

Report to Sydney West Joint Regional Planning Panel

JRPP No.	2015SYW194
DA No:	JRPP-15-2087
Proposed Development:	Shop top housing
Development Type:	Capital investment value > \$20 million
Lodgement Date:	18 September 2015
Land/Address:	Lots 30 and 31 DP 11157 and Lot 1 DP 1160104, 2 - 10 First Avenue, Blacktown
Land Zoning:	B4 Mixed Use
Capital Investment Value:	\$54,230,000
Applicant:	Penrith Village Square Pty Limited
Report Author:	Rebecca Gordon, Senior Town Planner
Instructing Officers:	Judith Portelli, Manager Development Assessment Glennys James, Director Design and Development
Date Submitted to JRPP:	8 June 2016
Date Considered by JRPP:	22 June 2016



Figure 1 Photomontage (HBO EMTB Architects Pty Ltd 2015)

Assessment Report

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1 Executive summary

- 1.1 Blacktown City received a Development Application (DA) from Penrith Village Square Pty Limited for a 'shop top housing' development at 2 - 10 First Avenue, Blacktown. The DA seeks approval for the construction of an 18 storey building comprising business and retail floor space at the first 2 levels and 16 residential levels above. The development includes 160 residential units and 191 car parking spaces over 5 levels. All vehicular access is proposed from Humphries Lane.
- 1.2 The proposed development constitutes 'regional development' requiring referral to the Joint Regional Planning Panel (JRPP), as it has a capital investment value of \$54,230,000. While Council is responsible for the assessment of the DA, the Sydney West JRPP is the consent authority.
- 1.3 The site is zoned B4 Mixed Use under Blacktown Local Environmental Plan (BLEP) 2015. Shop top housing, defined as one or more dwellings located above ground floor retail premises or business premises, is permissible in the B4 zone with development consent.
- 1.4 A detailed assessment has been undertaken against the provisions of BLEP 2015 and Blacktown Development Control Plan (BDCP) 2015. The development complies with the development standards contained within the LEP with the exception of building height and FSR. The development complies with the development controls within the DCP with the exception of common open space, balcony dimensions and car parking.
- 1.5 The applicant has lodged a request under clause 4.6 for the variations to the development standards under BLEP 2015. The building height is varied by up to 5.35 m above the permissible height limit or 4.35 m once the 1 m concession to the permissible height limit to accommodate a 4.5 m high basement clearance for garbage collection vehicles is applied. The variation is considered acceptable as the additional height is partly as a result of the lift overrun and partly in response to Council officers' concerns with the podium design. The lift overrun and increased podium height have a negligible shadow and amenity impact on surrounding properties. The height variation does not result in additional floor levels.
- 1.6 The DA also seeks a clause 4.6 variation to the floor space ratio. The permissible FSR is 6.5:1, whereas the development proposes an FSR of 6.76:1. The variation of 0.26:1 is considered acceptable as the bulk and scale of the development is not considered to be compromised, with suitable setbacks and variation to the streetscape to reduce the impact. The scale of the development is considered reasonable within the Blacktown CBD context, given the site's proximity to the Blacktown train station, bus interchange and major arterial road network. The proposed 4% variation is also consistent with the 3.8% variation recently granted for a development at 28 Second Avenue, Blacktown.
- 1.7 BDCP 2015 requires CBD residential developments to provide a minimum of 42% of the rates for common open space for a residential flat building in the R4 zone under BLEP 2015. There is no science to the 42% rule. It evolved over time following a number of reports to Council over the last 10 years where Council gave variations depending on the scale of the development and its location.
- 1.8 Based on these rates, the development requires 2,482 sqm of common open space, of which 30% (745 sqm) can be provided on private balconies/terraces. The development provides 745 sqm on the balconies (as the 30% allowance) and a further 633 sqm, being an open area at the podium level measuring 588 sqm and a 45 sqm resident only meeting room/gymnasium at the 1st floor level. This represents 56% of the BDCP control.

