

7. CLAUSE 4.6 VARIATION REQUESTS – HEIGHT AND FSR

7.1. OVERVIEW

Clause 4.3 of BBLEP 2013 specifies that the height of a building may not exceed the maximum height specified in the relevant Height of Buildings Map. As illustrated in **Figure 13**, a maximum height limit of 22m applies to the majority of the site, with a height limit of 11m applying to a small area along the western boundary. The proposed development exceeds (in part) the maximum height allowance when measured in accordance with the LEP definition of building height.

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, the following sections set out the justification for the departure to the height controls applicable under the LEP.

7.2. PROPOSED HEIGHT 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 LEP 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 5 storey podium building, with part 6 storey and part 8 storey tower forms.

The 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 4 is suitable for a taller building, exceeding the height limit.

The proposed heights are entirely consistent with the heights for each building approved under the Stage 1 development consent, as detailed in **Table 10**.

Table 10 – Building Height

Building	Stage 1 Storeys Approved	Stage 1 Maximum Approved RL	Proposed Storeys	Proposed Maximum RL	Compliance with Stage 1
Podium	5	16.9m (RL 38.9)	5	RL 38.9	Yes
A	6	22.6m (RL 44.6)	6	RL 44.6	Yes
B	8	28.8m (RL 50.8)	8	RL 50.8	Yes

7.2.1. Is compliance necessary and reasonable?

The proposed heights have been developed through an extensive master planning process and have already been approved as part of a Stage 1 Development Consent. It would therefore be unnecessary and unreasonable to require strict compliance with the standard at Stage 2.

7.2.2. Are there sufficient environmental planning grounds for the variation?

The above building heights were approved following consideration of a comprehensive site analysis and review of the site attributes and surrounding context. The southern part of the site, including the subject site, was identified as the least sensitive part of the Bunnerong Road site being physically and visually separated from existing low density residential development. Adjoining uses include the Westfield Eastgardens shopping centre to the south while residential properties to the east are considerably separated from the site by the Bunnerong Road carriageway.

The urban design concept for the Bunnerong Road site envisages the even graduation in height south to north across the site, with the tallest buildings located in the southern portion of the site reducing down to lower scale buildings to Bunnerong and Heffron Roads to the north (including two storey town houses).

7.2.3. 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 11** below.

Table 11 – Height Objectives of LEP

Objectives	Proposed Development
<i>(a) To ensure that the built form of Botany Bay develops in a coordinated and cohesive manner.</i>	Height responds to surrounding development and land uses. The subject site is not located in the vicinity of residential areas. Above ground parking is proposed to address the interface with the Westfield Eastgardens loading area.
<i>(b) To ensure the taller buildings are appropriately located.</i>	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.
<i>(c) To ensure that building height is consistent with the desired future character of an area.</i>	Consistent with the desired future character of the area as presented in Part 9D of the BBDCP 2013, the proposal provides new residential uses complemented by public open

Objectives	Proposed Development
	space and mixed use development across the wider Bunnerong Road site.
<i>(d) To minimise visual impact, disruption of views, loss of privacy and loss of solar access to existing development.</i>	<p>The proposal allows for a high level of residential amenity and complies with the requirements of the Stage 1 masterplan consent and the ADG with respect to solar access and cross ventilation.</p> <p>Given the site's separation from existing residential uses, not adverse overshadowing will occur as a result of the proposal.</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>	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.

As illustrated in **Table 11**, the proposed development does not conflict with the objectives of Clause 4.3 of the BBLEP 2013.

7.2.4. Summary

The proposal is considered appropriate and consistent with the objectives and intent of Clause 4.3 of the BBLEP 2013. Strict compliance with the LEP in this case is considered to be unreasonable and unnecessary as follows:

- Through the Stage 1 concept proposal, 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.
- The bulk and scale of the proposed development is consistent with the adjoining large scale regional retail facility (Westfield Eastgardens) adjacent.
- 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, 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.

7.3. PROPOSED FSR VARIATION

Pursuant to clause 4.4 of the BBLEP 2013 and the accompanying FSR map a maximum floor space ratio of part 1:1 and part 3:1 applies to the site. The LEP (clause 4.5) defines floor space ratio as:

The floor space ratio of buildings on a site is the ratio of the gross floor area of all buildings within the site to the site area.

The potential to exceed the nominated LEP FSR for the Bunnerong Road site was thoroughly explored in the consideration of the Stage 1 masterplan proposal. As part of that assessment and approval, it was accepted that the total Gross Floor Area for Urban Block 4 is to be 18,225sqm; providing a maximum FSR of 2.3:1 for Urban Block 4.

