

2 November 2023

Section 4.6 Written Request to Vary Height of Buildings Development Standard

Proposed Stage 3 / 4 Building, Leppington Anglican College, 50 Heath Road, Leppington

EPM Projects have been engaged by The Anglican Schools Corporation (TASC) to prepare a written request pursuant to section 4.6 of Appendix 5 (Camden Growth Centres Precinct Plan) of *State Environmental Planning Policy (Precincts – Western Parkland City) 2021* (Western City Precincts SEPP) with respect to the proposed exceedance of the height of buildings development standard. The proposal will exceed the 9m height of buildings development standard under section 4.3 Appendix 5 of the Western City Precincts SEPP by having a maximum building height of 9.043m above the existing ground level, which is equivalent to a variation of 0.47%. This minor exceedance of the height of buildings development standard is restricted to less than 0.01% of the footprint of the proposed Stage 3 / 4 building.

Notwithstanding, the contravention of the development standard, the proposed development appropriately responds to the opportunities and constraints of the site, is considered to be consistent with the objectives of the development standard and objectives of the zone within which the development is to be carried out and will not cause the development to be inconsistent with the approved concept DA (DA 2015/502 as modified). Accordingly, there are sufficient environmental planning grounds to justify the contravention of the development standard.

This written request has been prepared to provide an assessment in accordance with the statutory requirements of section 4.6 so that the consent authority can exercise its power to grant development consent, notwithstanding the contravention to the height of buildings development standard.

This section 4.6 written request has been prepared by EPM Projects based on the Architectural plans prepared by Alleanza Architecture and other supporting drawings and reports which were appended to the Statement of Environmental Effects dated 11 August 2023, RFI response letter dated 4 October 2023 and RFI response letter dated 2 November 2023.

1. Nature of the Variation

Section 4.3 of Appendix 5 and the Height of Buildings Map under Western City Precincts SEPP designate a maximum building height development standard of 9m for the site (**Figure 1**).





Figure 1: Extract of height of buildings map (Western City Precincts SEPP) with location of the new Stage 3/4 Building identified with a red dashed line.

Under the Section 3.3(1) of the Western City Precincts SEPP, words used in Chapter 3 (Sydney region growth centres) have the same meaning as in the *Standard Instrument – Principal Local Environmental Plan 2006* (the Standard Instrument) unless otherwise defined under that chapter. Building height is not defined under Chapter 3 of the Western City Precincts SEPP. Under the Standard Instrument, building height or height of buildings is defined as follows:

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.

The proposed development has a maximum height of 9.043m above the existing ground level measured to the top of the westernmost part of the ridge (**Figures 2 & 3**). This is equivalent to a variation of 0.043m or 0.47%.

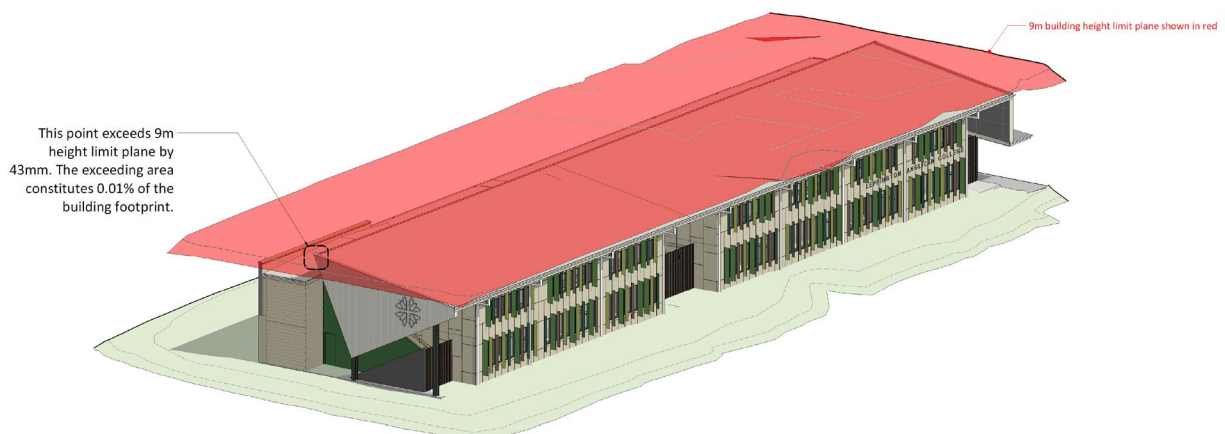


Figure 2: Height Plane Diagram (Alleanza Architecture)

