

Detailed information about proposal and Clause 4.6 variation request

1. Overall, there are 101 residential units proposed with the following unit mix:

Level	G	1	2	3	4	5	Total
1 bed	12	8	8	8	2	4	42
2 bed	6	10	10	10	8	13	57
3 bed	-	-	-	-	2	-	2
Total	18	18	18	18	12	17	101

2. The maximum building height of the development is 20.6 m. The development seeks a variation of 0.600 m over only limited portions of the building above the maximum height limit of 20 m under Blacktown LEP 2015. The maximum variation sought is equivalent to a 3% variation to the development control associated with the roof parapet. The applicant has lodged a Clause 4.6 variation to the development standard for the consideration of the consent authority.
3. The proposal provides for a 9 m setback to Carinya Street. The building is setback 6 m to the side and rear boundaries, which is considered acceptable.
4. Waste collection will occur within the Level 1 basement located on the site.
5. The DA provides for one level of basement car parking for a total of 119 car parking spaces. The basement provides:
- 104 resident car parking spaces, of which 13 are accessible spaces
 - 15 visitor car parking spaces
 - 16 bicycle spaces.
6. Each basement car space has been designed so that vehicles can enter and exit in a forward direction. Lifts will provide direct access from the basement carpark area to the residential levels. All parking is secure within the basement and a roller shutter and card-key system will be conditioned to be installed at the entry/exit points. Visitor parking is located centrally and in close proximity to the lifts.
7. The DA proposes 2 new vehicle access points out onto Carinya Street from the basement, one on the north side and one on the southern side of the development.
8. The development provides for a central communal open space area and an area towards the rear of the site, both at ground level. There is also a rooftop terrace proposed. The open space areas will benefit all units and has a total area of 968 sqm. The common landscaped areas will be embellished with seating, BBQ areas, children's playgrounds, pathways, pergolas and appropriate plantings.
9. The proposed development is well articulated with a flat roof form, and is well balanced with articulated windows, vertical grouping of balconies and building elements at corners providing architectural features to the development. Balconies incorporate feature elements used on the façade treatment, with a mix of concrete and aluminium framed glass balustrades. The development proposes a variety of external colours and

finishes, including face brick, highlighted with painted rendered finishes, aluminium cladding and aluminium framed windows.

10. A Design Verification Statement prepared by Dugald Mackenzie of Mackenzie Architects has been prepared for the development, in accordance with the requirements of SEPP 65. The Design Verification Statement identifies that the buildings have been arranged on the site in response to the site controls and surrounding context. The proposed development has been suitably treated to include appropriate finishes to have a high aesthetic content. The proposed design has been detailed to reflect contemporary design initiatives through the use of variation in form and materials. The building orientation and façade elements are implemented with a climate control strategy, including solar access, light penetration and provision of natural cross ventilation for individual apartments.
11. The applicant has submitted a Traffic and Parking Assessment Report prepared by Terraffix Pty Ltd. The report reviews the road network in the vicinity of the site and assesses the traffic implications of the development proposal in terms of road network capacity.
12. The report identifies that, in accordance with the Roads and Maritime Services publication *Guide to Traffic Generating Developments, Section 3 – Land use Traffic Generation* dated October 2002, the development proposal yields a traffic generation potential of approximately 43 vehicle trips per hour during commuter peak periods. The report identifies that the projected increase in traffic activity as a consequence of the development proposal is consistent with the objectives of the rezoning of the local area and will not have any unacceptable traffic implications in terms of road network capacity.

5-part test assessment of Clause 4.6 variation request

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

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.

- **Maximum height**

The maximum height limit on the site is 20 m. Although the development exceeds the permissible height by up to 600 mm, the development does not achieve an additional residential level and does not impact on the density / floor area of the development. The increased height also has no impact on the scale of the development. The additional height simply accommodates the roof structures and rooftop plant.