The proposed FSR is entirely consistent with the GFA approved under the Stage 1 development consent for Urban Block 4.

7.3.1. Is compliance necessary and reasonable?

The proposed FSR is a reflection of an extensive master planning process and has already been approved as part of a Stage 1 Development Consent by way of the allotted GFA for UB4 being 18,225sqm. It would therefore be unnecessary and unreasonable to require strict compliance with the standard at Stage 2.

7.3.2. Are there sufficient environmental planning grounds for the variation?

The GFA and subsequent FSR calculation for UB4 was approved following consideration of a comprehensive site analysis and review of the site attributes and surrounding context. The southern part of the site, including the subject site, was identified as the least sensitive part of the Bunnerong Road site being physically and visually separated from existing low density residential development. Adjoining uses include the Westfield Eastgardens shopping centre to the south while residential properties to the east are considerably separated from the site by the Bunnerong Road carriageway.

In approving the Stage 1 DA, consideration was given to the density and built form for the site. This includes the calculations of floor space that is accommodated within the approved building envelopes and number of storeys. The final FSR is aligned to the approved GFA for the site as well as the masterplan's distribution over a 5 storey podium with part 6 and part 8 storey tower forms on top.

Based on the detailed assessment and reasons for determination of the Stage 1 DA, it is considered that there are sufficient environmental planning grounds for the variation request, given its 100% compliance with the Stage 1 DA GFA approval.

7.3.3. Clause 4.4 Objectives

Clause 4.4 sets out the objectives of the floor space ratio development standard. The consistency of the proposed development with these objectives is set out in **Table 13** below.

Table 12 – FSR Objectives of LEP

Objectives	Proposed Development
<i>(a) to establish standards for the maximum development density and intensity of land use,</i>	The proposal is consistent with the maximum density and identified use of land as approved in the Stage 1 DA consent.
<i>(b) to ensure that buildings are compatible with the bulk and scale of the existing and desired future character of the locality,</i>	Consistent with the desired future character of the area as presented in Part 9D of the BBDCP 2013, the proposal provides new residential uses complemented by public open space and mixed use development across the wider Bunnerong Road site.
<i>(c) to maintain an appropriate visual relationship between new development and the existing character of areas or locations that are not undergoing, and are not likely to undergo, a substantial transformation,</i>	The proposal observes appropriate setbacks and transitions to provide a strong relationship between the site, the new development occurring to the south and west of the site and the existing development east beyond Bunnerong Road. The visual relationship is a reflection of the approved masterplan.
<i>(d) to ensure that buildings do not adversely affect the streetscape, skyline or landscape when viewed from adjoining</i>	The proposal forms part of a site masterplan which has provided for setbacks and streetscape reserves that provide quality urban environments with landscaping, height

Objectives	Proposed Development
<i>roads and other public places such as parks, and community facilities,</i>	transitions and a visual relationship between planned public spaces and the proposed development..
<i>(e) to minimise adverse environmental effects on the use or enjoyment of adjoining properties and the public domain,</i>	The proposed development will have minimal impact on the proposed adjoining open space and has been designed to complement it. The bulk and scale of the proposal reflects the sites position between a major road and future public open space and its gateway location to the precinct on Meriton Boulevard.
<i>(f) to provide an appropriate correlation between the size of a site and the extent of any development on that site,</i>	The floor space ratio is a reflection of the approved gross floor area, building heights and height in storeys, providing a built form that is reflective of the envisaged bulk and scale for the site.
<i>(g) to facilitate development that contributes to the economic growth of Botany Bay.</i>	The proposal is considered to contribute to the economic development of the local area, importantly growing a district centre, providing childcare facilities and housing in a location close to essential services and transport.

As illustrated in **Table 13**, the proposed development does not conflict with the objectives of Clause 4.3 of the BBLEP 2013.

7.3.4. Summary

The proposal is considered appropriate and consistent with the objectives and intent of Clause 4.4 of the BBLEP 2013. Strict compliance with the LEP in this case is considered to be unreasonable and unnecessary as follows:

- Through the Stage 1 concept proposal, the Bunnerong Road site has been assessed as being suitable for more intensive development than would normally be achievable under the LEP, noting the Gross Floor Area limits that apply.
- The proposal is entirely consistent with the maximum gross floor area allowable by the approved Stage 1 masterplan for this part of the Bunnerong Road site.
- Strict compliance with the FSR 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.
- The bulk and scale of the proposed development is consistent with the adjoining large scale regional retail facility (Westfield Eastgardens), proposed residential apartment buildings and planning public open space adjacent.
- The proposed development is consistent with the intent of Clause 4.4 of the LEP which is to minimise adverse amenity impacts on neighbouring residential properties and to support the desired future character of the area.