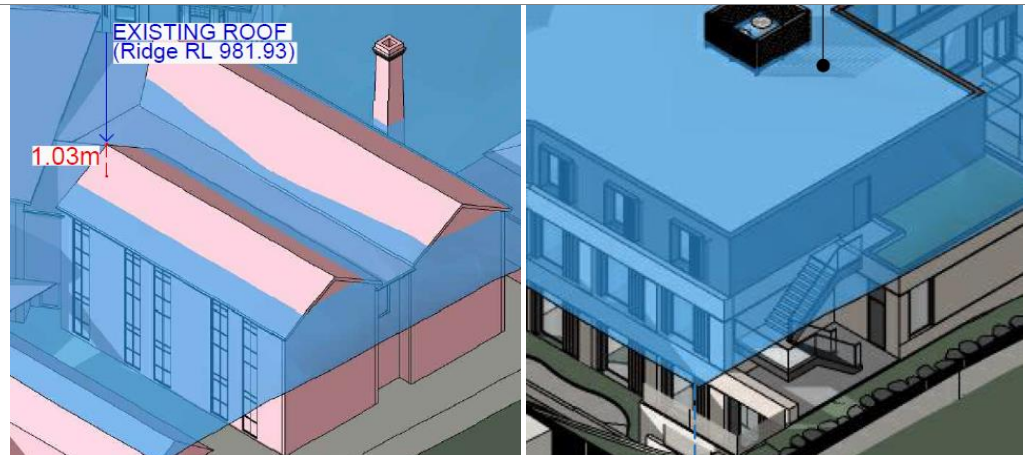



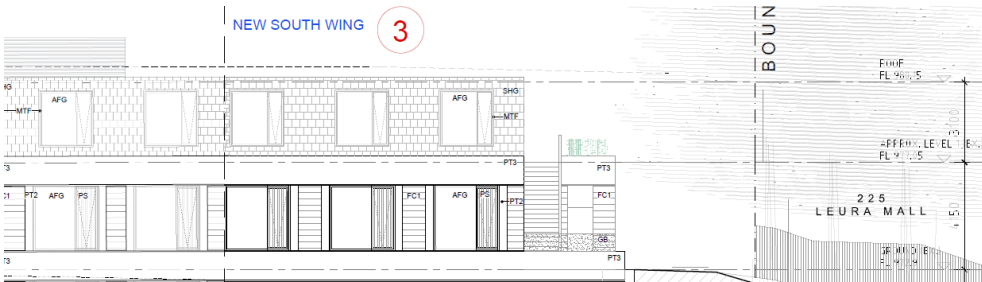


Figure 17: Plans extracts comparing the existing south wing extension with the new south wing B extension in the same general location on site (Source: PBD Architects)

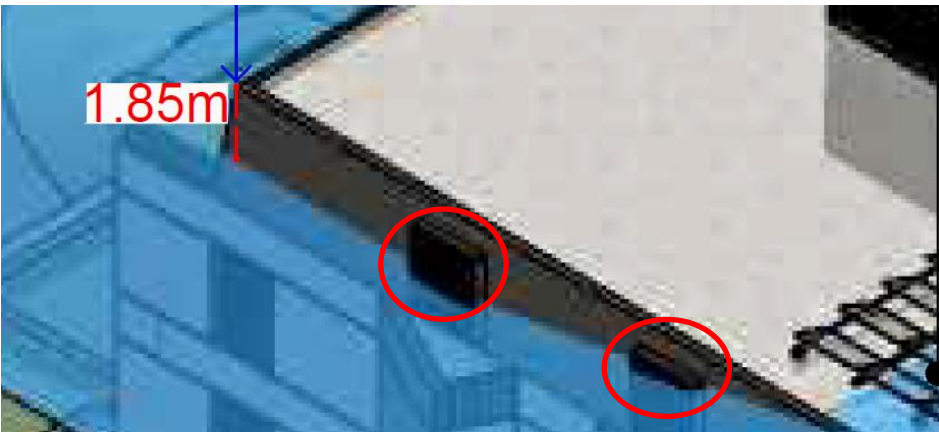
- The encroaching roof areas of new west wing A and the northern portion of new west wing B have been provided with a flat roof design. The roof area will not be visible from the adjoining properties (see Figure 10 to Figure 13). The flat roof to new west wing A is also non-trafficable (except for maintenance purposes) which allows for a low building parapet that integrates with the roof and wall design and does not add additional bulk to the building.
- While some of the PV solar panels are located above the height limit, they are well setback from the edge of the building and therefore will not be highly visible from surrounding properties.
- The rooftop air conditioning (AC) condensers have been fully integrated into the design of the roof. The AC condensers located at the rooftop of new south wing B are screened by fencing and therefore will not be visible.
- The rooftop screen fencing will not be visible from the front of the building or from any public road or place. Significant trees along the southern boundary of the site will also prevent views to this part of the site from the adjoining neighbours to the south.
- The balustrade provided to the trafficable terrace area at the northern end of west wing B is provided in clear glass and therefore does not result in additional bulk to the building. The landscape planter also provides greenery at the rooftop level to reduce the perceived bulk of the building.
- The encroaching lift overrun to new south wing A, with an RL of 981.55 sits significantly lower than the roof ridge of the adjoining Ritz building (RL 984.23) (see Section plan at Figure 8). The lift overrun is also setback from the front edge of the building and will therefore be inconsequential when viewed from the adjacent public domain in terms of its visual perception to contributing bulk to the building.
- The encroachments by the habitable portions of new south wing A (room L1.06 and south wing dining) are limited to the southern part of the upper floor level and are due to the fall of the land. The northern end of the "wing" complies with the maximum 8m height standard. The encroaching habitable areas are point encroachments only and do not add to the bulk of the building when viewed from the neighbouring property because the rooms (L1.06 and south wing dining). The encroaching habitable portions of new south wing A are also provided with

