

- 11.8.1 An acceptable security (bond) guaranteeing the future completion of the road sealing works shall be lodged with Council. The bond amount is to be calculated at the asphaltic contribution rate current at the time and is to be accompanied by Council's standard Deed of Agreements for Bonds.

11.9 Engineering Matters

11.9.1 Surveys/Certificates/Works As Executed plans

- 11.9.1.1 A Work-As-Executed plan (to a standard suitable for scanning) signed by a Chartered Professional Engineer or a Registered Surveyor must be lodged with Blacktown City Council when the engineering works are completed. Council requires the Work-As-Executed plans to be submitted in both hardcopy and electronically on a CD (in PDF and DWG format). All engineering Work-As-Executed plans MUST be prepared on a copy of the original, stamped Construction Certificate plans for engineering works. The Work-As-Executed plan must confirm that the On Site Detention system identification plate has been installed in accordance with the Upper Parramatta River Catchment Trust Guidelines. The On Site Detention system identification plate can be purchased from the Upper Parramatta River Catchment Trust or Council.
- 11.9.1.2 A certificate from a Chartered Professional Engineer/Registered Surveyor must be obtained and submitted to Council verifying that the on-site detention system as constructed will function hydraulically in accordance with the approved design plans.
- 11.9.1.3 A certificate from a Chartered Professional Civil Engineer must be obtained and submitted to Council verifying that the constructed Stormwater Quality Control system will function effectively in accordance with Council's DCP Part R – Water Sensitive Urban Design and Integrated Water Cycle Management.
- 11.9.1.4 Special attention is drawn to the following requirements of Council's Works Specification - Civil (Current Version):
- (a) Submission of compaction certificates for fill within road reserves.
 - (b) Submission of compaction certificates for road sub-grade.
 - (c) Submission of compaction certificates for road pavement materials (sub base and base courses).
 - (d) Compliance Certificates from road material suppliers.
- 11.10 Easements/Restrictions/Positive Covenants**
- 11.10.1 Restrictions and positive covenants must be provided over the on-site detention storage areas and outlet works.

These conditions are imposed for the following reasons:

- (a) To ensure compliance with the terms of the relevant Environmental Planning Instruments and/or the Building Code of Australia and/or Council's codes, policies and specifications.
- (b) To ensure that no injury is caused to the amenity of the area, to other persons or to private and public property.
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- 11.10.2 Restrictions and/ or positive covenant must be provided over the overland flow-path.
- 11.10.3 All Section 88B restrictions and covenants created, as part of this consent shall contain a provision that they cannot be extinguished or altered except with the consent of Blacktown City Council.

11.11 Dedications

- 11.11.1 Dedication at no cost to Council of 5m x 5m splay corners at each street intersection.
- 11.11.2 The 1.785 metres width land required for Humphries Lane road widening shall be dedicated at no cost to Council.

11.12 Bonds/Securities/Payments in Lieu of Works

- 11.12.1 A maintenance security of 5% of the value of the required engineering works must be lodged with Council prior to the practical completion of the works. Council will hold this security for a period of at least twelve months.

- a) In the case of subdivision - This period commences at the release of the final plan of subdivision. (Issue of Subdivision Certificate)
- b) In the case where no subdivision occurs - This period commences at the date of practical completion of the development.

This maintenance period may be extended in the following situations to allow for the completion of i) necessary maintenance and or ii) all outstanding minor works.

11.13 Inspection of Work

- 11.13.1 All road stormwater drainage structures (pipelines and pits) must be inspected by a CCTV on completion of the provision of all public utility services in accordance with Council's current Works Specification Civil. CCTV reports must be submitted to council in the form of a DVD of the inspection, a hard copy printout of the SEWRAT (or equivalent) report, and a certified CCTV statement in accordance with section 6.8 of Council's Works Specification Civil that any defects identified by this inspection have been rectified.

11.14 External finishes

- 11.14.1 The development approved by Council is to be constructed in accordance with the schedule of materials, finishes and colours identified on drawings A210, A510 and A511 and held at enclosures 107KK, 152A and 152B on Council's file JRPP-15-2087 and with those details submitted to satisfy the 'Pre-Construction Certificate' condition of consent.

