

Applicant's Clause 4.6 Request - Height of Buildings Development Standard

The proposed development is subject to a maximum building height of 14 metres in the Growth Centres SEPP. Each proposed building on the site includes similar design features that are above the maximum building height. These include the roof lobbies, which consist of the roof overruns and access points to common open space on the roof.

Figures 6, 7 and 8 show the actual areas in the part of each development that predominately exceed the maximum building height limit for Blocks A, B and C, respectively.

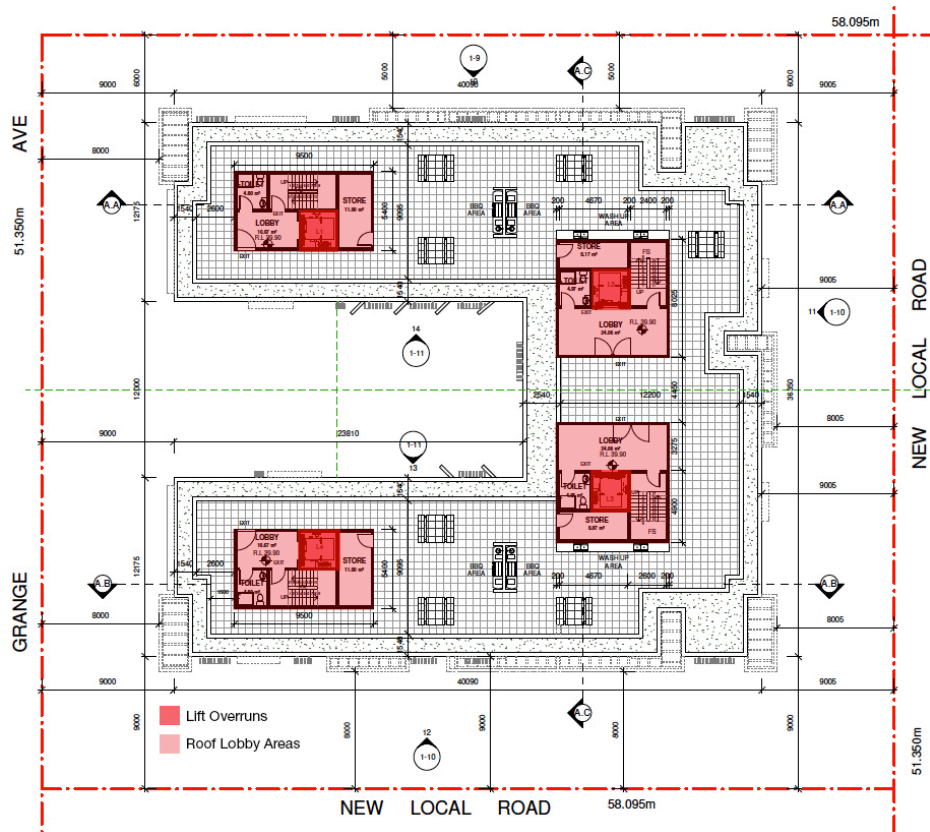


Figure 6. Lobby areas that exceed maximum building height

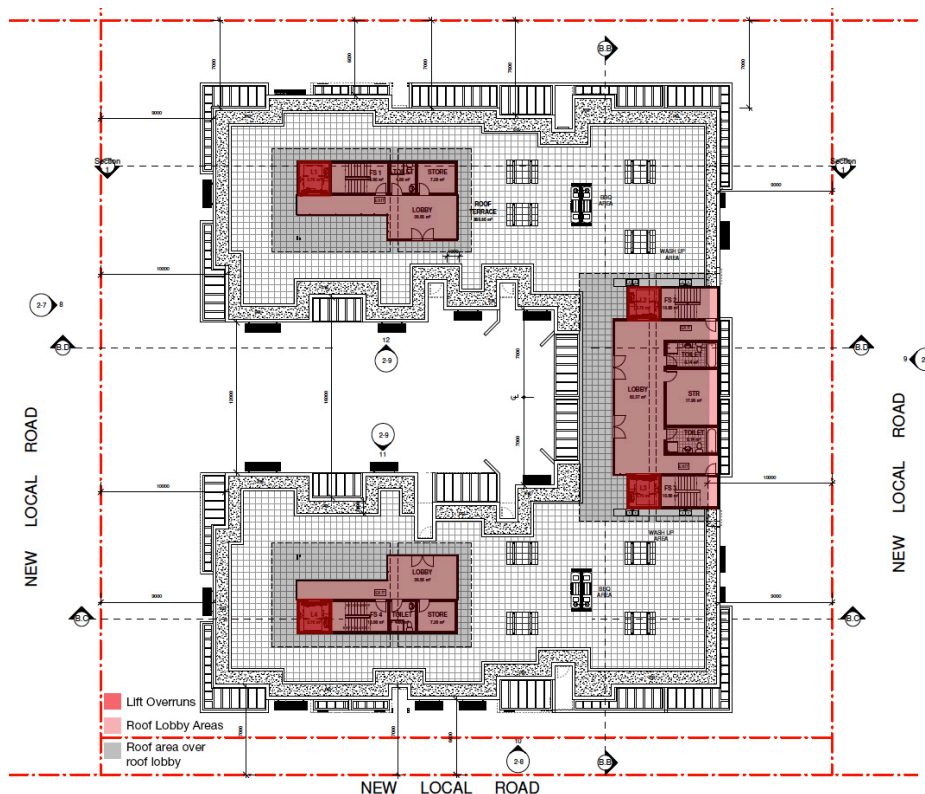


Figure 7. Roof to lobby areas that exceed maximum building height

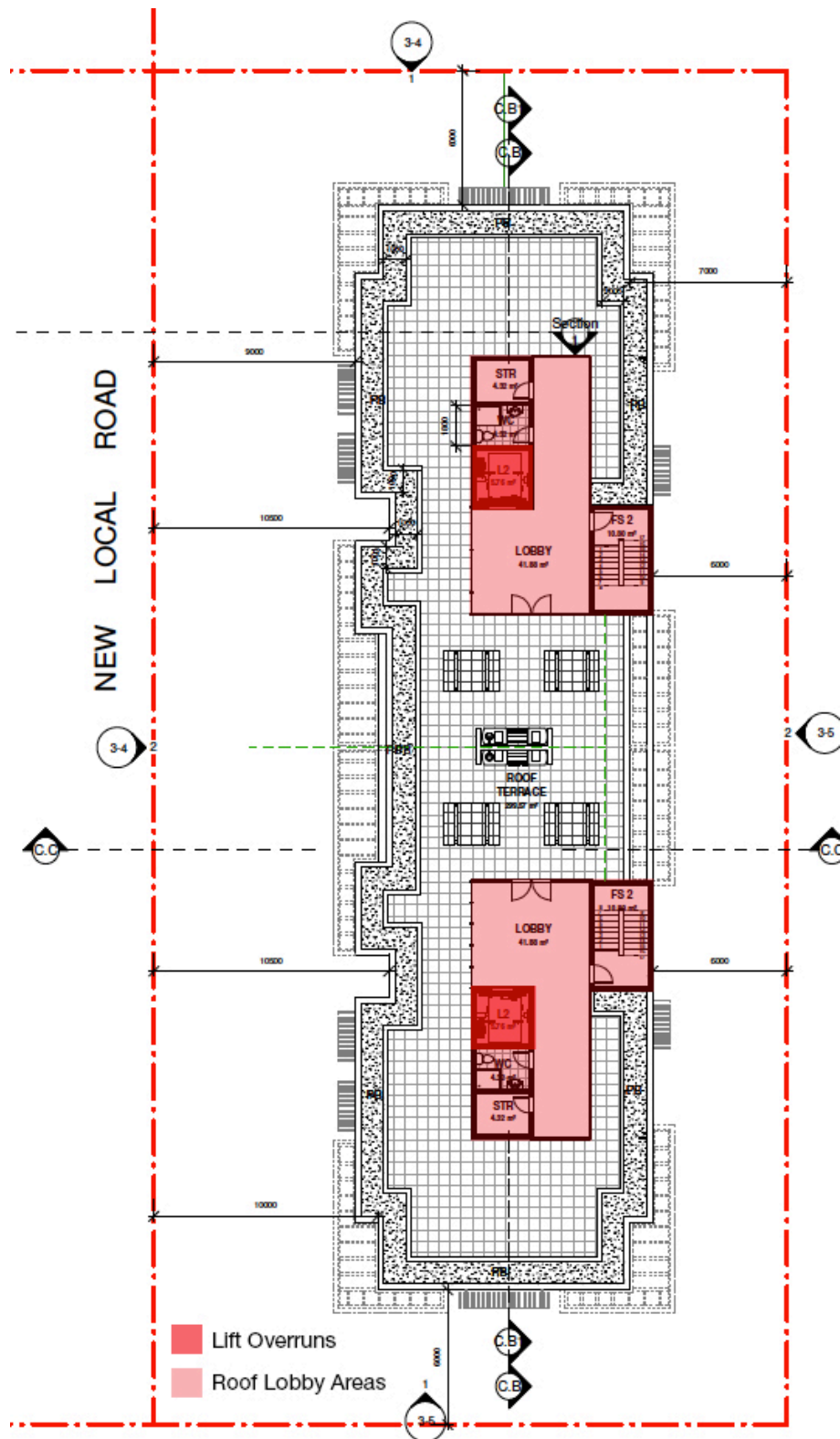


Figure 8. Roof to lobby areas that exceed maximum building height

The footprint total area of the all roof lobbies for each building equates to approximately, Block A – 214sqm, Block B – 230sqm and Block C – 120sqm. The total footprint areas for each building are approximately, Block A – 580sqm, Block B – 1,750sqm and Block C – 1,010sqm. Therefore, the lobby areas form an estimated percentage of each building footprint as follows, Block A – 21%, Block B – 13% and Block C – 20%. Figure 6, 7 and 8 show the large separations between the lobby areas for each building.

In relation to overshadowing, the subject site is orientated to the north. However, as shown in the shadow analysis diagrams enclosed with the architectural design plans, the proposal would not have an adverse impact on the adjoining lands.

The lobby areas and lift overruns, also include fire stairs and roof structure. It is necessary to provide fire stair access to the roof level in case of an emergency. While these elements exceed the maximum building height they also do produce a significant benefit to the overall function and residential amenity of the proposal.

