

# **Attachment B**

**Clause 4.6 Variation Request**

## Clause 4.6 Variation

### 1.0 Introduction

This is an application to vary a development standard under clause 4.6 – Exceptions to Development Standards of the Sydney Local Environmental Plan 2012 (SLEP 2012). The development standard to be varied is the maximum height of buildings (HOB) applicable to the subject site under Clause 4.3 of the SLEP 2012.

The Development Application (DA) submitted to Council seeks consent for additions and alterations to an existing building including a green roof located on the upper roof level comprising extensive planting, decking, glass balustrade, an aluminium stair case, and relocation of aerial and satellite dish to the lower roof level.

The subject site is located at 65 Cowper Wharf Roadway, Woolloomooloo, and comprises an existing five storey mixed use building, with non-residential uses on the ground floor and four storeys of residential apartments above. Level 4 currently occupies the penthouse apartment, in which this application relates to. The site is located on a corner lot, bounded by Cowper Wharf Road to the north, McElhone Street to the east, Dowling Street to the west, and a residential apartment building (4-16 Dowling Street) to the south. The site is not a listed heritage item, however is located within the Woolloomooloo Heritage Conservation Area, and identified as a *neutral* item of heritage significance.

Under Clause 4.3 of SLEP 2012, the maximum building height for the subject site is 15m. The proposal will result in a maximum HOB of 17.04m. This results in an increase of 2.04m above the maximum HOB development standard under the SLEP 2012 (13.6% variation).

It should be noted in 2011, subject to development consent found in D/2011/73/K, the site was approved for a maximum building height of **15.94m**. Based on this, the proposed development would result in an increase of **1.1m** above the approved HOB, which would result in a minor variation of **6.9%**.

In preparing this Clause 4.6 request, Architectus and Eeles Trelease Pty Ltd have taken into account the following principles in the *Land and Environment Court and the Court of Appeal: Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 1009; Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 and Four2Five Pty Ltd v Ashfield Council [2015] NSWCA 248; and Tenacity Consulting v Warringah Council [2004] NSWLEC 140*. It is considered that this request is consistent with the requirements of Clause 4.6 of the SLEP 2012 and the legal principles established by the above cases.

### 2.0 Planning instrument, development standard and proposed variation

The subject site is located within the City of Sydney LGA and is subject to the SLEP 2012. The site is zoned B4 Mixed Use. Under the SLEP 2012 the objectives of the B4 Mixed Use Zone are:

- *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 ensure uses support the viability of centres.*

This Clause 4.6 Variation seeks to vary the applicable maximum HOB applicable under Clause 4.3 of the SLEP 2012 as identified on the Height of Buildings Map.

The objective to the development standard is contained in Clause 4.3(1) and is reproduced below:

- *To ensure the height of development is appropriate to the condition of the site and its context*

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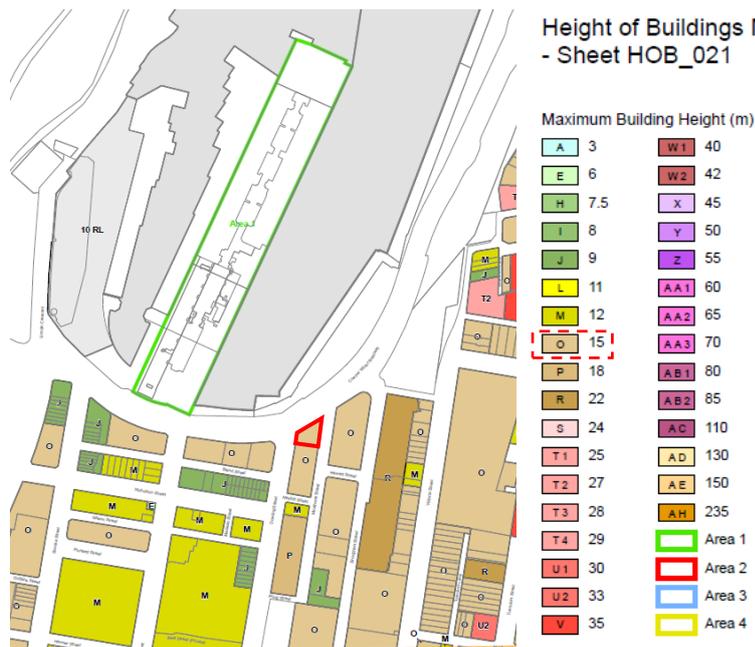
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- To ensure appropriate height transitions between new development and heritage items and buildings in heritage conservation areas or special character areas
- To promote the sharing of views
- To ensure appropriate height transitions from Central Sydney and Green Square Town Centre to adjoining areas

