

Council assessment of Clause 4.6 request

1 5-part test assessment of Clause 4.6 variation request

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:

- i. **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 56 m. Although the development exceeds the permissible height by 4 m at the plant and equipment points only, the development does not achieve an additional residential level. 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, as it is point encroachments of plant and equipment. The additional height simply provides a larger base to the building which improves the overall look and design of the development.

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

The additional shadow impacts are negligible. The majority of the overshadowing caused by the non-compliance is due to the lift overruns and rooftop plant and equipment which is captured within the roof space itself.

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

The site is considered suitable for the development given its proximity to the Blacktown railway station and the Blacktown CBD. The additional height does not result in any additional yield and does not result in an additional storey. The proposed number of storeys, being 18 in total, is consistent with other shop top housing developments proposed in the 56 m height limit area (e.g. JRPP-15-467 at 16 Third Avenue, JRPP-15-1263 at 2 Second Avenue, JRPP-15-02533 at 20 Second Ave and JRPP-15-2087 at 2 - 10 First Avenue). A reduction to the height of the building would compromise the design of the building (i.e. at the commercial base).

- **Privacy impacts**

The building height variation does not result in any additional privacy impacts on adjoining properties. The rooftop area will not be used for open space purposes.

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

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

iii. **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 standard, as outlined above, will still be achieved despite the variation.

iv. **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 height development standard have been previously supported in the CBD. Council officers have also consistently allowed the lift overruns and rooftop area to encroach above the permissible height limit.

Developments of a similar scale to this DA (i.e. 18 storeys only) have been approved within the Northern Precinct of the CBD, with variations to the height, including the development at 28 Second Avenue (JRPP-14-2593) and the development at 2 - 10 First Avenue (JRPP-15-2087).

- v. 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 is currently vacant. Full compliance with the development controls can therefore be achieved. The variation, however, does not increase residential density. Given the site's context within the Blacktown CBD and the limited site area, variations in order to create usable space for the benefit of future residents and a better designed building is considered acceptable.

In addition, in June 2016, Blacktown City Council resolved to review the planning controls within BLEP 2015 in the Blacktown CBD. For the subject site, Council resolved to support the deletion of the FSR controls within the CBD precinct and increase the maximum building height to 80 m. While the changes are still in their infancy, the recommendations have been forwarded to the Department of Planning and Environment for its consideration. In the circumstances of this strategic change by Council, it is considered unreasonable to require strict compliance with the building height control, which in the medium term is likely to be removed.

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