

Council officer's assessment of the Clause 4.6 request

1 Clause 4.6 request to vary the height standard

- 1.1 The applicant has submitted a request under Clause 4.6 of BLEP 2015 for a variation to the 20 m height standard. The objective of Clause 4.6 is to provide an appropriate degree of flexibility in applying certain development standards and to achieve better outcomes for and from the development by allowing flexibility in particular circumstances.
- 1.2 Clause 4.6 requires consideration of the following:
 1. *Has the applicant submitted a written request 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.*
 2. *Is the proposed development 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.*
 3. *Has the concurrence of the Director-General been obtained.*
- 1.3 The applicant's written request has adequately justified that compliance with the height standard is unreasonable and unnecessary in this instance. There are sufficient environmental planning grounds to justify varying the development standard. A copy of the applicant's written request is held at **Attachment 7**.
- 1.4 The variation will not have an unreasonable impact on neighbouring properties or the character of the area. The proposal is also consistent with the objectives of the development standard and the R4 High Density Residential zone.
- 1.5 In accordance with Clause 64 of the Environmental Planning and Assessment Regulation 2000, a consent authority, in this case the SPP, has 'assumed concurrence' from the Secretary (formerly the Director-General) of the Department of Planning and Environment.
- 1.6 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. Although the development exceeds the permissible height in part by 3.17 m, the increase in height 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 3 lift overruns and fire stairs, being the main elements to exceed the maximum height limit, are located entirely within the 6 storey portion of the building. If the 7 storey element was deleted, the development would still be seeking variation to the building height due to the encroaching lift overruns and fire stairs. The 3 rear ground level units, forming the part 7 storeys, meet the height limit and comply with the Apartment Design Guide (ADG).

- **Public areas**

The development exceeds the 20 m height limit by 3.17 m, but this is due to the 3 lift overruns and fire stairs located in the centre of the site and the roof parapet. Council officers have consistently supported a variation to the maximum height limit to accommodate rooftop facilities. Elimination of the common open space at the roof level (and the required lift access) would not be a good design outcome and would reduce the future occupants' recreation options.

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

The overshadowing caused by the non-complying lift overruns and fire stairs is captured within the roof space itself, and therefore will have no impact on adjoining properties. The higher roof parapet will also have a negligible shadow impact on surrounding properties. The shadow impacts are shown at **Attachment 5** and are considered acceptable given that they impact on the adjoining approved residential flat building during the morning hours and the front yards of the proposed residential flat building located on the opposite side of the road during the afternoon hours.

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

The site is considered suitable for the development given its proximity to the Seven Hills railway station and Town Centre. The additional height does not result in any additional yield and does not result in an additional storey.

Deletion of the lift overruns and fire stairs, in order to reduce the height of the building, would mean that the roof level common open area would have to be eliminated. This would not be a good design outcome and would reduce the future occupants' recreation options.

- **Privacy impacts**

The building height variation does not result in any additional privacy impacts on adjoining properties. The departure is attributed to the 3 lift overruns and fire stairs, and small portions of the roof parapet only.

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.

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

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 height standard have been previously supported in the R4 High Density Residential zone. Council officers have consistently allowed the lift overruns and rooftop area of residential flat building development to encroach above the permissible height limit.

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 currently contains 8 dwellings which will be demolished to accommodate the development which is situated in a locality in a state of transition. Full compliance with the height control can therefore be achieved. The variation, however, does not increase residential density and does not have any impact on the number of storeys that can be achieved. The 3 lift overruns and fire stairs are located entirely within the 6 storey portion of the building. If the 7 storey element was deleted, the development would still require a variation to the building height due to the encroaching lift overruns and fire stairs. Given the site's context within the Seven Hills Town Centre, a variation in order to add to the recreation options of the future occupants is considered acceptable.

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