Table 1 Assessment against Section 4.6 of Appendix 5 of Western City Precincts SEPP		
Clause	Assessment	Consistent
	<p>defined in section 1.4 of the <i>Environmental Planning & Assessment Act 1979</i> (EP&A Act) as follows:</p> <p>“development standards means provisions of an environmental planning instrument or the regulations in relation to the carrying out of development, being provisions by or under which requirements are specified or standards are fixed in respect of any aspect of that development, including, but without limiting the generality of the foregoing, requirements or standards in respect of:</p> <p>(c) the character, location, siting, bulk, scale, shape, size, height, density, design or external appearance of a building or work,”</p> <p>The building height development standard is not expressly excluded from the operation of section 4.6 (refer below). Therefore, development consent may be granted even though the proposed development does contravene the building height development standard.</p>	
Section 4.6(3) – Consent Authority to consider written justification	<p>Section 4.6(3) relates to the making of a written request to justify a contravention of the development standard. This Section 4.6 written request has been prepared to address the requirements of section 4.6(3) of Appendix 5 of the Western City Precincts SEPP (refer to Sections 2.1 and 2.2).</p> <p>It is a matter for the consent authority (being the Sydney Western City Planning Panel (SWCPP) for this DA) to consider this written request prior to granting development consent.</p>	Yes
Section 4.6(4)(a)(i) – Consent authority to be satisfied that written request adequately addresses the matters in section 4.6(3)	Sections 2.1 and 2.2 of this written request address the relevant matters in section 4.6(3).	Yes
Section 4.6(a)(iii) – Public Interest	An assessment against the objectives of the height of buildings development standard is provided in Table 2 . An assessment against the objectives of the R2 Low Density Residential zone is provided Table 3 (refer to discussion in Section 2.3).	Yes
Section 4.6(b) – Concurrence of the Secretary	The proposed development is regionally significant development and therefore the consent authority for the DA is the SWCPP. Accordingly, pursuant to the Notice issued under clause 64 of the former <i>Environmental Planning and Assessment Regulation 2000</i> (EP&A Regulation 2000) concurrence of the Secretary of the Department of Planning and Environment may be assumed.	Yes
Section 4.6(5) – Concurrence Considerations	Not relevant as concurrence can be assumed.	N/A
Section 4.6(6) – Subdivision	Not relevant as no subdivision is proposed as part of the DA.	N/A
Section 4.6(7) – Keeping of records	Section 4.6(7) is an administrative section requiring the consent authority to keep a record of its assessment under this subsection after determining a development application.	Yes
Section 4.6(8) – Restrictions on use of section 4.6	Section 4.6(8) is not relevant to the proposed development as it is subject to a DA and does not constitute complying development, does not seek to vary any requirements under the former <i>State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004</i> , and does not relate to a standard under sections 4.1B, 5.4 or 6.9	Yes

2.1 Compliance is Unreasonable or Unnecessary

In his Judgment of *Randwick City Council v Micaul Holdings Pty Ltd [2016] NSWLEC 7* ('Micaul') Preston CJ confirmed that an established means of demonstrating that compliance with a development standard is unreasonable or unnecessary is to establish that a development would not cause environmental harm and is consistent with the objectives of the development standard.

It is considered that the proposed exceedance of the height of buildings development standard would not cause environmental harm and can be appropriately mitigated for the following reasons:

- The height of buildings development standard is exceeded by a variation of less than 0.5%, which is negligible and will not be discernible. In addition, the area of the proposed building that exceeds the height of buildings development standard represents less than 0.01% of the overall building footprint.
- The exceedance of the height of buildings development standard is a result of minor and localised variations in the topography of the existing earthworks (approved as part of the Concept DA (DA 2015/502 (as modified))).
- The Stage 3 / 4 Building has been designed with a consistent finished floor levels (FFL) along the length of the new building being RL 101.350 (Ground Floor) and RL 104.950 (First Floor). This ensures accessibility to all areas of the building and avoids the needs for internal ramps and steps.
- The exceedance of the height of buildings development standard results in negligible additional overshadowing of the adjoining public domain. The proposed Stage 3 / 4 development does not overshadow any private open space or living spaces.
- The exceedance of the height of buildings development standard does not have any adverse impacts on the visual privacy of any existing or future adjoining development.
- The proposed exceedance of the height of buildings development standard does not have any visual impacts, or impact any significant views to or from the public domain.