These conditions are imposed for the following reasons:

- (a) To ensure compliance with the terms of the relevant Environmental Planning Instruments and/or the Building Code of Australia and/or Council's codes, policies and specifications.
- (b) To ensure that no injury is caused to the amenity of the area, to other persons or to private and public property.
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- 11.14.2 The awning must be constructed in accordance with the details submitted as part of the Construction Certificate. The height and width of the awning must comply with the requirements of Council's Maintenance Section.

11.15 Letterboxes

- 11.15.1 The letterboxes are to comply with the details submitted as part of the Construction Certificate and must comply with Australia Posts requirements for size. The letterbox system should be vandal resistant and secure.

- 11.15.2 The street number must be displayed prominently at the front of the building to comply with Local Government Act, 1973 Section 124, Order 8. The street number is to be visible at night.

11.16 Power Boards

- 11.16.1 All power boards must be housed within a cabinet to restrict tampering with the power supply. The lock set must be approved by the electricity authority.

11.17 Security/Surveillance

- 11.17.1 The development is to comply with the submitted 'Crime Prevention through Environmental Design' checklist held at Enclosure 72A on Council's JRPP-15-2087/3 and the details submitted as part of the Construction Certificate. The development is to provide CCTV, appropriate street numbering, signage, key locked letterboxes within the residential lobby, secure residential parking and security doors.

- 11.17.2 Shatter-proof film should be applied to the ground level shopfronts/business premises to minimise smash and grab opportunities.

11.18 Lighting

- 11.18.1 Vandal proof and security lighting is to be provided in accordance with the approved Construction Certificate plans to provide for the safety and convenience of occupants and visitors at night. The loading dock area and car parking areas must also be provided with sufficient lighting to enhance the safety of users.

11.19 Landscaping

- 11.19.1 All landscaping and common open space areas shall be completed in accordance with approved landscaping design plan.

11.20 Street Tree Planting

- 11.20.1 Prior to the issue of the Final Occupation Certificate, all required street tree planting and payments of bonds are to be completed to Council's satisfaction.

These conditions are imposed for the following reasons:

- (a) To ensure compliance with the terms of the relevant Environmental Planning Instruments and/or the Building Code of Australia and/or Council's codes, policies and specifications.
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11.21 Car Parking

- 11.21.1 Off-street car parking shall be encouraged by the installation of appropriate, permanent and prominent signs indicating its availability for customers, residents and their visitors.
- 11.21.2 Entrance/exit points are to be clearly signposted and visible from the street and the site at all times.
- 11.21.3 Access and parking for people with disabilities shall be provided in accordance with Australian Standard 2890.6. – 2009
- 11.21.4 All required internal driveways and car parking spaces shall be line-marked, sealed with a hard standing, all-weather material to a standard suitable for the intended purpose. In this regard, a minimum of 30 business/retail spaces, 138 resident spaces and 23 resident visitor car parking spaces must be provided on site.
- 11.21.5 The car parking allocation is to be incorporated into a Parking Management Strategy which will also include the following responsibilities for the Managing Agent/future Body Corporate:
- (a) Measures to ensure a clear segregation between the residential and non-residential parking spaces is maintained at all times.
- 11.21.6 A roller shutter and card-key system is to be installed at the segregation points between the commercial/visitor and residential parking areas, and at the entry/exit points of the basement car parks.
- 11.21.7 Bicycle racks are to be provided on site in accordance with the Apartment Design Guide (ADG).
- 11.21.8 The ceiling of each basement car park is to be painted white to enhance lighting illumination.

11.22 Ancillary Work

- 11.22.1 Each dwelling unit is to be provided with a mechanical drying appliance within the unit.

11.23 Waste Management

- 11.23.1 Evidence (e.g. in the form of receipts) is to be submitted to confirm that waste and recyclable materials, including fill from the excavation of the basement car parking have been managed and disposed.

