

## 55-57 North Parade, Mount Druitt

Clause 4.6 variation to height of buildings development standard

On behalf of Leith Group Developments Pty Ltd  
March 2021



# 1 Introduction

This Clause 4.6 Variation Request has been prepared on behalf of Leith Group Developments Pty Ltd (**the Applicant**) to support a Concept Development Application (**DA**) submitted to Blacktown City Council (**Council**) at 55-57 North Parade, Mount Druitt (**the site**).

Specifically, the works propose the following:

- Concept Approval – five mixed use tower forms; and
- Detailed Approval – Subdivision of the site into two Torrens title allotments.

A summary of the detailed elements of the DA is provided below.

DA Component	Description
Concept Approval	<p>The concept establishes the detailed design for the proposal and specifically seeks approval for:</p> <ul style="list-style-type: none"><li>• Five tower forms with a maximum building envelope;</li><li>• A gross floor area of 90,449.84m<sup>2</sup>:<ul style="list-style-type: none"><li>◦ 6,688.86m<sup>2</sup> of commercial floor area;</li><li>◦ 83,760.98m<sup>2</sup> of residential floor area;</li></ul></li><li>• 4,070.94m<sup>2</sup> of publicly accessible open space at ground; and</li><li>• Loading, vehicular and pedestrian access arrangements.</li></ul>
Detailed Approval	<p>Torrens title subdivision of the site into two allotments to permit the development to be constructed in two stages (subject of future DA).</p>

This report has been prepared to request a variation to the maximum height of buildings standard under clause 4.3 of Blacktown Local Environmental Plan 2015 (**BLEP 2015**). The request is being made pursuant to clause 4.6 of the LEP.

## 2 Clause 4.6 Exceptions to development standards

Clause 4.6 of the LEP enables contravention of the height of buildings standard subject to the consent authority considering a written request from the applicant justifying the contravention. The clause reads as follows:

### Clause 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.

(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, and

(b) the concurrence of the Planning Secretary has been obtained.

(5) In deciding whether to grant concurrence, the Planning 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 Planning Secretary before granting concurrence.

(6) Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living if—

(a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or

(b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.

**Note—**

When this Plan was made it did not include all of these zones.

(7) After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).

(8) This clause does not allow development consent to be granted for development that would contravene any of the following—

(a) a development standard for complying development,

(b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,

(c) clause 5.4,

(ca) clause 6.1 or 6.2,

(cb) clause 4.1C.

