

6 Clause 4.6 Variation Request – Building Height

6.1 Overview

Clause 4.3 of BBLEP 2013 specifies that the height of a building may not exceed the maximum height specified on the relevant Height of Buildings Map. The site is subject to a variable height limit of 28-44 metres. The proposed development exceeds the maximum height allowance when measured in accordance with the BBLEP definition of building height, **primarily from the outcome of the winning design from the required design competition and the approved masterplan applying to the site.**

Clause 4.6 provides flexibility to vary the development standards specified within the LEP where it can be demonstrated that the development standard is unreasonable or unnecessary in the circumstances of the case and where there are sufficient environmental grounds to justify the departure. Clause 4.6 states the following:

“(2) 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...”

(3) 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.”*

Accordingly, we set out below the justification for the departure to the height controls applicable under the LEP **as a result of the masterplan approval and the design competition winning entry.**

6.2 Proposed Variation

Pursuant to Clause 4.3 of the BBLEP 2013 and the accompanying height map a maximum height “standard of 44 metres applies to the site. The BBLEP 2013 defines height as:

building height (or height of building) means:

- (a) in relation to the height of a building in metres—the vertical distance from ground level (existing) to the highest point of the building, or*
- (b) in relation to the RL of a building—the vertical distance from the Australian Height Datum to the highest point of the building,*
including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like.

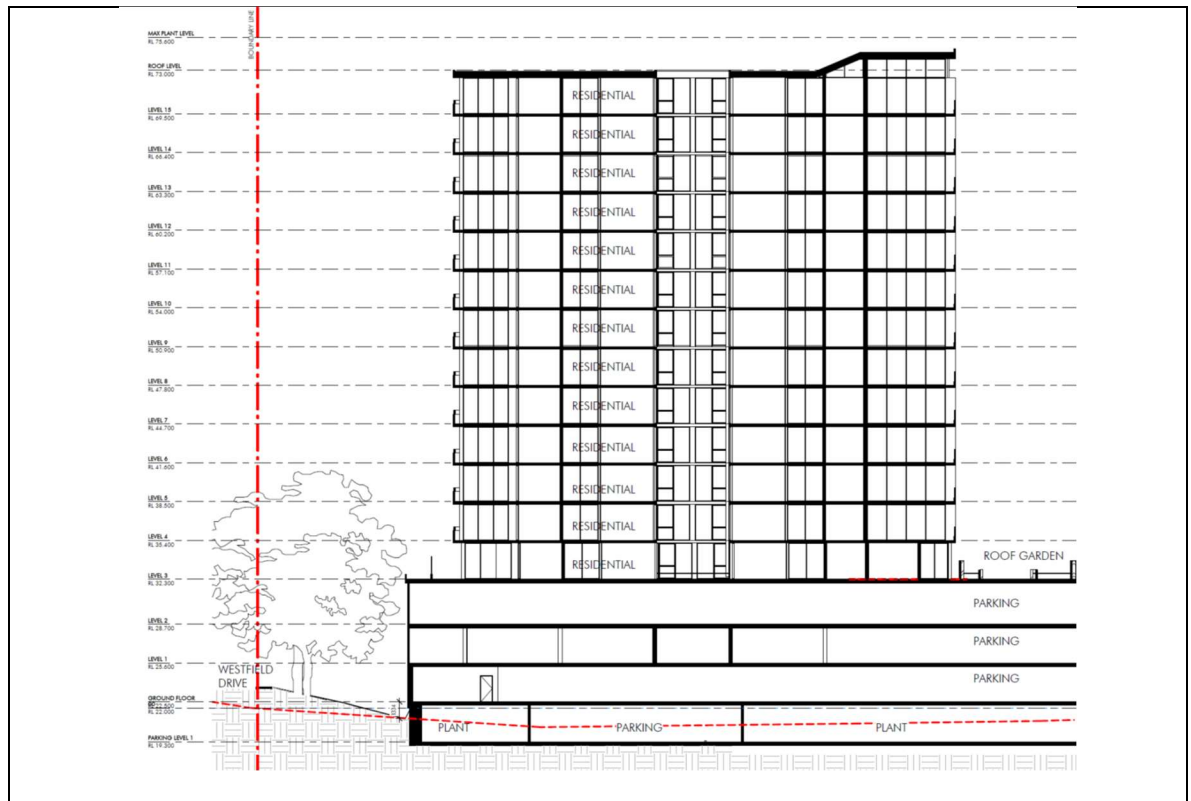
The proposed development involves the construction of a mixed use development involving a part 3 storey and part 5 storey podium building, with four towers above, being Buildings A-D. The towers range in height from 6 to 16 storeys. While the podium and Towers A, C and D sit well within the 44 metre height standard, Tower B, has a maximum height of 52.6 metres.

