

Revised Clause 4.6 Variation Request – Queanbeyan Civic and Cultural Precinct

Introduction

This report seeks an exemption to the height of building development standard prescribed by Clause 4.3 of the Queanbeyan Local Environmental Plan 2012 (QLEP 2012). This document should be read in conjunction with the Statement of Environmental Effects prepared for the construction of a seven-storey public administration building with one level of basement parking beneath a public plaza, new laneway configuration and modification to the subdivision lot layout at 257 Crawford Street, Queanbeyan. This objection must be considered in conjunction with the complete set of Architectural Plans prepared by Cox Architecture, as amended throughout the course of DA assessment.

This exception is sought pursuant to Clause 4.6 of the QLEP 2012 and seeks to vary the height of building development standard which applies to the land. Two maximum building heights of 25m and 30m apply to the site under Clause 4.3 of the QLEP 2012. The numeric variation to the height control is detailed below:

- Over the 25m portion of the site, the proposed building envelope has a maximum height of 32.97m above natural ground level, resulting in a maximum non-compliance of 7.97m or 32%.
- Over the 30m portion of the site, the proposed building envelope has a maximum height of 32.97m, resulting in a maximum non-compliance of 2.97m or 10%.

This request has been updated to reflect Planning Circular PS 20-002 issued 5 May 2020 which modifies the long standing assumed concurrence requirements for variations to development standards. This Planning Circular states that “only a full council can assume the Secretary’s concurrence where the variation to a numerical standard is greater than 10%”. The Southern Region Planning Panel is able to make this determination on behalf of the Council. Thus, referral to the Department of Planning, Infrastructure and the Environment, is not required.

This request has been prepared in accordance with the Guideline for Varying Development Standards: A Guide (DPIE, 2011) and has incorporated the relevant principles identified in the following Land and Environment Court judgements:

- Randwick City Council v Micaul Holdings Pty Ltd [2016] NSW LEC 7
- Four2Five Pty Ltd v Ashfield Council [2015] NSW CA 248
- Four2Five Pty Ltd v Ashfield Council [2015] NSW LEC 90
- Four2Five Pty Ltd v Ashfield Council [2015] NSW LEC 109
- Whebe v Pittwater Council [2007] NSW LEC 827.

Development Standard

Pursuant to Clause 4.6 of the QLEP 2012, this objection seeks to vary the building height standard stipulated in Clause 4.3 which states:

4.3 Height of buildings

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

- (a) to ensure that the height of buildings complement the streetscape or the historic character of the area in which the buildings are located,
- (b) to protect the heritage character of Queanbeyan and the significance of heritage buildings and heritage items,
- (c) to nominate heights that will provide a transition in built form between varying land use intensities.

(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.

The relevant Height of Building Map (Sheet HOB_005) of the QLEP 2012 is reproduced in Figure 1 below. This provides a maximum height of 30m (U) for the western portion of the site, and height of 25m (T) for the eastern portion of the site (we measure this as extending approximately 40m from the Crawford Street boundary).



Figure 1: Excerpt from Height of Buildings Map (QLEP 2012)