### 3 Development standards to be varied

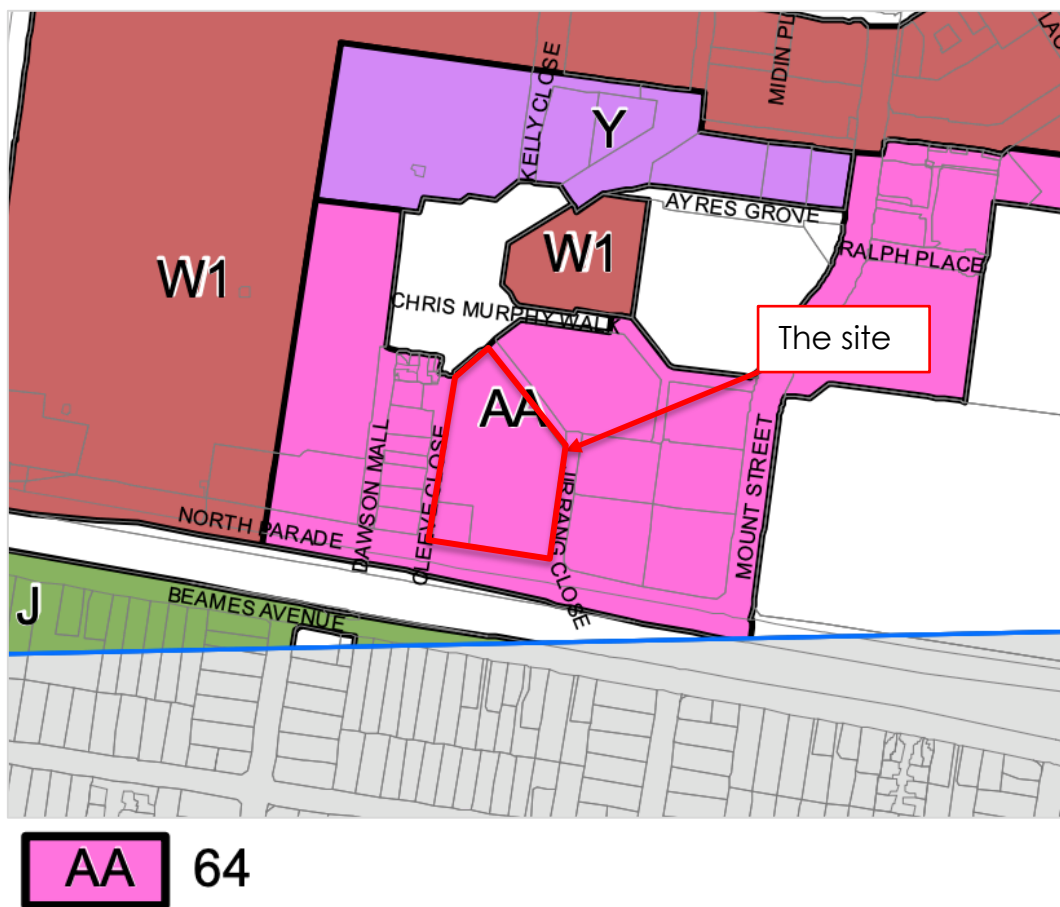
The development standard to be varied is clause 4.3(2) of BLEP 2015, which reads as follows:

#### 4.3 Height of buildings

[...]

(2) The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.

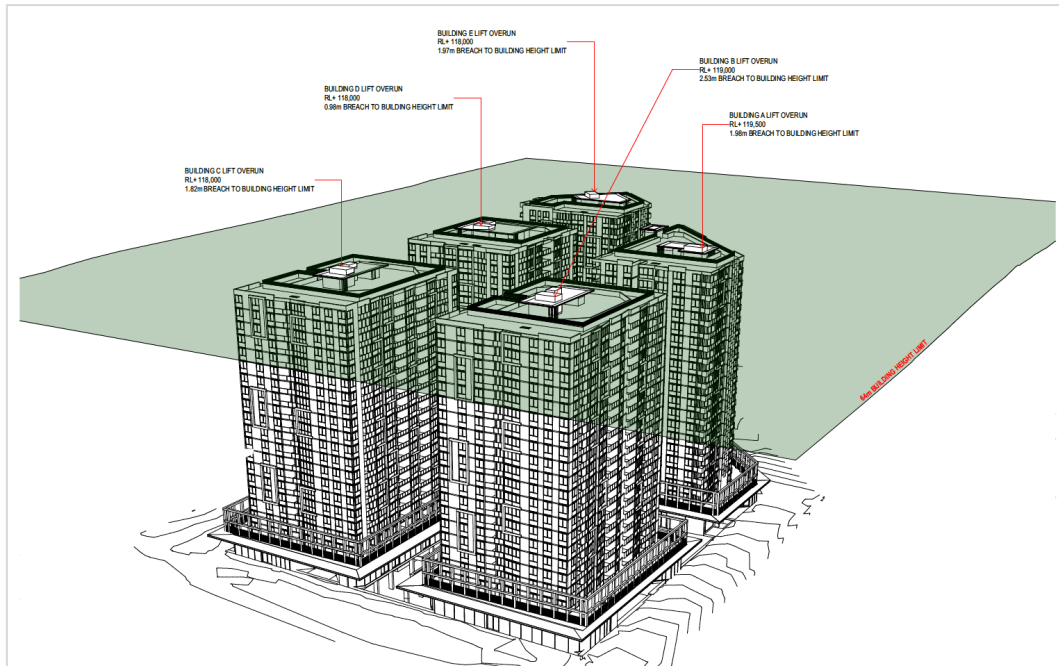
As shown in the Height of Buildings Map extract at **Figure 1**, the site is subject to a maximum building height of 64m.



