

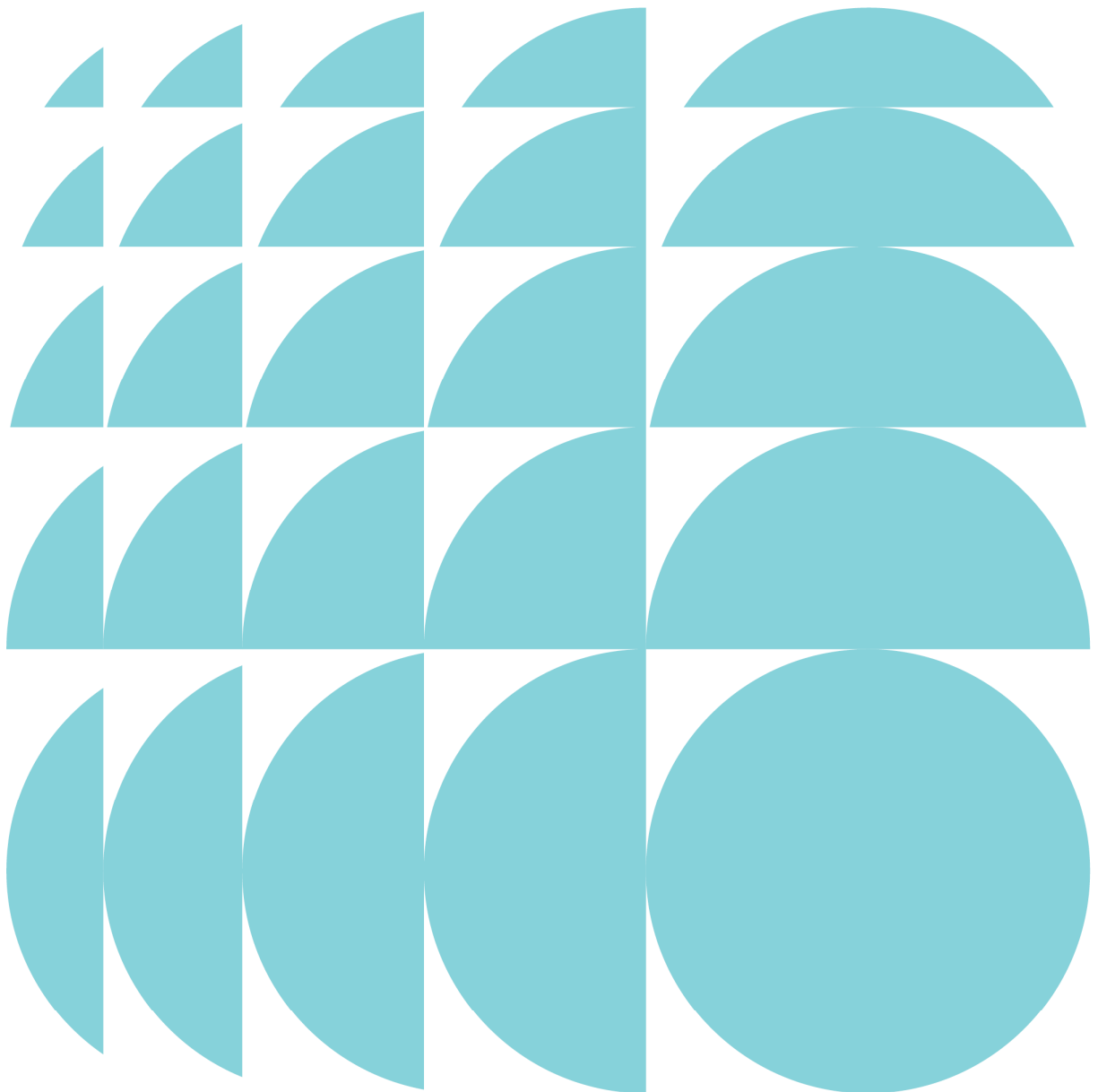
ETHOS URBAN

Clause 4.6 Variation Request Height of Buildings Development Standard

26 Second Avenue, Blacktown
Shop Top Housing and Commercial Premises

Submitted to Blacktown City Council
On behalf of Merhis Blacktown Pty Ltd

23 February 2018 | 218071



1.0 Introduction

This clause 4.6 variation request has been prepared by Ethos Urban on behalf of Merhis Blacktown Pty Ltd. It is submitted to Blacktown City Council (Council) in support of a development application (DA) for a shop top housing and commercial premises development (the 'proposal') at 26 Second Avenue, Blacktown (the 'site').

