

Council assessment of Clause 4.6 request

1 Overview

The applicant has lodged a Clause 4.6 variation request to vary the 64 m height control under Clause 4.3 Height of Buildings in Blacktown Local Environmental Plan 2015. Upon initial review of the variation request, the objectives of Clause 4.3 Height of Buildings development standard were not adequately addressed, and sufficient environmental planning grounds were not provided to justify the contravention to the development standard. An amended Clause 4.6 variation request was requested from the Applicant, by way of a request for additional information from Council, to properly address the objectives of the standard. A copy of the applicant's amended Clause 4.6 submission dated November 2022 is at attachment 6.

2 Visual representation of offset

The following building height plane identified the portions of the development that exceed the 64m height limit.

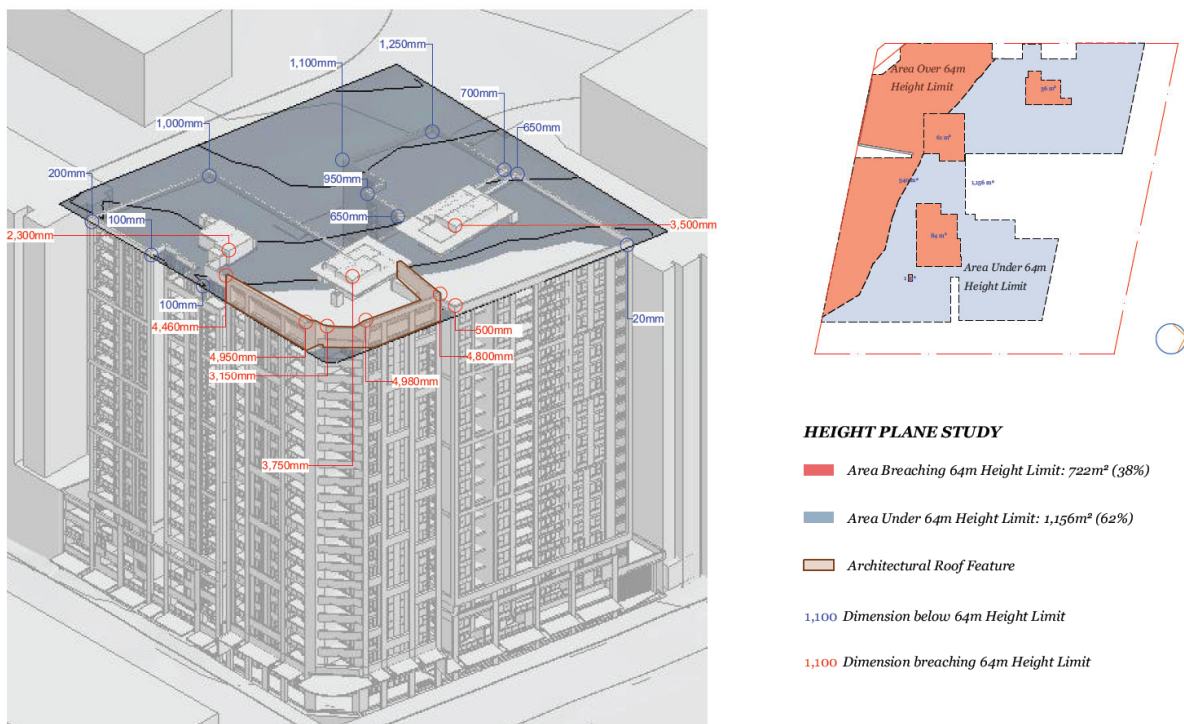


Figure 1: Height Plane Diagram from Architectural Drawings depicting the extent of non-compliance of the height of 64m for the building

The Clause 4.6 variation request applies to the features of the proposed building as summarised in the following table.

Section of building non-compliant with Height Control	Proposed Maximum Building Height	Exceedance above 64m height of buildings control	Variation as a % of the 64m height control

Architectural roof feature	68.46m to 68.98m	4.46m to 4.98m	7.78%
Lift overruns	66.3m to 67.75m	2.3m to 3.75m	5.85%
Roof	64.5m	0.5m	0.78%

The entirety of the residential and commercial gross floor area is below the 64 m height control.