Clause 4.3 of SLEP 2012, establishes a maximum HOB on the site of 15m as shown in Figure 1 below.



**Figure 1 - Maximum Height of Buildings Map**  
LEP mapping showing subject site outlined in red with a maximum building height of 15m (outlined in red)

The proposed maximum height for the proposed development is 17.04m (RL 19.61). This will increase the overall building height by 2.04m, or a variation of 13.6%.

In 2011, the consent was approved to increase the maximum building height of 15.74m (RL 18.31). In 2015, Council further approved a 200m increase to the maximum building height of 15.94m (RL 18.51).

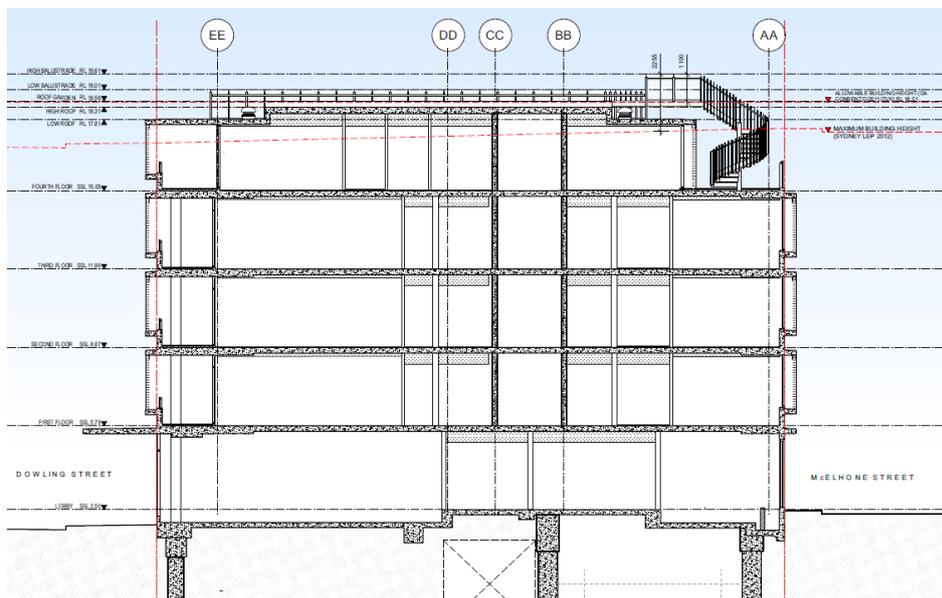
Based on the above, the proposed development will increase the overall building height by 1.1m, from the approved building height (subject to DA consent D/2011/73/K), or a variation of 6.9%.

Table 1 (overleaf) below provides a summary of the existing and proposed building heights for the site.

**Table 1 - Building heights summary**

Existing building height	Lift overrun	18.51 RL
	High roof	18.31 RL
	Low roof	17.81 RL
Proposed maximum building height	High Balustrade	19.61 RL
	Low Balustrade	19.01 RL
	Roof Garden	18.56 RL
Maximum HOB (SLEP 2012)		15m
Exceedance		2.04m
Variation		13.6%

Moreover, Figure 2 shows a section plan of the proposed development including the SLEP 2012 maximum height limit, and maximum approved height in relation to the proposed height variation.



