

Council assessment of Clause 4.6 request

1 Overview

The applicant has lodged a Clause 4.6 variation submission to vary the height control in Clause 4.3 of Blacktown Local Environmental Plan (BLEP) 2015. A copy of the applicant's Clause 4.6 submission is at attachment 8.

The maximum permitted height of buildings under BLEP 2015 is 16 m for the subject site, and the 5 storey residential flat buildings exceed the maximum permitted building height of 16 m by up to 5.6 m to the lift overrun. The proposed variation to the control is made under Clause 4.6 of BLEP 2015.

The areas of height exceedance relate to the portion of the uppermost level of the buildings and then elements of the parapets, fire stairs and the lift overrun that will provide access to the common open space at the rooftop level.

The maximum extent of variation is as follows:

Building A:

- 17.7 m (10.62% departure) to the parapet walls
- 21.6 m to the lift overrun (35% departure) of the building that provides access to the rooftop
- 20.4 m to the stair core

The habitable space above the height limit in Building A will range from 0.199 m (covering 72.4% of Level 4) to 2.26 m (covering only 0.5% of Level 4). The maximum height exceedance of 2.26 m relates only to the roofline of Unit A410's bathroom at the most top floor level of the building.

Building B:

- 17.72 m (10.75% departure) to the parapet walls
- 19.8 m to the lift overrun (23.75% departure) of the building that provides access to the rooftop
- 18.6 m to the stair core

The habitable space above the height limit in Building B will range from 0.199 m (covering 25.1% of Level 4) to 0.78 m (covering only 1.1% of Level 4). The maximum height exceedance of 0.78 m relates only to the roofline of Unit B404's bathroom at the most top floor level of the building.

2 Visual representation of offset

The following figure identifies the portions of the development that exceed the 16 m height limit under Clause 4.3 Height of Buildings under Blacktown Local Environmental Plan 2015, and portions of the development below the height limit. Areas that exceed the height limit are shown in white.