Clause 4.6 of *Blacktown Local Environmental Plan 2015* (BLEP 2015) enables Council to grant consent for even though a proposed development contravenes a development standard. The clause aims to provide an appropriate degree of flexibility in applying certain development standards to achieve better outcomes for and from development.

Clause 4.6 requires that a consent authority be satisfied of three matters before granting consent to a development that contravenes a development standard:

- That the applicant has adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case;
- That the applicant has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard; and
- That the proposal will be in the public interest because it is consistent with the objectives of the development standard and the zone in which it is proposed to be carried out.

This clause 4.6 variation request demonstrates that:

- Compliance with the Height of Building development standard in clause 4.3 of BLEP 2015 is unreasonable and unnecessary in the circumstances of the case;
 - given the objectives of the standard are achieved notwithstanding non-compliance with it;
- That there are sufficient environmental planning grounds to justify contravention of the standard, as:
 - The breach of the height control facilitates the delivery of a significant environmental planning benefit for the proposal by providing additional and improved access to the communal open space located on the roof of the building;
 - the proposal is compatible with the scale and character of the area;
 - the extent of variation is minor and at worst only departing 6.9% from the standard of the overall height; and
 - the extent of footprint occupied by the lift overruns and rooftop plant is minor when compared to the overall size of the roof space upon which they sit.
- The variation is in the public interest because it is consistent with the objectives of the zone and the development standard;
- The non-compliance with the development standard does not raise any matters of State and regional planning significance;
- There is no public benefit in maintaining the Height of Buildings development standard adopted by the environmental planning instrument for this site given:
 - the appropriate positioning of the rooftop plant and lift overruns and their presentation as viewed from the public domain will result in no adverse visual impact; and
 - the impact on the site and communal open space if this element was deleted or reduced would result in a less optimum outcome in terms of amenity provision o.

Therefore, the DA for this proposal may be approved with the variation as proposed in accordance with the flexibility allowed under clause 4.6 of BLEP 2015.

2.0 Request to Vary a Development Standard

Clause 4.6 of BLEP 2015 allows Council to grant consent for development even though the proposal contravenes a development standard imposed by this planning instrument. The clause aims to provide an appropriate degree of flexibility in applying certain development standards to achieve better outcomes for and from development.

2.1 Development Standard Sought to be Varied

This clause 4.6 variation request seeks to justify contravention of the Height of Buildings development standard set out in clause 4.3 of BLEP 2015. Under BLEP 2015, the site is provided with a maximum building height of 72 metres.

Clause 4.3 of BLEP 2015 is reproduced below in its entirety, and an extract of the Height of Buildings Map, to which this clause applies, is reproduced in **Figure 1**.

4.3 Height of buildings

(1) The objectives of this clause are as follows:

- (a) to minimise the visual impact, loss of privacy and loss of solar access to surrounding development and the adjoining public domain from buildings,*
- (b) to ensure that buildings are compatible with the height, bulk and scale of the surrounding residential localities and commercial centres within the City of Blacktown,*
- (c) to define focal points for denser development in locations that are well serviced by public transport, retail and commercial activities,*
- (d) to ensure that sufficient space is available for development for retail, commercial and residential uses,*
- (e) to establish an appropriate interface between centres, adjoining lower density residential zones and public spaces.*

(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.