**Figure 2 – Section of the proposed development**

The area of the building to which this application relates to is shown in red. It relates to the Level 4 Penthouse apartment, and the roof of 65 Cowper Wharf Roadway, Woolloomooloo.

In determining at what point the maximum building height should be measured to and from, the definition of building height as contained within the SLEP 2012 has been applied, which is as follows:

*building height (or height of building) means:*

*(a) in relation to the height of a building in metres—the vertical distance from ground level (existing) to the highest point of the building, or*

*(b) in relation to the RL of a building—the vertical distance from the Australian Height Datum to the highest point of the building,*

*including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like.*

Based on the above, this means that other elements on the rooftop such as the antennae and satellite dish are excluded from the definition of building height provided in the SLEP 2012.

### **3.0 Existing streetscape and surrounding green roofs**

The subject site is located on the southern side of Cowper Wharf Roadway, Woolloomooloo, east of Dowling Street, and west of McElhone Street.

To the north of the site is Sydney Cove (the harbour), and the Woolloomooloo Finger Wharfs (to the north-west), which provides a significant entertainment and dining precinct including tourism accommodation, restaurants, and residential apartments. Immediately adjoining the site to the south is a 2-4 storey residential flat building at 4-6 Dowling Street, owned by the NSW Land and Housing Corporation. Directly east of the site, opposite McElhone St, is a 3-storey residential flat building. A Shell service station is located east of the site, opposite Dowling Street.

Importantly, any consideration of any development on the subject site should consider any impacts upon the existing streetscape, including other green roofs within the vicinity of the subject site.

Context, setting and visual impact

The proposed green roof is proposed as an addition to the existing 5-storey mixed use building. From the public domain looking south-west toward the subject site, the external aluminium stair is not immediately visible from the streetscape. Refer to Figure 3.



**Figure 3 – Photomontage of the proposed development**

Looking south-west, at staircase (outlined in red) that forms part of the proposed development providing access for the Level 4 Penthouse apartment

Moreover, looking south-west toward the site, the glass balustrade is setback, and not immediately visible from the streetscape. Refer to Figure 4. This is considered a relatively minor impact upon the public domain as the staircase and balustrade is in keeping with the design of the existing building and character of surrounding development.



**Figure 4 - Photomontage of the proposed development**

Looking south-east at balustrade (outlined in red) on the lower roof level of existing building

Views along the full extent of the Cowper Wharf Roadway façade demonstrate how the new rooftop glass balustrade is setback, similar to the recessed glass face of the building, whilst maintaining the existing style of the iconic corner building.

#### Strategic context and surrounding green roofs

The *Greening Sydney Plan* was adopted by City of Sydney Council in May 2012, focusing on the opportunities to increase canopy cover, landscape amenity and biodiversity within the city of Sydney. A key action identified in the Plan is to *'promote the use of green roofs and green walls on new buildings and development'*.

Furthermore, the *Green Roofs and Walls Policy*, adopted by City of Sydney in April 2014, was prepared in response to the *Greening Sydney Plan*, to support an increase in the installation of green roofs and walls. The Plan sets out actions in which the Council will undertake, to encourage the installation of quality green roofs and walls throughout the city including:

*'Develop evidence and approaches which encourage and support the recognition of green roofs and walls in existing systems including the **development application process**, local planning controls, Environmental Upgrade Agreements and sustainability rating tools for buildings.'*

The proposal will increase useable, private open space in an urban, waterfront setting, whilst improving the amenity and visual appearance of the existing concrete roof of the building. The proposal will also respond directly to the *Greening Sydney Plan* by increasing the number of green roofs and walls in the city.