- 1.9 Under the requirements of the Apartment Design Guide (ADG), however, the development is only required to provide a common open space area equivalent to 25% of the site area (i.e. 528 sqm). Therefore, the proposal complies with the state-wide accepted industry standard and insistence on a higher level of provision will not be sustainable if the DA is appealed in the Land and Environment Court. The Apartment Design Guide was adopted by the NSW Government in July 2015 and it is relied upon by developers as the state-wide design parameters for apartment buildings. Our design standards have been in place for 20 years and do not reflect current design practice. It has been separately recommended to Council that we review our DCP so that it aligns to the standards in the state-wide guidelines.
- 1.10 Clause 6A of State Environmental Planning Policy No. 65 (SEPP 65) – *Design Quality of Residential Flat Development* states that the private open space and balcony requirements of the ADG prevail over any inconsistent DCP control. BDCP 2015 states that the balconies must measure at least 2.5 m x 3.0 m, while under the ADG balconies are only required to measure 2.0 m x 3.0 m. The development complies with the ADG requirements and therefore must be considered acceptable.
- 1.11 The DCP requires that the development be provided with 254 on-site car parking spaces. The development provides 191 car spaces and therefore does not comply with the DCP. Clause 30 of SEPP 65 states, however, that a DA cannot be refused on the grounds of parking if the development satisfies the minimum RMS car parking requirements set out in the 'Guide to Traffic Generating Developments'. The development provides a surplus of 40 spaces when assessed against the RMS rates and therefore must be considered acceptable.
- 1.12 The proposal is consistent with the objectives of SEPP 65 and satisfactorily achieves the 9 'design quality principles' listed under Schedule 1. Our officers have assessed the application against the requirements within the Apartment Design Guide (ADG). The development complies with the numerical recommendations of the ADG, with the exception of building separation.
- 1.13 The proposed development does not provide 9 m – 12 m setbacks at levels 4 and above as identified under the ADG. Instead, the proposal provides 6 m side and rear setbacks in line with Council's DCP. Similar developments have been approved in the Northern Precinct of the CBD with 6 m setbacks. This development is therefore consistent with other approved buildings in the area. The reduced setbacks also have no impact on solar access or visual and acoustic privacy and are therefore considered satisfactory. The ADG is a guide only. Non-compliance with the ADG does not warrant refusal of the application.
- 1.14 The proposed development was notified to property owners and occupiers within the locality between 9 and 23 December 2015. One submission was received. The grounds for concern relate to overshadowing and are not considered sufficient to warrant refusal of the application.
- 1.15 The development is considered satisfactory with regard to relevant matters such as siting and design, bulk and scale, privacy, overshadowing, access, traffic impacts, parking and stormwater drainage. The proposed development has been assessed against the relevant matters for consideration under Section 79C of the Environmental Planning and Assessment Act 1979, including the suitability of the site and the public interest, and is considered satisfactory.
- 1.16 It is recommended that the proposed development be approved subject to the conditions at attachment 1.

2 Location

- 2.1 The site is located within the Blacktown central business district (CBD) on the northern side of the railway line. The site is located approximately 400 m east of the train station and 25 m west of Sunnyholt Road, and is within easy walking distance of the main shopping area.
- 2.2 The Northern Precinct of the CBD is currently characterised by a mix of low rise residential flat buildings and commercial / light industrial development.