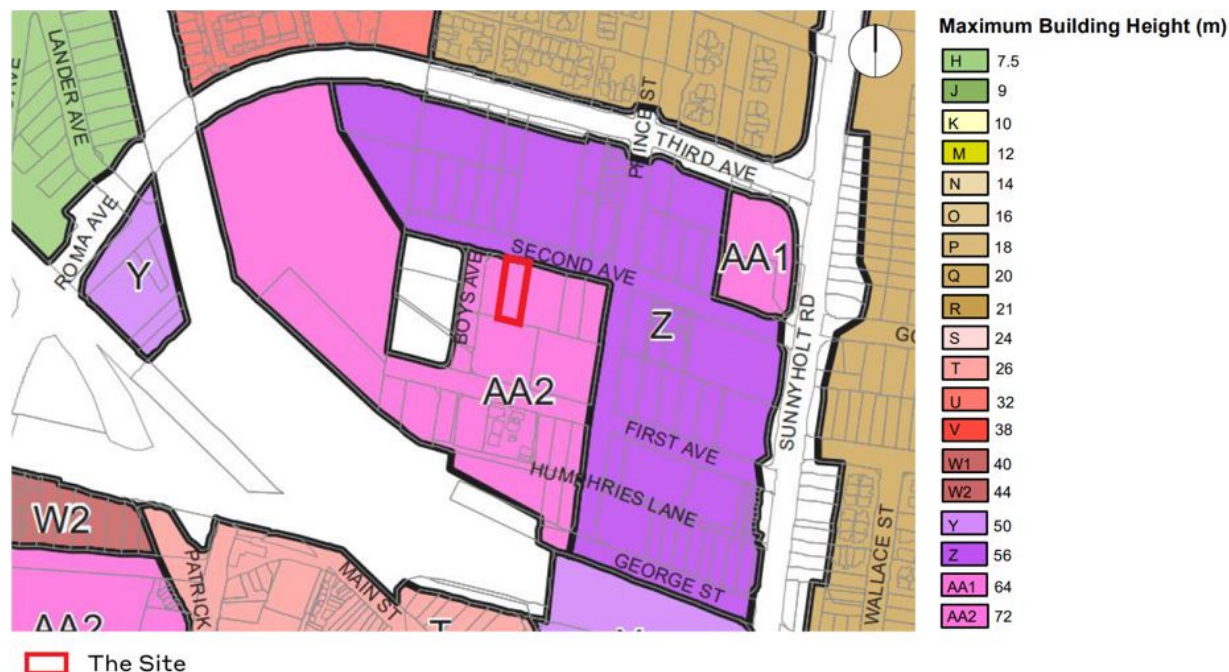


Figure 1 - Height of Buildings map

Source: Blacktown Local Environmental Plan 2015 (Sheet HOB_013)

2.2 Variation Sought

As detailed in the architectural drawings prepared by Conrad Gargett and provided at **Appendix A** of the Statement of Environmental Effects (SEE), a variation to the Height of Building development standard is requested. The proposal generates a maximum RL of 129.3m, being 77 metres above existing ground level.

Specifically, the variations to the Height of Building Development standard relate to:

- The roof top communal open space and associated balustrades;
- Lift overruns; and
- Rooftop plant.

The detailed extent of each variation is provided in **Table 1** below and illustrated in **Figure 2**. It is noted that the lift overruns generate the greatest departure from the Height of Building development standard, resulting in a 5m variation (6.9%).

It is well established in case law that the extent of the numerical variation does not form part of the test required to be exercised under Clause 4.6. Recent decisions in respect of *Micaul Holdings P/L V Randwick City Council* (55% exceedance of height and 20% exceedance of FSR) and *Moskovich V Waverley Council* (65% exceedance of FSR) support this.

Table 1 - Extent of variation

Component	RL	Maximum Height (m) (above existing ground level)	Variation
Communal open space	124.400	72m	0m
Balustrades	126.2	73.8m	1.8m (2.5%)
Rooftop plant	127.900	75.6	3.6m (5%)
Lift overruns	129.300	77	5m (6.9%)

