

ANNEXURE 1: CLAUSE 4.6 VARIATION BUILDING HEIGHT

Clause 4.3 of the Blacktown Local Environmental Plan 2015 stipulates a maximum building height of 80m. As per the 3D Height Plane Extract below and within the following page, the mixed use building exceeds the maximum building height of 80m. Accordingly, a variation pursuant to Clause 4.6 of the Blacktown Local Environmental Plan 2015 is requested.

<i>Portion</i>	<i>Maximum Height</i>	<i>Departure</i>
Building:	81.15m to 80m highest provision	1.15m (1.44%)

Figure 17: Height Plane Diagram 1

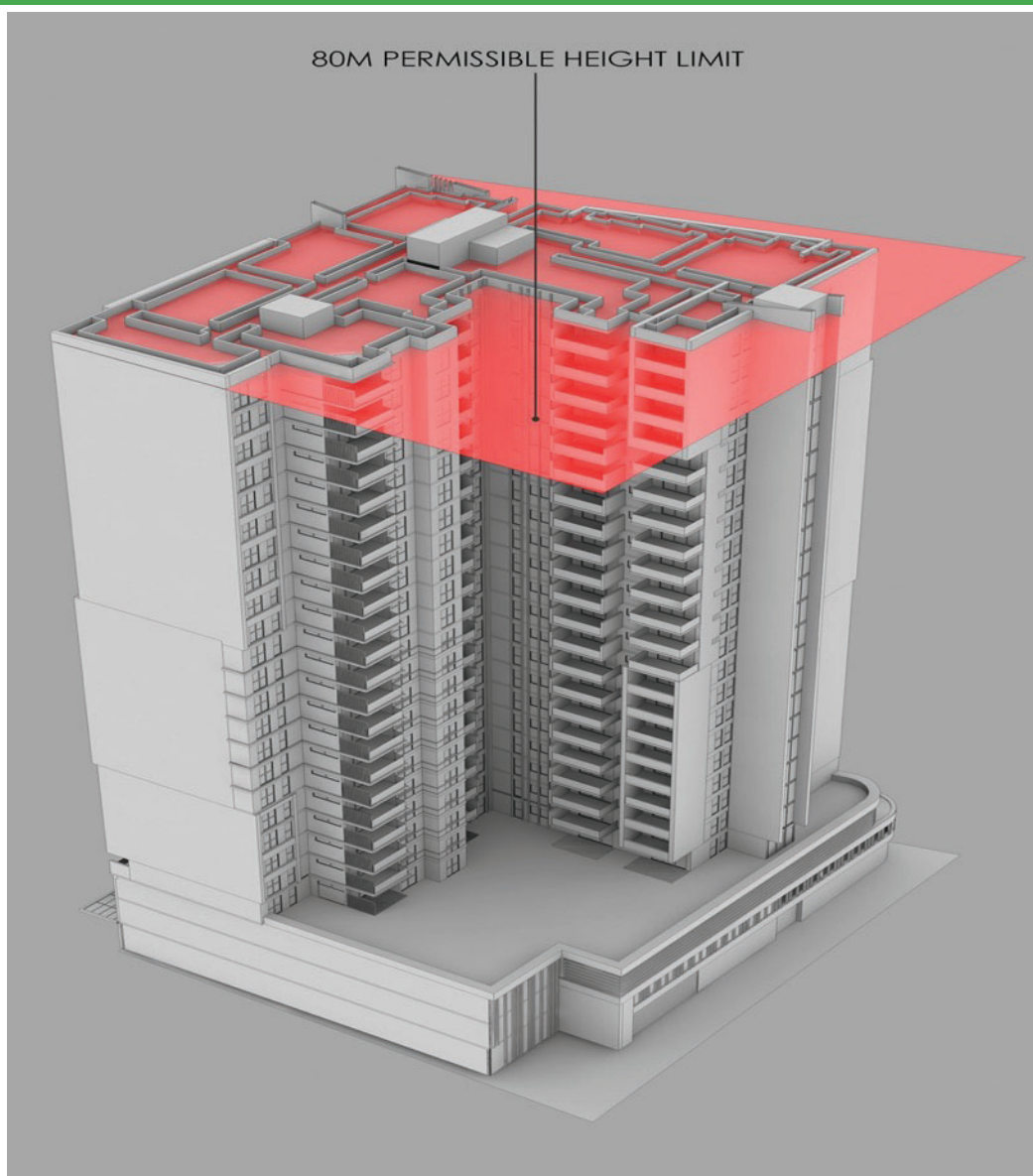
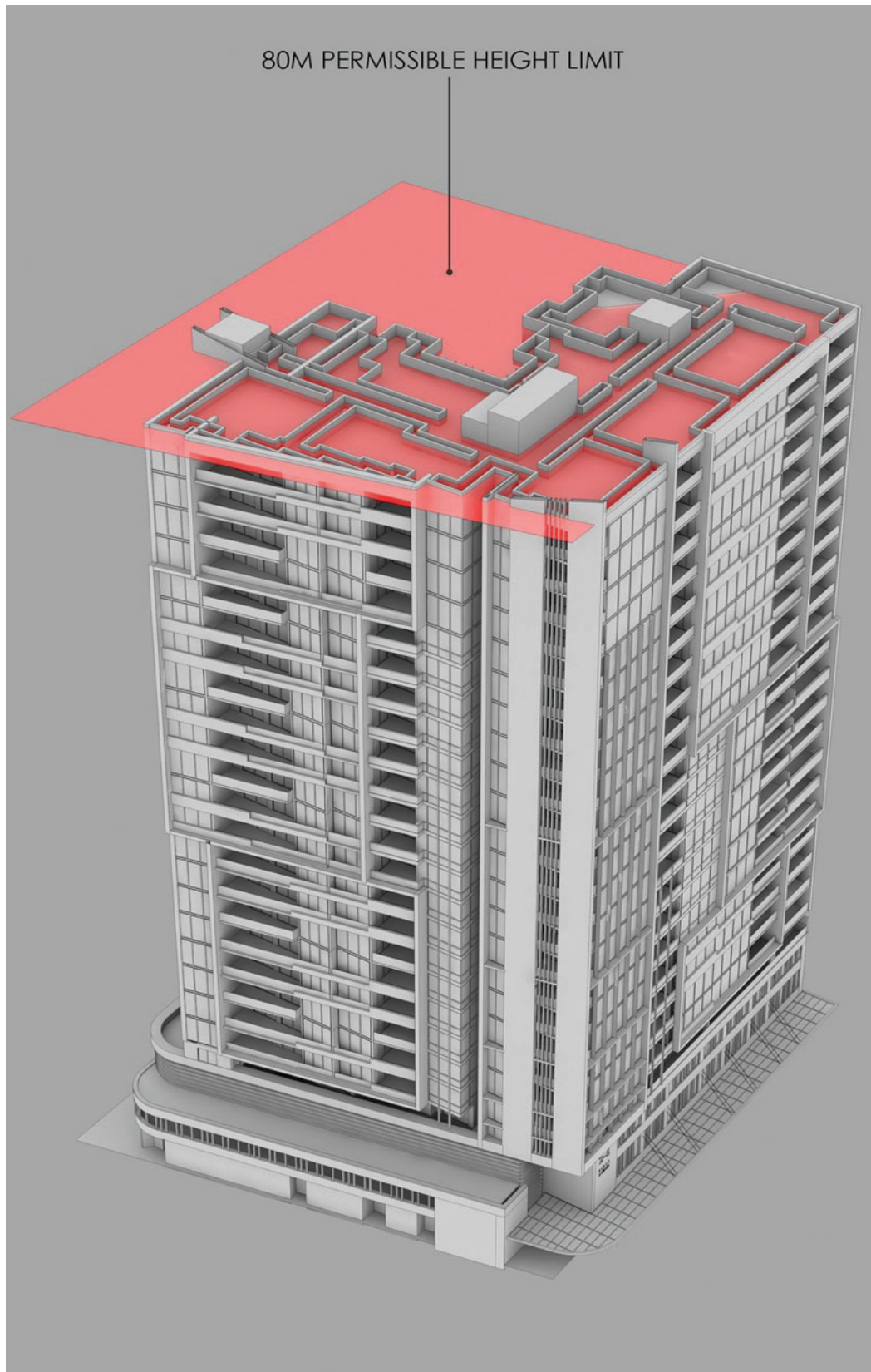




