

Clause 4.6 Variation to Development Standard

Property:	2 to 6 First Avenue, Blacktown
Development:	Mixed Use Building comprised of "Shop Top Housing" and Commercial premises
Development Application No.:	JRPP-15-2087
Development Standard:	Clause 4.3 of Blacktown Local Environmental Plan 2015 – Height of Buildings Clause 4.4 of Blacktown Local Environmental Plan 2015 – Floor Space Ratio

1. Summary

Penrith Village Square Pty Ltd lodged a development application (**DA**) for a Mixed Use Development comprising commercial premises and "Shop Top" housing residential units at No's 2 to 6 First Avenue, Blacktown (JRPP-15-2087).

This is a request under clause 4.6 of *Blacktown Local Environmental Plan (Central Business District) 2012 (BLEP 2012)* to vary the development standard for building height and Floor Space Ratio.

The proposed development exceeds the maximum building height of 56 metres for the site, as set out in Clause 4.3 in BLEP 2012. The DA has been amended so that only the roof top structure (including parapet and supporting slab) as well as lift overrun and plant room remain above the height standard.

The exceedance of the maximum building height relates to architectural features as well as the desire of Blacktown Council to improve the quality of and access to the commercial space on the ground floor. The architectural features and integrated stairs, plant and lift overruns would normally be permitted above the height standard as they satisfy the former provisions of clause 5.6 of BLEP 2012 that relate to architectural roof features. These provisions do not appear to have carried over in the BLEP2015.

Further the FSR of the building exceeds 6.5:1 due mainly to the configuration of the Commercial Space on Level 2 in order to create additional residential amenities and facilities. The exceedance of the FSR is approximately 3.8% to 4.0% of the permitted FSR which is the standard range applied by Council in previous application approved in the Northern Precinct.

Despite the above, this request for a variation to the height standard is submitted for the purposes of abundant caution. On this basis, this submission outlines the justification for this contravention and demonstrates that it is in the public interest.

2. Authority to vary a development standard

Clause 4.6 of Blacktown LEP 2015 allows the contravention of a development standard as follows:

- 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 excluded from the operation of this clause.*
- 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*
 - b) *the concurrence of the Director-General has been obtained.*
- 5) *In deciding whether to grant concurrence, the Director-General 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 Director-General before granting concurrence.*
- 6) *Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living if:*
 - a) *the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or*
 - b) *the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.*

Note. When this Plan was made it did not include Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living.

- 7) After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).
- 8) This clause does not allow development consent to be granted for development that would contravene any of the following:
 - a) a development standard for complying development,
 - b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,
 - ba) clause 4.3A,
 - c) clause 5.4,
 - ca) clause 5A.1 or 5A.2,
 - cb) clause 6.7.

3. Development Standard to be Varied

A variation to clause 4.3 of BLEP 2015 is sought. Clause 4.3 specifies:

- (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 Buildings' Map identifies that the subject site has a maximum building height of 56 metres – refer to **Figure 1** below.