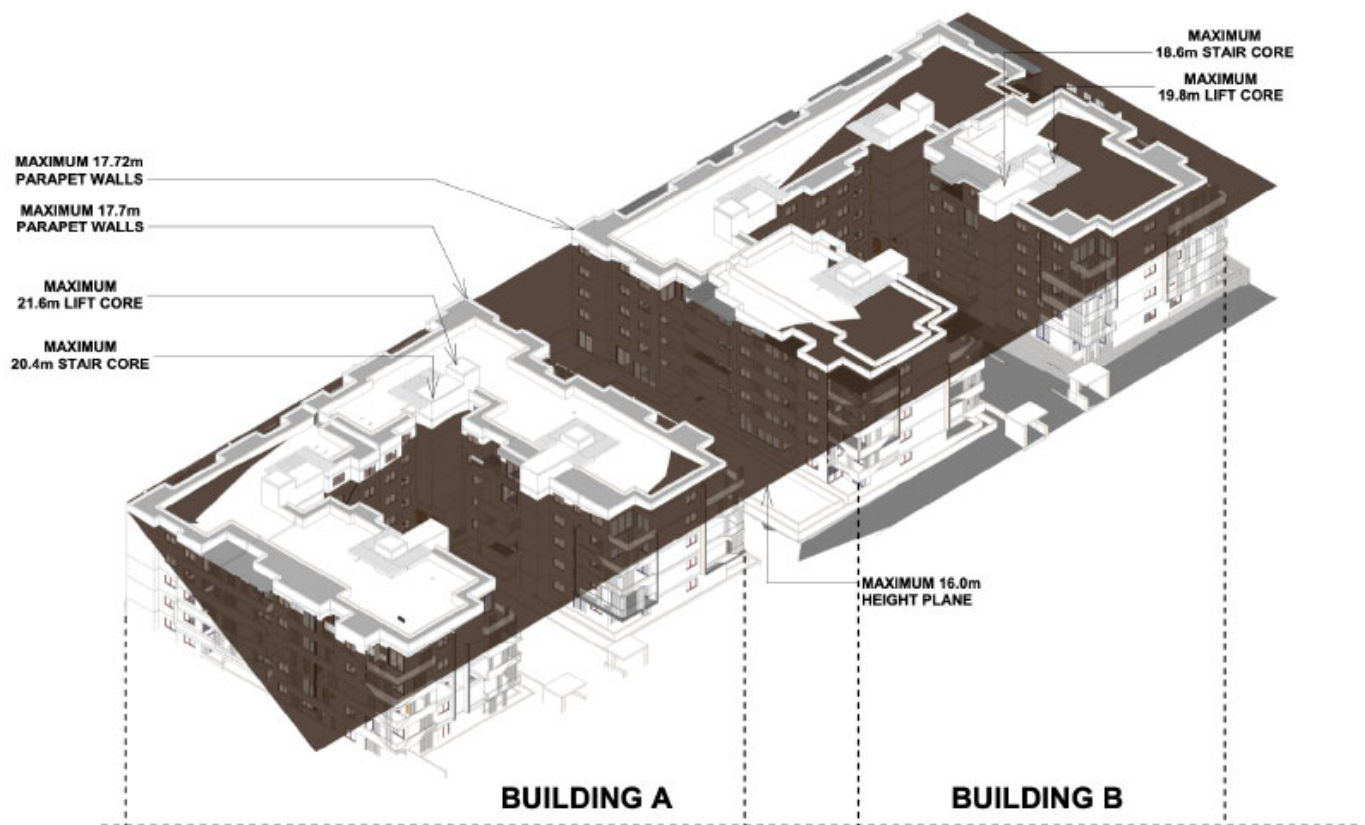
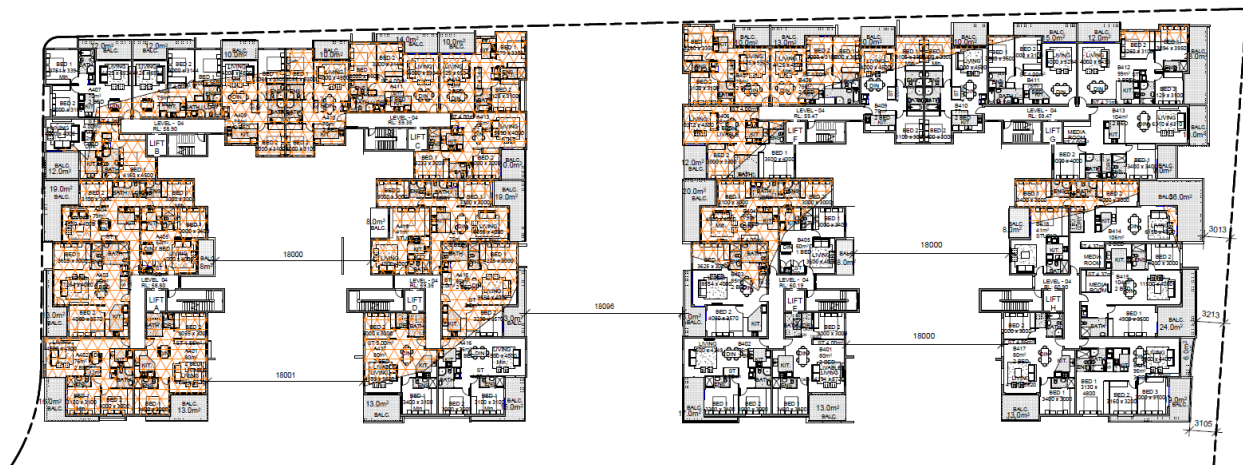