Figure 18: Section B-B Extract



The proposal is predominantly compliant with the maximum building height. It is noted that the proposal is predominantly compliant with the maximum building height with the majority of the departure can be attributed to the roof features, including the parapet, lift overrun, planters and plant and equipment and does not comply with Clause 4.3.

The design of the building ensures that habitable floor space is compliant with the maximum building height line, with the lift overrun, planters and plant and equipment recessed so that they are not visible/negligible when viewed from street level. This indicates that the variation is not simply a means of achieving additional development yield on the site, but a site specific design response to providing additional privacy open space within the roof level while achieve service requirements associated with the lift and stairwells. Despite the departure, the proposal continues to be consistent with the underlying intent of the control and the variation is considered appropriate.

ADDRESSING CLAUSE 4.6 PROVISIONS – HEIGHT

Clause 4.6 of the Blacktown Local Environmental Plan 2015 provides that development consent may be granted for development even though the development would contravene a development standard. It is submitted that cl.4.3(20) of the LEP 2015 is consistent with the definition of “development standard” contained in s.1.4(1) of the *Environmental Planning and Assessment Act 1979 (the Act)*, being:

..... provisions of an environmental planning instrument or the regulations in relation to the carrying out of development, being provisions by or under which requirements are specified or standards are fixed in respect of any aspect of that development, including, but without limiting the generality of the foregoing, requirements or standards in respect of—

.....

*(c) the character, location, siting, bulk, scale, shape, size, **height**, density, design or external appearance of a building or work,*

Clause 4.6(3) to (5) of LEP 2013 follows:

(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 Director-General has been obtained.*

(5) *In deciding whether to grant concurrence, the Director-General 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 Director-General before granting concurrence.*

Clause 4.6 does not fetter the consent authority's discretion as to the numerical extent of the departure from the development standard. Each of the relevant provisions of Clause 4.6 are addressed in turn below.

CLAUSE 4.6(3)(A) - COMPLIANCE UNREASONABLE AND UNNECESSARY

In accordance with the provisions of this clause it is considered that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case as:

The underlying objectives of the control are satisfied, known as the first way in the decision of *Wehbe v Pittwater Council* (2007) 156 LGERA 446;

Underlying Objectives are Satisfied

The objectives of the 'Height of Buildings' development standard are stated as:

(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 area 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.*

The current development proposal is predominantly consistent with the building height except for the parapet, planter boxes and the lift core/stairwell with the proposal remaining consistent with the objectives based on the following:

- The overall height of the development presents as a compatible form of development within the evolving high density development within the Blacktown North CBD Precinct.
- The development proposal is consistent with the intent of the maximum height control and will provide an attractive 25 storey building that addresses its frontages to First Avenue, Zolyomi Lane and Humphries Lane.
- The additional height does not generate any additional amenity impacts regarding overshadowing, visual privacy, acoustic privacy, or view loss. The encroachment of the parapet, planter boxes and lift core/stairwell overrun do not increase the shadows cast by the building. The proposed development would not have an unacceptable impact on the amenity of adjoining properties in terms of overlooking or overshadowing.
- The encroachment to the height limit will not result in any additional privacy impacts nor additional loss of solar access to surrounding developments and the adjoining public domain form buildings.
- The non-compliance is minor in nature, noting that the majority of the building complies with the building height control and that the encroachment associated with the planter boxes and lift/stairwell overrun have been recessed, its impact to the streetscape is negligible as it will be visually unnoticeable when viewed from the street level.
- Due to the minor nature of the variation, it will not have any adverse amenity impacts. In this regard it is noted:
 - Considering that the encroachment is limited to the parapet, planter boxes and lift/stairwell overrun within the roof, the variation will be visually

- unnoticeable and will have no adverse impact on the physical bulk or scale of the proposed 80m building
 - The variation will not lead to any additional reduction in solar penetration on site or to adjoining properties nor will it lead to sunlight loss or overshadowing.
 - The proposed variation will not lead to view loss or interrupt on views to and from the site
 - The proposed variation will not lead to a reduction in privacy afforded to existing residents or future residents of the proposal
- The overall development has been designed to ensure that privacy impacts are mitigated that the proposal will not obstruct existing view corridors.
 - The proposed development will permit the site to develop to its full zoning potential whilst complementing the future vision envisioned for the site by providing a mixed use building that provides good address to the street frontages and complying with key planning controls applying to the proposal.
 - The minor non-compliance to the height control has no impact on the setting of any items of environmental heritage or view corridors.
 - The proposal is not located within a low-density area and the proposal represents an appropriate built form on the site.

As outlined above the proposal remains consistent with the underlying objectives of the control and as such compliance is considered unnecessary or unreasonable in the circumstances.

Based on the above points the development is clearly in the public interest because it is consistent with the underlying objectives of the height control; and the numerical departure from the height control facilitates a positive design outcome on the site.

The above discussion demonstrates that there are sufficient environmental planning grounds to justify the departure from the control.

CLAUSE 4.6(3)(B) - SUFFICIENT ENVIRONMENTAL PLANNING GROUNDS

Pain J held in *Four2Five vs Ashfield Council* [2015] NSWLEC 90 that to satisfy clause 4.6(3)(b), a clause 4.6 variation must do more than demonstrate that the development meets the objectives of the development standard and the zone, it must also demonstrate that there are other environmental planning grounds that justify contravening the development standard, being grounds that are specific to the site.

