

Clause 4.6 Variation to Maximum Height of Building Development Standard



Prepared by Hunter Land Pty Ltd

SEPTEMBER 2023

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Document Status

Version	Description	Author	Issue Date
V1	DA Submission	TG	September 2023

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CONTENTS

1. INTRODUCTION	1
2. THE DEVELOPMENT STANDARD	2
3. THE PROPOSED VARIATION.....	3
4. CLAUSE 4.6 EXCEPTIONS TO DEVELOPMENT STANDARDS	3
5. CONCLUSION	8

1. INTRODUCTION

This application proposes to vary a development standard under clause 4.6 of the Maitland Local Environmental Plan (LEP) 2011.

This application discusses that varying the development standard will achieve a better outcome for the development by allowing flexibility in these particular circumstances. Strict compliance with the maximum building height is considered unreasonable and/or unnecessary on this site and the variation can be supported via a clause 4.6 exception to the development standard. The proposed variation can be justified on environmental planning grounds.

Clause 4.6 (1) and (2) of the Maitland LEP 2011 states:

- (1) The objectives of this clause are as follows-*
 - (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.*
- (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 exclude from the operation of this clause.*

Clause 4.6 of the Maitland LEP 2011 aims to provide an appropriate degree of flexibility in applying certain development standards to particular development to achieve a better outcome. Clause 4.6 allows development consent to be granted to development that contravenes a development standard provided it meets the requirements of Clause 4.6 as detailed in this report.

2. THE DEVELOPMENT STANDARD

Clause 4.3 of Maitland LEP 2011 refers to Height of Buildings. Clause 4.3 states:

4.3 Height of buildings

(1) *The objectives of this clause are as follows—*

(a) *to ensure that the height of buildings complements the streetscape or the rural character of the area in which the buildings are located,*

(b) *to protect the heritage character and significance of buildings and avoid an adverse effect on the integrity of heritage items,*

(c) *to ensure that the height of buildings protects the amenity of neighbouring properties in terms of visual bulk, access to sunlight, privacy and views.*

(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 Height of Building Map shows the maximum building height of 8m applies to the site. Refer to Figure 1 below.



Figure 1 – Height of Building Map HOB_004D Maitland LEP 2011

3. THE PROPOSED VARIATION

The point of greatest variation to the building height standard proposed is 9.805m to the top of the building from natural ground level as shown on the DA plans attached. This represents a variation of 1.805m.

Due to the nature of the site, namely its topography and crossfall of the existing car park, the proposed building height breaches the relevant height standards contained within the Maitland LEP 2011.

This proposal seeks a variation to the development standard contained within clause 4.3 of Maitland LEP 2011 which allows a maximum building height of 8m. The variation is considered to be minor.

4. CLAUSE 4.6 EXCEPTIONS TO DEVELOPMENT STANDARDS

This application to vary the building height standard addresses Clause 4.6 Exceptions to development standards of Maitland LEP 2011 which states:

- (3) *Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating—*
 - (a) *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
 - (b) *that there are sufficient environmental planning grounds to justify contravening the development standard.*

- (4) *Development consent must not be granted for development that contravenes a development standard unless—*
 - (a) *the consent authority is satisfied that—*
 - (i) *the applicant’s written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
 - (ii) *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
 - (c) *the concurrence of the Planning Secretary has been obtained.*

4.1 Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case?

Clause 4.3 of Maitland LEP 2011 refers to Building Heights. The objectives of Clause 4.3 are:

- (a) *to ensure that the height of buildings complements the streetscape or the rural character of the area in which the buildings are located,*

- (b) *to protect the heritage character and significance of buildings and avoid an adverse effect on the integrity of heritage items,*

- (c) *to ensure that the height of buildings protects the amenity of neighbouring properties in terms of visual bulk, access to sunlight, privacy and views.*

The proposed commercial development is considered to generally comply with the building height objectives as:

- The proposed building has been architecturally designed in a contemporary style to complement the streetscape of the commercial area in which the building is located;
- The site is not located in a Heritage Conservation Area.
- The site is located in a commercial area and is surrounded by other commercial and retail buildings and uses. The proposed height of the building will not adversely impact on the amenity of the neighbouring properties. The proposal will have no impact on visual bulk, solar access, privacy and views on surrounding properties. No residential dwellings are located in the vicinity of the site.
- The proposed variation in height is only minor.
- The proposed building will be located at the rear of the site which will further reduce the visual bulk and mass of the building through the use of building design and variations in finishes and colours. The height of the building from Mitchell Drive will appear less than the actual height due to the topography of the site.