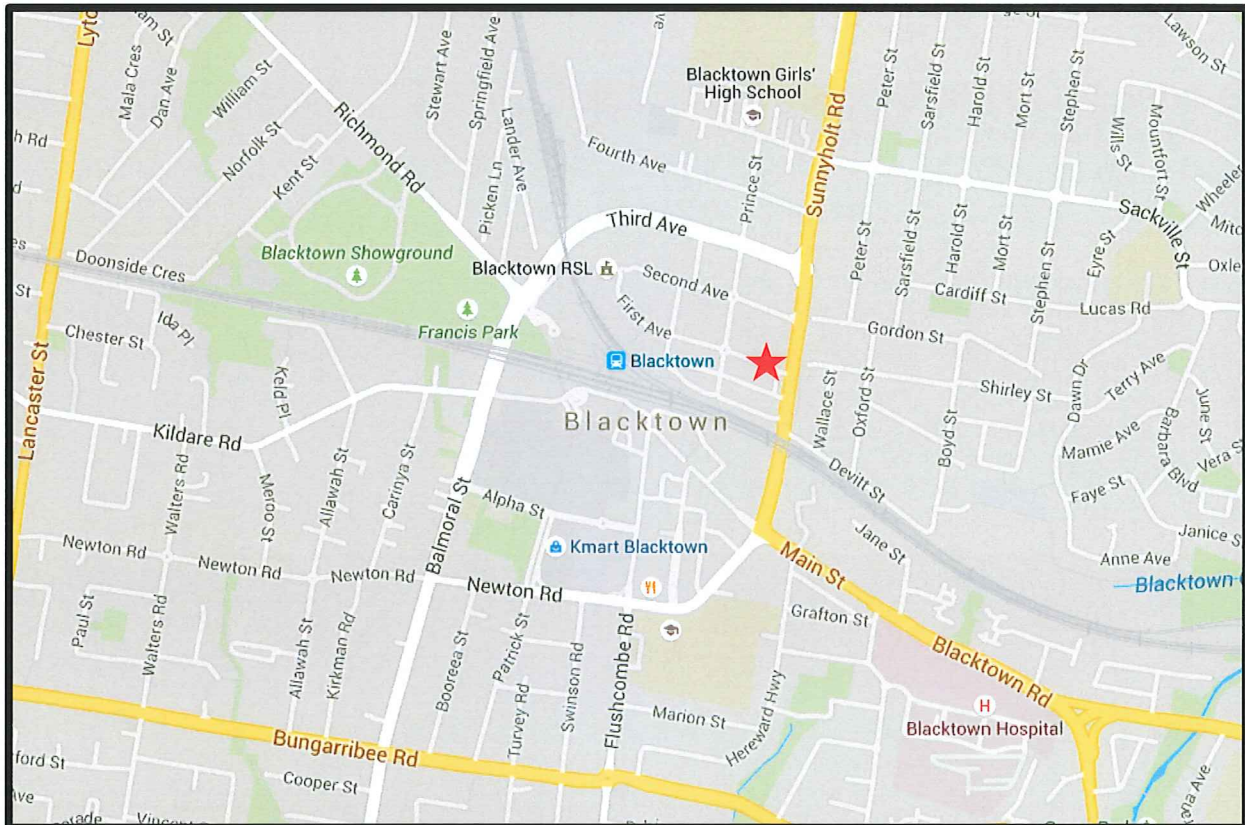


Figure 2 Location map (Source: Google maps 2016)

3 Site description

- 3.1 The subject site is known as Lots 30 and 31 DP 11157 and part of Lot 1 DP 1160104, 2 - 10 First Avenue, Blacktown. The site is a corner lot and has a frontage of 42.5 m to First Avenue, 45.7 m to Zolyomi Lane and 51.8 m to Humphries Lane. The total site area is 2,111 sqm.
- 3.2 The site is currently vacant land and is clear of any vegetation. Immediately to the west is a 2 storey commercial building which is occupied by Centrelink. The Centrelink building is constructed to the boundary and addresses the subject site with a blank wall. The site adjoins a road / laneway on the other 3 boundaries and has a gentle slope from Zolyomi Lane (to the east) towards the Centrelink building.
- 3.3 To the north of the site is a single storey detached building occupied by Guardian Funerals, to the east is a row of single storey shops which front Sunnyholt Road, and to the south is Thrifty car rentals.
- 3.4 The site is zoned B4 Mixed Use under Blacktown Local Environmental Plan (BLEP) 2015.



Figure 3 Aerial image as of 23 February 2016 (Source: Nearmap)

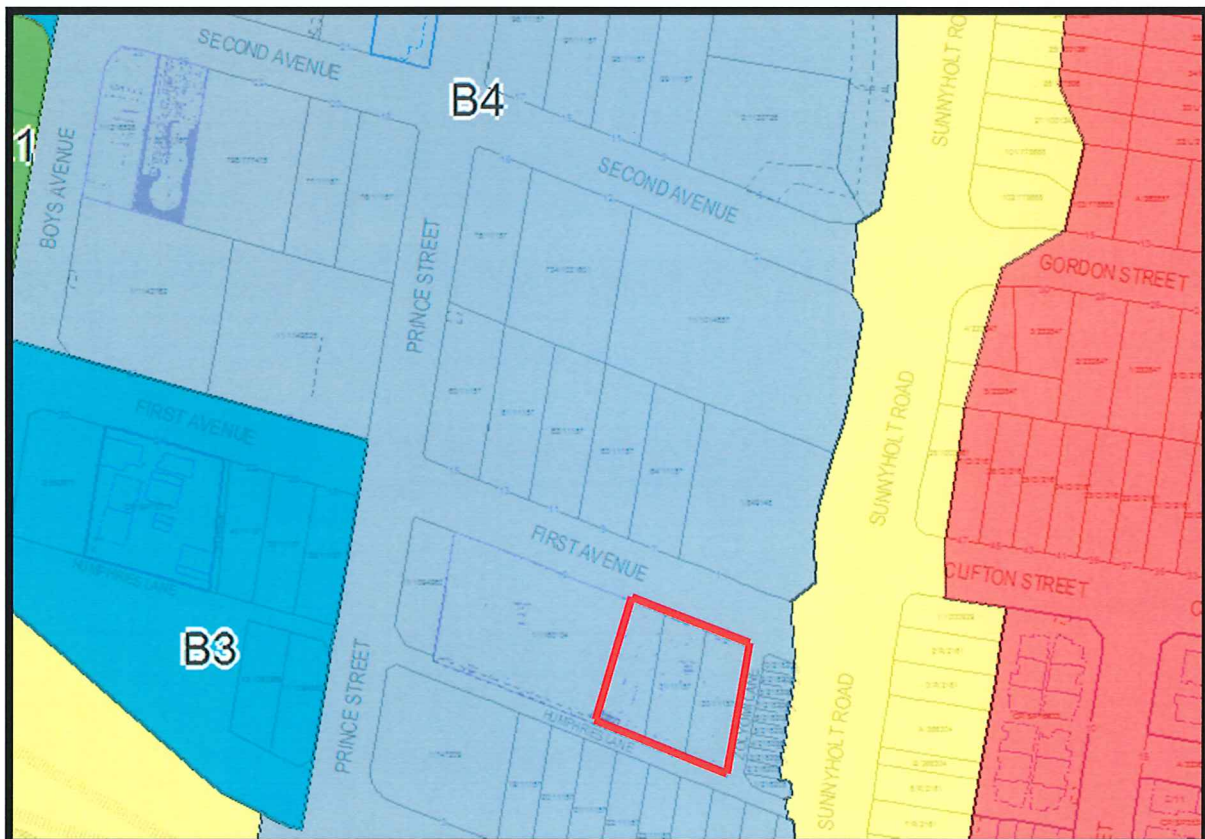


Figure 4 Zoning extract (Source: BCC 2016)