3 Clause 4.6 variation considerations

Clause 4.6 requires consideration of the following matters and a town planning comment is provided 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))

Strict numeric compliance with the Height of Buildings clause is considered unreasonable and unnecessary in this case because:

- The building height proposed is considered to be consistent with the objectives for the building height control and consistent with the objectives for development in Zone B4
- The points of exceedance are specific to the site conditions and the design of the building which is predominantly compliant with the relevant planning controls and objectives.
- The points of non-compliance with the building height control do not result in other non-compliances

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

The variations to the building height control are considered minor as a portion of the overall building height as detailed in the building height plane diagram in Figure 1 above.

- The proposed variations relate to an architectural roof feature, lift overruns and small sections of the roof parapet which forms a planter bed to the edge of the rooftop open space. The points of variation are considered minor in nature as they are discrete and essential elements of the rooftop
- All residential and commercial gross floor area is contained below the 64m building height limit.
- The building height is considered to be consistent with the desired future character and nature of development anticipated by the planning controls within the locality of the Blacktown CBD Northern Precinct. Neighbouring sites adjoining the northern (rear) boundary are subject to approved development of 18 storeys (60m). The Stage 2 building is approved to 18 storeys. The existing building further east of the Stage 2 building is 17 and 19 storeys (60 to 65m). The site to the north east is subject to a height of buildings incentive clause in the LEP.
- The proposed height non-compliance will not have any unacceptable environmental impacts on surrounding properties or the public realm.
- The architectural roof feature provides a key point of design interest, is a decorative element and provides some attenuation of unpleasant winter winds for the rooftop open space. The architectural roof feature does not constitute GFA and cannot be modified to create additional GFA. The architectural roof feature adds interest and design detail to the skyline profile of the rooftop as viewed from the street and adjoining properties.

- The lift overruns are appropriately placed within the building footprint. They are well separated from the edges of the building and will not be visible from the adjoining streets. The lift overruns will not contribute to the shadow cast onto adjoining properties.
- The lift overruns are an essential feature to provide accessible all weather access to the rooftop terrace. The rooftop terrace is an optimal location for communal open space for residents because the ground level communal open space will receive limited direct solar access and is also available for use by occupants of the commercial premises and serviced apartments.
- The parapet edge is consistent with the edge treatment of the overall rooftop open space that creates a planter bed. The points at which the parapet breach the height control are a direct result of the existing site topography and will be imperceptible as a departure from the building height control as finished levels will be altered throughout the site.
- The proposed departure will not materially alter the bulk and scale of the building
- The external appearance of the Stage 1 building will be consistent with the bulk, scale and height of approved and anticipated built form in the immediate vicinity of the site and the anticipated streetscape character
- The minor exceedances are specific to this case
- The points of exceedance will have no detrimental impacts to the amenity of future building occupants or the amenity of occupants of neighbouring development.

The applicant's Clause 4.6 request and the revised plans provide satisfactory evidence that the proposal has demonstrated justifiable grounds for the minor variations to the numeric height control in this case.

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

Applicable EPI	
Objectives of Clause 4.3 to be varied	How the proposal achieves the objective
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 proposed sections of the structure that exceed the height control will not have a detrimental visual impact. The architectural roof feature is an aesthetic improvement to the overall building design. It will not obstruct views and vistas. The lift overruns are recessed from the edge of the building and will not be visible from the street or from the majority of neighbouring properties. The edge of the parapet is a continuation of the treatment to the entire edge of the rooftop terrace and represents a breach in the height control as a consequence of the existing ground levels. Existing ground levels will be altered with the overall development and the height of the parapet relative to ground level will be inconsequential in the final built form. The points of non-compliance will not result in overlooking or loss of privacy. The Stage 1 building will have some increased shadow impacts on the rooftop terrace of the Stage 2 building as shown in Figure 2. However, these impacts occur after 2pm in midwinter and do not prevent the Stage 2 building from achieving solar access compliant with the ADG.</p>