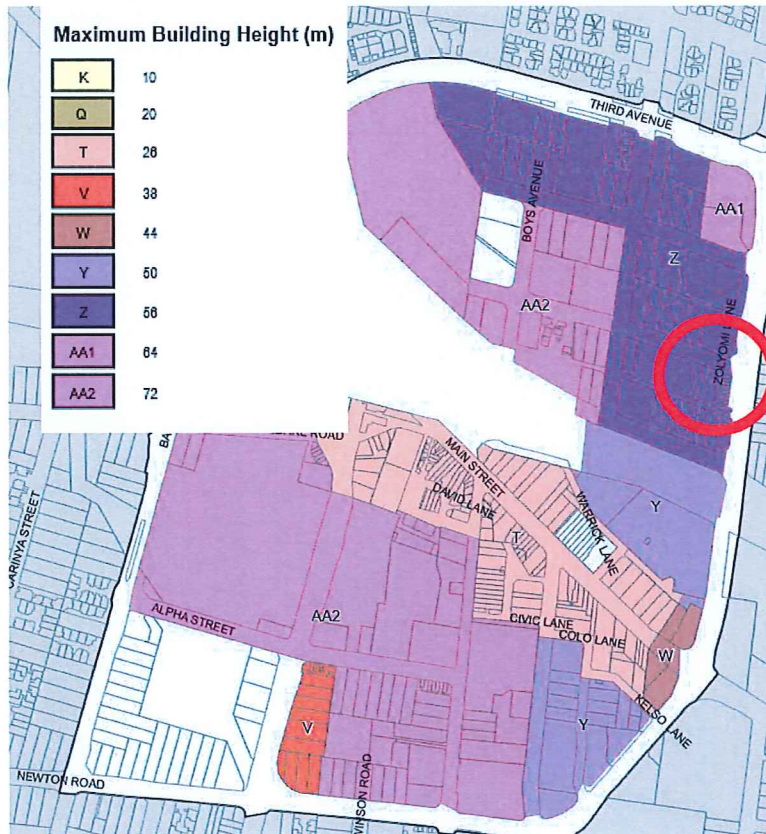


Figure 1 Maximum building height

4. Extent of variation – Building Height

The DA proposes to exceed the maximum building height by up to approximately 5350mm.

Based on other approved developments within the Precinct, Council measures the height limit to the under slab of the roof; exceedance above this limit by building parapet and a mechanical plant room and lift overrun are accounts for 3960mm (75%) of the non-compliance.

The remaining height non-compliance relates to two building features:-

- i. 1100mm is attributed to the recommendation of Council by way of letter dated 12th November 2015 wherein Council advised that a better planning outcome would be achieved if the proposed ground floor was not lowered;

The benefits sought by this relaxation were:-

1. More height to the podium provides a better base for the building as well as addressing some floor to ceiling height issues;
 2. Provides disabled access across the entire frontage of the site and;
 3. A more flexible commercial floor plan would be created.
- ii. A further 290mm has been sought to provide a slab set down on Level 2 from the Residences to the Common Open Space at that level. The increase in slab height is merely good design practice, the additional height sought does not add to the bulk of the building and would not be discernible from the ground level.

This exceedance is illustrated within **Figure 2**.

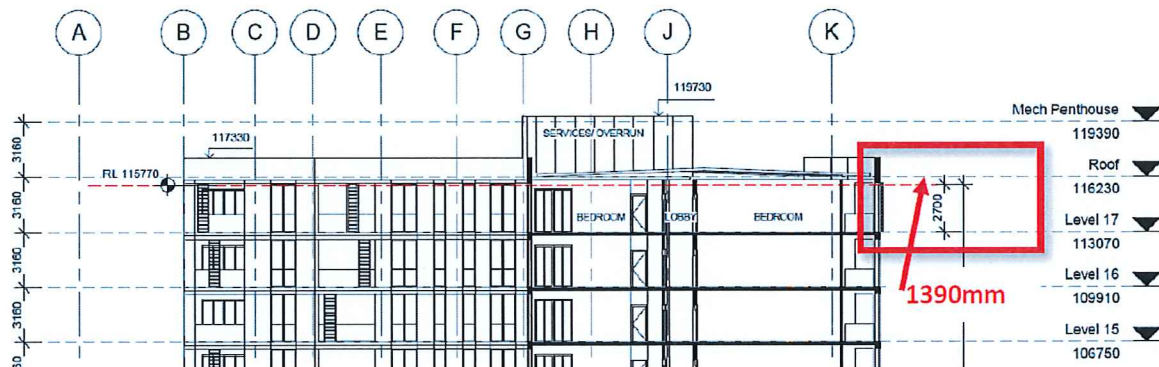


Figure 2 View of the northern elevation showing the maximum building height

5. Objective of Clause 4.3

The objectives of clause 4.3 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.*

6. Extent of variation – Floor Space Ratio

The permitted GFA for the site is 13,721.50m² (Site Area x 6.5; 211x 6.6 = 13,721.50m²).

The proposal has a GFA of 14,271m² hence the DA proposes to exceed the permitted GFA by 549m². This represents a 4.0% increase in the permitted Gross Floor Area.

It is noted that the additional GFA is within the order of variation accepted by council in its determination of recent applications including properties known as 26 Second Avenue and 28 Second Avenue. In the case of 28 Second Avenue the GFA exceeded the permitted FSR by a similar order as the current proposal (3.8%).

7. Objective of Clause 4.4

The objectives of clause 4.4 are as follows:

- (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 available for development for commercial premises, taking into account the availability of infrastructure and the generation of vehicular and pedestrian traffic.*

8. Assessment

The following sections discuss the ground for the variation to Clauses 4.3 and 4.4 against the relevant provisions of Clause 4.6.

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

Compliance with the maximum building height in this circumstance is considered both unreasonable and unnecessary.

There are two principal elements that exceed the maximum building height. They are:

- The plant and equipment area; and
- The roof structure which extends over the plant and equipment area and part of the common open space provided on the roof level.