Land Zone Objectives

The land is zoned E2 Commercial Centre pursuant to Maitland LEP 2011. The objectives of the E2 zone are

- *To strengthen the role of the commercial centre as the centre of business, retail, community and cultural activity.*
- *To encourage investment in commercial development that generates employment opportunities and economic growth.*
- *To encourage development that has a high level of accessibility and amenity, particularly for pedestrians.*
- *To enable residential development only if it is consistent with the Council's strategic planning for residential development in the area.*
- *To ensure that new development provides diverse and active street frontages to attract pedestrian traffic and to contribute to vibrant, diverse and functional streets and public spaces.*
- *To recognise Council's preferred hierarchy of activity centres and precincts, by ensuring that existing and future development—*
 - *(a) at Greenhills—reinforces the regional significance of this retail precinct, and*
 - *(b) at Central Maitland—promotes business development to reinforce Central Maitland's significance as a major regional centre.*

The proposed development is considered to satisfy the objectives of the zone for the following reasons:

- The proposal for a commercial development will provide office land uses to serve the needs of the local and wider community within an established commercial area directly opposite Stocklands Greenhills Shopping Centre.
- The site is located opposite the recently expanded Stocklands Greenhills Shopping Centre, cinema complex and Maitland Mutual building. The proposal for a commercial development will provide employment opportunities in accessible locations.
- The development is located in convenient distances to public transport and in close proximity to residential areas to provide service and employment opportunities. Public transport is provided in the area with a number of routes servicing the bus interchange at Stocklands Greenhills opposite the site on Mitchell Drive which is within convenient walking distance to the site. Pedestrian facilities in the area are excellent with 1.2metre wide to full width concrete footpaths running along both sides of

Mitchell Drive past the site and a signalised pedestrian crossing immediately in front of the site on Mitchell Drive providing access to Stocklands Greenhills Shopping Centre.

- The proposal is not retail in nature. Council’s preferred hierarchy of activity centres and precincts is recognised by this development with the proposal supporting and reinforcing the regional significance of the retail precinct of Greenhills by ensuring existing and future commercial development is located opposite the Greenhills main shopping centre district.
- The proposal is compatible within the established commercial area and built form of the neighbouring sites.

The proposal is defined in Maitland LEP 2011 as office premises which means:

a building or place used for the purpose of administrative, clerical, technical, professional or similar activities that do not include dealing with members of the public at the building or place on a direct and regular basis, except where such dealing is a minor activity (by appointment) that is ancillary to the main purpose for which the building or place is used.

Note—

Office premises are a type of commercial premises—see the definition of that term in this Dictionary.

The proposal for office premises on the site is a permissible land use within the zone with Council consent.

The use of the site for office premises meets the objectives of the zone.

Maitland LEP 2011 objectives

The aims of Maitland LEP are:

- (a) to facilitate ecologically sustainable development of land and natural assets,*
- (b) to protect and maintain the extent, condition, connectivity and resilience of natural ecosystems, native vegetation, wetlands and landscapes, including those aspects of the environment that are matters of national environmental significance within Maitland in the long term,*
- (c) to properly plan and protect human-made resources of Maitland including buildings, structures and sites of recognised significance which are part of the heritage of Maitland,*
- (d) to protect, enhance or conserve the natural resources of Maitland including the following—*
 - (i) areas of high scenic rural quality,*
 - (ii) productive agricultural land,*
 - (iii) habitat for listed threatened species and endangered ecological communities,*
 - (iv) minerals of regional significance,*
- (e) to create liveable communities which are well connected, accessible and sustainable,*
- (f) to provide a diversity of affordable housing with a range of housing choices throughout Maitland,*
- (g) to allow for future urban development on land within urban release areas and ensure that development on such land occurs in a co-ordinated and cost-effective manner,*
- (h) to concentrate intensive urban land uses and trip-generating activities in locations most accessible to transport and centres, strengthening activity centre and precinct hierarchies and employment opportunities,*

(i) to ensure that land uses are organised to minimise risks from hazards including flooding, bushfire, subsidence, acid sulfate soils and climate change,

(j) to encourage orderly, feasible and equitable development whilst safeguarding the community's interests, environmentally sensitive areas and residential amenity.

The proposed variation to the maximum building height is only minor and considered to be consistent with the aims of the Maitland LEP 2011 by:

- Creating a site that is well connected and accessible;
- Creating a high-quality contemporary development that will contribute to the commercial and employment needs of the local and wider community; and,
- Allow for a commercial development within an existing centre that is accessible to employment, transport facilities, services and the like.

Given the high level of compliance with the aims of the Maitland LEP, the objectives of Clause 4.3 Maximum Building Heights and the Land Zone objectives, the proposal to vary the development standard is recommended to be supported. The proposed variation is very minor and will not be visible or obvious when viewed on site. The proposal is a high-quality contemporary design with no impact on adjoining properties in terms of sunlight, privacy and views. The proposal has limited visual bulk impacts and external amenity impacts.

Due to the topography of the site and the crossfall of the existing car park, strict compliance with the development standard would be considered unreasonable and unnecessary in this instance as the proposed height variation will result in a better design outcome than a development that complies with the building height limit imposed in Clause 4.3 of the Maitland LEP 2011. The request to vary the building height limit will also reduce the need for excess cut and fill across the site. The proposal will not negatively impact on the amenity of the neighbourhood and the variation to the height standard is a better development and design outcome for this site.