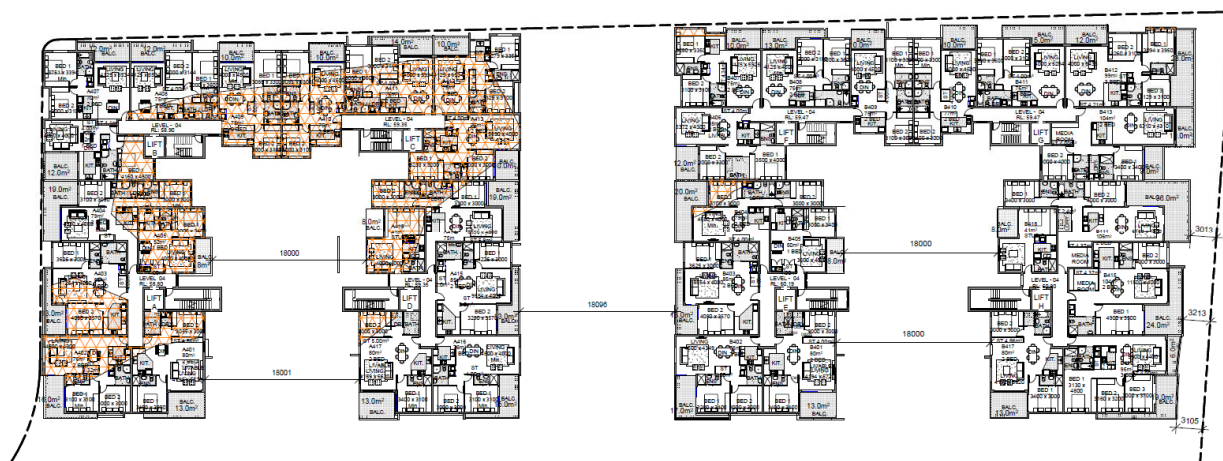
Figure 1: Extract from the Height Plane Diagram demonstrating the overlay of the 16 m height plane and the parts of the development which are above the permissible height plane (shown in white)



 Habitable Areas Above 16m Height Plane
Variation Range: 0-199mm over

Building A - Level 4 - Site Coverage: 1601.6sq.m
Building A - Area above 16m Height Limit in Variation Range: 1160.2sq.m (72.4%)

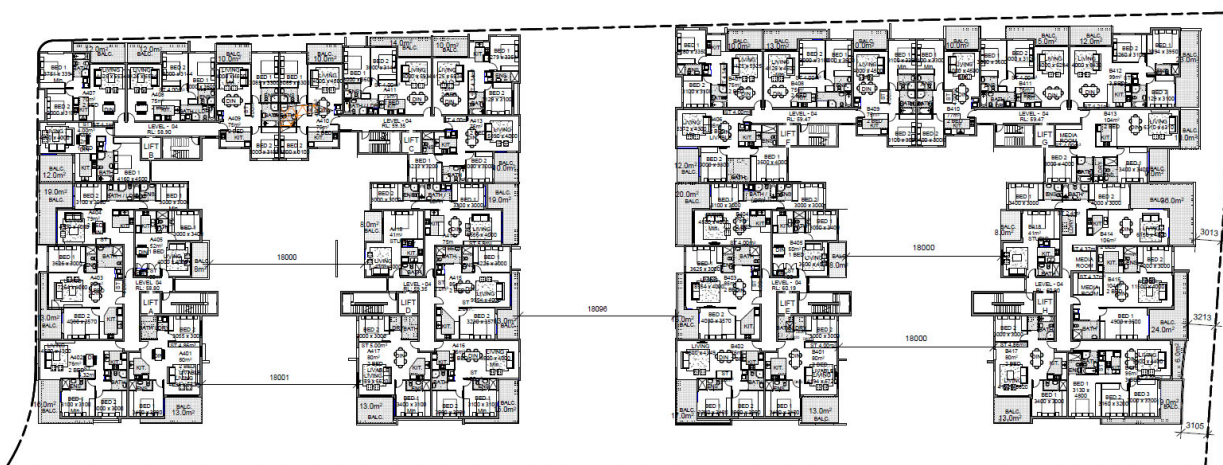
Building B - Level 4 - Site Coverage: 1779sq.m
Building B - Area above 16m Height Limit in Variation Range: 441.1sq.m (25.1%)




 Habitable Areas Above 16m Height Plane
Variation Range: 600-799mm over

Building A - Level 4 - Site Coverage: 1601.6 sq.m
Building A - Area above 16m Height Limit in Variation Range: 646sq.m (40.3%)

Building B - Level 4 - Site Coverage: 1754 sq.m
Building B - Area above 16m Height Limit in Variation Range: 19.5sq.m (1.1%)
* Max. Height Variation above 16m Height Limit: 0.78m (Unit B404 - Bedroom 1)



 Habitable Areas Above 16m Height Plane
Variation Range: 2200-2399mm over

Building A - Level 4 - Site Coverage: 1601.6 sq.m
Building A - Area above 16m Height Limit in Variation Range: 8.2sq.m (0.5%)
* Max. Height Variation above 16m Height Limit: 2.26m (Unit A410 - Bathroom)

Building B - Level 4 - Site Coverage: 1754 sq.m
Building B - Area above 16m Height Limit in Variation Range: N/A (0%)

3 Clause 4.6 variation considerations

Clause 4.6 requires consideration of the following matters and a town planning comment is provided in response to each item.