Pursuant to clause 4.6(3)(b) of the LEP, there are sufficient environmental planning grounds to justify the variation to the height development standard because:

- The variation is of a minor nature and will not generate any additional amenity impacts whilst also providing a beneficial planning outcome as it allows the delivery of high quality new mixed use development that will provide for the retail, employment and housing needs of the community.
- The proposal will be consistent with the evolving high density character along the Blacktown Town Centre Northern Precinct associated with the Blacktown Town Centre DCP, noting that the minor encroachment of the height control will have no impact on the future built form character of the town centre.
- The departure does not impact on the achievement of suitable land use intensity (noting that all habitable areas are contained below the maximum permitted height control).

The proposed development and in particular the variation to the Height of Buildings Standard would further the following objectives of the Act specified in S.1.3:

(a) to promote the social and economic welfare of the community and a better environment by the proper management, development, and conservation of the State's natural and other resources,

The variation facilitates the delivery of new shop top housing development in a high-density mixed use context where there are no resultant environmental planning impacts. The delivery of high-quality retail and commercial tenancies and housing in a highly accessible location results in a sustainable outcome and the minor height variation results in an improved design outcome which is a positive planning outcome.

(c) to promote the orderly and economic use and development of land,

The provision of a high-density mixed use development in this highly accessible location results in the orderly and economic use of the site.

(g) to promote good design and amenity of the built environment,

The resulting development is high quality in its architecture and will be a positive contribution to the amenity of the site for its intended use as within a high-density mixed use context. The building will have a harmonious relationship with neighbouring development and will not harm the amenity of the built environment.

CLAUSE 4.6(4) ZONE OBJECTIVES & THE PUBLIC INTEREST

In accordance with the provisions of Clause 4.6(4) Council can be satisfied that this written request has adequately addressed the matters required to be demonstrated by Clause 4.6(3) for the reasons set out previously.

In relation to the provisions of Clause 4.6(4)(a)(ii) the consent authority can be satisfied that the development, including the numerical building height departure, is in the public interest given that the proposed development is consistent with the objectives of the building height control (see above), and is consistent with objectives of the B4 – Mixed Use zone as set out below.

In relation to the zone objectives, they are stated as:

- *To provide a mixture of compatible land uses.*
- *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 will provide a large mixed use building that will assist in the evolution of development of Blacktown North CBD Precinct. In addition the proposal will complement and enhances the local streetscape by virtue of the careful siting of the development.

The development is to provide a contemporary 25 storey mixed use building exhibiting design excellence that will positively contribute to the evolving skyline within the town centre. The proposal is to also deliver high quality retail and commercial floor space that will contribute to the performance and viability of the commercial centre whilst also increasing valuable employment opportunities.

The site proximity to major transport hub in the form of Blacktown Train Station, Bus Interchange and T-Way bus stops will contribute towards maximising public transport patronage and encourage walking and cycling.

On the basis of the above points the development is in the public interest because it is consistent with the objectives of the building height standard, and the objectives of the B4 zone and the minor numerical departure from the building height control will not generate any additional amenity impacts whilst also providing a beneficial planning outcome as it allows the delivery of high quality new mixed use development.

CLAUSE 4.6(5)

As addressed, it is understood the concurrence of the Director-General may be assumed in this circumstance, however the following points are made in relation to this clause:

- a) The contravention of the height control does not raise any matter of significance for State or regional environmental planning given the nature of the development proposal and minor nature of the variation;

- b) There is no public benefit in maintaining the development standard as it relates to the current proposal as the proposal is consistent with the underlying objectives of the control and the fact that the minor non-compliance does not lead to amenity impacts nor will it result in excessive bulk and scale, and it will not set an undesirable precedent for future development within the locality.

CONCLUSION

Strict compliance with the prescriptive building height requirement is unreasonable and unnecessary in the context of the proposal and its particular circumstances.

The proposed development meets the underlying intent of the control and is a compatible form of development that does not result in unreasonable environmental amenity impacts.

The proposal promotes the economic use and development of the land consistent with its zone and purpose. Council is requested as part of the future development application to invoke its powers under Clause 4.6 to permit the variation proposed.

The objection is well founded and taking into account the absence of adverse environmental, social or economic impacts, it is requested that Council support the development proposal.

The proposal will not have any adverse effect on the surrounding locality, and is consistent with the future character envisioned, while supporting the role of Blacktown as a local centre. The proposal promotes the economic use and development of the land consistent with its zone and purpose. Council is requested to invoke its powers under Clause 4.6 to permit the proposed variation.