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

The additional shadow impacts are negligible. The overshadowing caused by the non-compliance is due to the roof slab in some areas of the building and the lift overruns which provide access to the rooftop terrace. The shadow diagrams demonstrate the development can achieve a minimum of 2 hours of direct solar access between 9 am and 3 pm in midwinter for approximately 70% (71 units) of apartments within the development.

- **Facilitates higher density development in and around the Blacktown CBD while minimising impacts on adjacent residential, commercial and open space areas**

The Blacktown Railway Station is located approximately 550 m walking distance from the site. Blacktown Station forms part of the main western line and has historically been a higher order station providing fast and limited stop services to and from the Sydney CBD. The building represents as 7 storeys, and is 20.6 m in height when measured from the ground floor to the top of the plant and equipment. The density of this development meets this objective.

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

The site is considered suitable for the development given its proximity to the Blacktown Station and centre. The additional height does not result in any additional yield and does not result in an additional storey. The proposed number of storeys is suitable given its proximity to transport and the retail and commercial centre.

The objectives of the development standard are achieved as the development is representative of the building height anticipated for land near the Blacktown City Centre 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.

2. 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 due to topographical changes.

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

The purpose of the development standard could still be met even if compliance with the numerical aspect of the standard was not required. 100% compliance with the height limit of 20 m is considered unreasonable as the variation involving point encroachments of 0.6 m for plant and equipment and the roof slab of the top 6th floor, being a variation of 3%, is acceptable based on merit. The objectives of the standard, as outlined above, will still be achieved despite the variations as there are no residential units above the 20 m height limit.

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 similarly been considered in the Blacktown Urban Renewal Precinct.

- DA-16-03871 approved September 2017 for the construction of a 6 storey residential flat building included a variation of up to 13 % of the 20 m height limit, which included lift overruns and building parapets.

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 is within an Urban Renewal Precinct. Full compliance with the development control would be able to be achieved, but the variations do not increase residential density. Further, given the context of the site, the topography of the land must be considered. The existing levels on the site result in a 3.5 m fall from the east to west portion of the site. As site benching and earthworks are required to meet civil

grades and construction of the surrounding road network, full compliance would be unreasonable in the circumstances.

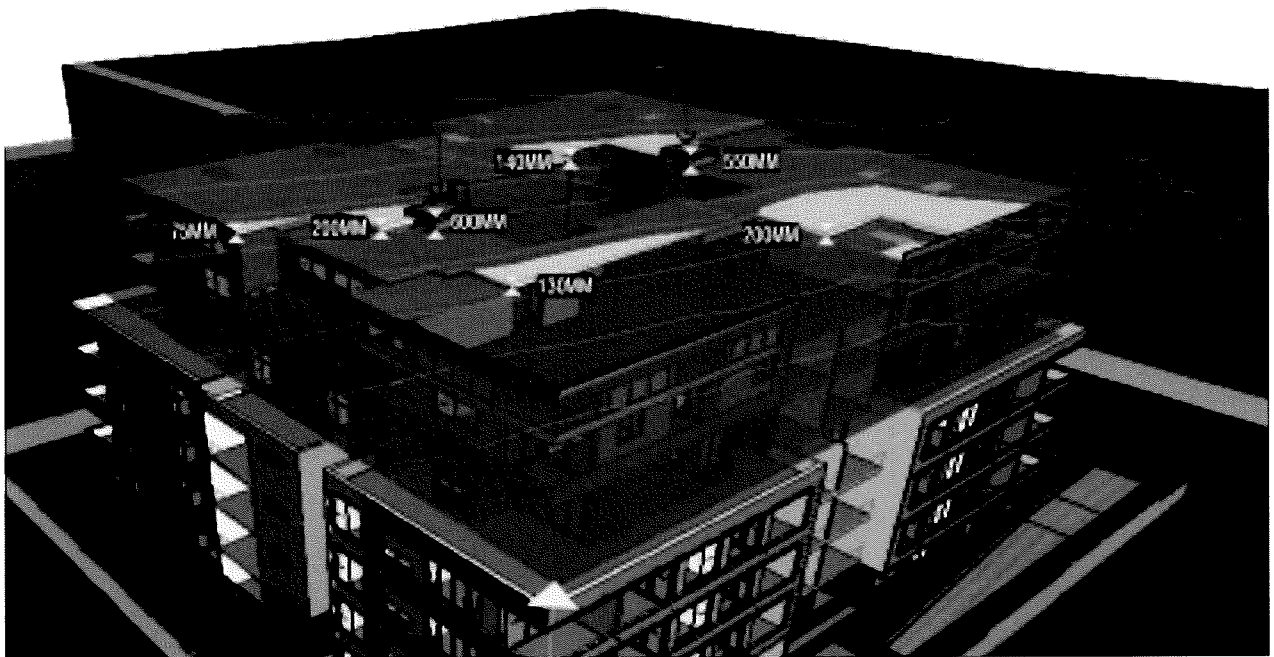
Based on the above assessment, the requested variation under Clause 4.6 is considered reasonable, well founded and is recommended for support.

