



Hawes & Swan

Town Planning Consultants

REQUEST UNDER CLAUSE 4.6 OF HOLROYD LEP 2013

Construction of a Residential Flat Building and
Associated Site Works at
11-19 Centenary Road, Merrylands



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Clause 4.6 Variation Request
11-19 Centenary Road, Merrylands

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Merrylands**

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1.0 The Proposal

This request is written in support of a development that proposes a four storey residential development and associated site works at 11-19 Centenary Road, Merrylands.

Clause 4.6 of within the *Holroyd LEP 2013* allows the consent authority to grant consent for development even though the development contravenes a development standard imposed by the LEP. The clause aims to provide an appropriate degree of flexibility in applying certain development standards to achieve better outcomes for and from development. Clause 4.6 requires that a consent authority be satisfied of three matters before granting consent to a development that contravenes a development standard:

- That the applicant has adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case;
- That the applicant has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard; and
- That 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 consent authority's satisfaction as to those matters must be informed by the objective of providing flexibility in the application of the relevant control. The Land and Environment Court has established questions to be addressed in variations to developments standards lodged under *State Environmental Planning Policy 1 – Development Standards* (SEPP 1) through the judgment of Justice Lloyd, in *Winten Property Group Ltd v North Sydney Council* [2001] 130 LGERA 79 at 89. The test was later rephrased by Chief Justice Preston, in the decision of *Wehbe v Pittwater Council* [2007] NSW LEC 827 (Wehbe).

An additional principle in relation to Clause 4.6 was established in the decision by Commissioner Pearson in *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1009 (Four2Five) which was upheld by Pain J on appeal.

These tests and considerations can also be applied to the assessment of variations under clause 4.6 of the *Holroyd LEP 2013*. Accordingly, this Clause 4.6 variation request is set out using the relevant principles established by the Court.

1.1 Relevant Development Standard

The development standard to which this objection relates is Clause 4.3 Height of Buildings. Clause 4.3 Height of buildings sets out the following:

1. The objectives of this clause are as follows:
 - (a) to minimise the visual impact of development and ensure sufficient solar access and privacy for neighbouring properties,
 - (b) to ensure development is consistent with the landform,
 - (c) to provide appropriate scales and intensities of development through height controls.

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.

The applicable height control for the site is 15m. The development proposes a minor portion of the building which exceeds the building height by a maximum 500mm.

1.2 Is the Planning Control in Question a Development Standard?

'Development Standards' are defined under Section 4(1) of the EP&A Act as follows:

“development standards means 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,...”

The maximum building height control under Clause 4.3 of the Holroyd LEP 2013 is clearly and a development standard.

2.0 The Contravention

As described in the Statement of Environmental Effects (SEE) and illustrated on the Architectural Drawings prepared by Nordon Jago submitted separately, the height of the proposed development will exceed the maximum building height of 15m by a maximum 500mm which equates to a maximum 3.3% variation. The proposed variation accommodates a minimal percentage of the total building volume proposed. The four storey street facades are all below the maximum height limit.

As illustrated in the Attachment 1 of this report, although the highest point is up to 500mm above the 15m height plane, due to the topography of the site, the area of the building that exceeds the height control is generally limited to a stairwell only. No habitable space is located above the 15m height limit.

The principle reason for the exceedance of the maximum building height limit is the need to respond to the site's topography. Building height is measured from existing ground level, the existing ground level of the site varies from R39.43 at the north-eastern corner to RL36.96 at the south-western corner representing a level change of 2.47m. Subsequently, the built form has been designed to correspond with the site's gradient.

Strict numerical compliance with the development standard would result in the deletion of the fourth storey which is not an appropriate outcome for a site that is zoned for 'High Density Residential' and is within walking distance of a range of services and facilities and a range of bus transit route. In order to achieve residential density that is appropriate and envisaged by the site's zoning, a departure from the maximum building height standard is required.

Refer to **Attachment 1** of this request which details the area of non-compliance.

3.0 Justification of the Contravention

3.1 The Site Context

Site context is a key consideration when determining the appropriateness and necessity of a development standard. The site and its surrounds as existing are a mix of residential and local centre uses. Development to the south of the site is currently undergoing construction for a 5 storey Residential flat building (approved under DA2014 /358).

The site is well serviced by public transport and is located within an accessible and is located approximately 430m south of Merrylands Central Gardens, Merrylands Park (including swim centre) and Ted Burge Sportsground. In addition, the site is conveniently located with respect to the arterial and local road systems servicing the area to effectively distribute traffic onto the wider road networks.

3.2 Public Interest

Clause 4.6(4)(a)(ii) of Holroyd LEP 2013 requires that development consent must not be granted for development that contravenes a development standard unless the consent authority is satisfied that 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 proposed development has been assessed against the objectives for the R4 Medium Density Residential zone below. Despite the proposed variation to the maximum building height development standard, the proposal is considered in the public interest as it nevertheless, will comply with the development standard upon completion of construction and satisfies the objectives of the zone and the objectives of the development standard.

3.3 Consistency with R4 High Density Residential Zone

The consistency of the proposal against the objectives of the R4 High Density Residential zone is outlined below.

To provide for the housing needs of the community within a high density residential environment.