Objective of height of buildings development standard	Discussion
	<p>generous setbacks to the southern boundary of approximately 15.59m. See Figure 7 and Figure 22.</p> <ul style="list-style-type: none"> ▪ A substantial row of tree planting exists along the south-east boundary, adjoining the neighbour at 225 Leura Mall. The elements that exceed the height standard will not be visible from this neighbouring property (see Figure 18). ▪ The encroaching habitable portions of new west wing A, located adjacent to the neighbouring property at 24 Wascoe Street, are limited to the western front end of the upper floor level and are due to the fall of the land. The habitable portion encroaches by a maximum of 1.85m (see Figure 10 to Figure 12). To reduce the perceived bulk of the west wing, a generous setback of 9.2m is provided from the wall of the building to the southern boundary. ▪ The generous setbacks to the southern boundary, including the 9.2m setback to new west wing A wall, provides opportunities for new deep soil planting that will assist in screening the portions of the building that exceed the building height standard. ▪ The upper floor level of west wing B and the roof top terrace at the northern end of the building, exceed the maximum height standard by 2.05m to 4.65m. The combined stepping of the building and recessing of the front façade, reduces the overall bulk of the building and ensures that it is not excessive when viewed from the public domain. West wing B does not share a boundary with any adjoining property and is setback a minimum of 11m from the Wascoe Street front property boundary. New west wing B, including the height exceedances, will not be visible from the residential areas to the south because of its location on the site. From the public domain and the residential dwellings to the west, the height exceedances will be significantly screened by the vegetation that will be retained and supplemented along the Wascoe Street frontage. Street trees on the western side of Wascoe Street further assist in screening views from private properties to the site (see Figure 19).  <p><i>Figure 18: Existing tree planting along the south-east boundary adjoining 225 Leura Mall (Source: GYDE)</i></p>

Objective of height of buildings development standard	Discussion
	<ul style="list-style-type: none"> ▪ The new south and west wings have been designed to complement the existing Ritz Hotel building, Manager's Cottage and Education Cottage, while ensuring that the Ritz Hotel building remains the dominant feature on the site. This is achieved by locating the new development in the southern and western portions of the site and retaining the open landscape setting in the northern and eastern parts of the site. As a result, the elements located above the height standard are largely screened by the Ritz Hotel building when viewed from the Megalong Street frontage or via the traditional main entry into the property off the roundabout. This allows the building to retain its relationship to the main commercial area of Leura to the north and north-east and for the existing significant vegetation to be retained in this part of the site, which is an important feature of the local area. ▪ The elements that exceed the height of building standard, especially those elements adjacent to the southern boundaries, provide an appropriate transition to the residential area to the south. In lieu of proposing a building that provides a minimum 2m side setback to the south-west boundary and then steps up in height as it moves away from the boundary, the proposed development provides a generous 9.2m side setback to the wall at each level. Increased setbacks of 3.3m at the ground floor and 7.9m-15.5m at the first floor are also achieved by providing a stepped built form and retaining the Education Cottage. ▪ When viewed from the Leura Mall street frontage and from the neighbouring properties, the elements located above the height standard do not display excessive bulk because the development appears predominantly as 2-storeys from these locations. This is because the lower ground floor is below the existing ground level and is generally not visible when viewed from the east or south (see Figure 9, Figure 20 and Figure 21). As indicated above, sightlines from the properties to the south are also significantly obscured by the existing mature trees. While the existing trees along the common boundary with 24 Wascoe Street are recommended for removal, the proposed landscape scheme for the site proposes that replacement trees (Magnolia) with a mature height of 6m be provided.  <p><i>Figure 19: Street trees on the western side of Wascoe Street assist in screening views (Source: Google Street View)</i></p>

Objective of height of buildings development standard	Discussion
	 <p>Figure 20: Concept render image (DA720) showing the view from Leura Mall to new South Wing A which appears as a 2-storey building (Source: PBD Architects)</p>  <p>Figure 21: Extract of Elevation Plan (DA201) showing that new South Wing B appears as 2-storeys from 225 Leura Mall as the lower ground level is below the neighbouring existing ground level (dashed green) (Source: PBD Architects)</p> <ul style="list-style-type: none"> ▪ The proposed materials and finishes, including a combination of painted finishes and brickwork, assist in reducing the perceived bulk of the building. ▪ As discussed in response to point (b) below, there will be no unreasonable impacts in terms of privacy or overshadowing, on the adjoining neighbours. The bulk of development is therefore not excessive. <p>This objective will therefore be achieved notwithstanding the non-compliance with the height standard.</p>

Objective of height of buildings development standard	Discussion
	<p><u>Public Interest</u></p> <p>In relation to the public interest, the overall development is also considered to be consistent with the objective of the standard for the reasons stated above and for the following additional reasons:</p> <ul style="list-style-type: none"> ▪ Council has previously granted development consent (X/662/2001) for alterations and additions to 'The Ritz', including a new 2-storey residential wing extending to the south of the Ritz main building. The roof ridge of the existing southern wing is RL 981.93. The previously approved building height is reflected in the current development with the proposed flat roof height of the new south and west wings being RL 980.15. ▪ The existing south wing is setback 3.74m from the southern boundary. In approving the existing south wing, it was established that a building of this height (i.e., RL 981.93) was acceptable in the southern part of the site adjacent to the lower density heritage conservation area. ▪ The extensive landscaping will soften the edges of the new development, enhance the heritage buildings and provide visual layers which further reduce the visual bulk of the buildings. ▪ The new buildings integrate well with the existing development and have been designed so that the bulk/mass does not dominate the existing buildings on or neighbouring the site. ▪ The new building extensions are not inconsistent with the existing building in terms of massing and scale. The new extensions have a lower roof height and are smaller in size than the original buildings, which ensures that the new buildings do not dominate or overwhelm the heritage buildings. <p>For the reasons outlined above, the bulk of the new buildings will not appear excessive and will continue to provide an appropriate transition between the main commercial area of Leura and the adjacent residential areas.</p>
(b) to protect privacy and the use of private open space in new development or on adjoining land,	<p>The subject corner site has 3 street frontages and shares its southern boundary with two (2) residential properties, one being a single storey detached cottage at 24 Wascoe Street and the other being a single storey detached cottage at 225 Leura Mall.</p> <p>The proposed development will not impact on the privacy of these dwellings and the use of their private open space for the following reasons:</p> <ul style="list-style-type: none"> • There will be no overlooking because of the provision of generous setbacks, retention of existing landscaping, proposed new landscaping, orientation of windows away from the southern windows and privacy screens on windows. • There will be no acoustic impact because of the residential nature of the proposed development and the provision of generous setbacks and screening around the AC condensers. • There will be no adverse overshadowing impacts because the proposed development does not preclude the dwellings to the south of the site from achieving the minimum