Furthermore, the proposed development is considered to be consistent with the objectives of the height of buildings development standard as described in **Table 2**.

Table 2 Assessment against Objectives of the Height of Building Development Standard	
Objective	Assessment
(a) to establish the maximum height of buildings,	The 9m height building establishes a generally two (2) storey built form. The proposed new Stage 3 / 4 Building is a two (2) storey building. The proposed minor exceedance of the height of development standard is not inconsistent with this objective.
(b) to minimise visual impact and protect the amenity of adjoining development and land in terms of solar access to buildings and open space,	The proposed minor exceedance of the height of building development standard will have a negligible visual impact and will maintain the amenity of adjoining development and land in terms of solar access to buildings and open space.
(c) to facilitate higher density development in and around commercial centres and major transport routes.	Not relevant to the proposed development as it is not located in or around a commercial centre or adjacent to a major transport route.

2.2 Sufficient Environmental Planning Grounds

In the Judgment of *Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 1009* ("Four2Five") Pearson C indicated there is an onus on the applicant to demonstrate, through the written request, that there are "sufficient environmental planning grounds" such that compliance with the development standard is unreasonable or unnecessary. Furthermore, that the environmental

planning grounds must be particular to the circumstances of the proposed development rather than public benefits that could reasonably arise from a similar development on other land.

In Initial Action, Preston CJ indicated that it is reasonable to infer that “*environmental planning grounds*” as stated in under clause 4.6(3)(b), means grounds that relate to the subject matter, scope and purpose of the EP&A Act, including the objects in section 1.3 of the EP&A Act.

The site-specific environmental planning grounds that support the proposed variation to the building height development standard in this circumstance are detailed in the SEE; supported by the Architectural Plans and Architectural Design Statement prepared by Alleanza Architecture are summarised as follows:

- The proposed development is not inconsistent with the concept masterplan approved under the concept DA (DA 2015/502 (as modified) and therefore, complies with the test under section 4.24(2) of the EP&A Act. The overall height, location, scale and form of the proposed Stage 3 / 4 building is consistent with the approved concept DA.
- The proposed minor exceedance represents a less than 0.5% variation to the 9m height of buildings development standard and is contained to less than 0.01% of the building footprint. This will not be perceptible.

In addition, in Micaul and Initial Action, Preston CJ clarified that sufficient environmental planning grounds may also include demonstrating a lack of adverse amenity impacts. As summarised in **Section 2.1**, the proposal satisfactorily manages and mitigates adverse amenity impacts.

Accordingly, it is considered that there are sufficient environmental planning grounds to justify the contravention of the building height development standard in this instance.

2.3 Public Interest

Pursuant to section 4.6(4)(b) of Appendix 5 of the Western City Precincts SEPP and as discussed by Preston CJ in Initial Action, if the development is consistent with the objectives of the development standard and the objectives of the zone, the consent authority can be satisfied that the development will be in the public interest.

An assessment of the proposal against the objectives of the height of buildings development standard is provided at **Table 2** and an assessment of the proposed development against the objectives of the R2 Low Density Residential Zone expressed in the Land Use Table to section 2.3 of Appendix 5 of the Western City Precincts SEPP is provided in **Table 3**.

Table 3 Assessment against Objectives of the R2 Low Density Residential zone	
Objective	Assessment
<ul style="list-style-type: none"> • <i>To provide for the housing needs of the community within a low density residential environment.</i> 	The proposed development does not detract from the provision of housing to meet the needs of the community within a low-density residential environment.
<ul style="list-style-type: none"> • <i>To enable other land uses that provide facilities or services to meet the day to day needs of residents.</i> 	Leppington Anglican College is a Co-educational Independent Anglican school that once completed will provide educational opportunities for students from Pre-Kindergarten to Year 12. The proposed development enables and promotes the ongoing use of the site as an educational establishment, being a land use that provides facilities and services that meet the day to day needs of residents. In addition, the proposed development does not preclude or detract from other land uses that would also meet the day to day needs of residents.
<ul style="list-style-type: none"> • <i>To allow people to carry out a reasonable range of activities from their homes where such activities are not likely to adversely affect the living environment of neighbours.</i> 	The proposed development does not impact on the ability of people to carry out a reasonable range of activities from their homes.
<ul style="list-style-type: none"> • <i>To support the well-being of the community by enabling educational, recreational, community, religious and other</i> 	The proposed development is an educational establishment within a low-density residential development. The proposed development is compatible with the existing and desired future character of the Leppington low-density precinct.