The proposed development seeks to respond to the housing need of the Merrylands community by providing a new development form that largely complies with the relevant high density development controls established for the site in the Holroyd LEP 2013 and Holroyd DCP 2013.

In addition, the units proposed will be affordable rental housing units that will cater for lower income earners and those in need in the community.

To provide a variety of housing types within a high density residential environment.

The development will provide a variety of one, two and three bedroom apartments. The proposal comprises 78 units in total in the following unit configuration:

- 22 x 1 bedroom units;

- 16 x 1 bedroom adaptable units;
- 32 x 2 bedroom units;
- 8 x 3 bedroom units.

The proposed housing mix is appropriate for the location and is supported by the Social Impact Assessment submitted separately. As outlined directly above, the proposed built form is consistent with the Council's expectations for high density development.

To enable other land uses that provide facilities or services to meet the day to day needs of residents.

The proposed residential development will generate demand for existing and planned services within the precinct. The development as proposed does not preclude other land uses that provide facilities or services to meet the day to day needs of residents in adjoining sites.

3.4 Consistency with Objectives of the Building Height Development Standard

The consistency of the proposal against the objectives of the maximum building height standard is outlined below.

To minimise visual impact of development and ensure sufficient solar access and privacy for neighbouring properties.

The proposed variation of 500mm is limited to a small portion of the roof on the north-eastern corner and does not appear visually prominent. The design of the development ensures that it does not present as a large bulky built form, rather it contains a staggered building height, a range of materials and finishes and a variety of setbacks which provide an attractive and active built form.

The proposal maintains a 17m setback where the height encroachment occurs and allows sufficient levels of solar access to neighbouring properties, public and private open space. In addition, the development has been sited to ensure its bulk is centered along the sites western boundary to create larger separation better the residential development to the east.

The surrounding land to the north, east and west has a 9m height limit; and the land to the south has a 15m height limit. Therefore, none of the future building will have habitable levels with views over and beyond the proposal. As such, the proposed variation is therefore unlikely to reduce any views from future apartments in the surrounding area.

The proposal will not have any additional impact on solar access to the likely future open space and development of the adjoining properties. The shadow diagrams prepared by Nordon Jago (submitted separately) indicate that there is ample opportunity for surrounding development to achieve high amenity through solar access.

To ensure development is consistent with landform.

The development proposed is considered to be consistent with the landform and development envisaged for the site. The architectural plans prepared by Nordon Jago demonstrate that the built form has been modelled to create a strong street address and street edge that works with the sites topography where practical.

To provide appropriate scales and intensities of development through height controls.

The development is considered to be an appropriate scale for the site having regard to the height and FSR controls that apply. The height variation proposed relate to a small portion of the building and will not appear visually dominant when viewed from a public place. In addition, the development is consistent with the intent of the maximum height control with the proposal providing an attractive building that addresses its three street frontages.

4.0 Is Compliance with the Development Standard Unreasonable or Unnecessary in the Circumstances of the Case (Clause 4.6(3)(a))?

Clause 4.6(3)(a) of Holroyd LEP 2013 requires the departure from the development standard to be justified by demonstrating:

- 1. the objectives of the standard are achieved notwithstanding noncompliance with the standard; and*
- 2. that there are sufficient environmental planning grounds to justify contravening the development standard.*

Objectives otherwise achieved

As detailed in the section above, the proposal satisfies the building height objectives despite the height variation. These objectives are satisfied by the proposal (as shown above) despite the numerical variation with the building height standard. The proposed development, including the proposed building elements that exceed the height limits, will continue to achieve the objectives of the standard. It is therefore considered that the objectives of the development standard are met notwithstanding the breach of the height of buildings standard.

Sufficient environmental planning grounds to justify contravention

Due to the site's topography, development would not be able to achieve the objectives of the building height development standard (or those of the R4 zone) if strict compliance with the standard is required. Notably, strict compliance with the building height development standard would require the deletion of the fourth storey which would significantly reduce the site's potential to facilitate higher density residential development and meet the objective of the standard.

5.0 Are there Sufficient Environmental Planning Grounds to Justify Contravening the Development Standard (Clause 4.6(3)(b))?

It is our opinion that there are sufficient environmental planning grounds to justify contravening the building height standard in this instance. These are as follows:

- The proposed development is consistent with the objectives of the zone and the objectives of the building height control.
- The proposal does not result in any adverse impact from adjoining properties.
- The height variation equates to a maximum 500mm for a minor portion of the building and is not visually prominent.

6.0 Conclusion

The proposed contravention of the 15m maximum building height is based on the reasons outlined in this request.

It is considered that this proposal represents an individual circumstance in which Clause 4.6 was intended and to be available to set aside compliance with unreasonable or unnecessary development standards.

The proposed development will not create an undesirable precedent.

The proposed development is consistent with the objectives of Clause 4.3 and Clause 4.6 of Holroyd LEP 2013 and therefore is in the public interest pursuant to clause 4.6(4)

In view of all of the above, this written request has adequately addressed the matters required by Clause 4.6(3) of Holroyd LEP 2013 and Council's support to contravene the maximum building height development standard of Clause 4.3 is sought



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ATTACHMENT 1