**Figure 1** – Height of Buildings Map  
Source: BLEP 2015

## 4 Extent of variation to the development standard

The proposed development provides a maximum building height of 66.53. This represents a height variation of 2.53m, or 3.95%. We note this reflects the greatest extent of variation.



**Figure 2** – Height Plane Diagram  
Source: MAI

As shown in the **Figure 2** and in the submitted architectural elevations, the variation only relates to lift overrun that sits above the height plane at various points across the site.

A summary of each variation for tower form is summarised below:

- Building A = 65.98m (variation of 1.98m or 3.09%)
- Building B = 66.53m (variation of 2.53m or 3.95%)
- Building C = 65.82m (variation of 1.82m or 2.84%)
- Building D = 64.98m (variation of 0.98m or 1.53%)
- Building E = 65.97m (variation of 1.97m or 3.07%)

The variation on each building relates to lift overrun elements only. These are situated centrally on the rooftops of each building and are used to provide residential access to communal open space.

## 5 Assessment

**Clause 4.6(2) – Is the standard expressly excluded from the operation of this clause?**

The height standard is not expressly excluded from the operation of clause 4.6.

**Clause 4.6(3)(a) – Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case?**

In *Wehbe v Pittwater Council* [2007] NSWLEC 827, Preston CJ set out five justifications to demonstrate that compliance with a development standard is unreasonable or unnecessary. These include:

- *the objectives of the development standard are achieved notwithstanding non-compliance with the standard*
- *the underlying objective or purpose of the standard is not relevant to the development*
- *the underlying objective or purpose would be defeated or thwarted if compliance was required*
- *the standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and/or*
- *the zoning of land was unreasonable or inappropriate, such that the standards for that zoning are also unreasonable or unnecessary.*

Compliance with the height standard is considered unreasonable and unnecessary given the following circumstances of this case:

- The proposed development achieves the objectives of the height standard and is consistent with the objectives of the zone notwithstanding non-compliance with the standard (see further discussion below);
- The variation is minor in nature (3.95%) and does not give rise to a notable increase in building bulk, form and scale;
- To the point above, there is no associated increase in GFA or intensity of the development;
- The lift overrun elements are situated centrally on the rooftops of each building and are unlikely to be perceived from street level;
- To the point above, the central location of the lift overrun elements do not result in any adverse overshadowing impacts;
- The proposed development is able to achieve relative compliance with the building envelope controls contained within the DCP and ADG;
- The additional height does not result in any unreasonable environmental impacts (see further discussion below); and
- There is no public benefit in maintaining the standard in the circumstances of the case (see further discussion below).

**Clause 4.6(3)(b) – Are there sufficient environmental planning grounds to justify contravening the development standard?**

As noted in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 by Preston CJ at [23]: “The adjectival phrase ‘environmental planning’ is not defined, but would refer to grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s 1.3 of the EPA Act.”

The proposed development promotes the “good design and amenity of the built environment” and the current design promotes the “proper construction of buildings, including the protection of the health and safety of their occupants.”

