

CLAUSE 4.6 VARIATION

Address: Nos. 242 - 252 Pitt Street, Merrylands

Proposal: Shop Top Housing

23 JULY 2018

**CLAUSE 4.6 VARIATION (BUILDING HEIGHT)
DEVELOPMENT APPLICATION NO. DA-558/2017
NOS. 242 – 252 PITT STREET, MERRYLANDS**

Clause 4.6 variation, seeking departure from the maximum building height prescribed by Clause 4.3(2) of the Holroyd Local Environmental Plan 2013.

(1) The objectives of this clause are as follows:

- (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
- (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

Comment: The LEP prescribes a maximum building height of 53 metres. The proposed building height is 61 metres.

The gazettal of Holroyd Local Environmental Plan 2013 introduced a new planning framework for the Merrylands Centre, increasing building heights to 65 metres (20 storeys) and densities up to 9:1 in the centre's core.

However, following introduction of these new controls, Council became increasingly aware of the need to review the building height controls as a means of providing greater flexibility in delivering the floor space potential permissible under the LEP. Council also became aware of a number of mooted proposals within the centre, and acknowledged that providing this flexibility in building height would enable these proposals to proceed.

A draft LEP amendment (Merrylands Station and McFarlane Street Precinct Planning Proposal) was approved at Gateway on 15 August 2016, which seeks to increase building heights without increasing densities. The principal objective of the Planning Proposal is to provide greater flexibility in which to deliver the current floor space potential for developable sites within the Merrylands City Centre. The exhibited maximum building height for the subject site is 65 metres.

The planning objectives identified by the accompanying development controls include to develop a strong identity for the Merrylands Centre through a vibrant mix of retail, commercial and residential development, to achieve urban design strategies that acknowledge the role of

Merrylands within the Cumberland subregion, to strengthen the economic and employment status of Merrylands Centre and provide increased growth capacity within Merrylands, to renew and revitalise the Merrylands Centre catering for a diverse community, and to ensure buildings are designed to maximise appropriate amenity outcomes for the Precinct.

The Planning Proposal was publicly exhibited for 28 days from 2 November to 30 November 2016.

A public Hearing was held on 8 February 2017 as required by the Gateway Determination.

On 18 April 2018, Council considered a report detailing finalisation procedures for the Merrylands Station and McFarlane Street Precinct Planning Proposal, and changes proposed to Development Control Plan 2013 to support Council's direction for renewal of the Merrylands centre. Council resolved on this date to:

1. *Adopt the Planning Proposal (15 August 2016) as exhibited for the Merrylands Station and McFarlane Street Precinct, Merrylands, and proceed with finalisation of the associated amendment to the Holroyd LEP 2013 in conjunction with the NSW Department of Planning and Environment.*

...

3. *Adopt the draft Precinct DCP controls (prepared October 2016) as exhibited.*

We have been in recent contact with representatives of the Department of Planning responsible for processing the Planning Proposal (on 11 July 2018) and understand the Department is in the final stages of finalising the instrument for presentation to the Minister. Changes to the planning regime are therefore certain and imminent.

- (2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument.***

Comment: The development standard to be contravened is Clause 4.3(2) Height of Buildings.

- (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***

Comment: This submission constitutes a written request for consideration by the consent authority.

Compliance with the development standard is considered unreasonable and unnecessary in the circumstance of this case given the advanced nature of the process to secure increased building height for development within the Merrylands centre.

The gazettal of Holroyd Local Environmental Plan 2013 introduced a new planning framework for

the Merrylands Centre, increasing building heights to 65 metres (20 storeys) and densities up to 9:1 in the centre's core. However, following introduction of these new controls, Council became increasingly aware of the need to review the building height controls as a means of providing greater flexibility in delivering the floor space potential permissible under the LEP. Council also became aware of a number of mooted proposals within the centre, and acknowledged that providing this flexibility in building height would enable these proposals to proceed.

On 20 October 2015, Council resolved to undertake an independent review of the current building heights in the core of Merrylands Centre with consideration given to how the current building heights constrain the reasonable achievement of floor space yields within the quality built form outcomes that may have an unnecessarily high impact on sunlight access to planned public spaces and future buildings on Merrylands Road. The two key focal points within the Centre to be considered were the Merrylands City Square and the Merrylands Rail Station, which should ideally be identified by more prominent landmark buildings.