4 Background

- 4.1 On 10 November 2015, development consent (DA-15-1209) was granted for the consolidation and re-subdivision of Lots 30 and 31 DP 11157 and Lot 1 DP 1160104 into 2 new lots. This application (JRPP-15-2087) seeks to develop proposed Lot 2 within the approved subdivision. Proposed Lot 1 contains the existing Centrelink building.
- 4.2 A portion of Lot 2 (the subject of this DA) has been set aside for an existing padmount substation. As part of any development consent granted over the site, suitable conditions will also be imposed to allow for the widening of Humphries Lane by 1.5 m.
- 4.3 A previous DA (JRPP-15-865) was lodged over the site for an 18 storey development. Following a preliminary review, however, the application was withdrawn on 31 August 2015. Amendments were made to the design and the subject DA (JRPP-15-2087) was lodged on 18 September 2015.

5 The proposal

- 5.1 The proposal is for the construction of an 18 storey building comprising commercial / retail floor space at the first 2 levels with 16 residential levels above.
- 5.2 The development provides 900 sqm of business / retail space, with 369 sqm at ground level and 531 sqm at the first floor level.
- 5.3 A total of 160 residential apartments are proposed from levels 3 to 18. The unit mix includes 49 x 1 bedroom units and 111 x 2 bedroom units. A total of 16 of the units will be adaptable.
- 5.4 The development provides 588 sqm of communal open space at the podium level and a 45 sqm meeting room / gymnasium is provided at the first floor level for the exclusive use of the residents. The outdoor communal open space area will be embellished with paving, timber decking, synthetic grass and suitable trees and shrubs within planter boxes. Communal bench seating, tables and a barbeque are also proposed.
- 5.5 The 2 storey commercial / retail podium will be built to the property boundaries. The 16 storey residential tower above provides a zero setback to the front property boundary and a minimum 6 m setback to the western boundary. Variable setbacks are proposed to the eastern and southern boundaries, with a minimum setback of 6 m from the centreline of the adjoining laneways. A 6 m setback to the centreline of the laneways will ensure that the minimum 12 m building separation is achieved between this development and future developments on the opposite side of the laneway.
- 5.6 A total of 191 car parking spaces are proposed across 5 levels (i.e. ground level and 4 basement levels). All vehicular access is proposed from Humphries Lane. It is recommended that 30 spaces be nominated for business / retail use (as per Council's DCP rate) and that 23 spaces be set aside for visitors (as per the RMS rate). The remaining 138 spaces will be allocated to the residential units (which is 40 more spaces than required by the RMS rate). Of the 138 resident spaces, 1 space will be allocated to each 2 bedroom unit (i.e. 111 spaces). The other 27 spaces will be allocated to the 1 bedroom units. This means that 22 x 1 bedroom units will not have an allocated car space. The 30 business / retail car parking spaces, however, could be utilised by these residents / occupiers outside of trading hours. The body corporate would be responsible for monitoring and controlling the dual use of the business / retail car parking spaces. It is also likely that a portion of the occupants will not own a car given that the site is located in close proximity to the Blacktown train station. The RMS car parking rates have been adopted to reflect the number of people who rely on public transport.
- 5.7 The maximum building height of the development is 61.35 m (or 57.37 m to the ceiling of the top level). This represents a 5.35 m departure from the 56 m maximum height limit

under BLEP 2015 or a 4.35 m departure once the 1 m concession to the permissible height limit to accommodate a 4.5 m high basement clearance for garbage collection vehicles is applied. With the 1 m concession for plant and equipment, the permitted overall height for this development is 57 m.

- 5.8 The majority of the departure (i.e. 2.96 m) can be attributed to the roof features, including the parapet, lift overrun and plant and equipment. The additional 1.39 m is because the base of the building has been increased in height to provide better access to the commercial tenancies on the ground level and improve the overall design and appearance of the building. The applicant has lodged a clause 4.6 request to vary the development standard. The applicant's clause 4.6 request is at attachment 2. Council's assessment of this variation is undertaken in section 7.
- 5.9 The proposal has an FSR of 6.76:1, which exceeds the maximum FSR of 6.5:1 for the site. This is a 4% variation. The applicant has also lodged a clause 4.6 request to vary this development standard. The applicant's clause 4.6 request is at attachment 2. Council's assessment of the variation is undertaken in section 7.
- 5.10 The building has been designed so that each façade provides visual interest and variety. This has been achieved with irregular window placement and through the use of contrasting dark panels. The interesting cladding treatment and random window patterning is important for such a prominent building that is capable of being viewed 'in the round'. Photomontages showing the patterns, colours and finishes are at attachment 3 and the development plans are at attachment 4.