 Indicative location of building

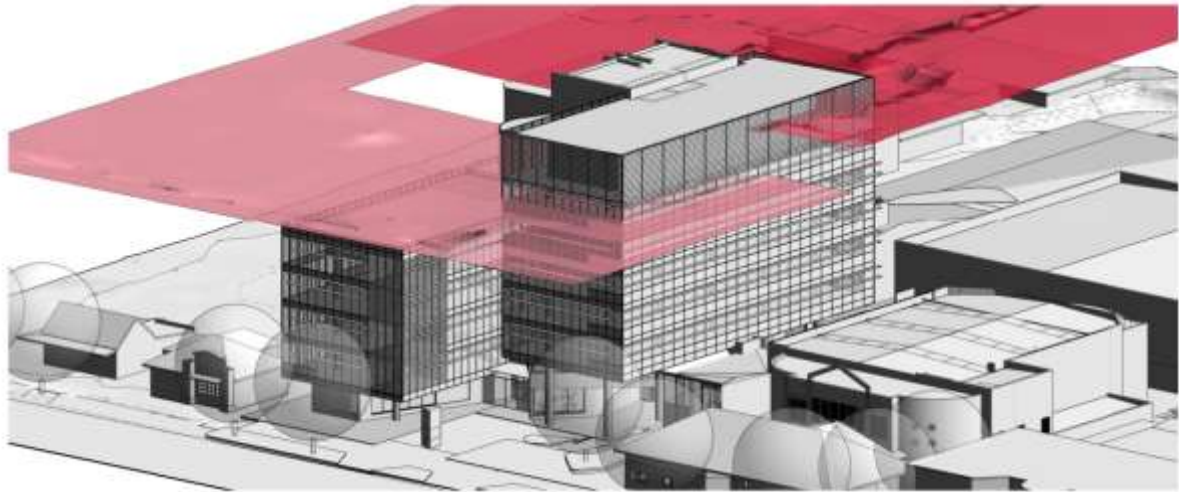
The Proposed Variation

The proposal seeks the following variation from the permitted building heights under Clause 4.3 of the QLEP 2012:

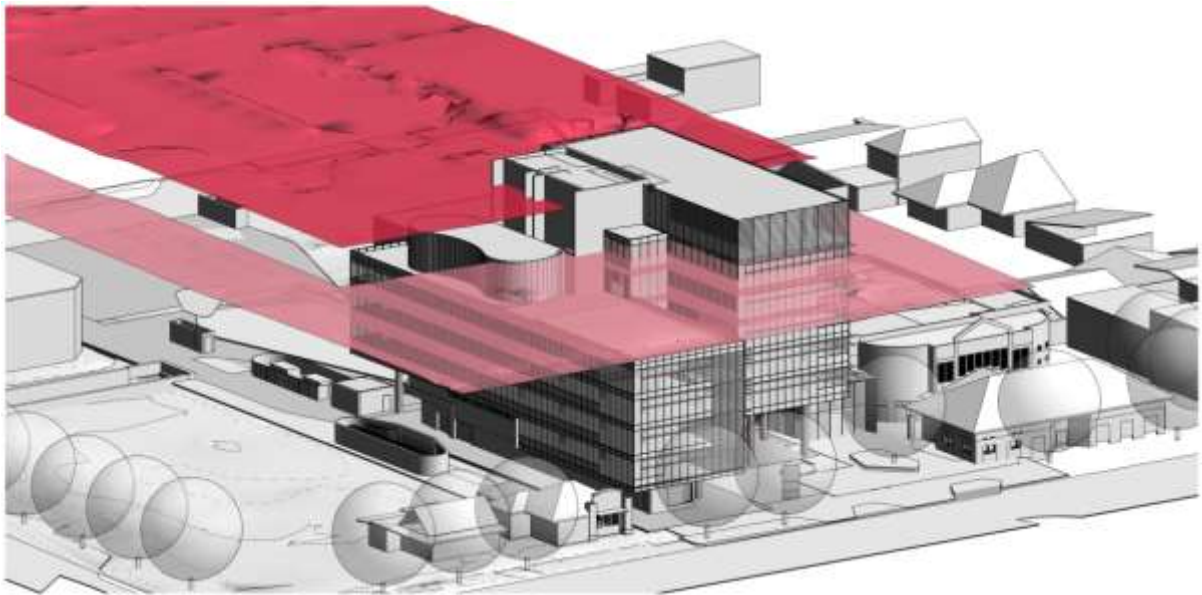
- Over the 25m portion of the site (shown light pink), the proposed building envelope has a maximum height of 32.97m, resulting in a maximum non-compliance of approximately 7.97m or 32%.
- Over the 30m portion of the site (shown dark pink), the proposed building envelope has a maximum height of 32.97m, resulting in a maximum non-compliance of approximately 2.97m or 10%.

Figure 2 provides elevations with the building height plane projected through the site. It is noted that the highest portion of the building contains the lift overrun and building plant. Figure 3 provides this information in section and elevation and confirms that the largest area of height exceedance is on the northern tower of the building and comprises 1.5 storeys.