These conditions are imposed for the following reasons:

- (a) To ensure compliance with the terms of the relevant Environmental Planning Instruments and/or the Building Code of Australia and/or Council's codes, policies and specifications.
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- 11.23.2 Prior to the issue of an Occupation Certificate evidence is to be submitted to confirm that appropriate arrangements have been made with the private contractor for the disposal of waste and recycling.
- 11.23.3 Waste and recycling collections undertaken by a private contractor are to be provided by the Owner's Corporation. The private contractor's details are to be provided to Council's Sustainable Resources Officer for our records.
- 11.23.4 The development can accommodate Council's heavy rigid garbage collection vehicles. In the event Council is therefore requested to undertake waste/recycling collection from the site (either prior to the issue of an Occupation Certificate or in the future), the 'Agreement for onsite waste collection' form must first be signed by the property owners.
- 11.23.5 Appropriate provisions are to be included in the Strata Management Agreement for the ongoing management of waste and recyclables on the property. The agreement is to indicate:
- i. Requirements for the appointment of a building manager/caretaker to manage bins and bulky waste on site in accordance with the approved waste management arrangements.
 - ii. Who is responsible for maintaining the garbage collection system and bin cleaning, and ensuring waste collection points are clear and unobstructed prior to collection times.
 - iii. That residents are unable to access Council's household clean-up service, or garbage/recycling service given that the development will be serviced by a private waste and recycling contractor.
 - iv. That no bins are to be located or placed in the approved collection points outside the scheduled collection time for that area.
 - v. The method of communication to new tenants and residents regarding Councils' waste management services and collection system for the complex.
- 11.23.6 The garbage and recycling storage area must have a smooth impervious floor that is graded to a floor waste. A tap and hose must be provided to facilitate regular cleaning of the bins and all waste water must be discharged to the sewer in accordance with the requirements of Sydney Water. Garbage bins must be designed to prevent the escape of any liquid leachate and must be fitted with a lid to prevent the entry of vermin.
- 11.23.7 Appropriate provisions are to be made for the storage and collection of waste. A separate caged bulky waste storage area, separate resident and commercial waste rooms and waste chutes are to be provided in accordance with the approved plans. On-site waste collection areas, the loading bay and manoeuvrability paths are also to be suitably line-marked and sign-posted to ensure areas are kept clear of obstructions that may prohibit their future use. Parking barriers/locks are to be provided in the loading bay to prevent unauthorised parking in this area.

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11.24 **Other Matters**

- 11.24.1 All commitments listed in the BASIX Certificate Number: 622845M_03 dated 4 December 2015 and held at enclosure 71A on Council's file JRPP-15-2087/3 shall be complied with prior to the issue of an Occupation Certificate for the development.
- 11.24.2 A post-construction dilapidation report shall be carried out for any of the potentially affected existing buildings surrounding the proposed development. A copy of the report shall be submitted to Council prior to issue of Occupation Certificate.

11.25 **Adaptable Housing Units**

- 11.25.1 Certification from a qualified Access Consultant confirming that the Adaptable Housing Units are capable of being modified when required by the occupants in accordance with the Australian Adaptable Housing Standard (AS 4299-1995) is to be submitted to Council's town planning department.

11.26 **State Environmental Planning Policy No. 65 – Design Quality of Residential Flat Development**

- 11.26.1 An Occupation Certificate must not be issued unless all design verifications have been provided in accordance with Clause 154A of the Environmental Planning and Assessment Regulation 2000.

11.27 **Graffiti Management Plan**

- 11.27.1 A "Graffiti Management Plan" is to be submitted for the separate approval of Council's Manager, Development Services. The plan is to address the following issues:

- (a) Methods to minimise the potential for graffiti.
- (b) Management/notification procedures for the rapid removal of graffiti.
- (c) Annual review of any "management agreement" for the removal of graffiti to ensure the property is maintained at its optimum level.

- 11.27.2 The Owners Corporation is to manage the graffiti management plan. The recommendations of the plan are to be integrated into a Strata Management Agreement/by-laws.

11.28 **Acoustic verification**

- 11.28.1 Certification must be provided by a qualified acoustic engineer that all work associated with the installation of the acoustic measures and noise attenuation

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has been completed in accordance with the certified design and to the standard required by this consent.

11.29 Site Contamination

11.29.1 Upon completion of site remediation works an appropriately qualified environmental consultant shall prepare a validation report. The validation report shall be carried out in accordance with:

- (a) NSW Environment Protection Authority's Guidelines for Consultants Reporting on Contaminated Sites (1997)
- (b) NSW Environment Protection Authority's Contaminated Sites Sampling Design Guidelines (1995)
- (c) Australian and New Zealand Environment and Conservation Council and National Health and Medical Research Council's Australian and New Zealand Guidelines for the Assessment and Management of Contaminated Sites (1992)

A suitably qualified environmental consultant shall review the validation report and submit to Council a Site Audit Statement. The Site Audit Statement shall verify that the investigation, remediation and validation was carried out in accordance with the aforementioned guidelines and that the site is suitable for the proposed use.