6 Planning controls

- 6.1 The planning controls that relate to the proposed development are as follows:

- (a) **Environmental Planning and Assessment Act 1979**

For an assessment against the Section 79C 'Heads of consideration' refer to Section 11.

- (b) **State Environmental Planning Policy (State and Regional Development) 2011**

The Joint Regional Planning Panel (JRPP) is the consent authority for all development with a capital investment value (CIV) of over \$20 million. The DA has a CIV of \$54,230,000. While our officers are responsible for the assessment of the DA, determination of the application is to be made by the Sydney West JRPP.

- (c) **State Environmental Planning Policy (Infrastructure) 2007**

SEPP (Infrastructure) 2007 ensures that the Roads and Maritime Services (RMS) is given the opportunity to comment on development nominated as 'traffic generating development' under Schedule 3 of the SEPP.

The proposed development is located within 90 m of a classified road (i.e. Sunnyholt Road) and proposes more than 75 dwellings, 50 car spaces and 500 sqm of commercial / retail floor space. The development is therefore classified as 'traffic generating development' requiring referral to RMS. RMS has reviewed the DA and has raised no objection to the proposal.

- (d) **State Environmental Planning Policy No. 55 – Remediation of Land**

State Environmental Planning Policy No. 55 – Remediation of Land aims to 'provide a State wide planning approach to the remediation of contaminated land'. Where contamination is, or may be, present, the SEPP requires a proponent to investigate the site and provide the consent authority with the information to carry out its planning functions.

As part of the DA, the applicant submitted a phase 1 site contamination report. The report identified that previous demolition of buildings and filling of the land could be potential sources of contamination. Phase 2 testing was therefore recommended. This was undertaken by Douglas Partners in February 2016 and concluded that the only contamination of concern is asbestos cement in the fill material. A remediation action plan has been prepared for the removal of the fill and will form a condition of any consent.

(e) State Environmental Planning Policy No. 65 – Design Quality of Residential Flat Development

State Environmental Planning Policy No. 65 (SEPP 65) – *Design Quality of Residential Flat Development* applies to the assessment of development applications for residential flat buildings 3 or more storeys in height and containing at least 4 dwellings.

As part of the submission requirements, the DA must provide a design statement addressing the 9 'design quality principles' prescribed by the SEPP. Council's assessing officer's comments in relation to the submission is provided at attachment 5.

Clause 30 of SEPP 65 states that the following standards cannot be used as grounds to refuse a development:

- (i) If the car parking for the building will be equal to, or greater than, the recommended minimum amount of car parking specified in Part 3J of the Apartment Design Guide (ADG)
- (ii) If the internal area for each apartment will be equal to, or greater than, the recommended minimum internal area for the relevant apartment type specified in Part 4D of the ADG
- (iii) If the ceiling heights for the building will be equal to, or greater than, the recommended minimum ceiling heights specified in Part 4C of the ADG.

The proposed development does not comply with the car parking requirements under Blacktown Development Control Plan (DCP) 2015. It does, however, exceed the minimum RMS car parking requirements set out in the 'Guide to Traffic Generating Developments'. In accordance with Clause 30 of the SEPP, the DA therefore cannot be refused on the grounds of insufficient parking.

(f) Apartment Design Guide (ADG)

SEPP 65 requires that, when assessing an application, consideration also be given to the Apartment Design Guide (ADG). Council's assessing officer's assessment against the relevant design concepts and numerical guidelines of the ADG is held at attachment 6.

The development complies with the ADG with the exception of the proposed building separation. The non-compliance with the recommended building separation requirements is discussed in section 7.

Although the ADG is a guide, SEPP 65 states that some parts of the ADG must be applied when assessing DAs. In accordance with clause 6A of SEPP 65, the following objectives, design criteria and design guidance under parts 3 and 4 of the ADG prevail over any inconsistent DCP control:

- (i) Visual privacy
- (ii) Solar and daylight access
- (iii) Common circulation and spaces

- (iv) Apartment size and layout
- (v) Ceiling heights
- (vi) Private open space and balconies
- (vii) Natural ventilation
- (viii) Storage.

Council's DCP controls are consistent with the above ADG requirements, except in relation to private open space and balconies. The DCP does not provide specific private open space requirements. Instead it has common open space requirement. There is, however, an incentive to provide private open space and balconies because they count towards 30% of the common open space requirement.

The DCP states that the balconies must measure at least 2.5 m x 3.0 m if they are to be included in the common open space calculations. Under the ADG, however, balconies are only required to measure 2.0 m x 3.0 m. The inconsistency between the ADG and our DCP open space requirements is also discussed in section 7 of this report.