Figure 2: Height Plane Showing Portions of the Development Exceeding the building height controls



View South West

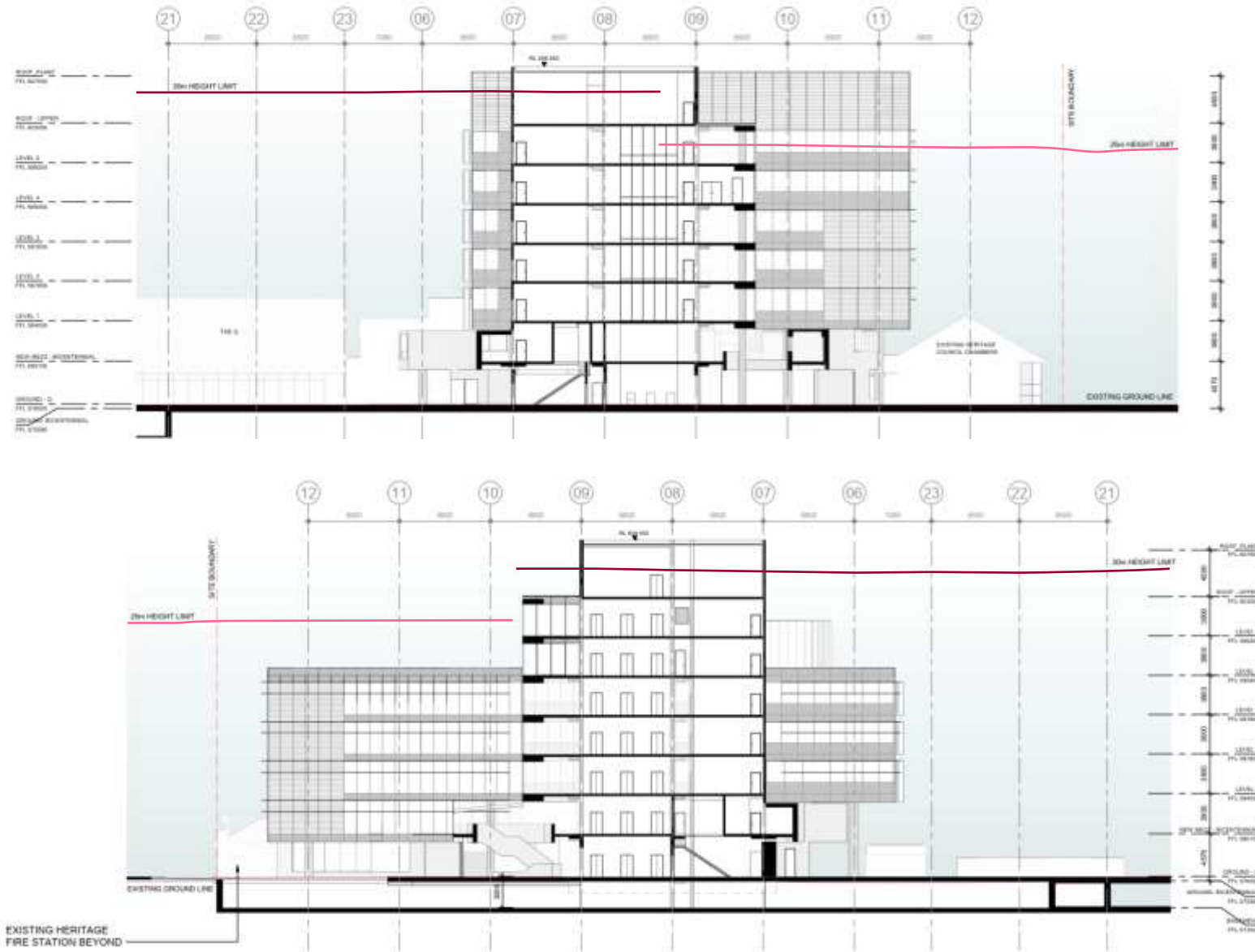


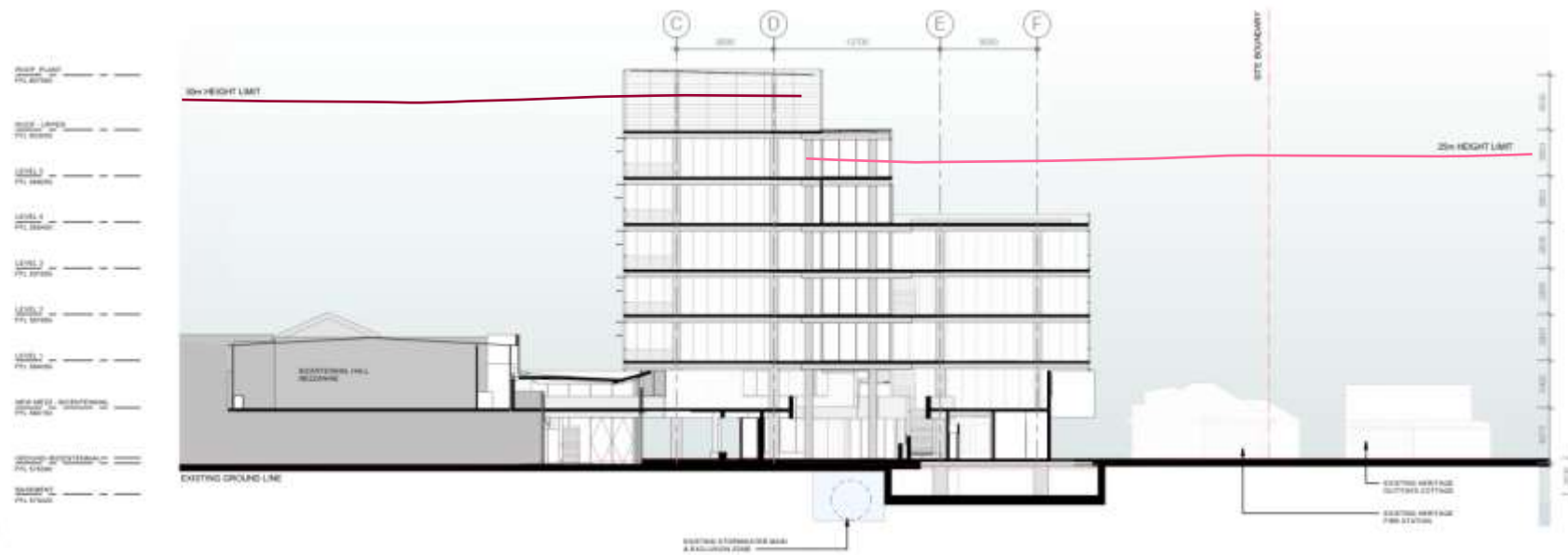
View North West

LEGEND

- 30m HEIGHT PLANE
- 25m HEIGHT PLANE

Figure 5: Architectural Plans





Justification for Proposed Variation

This variation to the maximum permitted building height is sought under the provisions of Clause 4.6 of the QLEP 2012 which aims to provide flexibility in the application of development standards. The objectives of Clause 4.6 are as follows:

4.6 Exceptions to development standards

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

Comment

The flexible application of the height development standard is appropriate in this instance as it results in an improvement to urban form. By flexibly applying the height standard, the proposal improves the urban form of the development by reducing the extent of the building footprint. The flexible application of the height control enables:

- The building to be provided with a larger rear setback than required under the DCP controls, to provide a large and consolidated public plaza
- A lower building height to be provided to Crawford Street (significantly less than the 25m permitted height) which improves the bulk and scale of the building, improving integration with the heritage character of the streetscape
- An overall improvement to building massing as the bulk of the building can be placed centrally within the site to create the least impact on heritage, overshadowing, bulk and scale.

The bulk of the building has been broken into two towers. The design approach proposes a greater building height to northern tower, to minimise the shadow cast onto the adjoining heritage items to the south. The additional 2.97m building height sought beyond the 30m control allows for the lift overrun which is located centrally such that the shadow cast by the additional building height is minimised within the site. The architectural appearance of the building provides improved articulation and modulation of building bulk, whilst the difference in building heights between the two towers improves visual interest and connectivity to the Q Theatre.

The proposal will enhance the usability of public spaces throughout the Queanbeyan Civic Precinct, through introducing a landmark building and high quality public plaza. The proposal presents a positive outcome for the Queanbeyan CBD and will provide Council with modern, functional and fit-for-purpose customer service centres, offices, commercial lettable areas and a new community library. In this instance, applying flexibility to the height of building development standard facilitates a better outcome; achieving the objectives of Clause 4.6.