Applicable EPI																									
Objectives of Clause 4.3 to be varied	How the proposal achieves the objective																								
	<div><div><div></div><div>21st June - 9am</div></div><div><div></div><div>21st June - 10am</div></div><div><div></div><div>21st June - 11am</div></div><div><div></div><div>21st June - 12pm</div></div><div><div></div><div>21st June - 1pm</div></div><div><div></div><div>21st June - 2pm</div></div><div><div></div><div>21st June - 3pm</div></div></div> <div><p>Stage 2 Rooftop open space is only impacted by additional shadows at 2pm - 3pm in the proposed scheme</p><div><p>Proposed Massing Shadows</p><ul style="list-style-type: none">Stage 2 Communal Open Space (2,460m²)Shadows to Stage 2 Rooftop COS in Approved DAProposed DA Additional shadows to COS Stage 2<p>Approved DA Shadows to Stage 2</p><table><tr><th>9am</th><th>10am</th><th>11am</th><th>12pm</th><th>1pm</th><th>2pm</th></tr><tr><td>60%</td><td>89%</td><td>87%</td><td>81%</td><td>67%</td><td>61%</td></tr></table><p>Proposed DA Shadows to Stage 2</p><table><tr><th>9am</th><th>10am</th><th>11am</th><th>12pm</th><th>1pm</th><th>2pm</th></tr><tr><td>60%</td><td>89%</td><td>87%</td><td>81%</td><td>67%</td><td>51%</td></tr></table></div></div>	9am	10am	11am	12pm	1pm	2pm	60%	89%	87%	81%	67%	61%	9am	10am	11am	12pm	1pm	2pm	60%	89%	87%	81%	67%	51%
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	<p>Figure 2: Shadow impact comparisons showing additional shadow cast onto the rooftop terrace of Stage 2 building</p>																								
Objective (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 proposed height non-compliances are relatively minor in extent in comparison to the scale of development permissible on the site and surrounds. The non-compliances relate to an architectural feature, lift overruns and minor portions of the flat parapet, which do not contribute significant bulk to the building. When viewed from the public domain the non-compliances will not perceptible in the streetscape and in the context of existing and approved surrounding buildings of 18 to 20 storeys.</p>																								
Objective (d) - to ensure that sufficient space is available for development for retail, commercial and residential uses.	<p>The proposed development provides for additional commercial premises, serviced apartments and residential floor space and is consistent with the DCP intentions for the Northern Precinct of the Blacktown CBD to accommodate from the future expansion of the CBD.</p>																								
Objective (e) - to establish an appropriate interface between	<p>Not applicable.</p>																								

Applicable EPI	
Objectives of Clause 4.3 to be varied	How the proposal achieves the objective
centres, adjoining lower density residential zones and public spaces.	

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))

Applicable EPI - Blacktown Local Environmental Plan 2015	
Objectives of the B4 (Mixed Use) zone	How the proposal achieves the objective
Objective (a) - To provide a mixture of compatible land uses.	The proposed development provides for commercial space at the ground floor with serviced apartments and residential apartments above, and as such provides a mixed use development of compatible land uses, within a locality in which commercial, retail and residential development is located and encouraged.
Objective (b) - 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 site is within a highly accessible location in the Blacktown CBD, and as such the provision of a mixed use development comprising commercial and residential uses is appropriate for the locality and a desired form of development for the zone. The site is within 450m of the Blacktown railway station and bus interchange and future building occupants will have the opportunity to use a variety of public transport options.

The proposal provides a scale of development which is consistent with the scale anticipated by the planning controls and the desired future character of the locality. The proposed non-compliances relate to minor building elements which do not contribute any significant bulk to the proposal, and visually will not be perceptible from the public domain, with the exception of the architectural roof feature, which has been identified as a worthwhile design element. The proposal will also accommodate access to the rooftop communal open space, which is essential to provide quality open space with high levels of amenity for future residents to enjoy. The proposal results in a positive development outcome which does not have any adverse impacts on the privacy or solar access of surrounding properties. Therefore, there is no benefit to neighbouring properties in maintaining strict numeric compliance with the development standard.

Based on the above assessment, the Clause 4.6 variation request is considered well founded and constitutes a reasonable degree of flexibility in the application of the height of buildings numeric development standard in Clause 4.3 of BLEP 2015.

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))

This 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 of 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.

The request does not raise any matters of significance for regional or State environmental planning. 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. Therefore, there is no public benefit in maintaining strict compliance with the development standard in this instance.

3.5.2 Are there any 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.