

DA 487/2015 – 229 MILLER STREET, NORTH SYDNEY

CLAUSE 4.6 VARIATION TO DEVELOPMENT STANDARD

This request for variation to the height control is submitted in support of a development application relating to 229 Miller Street North Sydney. The DA seeks consent for the demolition of an existing building and the erection of a twenty level mixed use building above at grade and basement parking at No. 229 Miller Street, North Sydney and minor works to the approved building at No. 231 Miller Street, North Sydney.

1. THE PROPOSED VARIATION

This request relates to Clause 4.3 of the North Sydney Local Environmental Plan 2013 which sets a maximum height for buildings on the subject site of RL 135m AHD. The proposed building complies with the height control other than for the lift overrun, which reaches a height of RL 136.9 and as such breaches the control by 1.9m.

2. OBJECTIVES OF THE HEIGHT OF BUILDINGS DEVELOPMENT STANDARD

Clause 4.6(4) requires that prior to granting consent to a variation the consent authority must be satisfied that the variation of the standard is consistent with the objectives of the standard and the objectives of the zone and these are addressed following.

The proposal satisfies the objectives of the Mixed Use zone which were identified in the Statement of Environmental Effects submitted with the development application.

While a minor variation to the Height of Building development standard is sought, the development proposed is generally consistent with the objectives of the control, as set out in Clause 4.3 of the LEP. Consistency with each of the objectives of the Height Standard is outlined below.

(a) to promote development that conforms to and reflects natural landforms, by stepping development on sloping land to follow the natural gradient,

The site has a slope from the front to the rear and this has been addressed appropriately by stepping the ground level at the front and rear to match the predominant levels of the adjoining street/right-of-way.

(b) to promote the retention and, if appropriate, sharing of existing views,

The breach of the height control will have little impact on views from the surrounding areas as the properties to the north, north west and north-east are developed with buildings, or have development approval.

The analysis of view impacts demonstrates that while there will be some impact on views for a small number of residents of the Meriton building which is located immediately to the west of the site, these impacts are caused by the compliant elements of the proposed

building. Notwithstanding that these impacts are considered to be acceptable given the circumstance of the site and its surrounds, we have made some modifications to levels 16 and 17 to improve the outlook from the affected apartments. These alterations have reduced the size of the footprint of these levels, effectively taking area from the north-west and south-west corners to open the outlook in these directions.

The development proposed will generally not result in the loss of significant view lines or vistas as such views and vistas are already lost by the approval of developments at Nos. 221 and 231 Miller Street. Some loss of views will occur to the upper levels of No. 231 Miller Street, but the view loss is resultant from a portion of the building which complies with the height control and as such are not views that can reasonably be expected to be retained. The proposal will result in a loss of views from the existing office building at No. 221 Miller Street and future residential apartments in the as-yet undeveloped consent for that property. Again, the view impacts would be resultant from the compliant components of the building and as such are considered to be acceptable.

View impact is fully considered in the View Impact Analysis that has been submitted to Council under separate cover. The view analysis that has been undertaken has informed this amendment to the Clause 4.6 Variation request. The analysis demonstrates that the impact on views that would be caused by the non-compliance of the lift overrun with the height control will be minor in nature.

(c) to maintain solar access to existing dwellings, public reserves and streets, and to promote solar access for future development,

The impact on adjoining buildings in terms of solar access results from the compliant elements of the building. The lift overrun will not cause any additional detrimental solar impacts as the only areas of shadow caused will be to the rooftop of the proposed building.

Shadow diagrams and Views from the Sun diagrams have been submitted with this application, and additional solar impact information has now been provided to Council to allow for the consideration of the solar impact of the proposal.

There will be no detrimental solar impact to any public reserves, streets or other public areas as a result of the proposal. The position of the lift overrun is such that the only shadowing caused will be to the rooftop of the proposed building.

(d) to maintain privacy for residents of existing dwellings and to promote privacy for residents of new buildings,

The privacy of the adjoining buildings is not be detrimentally impacted by the component of the building which varies from the height control as it is a lift overrun and not habitable space. The layout and design of the apartments have been designed to ensure that the impact on the privacy of adjoining residents will be minimised.

The minor breach in the height standard that is proposed relates only to the lift overrun and will not cause any loss of privacy for surrounding residents.