12 OPERATIONAL (PLANNING)

12.1 Graffiti removal

12.1.1 Removal of any graffiti, visible from any public road or space, is the responsibility of the property owner/s. All graffiti must be removed within 48 hours of detection.

12.2 Awning

12.2.1 The integrity of the awning must be checked by a NPER engineer engaged by the body corporate every 5 years to ensure compliance in line with the BCA and other relevant standards. A certificate of compliance is to be forwarded to Council's Civil and Park Maintenance Section for its records every 5 years.

12.2.2 No other hanging is permitted under the awning which may affect the minimum clearance height of 2.4m.

12.2.3 The property owner is responsible for the maintenance of the awnings at all times.

12.3 Access/Parking

These conditions are imposed for the following reasons:

- (a) To ensure compliance with the terms of the relevant Environmental Planning Instruments and/or the Building Code of Australia and/or Council's codes, policies and specifications.
- (b) To ensure that no injury is caused to the amenity of the area, to other persons or to private and public property.
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- 12.3.1 All required off-street car parking spaces and internal accessways shall be maintained to a standard suitable for the intended purpose.
- 12.3.2 All loading and unloading operations shall take place at all times wholly within the confines of the land.
- 12.3.3 All vehicles, including waste and recycling collection vehicles, must enter and exit the site in a forward direction at all times.
- 12.3.4 Access and parking for people with disabilities shall be maintained in accordance with provisions of Australian Standards 1428.1 and 2890.1.
- 12.3.5 The 30 business/retail car parking spaces may be utilised by owners/tenants of the residential units outside of trading hours. The body corporate is to be responsible for monitoring and controlling the dual use of the business/retail car parking spaces at all times.

12.4 General

- 12.4.1 No goods, materials, or trade waste shall be stored at any time outside the building other than in approved garbage receptacles.
- 12.4.2 Spillage of light, if any, shall be controlled so as not to cause nuisance to the amenity of adjoining land.
- 12.4.3 If artificial lighting is proposed full details are to be submitted indicating the manner in which adjoining properties are to be protected.
- 12.4.4 Should an intruder alarm be installed on the land it shall be fitted with a timing device in accordance with the requirements of the Protection of the Environment Operations Act 1997.

12.5 Noise & Nuisance

- 12.5.1 Emission of sound from the land shall be controlled at all times so as to not unreasonably impact upon nearby owners/occupants.
- 12.5.2 The use of the land is not to interfere with the amenity of the surrounding residential area.
- 12.5.3 Any nuisance created by the use of any aerial or transmitting or receiving equipment associated with the development shall be addressed to the satisfaction of the Spectrum Management Agency.
- 12.5.4 In accordance with the requirements of Council's DCP, no plant or equipment shall generate a noise level greater than 5dBA above the ambient L90 sound level.
- 12.5.5 No nuisance or interference with the amenity of the area shall be created by reason

These conditions are imposed for the following reasons:

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of any process or operation on the land causing the emission of noise, dust, smoke or any polluted discharge whatsoever. Note: The Protection of the Environment Operations Act 1997 requires Council to investigate complaints where only one person complains.

12.6 Landscaping

12.6.1 All landscaped areas provided in accordance with the approved landscaping design plan shall be maintained at all times in a suitable manner.

12.6.2 Sightlines must be kept free from obstructions. If a lack of natural surveillance occurs this would quickly encourage anti-social behaviour and criminal offences specifically malicious damage to the area. The 'fear of crime' would also no doubt increase if there is sign of malicious damage, rubbish, broken bottles etc. around the development. Regular maintenance and up-keep of the site must therefore be adhered to.

12.6.3 The management of vegetation, gardens, planter boxes, communal areas, BBQ facilities, children's play equipment, etc. is to be incorporated within the future strata management plan once the development is occupied.

12.7 Use of Premises

12.7.1 The use of the approved development shall, at all times, be conducted in a manner consistent with the terms and conditions of this consent.

12.8 Signage

12.8.1 In accordance with Clause 37(2)(b)(v) of Blacktown Local Environmental Plan (BLEP) 1988, the approved Directory Boards must not contain any flashing or moving elements.