These design features allow access to the common open space on the roof level. As such, the proposal is considered to generate a skilful design outcome in balance of the proposal versus the minor material environment impacts.

In consideration of the location of the proposed built form that exceeds the height limit, as well as the degree of exceedance and in review of likely impacts it is considered that the exceedance is completely acceptable for the site.

The proposal is supported by a clause 4.6 variation, which seeks a formal exception to the development standard and provides further justification.

4.2.4 Cl. 4.6 Request for variation to height of building development standard

A request under clause 4.6 'exceptions to development standards' of Appendix 12 of the Growth Centres SEPP is made to vary Council's maximum building height development standard under clause 4.3 of Appendix 12 of the Growth Centres SEPP.

Clause 4.6 states:

"4.6 Exceptions to development standards

(1) The objectives of this clause are as follows:

- (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
- (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

(2) Development 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. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.

(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.”*

Objectives of the land use zone

The site is zoned R3 Medium Density Residential. The objectives of the zone in the RLEP are as follows:

- *To provide for the housing needs of the community within a medium density residential environment.*
- *To provide a variety of housing types within a medium density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To support the well-being of the community by enabling educational, recreational, community, religious and other activities where compatible with the amenity of a medium density residential environment.*

The proposal meets the above by:

- The proposal offers residential accommodation, which meets the future housing needs of the area. It also provides a type of the development that is consistent with the intent of the land use zone;
- The proposal offers three buildings excellent residential amenity in well sized apartments;
- The proposal does not generate any significant adverse impacts on surrounding properties; and
- The proposal is located near the Marsden Park Town Centre and close to public transport.

Objectives of the building height development standard

In accordance with clause 4.3 of the RLEP, the objectives of the maximum building height development standard area:

- 1) *The objectives of this clause are as follows:*
 - (a) to establish the maximum height of buildings,*
 - (b) to minimise visual impact and protect the amenity of adjoining development and land in terms of solar access to buildings and open space,*
 - (c) to facilitate higher density development in and around commercial centres and major transport routes.*

The proposal meets the above by:

- As discussed in Section 4.2.3, the structure exceeding the maximum building heights for all three buildings are relatively small portion of area in comparison with the overall building footprint.
- The non-compliance does generate any significant detrimental impacts than what would likely be generated by a complying development.

- The proposal is consistent with the intent of the zone and the future character of the area and promotes a high quality urban form.
- The proposal allows for satisfactory exposure for sky exposure and daylight surrounding buildings that would be achieved by a complying development.
- The proposal is consistent with other development in the area and offers a well resolved transition between building forms.