3.1 Consideration as to whether compliance with the development standard is unreasonable or unnecessary in the circumstances of the case (Clause 4.6(3)(a))

The underlying purpose of the standard is still considered relevant to the proposal. However, 100% compliance in this circumstance is considered both unreasonable and unnecessary for the following reasons:

- The majority of the departure, including the habitable space at top floor of the buildings, is located over a portion of the site where the topography falls due to the natural ground level of the existing creek bed which runs through the development site and is to be realigned to deal with flooding matters.
- The additional height does not result in any additional floor area or yield and is a specific design response to the flood affectation of the site and the need to ensure that the finished floor levels of both Buildings A and B are at a suitable height above the dam break level, which requires raising the building level.
- The part of the proposed buildings which exceed 16 m do not result in additional shadow impacts, as the development will only overshadow Vardys Road to the south of the site.
- The portion of the rooftop features that exceed the height limit the most are the lift overruns and staircase that represent only point encroachments into the height plane. They will not be visible from the street and will not result in additional overshadowing to adjoining properties as shadows will be fully contained in the roof areas. The provision of rooftop common areas enable the provision of quality common open space areas that achieve solar access for residents and private open space well in excess of the minimum requirements set out in the planning controls.
- This site is unique as its not a typical infill site and should be viewed more like a greenfield site. Given the significant changes to the site due to the creek re-alignment, the measure of a height plane from the bed of an existing creek should be taken into consideration as the ground level at the road level of Vardys Road and Evan Place is a better indication of existing levels in the immediate area surrounding this site.

3.2 Consideration of sufficient environmental planning grounds to justify contravening the development standard (Clause 4.6(3)(b))

There are sufficient environmental planning grounds that support a variation to the maximum building height control in this instance, to secure a better outcome for the development.

The proposal promotes the orderly and economic use and development of the site because it provides a carefully considered design approach which responds to the flood affectation of the site.

The proposal provides a better planning outcome because it provides access to rooftop communal space on both buildings with appropriate levels of solar access and shade, suitable recreation areas and suitable amenity for its residential occupants.

The proposal does not generate any significant overshadowing or amenity impacts, considering this is an isolated site with no immediate abutting residential zone.

The proposal does not generate any adverse environmental impacts nor result in any increase in residential apartments or density and is therefore considered acceptable in the circumstances. The 5 storey residential flat buildings proposed are an expected outcome of a 16 metre height limit development standard.

It is considered that the applicant's written request at attachment 8 justifying the contravention of the development standard has adequately addressed the matters required to be demonstrated by Clause 4.6(3).