(g) State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been lodged as part of the DA, as well as a NatHERS (Nationwide House Energy Rating Scheme) assessor certificate. The BASIX certificate indicates that the development has been designed to achieve the required water, thermal comfort and energy scores. A suitable **condition** will be imposed on any development consent requiring compliance with the submitted BASIX certificate.

(h) Blacktown Local Environmental Plan (BLEP) 2015

The site is zoned B4 Mixed Use under BLEP 2015. Shop top housing is permissible within the zone with consent. Shop top housing is defined as one or more dwellings located above ground floor retail premises or business premises.

Attachment 7 provides an assessment of the proposal against the requirements of BLEP 2015. The development complies with the development standards contained within BLEP 2015 with the exception of building height and FSR.

The applicant is seeking an exemption under clause 4.6 to these development standards. A copy of the applicant's clause 4.6 variation request is provided at attachment 2, while an assessment against the development standards is discussed in detail in section 7.

(i) Blacktown Development Control Plan 2015 (BDCP)

BDCP 2015 applies to the site. Attachment 8 provides a table that outlines the proposal's compliance with BDCP. The development complies with the development controls with the exception of common open space, private balcony dimensions and car parking. The variations are discussed in detail in section 7 of this report. As indicated above, the DA cannot be refused on the grounds of parking if the development satisfies the minimum RMS car parking requirements set out in the 'Guide to Traffic Generating Developments'. The development will provide a surplus of 40 spaces when assessed against the RMS rates and is therefore considered acceptable. The common and private open space provisions are also considered acceptable given the CBD context and that they comply with the requirements of the ADG.

7 Assessment

7.1 Variations to BLEP 2015 development standards

Following is a summary of the principal development standards under BLEP 2015 and how the proposal responds to those standards.

BLEP 2015	Required	Proposed	Compliance
Clause 4.3 Height	56 m	61.35 m (or 57.37 m to the ceiling of the top level).	No – Clause 4.6 variation submitted. See assessment below.
Clause 4.4 Floor space ratio (FSR)	6.5:1	6.76:1	No – Clause 4.6 variation submitted. See assessment below.

(a) Building height variation

The maximum height on the site permissible under BLEP 2015 is 56 m. The plans, as originally submitted to Council, proposed an 18 storey building measuring 56 m to the ceiling of the top level and 59.96 m to the top of the lift overrun. The proposed development complied with the 56 m height limit with the exception of the roof-top facilities.

Our officers have consistently supported a variation to the maximum height limit to accommodate roof-top facilities. A 1 m concession to the permissible height limit is also supported if a 4.5 m high basement clearance to accommodate on-site garbage collection is provided, as is the case with this development. With the 1 m concession for plant and equipment, the permitted overall height for this development is 57 m.

The roof-top plant and equipment and lift overrun proposed for this development are setback a minimum of 8 m from each building façade and would not be visible from the street. The additional 2.96 m in height is therefore considered acceptable.

However, to comply with the maximum height limit under BLEP, the ground floor commercial / retail tenancies were proposed approximately 1 m lower than the adjacent footpath. Significant ramping was therefore required to achieve disabled access into the commercial tenancies, and the dropped floor level resulted in a poorly designed base for the building.

Council's City Architect believed that the development would be significantly improved if the ramping was deleted and if more height was added to the podium to eliminate the 'squashed' appearance.

The height of each residential level is 3.16 m, but could be reduced to as low as 3 m. Across 16 residential levels, the additional 0.16 m has added more than 2.5 m to the overall height of the building. The applicant was requested to review the floor to floor measurement, but advised us that any reduction would impact on the proposed construction method. The 3.16 m floor to floor height has therefore been retained.

To address Council officers' concerns, the 2 storey commercial podium (i.e. the base of the building) has been increased in height by 1.39 m. This has been achieved by 'lifting' the building so that it is no longer lower than the adjacent footpath and providing a partial increase in the ceiling height. There has been no change to the 16 residential levels. The comparison between the original and amended podium design is provided at attachment 9.

The revised DA now exceeds the building height limit by 4.35 m. As discussed above, 2.96 m of this can be attributed to the roof features, including the parapet, lift overrun and plant and equipment. The additional exceedance to the maximum building height (i.e. the additional 1.39 m) is because the base of the building has been increased in height from 5.9 m to 7.29 m.

The additional 1.39 m increase to the building height has been provided to address concerns with the design of the first 2 commercial levels. The revised plans:

- Provide better access to the commercial tenancies on the ground level, given that the floor level has been raised to meet the footpath
- Improve the overall design and appearance of the building
- Provide a more flexible commercial floor plan.

The additional height does not result in any additional yield and does not result in an additional storey. The proposed number of storeys, being 18 in total, is consistent with other shop top housing developments proposed in the 56 m height limit area (e.g. JRPP-15-467 at 16 Third Avenue, JRPP-15-1263 at 2 Second Avenue and JRPP-15-2533 at 16 Second Avenue).