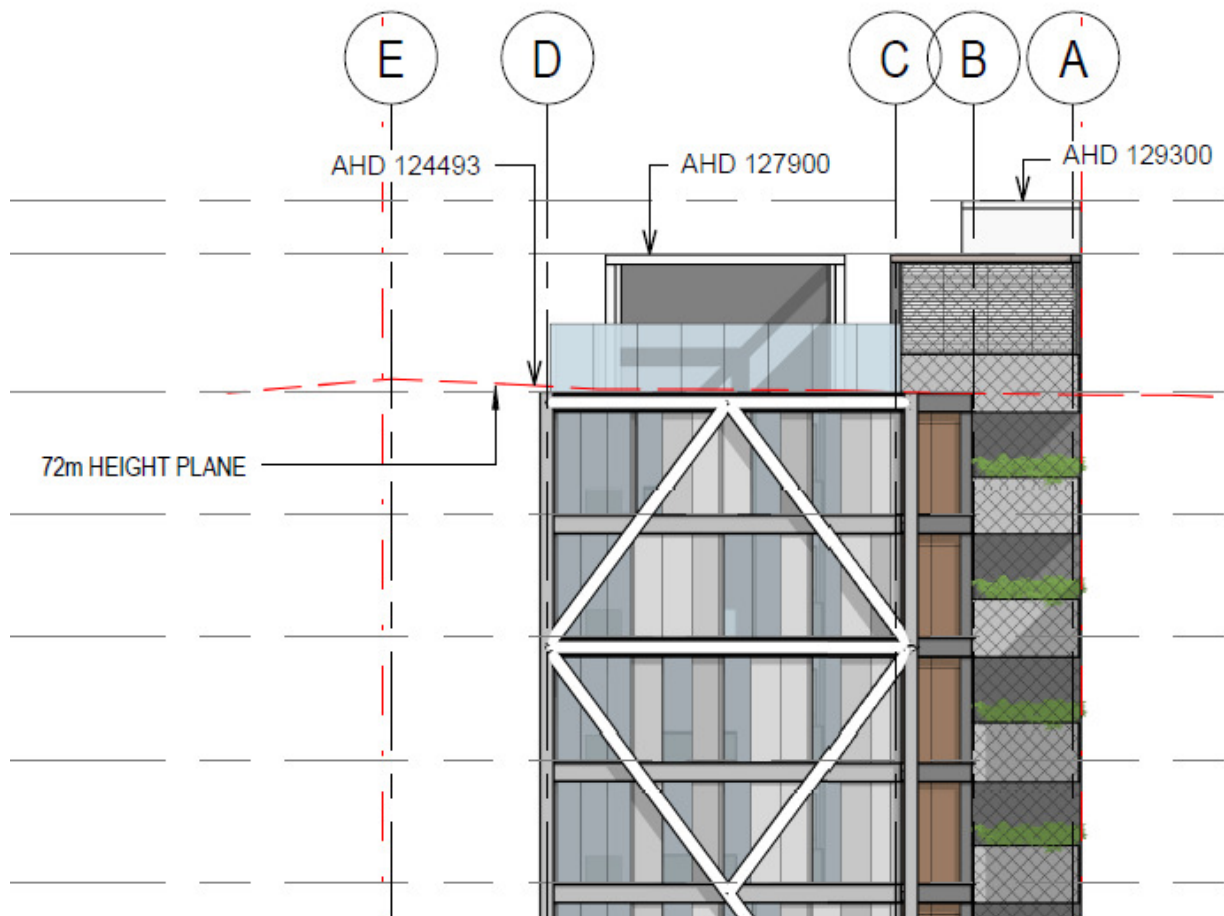


Figure 2 - Extent of variation (north elevation)

Source: Conrad Gargett

2.3 Is the Planning Control in Question a Development Standard?

'Development Standards' are defined under Section 4(1) of the *Environmental Planning and Assessment Act 1979* as follows:

"development standards means provisions of an environmental planning instrument or the regulations in relation to the carrying out of development, being provisions by or under which requirements are specified or standards are fixed in respect of any aspect of that development, including, but without limiting the generality of the foregoing, requirements or standards in respect of: ...

(c) the character, location, siting, bulk, scale, shape, size, height, density, design or external appearance of a building or work..."

The Height of Buildings control prescribed under Clause 4.3 of BLEP 2015 is clearly and unambiguously a development standard and has continually been applied in this manner by the consent authority.

3.0 Justification for Contravention of the Development Standard

Clause 4.6(3) of BLEP 2015 provides that:

4.6 Exceptions to development standards

- (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.*

Further, clause 4.6(4)(a) of BLEP 2015 provides that:

- (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 Secretary has been obtained.*

Assistance on the approach to justifying a contravention to a development standard is also to be taken from the applicable decisions of the NSW Land and Environment Court and the NSW Court of Appeal in:

1. *Wehbe v Pittwater Council [2007] NSW LEC 827 (Wehbe); and*
2. *Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 1009 (Four2Five).*

The relevant matters contained in clause 4.6 of BLEP 2015, with respect to the Height of Buildings development standard, are each addressed below, including with regard to these decisions.

3.1 Clause 4.6(3)(a): Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case

In *Wehbe*, Preston CJ of the Land and Environment Court provided relevant assistance by identifying five traditional ways in which a variation to a development standard had been shown as unreasonable or unnecessary. However, it was not suggested that the types of ways were a closed class.

While *Wehbe* related to objections made pursuant to *State Environmental Planning Policy No. 1 – Development Standards* (SEPP 1), the analysis can be of assistance to variations made under clause 4.6 where subclause 4.6(3)(a) uses the same language as clause 6 of SEPP 1 (see *Four2Five* at [61] and [62]).