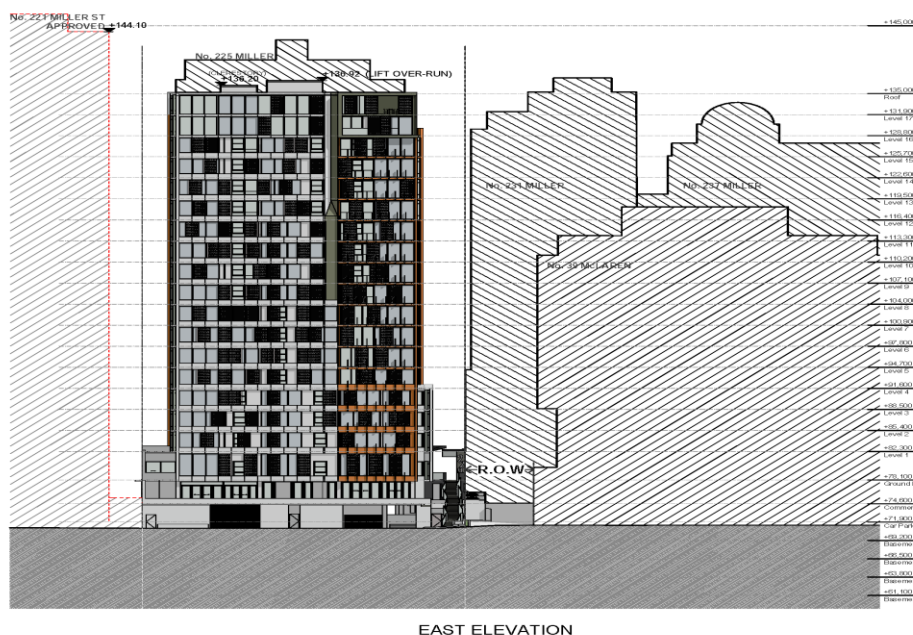
(e) to ensure compatibility between development, particularly at zone boundaries,

The proposed development will provide a compatible mix of uses to the surrounding area. All of the buildings in the immediate vicinity are a mix of residential apartments, serviced apartments and commercial uses. The mix of commercial use, residential apartments and a child care centre that is proposed within the building at 229 Miller Street will be entirely in keeping with the existing development, and it will also be consistent with the uses appropriate to the location of the site in the centre of North Sydney and in close proximity to public transport and employment opportunities.

The height of the building has been designed in order to provide visual compatibility with the adjoining buildings, allowing an appropriate stepped transition in height of buildings as required by the North Sydney Centre controls. As such it provides an appropriate scale and density of development in accordance with the existing and desired future character of the area. The lift overrun is not visible from the public domain and as such does not alter the visual compatibility of the design.

(f) to encourage an appropriate scale and density of development that is in accordance with, and promotes the character of, an area.

The bulk of the proposed building is in keeping with the height control for the site and as such it is in keeping with the intended character for the area. The proposed building is also appropriate given the scale of the surrounding buildings, including recent approvals that are yet to be constructed. The diagram below indicates that the proposal fits well within the surrounding area and is consistent with the density and height that is appropriate given the location of the site within the North Sydney CBD.



The lift overrun cannot be seen from Miller or McLaren Streets or any other public place, is small in footprint and will not result in any significant detrimental impacts in terms of shadowing, loss of privacy or loss of views. Visually, the height of the building is fully compliant with the height control and as such achieves the objectives of that control and the objectives of the mixed use zone, as were addressed previously. Were the lift overrun not permitted to exceed the height control, one additional storey would need to be removed from the development, which would result in it having the visual appearance of 3m below that anticipated by the control and as such a better planning outcome to achieve the visual intent of the control is to permit the lift overrun, which allows the top floor to be retained.

For this reason there is an appropriate and necessary planning benefit to the variation of the height control in this instance and as such it is in the public interest to permit variation of the standard for the reasons given.

3. CLAUSE 4.6 VARIATION

Clause 4.6 permits variations to development standards, of which the RL 135 height control is one, in order to provide an appropriate degree of flexibility in applying development standards and in order to achieve better outcomes for and from development by allowing flexibility. It is considered that a better planning outcome can be achieved on this site in this case by varying the control in order to permit the lift overrun to exceed the height control.

3.1 The Development standard is unreasonable and unnecessary in the circumstances of the case

Clause 4.6(3)(a) of the North Sydney LEP 2013 requires that a proposed variation to a development standard demonstrates that *compliance with the development standard is unreasonable or unnecessary in the circumstances of the case*.