If the applicant is made to comply with the maximum height limit under BLEP, the building will be provided with a “squashed” podium with difficult access / ramping into the commercial tenancies. This would not be a good design outcome. Any reduction to the height of the building would also compromise the design of the building or would require less preferred construction methods.

Given that the additional height does not result in any commercial gain for the developer (in terms of yield or number of storeys) and will result in a better designed building, it is considered that the proposed variation to the height standard should be supported in this instance.

(b) Floor space ratio (FSR) variation

The permitted gross floor area (GFA) for the site is 6.5:1 (i.e. 13,721.5 sqm). The proposal has a GFA of 6.76:1 (i.e. 14,271 sqm) and exceeds the permitted GFA by 549.5 sqm. The proposed variation is 4%. This is similar to the 3.8% variation recently granted for a development at 28 Second Avenue, Blacktown.

The plans, as originally submitted to Council, provided 7 car spaces and the associated vehicular access ramps and aisles at the 1st floor level behind the commercial tenancies.

The increase to the FSR is a result of the 1st floor level being reconfigured. To address traffic related concerns, the proposed secondary access point off Zolyomi Lane was deleted, which meant that the 7 car spaces at the 1st floor level had to be relocated to the basement. Car parking areas are not included in GFA calculations. The redesigned 1st floor commercial floor space and replacement of the parking area with relocated building services, a resident-only meeting room / gymnasium and new corridors to connect these amenities to the rest of the building, has resulted in the additional floor area.

The revised design is considered superior as it provides a more active street frontage to Humphries Lane. The original design provided a car parking area at the 1st floor level with limited opportunity for casual surveillance of the laneway. The redesigned commercial floor space and residential meeting room / gymnasium will now provide this opportunity.

The additional floor area has been contained within the original, complying building footprint. It does not add any additional bulk to the building and does not result in additional yield. The non-compliance (i.e. 4% variation) is also consistent with other approvals granted and so should be supported.

(c) Clause 4.6 – variations to the development standards

The applicant has submitted a request for variations to the above 2 development standards pursuant to clause 4.6 of BLEP 2015. The objective of clause 4.6 is to provide an appropriate degree of flexibility in applying certain development standards and to achieve better outcomes for and from the development by allowing flexibility in particular circumstances.

Clause 4.6 requires consideration of the following:

1. *Has the applicant submitted a written request 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.*
2. *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.*
3. *Has the concurrence of the Director-General been obtained?*

The applicant's written request has adequately justified that compliance with the height and FSR development standards is unreasonable and unnecessary in this instance.

There are sufficient environmental planning grounds to justify varying the development standards. A copy of the applicant's written request is held at attachment 2.

The variations will not have unreasonable impacts on neighbouring properties or the character of the area. The proposal is also consistent with the objectives of the development standards and the B4 Mixed Use zone.

In accordance with clause 64 of the Environmental Planning and Assessment Regulation 2000 a consent authority, in this case the JRPP, has 'assumed concurrence' from the Secretary (formerly the Director-General) of the Department of Planning and Environment.

(d) Justification for the variations

The Land and Environment Court has established the following 5-part test for a consent authority to take into consideration when deciding whether to grant concurrence to a variation to a development standard:

1. **The objectives of the standard are achieved notwithstanding non-compliance with the standard**

Height

The objectives of clause 4.3 Height of buildings are as follows:

- (a) *To establish maximum height controls for buildings as a means of controlling the density and scale of buildings*
- (b) *To nominate heights that will provide a transition in built form and land use intensity*
- (c) *To define focal points by way of nominating greater building heights in certain locations*
- (d) *To provide sufficient space for development for the purposes of retail premises, commercial premises and residential accommodation*
- (e) *To allow sun access to the public domain and ensure that specific areas are not overshadowed*
- (f) *To ensure that buildings and public areas continue to receive satisfactory exposure to the sky and sunlight*
- (g) *To minimise any visual impact on, or loss of solar access to, land in the vicinity of proposed development as a result of that development*
- (h) *To minimise any loss of privacy to residential land as a result of proposed development*
- (i) *To ensure that there is an appropriate interface between commercial centres and land in any adjoining residential zone or in any adjoining public land.*

- **Maximum height**

The maximum height limit on the site is 56 m (or 57 m once the 1 m concession to the permissible height limit to accommodate a 4.5 m high basement clearance for garbage collection vehicles is applied). Although the development exceeds the permissible height by 4.35 m, the development does not achieve an additional residential level. The increase in height therefore does not impact on the density / floor area of the development. The increased height also has no impact on the scale of the development. The additional height simply provides a larger base to the building which improves the overall look and design of the development.