Objective of height of buildings development standard	Discussion
	<p>solar access required to their private open space or living areas, as well as the north-facing windows of No. 24 Wascoe Street.</p> <p>Further details on how the proposed development will not impact the amenity of its neighbours is below.</p> <p>The site is well separated from the properties to the north, east and west by public roads (Megalong Street, Leura Mall and Wascoe Street respectively) and will not unreasonably impact on the privacy of these properties. The closest adjoining properties are located to the south of the site (Figure 16).</p> <p>The non-compliant elements of the proposal that are located adjacent to the southern neighbouring properties will have no impact upon the privacy of the adjoining dwellings or the use of their private open space areas for the following reasons:</p> <ul style="list-style-type: none"> ▪ The roof areas contain no door or window openings and will be non-trafficable (except for maintenance purposes). As such, there will be no opportunities for overlooking. ▪ The roof top services are integrated into the roof design or provided with acoustic screening to ensure there will be no acoustic impacts. ▪ The upper floor level of new west wing A contains part of 2 bedroom window openings above the maximum height standard (see Figure 22 and Figure 23). The windows are provided with a privacy screen which prevents any outlook from the window. The 2 windows will therefore have no impact on the privacy of the neighbouring dwelling or impact on the use of their private open space.  <p>Figure 22: Height plane diagram (south-east view) showing that new west wing A contains part of 2 window openings that are located above the maximum 8m height standard (circled red) (Source: PBD Architects)</p>