The Structure and Building Height Review Report was completed by SJB Architects in response to this resolution. The aim of the review was to assess Council's current building heights standards in the core of the Merrylands centre, and ultimately recommend changes that would provide greater flexibility in which to deliver the current floor space potential for improved building design and planning outcomes. The study area included land bounded by McFarlane Street, Merrylands Road, Treves Street and Terminal Place, but inexplicably did not include the subject site, being one of the largest consolidated sites within the Merrylands Centre, and a key site in terms of connectivity of the town centre and McFarlane Street to the railway station via delivery of pedestrians through a pedestrian linkage nominated at Figure 3 in the Holroyd Development Control Plan 2013, Part M – Merrylands Centre Controls.

The materials exhibited as part of the Merrylands Centre and McFarlane Street Precinct Review did not include the subject site within the precinct being investigated, despite it being the only site physically adjoining land contained within the precinct that was not included in the study area. The purpose of the report considered on 3 May 2016, post exhibition of this Review, was to inform Council of the outcomes of the pre-Gateway consultation undertaken. The report noted the subject site and Council owned land currently used as a car park and bus terminus were not included in either the Neil Street Precinct Urban Design Review (reported to Council on 20 October 2015) or the Merrylands Station and McFarlane Street Precinct Review. Given these sites provide a suitable transition/connection between the two Precincts, it was recommended by Council officers that these sites be included in the Merrylands Station and McFarlane Street Precinct Planning Proposal. Council officers ultimately recommended that a Planning Proposal to amend the Holroyd Local Environmental Plan 2013 be prepared and forwarded to the Department of Planning and Environment for Gateway determination, with inclusion of the following changes:

- *The area subject to the Merrylands Station and McFarlane Street Precinct Planning Proposal be expanded to include No. 244 – 252 Pitt Street and the Council land adjacent to Merrylands Station (Lot 1 Terminal Place);*
- *The height of buildings proposed for No. 244 – 252 Pitt Street be increased to 65m (20 storeys).*

The draft LEP was approved at Gateway on 15 August 2016.

The Planning Proposal was publicly exhibited for 28 days from 2 November to 30 November 2016.

A public Hearing was held on 8 February 2017 as required by the Gateway Determination.

On 18 April 2018, Council resolved to adopt the Planning Proposal and to proceed with the intended amendment to the LEP and DCP controls.

We have additionally been in recent contact with representatives of the Department of Planning responsible for processing the Planning Proposal (on 11 July 2018), and understand the Department is in the final stages of finalising the instrument for presentation to the Minister.

Changes to the planning regime are therefore certain and imminent.

It is therefore considered unreasonable and unnecessary to strictly apply the development standard in these circumstances, particularly as the proposed development is lower in height than the approved development at Nos. 224 – 240 Pitt Street and No. 4 Terminal Place (20 storeys – see **Figures 1 & 2**), is also consistent with the maximum prescribed FSR applicable to the site, and satisfies each of Council’s stated objectives in relation to its desire to increase building heights within the Merrylands centre.

(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:

(b) That there are sufficient environmental planning grounds to justify contravening the development standard.

Comment: The proposal seeks flexibility in application of the development standard, where a breach to the maximum building height is entirely consistent with the maximum 65 metre maximum building height limit drafted and exhibited as part of the Planning Proposal, endorsed by Council, and which is ‘certain and imminent’ to be adopted by the Department of Planning.

The draft maximum building height limit is the culmination of a number of strategies and inquisitions into appropriate building height and density within the Merrylands centre. The maximum building height of the proposed development at 61 metres (RL 78.05), which represents an approximate 15% variation to the development standard. The design provides appropriate allowance for both structure and minimum floor to ceiling heights for each of the commercial and residential floors to be achieved, and is considered an appropriate response to the site’s context adjacent the Merrylands Train Station and bus interchange, and the Merrylands centre’s shopping precinct.

The resultant development is also noted to be consistent with the maximum prescribed FSR for the site. Whilst this same gross floor area could be achieved by a building that would be compliant with the prescribed maximum building height, the proposed development is considered a better planning outcome, with more slender tower elements promoting a greater number of units being able to achieve solar access and natural cross ventilation. Owing to the more slender design, 100% of apartments are able to receive direct sunlight at mid-winter to a portion of their living rooms and private open spaces between 9am and 3pm.

The approved ‘Concerto’ development at Nos. 224 – 240 Pitt Street and No. 4 Terminal Place is 20 storeys in height, with a maximum RL 79.7. The adjoining site to the south, identified as No. 254 Pitt Street, has an exhibited maximum building height of 86 metres (26 storeys) (see **Figures 1 & 2**).

The proposed development is for an 18 storey building with communal open space atop the roof, with a maximum building height of 61 metres at RL 78.05, which is less than the height of the approved Concerto development.