The **original** potential to exceed the nominated LEP building heights for the Bunnerong Road site was thoroughly explored in the consideration of the Stage 1 masterplan proposal. As part of that

assessment it was accepted that the southern part of Urban Block 5E is suitable for a taller building, exceeding the height limit.

In addition to this, the conditions of the masterplan required a design competition to be held so that buildings were not all the same. A design competition was held with Council having a representative on the judging panel and Council staff at the presentation of each entry. The winning design incorporated a roof element to break up the heights by elevating a corner element. It is this corner element that exceeds the height limit by 1m as shown below.

Architectural Cross Section



Design Competition Height



Importantly, there is no increase in floor area from the architectural feature.

Other than the height variation for the design competition, the proposed building heights are entirely consistent with the Stage 1 development consent, as detailed in **Table 12** below.

TABLE 12: BUILDING HEIGHT

Building	Stage 1 Storeys Approved	Stage 1 Maximum approved RL	Proposed Storeys	Proposed Maximum RL	Compliance with Stage 1
A	8	28.8m	8	27m	Yes
B	16	53.6m	16	52.6m	No
C	6	22.6m	6	21m	Yes
D	6	22.6m	6	21m	Yes
PODIUM	3 / 5	10.7m / 16.9m	3 / 5	10.7m / 16.9m	Yes

6.2.1 Is compliance necessary and reasonable

The minor variation for the design competition provides a significant improvement for the built form. Proposed heights for the remainder of the buildings have been developed through an extensive master planning process and have already been approved as part of a Stage 1 Development Consent, which involved extensive shadow analysis and built form assessment. In respect of the design competition that had Council heavily involved with, and there being no impact on public or private amenity, it is deemed unnecessary and unreasonable change the height on this occasion.

6.2.2 Are there sufficient environmental planning grounds for the variation?

The justification for the breach in the height limit is based on two key principles as follows:

Preferred Urban Design Outcome for the Bunnerong Road site

In terms of the masterplan approval heights, the consideration of a comprehensive site analysis and review of the site attributes and surrounding context were undertaken by Council and their external consultants to arrive at this design outcome. The southern part of the site was identified as the least sensitive part of the Bunnerong Road being physically and visually separated from existing low density residential development to add extra height. Adjoining uses of the Westfield Eastgardens shopping centre to the south required an elevated position to improve residential amenity in the towers on to op above ground parking, which is a very unique situation.

With respect to the design competition, the smaller roof element that exceeds the height was considered suitable by the design jury members that also included Council representation.

Above ground car parking to address the interface with the Westfield Eastgardens Loading Area

Building heights have been raised above the specified LEP height limits in this portion of the site to allow for above ground car parking. The southern part of the Bunnerong Road site is situated opposite the Westfield Eastgardens Shopping Centre. Loading and servicing facilities are

provided at this side. Podium level car parking is proposed to the south of the proposed development to address Westfield's loading / servicing area. This part of the site is undesirable for low level apartment buildings given potential land use conflicts between future residential uses and loading activities. All proposed south facing apartments are elevated above the proposed car parking levels with the tower elements of the development. The added height from the design competition winning entry provides a roof element other than a flat design.

The additional height allows for the floorspace envisaged by the LEP to be realised on the site (3:1). This could not otherwise be achieved given the incorporation of above ground car parking as proposed.