Cl.4.6 Assessment

The first test of clause 4.6, is whether the proposal meets the objectives of clause 4.6, which area:

- (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
- (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

It is believed that the proposal does meet the above objectives as it offers a development that does not generate any significant environmental impacts. The proposal achieves a high quality design with excellent outcomes for the site.

The second test is under clause 4.6(3), which requires the proposal to be justified in regard to:

- (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."*

We believe that strict compliance with the development standard is unnecessary in the circumstances of the case, as the proposal generates a minor impact in regard to overshadowing that does not restrict redevelopment of adjoining lands. Further, there are no view loss or significant adverse visual impacts generated by the proposal. As such, there is sufficient justification for the proposal on the environmental planning grounds to allow for the contravention of the development standard.

Summary

The proposed development is within the public interest because it is consistent with the objectives of the particular standard, providing a particularly high level of amenity for future residents whilst maintaining the current level of amenity to surrounding development.

Therefore, it is considered that strict compliance with the development standard is unnecessary in the circumstances of the case, and that there are sufficient environmental planning grounds to justify contravening the development standards for Council to support the proposed development.

5 February 2018

General Manager
Blacktown City Council
PO Box 63, Blacktown NSW 2148

Attn: Ms. Holly Palmer

Dear Holly,

Re: Addendum to Clause 4.6 Request to vary building height development standard in Clause 4.3 of Appendix 12 of the State Environmental Planning Policy (Sydney Region Growth Centres) 2006 - SPP-17-00051 - 217 Grange Ave, Marsden Park

This addendum supports a Clause 4.6 (Cl.4.6) of Appendix 12 of the *State Environmental Planning Policy (Sydney Region Growth Centres) 2006* (SEPP) request to vary the height of building development standard under the SEPP. The Cl.4.6 and addendum has been submitted on behalf of JS Architects Pty Ltd.

On 22 December 2017, a development application (SPP-17-00051) was lodged with Blacktown City Council (Council). The proposal consists of the demolition of the existing structures, subdivision to create 3 development lots and 1 lot for roads, construction of new public roads, 3 Residential Flat Buildings consisting of 132 apartments and 223 basement car parking spaces and associated drainage works and landscaping.

The proposed development is subject to a maximum building height of 14 metres under the SEPP. Each proposed building on the site includes similar design features that are above the maximum building height. These include the roof lobbies, which consist of the roof overruns and access points to common open space on the roof. The Cl.4.6 variation request is found within the Statement of Environmental Effects (SEE).

The NSW Department of Planning and Environment (DP&E) has issued a Planning Circular (PS17-006) dated 15 December 2017 that provides guidance with respect to assumed concurrence when determining a development application that is supported by a Cl.4.6. The Planning Circular outlines the procedural and reporting requirements.

Therefore, the Cl.4.6 that supports DA-20/2017 is also required to assess Cl.4.6(5) of the LEP. Cl.4.6(5) states:

“4.6 Exceptions to development standards

(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.”***

This addendum includes the relevant assessment of Cl.4.6(5) in support of the development application. The assessment of Cl.4.6(5) is to be read in conjunction with Section 4.2.4 of the SEE.

An assessment of Cl.4.6(5) of the SEPP is provided below.

(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

The proposed non-compliance with the maximum building height development standard does raise any matters of significance for State or regional environmental planning. However, the maximum building height is found within the SEPP, which establishes the urban planning framework for the future release and development of the North West Growth Centre. The proposal does offend the objectives of the land use zone, which is R3 Medium Density Residential and does not offend the objectives of the building height development standard.

(b) the public benefit of maintaining the development standard, and

Maintaining the development standard in the circumstance would result in a poorer public benefit with respect to the streetscape. Should the proposal comply with the maximum building height development standard it would result in an inferior architectural and urban design outcome. The consequence of a complying scheme would be an efficient use of land.

Moreover, the proposed design elements generating the non-compliance allow for the successful performance of the development, hence access to the roof top communal open spaces. Further, the elements of non-compliance do not generate adverse overshadowing on adjoining properties or buildings within the proposed development site.

(c) any other matters required to be taken into consideration by the Secretary before granting concurrence.

There are no other matters to be taken into consideration by the Secretary before granting concurrence. The proposal results in an orderly and economic development for the site.

I trust that this addendum satisfies that necessary procedural and reporting requirements.

Yours sincerely,



Michael Gheorghiu
B.Eng (Civil & Bldg.), MURP, MUDD