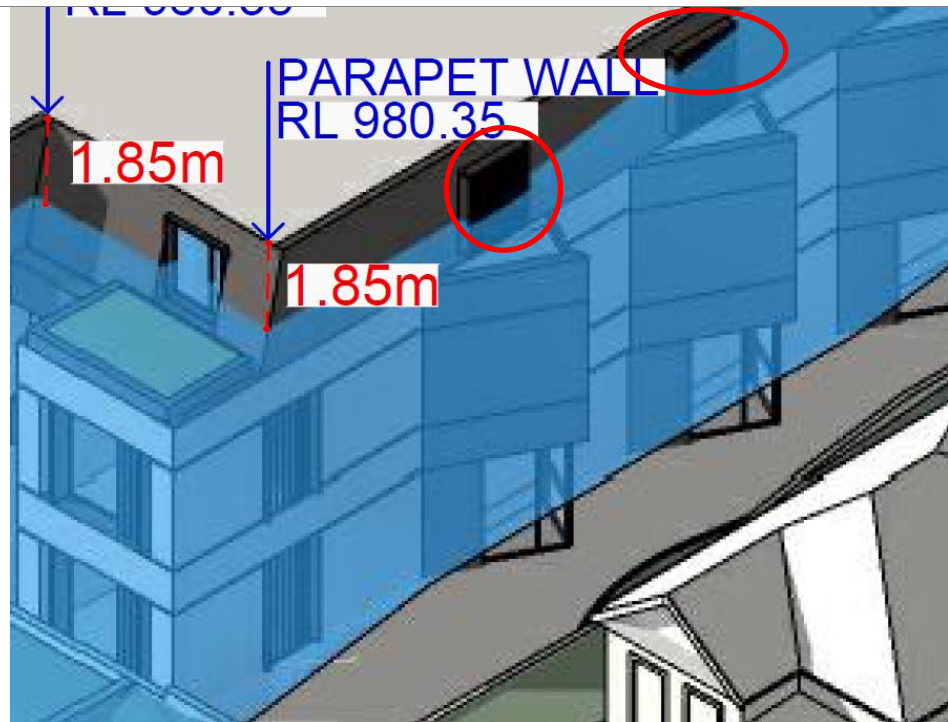



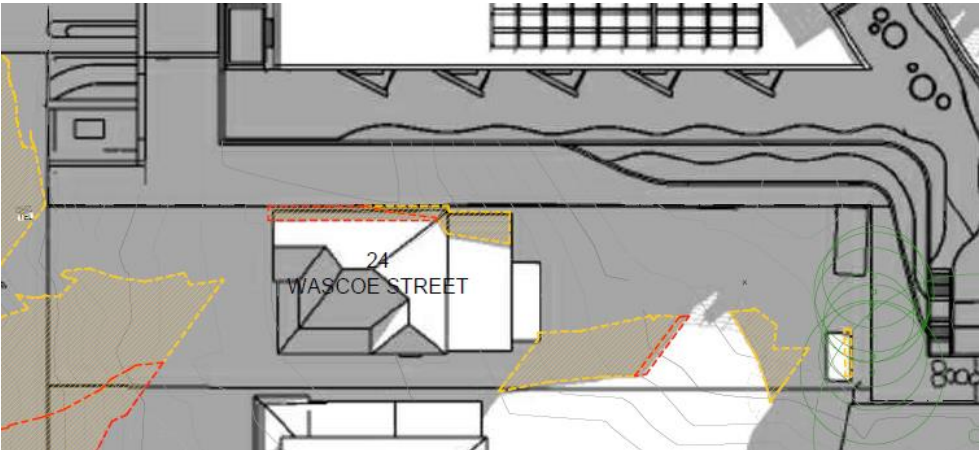

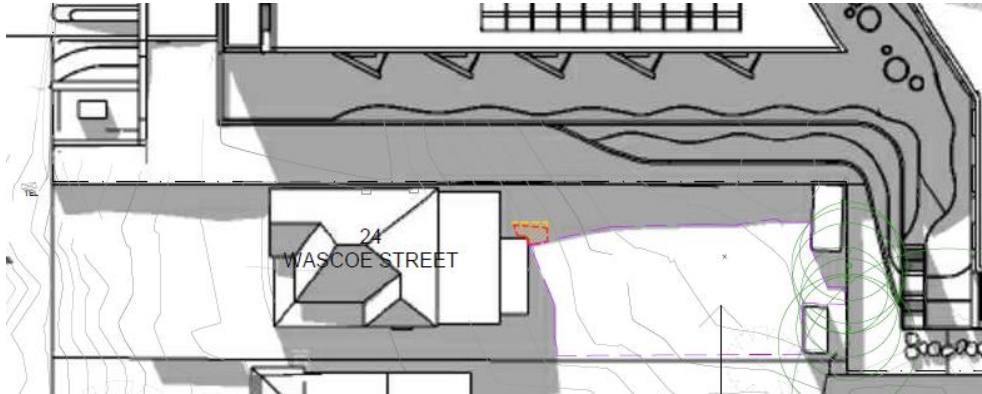



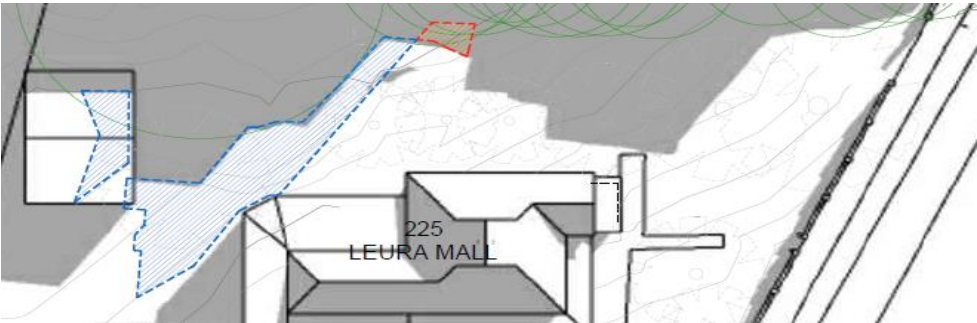
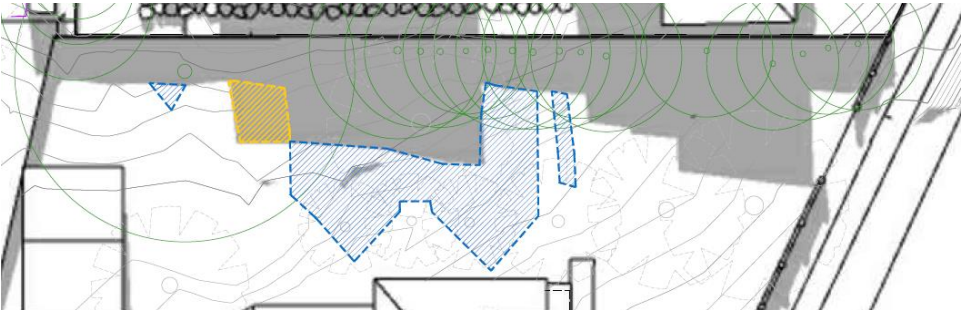
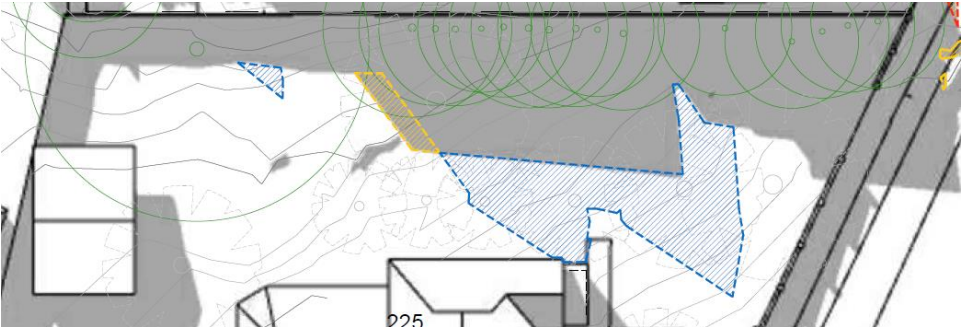
Figure 23: Height plane diagram (south-west view) showing that new west wing A contains part of 3 window openings that are located above the maximum height standard (circled red) (Source: PBD Architects)

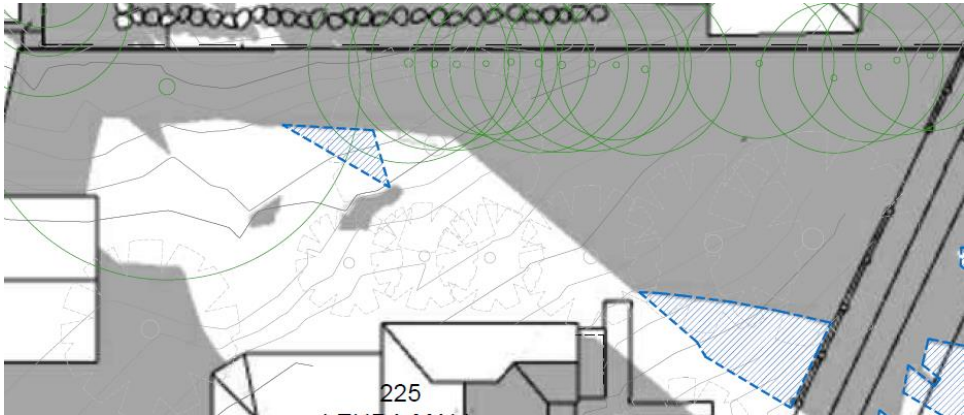
- The shadow analysis confirms the following in relation to the elements that encroach above the maximum 8m height standard:
 - 24 Wascoe: A minor portion of the private open space area will receive additional overshadowing at 10am. The height exceedance will also cause additional overshadowing to the private open space between 1pm and 3pm. The internal living areas are located on the southern side of the dwelling and will therefore not be overshadowed by the development. The north-facing windows of the dwelling are bedrooms, but existing solar access to these windows is to be retained.
 - 225 Leura Mall: A minor portion of the private open space will receive additional overshadowing at 10am from the height exceedance. The areas of reduced overshadowing, however, are greater than the areas of additional overshadowing caused by the height exceedance. The proposed development will not overshadow any part of the dwelling.

The shadow analysis demonstrates, however, that while the height exceedance will cause some additional overshadowing, the adjoining neighbours will maintain a minimum of 3 hours of solar access to at least 50% of their private open space areas in mid-winter between 9am and 3pm, and that the proposed development will not obstruct sunlight any neighbouring living room window. Extracts from the shadow diagrams are provided below. Based on the shadow analysis, the use of the private open space area will not be impacted.

Objective of height of buildings development standard	Discussion
	<p>SHADOW DIAGRAM LEGEND:</p> <ul style="list-style-type: none">  ADDITIONAL OVERSHADOWING BY PROPOSED RACF  IMPROVEMENT IN OVERSHADOWING BY PROPOSED RACF  ADDITIONAL OVERSHADOWING IMPACT BY PORTION OF PROPOSAL OVER 8M HEIGHT PLANE (8.5m SETBACK SCHEME)  <p><i>Figure 24: Extract from shadow diagram showing the shadow impact at 9am to 24 Wascoe Street (Source: PBD Architects)</i></p>  <p><i>Figure 25: Extract from shadow diagram showing the shadow impact at 12noon to 24 Wascoe Street (Source: PBD Architects)</i></p>

Objective of height of buildings development standard	Discussion
	<div data-bbox="438 734 1423 1126"></div> <div data-bbox="438 1137 1423 1205"><p>Figure 26: Extract from shadow diagram showing the shadow impact at 1pm to 24 Wascoe Street (Source: PBD Architects)</p></div> <div data-bbox="438 1288 1423 1657"></div> <div data-bbox="438 1668 1423 1736"><p>Figure 27: Extract from shadow diagram showing the shadow impact at 3pm to 24 Wascoe Street (Source: PBD Architects)</p></div>