Copy of Applicant's Written Clause 4.6 Request

Clause 4.6 Variation

Summary of Variation

As shown on the section extract below the proposal exceeds the maximum building height of 20 m, noting that the proposal is predominantly compliant with the maximum building height with the exception of a small portion of the upper most level of the building as can be seen across most clearly on the 3D extracts below.



The maximum extent of variation is 200 mm to the roof slab to a portion of the site and up to 600 mm to the lift over-runs, which are recessed from the perimeter of the building. The maximum variation is 3% of the control, limited to less than 10% of the overall roof area.

The departure is limited to an area where the topography falls away (see contour lines on height diagram) and is also a function of providing lift access to the communal open space area from either end of the building.

The design of the building ensures that the habitable floor space is contained below the maximum building height line which indicates that the variation is not simply a means of achieving additional development yield on the site, but a site specific design response. In this case the variation predominantly stems from the minor cross-fall on the site, as well as the need to provide for suitable access to the rooftop area, with the rooftop necessary to provide a suitable quantum of communal open space on the site that has a northerly aspect. The ground floor communal areas achieve less sun at mid-winter and therefore a splitting of common areas across the site is suitable to enable use of areas depending upon the climatic conditions, i.e. ground floor areas are more suitable to hotter summer months and rooftop to winter months.

Full compliance could be achieved through further cutting of the building into the site, and removing the rooftop common area however the current proposal is a better outcome as it enables the dwellings at the front of the site to achieve appropriate ground floor finished floor levels and a suitable communal open space at the upper level.

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.
- 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
- Satisfying the relevant provisions of Clause 4.6.

Departure Proposed

The maximum extent of variation is 200 mm to the roof slab to a portion of the site and up to 600 mm to the lift over-runs, which are recessed from the perimeter of the building. The maximum variation is 3% of the control, limited to less than 10% of the overall roof area.

Departure Comment

The departure is limited to an area where the topography falls away (see contour lines on height diagram) and is also a function of providing lift access to the communal open space area from either end of the building.

The design of the building ensures that the habitable floor space is contained below the maximum building height line which indicates that the variation is not simply a means of achieving additional development yield on the site, but a site specific design response.

In this case the variation predominantly stems from the minor cross-fall on the site, as well as the need to provide for suitable access to the rooftop area, with the rooftop necessary to provide a suitable quantum of communal open space on the site that has a northerly aspect. The ground floor communal areas achieve less sun at mid-winter and therefore a splitting of common areas across the site is suitable to enable use of areas depending upon the climatic conditions, i.e. ground floor areas are more suitable to hotter summer months and rooftop to winter months.