4.6 Exceptions to development standards cont.

- (2) Development consent may, subject to this clause be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.

Comment

The Height of Building development standard is not excluded from the function of this clause and therefore can be considered under Clause 4.6 of the QLEP 2012.

4.6 Exceptions to development standards cont.

(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...

Comment

In *Wehbe v Pittwater Council* [2007] NSW LEC 827, the Chief Judge of the Land and Environment Court, Preston J, developed the five point test for consideration of a SEPP 1 objection. The applicability of the Wehbe test to a request to vary development standards under Clause 4.6 of the Standard Instrument has been confirmed in *Randwick City Council v Micaul Holdings Pty Ltd* [2016] NSW LEC 7.

As required by CI 4.6(3)(a), the Wehbe test provides that compliance with a development standard can be demonstrated as being 'unreasonable or unnecessary' in any of the following five ways:

- 1. The objectives of the standard are achieved notwithstanding the non-compliance with the standard;*
- 2. The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;*
- 3. The underlying object or purpose would be defeated or thwarted if compliance was required and therefore 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 compliance with the standard is unnecessary and unreasonable;*
- 5. The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable and unnecessary. That is, the particular parcel of land should not have been included in the particular zone.*

In accordance with the first test above, it is argued that compliance with the numeric height of building standard is unnecessary in the circumstance of this development, as the objectives of the clause can still be achieved. The following discussion addresses each objective of the development standard and demonstrates how the proposal satisfies the objectives, notwithstanding the numeric non-compliance:

4.3 Height of buildings

(1) The objectives of this clause are as follows

(a) to ensure that the height of buildings complement the streetscape or the historic character of the area in which the buildings are located,

The site is within the Queanbeyan CBD and provides an opportunity to activate the area between Crawford Street and The Q Theatre with a public plaza. The proposal will strengthen the CBD by consolidating existing administrative offices into a central building and making public domain improvements. The CBD context of the site is readily able to absorb the scale and bulk of the building and ensure that the proposal integrates with the character of the streetscape.

The site planning extracts the proposed development from the fine-grained zero set back heritage streetscape of Crawford Street. The heritage listed School of Arts and Fire Station buildings have a nil setback and single storey scale. The larger front setback (for the seven storey portion of the building) has an important role in ensuring the scale of the building is respectful of the scale of these heritage items.

The existing significant tree along with new pavement, public art and ticket kiosk will also contribute to the sense of an urban plaza off Crawford Street. In effect, the public plaza will absorb some of the additional scale of the building and ensure the building resonates with its civic context.

The height of the building has been broken down, with ground and mezzanine levels designed to relate to the human scale and tactile brick materiality of neighbouring heritage-listed buildings. The chosen datums are sympathetic to the scale of the former Fire Station to the south, and the former School of Arts building to the north. The reflective glass materiality of upper levels, together with the retention of three mature trees along Crawford Street, will screen the visual bulk of the upper levels of the building.

The overall width of the building has been broken down into narrow components, both at the upper and lower levels, which repeat the rhythm of heritage listed buildings on Crawford Street. Whilst the overall scale of the building is very different to the scale of original buildings in the streetscape, it responds meaningfully to the dominant pattern of the streetscape with two narrower building forms, visually separated in the streetscape.

Clause 4.3 (1) cont.

(b) to protect the heritage character of Queanbeyan and the significance of heritage buildings and heritage items,

Consideration of the impacts of the new Council building on the adjacent heritage buildings are likely to be positive. The new building is a public destination and will attract greater visitation to this part of Crawford Street. The proposal is respectful in its relationship with the two flanking heritage buildings and is contemporary in its design so that it is readily identifiable as new work.

The new building is likely to increase the extent to which the former Fire Station and former School of Arts buildings are noticed and respected for their positive contribution to the streetscape and history of Queanbeyan.

The office building will also introduce a new way of viewing the heritage listed buildings in Crawford Street, providing an additional viewpoint looking down onto the heritage items. It is intrinsic that by increasing views to in-tact heritage items, there is likely to be an increased public interest in conservation and appreciation.