As the language used in subclause 4.6(3)(a) of BLEP 2015 is the same as the language used in clause 6 of SEPP 1, the principles contained in *Wehbe* are of assistance to this clause 4.6 variation request.

The five methods outlined in *Wehbe* include:

1. The objectives of the standard are achieved notwithstanding non-compliance with the standard.
2. The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary.
3. The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable.
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.
5. The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.

This clause 4.6 variation request establishes that compliance with the Height of Buildings development standard is unreasonable or unnecessary in the circumstances of the proposal and accordingly justifies the variation proposed pursuant to method 1 outlined in *Wehbe*.

In the recent judgment in *Randwick City Council v Micaul Holdings Pty Ltd* [2016] NSWLEC 7 the Chief Judge upheld the Commissioner's approval of large variations to height and FSR controls on appeal. He noted that under Clause 4.6, the consent authority (in that case, the Court) did not have to be directly satisfied that compliance with the development standard was unreasonable or unnecessary but that the applicant's written request adequately addresses (*our emphasis*) the matters in clause 4.6(3)(a) that compliance with each development standard is unreasonable or unnecessary.

The sections below address the matters in clause 4.6(3)(a), in particular how the objectives of the maximum height development standard are achieved notwithstanding the non-compliance with the numerical control.

3.1.1 The underlying objectives or purposes of the development standard

The objectives of the Height of Buildings development standard contained in clause 4.3 of BLEP 2015 are as follows:

- (a) to minimise the visual impact, loss of privacy and loss of solar access to surrounding development and the adjoining public domain from buildings.
- (b) to ensure that buildings are compatible with the height, bulk and scale of the surrounding residential localities and commercial centres within the City of Blacktown.
- (c) to define focal points for denser development in locations that are well serviced by public transport, retail and commercial activities.
- (d) to ensure that sufficient space is available for development for retail, commercial and residential uses.
- (e) to establish an appropriate interface between centres, adjoining lower density residential zones and public spaces.

3.1.2 The objectives of the standard are achieved notwithstanding non-compliance with the standard

Objective (a): To minimise the visual impact, loss of privacy and loss of solar access to surrounding development and the adjoining public domain from buildings.

The site directly adjoins a 23-storey mixed use development currently under construction at 1 Boys Avenue. As detailed in the shadow diagrams prepared by Conrad Gargett (**Appendix A**), the proposal does generate overshadowing to the adjoining property from 9:00am during the winter solstice. The immediate proximity of each development and built form similarities makes this unavoidable.

It is noted however that the adjoining development is devoid of any overshadowing from 12 noon and is not impacted upon by the proposal the remainder of the day during the winter solstice. The proposal does not therefore inhibit its ability to achieve a minimum two hours of direct sunlight from 9:00am to 3:00pm during the winter solstice as specified by the *Apartment Design Guide* (ADG).

Similarly, the adjoining development is not inhibited by the proposal in its ability to achieve a minimum of three hours of direct sunlight in the winter solstice. Equally, the proposal does not overshadow the existing building directly east of the site to a point in which it cannot receive a minimum of three hours direct solar access. This is consistent with the *Blacktown Development Control Plan 2015* (BDGP 2015).

Other areas which are subject to overshadowing are across streets and the rail corridor. These are predominately transitional spaces and not areas of congregation where private land owners or the public expect to enjoy sunlight access.

With respect to the matters of privacy and visual impacts, the circulation core of the proposal is along the western façade. This will ensure the adjoining development at 1 Boys Avenue has a predominately non-habitable interface with the proposal thus minimising visual privacy impacts between the two developments.

Again, it is noted that the proposal's proximity to the adjoining development makes it susceptible to some view loss. However, any additional setback will not effectively improve these views. This is attributed to the constrained narrow nature of both the site and the adjoining property at 1 Boys Avenue.

The narrow nature of the site and the land adjoining at 1 Boys Avenue have generated long and narrow development footprints. The constraint also creates difficulty in providing a feasible development whilst strictly adhering to strict numerical compliance with development standards in planning instruments and guidelines in the ADG. For example, strict compliance with the such controls and guidelines with respect to building setbacks and separation to facilitate a further reduction in privacy and visual impacts on 1 Boys Avenue would render essentially no development envisaged for the B4 zone possible.

No significant open space or public domain areas surround the site which would be adversely impacted by overshadowing, privacy and or visual amenity.