Further the proposal provides a step in the building, but avoids unnecessary stepping that would necessitate internal steps and ramping within common lobby areas, reducing accessibility for residents and visitors.

Blacktown Local Environmental Plan 2015 – Clause 4.6

Clause 4.6 of the Blacktown LEP 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.*
 - 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.

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 proportions of the uppermost level remains consistent with the objectives based on the following:

- The development adopts a 6 storey with mezzanine form that is envisaged by the 20m height limit, noting that the departure is located to a portion of the site where the topography falls and where there is a step in levels in the buildings. Therefore the variation will not be apparent when the building is viewed from the public domain as the front of the building is compliant. Therefore, there is no impact in terms of bulk and scale of the building on the streetscape.
- The lot orientation means that the additional shadow cast by the development (non-compliant portion) is indistinguishable as compared to a compliant shadow cast on the adjoining properties, noting that setbacks and separations comply and height at the perimeter of the building on the western, southern, and eastern sides is fully compliant (minor departure at northern edge where no additional shadow is cast from this area);
- There are no additional visual privacy impacts arising from the non-compliance as the variation is for a small portion of the roof form where there are no privacy impacts to adjoining properties.
- The proposal provides for a high quality urban form that ensures good amenity for all units including the ground floor units that avoid substantial cut into the site to ensure that amenity is maintained.
- The minor departure to the height control has no impact on view corridors and does not impact on any heritage items in the locality.

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.

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

- The need to provide amenity to ground floor units rather than extending the amount of cut occurring on this site to that entire floor level to achieve technical compliance but resulting in further need for retaining walls and less amenity for ground floor units;
- The design of the building ensures that the habitable floor space is contained below the maximum building height line which indicates that the variation is not simply a means of achieving additional development yield on the site, but a site specific design response. In this case the variation predominantly stems from the minor cross-fall on the site, as well as the need to provide for suitable access to the rooftop area- with the rooftop necessary to provide a suitable quantum of communal open space on the site that has a northerly aspect. The ground floor communal areas achieve less sun at mid-winter and therefore a splitting of common areas across the site is suitable to enable use of areas depending upon the climatic conditions, i.e. ground floor areas are more suitable to hotter summer months and rooftop to winter months.
- The absence of negative environmental impacts arising from the additional height in terms of privacy and overshadowing.
- The minor variation facilitates the delivery of additional housing consistent with the objectives of the R4 zone in delivering housing in proximity to public transport and the Blacktown CBD.

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 R4 zone as the proposal provides for housing opportunities within a high density context in proximity to local centres and infrastructure.

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:

- a. 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
- b. 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 nature of the departure.

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 will 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 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 –

- It enables suitable amenity to ground floor units rather than extending the amount of cut occurring on this site to that entire floor level to achieve technical compliance but resulting in further need for retaining walls and less amenity for ground floor units as compared to the current proposal.
- The design of the building ensures that the habitable floor space is contained below the maximum building height line which indicates that the variation is not simply a means of achieving additional development yield on the site, but a site specific design response. In this case the variation predominantly stems from the minor cross-fall on the site, as well as the need to provide for suitable access to the rooftop area- with the rooftop necessary to provide a suitable quantum of communal open space on the site that has a northerly aspect. The ground floor communal areas achieve less sun at mid-winter and therefore a splitting of common areas across the site is suitable to enable use of areas depending upon the climatic conditions- i.e. ground floor areas are more suitable to hotter summer months and rooftop to winter months.
- The absence of negative environmental impacts arising from the additional height in terms of privacy and overshadowing.
- The minor variation facilitates the delivery of additional housing consistent with the objectives of the R4 zone in delivering housing in proximity to public transport and the Blacktown CBD.
- The proposal provides a step in the building, but avoids unnecessary stepping that achieving technical compliance with the height control would generate. Strict compliance would necessitate further stepping of the building form and subsequent internal steps and ramping within common lobby areas- reducing accessibility for residents and visitors.