Objective of height of buildings development standard	Discussion
	 <p>Figure 28: Extract from shadow diagram showing the shadow impact at 9am to 225 Leura Mall (Source: PBD Architects)</p>  <p>Figure 29: Extract from shadow diagram showing the shadow impact at 12noon to 225 Leura Mall (Source: PBD Architects)</p>  <p>Figure 30: Extract from shadow diagram showing the shadow impact at 2pm to 225 Leura Mall (Source: PBD Architects)</p>

Objective of height of buildings development standard	Discussion
	 <p data-bbox="440 1160 1452 1218"><i>Figure 31: Extract from shadow diagram showing the shadow impact at 3pm to 225 Leura Mall (Source: PBD Architects)</i></p> <p data-bbox="440 1249 1460 1339">The elements located above the height standard will also have no unreasonable impacts on the future occupant's privacy or the use of the open spaces within the development itself for the following reasons:</p> <ul data-bbox="440 1352 1481 1957" style="list-style-type: none"> ▪ The works proposed to the existing Ritz Hotel and wings, and located above the height standard, include replacement of existing elements. ▪ The roof and rooftop elements, including the lift overrun, acoustic screen fencing, PV panels and AC condensers, contain no openings and will be non-trafficable (except for maintenance purposes) and therefore provide no opportunities from which to overlook future occupant's rooms or the open spaces within the site. ▪ The rooftop services are integrated into the roof design or provided with acoustic screening to ensure that there will be no associated acoustic privacy impacts. ▪ The orientation of the terrace area at the northern end of west wing B, together with the perimeter planter boxes and landscaping, ensures that occupants will not be able to access the edge of the terrace and overlook any rooms or open space areas. Use of the terrace will be limited at night to ensure that there are no noise impacts to adjoining rooms. ▪ The bedroom window openings located above the maximum height standard and orientated towards either the street or property boundaries, will have no impact on the privacy of the future residents given that the windows are not located directly opposite any neighbouring window and would not have a direct line of sight from any public place. ▪ The bedroom window openings located above the maxim height standard that are orientated towards the centre of the site (i.e., those rooms overlooking 'Garden C'), will have no impact

Objective of height of buildings development standard	Discussion
	<p>on the privacy of the future residents given that the bedroom window openings are staggered, are not located directly opposite each other and are separated by at least 7.1m.</p> <ul style="list-style-type: none"> ▪ The proposed residential care facility does not provide any private open space areas, with the expansive landscaped grounds being equally accessible by all occupants. ▪ The proposed development comprises north facing sitting areas and lounge rooms that will be accessible to all residents. The proposed development also includes extensive communal open space areas in the northern, eastern and western parts of the site where direct solar access is most readily available. This includes the proposed easterly stroll garden, former croquet lawn and entry drive and forecourt. <p>This objective will therefore be achieved notwithstanding the non-compliance with the height standard.</p> <p><u>Public Interest</u></p> <p>In relation to the public interest, the overall development is also considered to be consistent with the objective of the standard for the reasons stated above and for the following additional reasons:</p> <ul style="list-style-type: none"> ▪ A minimum distance separation of approximately 17.5 metres is provided between the dwelling house at No. 225 Leura Mall and the proposed development. Furthermore, significant, established vegetation exists and additional tree planting is proposed along the south-east boundary. For these reasons, the proposed development will have no impact on the visual or acoustic privacy of the dwelling at No. 225 Leura Mall or on the privacy of the open space areas associated with this dwelling. ▪ The open stairs provided at the southern end of the new south wings are required for emergency fire exit and therefore will be used infrequently. This will ensure the stairs do not impact on the adjoining neighbour's privacy. ▪ A comparison between the existing and proposed south wings show that the number of windows orientated towards No. 24 Wascoe Street has been reduced. ▪ A generous setback of 9.2 is provided from the wall of new west wing A to the south-west boundary. The setback allows for the proposed new deep soil planting along this boundary (i.e., Japanese Maple trees with a mature height of 6m). ▪ New south wing B and new west wing A sit lower than the neighbouring properties and will have the appearance of a 2-storey building when viewed from the neighbouring properties. As a result, there are no overlooking opportunities from the window openings provided at the lower ground levels of the buildings. ▪ The ground level windows provided to the new west wing A are provided at a 45-degree angle to prevent direct outlook to the neighbouring property. The provision of the new boundary

Objective of height of buildings development standard	Discussion
	<p>landscaping will further ensure that there are no opportunities for overlooking from the ground level of the new west wing A to the neighbouring property at No. 24 Wascoe Street.</p> <ul style="list-style-type: none"> ▪ The upper floor level of new west wing A contains windows that are orientated towards No. 24 Wascoe Street. These windows are provided with a privacy screen which prevents any outlook from the window. The new boundary landscaping will also ensure that there will be no privacy impacts to the neighbouring dwelling at No. 24 Wascoe Street or its associated private open spaces. ▪ The development has been designed to maximise the amenity of future residents. Bedroom window openings have been designed and located to ensure residents will be provided with suitable levels of acoustic and visual privacy. ▪ All residents will have equal access to the communal spaces (internal and external) on the site. ▪ Shadow diagrams have been prepared by PBD Architects which demonstrate that the private open space areas of the neighbouring properties will receive unobstructed sunlight to at least 50% of its area for a minimum of 3 hours between 9am and 3pm in mid-winter. The proposed development will also have no impact on solar access to the internal living areas of the adjoining properties. <p>For the reasons outlined above, the privacy and the use of private open space within the development and on adjoining land, will be protected.</p>
(c) to nominate heights that will provide a transition in built form and land use intensity,	<p>The proposed development provides an appropriate transition to surrounding development for the following reasons:</p> <ul style="list-style-type: none"> ▪ Non-compliances associated with new works located within the site so there is a transition and exceedance of DCP setbacks. ▪ A reduction in land use intensity is proposed as the site previously had 150 beds. ▪ The cottage is being retained to maintain the existing transition of built form. ▪ The new buildings will appear as two-storeys from Leura Mall and the adjoining properties immediately to the south. <p><u>Public Interest</u></p> <p>In relation to the public interest, the overall development is also considered to be consistent with the objective of the standard for the reasons stated above and for the following additional reasons:</p> <ul style="list-style-type: none"> ▪ The proposal has been designed to ensure that no new development is higher than the ridgeline of the existing Ritz building. ▪ The new buildings have been sited to give due prominence to the existing heritage items on site (Manager's Residence, Education Cottage and former Ritz Hotel) and maintain the relationship with the commercial precinct to the north.