Given the above and despite rooftop building elements exceeding the Height of Buildings development standard, it is submitted that these variations will:

- Not significantly inhibit the opportunity of surrounding development in achieving sufficient solar access.
- Not generate any additional adverse visual impacts to surrounding development as the variations relate only to the upper portions of the building.
- Not increase adverse privacy impacts upon surrounding development given the breach concerned relates to elements on the roof or the proposal.

Objective (b): To ensure that buildings are compatible with the height, bulk and scale of the surrounding residential localities and commercial centres within the City of Blacktown.

The proposal will have a height, bulk and scale compatible with its location within the Blacktown city centre. The site is not located in close proximity of any low density residential localities, which contain a significantly different character, height, bulk and scale to the proposal.

The proposal utilises controls available to the site, contributing to a built form outcome envisioned for the city centre under BLEP 2015. The communal open space, lift overruns and plant, which exceed the Height of Buildings development standard are isolated to the upper, central portion of the building. Although these elements increase the building height of the proposal, they do not generate a development that would be inconsistent with the height, bulk and scale of development proposed, and being constructed within the city centre, including:

- A 23-storey mixed use development is currently being constructed directly west of the site at 1 Boys Avenue.
- A 24-storey mixed use development approved at 28 Second Avenue.
- An 18-storey mixed use development is currently being constructed north east of the site at 12 Second Avenue.

- An 18-storey mixed use development approved for 2-10 First Avenue.
- An 18-storey mixed use development proposed for 9-17 Second Avenue.
- An 18-storey mixed use development proposed for 10-14 Third Avenue, Blacktown.

Objective (c): *To define focal points for denser development in locations that are well serviced by public transport, retail and commercial activities.*

The site is located within 350m of Blacktown Railway Station and Westpoint Shopping Centre, hence providing access to transport, retail and commercial activities within walking distance. The locality of the site, being the northern portion of the city centre, is defined as a focal point for high density development commensurate of its land use zoning and potential available under the controls.

The communal open space, lift overruns and plant, which exceed the Height of Buildings development standard do not alter the proposed development in its ability to provide a density appropriate to the city centre. The rooftop elements will not inhibit the suitability of the density proposed and/or future residents' ability to be well serviced by the surrounding transport, retail and or commercial uses within the city centre.

Objective (d): *To ensure that sufficient space is available for development for retail, commercial and residential uses.*

The proposal accommodates commercial and/or retail uses. All floors within the proposal sit below the maximum permissible height for this site.

The communal open space area, which although exceeds the Height of Buildings development standard, supports the residential component of the development through the provision of improved amenity. The communal open space utilises a generally redundant space. The utilisation of the space is therefore provides a positive benefit, which off sets the breach of the Height of Buildings standard.

Rooftop building elements including lift overruns and plant, occupy a relatively small floor space in relation to the rooftop floorplate. These elements provide a functional service to the building.

Objective (e): *To establish an appropriate interface between centres, adjoining lower density residential zones and public spaces.*

The Height of Buildings development standard enables a gradual height transition of development from the city centre down towards low density residential development, ensuring an appropriate built form interface. The site however, is not within a peripheral location of the city centre whereby its built form and design needs to consider an interface with low density residential development or public spaces.

The maximum height of the proposal, albeit exceeding 72 metres, conforms to the built form and the height transitions envisioned for development under the Height of Buildings development standard. The proposal will remain in context in terms of its position within the transition desired by Council for development as it moves away from the core of the city centre.

3.1.3 Other reasons why compliance is unreasonable or unnecessary

Compliance with the Height of Buildings development standard is also unnecessary in these circumstances because a better planning outcome for the site as a can be achieved because of the non-compliance. The development is an integrated proposal that will deliver residential accommodation, commercial and retail floor space consistent with the desired future character of the area. The proposed variation to the height will facilitate the provision of communal open space and thus providing high quality amenity for residents.

The extent of built form comprising the rooftop plant, transparent balustrading and lift overruns contained above the height limit will be small in terms of their footprint when compared to the total roof area. Subsequently, these elements will only be perceived from a limited number of locations within the public domain and thereby having minimal visual impact. Moreover, these elements do not inhibit floor space better suited to residential, commercial and or retail uses.

On balance, maintaining the development standard would result in a poorer amenity outcome for future residents and visitors to the site. Given the proposal is consistent with the envisaged built form of the locality and will contribute to a higher standard of amenity for future residents, the proposal has sufficient planning grounds to justify contravening of the Height of Buildings development standard.