Plant and Equipment area

The plant and equipment area is located centrally on the roof level of the block. They include lift overruns, the electrical unit, storage and fire hydrants. These areas have been setback a minimum of 8.0 metres from each building façade.

When viewed from the street, the plant and equipment areas would not be visible. These elements are integrated into the design of the architectural roof feature, and consequently are not separately discernible.

As such, it is considered both unreasonable and unnecessary to apply the maximum building height to the plant and equipment areas as they would not have a visual impact as a result of their inclusion.

Roof Parapet

The parapet structure extends 1100mm above the roof structure. Depending on the elevation viewed and where the development is viewed from, the roof parapet structure will largely be unseen and provided an “architectural” termination point for the building.

At ground level, the roof structure will not be visible from any of the southern, northern, eastern and western elevations, as it is set inside the building footprint.

While this element is not critical to the development, it is considered to provide a positive outcome for both functionality of the building and in creating a termination edge for each of the building façade.

The removal of this element, due to the numerical building height control, is not considered to outweigh the benefits of it being retained.

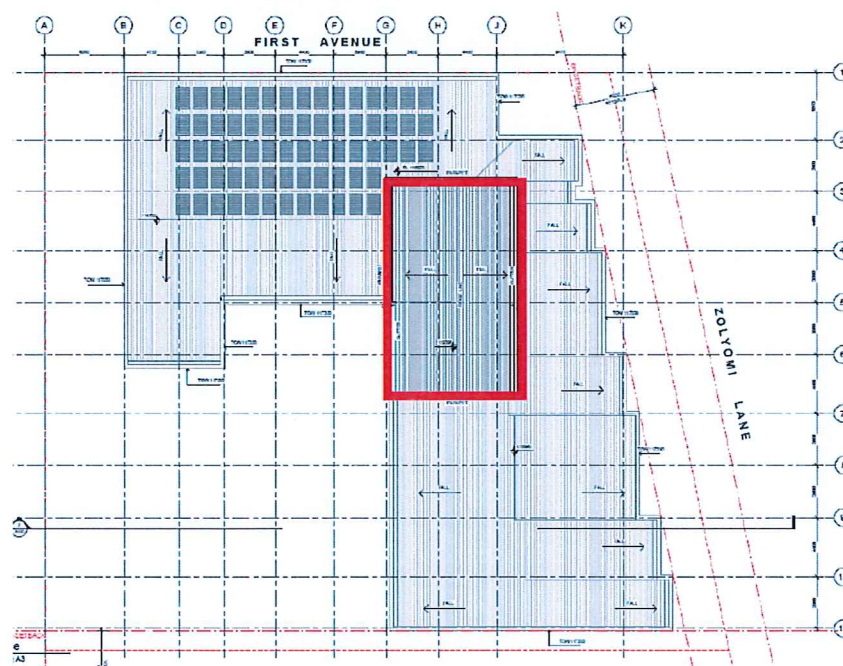


Figure 3 Location of roof structure

Despite the proposed contravention to the maximum building height, the development as proposed, is not considered to be inconsistent with desired future character and building forms anticipated within the northern CBD.

Compliance with the maximum building height of 56 metres is unnecessary and unreasonable in this instance as:

- The plant and equipment room is located centrally on the roof and integrated into the architectural roof feature within each block, and will not be visible from the street level.
- The roof structure will not be visible at street level proximate to the site.
- The roof parapet structure provides relief, articulation and depth to the building façade which has been incorporated into the design adding visual interest. The roof parapet structures are purposely designed as extensions to the vertical elements with the building facades, to accentuate these elements and provide an architecturally resolved “cap” to the building form.
- The removal of the roof structure is not considered to outweigh the benefits of it being retained.
- The overall building height is not considered to be inconsistent with the desired future character and building forms anticipated within the northern CBD.

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

As discussed earlier in this submission, there is an absence of significant impacts resulting from the building height non-compliance in relation to adjoining properties, visual impacts and character of the area.

The non-compliance with Floor Space Ratio is a numerical departure; no additional floor of residential is achieved nor does the increased GFA to 4% generate any additional bulk to the building.

The proposed development provides an appropriate scale and form of development. Strict compliance with this numerical standard is considered unnecessary.

Is the proposed development in the public interest?

The proposed development is considered to be in the public interest because:

- The roof structure provides visual interest to the building along the northern elevation and achieves a better design outcome for this site which sits in a prominent location within Blacktown City Council’s northern CBD.
- The roof structure provides a function for residents using the roof top common open space area by providing shelter from sun and rain.