Objective of height of buildings development standard	Discussion
	<ul style="list-style-type: none"> ▪ In approving the existing south wing it was established that a building of this height (i.e. RL 981.93) was acceptable in the southern part of the site adjacent to the lower density heritage conservation area. The proposed development seeks to maintain a similar scale of development in the southern portion of the site. ▪ The roof ridge of the existing southern wing is RL 981.93. Although the number of storeys is increasing, the proposed roof height of the new south and west wings is 980.15 and therefore are consistent with the current and desired built form for the site. ▪ In lieu of proposing a building that provides a minimum 2m side setback to the south-west boundary and then steps up in height as it moves away from the boundary, the proposed development provides a generous 9.2m side setback to all levels of the new west wing A. This allows greater landscape opportunities in the setback area, while also providing an appropriate transition in built form to the lower scale residential dwellings to the south. ▪ The proposed new development is located at the rear of the existing heritage building and will not be highly visible from the main entrance to the site or from the front of the building. ▪ The new south wings and new west wing A sit lower than the neighbouring properties. This means that the development has the appearance of a 2-storey building when viewed from the neighbouring properties and from Leura Mall. The 2-storey appearance provides a transition between the 3 storey Ritz Hotel building in the centre of the site and the single storey dwellings to the south. ▪ The new development complements the scale of the Ritz building and will reinstate its status as a landmark site. ▪ The built form and land use intensity will not adversely impact on the streetscape or the adjoining Heritage Conservation Area. ▪ The proposed rear additions are visually subservient to the main building on the site and will not be highly visible within the streetscape due to the extensive perimeter planting (both retained and proposed). <p>For the reasons outlined above, the proposed building heights will provide an appropriate transition in built form and land use intensity.</p>
(d) to ensure an appropriate height transition between new buildings and heritage items.	<p>Figure 32 below shows the location of the surrounding heritage items listed under the BMLEP 2015. Figure 33 shows the additional heritage items located in the 'Deferred Matter' area (BMLEP 2005 and draft BMLEP 2013).</p>

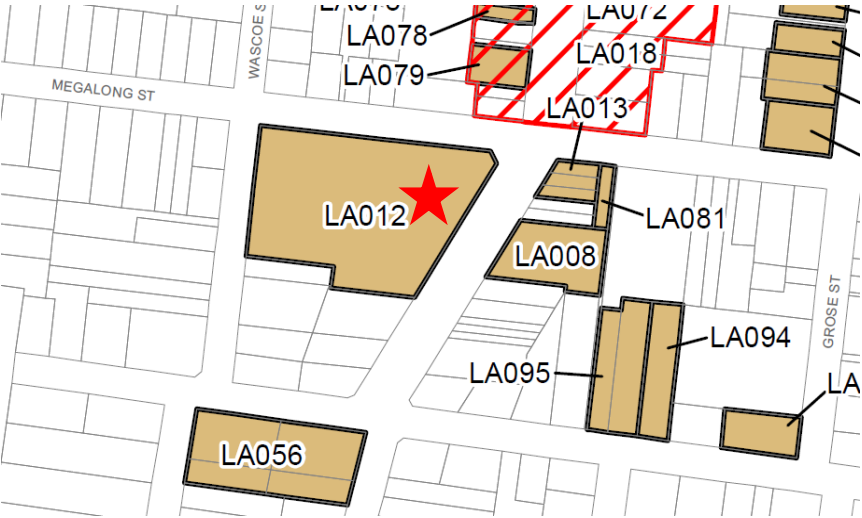

Objective of height of buildings development standard	Discussion
	 <p>Figure 32: Extract from BMLEP 2015, with the heritage items shaded brown. The subject site (marked with a red star) is identified as local heritage item LA012 (The Ritz and interiors) (Source: NSW Legislation)</p>



Figure 33: In addition to those heritage items mapped under the BMLEP 2015, the 'Deferred Matter' area mapping includes additional heritage items which are shown highlighted in blue (Source: Blue Mountain Council interactive maps)

- The proposed development does not exceed the existing maximum height. All surrounding heritage items are well separated from new works by significant building setbacks and road reserves.
- Most of the elements that exceed the height standard are not visible and are well separated from the nearby heritage items due to their orientation and location on the site. The separation distances ensure that an appropriate transition in heights is maintained.
- The elements that exceed the height standard do not form part of the Megalong Road (northern side) streetscape and have a limited relationship to the heritage items to the north of the site. This is due to the road separation and because the new works will be in the southern part of the site which is well removed from the heritage items to the north. The new buildings will also not be highly visible from the north due to the screening offered by the vegetation and existing built form.
- New south wing A is located opposite a heritage item in Leura Mall. This heritage item, however, is not visible within the Leura Mall streetscape due to the dense tree planting along the front boundary. Notwithstanding, the new south wing A has the appearance of a 2-storey building when viewed from Leura Mall and therefore provides a suitable height transition between the adjoining 3 storey Ritz building and the 1-2 heritage buildings in Leura Mall.
- The heritage item at No. 26 Wascoe Street is not highly visible from the street due to the dense landscaping within the front setback of the dwelling. The relationship between the proposed development and the heritage item at No. 26 Wascoe Street therefore cannot be seen within streetscape.
- The retained and proposed landscaping within the front and side/rear setbacks of the development site means that the new west wing will not be highly visible from No. 26 Wascoe.
- Part of new south wing B will be visible from the rear yard of No. 26 Wascoe Street. An appropriate height transition, however, is provided because the building sits lower and has the appearance of a 2-storey building when viewed from the neighbouring properties.

Objective of height of buildings development standard	Discussion
	<p>Furthermore, the roof height of the new south wing B (RL 980.15) is slightly lower than the existing south wing (RL 981.93) and as such, the existing height transition will be maintained.</p> <ul style="list-style-type: none"> ▪ An appropriate height transition is provided between the new building works in the western part of the site and the heritage item at No. 26 Wascoe, because No. 24 Wascoe Street is located between the 2 properties. ▪ The exceeding elements adjacent to the south-west boundary provide an appropriate transition to the properties to the south because they are provided with a generous 9.2m side setback.  <p><i>Figure 34: The new building works (excluding the roof top services) comply with the maximum building height in the areas that immediately connect with the existing Ritz Hotel heritage item (see areas shown circled in red) (Source: PBD Architects)</i></p> <p><u>Public Interest</u></p> <p>In relation to the public interest, the overall development is also considered to be consistent with the objective of the standard for the reasons stated above and for the following additional reasons:</p> <ul style="list-style-type: none"> ▪ No new building element exceeds the height of the existing heritage item on site (i.e. 'The Ritz'), ensuring that the new built form is subservient and manages transition of scale appropriately. ▪ The existing development on site is located closer to No. 26 Wascoe than the proposed development. The greater separation assists in maintaining an appropriate height transition.