Strict compliance with Clause 4.3 of Maitland LEP 2011 is therefore considered unreasonable and unnecessary in the circumstances of this case.

The proposed variation is minor in nature.

4.2 Are there sufficient environmental planning grounds to justify contravening the development standard?

The site is mapped on the Height of Buildings Map pursuant to Maitland LEP 2011 as containing a maximum building height of 8m. The proposal seeks consent for a maximum building height of 9805 to the top of the building as shown on the DA plans attached. This represents a variation of 1.805m which is considered minor.

The proposed variation is so minor that the proposed exceedance will not be obvious to the naked eye viewing the proposed building from any angle.

The variation in this case is considered acceptable as the proposed height variation will result in a better design outcome of the proposed commercial building than a development that complies with the building height limit.

The proposed development will provide direct pedestrian access from Mitchell Drive to the entrance of the commercial building. The building will provide employment opportunities to the local community during the construction phase and later as office premises in an area of high accessibility.

The proposed will result in a FSR of 0.35:1 and complies with the FSR contained within the Maitland LEP 2011. The proposed development being a commercial development is compatible with the streetscape and character of the area by providing appropriate correlation between the size of the site and the extent of the proposed development on site.

The variation to the maximum building height reduces the need for excessive earthworks given the existing ground levels of the site.

The proposal for a high-quality contemporary design will maintain the character and streetscape of the area. Council has recently varied the maximum building height limit in the area by allowing Aldi to vary the building height standard to 9.5m and Maitland Mutual commercial premises opposite the site by 1.3m. Therefore, Council has not maintained the maximum building height in the surrounding area and have varied from the standard.

Stocklands Greenhills shopping centre, the cinema complex and the Maitland Mutual building recently constructed opposite the site are identified in the Greenhills Stand Alone Shopping Centre and surrounds retail precinct in the Maitland City Council Activity Centres and Employment Clusters Strategy 2010. The proposed development will not look out of context in this environment and is compatible with the mass and bulk of the surrounding area and adjoining buildings. The proposal will not cause adverse visual impacts in the area.

4.3 Is the proposed development 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?

The public interest is best served by the orderly and economic use of land for purposes permissible under the relevant planning scheme and in accordance with relevant planning controls. The development is permissible and consistent with strategic and statutory policies. It will provide commercial development in an efficient and affordable manner and help reduce demand for commercial development on the urban fringes away from transport facilities.

The proposed development is in the public interest and is consistent with the objectives of the Height of Buildings development standards, the objectives of the E2 Commercial Centre zone and the aims of Maitland LEP 2011. The proposed development complements the existing streetscape and character of the commercial area. The proposed building will not impede on access to sunlight, privacy or views of its neighbours and is an improved design to the current buildings located on site.

The site is located within the Greenhills centre opposite the Stocklands shopping centre, cinema complex and Maitland Mutual building. The proposal reinforces the regional significance of the centre. The site is ideally suited within an existing commercial centre. Public transport is available directly on Mitchell Drive. The proposal will provide employment opportunities to the local and wider community.

Regardless of non-compliance with the building height standard, the outcome is appropriate and will have no significant adverse environmental impacts. It is considered that the proposed development is in the public interest.

4.4 Has concurrence of the Secretary been obtained?

Clause 4.6 (5) of the Maitland LEP 2011 requires concurrence of the Secretary and states:

(5) In deciding whether to grant concurrence, the Planning Secretary must consider—

(a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and

(b) the public benefit of maintaining the development standard, and

(c) any other matters required to be taken into consideration by the Planning Secretary before granting concurrence.

As the proposed variation is less than 10%, the development application can be determined by the General Manager or nominated Council staff under delegation.

The proposal to vary the maximum building height standard will result in a high-quality contemporary building on the site. The proposal will not result in unreasonable amenity or environmental impacts. The proposal complies with the aims of Maitland LEP 2011 and the objectives of the E2 Commercial Centre zone. Variation to the development standard will not raise any matters of significance for State or regional environmental planning. The proposed variation is only minor.

There will be no public benefit in maintaining the development standard and lowering the building marginally. As a result of varying the development standard, the proposal will result in a better urban design outcome. No impacts on the environment are expected.

There are no other matters required to be taken into consideration before granting concurrence.

5. CONCLUSION

This proposal for commercial premises seeks consent to vary the development standard to achieve a better outcome for the development by allowing flexibility to the maximum building height imposed in Maitland LEP 2011. Strict compliance with the maximum building height is considered unreasonable and/or unnecessary on this site and the variation can be supported via a clause 4.6 exception to the development standard.

The proposed variation is very minor in nature and would not be visible to the naked eye.

The variation to the development standard will provide a better design outcome for this site. The development will not have any adverse visual impacts in the locality.

The proposal meets the exceptions to development standards as set out in Maitland LEP 2011. Strict compliance with the development standard is considered unreasonable or unnecessary in the circumstances of the case and the variation can be justified on environmental grounds. The proposed development is considered to be in the public interest and in this case, the variation can be justified