12.9 Waste Management

12.9.1 The development has been designed to accommodate Council's heavy rigid vehicle (i.e. measuring 11m long with a 25 m turning circle and 4.5 m headroom allowance). The applicant, however, has nominated that all waste and recycling will be collected by a private contractor. Waste and recycling collections undertaken by a private contractor are to be provided by the Owner's Corporation.

12.9.2 The truck access and design can accommodate Council's heavy rigid vehicles. If the development turns to Council for waste servicing in the future, the Agreement for "onsite waste collection form" (copy attached) must be signed prior to Council collecting waste from the subject property.

12.10 Emergency Procedures

12.10.1 Instructions concerning procedures to be adopted in the event of an emergency

These conditions are imposed for the following reasons:

- (a) To ensure compliance with the terms of the relevant Environmental Planning Instruments and/or the Building Code of Australia and/or Council's codes, policies and specifications.
- (b) To ensure that no injury is caused to the amenity of the area, to other persons or to private and public property.
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shall be clearly displayed throughout the development for both public and staff information at all times to the satisfaction of Council.

12.11 Clothes Drying

- 12.11.1 Clothes drying is to be conducted in the mechanical dryers. The drying of clothes on balconies (where visible from a public place) is prohibited. If the development is to be strata subdivided, a clause is to be included in the Plan of Strata Management prohibiting the drying of clothes on balconies (where visible from a public place).

13 OPERATIONAL (ENVIRONMENTAL HEALTH)

13.1 Environmental Management

- 13.1.1 Any activity carried out in accordance with this approval shall not give rise to air pollution (including odour), offensive noise or pollution of land and/or water as defined by the Protection of the Environment Operations Act 1997.
- 13.1.2 All waste generated on the site is to be stored, handled and disposed of in such a manner as to not create air pollution (including odour), offensive noise or pollution of land and/or water as defined by the Protection of the Environment Operations Act 1997.
- 13.1.3 In accordance with the requirements of Part 5.7 Protection of the Environment Operations Act 1997, Council is to be informed of any pollution incident that occurs in the course of carrying out the approved activity where material harm to the environment is caused or threatened.

13.2 Noise

- 12.2.1 A post commissioning report produced by an independent organisation that is eligible for membership with the *Association of Australian Acoustic Consultants*, is to be submitted within 3 – 6 months of the development operating to validate the findings of the acoustic report submitted to satisfy the pre-construction certificate conditions of this consent.

These conditions are imposed for the following reasons:

- (a) To ensure compliance with the terms of the relevant Environmental Planning Instruments and/or the Building Code of Australia and/or Council's codes, policies and specifications.
- (b) To ensure that no injury is caused to the amenity of the area, to other persons or to private and public property.
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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.