Objective of height of buildings development standard	Discussion
	<ul style="list-style-type: none">▪ The heritage components are close together and their placement to the centre of the site with extensive gardens to the east and north means they will continue to read as a group set in landscaped gardens. <p>For the reasons outlined above, an appropriate height transition will be provided between the proposed new building works and the heritage items on and surrounding the site.</p>

As demonstrated in Table 3 above, the objectives of the height of buildings development standard are achieved notwithstanding the proposed variation.

In accordance with the decision in *Wehbe v Pittwater Council* [2007] NSWLEC 827, *Initial Action Pty Limited v Woollahra Municipal Council* [2018] NSWLEC 118, *Al Maha Pty Ltd v Huajun Investments Pty Ltd* (2018) 233 LGERA 170; [2018] NSWCA 245 and *RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130 and *SJD DB2 Pty Ltd v Woollahra Municipal Council* [2020] NSWLEC 1112 at [31], therefore, compliance with the 'Height of Buildings' development standard is demonstrated to be unreasonable or unnecessary and the requirements of clause 4.6(3)(a) have been met on this way alone.

6. SUFFICIENT ENVIRONMENTAL PLANNING GROUNDS

In this section it is demonstrated that there are sufficient environmental planning grounds to justify contravening the 'Height of buildings' development standard as required by clause 4.6(3)(b) of the LEP.

In *Initial Action Pty Ltd v Woollahra Council* [2018] NSWLEC 118, Preston CJ observed that in order for there to be 'sufficient' environmental planning grounds to justify a written request under clause 4.6 to contravene a development standard, the focus must be on the aspect or element of the development that contravenes the development standard, not on the development as a whole.

Furthermore, in *Initial Action* the Court clarified that there does not need to be a "better" planning outcome:

87. The second matter was in cl 4.6(3)(b). I find that the Commissioner applied the wrong test in considering this matter by requiring that the development, which contravened the height development standard, result in a "better environmental planning outcome for the site" relative to a development that complies with the height development standard (in [141] and [142] of the judgment). Clause 4.6 does not directly or indirectly establish this test. The requirement in cl 4.6(3)(b) is that there are sufficient environmental planning grounds to justify contravening the development standard, not that the development that contravenes the development standard have a better environmental planning outcome than a development that complies with the development standard.

In *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90, Pain J observed that it is within the discretion of the consent authority to consider whether the environmental planning grounds relied on are particular to the circumstances of the proposed development on the particular site.

The environmental planning grounds to justify the departure of the 'Height of buildings' standard are as follows:

- Strict compliance with the development standard would not result in a better outcome for development, as it would prevent refurbishment and adaptive use of the heritage building. It would unnecessarily complicate orderly and economic development of the land in accordance with the intentions of the zoning and the objectives of the *Environmental Planning and Assessment Act 1979*.
The Ritz nursing home previously operated approximately 150 beds but was closed in 2017 due to noncompliance with required aged care facility codes. The current proposal seeks to redevelop the site, refurbish the heritage items and provide a replacement aged care facility that acknowledges the heritage significance of the site and is in accordance with today's standards. The success of the project relies on retaining the same number of beds. However, to meet the expectations and needs of consumers for privacy, dignity and amenity, single rooms are proposed. A reduction in height, and therefore the number of storeys, would result in considerably less rooms than previously provided on the site.
- The Blue Mountains Local Strategic Planning Statement (LSPS) and Local Housing Strategy (LHS) recognise that the Blue Mountains is experiencing and will continue to experience an aging of the population. In response, the Blue Mountains Council has recognised that there is a shortfall of residential care facility places (especially in the upper Mountains area including Leura) and a need to broaden housing choice in the LGA. The development of the site for residential care will:
 - assist in achieving a portion of the identified shortfall;
 - provide appropriate infill development within an existing town centre; and
 - provide significant benefits to the aging community.

The vast majority of housing in the Blue Mountains (92%) is free standing houses. Given that the Blue Mountains population is ageing, and certain sections of the community are experiencing housing stress, the provision of a residential care facility will provide housing choice for ageing residents, allowing residents to age in place and remain within and connected to their community.

- The existing scale of the heritage buildings on the site is already two and three storeys, with the ridges and parapets of the former Ritz Hotel already well exceeding the 8m height standard. The variation exceeds the maximum height limit by up to 5.3m (66.25% variation) at its greatest. However, the majority of the building mass, however, is below or in line with the 8m height standard.
- A Heritage Impact Statement (HIS) has been prepared by John Oultram Heritage and Design. The HIS recognises:

The aged development requires a critical mass of accommodation to be a feasible development and the provision of buildings to the south and west:

- *Allows the retention of the heritage buildings on the site*
- *Allows the retention of the heritage gardens and features to the east and north*
- *Limits the footprint of the new buildings*
- *Allows setbacks between the new buildings and the built heritage components to limit their visual impact.*

The HIS recognises that while a cleared site would allow a lower scale development across the site, the proposal seeks to conserve the heritage components and gardens and provide adequate separation with new buildings to the south and west to compensate for the loss of built volume resulting from the heritage constraints.

The proposal involves the retention and adaptive re-use of the existing heritage buildings. This is a condition of the site which cannot be reduced or changed for heritage reasons. Cumulatively, the heritage conditions, the design requirements for high-level residential care facility, and the required servicing arrangements result in the variations to the height standard.

- The proposed development achieves the objects in Section 1.3 of the EPA Act, specifically:
 - The proposal promotes the orderly and economic use and development of land (1.3(c)).
 - The proposal promotes the sustainable management of built and cultural heritage by maintains the major heritage buildings on the site and proposing an appropriate adaptive reuse (1.3(f)).
 - The development represents good design and amenity (1.3(g)).
 - The building as designed facilitates its proper construction and will ensure the protection of the health and safety of its future occupants (1.3(h)).

The additional height will not result in any detrimental privacy or overshadowing impacts to neighbouring properties.

There are no significant view lines or vistas from the public domain or from surrounding residential properties that are affected as a consequence of the departure in height.

- When considered against the Housing SEPP provisions, including the non-discretionary building height control of 9.5m and up to 11.5m for servicing equipment, as well as the 11.8m height limit for development on land where RFBs are permitted, it is demonstrated that the proposed heights generally align with acceptable state wide standards for this form of development.