3.2 Clause 4.6(3)(b): Environmental planning grounds to justify contravening the development standard

There are sufficient environmental planning grounds to justify a flexible approach to the application of the Height of Building development standard as it applies to the site.

In *Four2Five* the Court found that the environmental planning grounds advanced by the applicant in a Clause 4.6 variation request must be particular to the circumstances of the proposed development on that site. With regards to this application, there are particular elements that contribute to the proposed development's variation to the Building Height standard and these are detailed below.

Provision of Communal Open Space and Improved Access

The proposal incorporates a rooftop communal open space for the building, which will significantly enhance residential amenity and help improve the developments overall environmental performance. The type and quality of communal open space proposed is a significant benefit to residents given the limited availability of high quality communal open spaces within the city centre locations.

To maintain equitable access to this rooftop communal open space, and contribute to its amenity, the lift overruns and rooftop balustrades will protrude the 72-metre maximum Height of Buildings development standard. This will not impact on any significant scenic views to or from the site and will not generate any additional adverse overshadowing on the surrounding locality.

Full adherence to the development standard would require the lift overruns and balustrades to be either reduced and or removed. This would result in:

- Unequitable access to the rooftop open space for residents. A reduction to the lift overruns can only be achieved by removing lift access and retaining only the stair to the rooftop communal open space. This will not ensure equitable access to this space particularly for those in wheelchairs and or with prams and would generate a building design unable to meet BCA requirements.
- A reduced amount, type and diversity of communal open space available to the site. If the lift overruns were to be removed, the rooftop communal open space would not be possible in the indicative development scheme.

Maintaining the Height of Buildings development standard would therefore result in a poorer amenity outcome for residents. It would reduce the diversity and type of communal open space available to the site.

It is noted that although the proposed development achieves the minimum communal open spaces requirements under the ADG on level 1, the roof top terrace provides a superior communal area with greater amenity given its unobstructed solar access and outlook. This perspective, which demonstrates the provision of access to something

which is over and above the circumstances required under the ADG, was supported by Commissioner Dixon *MGT 6 Pty Ltd v The Council of the City of Sydney* [2017] NSWLEC 121.

The environmental planning grounds, being the provision of accessible, high amenity communal open space are particular to the site and the proposal and will significantly benefit to its future occupants. Thus, the benefits of providing lift access and their associated overruns, which breach the Height of Buildings standard, far outweigh a fully numerical compliant development, in the circumstances of this case.

No Adverse Visual Impact from the Public Domain

The rooftop elements which exceed the 72-metre height limit will not result in any adverse visual impacts when viewed from the street front and or from public domain areas surrounding the site. Rooftop elements have heights generally consistent with the upper storey building elements of the adjoining development at 1 Boys Avenue and, therefore, will not generate any additional adverse visual impacts.

In light of the above, there are no environmental planning grounds that warrant maintaining and/or enforcing the numerical building height standard in this instance. Rather, there are clear and justifiable environmental planning merits which justify the flexible application of the height control allowed by clause 4.6.

The Statement of Environmental Effects demonstrates that the proposed development will not give rise to any significant adverse environmental effects which cannot be managed or mitigated.

3.3 Clause 4.6(4)(a)(ii): In the public interest because it is consistent with the objectives of the zone and development standard

3.3.1 Consistency with objectives of the development standard

The proposal is consistent with the objectives of the Height of Buildings development standard, for the reasons discussed in section 3.1.2 of this report.

3.3.2 Consistency with objectives of the zone

The proposal exceeds the Height of Buildings development standard on land in B4 Mixed use zone. As such, the objectives of this zone are required to be considered in determining whether the variation to exceed the applicable height standards is supportable.

B4 Mixed Use Zone

The objectives of the B4 Mixed use zone are as follows:

- *To provide a mixture of compatible land uses.*
- *To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.*

The proposal in its entirety satisfies the B4 Mixed Use zone objectives as it:

- provides a mixture of compatible land uses, including residential apartments, commercial and retail;
- integrates residential, commercial and retail uses in a highly accessible location that is close to major public transport in the form of Blacktown Railway Station and Blacktown Transit Way, which also accommodates suitable cycling infrastructure.

Despite the proposed variation to maximum Height of Buildings development standard, it has been demonstrated that the height proposed will remain consistent with the objectives of the B4 Mixed Use zone in BLEP 2015.