The proposed public plaza will significantly improve the setting of the heritage items and upgrade their overall contribution to the streetscape by confirming the civic role of the area. The design of the landscaped public realm has also paid careful attention of the fabric and materials flanking the heritage buildings by incorporating sympathetic materials and plantings.

Clause 4.3 (1) cont.

(c) to nominate heights that will provide a transition in built form between varying land use intensities.

The height steps down from north to south and east to west, generally following the height transition foreseen by the 25m and 30m height controls. By adopting the setbacks and building massing that were chosen to ensure the development is sympathetic to the heritage character of Crawford Street,

the additional building height is required to achieve a reasonable floor area (noting that the development is well within the maximum permitted FSR under Clause 4.4).

The lower scale of the building facing the public forecourt and the Q Theatre provide an important role in transitioning the height down to a human scale, where the land uses are likely to be less intense such as public events and passive recreation. Landscaped spaces also provide areas of transition and balance.

Despite the variation, the proposal achieves the underlying objectives of the height of building control. In accordance with the first test established in *Wehbe v Pittwater Council* [2007] NSW LEC 827, this demonstrates that numeric compliance with the height control is unnecessary in this circumstance. This addresses the requirements of Clause 4.6(3)(a) by confirming that the objectives of the development standard can be achieved, notwithstanding the numeric departure.

Clause 4.6 (3) cont.

(b) that there are sufficient environmental planning grounds to justify contravening the development standard.

Comment

The proposed height variation is acceptable on the site and has environmental planning merit as follows:

- Lack of environmental impact

The design of the proposed development has considered the character, form, scale and materiality of development within the local area. The design is suitable for the site and includes a podium of primarily facebrick with large glazed panels used in the levels above. Horizontal elements designate clear breaks in the building at each level to ensure the seven storey building does not visually dominate nearby heritage items, conservation areas and adjoining existing commercial and residential development.

From an urban design perspective, the front setback ensures that the building will not visually dominate the streetscape. Existing development on the western side of Crawford Street does not have a consistent street setback and certainly does not comply with the Queanbeyan DCP required 6m setback. The Council's LEP controls and CBD Masterplan envisages much higher density development along the western side of Crawford Street than is currently present and it is considered that a new streetscape will be established as properties are developed to their permitted height/density in the future.

The proposal has been designed to minimise the shadow cast on adjoining development, by providing separation to the shared common boundary, taller northern tower and introducing a large setback at the third storey to allow morning sunlight to penetrate the buildings on 257 Crawford Street and northerly facing windows.

- Heritage

The additional height has been managed in the building setbacks and massing to ensure the development remains respectful to the heritage character of the area. The selection of sympathetic materials, repeated scale of building forms and landscaping will provide continuity in the streetscape. A Heritage Impact Statement was provided with the proposal and recommendations of the Heritage Advisory Panel can be included as conditions, if required by Council.

- Strategic Location

The site is within the CBD and provides an opportunity to activate the area between Crawford Street and The Q Theatre by providing a public plaza. This will strengthen the CBD by consolidating existing administrative offices into a central building and enhancing the civic importance of the precinct.

The development is considered consistent with the desired future character for the Queanbeyan CBD as expressed by the provisions of the QLEP 2012 and the recently released draft Queanbeyan CBD Spatial Masterplan.

- Urban hierarchy

The draft Spatial Masterplan outlines the need to activate public spaces to improve the pedestrian experience, to make the CBD more accessible and inviting and to strengthen the cultural hub of the CBD. The proposal will activate the area between Crawford Street and The Q Theatre with a public plaza and will strengthen the CBD by consolidating existing administrative offices into a central building. The proposed building has a civic address and with the active adjoining public plaza, will create a clearly identifiable cultural and civic hub in the centre of the CBD.

- Landmark Building

The site presents an opportunity for a landmark building that delineates a change in urban form and clearly identifies the civic hub of the CBD. The proposal capitalises on the opportunity for a landmark building and presents a quality architectural design with highly durable building materials. The additional building height assists in providing a landmark building that is readily identifiable and unique to the area.

Clause 4.6 cont.

