

Holroyd City Council

Urban Design DA Review

Project: 1-11 Neil Street Stage 1

Reviewer: Geoff Baker, HBO+EMTB Urban and Landscape Design Pty Ltd.

Date: 9 June 2015

[1] History

This DA review follows a Land and Environment Court Case (10728 of 2014) concerning a staged development application (masterplan) for a larger parcel of land including the subject site. The Court dismissed the Applicant's appeal and upheld Council's refusal of the staged development application. In her Judgement, Commissioner Morris wrote:

94. However, I am not satisfied that the proposed building separations adequately achieve the amenity sought by the DCP or the RFDC. I agree with Mr Baker's comments "it is critical that if a new Masterplan is to replace the plan in the DCP, it is workable and will give rise to good apartment buildings with, at minimum, satisfactory levels of internal amenity. I also agree that the width of buildings is excessive and that a maximum building depth 22m and glass line to glass line 18m should apply. The orientation of buildings 3 – 6 does not optimise the northern aspect of the site and whilst there are positive benefits in the reduced heights of buildings 3 and 5, there is a consequential reduction in the area available for common open space. Other unsatisfactory impacts arise from the additional height in building 1 that overshadows the public park.

95. For these reasons, I am not satisfied that the concept proposal achieves the objects of the DCP. The proposal unnecessarily constrains the ability to provide good amenity to the apartments without the need to rely on amelioration measures to address impacts. This is not an appropriate resolution for a concept proposal.

96. Mr Galasso urged the Court to consider the "amber light" approach if the development was considered appropriate other than the issue of building separation. I do not find this is the case and therefore, it is not appropriate that consent should be granted. Such an approach would prevent the realisation of the FSR appropriate to the site and the assessment of any impacts of how that floor space was reallocated. It also would not address the shortfall in common open space.

97. For these reasons, consent should be refused.

The following assessment takes into account the above findings of the Commissioner.

[2] Context Analysis

The context and site analysis (drawing DA0.04) is inadequate, in particular:

- Vehicle access to the site through local streets and to Merrylands Town Centre is not shown

- Pedestrian access between the site, Merrylands rail station/bus interchange and Merrylands Town Centre is not shown
- No details are provided of the configuration of the adjoining residential building at 42-50 Brickworks Drive (location of habitable rooms and balconies along its southern façade, which faces the subject site)

[3] Council's Controls

It is understood that the proposal complies with the applicable LEP FSR control for the site but slightly exceeds the LEP Height control. The subject site is part of "Block 5" in the Merrylands Centre Neil Street Precinct, Part M, Section 5.5 of Holroyd DCP 2013. The proposal is not consistent with the layout for the site and other provisions set out therein.

[4] Density

Although the proposal complies with the applicable FSR controls, this is an atypical situation in that a significant portion of the site is dedicated to a local public road and drainage swale extension which Council will construct. These improvements are public in nature, the ongoing responsibility and cost of maintenance are to be borne by Council and they will lie outside of the secured residential area for which the Owners Corporation will be responsible. Nevertheless, the application includes the area they occupy in calculating maximum permissible floor space. More typically, the public road and swale would not be part of the development site and would not be included in the FSR calculation. The net result is that the amount of building bulk permitted on the site is significantly greater than would more usually be expected. Whether Council took this fact into consideration when setting the LEP height control for the site is unknown, but various unsatisfactory aspects of the proposal appear to be the result of attempting to squeeze the permitted FSR within the height limit.

[5] Site Planning and Building Mass and Height

The proposal differs markedly from the basic site configuration diagram in Holroyd DCP 2013:

- In the DCP, the building mass is essentially located in a slab which is oriented perpendicularly to the rail line; in the proposal, the mass is split into two buildings with most of the floor area in a slab parallel to and up against the rail line.
- The DCP has its communal open space facing north and east; the proposal does not provide usable communal open space

In the Court proceedings, the acoustic experts agreed that the Applicant's masterplan for the whole of the larger site was better than the DCP layout in that it located the tallest building slabs along the railway line and Neil Street so that they shield the open space and buildings to the west. (Special acoustic treatment would still be required for habitable rooms facing the railway.) The DCP configuration, by contrast, creates courtyards facing the railway in which rail noise would reverberate. The Court proceedings did not, however, provide an opportunity to explore the optimum site configuration to minimise noise impacts. Alternative layouts were not tested.

Both buildings are located on the site so that their long facades face southeast and northwest. All the units in Building 5 and the majority in Building 6 have their living areas facing northwest, which is sub-optimal in terms of passive solar design. In addition, the typical floor of Building 6 has 5 units which solely or principally face the railway line. This is a poor acoustic outcome.

If the overall site plan for the larger site (all Stages) were revisited, Building 6 (10 stories) could be re-oriented to face due north. If the southern boundary of Stage 1 remains as currently proposed, Building 6 could be rotated 90 degrees and positioned parallel to this boundary. Building 5 (4 stories) could be relocated along the boundary with the rail corridor (and increased in height by, say, one storey if necessary). The resulting northeast orientation for Building 6 would improve its solar performance compared to the current proposal (facing northeast is better than northwest). The Impact of train noise would be reduced because the end of Building 6 facing the railway line could be designed without openings to habitable rooms and Building 5, as currently designed, would have no units facing the railway line. A large and usable communal open space would face north and be shielded from rail noise by Building 5.