- **Public areas**

The development exceeds the accepted 57 m height limit by 4.35 m, but 2.96 m of this is attributed to the roof features, including the parapet, lift overrun and plant and equipment. The relocation of the plant and equipment would impact on other components on the development, including the commercial podium and common open space area. A reduction in the building height would result in a “squashed” podium with difficult access/ramping into the commercial tenancies. This would not be a good design outcome.

- **Solar access to buildings and open space of adjoining development and land**

The additional shadow impacts are negligible. The majority of the overshadowing caused by the non-compliance is due to the lift overrun and roof-top plant and equipment which is captured within the roof space itself. Overshadowing as a result of the height variation is shown at attachment 10 and is considered acceptable.

- **Range of building heights in appropriate locations**

The site is considered suitable for the development given its proximity to the Blacktown railway station and the Blacktown CBD. The additional height does not result in any additional yield and does not result in an additional storey. The proposed number of storeys, being 18 in total, is

consistent with other shop top housing developments proposed in the 56 m height limit area (e.g. JRPP-15-467 at 16 Third Avenue, JRPP-15-1263 at 2 Second Avenue and JRPP-15-2533 at 16 Second Avenue). A reduction to the height of the building would compromise the design of the building (i.e. at the commercial base).

- **Privacy impacts**

The building height variation does not result in any additional privacy impacts on adjoining properties. The roof-top area will not be used for open space purposes.

FSR

The objective of Clause 4.4 Floor space ratio is:

- (a) *To establish maximum floor space ratios as a means of controlling the density, bulk and scale of buildings*
- (b) *To establish the maximum floor space for development for the purpose of commercial premises, taking into account the availability of infrastructure and the generation of vehicle and pedestrian traffic*
- (c) *To concentrate intensive land uses in locations that are most accessible to transport or are on key gateway sites.*

The objectives of the development standard are achieved as the development is not considered bulky and the density is not excessive. The irregular window placement and stepped eastern facade, and use of interesting cladding treatment and contrasting dark panels, ensures the massing of the building is satisfactory.

The plans, as originally submitted to Council, complied with the maximum GFA of 6.5:1. The additional floor area is a result of the 1st floor level being reconfigured to address traffic related concerns. The replacement of the 1st floor parking area with relocated building services, a resident-only meeting room/gymnasium and new corridors to connect these amenities to the rest of the building has resulted in the additional floor area of 549.5 sqm. Strict compliance with the development control would result in a less desirable design outcome for the development within the CBD context.

The DA is consistent with objective (c), as the land use is approximately 400 m east of the Blacktown railway station and bus interchange. Given the site's proximity to public transport, the minor variation in floor space is considered acceptable in this circumstance.

2. The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary

The purpose of the standards is still considered relevant to the proposal. However, 100% compliance in this circumstance is considered unreasonable.

3. The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable

The purpose of the development standards would not be defeated if compliance was required. However, 100% compliance is considered unreasonable as the variation is acceptable based on merit. The objectives of the standards, as outlined above, will still be achieved despite the variations.

- 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**

Variations to the height and FSR development standards have been previously supported in the CBD. Council officers have also consistently allowed the lift overruns and roof-top area to encroach above the permissible height limit.

Developments of a similar scale to this DA (i.e. 18 storeys only) have been approved within the northern precinct of the CBD with variations to the height and FSR, including the development at 28 Second Avenue (JRPP-14-2593).

- 5. The compliance with the development standard is unreasonable or inappropriate due to existing use of land and current environmental character of the particular parcel of land. That is, the particular parcel of land should not have been included in the zone**

The development site is currently vacant. Full compliance with the development controls can therefore be achieved. The variations, however, do not increase residential density. Given the site's context within the Blacktown CBD and the limited site area, variations in order to create usable space for the benefit of future residents and a better designed building is considered acceptable.

Based on the above assessment, the requested variations under clause 4.6 are considered reasonable, well founded and are recommended for support.

7.2 Variations to BDCP 2015 requirements

The provisions of Blacktown Development Control Plan 2015 (BDCP), in particular Part D – Development in the Business zones, apply. The table at attachment 8 demonstrates that the proposal is compliant with BDCP with the exception of car parking and open space as outlined below.

(a) Parking

Following is a summary of the car parking requirements that apply to the development:

	Retail / business component (being 900 sqm)	Residential component (being 160 units - 49 x 1 bed and 111 x 2 bed)	Visitor parking (for 160 units)	Total required
Requirement under Council's DCP	1 space / 30 sqm GFA = 30 spaces	1 space per 1 or 2 bed = 160 spaces	1 space per 2.5 units = 64 spaces	254
Requirement under the RMS guideline	N/A for this development. Council's DCP rate is therefore to be applied = 30 spaces	0.4 spaces per 1 bed and 0.7 spaces per 2 bed = 98 spaces	1 space per 7 units = 23 spaces	151

Based on the BDCP parking rates, the proposed development requires 254 off-street car parking spaces. The proposed development provides 191 car parking spaces and therefore does not comply with the car parking requirements under the DCP.