

ASSESSMENT OF CLAUSE 4.6 VARIATION REQUEST TO BUILDING HEIGHTS

JRPP-15-02700 - Assessment of a Residential Care Facility (RCF)
Proposed Lot 2 in Nos. 37-43 Kildare Road, Blacktown

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

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

Height

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

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

- **Maximum height**

The maximum height limit on the site is 20 m under the BLEP 2015 building height map. Although the development exceeds the permissible height by 300 mm or 1.5%, the development does not achieve an additional residential level. The additional height simply accommodates the area of the lift and stair overrun, and for hot water plant. The increase in height therefore does not impact on the density / floor area of the development. The increased height also has no impact on the scale of the development.

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

The additional shadow impacts due to the increase in height are negligible. The overshadowing caused by the non-compliance is due to the area of the lift and stair overrun which is captured within the roof space itself. The lift overrun structure does not result in additional overshadowing of adjoining

buildings and open space. The additional height does not result in any adverse visual impact given it is visually imperceptible.

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

The site is considered suitable for the development given its proximity to the Blacktown CBD's retail and commercial centre, and the Blacktown railway station/bus interchange, and adjacent to Gribble Place where a number of Council assets are located which are used by various community organisations. The additional height does not result in any additional yield and does not result in an additional storey. The proposed number of storeys, being five, is consistent with the storeys anticipated for the future proposed residential flat buildings south of the site, which given the 20 m height limit will enable 6 storey RFB development. A reduction to the height of the building would compromise the design of the building (i.e. internally in relation to lowered ceilings).

The objectives of the development standard are achieved as the development is representative of the building height anticipated in this recently rezoned R4 precinct near to Blacktown CBD, and does not result in a bulky appearance. The interesting and varied design elements used throughout the development assist with ensuring that it is consistent with the desired future character of the immediate locality. Therefore, this minor variation to building height is considered acceptable in this circumstance, and is recommended to be supported in this instance.

- **Privacy impacts**

The building height variation does not result in any additional privacy amenity impacts on adjoining properties. The roof top area is not capable of being used for open space purposes. Furthermore, the structure will have minor visibility from the public domain, if any, and will not detract from the desired future character.

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

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

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

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

4. The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable

Variations to the development standards of building height have been previously supported within the immediate area. Council officers have also consistently allowed the lift and stair overrun area to encroach above the permissible height limit, and this variation is consistent with deviations recently approved:

- DA-15-01678 approved on 8 April 2016 for the construction of a 6 storey residential flat building at 106, 108 and 110 Hambledon Road, Schofields, included a variation to the 20 m height limit, being 1.6 m or less than 10% for the centrally located lift overrun, part of the fire stair structure, and parts of

the rooftop pergola structures. The general roofline satisfies the 20 m building height limit.

- DA-15-01850 approved on 11 April 2016 for the construction of a 6 storey residential flat building at 3 Wallace Street, Blacktown included a variation to the 20 m height limit, being 1.6 m or less than 10% for the centrally located lift overrun, part of the stairwell, and parts of the rooftop pergola structures. The general roofline satisfies the 20 m building height limit.
- DA-15-02695 approved on 26 July 2016 for the construction of a part six/part seven-storey residential flat building at 1 Balmoral Street, Blacktown included a variation to the 20 m height limit, being 1.7 m or less than 10% for the centrally located access stairs, lift overrun, and shading structure. The general roofline satisfies the 20 m building height limit.

Variations to the roof structure and lift overruns are consistent with deviations considered elsewhere within the Blacktown local government area.

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

The development site contains four post-war dwellings, and amalgamation of four lots and subdivision into two lots is proposed to enable development on two lots to provide for a residential care facility, and a future residential flat building within an area which has recently been rezoned to R4 High density residential. Full compliance with the development control would be able to be achieved, but the variations do not increase residential density. Given the site's context close to the Blacktown CBD, and the limited site area, this variation to create useable space for the benefit of future residents of this Seniors housing development, and to achieve a better designed building is considered acceptable. Compliance would be unreasonable in the circumstances.

Based on the above assessment, the requested variation under Clause 4.6 is considered reasonable, well-founded and is recommended for support.