The proposed development is consistent with the desired maximum height for development upon the site (illustrated in exhibited materials accompanying the Merrylands Station and McFarlane Street Precinct Planning Proposal), is consistent with the scale of intended buildings upon adjacent sites within the Merrylands centre, and is able to demonstrate that a better planning outcome is achieved by providing a more slender tower form to achieve the available maximum floorspace. It is therefore suggested that an appropriate degree of flexibility in application of the current development standard should be applied in these circumstances.

Adoption of the amended controls for building height are certain and imminent.

The approved Concerto immediately adjacent the subject site which also has the role of reinforcing the Pitt Street and Terminal Place corner, and access to the principle transport interchange for the Merrylands town centre, has been approved at 20 storeys in height (see **Figures 1 & 2** over page). The proposed development at 18 storeys (plus rooftop terrace), is consistent in scale with the adjoining building and further reinforces this significance entry to the centre's transport interchange.

(4) Development consent must not be granted for development that contravenes a development standard unless:

(a) The consent authority is satisfied that:

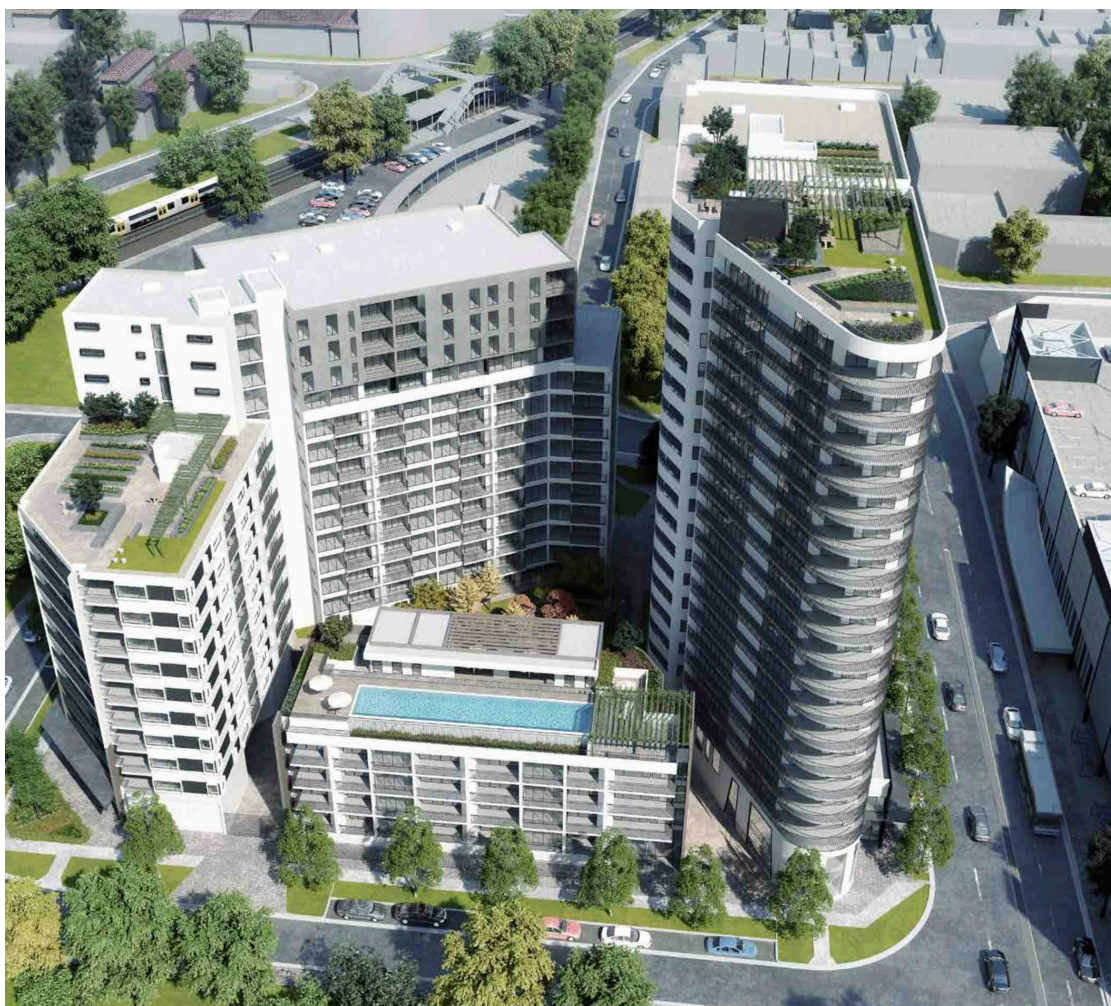
- (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
- (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*

(b) the concurrence of the Director-General has been obtained.

