



Clause 4.6 Departure - Height 9 & 11-17 SECOND AVE BLACKTOWN



QUALITY ASSURANCE

PROJECT: Clause 4.6 Departure -Height

ADDRESS: 9 & 11-17 Second Ave Parramatta

COUNCIL: City of Blacktown

AUTHOR: Think Planners Pty Ltd

Date	Purpose of Issue	Rev	Reviewed	Authorised
25 July 2017	Re-issued Final	Final	AB	AB

UPDATED CLAUSE 4.6 DEPARTURE –HEIGHT

Summary of Variations Proposed

As shown on the elevations below the proposals exceed the maximum building height of 56m, noting that the proposals are predominantly compliant with the maximum building height. It is noted that the proposals are predominantly compliant with the maximum building height however a small portion of the buildings comprising the lift over run/structure associated with the communal open space on the roof level exceeds the maximum building height requirement and as such does not comply with Clause 4.3. The variation results in a better outcome as explained generally below and as specifically addressed in the final part of this submission.

Establishing the Relevant Tests

A Clause 4.6 variation request has been prepared, noting that the request addresses a number of recent Land and Environment Court cases including *Four 2 Five v Ashfield* and *Micaul Holdings Pty Ltd v Randwick City Council* and *Moskovich v Waverley Council*.

The key tests or requirements arising from the above judgments are:

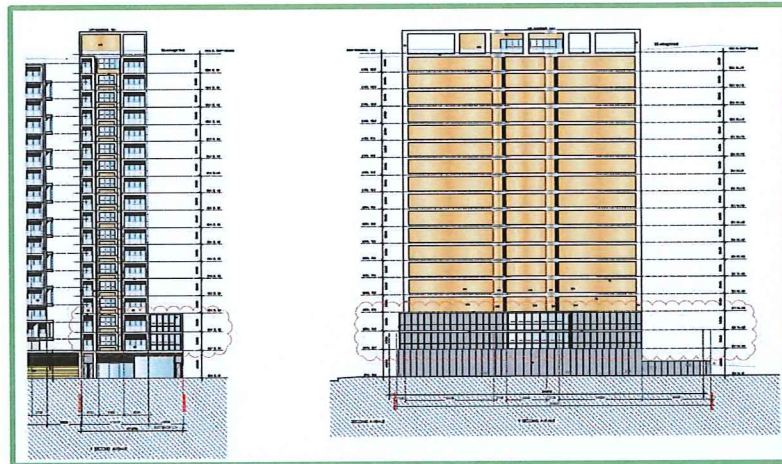
- The consent authority is to be satisfied the proposed development will be in the public interest because it is “consistent with” the objectives of the development standard and zone, and it is not a requirement to “achieve” those objectives. It is a requirement that the development be compatible with the objectives, rather than having to ‘achieve’ the objectives.
- Establishing that ‘compliance with the standard is unreasonable or unnecessary in the circumstances of the case’ does not always require the applicant to show that the relevant objectives of the standard are achieved by the proposal (Wehbe “test” 1). Other methods are available as per the previous 5 tests applying to SEPP 1, set out in *Wehbe v Pittwater*.
- When pursuing a Clause 4.6 variation request it is appropriate to demonstrate how the proposal achieves a better outcome than a complying scheme; and
- The proposal is required to be in ‘the public interest’.

In relation to the current proposal the keys are:

- Demonstrating that the development remains consistent with the objectives of the building height standard;
- Demonstrating consistency with the zoning and a better outcome; and
- Satisfying the relevant provisions of Clause 4.6.

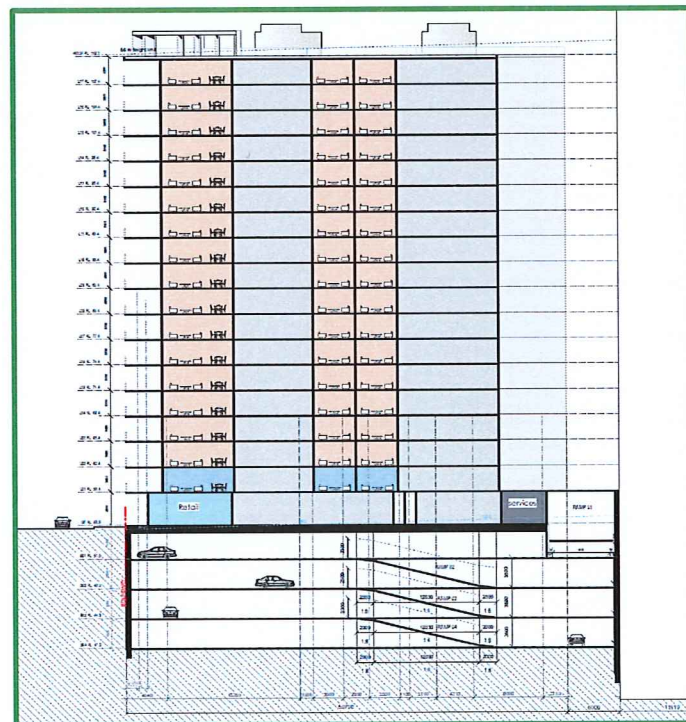
Departure Proposed - Number 9

The extent of departure is approximately 4.8m which equates to 8.5% of the control. It is noted that the roof terrace only exceeds the height limit by 700mm or 1.2%. This is illustrated by the elevation extracts below.