[6] Setbacks

Because the site includes a new length of public roadway and drainage swale, technically there is no “front” to be set back from. However, for the portion of the site on which the proposed buildings are located, Building 5 has no setback from the swale, which is effectively the front of the site. This has an adverse consequence in that the three ground floor units of this building have no external courtyard, as recommended by the SEPP65 RFDC and required in Holroyd DCP 2013 Part B, Section 6.6. In lieu of a courtyard which is open to the sky, these units have a balcony which is covered over by the identical balcony of the apartment above. For the ground floor units, this is a poorer amenity outcome.

The proposed northern side setback of 6m is of particular concern, given that the existing 7-storey flat building at 42-50 Brickworks Drive is only 3m from the northern boundary of the subject site. It is understood that the façade of this building facing the site contains mostly bedrooms and balconies to bedrooms. The SEPP65 RFDC requires 18m separation between buildings 5 to 8 stories tall with habitable rooms/balconies on both buildings (the applicable conditions here in relation to the proposed Building 6). The proposal provides only 9m separation (6m to the boundary with a further 3m from the boundary to the existing building), which is clearly insufficient. The Court agreed. Whilst it is not realistic to expect the proposal to achieve a full 18m separation from the existing building (requiring a 15m side setback on the subject site) a 9m setback is considered the absolute minimum which should be provided. The same setback should apply to Building 5. Here, since the proposed building is only 4 stories, the applicable 12m RFDC separation would then be achieved.

[7] Building Separation

To the south of the scheme there is a line separating stages of development, rather than a boundary and therefore technically there is no side setback. Building separation distances are the relevant concern. Assuming that the future Building 4 in Stage 2 is of the same or similar height to Building 6 (10 floors), the relevant RFDC separation standards are:

- 24m between habitable rooms/balconies
- 18m between habitable rooms/balconies and non-habitable rooms
- 12m between non-habitable rooms

Although the proposed Building 6 end façade facing the Stage 2 Building 4 has windows, they are to living areas and not the primary source of light and air. They could be treated so that the facade could be deemed to be “non-habitable “. If the same approach were adopted for Building 4 in the future, the separation distance would need to be a minimum of 12m. The current plans show 9m, so it might be reasonable to achieve this by moving the Building 4 facade south by 3m. The proposed location of the Building 6 south façade is therefore considered acceptable.

For Building 5, adequate separation from the future Building 3 could be achieved by relocating the window in Bedroom 2 of the 5.L.01 line to the eastern façade of the building (see also [12] below).

[8] Sustainability – Building Orientation

The sole or principal orientation of all units in Building 5 is north-west. One of the long facades of Building 6 also faces north-west. The majority of apartments in the scheme will thus be exposed to intense solar heat loading during summer afternoons. No shading devices are proposed. The net result would be poor sustainability.

Perversely, the proposal fails to exploit the desirable northerly or north-easterly aspect of the site. The north-facing facades of both buildings have minimal openings.

[9] Communal Open Space

The proposal provides no designated Communal Open Space. Of the open space on the site, most contains circulation paths and none meets the SEPP65 RFDC objective of ensuring that “communal open space is consolidated, configured and designed to be usable and attractive”. It is not clear if the drainage swale will be publicly accessible (the existing swale to the north is not), but even if this turns out to be the case, this would be public open space, not communal open space. The latter is defined as secure open space within a residential development that is accessible only to residents within the development, but not the public. Communal open space provides a higher level of safety and security than typical public open space.

[10] Deep Soil

Deep soil is limited to a 6m wide strip along the northern boundary and a 3m wide strip along the eastern (railway) boundary. The 6m strip will presumably allow the existing trees within the site along this boundary to be retained and the 3m strip, with contiguous deep soil with in the rail corridor, enables trees to be planted as a visual screen. These are positive outcomes.

[11] Pedestrian and Vehicular Access

Pedestrian access to the main entries of the two buildings is indirect and does not conform to the safety and security principles of CPTED. From the footpath on the new public street, pedestrians cross a bridge over the swale, walk past the southern end wall of Building 5 (which encloses a Garbage Room at Ground Floor level), turn left and proceed along a curving path to the building entries via another right or left turn. The circulation paths between the buildings and the building entries are not visible from the public street.

There are no vehicular access points proximate to the main building entries. The nearest point for drop-off vehicles, taxis, delivery and service vehicles, moving vans and the like is out on the new public street.

[12] Internal amenity

The most significant internal amenity issue is the impact of rail noise on the apartments in Building 6. 70 units (57% of the total number of units in Buildings 5 and 6) have habitable rooms adjacent to and directly facing the railway line. 30 units (24%) are single aspect directly facing the railway line.

According to the Applicant's acoustic report, all bedrooms facing the railway line would require special glazing and window frames and most likely "comfort ventilation" (electrically driven mechanical ventilation). This would be a sub-optimal outcome for the interiors of these rooms and the sustainability of the development as a whole.

If the site were replanned as described under [5] above, no habitable rooms would directly face (i.e. have openings to) the railway line. An acoustic study would be required to determine if habitable rooms in Building 6 facing perpendicular to the railway line would require special treatment (although it seems likely that at minimum those shielded by the relocated Building 5 would not).

An additional internal amenity issue for Building 6 concerns the fully internalized room in Units 6.L.04, 6.L.07 and above. Whether it is used as a study or second bedroom, it is a habitable room and as such should receive natural light and air.

In relation to internal amenity issues for Building 5:

- Unit 5.0.01 should have an opening in the east façade to allow natural cross-ventilation
- Unit 5.L.01 should have an opening in the east façade of the east bedroom for outlook and natural cross-ventilation

The Applicant's claimed performance for solar access and natural cross ventilation (which meets SEPP65 RFDC standards) has not been independently verified.