Comment: The objectives of the building height control are:

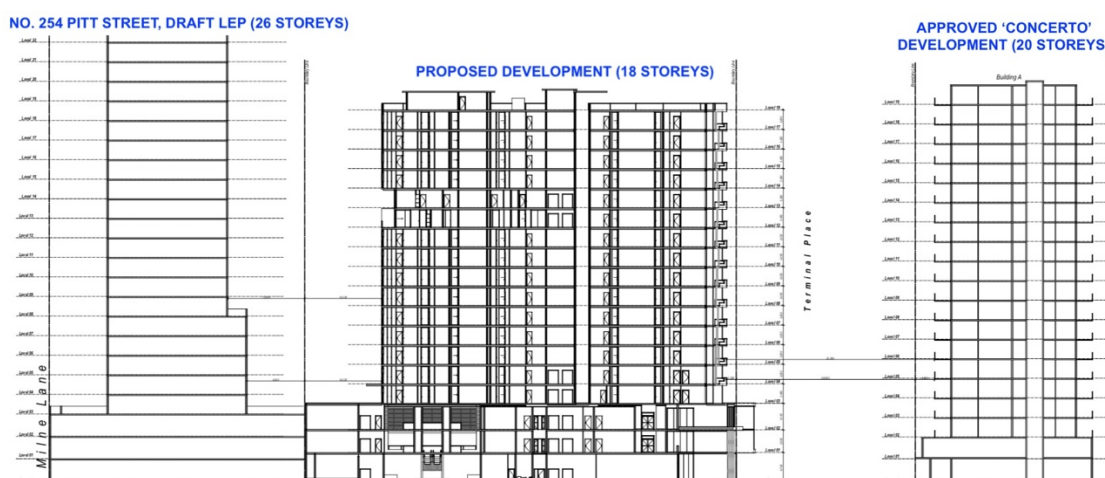
- (a) to minimise the visual impact of development and ensure sufficient solar access and privacy for neighbouring properties,*
- (b) to ensure development is consistent with the landform,*
- (c) to provide appropriate scales and intensities of development through height controls.*

All of the stated objectives are satisfied by the proposed development. The intended development is consistent with the desired future height of buildings within the town centre, adequately setback from adjoining buildings by allowing a minimum 24 metre building separation, consistent with building separation and visual privacy requirements of the Apartment Design Guide, and is consistent with the maximum density prescribed by Council for development of the site.



Figures 1 & 2

Approved 20 storey Concerto development (above); and development in context with approved Concerto development and proposed building 26 storey building at No. 254 Pitt Street to the south (below).



The development is consistent with the natural landform, and in urban design terms, reinforces the

corner treatment of the street block. The scale and intensity of development is consistent with the desired future character of this area, and has exceptional access to the facilities this centre has to offer, including public transport accessibility to much of the Sydney metropolitan area.

The site is zoned B4 Mixed Use. The relevant objectives of the zone relating to the proposed development are as follows:

- *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.*
- *To facilitate a vibrant, mixed-use centre with active retail, commercial and other non-residential uses at street level.*
- *To encourage the development and expansion of business activities that will strengthen the economic and employment role of the Merrylands town centre.*

The proposed development is consistent with these objectives, promoting a mixture of compatible land uses, an appropriate density of commercial and residential housing densities to support the Merrylands centre and maximise public transport usage, exhibits a variety of housing types consistent with demand in the locality, and an appropriate design quality to complement the desired future character of this high density precinct. The proposed resident population will assist in supporting vitality of this major centre.

(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.

Comment: The contravention raises no matters of State or regional significance. It is considered that as the proposal is consistent with the desired future character of development in the precinct, there is no public benefit in maintaining the development standard given the nature of the variation proposed, being consistent with the exhibited standard, and the certainty and imminence of proposed changes to the Merrylands centre's planning regime.

No other matters are required to be taken into consideration by the Director-General.

(6) Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living if:

(a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or

(b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.

Comment: The proposal is not for contravention of a subdivision control.

(7) After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).

Comment: The consent authority will keep a record of the determination.


(8) This clause does not allow development consent to be granted for development that would contravene any of the following:

(a) a development standard for complying development,

(b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,

(c) clause 5.4.

Comment: The proposal is not complying development. The development standard does not arise from the regulations in connection with BASIX. The standard does not arise from Clause 5.4 or any of the other exclusions listed.



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