

Attachment C

Clause 4.6 Variation



**WRITTEN REQUEST PREPARED PURSUANT TO
CLAUSE 4.6 OF SYDNEY LOCAL ENVIRONMENTAL
PLAN 2012 IN RELATION TO A VARIATION WHICH IS
SOUGHT TO THE DEVELOPMENT STANDARD
CONTAINED IN CLAUSE 6.25(3) OF SYDNEY LOCAL
ENVIRONMENTAL PLAN 2012**

**Submitted in Support of a Development Application
for LLCQ Project at 174 -186 & 200A George Street
and 33-35 Pitt Street, Sydney**

**Prepared for
Lendlease Development Pty Ltd**

**By
BBC Consulting Planners**

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1. Introduction

This written request has been prepared as part of a development application, lodged pursuant to Section 78A of the Environmental Planning and Assessment Act 1979, for the Lendlease Circular Quay (LLCQ) project (“the proposed development”) at the LLCQ site at 174 – 186 and 200A George Street and 33-35 Pitt Street, Sydney (“the site”).

This clause 4.6 request has been prepared in relation to a potential non-compliance with development standards contained in clause 6.25(3) of SLEP 2012.

Clause 6.25(3) provides that development consent may be granted to the erection of a building with a maximum height of 248 metres on up to 25% of the area of site and 238 metres on up to 12% of the area of the site. The SDCP 2012 contains further details on the height control referring to a maximum building height of in metres and RL of 248 metres or RL 250.8 metres and 238 metres or RL 240.8 metres.

Clause 5.6 envisages and allows equipment for servicing the building (such as plant, lift motor rooms, fire stairs and the like) to be contained in or supported by the roof feature. However, as the definition of building height does not specifically exclude architectural roof features or plant and lift overruns etc from inclusion in the calculation of height, except for the terms of clause 5.6, the proposal may result in a technical variation from the development standard.

Clause 4.6 allows approval to be granted to a development application where a proposal contravenes a development standard in the SLEP 2012.

The objectives of clause 4.6 are:

- (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.”*

This written request addresses the requirements of clause 4.6.

Clause 6.25 of SLEP 2012 states:

6.25(3) Despite clause 4.3, development consent may be granted to the erection of a building with a maximum height of:

- (a) *200 metres on up to 33% of the area of block 1, or*
- (b) *155 metres on up to 42% of the area of block 2, or*
- (c) *185 metres on up to 24% of the area of block 3, or*
- (d) 248 metres on up to 25% of the area of block 4 and 238 metres on up to 12% of the area of that block.**

The LLCQ site is block 4.

2. Clause 4.6

Clause 4.6 of Sydney Local Environmental Plan 2012 provides (in part):

- “(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*
 - (b) that there are sufficient environmental planning grounds to justify contravening the development standard.*
- (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 Secretary has been obtained.*
- (5) In deciding whether to grant concurrence, the Secretary 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 Secretary before granting concurrence.”*

The matters raised above are addressed below in Section 4 of this submission.

3. Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case and are there sufficient planning grounds to justify contravening the standard?

3.1 Extent of non-compliance

The proposed development has the following parts of the building that are above the maximum building height for the eastern part of the site of 248 metres (RL 250.8 metres):

The architectural roof feature and the plant screened by this feature have a height of 263 metres (RL 265.8). This equates to a 15-metre departure from the maximum height or 6%. As the Sydney LEP 2012 definition of building height does not specifically exclude architectural roof features or plant from inclusion in the calculation of height, the proposal results in a technical variation from the development standard.

3.2 Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case?

Compliance with the development standard is considered unreasonable and unnecessary in the circumstances of this case for the following reasons:

Consistent with the objectives of the architectural roof feature controls

Clause 5.6 of SLEP 2012 deals with architectural roof features and has the following objectives:

- (a) to allow minor architectural roof features to exceed height limits,*
- (b) to ensure that any architectural roof feature does not cause an adverse visual impact or adversely affect the amenity of neighbouring premises,*
- (c) to ensure that architectural roof features are considered in the design of a building and form an integral part of a building's design.*

Clause 5.6 allows development that includes an architectural roof feature to exceed the height limit may be carried out. The roof feature satisfies the objectives and provisions of this clause.