6.3 Clause 4.3 Objectives

Clause 4.3 sets out the objectives of the maximum building height development standard. The consistency of the proposed development with these objectives is set out in **Table 13** below.

TABLE 13: HEIGHT OBJECTIVES

Objectives	Proposed Development
(a) To ensure that the built form of Botany Bay develops in a coordinated and cohesive manner.	The height of the buildings in this Development Application are consistent with the masterplan and the design competition outcomes. Both were outcomes of intensive analysis to ensure Botany Bay continues to develop in a coordinated and cohesive manner. Above ground parking is proposed to address the interface with the Westfield Eastgardens loading area.
(b) To ensure the taller buildings are appropriately located.	<p>The tallest height of all buildings approved under the masterplan were located against the Westfield Shopping Centre to have consistent bulk, scale and height. Regarding Urban Block 5E, building height is much less than that found in Blocks 5C and 5W. Within Block 5E there is a further tapering of building height from the western boundary to Bunnerong Road to address overshadowing of neighbouring development along the eastern side of Bunnerong Road. In this instance the building heights are consistent with the masterplan approval.</p> <p>The design competition height is an element to provide interest to one part of a building and was considered acceptable to the jury which Council was represented on.</p> <p>Consistent with the Stage 1 masterplan consent for the Bunnerong Road site, the proposal will facilitate the development of the tallest buildings within the southern portion of the site adjacent to Westfield Eastgardens, allowing for the gradual transition in height down to the north where the Bunnerong Road site interfaces with residential uses.</p>
(c) To ensure that building height is consistent with the desired future character of an area.	The approved masterplan establishes the building heights as being the desired future character. Building heights are consistent with the masterplan, as is the design winning entrant consistent with the building height for that component creating visual interest to the area.
(d) To minimise visual impact, disruption of views, loss of privacy and loss of solar access to existing development.	The building heights and that component for the design competition continues to allow for a high level of residential amenity and complies with the requirements of the Stage 1 masterplan consent and the ADG with respect

Objectives	Proposed Development
	<p>to solar access and cross ventilation.</p> <p>Given the extensive 70m width between the buildings on the podium and the building line of dwelling houses along the eastern side of Bunnerong Road, no additional overshadowing or loss of privacy, views will take place than that already considered when the masterplan was approved.</p>
<p><i>(e) To ensure that buildings do not adversely affect the streetscape, skyline or landscape when viewed from adjoining roads and other public places such as parks, and community facilities.</i></p>	<p>Building heights were analysed intensively during the masterplan approval. Buildings remain consistent with the masterplan as does the winning entry of the design competition.</p> <p>The proposed development will make a positive contribution to the streetscape. Buildings have been designed to a high standard and comprise good quality materials and finishes.</p>

As illustrated in the table above, the proposed development does not conflict with the objectives of Clause 4.3 of the LEP.

6.4 Summary

The proposal is considered appropriate and consistent with the objectives and intent of Clause 4.3 of the LEP. Strict compliance with the LEP in this case is considered to be unreasonable and unnecessary as follows:

- Through the Stage 1 masterplan application, the Bunnerong Road site has been assessed as being suitable for more intensive development than would normally be achievable under the LEP, noting the building height limits that apply.
- The proposal is entirely consistent with the maximum building height limits allowable by the approved Stage 1 masterplan for this part of the Bunnerong Road site.
- Strict compliance with the height controls would result in a poorer design outcome for the site as it would prevent the delivery of the Bunnerong Road site as envisaged by the Stage 1 masterplan consent and the winning entry of the design competition required by the masterplan.
- The bulk and scale of the proposed development is consistent with the adjoining large scale regional retail centre (Westfield Eastgardens).
- The proposed development is consistent with the intent of Clause 4.3 of the LEP which is to minimise adverse amenity impacts on neighbouring residential properties and to support the desired future character of the area.
- The proposal will not result in the loss of views for existing residents, nor will it result in adverse amenity impacts and satisfies all relevant amenity criteria of the ADG, including access to sunlight, natural ventilation and privacy.