(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

Comment

The matters required by subclause (3) have been addressed in detail in the above sections of this objection.

Clause 4.6(4) cont.

(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

Comment

The above discussion demonstrates that notwithstanding the numeric variation, the proposed development is consistent with the relevant objectives of the height of building development standard which include ensuring development *'that the height of buildings complement the streetscape or the historic character of the area in which the buildings are located'* and *'protect the heritage character of Queanbeyan and the significance of heritage buildings and heritage items'*.

In relation to the second requirement, being consistency with the zoning objectives; the site is zoned B3 Commercial Core pursuant to the QLEP 2012 and is consistent with the objectives of the zone as follows:

- *To provide a wide range of retail, business, office, entertainment, community and other suitable land uses that serve the needs of the local and wider community.*

The proposed community and office administrative building is a permissible use in the B3 Commercial Core zone. The proposal introduces a public plaza that will serve the needs of the community and upgrade pedestrian links from Crawford Street through to areas such as The Q Theatre.

The proposal will create a clearly identifiable cultural and civic hub in the centre of the CBD. The proposal includes a library, a café to service the needs of community and workers within the site and the local area.

It is considered that the administrative accommodation presents the highest and best use of the site. By consolidating various existing administrative offices into one central building, the proposal may release other Council owned sites in the CBD for future redevelopment which will enhance the renewal of the area.

- *To encourage appropriate employment opportunities in accessible locations.*

The proposal provides community and public administration uses within a highly accessible and strategic location, connected to existing local bus services operating along Crawford Street. The site is centrally located and highly accessible and will encourage additional employment generating uses to co-locate within the building.

- *To maximise public transport patronage and encourage walking and cycling.*

The proposed development satisfies these objectives by consolidating existing Council public administration uses, within the Queanbeyan CBD into one building. The site is in an accessible location and will incorporate end-of-trip facilities to encourage employees to choose active transport options for their journey to work.

- *To recognise the Queanbeyan central business district as the main commercial and retail centre of Queanbeyan and to reinforce its commercial and retail primacy in Queanbeyan*

The proposal will activate the area between Crawford Street and The Q Theatre with a public plaza and will strengthen the CBD by consolidating existing administrative offices into a central building. The proposal will create a clearly identifiable cultural and civic hub in the centre of the CBD to reinforce the commercial importance of the area.

- *To encourage some high density residential uses in conjunction with retail or employment uses where appropriate.*

The proposal is not for residential uses, therefore, this objective is not relevant.

Clause 4.6(4) cont.

(b) the concurrence of the Secretary has been obtained.

Comment

As confirmed in Planning Circular PS 20-002: Variations to development standards (DPIE, May 2020), numeric variations beyond 10% can be considered by an independent planning panel with assumed concurrence of the Secretary.

The proposed variation to the height of building development standard does not raise any matter of significance for State or Regional Planning. It has been clearly demonstrated in this application and Clause 4.6 request that the site can readily accommodate the additional height.

Conclusion

The above discussion demonstrates that the variation from the maximum height of building standard of approximately 2.97m (or 10% over the 30m HOB) and 7.97m (or 32% over the 25m HOB) is appropriate in the circumstances of the proposal, subject to the provisions of Clause 4.6 of the QLEP 2012. This Clause 4.6 variation request is well founded as it demonstrates the following:

- Compliance with the height standard is unreasonable and unnecessary in the circumstances of the proposed development.
- There are sufficient environmental planning grounds to justify the contravention, which results in a better planning outcome than a strictly compliant development in the circumstances of this particular case.
- There is a lack of environmental impact resulting from the numeric variation, the proposal is within a strategic location to support additional building height, and the proposed landmark building is appropriate for the built form context of the area.
- The development remains consistent with the relevant objectives of the B3 Commercial Core zone, notwithstanding the numeric variation in accordance with Clause 4.6(4)(a)(ii) of the QLEP 2012.
- The proposed development improves the overall public urban realm and the availability of public space surrounding the building. This demonstrates that through the flexible application of the building height development standard, a better planning outcome can be achieved on the subject site.
- The proposal is in the public interest.
- There are no matters of State or regional planning significance and no notable public benefits in maintaining the height standard in this case.