3.3 The objectives of the standard are achieved notwithstanding non-compliance with the standard (Clause 4.6(4)(a)(ii))

Blacktown Local Environmental Plan 2015	
Objectives of Clause 4.3 'Height of buildings'	How the proposal achieves the objective
(a) to minimise the visual impact, loss of privacy and loss of solar access to surrounding development and the adjoining public domain from buildings	<p>The building height of the proposed development will appear as compliant as viewed from street, as the rooftop structures are centrally located on the rooftop and will have minimal visibility.</p> <p>The development is located more than 50 m from the building to the Evan Place residential dwellings and this distance alone substantially mitigates any privacy impacts. In addition, the existing width of Vardys Road is in the order of 30 m, which provides a substantial width such that there is a large amount of separation to the residential development opposite.</p> <p>The shadow impacts which are generated by the height breach do not adversely affect the surrounding properties as the overshadowing generated by the rooftop elements is contained within the roof area and the majority of the shadows cast from the buildings fall on Vardys Road, as shown on the shadow diagram.</p>
(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	<p>The overall height of the development presents a 5 storey form that is envisaged by the 16 m height limit and is compatible with the scale of desired character anticipated for this R4 High Density Residential zone.</p> <p>The departure is located on a portion of the site where the topography falls owing to the natural ground level of the existing creek and results in the additional building mass and bulk located closer to the public open space and the future riparian corridor, noting the building has no full habitable floorspace levels that protrude above the 16 m height control.</p> <p>Therefore, the variation will not be dominant when the buildings are viewed from the street and the buildings will generally appear compliant as viewed from street. Therefore, there is no impact in terms of bulk and scale of the buildings on the streetscape.</p>
(c) to define focal points for denser development in locations that are well serviced by public transport, retail and commercial activities	<p>The site is within 200 m walking distance to the bus stop on the North West Transitway which provides a bus service into the Blacktown CBD and railway station. The close distance from the site to the North West Transitway is desirable and supports an increase in residential densities on the site.</p>
(d) to ensure that sufficient space is available for development for retail, commercial and residential uses	<p>The proposal ensures that sufficient space is available for residential uses.</p>
(e) to establish an appropriate interface between centres, adjoining lower density residential zones and public spaces	<p>The proposal establishes an appropriate interface, being located in a high density residential zone, near public open space, and away from the lower density residential zone opposite. The non-compliance with the height control has no impact on any heritage item or view corridors.</p>

Therefore, the proposal is in the public interest because the development is consistent with the objectives of this particular development standard.

3.4 The objectives of the zoning are achieved notwithstanding non-compliance with the standard (Clause 4.6(4)(a)(ii))

Blacktown Local Environmental Plan 2015	
Objectives of Zone R4 High Density Residential	How the proposal achieves the objective
To provide for the housing needs of the community within a high density residential environment	The proposal provides for the housing needs of the community by providing 178 apartments and associated communal open space areas at ground level and on the rooftop.
To provide a variety of housing types within a high density residential environment	The proposed residential flat buildings provide a mix of 1, 2 and 3-bedroom apartments which contribute to the variety of housing types in this precinct.
To enable other land uses that provide facilities or services to meet the day to day needs of residents	Not applicable to this application.
To enable certain activities to be carried out within the zone that do not adversely affect the amenity of the neighbourhood	Not applicable to this application.
To permit residential flat buildings in locations close to public transport hubs and centres	The proposed residential flat buildings are within 200 m walking distance to the bus stop on the North West Transitway connecting to the Blacktown CBD and railway station. The close distance from the site to the North West Transitway is desirable and supports the proposal.

Therefore, the proposal is in the public interest because the development is consistent with the objectives of this particular development standard.

3.5 The concurrence of the Secretary has been obtained (Clause 4.6(4)(b))

The Clause 4.6 written request to vary a development standard in an Environmental Planning Instrument has been considered in accordance with Planning Circular PS 08-003. The Secretary (formerly Director-General) of the NSW Department of Planning and Environment's concurrence is assumed as this request is adequate, does not raise any matter of significance for State or regional environmental planning and there is no public benefit in maintaining the standard, as discussed below.

3.5.1 Contravention of the development standard does not raise any matter of significance for State or regional environmental planning.

There is no identified outcome which would raise any matter of significance to planning matters of State or regional significance as a result of varying the development standard as proposed under this application. The development meets the objectives of the R4 High Density Residential zone and results in no detrimental impacts resulting from the minor height exceedance. The proposed development also satisfies the objectives of the standard.

3.5.2 There is no public benefit in maintaining the standard.

There is no public benefit in maintaining the standard in this instance, as when compared to providing a development that strictly complies with the height of buildings development standard, the impact of the proposal on the surrounding area is no different while this application also offers a public benefit because it provides additional rooftop recreational facilities for the use of the residents. Therefore, there is no public benefit in maintaining strict compliance with the development standard in this instance.

3.5.3 There are no other matters required to be taken into consideration by the Planning Secretary before granting concurrence.

It is considered that all matters required to be taken into consideration by the Secretary before granting concurrence have been adequately addressed as part of

this Clause 4.6 variation request to vary Clause 4.3 of Blacktown Local Environmental Plan 2015.

Based on the above assessment, the Clause 4.6 variation request is considered reasonable and is recommended for support.