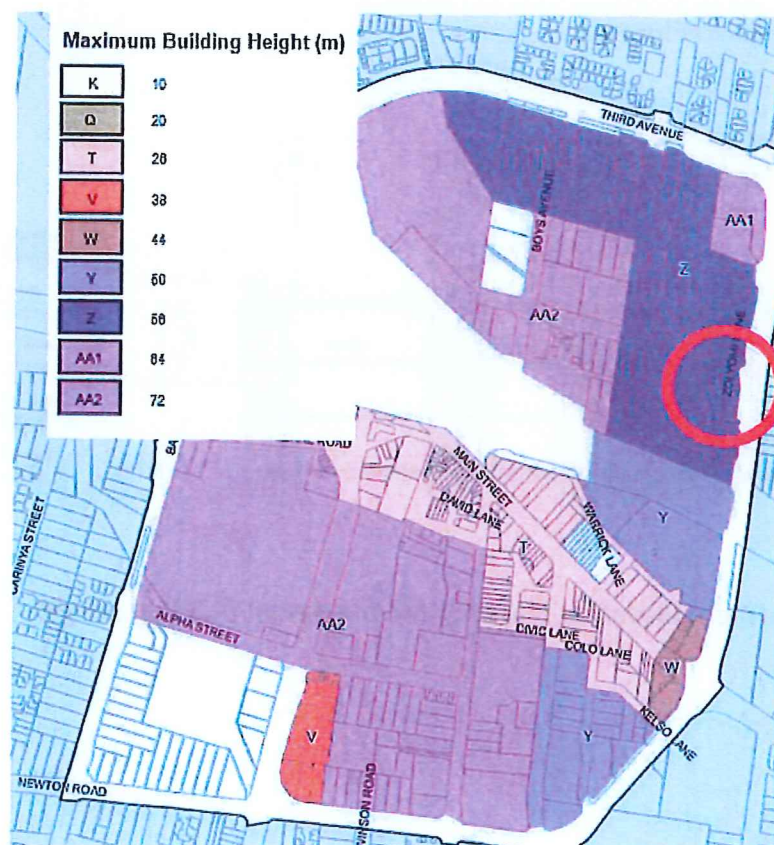


Figure 1 Maximum building height

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**.

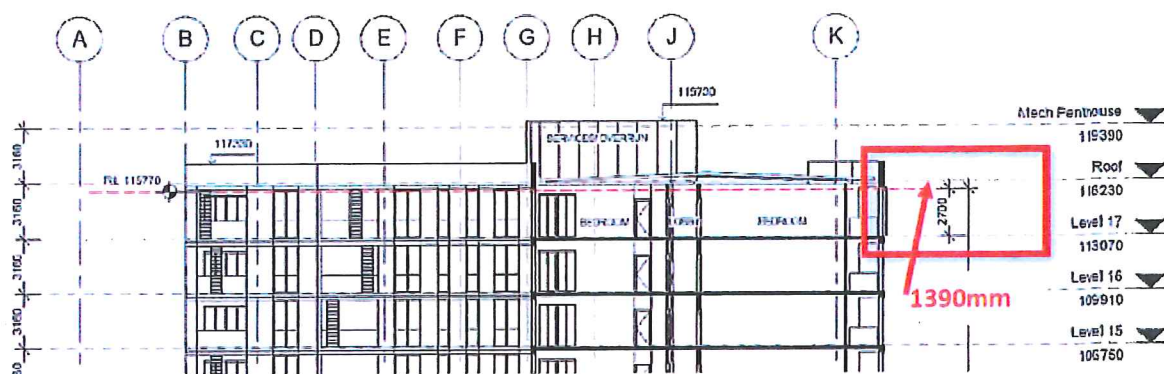


Figure 2 View of the northern elevation showing the maximum building height

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.

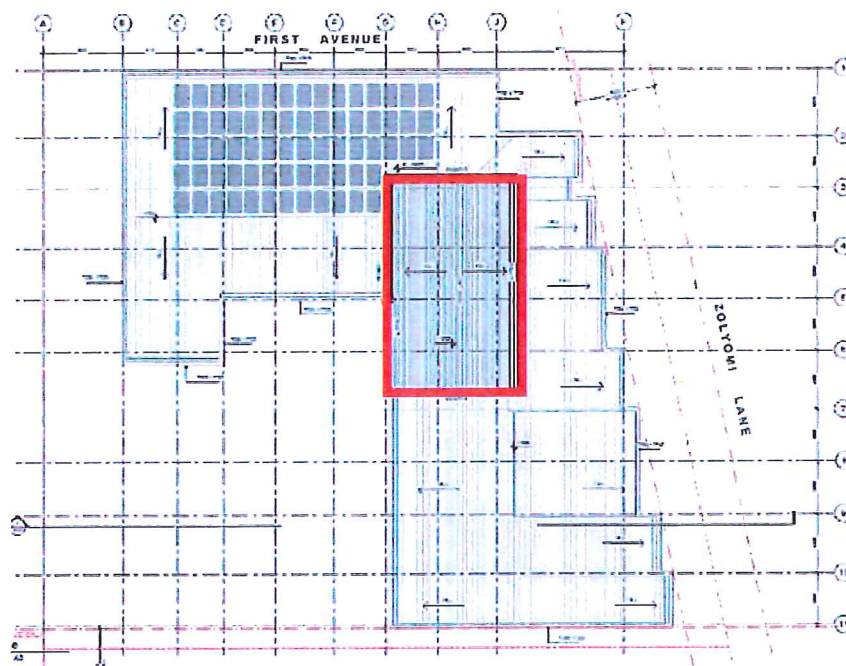


Figure 3 **Location of roof structure**

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.



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Penrith Village Square Pty Ltd Renderings											
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