Table 3 Assessment against Objectives of the R2 Low Density Residential zone	
Objective	Assessment
<i>activities where compatible with the amenity of a low density residential environment.</i>	
<ul style="list-style-type: none"> To provide a diverse range of housing types to meet community housing needs within a low density residential environment. 	The proposed development does not detract from the provision of a diverse range of housing types that meet community housing needs within a low-density residential environment.

These assessments demonstrate that the proposed development is consistent with the relevant objectives of the development standard to be varied and the relevant objectives of the zone within which the development is to be carried out. Accordingly, it follows that the proposed development is in the public interest.

3. Conclusion

The proposed Stage 3 / 4 Building at Leppington Anglican College, 50 Heath Road, Leppington contravenes the height of building development standard under section 4.3, Appendix 5 (Camden Growth Centres Precinct Plan) of the Western City Precincts SEPP.

The height of buildings control under the Western City Precincts SEPP is a development standard and is not excluded from the application of section 4.6 of Appendix 5 of the Western City Precincts SEPP.

This written request to vary the development standard has been prepared in accordance with section 4.6(3) Appendix 5 of the Western City Precincts SEPP and demonstrates that strict compliance with the development standard is unreasonable and unnecessary because, notwithstanding the contravention of the building height development standard, the proposed development is consistent with:

- the objectives of the development standard pursuant to section 4.3, Appendix 5 of the Western City Precincts SEPP as the proposed works do not result in any adverse impacts on the any existing or future development or detract from the low-density character of the surrounding area; and
- the relevant objectives of the R2 Low Density Residential Zone as it enables and promotes the continued operation of an educational establishment land use that provides facilities or services to meet the day to day needs of residents.

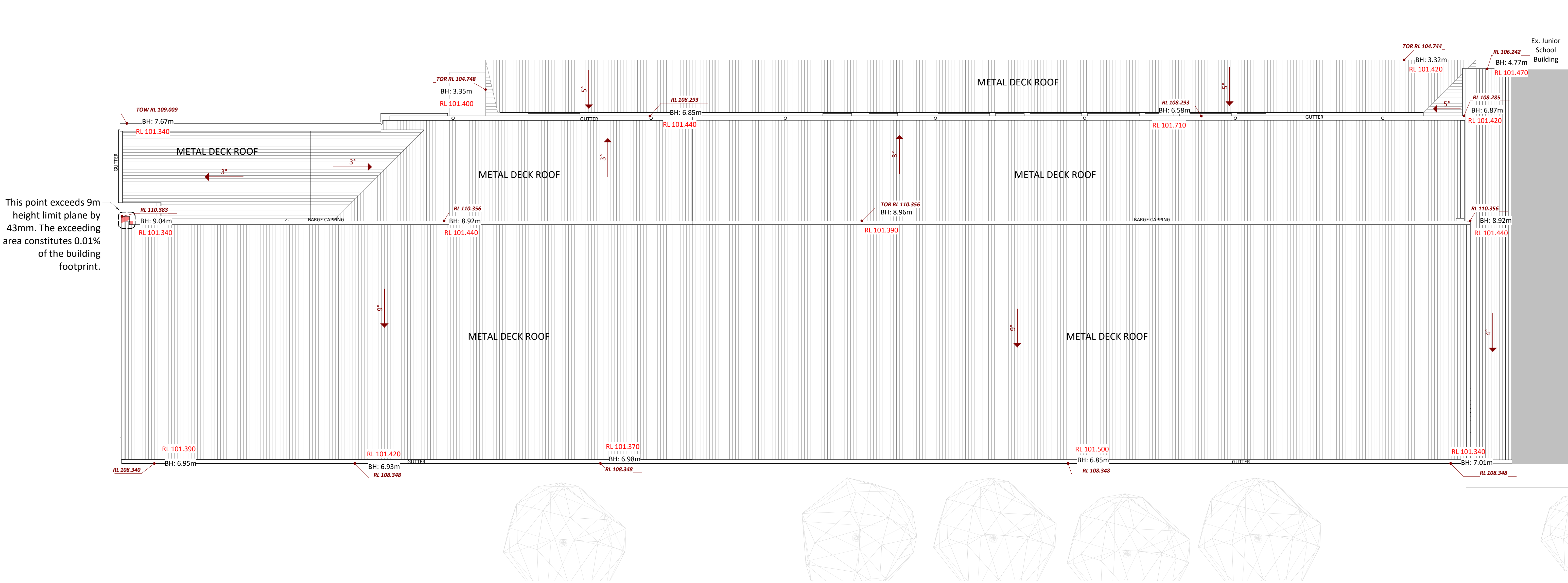
Therefore, the proposed development is in the public interest.