Roof elements integrated into the design of the building

The architectural roof feature has been designed as an integral part of the building with its design and form responding positively to the comments of the architectural design competition jury. The expression of the architectural roof feature is achieved by the extension of a transparent glass façade, against the silhouette of the remaining core beyond.

The feature is minor in scale relative to the building and provides an appropriate termination to the building.

Minor degree of non-compliance

The degree of non-compliance is considered minor at 6%.

3.3 Are there sufficient environmental planning grounds to justify contravening the development standard?

The proposal is entirely consistent with the objectives and requirements of relevant planning instruments and development standards and will result in no significant adverse environmental planning impacts. The inherent characteristics of the site, including its size, nature of surrounding development, make the proposal eminently suitable and entirely justifiable on environmental planning grounds. The non-compliance results in an improved architectural form and is a positive addition to the skyline of the CBD.

The elements that do not comply with the building height control are at a level that will not be perceptible from pedestrian level, and will not impact on the adjacent heritage items. The roof elements are consistent with the objective of view sharing and does not result in a loss of views from adjacent developments.

There is a complete absence of environmental harm associated with the minor non-compliance of the proposal.

3.4 Has this written request adequately addressed the matters required to be demonstrated by sub-clause (3)?

It is considered that the development adequately addressed the matters set out in Clause 4.6(3) as required by Clause 4.6(4)(a)(i).

4. Is the development in the public interest?

Clause 4.6(4)(a)(ii) specifies that a development will be in the public interest if it is consistent with the objectives of particular development standards and the objectives for development within the zone in which the development is proposed to be carried out.

It is considered that the development will be in the public interest for the following reasons.

4.1 Consistency with the objectives of the height standard

The objectives of the height development standard are (relevantly)

- (a) to ensure the height of development is appropriate to the condition of the site and its context,*
- (b) to ensure appropriate height transitions between new development and heritage items and buildings in heritage conservation areas or special character areas,*
- (c) to promote the sharing of views,*
- (d) to ensure appropriate height transitions from Central Sydney and Green Square Town Centre to adjoining areas,*

The objective of clause 6.25 height control is *to provide for additional building height on parts of certain sites (within the area bounded by Alfred Street, Pitt Street, Dalley Street and George Street (known as the “APDG block”)) if the development of the site provides for publicly accessible open space, lanes and other links through the site.*

It is considered that the development is consistent with these objectives in every regard.

For the reasons outlined in Section 3.2 above, it is considered that the development achieves design excellence and is appropriate in the context.

4.2 Consistency with the objectives of the zone

Objectives for the B8 Zone are:

- To recognise and provide for the pre-eminent role of business, office, retail, entertainment and tourist premises in Australia’s participation in the global economy.*
- To provide opportunities for an intensity of land uses commensurate with Sydney’s global status.*
- To permit a diversity of compatible land uses characteristic of Sydney’s global status and that serve the workforce, visitors and wider community.*
- To encourage the use of alternatives to private motor vehicles, such as public transport, walking or cycling.*
- To promote uses with active street frontages on main streets and on streets in which buildings are used primarily (at street level) for the purposes of retail premises.*

It is considered that the development is totally consistent with the objectives of the zone.

5. Conclusion

Having regard to the above, it can be concluded that the proposed non-compliance does not undermine or frustrate the underlying objective of the standard. The non-compliance also gives rise to no significant adverse environmental impacts.

On the grounds stated above, it is considered that strict compliance with the development standard is unreasonable and unnecessary in the circumstances of the case.

Further, consistently with the objectives of clause 4.6, it is considered that strict adherence to the development standards for this development is not warranted and relaxing the standards results in a better development.