For the reasons contained in this application, there are sufficient environmental planning grounds to justify the variation to the development standard, as required in Clause 4.6(3)(b). We therefore consider contravening the development standard to be justified.

7. PUBLIC INTEREST

In this section it is explained how the proposed development will be in the public interest because it is consistent with the objectives of the 'Height of Building' standard and the objectives for development within the zone in which the development is proposed to be carried out. This is required by clause 4.6(4)(a)(ii) of the LEP.

In Section 5 of this report, it was demonstrated that the proposed development overall achieves the objectives of the development standard notwithstanding the variation of the development standard (see comments under 'public interest' in Table 3).

The table below considers whether the proposal is also consistent with the R1 - General Residential zone objectives.

Table 4: Consistency with the R1 General Residential Zone Objectives.

Objectives of Zone R1 - General Residential	Discussion
To provide for the housing needs of the community.	<p>The subject application seeks to rejuvenate a vacant and disused residential care facility in an area of high amenity.</p> <p>The closure of The Ritz Nursing Home in 2017 meant the loss of 150 beds to the upper Blue Mountains.</p> <p>The proposed alterations and additions to the existing heritage building will bring the quality of accommodation up to contemporary standards and in doing so will reinstate much needed housing and residential care for seniors and people with a disability.</p> <p>The proposal increases the availability and diversity of accommodation for older people and people with a disability and makes a significant contribution to the housing needs of the community. The proposal is therefore consistent with this objective.</p>
To provide for a variety of housing types and densities	<p>The proposal provides an additional housing type near an area which accommodates a large number of traditional detached housing typologies.</p> <p>The proposed development will contribute to the housing mix delivered by the Blue Mountains LGA and will provide much needed Seniors Housing in a highly accessible area.</p> <p>The proposal therefore achieves this objective.</p>

Objectives of Zone R1 - General Residential	Discussion
<p>To enable other land uses that provide facilities or services to meet the day to day needs of residents.</p>	<p>The proposed development provides for the rejuvenation of a former residential care facility.</p> <p>While the residential care facility does not provide for other land uses, it will include on-site services and amenities to cater for the day to day needs of the residents. On-site facilities will include:</p> <ul style="list-style-type: none"> ▪ Wellness Centre – for beauty and hairdressing requirements including stocking basic beauty products such as make-up, skin cleansers and moisturisers, shampoos and conditioners. ▪ Café and shop – whilst residents will be fully catered for in terms of meals, the on-site café will provide an area where residents can have café items with their family/friends. The café will also stock items that would reasonably be required by the residents including day-to-day items such as confectionary and snacks, writing materials and postage stamps, books, magazines and newspapers (other than those provided). Other items could be ordered based on any specific requirements or on-going demand. <p>The proposal therefore achieves this objective.</p>
<p>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.</p>	<p>As demonstrated under Section 5 of this report, the proposed development will not unreasonably impact on the amenity, privacy or overshadowing of the adjacent residents. There are also no significant views lines from the adjacent residents that would be impacted by the proposal.</p> <p>Whilst the Ritz holds significant heritage value, the former conversion of the Hotel to a nursing home has led to numerous unsympathetic changes to the internal and external parts of the building. The gardens have also been left to grow untamed and the building is in significant need of repair.</p> <p>The proposed development will rejuvenate and restore the main Ritz building. The fragmented outbuildings and unsympathetic extensions will be removed, and new extensions will be added to provide a more cohesive and elegant form.</p> <p>A complementary and expansive landscape scheme which responds to the unique features of the site will further enhance and improve the quality of the</p>

Objectives of Zone R1 - General Residential	Discussion
	<p>environment.</p> <p>The proposal therefore achieves this objective.</p>
<p>To enhance the traditional streetscape character and gardens that contribute to the attraction of the area for residents and visitors.</p>	<p>The proposed development will retain and enhance the landscape character of the site. As noted in the supporting Landscape Report, prepared by Svalbe & Co + Brendan Moar, the proposed landscape design draws on the character and structure of the existing whilst adapting to the spaces and uses generated by the new buildings.</p> <p>The landscape character to the north, east and westerly parts of the site remains very much in keeping with that of the existing. All paths and accessways, including the former main drive, however, are now proposed exclusively for pedestrian access and circulation.</p> <p>The proposed development will ensure that the landscaping on site is well kept and improve the existing streetscape character.</p>
<p>To provide opportunities for the development of a variety of tourist-oriented land uses within a predominantly residential area.</p>	<p>N/A</p> <p>The development is for the provision of a high-quality residential care facility for the use of private residents and their visitors.</p>

As demonstrated in Table 4, the proposal is consistent with the objectives of the zone and in Section 5 it was demonstrated that the proposal is consistent with the objectives of the development standard. According to clause 4.6(4)(a)(ii), therefore, the proposal is in the public interest.

8. STATE OR REGIONAL ENVIRONMENTAL PLANNING

This section considers whether contravention of the development standard raises any matter of significance for State or regional environmental planning, the public benefit of maintaining the development standard, and any other matters required to be taken into consideration by the Secretary before granting concurrence required by clause 4.6(5).

There is no identified outcome which would be prejudicial to planning matters of state or regional significance that would result as a consequence of varying the development standard as proposed by this application.

In fact, support for the requested variation will lend support to matters of regional significance by virtue of the provision of much needed, high-quality, purpose-built high care accommodation for seniors in the Blue Mountains community.

Finally, we are not aware of any other matters required to be taken into consideration by the Secretary before granting concurrence of the Secretary required by Clause 4.6(4)(b).

9. CONCLUSION

This submission requests a variation, under clause 4.6 of the *Blue Mountains Local Environmental Plan 2015*, to the Height of Buildings development standard and demonstrates that:

- Compliance with the development standard would be unreasonable and unnecessary in the circumstances of this development;
- There are sufficient environmental planning grounds to justify the contravention;
- The development achieves the objectives of the development standard (Test 1 under Wehbe) and is consistent with the objectives of the R1 - General Residential zone;
- The proposed development, notwithstanding the variation, is in the public interest and there is no public benefit in maintaining the standard; and
- The variation does not raise any matter of State or Regional Significance.

The consent authority can be satisfied to the above and that the development achieves the objectives of the development standard and is consistent with the objectives of the R1- General Residential Zone notwithstanding non-compliance with the 'Height of Buildings' standard and is therefore in the public interest.

The concurrence of the Secretary can be assumed in accordance with Planning Circular PS 18-003.

On this basis, therefore, it is appropriate to exercise the flexibility provided by clause 4.6 in the circumstances of this application.