Accordingly, the proposed development not only adheres to the objectives under section 1.3 of the EPA Act; there are also sufficient environmental planning grounds to justify contravening the height standard, which include:

- The variation relates to lift overrun only, which provides the sole purpose of allowing residents to access rooftop communal open space on each building;
- Multiple options were explored in relation to the preferred location of communal open space across the site. Through discussions with council, it was determined that communal open space on the rooftops of each building would afford an optimal level of amenity for future residents;
- To the point above, the alternative solution would be to provide communal open space at the podium levels. However, this presented a number of amenity issues including potential for wind tunnelling, lack of sunlight (compliance with ADG) and noise impacts;
- The variation does not result in adverse impacts on neighbouring properties in terms of overshadowing and visual impact. As discussed above, the lift overrun elements are located centrally on the rooftops of each building and will unlikely be perceived from street level;
- To the point above, variation elements are largely concealed and do not take up substantial roof area. The shadow caused by these elements will largely fall onto the roofs of the respective building;
- The variation does not produce any increase in the density or intensity of the development;
- To the point above, the variation does not produce an over-development of the site. It does not compromise internal site amenity, or the environmental amenity or potential future development in the CBD; and
- The proposed development is consistent with the objectives of the zone and standard.

**Clause 4.6(4)(a)(ii) - 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?**

Achievement of and consistency with development standard objectives

The particular development standard is clause 4.3 of BLEP 2015. The relevant objectives are addressed in the table below.

**4.3 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.

Objective	Consistency
(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>This objective will be achieved notwithstanding non-compliance. The proposed development does not result in any notable or unacceptable visual impacts, loss of privacy and solar access.</p> <p>The lift overrun elements are situated centrally within the tower forms and as such, are unlikely to be viewed from street level or cast any noticeable shadows.</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>This objective will be achieved notwithstanding the non-compliance as the built form will be entirely compatible with the built form and scale of development in the CBD.</p> <p>The proposed variation is minor in nature (3.95% at its greatest) and does not result in significant protrusions of the height plane.</p> <p>Therefore, the proposed development ensures the overall building height is entirely compatible with the built form controls and scale of the CBD.</p>
(c) to define focal points for denser development in locations that are well serviced by public transport, retail and commercial activities,	<p>This objective will be achieved notwithstanding the non-compliance as the built form is appropriate in the locality. The variation does not result in additional storeys of the development or an associated increase in GFA.</p> <p>The proposed development is compliant with key built form massing controls including ADG building separation requirements and generally in compliance with DCP setbacks, which indicates that the development is of an appropriate bulk and scale for the locality.</p>
(d) to ensure that sufficient space is available for development for retail, commercial and residential uses,	<p>This objective will be achieved notwithstanding the non-compliance as the proposed built form accommodates a range of retail, residential and commercial uses within the built form.</p>
(e) to establish an appropriate interface between centres, adjoining lower density residential zones and public spaces.	<p>This objective will be achieved notwithstanding the non-compliance as the proposed variation does not result in an unsuitable or inappropriate building transition to public open space to the north.</p> <p>The lift overrun elements are situated centrally on the rooftops and will not be perceived from street level or public spaces.</p>

#### Consistency with B4 Mixed Use zone objectives

The proposed development's consistency with the B4 Mixed Use zone objectives is outlined in the table below.



Objective	Consistency
To provide a mixture of compatible land uses.	The proposal is entirely consistent with the zone objective, in that it provides multiple uses within the building including a potential for retail, food and drink premises, retention of the existing club and residential apartments.
To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.	The proposal is entirely consistent with the zone objective, in that it provides a combination of commercial and residential development within excellent walking distance of Mount Druitt Train Station and additional amenity within the CBD.

## 6 Matters of significance for State or regional environmental planning

The proposed variation to the height of buildings standard does not raise any matter of State or regional planning significance.

## 7 Conclusion

This written request justifies the proposed height of buildings variation in the terms required under clause 4.3 of BLEP 2015. In summary, the proposed variation is justified for the following reasons:

- Compliance with the height of buildings standard is unreasonable and unnecessary in the circumstances as the proposed development achieves the objectives of the height standard notwithstanding the non-compliance;
- There are sufficient environmental planning grounds which justify the minor contravention to the development standard;
- The proposed development, despite the variation, is consistent with the zone objectives; and
- There are no matters of State or regional planning significance and no notable public benefits in maintaining the height of buildings standard in this case.