In *Wehbe V Pittwater Council* (2007) NSWLEC 827 Preston CJ set-out five ways of establishing that compliance with a development standard is unreasonable or unnecessary in support of justifying a variation. These are:

1. *The objectives of the standard are achieved notwithstanding non-compliances with the standard.*
2. *The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary.*
3. *The underlying objective or purpose would be defeated or thwarted if compliance was required and therefore compliance is unnecessary.*
4. *The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable.*
5. *The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. This is, the particular parcel of land should not have been included in the particular zone.*

As outlined elsewhere in this report, the development proposed at 229 Miller Street is consistent with the height standard apart from a minor breach by the lift overrun. The bulk and scale of the building is compliant with the height control and is hence consistent with the scale that was envisaged for the site by the LEP control. The proposed breach by the lift overrun does not alter the bulk and scale of the proposed building.

The exceedance of the height control by 1.9m does not cause any significant detrimental impacts on the surrounding area, with no additional shadow impact on any surrounding building or public place. The position of the lift overrun is such that the only area of shadowing cause is to the rooftop of the proposed building.

There are no detrimental visual impacts caused by the element of the proposed building that does not comply with the height control. The issue of visual impact is fully assessed in the View Impact Analysis that has been submitted to Council.

Given the location of the subject site within the North Sydney Centre, the nature of the immediately surrounding development and the fact that the building proposed is generally consistent with the objectives of the Mixed Use Zone, it is considered that strict compliance with the height control is unreasonable and unnecessary in this case.

3.2 Sufficient Environmental Planning Justification

Clause 4.6(3)(b) of the North Sydney LEP 2013 requires that a proposed variation to a development standard demonstrates *that there are sufficient environmental planning grounds to justify contravening the development standard*.

As discussed previously in this report, it is considered that there is adequate planning justification to support the minor non-compliance of the proposed building:

- The proposed development is consistent with the objectives of the Mixed Use Zone and also with the objectives of the Height of Building development standard in the North Sydney LEP;
- The non-compliant element does not add to the visual bulk and scale of the building;
- The lift overrun cannot be seen from any public place;
- The non-compliant element does not cause any additional shadow impacts on the surrounding area;
- There are no additional view impacts caused by the lift overrun.

For these reasons, it is considered that there is sufficient planning justification to support the minor level of non-compliance that is proposed.

3.3 The Public Interest

Clause 4.6 requires that development consent must not be granted unless *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*.

The development proposed is consistent with the objectives of the Mixed Use zone. It is also consistent with the objectives set out in Clause 4.3 Height of Buildings. It is therefore considered that the proposal will result in the mixed use development that will contribute to the CBD of North Sydney in a manner that is envisaged by the relevant planning controls.

3.4 The Public Benefit of Maintaining the Development Standard

Clause 4.6 requires that the consent authority consider if there is public benefit associated with maintaining the development standard.

It is considered that there are no significant State or regional planning issues raised by the proposed variation to the control and in the circumstances and there is no public benefit to be had in maintaining the standard. For these reasons, and those already outlined in this report, it is considered that compliance with the standard in this case is unreasonable and there are sufficient environmental planning grounds to justify the minor contravention of the development standard.

In addition, the public benefit will be served through the provision of additional residential apartments, commercial space and a child care centre within the centre of North Sydney in close proximity to public transport, employment opportunities and a range of amenities. A child care centre is also proposed and this will provide an important service for residents and workers in the area.

4 CONCLUSION

A variation to the Height of Building development standard as set out in Clause 4.3 of the North Sydney LEP 2013 is sought in this case to enable the proposed lift overrun to exceed the height limit by 1.6m. This element of the building is minor and will not give rise to any significant impacts on the surrounding area.

The proposed building will provide a built form with a scale that is appropriate for the site given its location within the centre of North Sydney and the development, both constructed and recently approved, that immediately surrounds it. The site sits within a tight cluster of buildings, having a battle-axe location without a direct frontage to Miller Street.

The proposed height of the lift overrun will not create any additional shadow impacts and visual impacts caused will be minimal, as demonstrated by the visual impact assessment that has been submitted.

The scale and height of the proposed building is consistent with the objectives of both the Mixed Use zone and the Height of Buildings development standard and is therefore in keeping with the intended character of the area within the centre of North Sydney.

For the reasons outlined in this report, it is considered that the proposal will result in a building that creates public benefit and strict compliance with the Height of Buildings development standard is unnecessary and unreasonable in this case.