Departure Proposed - Numbers 11-17

The extent of departure is approximately 4.3m which equates to 7.6% of the control. This is illustrated by the section below.



Departure Comment

The designs of the two buildings ensure that habitable floor space is compliant with the maximum building height line, with the lift over run/service structures recessed so that they are not visible/negligible when viewed from street level. Furthermore, the exceedance is considered incapable of being perceived having regard to the 56m height limit.

This indicates that the variation is not simply a means of achieving additional development yield on the site, but a site-specific design response to service the rooftop communal open space area to both buildings. Despite the departure, the proposal continues to be consistent with the underlying intent of the control and the variation is considered appropriate.

Blacktown Local Environmental Plan 2015 – Clause 4.6

Blacktown Local Environmental Plan 2015 provides that development consent may be granted for development even though the development would contravene a development standard. This is provided that the relevant provisions of the clause are addressed, in particular subclause 3-5 which provide:

(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 Secretary has been obtained.

(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.

Each of these provisions are addressed in turn in the following pages.

Clause 4.6(3)

In accordance with the provisions of this clause it is considered that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case as the underlying objectives of the control are achieved. The objectives of the building height development standard are stated as:

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

The current development proposal is consistent with the building height with the exception of lift core/service area remains consistent with the objectives based on the following:

- The overall height of the development presents as a compatible form of development with the evolving high density development within the Blacktown North CBD Precinct.
- The lift core/service structures are recessed and not visible from the street level.
- The proposal has been designed to ensure that privacy impacts are mitigated that the proposal will not obstruct existing significant view corridors;
- The proposal does not result in additional overshadowing to residential properties as the shadow cast by the development falls on the site and surrounding reserves with only limited overshadowing to adjoining properties and this overshadowing would not be discernibly different as compared to a compliant height;
- The minor non-compliance to the height control has no impact on the setting of any items of environmental heritage or view corridors; and
- The non compliance is the direct result of providing additional amenities to the residents and not an attempt to gain additional saleable floor space.

The unique circumstances of the case that warrant support of the departure are:

- The sites location in the city centre, where ground level space is taken up with large podiums; driveways that service parking; spaces for the provision of garbage movements and pick up; and the location of essential services such as fire panels and substations warrants the provision of communal open space in the form of a roof top terrace.
- A roof top terrace is also a preferable location in the circumstances as it will benefit from being elevated and enjoying views and excellent solar access and provide superior open space amenity to building occupants than at grade open space.

As outlined above the proposal remains consistent with the underlying objectives of the control and as such compliance is considered unnecessary or unreasonable in the circumstances. The above discussion demonstrates that there are sufficient environmental planning grounds to justify the departure from the control.

Clause 4.6(4)

In accordance with the provisions of Clause 4.6(4) Council can be satisfied that this written request has adequately addressed the matters required to be demonstrated by Clause 4.6(3). As addressed the proposed development is in the public interest as it remains consistent with the objectives of the building height control. In addition, the proposal is consistent with the objectives of the B4 Zone, being:

- *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 will provide a large mixed use building that will assist in the evolution of development of Blacktown North CBD Precinct. In addition the proposal complements and enhances the local streetscape by virtue of the careful siting of the development.

It is understood that the concurrence of the Secretary can be assumed in the current circumstances.

Clause 4.6(5)

As addressed it is understood the concurrence of the Secretary may be assumed in this circumstance, however the following points are made in relation to this clause:

- The contravention of the building height control does not raise any matter of significance for State or regional environmental planning given the nature of the development proposal; and
- There is no public benefit in maintaining the development standard as it relates to the current proposal. The departure from the building height control is acceptable in the circumstances given the underlying objectives are achieved and it will not set an undesirable precedent for future development within the locality given the proposal provides for a site specific design response (i.e. slope) and interfaces with a reserve to the south.

Strict compliance with the prescriptive building height requirement is unreasonable and unnecessary in the context of the proposal and its particular circumstances.

The proposed development meets the underlying intent of the control and is a compatible form of development that does not result in unreasonable environmental amenity impacts. The proposal also not have any adverse effect on the surrounding locality. The proposal promotes the economic use and development of the land

consistent with its zone and purpose. Council is requested as part of the future development application to invoke its powers under Clause 4.6 to permit the variation proposed.

The Departure is a Better Outcome

The proposal results in a better outcome as –

- The communal open space area is afforded exceptional amenity in terms of privacy and solar access, that is accessible to building occupants, and that is not compromised by ground level constraints and impacts such as –
 - Overshadowing from the building above;
 - Overlooking from surrounding towers; and
 - The space being allocated only after other spaces are first allocated, such as activation of street edges, driveway locations, essential services and garbage facilities.
- As the site is zoned B4, residential flat buildings are not permitted and the form of development is to comprise “shop top housing”. Shop top housing is intended to ensure that retail and business premises are provided on the ground level and no residential development take up that space on the ground floor. The provision of communal open space on the roof top results in the better outcome of reinforcing the planning intention of retail and business premises on the ground floor.