Accordingly, the consent authority can reasonably be satisfied that this written request has adequately addressed the matters in clause 4.6(3) and that the proposal would be in the public interest as it is:

- consistent with the objectives of the particular development standard; and
- the objectives for development within the zone in which the proposal is to be carried out.

3.4 Other Matters for Consideration

Under clause 4.6(5), in deciding whether to grant concurrence, the Director-General must consider the following matters:

- (5) *In deciding whether to grant concurrence, the Secretary must consider:*
- (a) *whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
 - (b) *the public benefit of maintaining the development standard, and*
 - (c) *any other matters required to be taken into consideration by the Secretary before granting concurrence.*

These matters are addressed in detail below.

3.4.1 Clause 4.6(5)(a): Whether contravention of the development standard raises any matter of significance for State or regional environmental planning

The variation of the Height of Buildings development standard does not raise any matter of significance for State or regional planning. It is noted, however, that the proposal is consistent with the most recent metropolitan plan for Sydney, *A Plan for Growing Sydney* in that it:

- provides accommodation and services to meet the needs of the local population, both at the present time and in the future as Sydney's population grows and ages;
- allows for the use of the site to continue to provide local employment opportunities;
- is well located for public transport connections; and
- includes the redevelopment of an urban renewal site in proximity to public transport.

3.4.2 Clause 4.6(5)(b): The public benefit of maintaining the development standard

There is no public benefit in maintaining the numerical Height of Buildings development standard in this instance. In fact, strictly adhering to the maximum height development standard would result in an inferior outcome for future residents.

Maintaining and enforcing the development standard in this case would unreasonably prevent the orderly and economic development of this underutilised site, and would unnecessarily encumber the various benefits this development brings, including:

- a new development that is compatible with the desired future character of the locality;
- a new development offering high quality design and improvements to the streetscape; and
- the provision of construction jobs and ongoing employment opportunities through the retail uses proposed.

3.4.3 Clause 5.6(5)(c): Any other matters required to be taken into consideration by the Director-General before granting concurrence.

In addition to the matters already mentioned, it is worth noting that the proposed variation to the Height of Buildings development standard will not set an undesirable precedent in the area. The height variation sought applies only to the rooftop, similar to the variation granted for the adjoining development currently under construction and adjoining the site at 1 Boys Avenue. The height variation will not generate additional adverse amenity impacts for future residents at 1 Boys Avenue or future occupants of the site. Further, the variation generated by the lift overruns is unique to the proposal as it facilitates equitable access to a rooftop communal open space.

4.0 Conclusion

Compliance with the Height of Buildings development standard contained in clause 4.3 of BLEP 2015 is unreasonable and unnecessary in the circumstances of the case, and the justification is well founded. It has been established that the variation allows for a better planning outcome for the site by providing equitable access to all levels of the development and additional, superior communal open space.

This clause 4.6 variation request demonstrates, notwithstanding the proposed variation to the Height of Buildings development standard, that:

- The objectives of the Height of Buildings development standard are achieved notwithstanding the variation to the numerical control;
- The proposed flexible application of controls accomplishes better planning outcomes than would be achievable by strict adherence to the controls across the development site in relation to the proposed communal open space and lift overruns.
- The extent of variation is minor in both proportion of the overall height and in the extent of space occupied by the lift overruns and rooftop plant as part of the overall and much larger roof space;
- The rooftop building elements which exceed the maximum height do not create any additional direct adverse overshadowing, visual and or privacy impacts;
- The breach of the height control facilitates the delivery of a significant environmental planning benefit for the development by providing a high quality communal open space located on the roof of the building with equitable access.
- The proposal is compatible with the scale and character of the Blacktown city centre.
- The non-compliance with the development standard does not raise any matters of State and regional planning significance; and
- There is no public benefit in maintaining the building height development standard adopted by the environmental planning instrument for this site given:
 - the appropriate positioning of the rooftop plant and lift overruns that will result in no adverse visual impacts upon the streetscape and/or public domain;
 - the reduction in the amenity that will be provided on the site via the rooftop communal open space are, if this element was deleted or reduced to strictly comply

This clause 4.6 request demonstrates that the proposal will deliver a holistically better outcome for Council and future residents of the development and maintains a built form in line with the character envisaged for Blacktown city centre. For the reasons set out in this written request the development should be approved with the variation as proposed in accordance with the flexibility allowed under clause 4.6 of BLEP 2015.