In addition, this written request outlines sufficient environmental planning grounds to justify the contravention of the height of buildings development standard including:

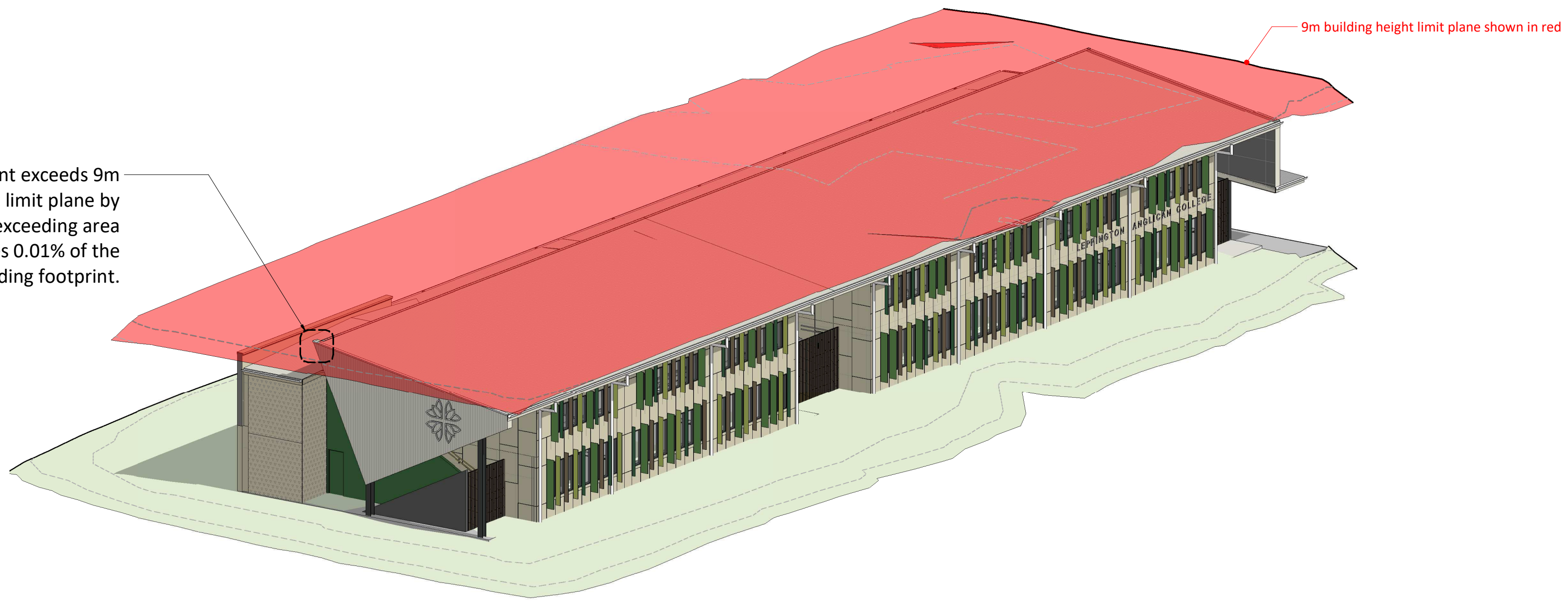
- The minor nature of the exceedance being a less than 0.5% variation to the height of buildings development standard.
- The proposed development is not inconsistent with the approved Concept DA (DA 2015/502 (as modified) as required under section 4.24 of the EP&A Act.
- The contravention of the development standard will not have any adverse amenity impacts including overshadowing, view loss or visual privacy impacts.

Accordingly, the written request can be relied upon by the consent authority when documenting that it has formed the necessary opinions of satisfaction under section 4.6(4) Appendix 5 of the Western City Precincts SEPP.

Attachment A: Height Plane Diagram (Alleanza Architecture)



This point exceeds 9m height limit plane by 43mm. The exceeding area constitutes 0.01% of the building footprint.



2 3D diagram

BH: 3.35m Building height from natural ground at spot level
RL 101.000 Existing spot level at natural ground level
RL 101.000 Proposed spot level on building
Area that passes through plane of height limit