Identified in Councils Green Roofs and Walls Policy (2014), there are a number of existing green roofs within close proximity to the subject site, particularly along Cowper Wharf Roadway (Woolloomooloo Apartments and Embarkation Park). The proposed green roof at 65 Cowper Wharf Road, 'the Anchorage', would allow a continuation of the character and soft, green,

landscaped roof tops, along Cowper Wharf Roadway, providing an aesthetically, beautiful and sustainable outlook for neighbouring properties.

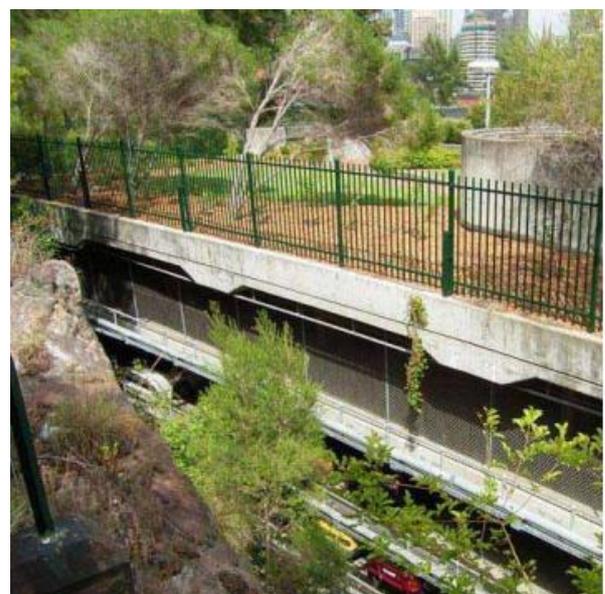
A number of green roofs and walls surrounding the subject site are mapped below in Figure 5 and illustrated in Figures 6-9.



Figure 5 - Surrounding green roofs and walls map  
Green roofs and walls mapping extracted from City of Sydney Green Roofs and Walls Policy (2014) in relation to the subject site (identified by red asterix).  
Source: City of Sydney



**Figure 6 - Woolloomooloo Apartments**  
 The terrace apartments located approximately 250m from the subject site includes a green roof terrace  
 Source: City of Sydney



**Figures 7 & 8 – Embarkation park**  
 Green roof located on top of existing car park structure, located approximately 150m from the subject site  
 Source: City of Sydney



**Figure 9 – Green roof at Wyldefel gardens**

Roof garden located approx. 500m from subject site.

Source: *City of Sydney*

#### 4.0 Application of Clause 4.6

Clause 4.6 of the SLEP 2012 provides a mechanism whereby development standards may be varied. The relevant provisions of clause 4.6 are as follows:

- (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.*
- (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. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*
- (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.*
- (6) – (8)...

Under Clause 4.6, it is considered that there are five crucial requirements which need to be addressed:

1. There must be a written request from the applicant that seeks to justify the contravention of the standard.
2. That written request must justify contravention of the standard by demonstrating, as required by clause 4.3, that:
  - a. Compliance with the development standard is unreasonable or unnecessary in the particular circumstances of the case; and
  - b. That there are sufficient environmental planning grounds to justify contravening the development standard.
3. The consent authority must consider the written request.
4. The consent authority must be satisfied that:
  - a. the written request has adequately addressed the matters that are required to be demonstrated by clause 4.6(3), i.e. compliance is unreasonable and unnecessary and sufficient environmental planning grounds; and

- b. the development is 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.
5. Concurrence to the variation must have been obtained from the Director-General.

It is noted that Planning Circular no PS08–003 Variations to development standards (dated 9 May 2008) provides that the concurrence of the Secretary of the Department of Planning and Environment can be assumed where Councils have adopted Clause 4.6 of the standard instrument. As such, the final requirement identified above can be assumed to be satisfied.

Of relevance in considering Clause 4.6 are the following judgements of the Land and Environment Court:

- *Winten Property Group Limited v North Sydney Council* [2001] NSWLEC 46
- *Wehbe v Pittwater Council* [2007] NSWLEC 827
- *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1009 ('Four2Five No 1')
- *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90 ('Four2Five No 2')
- *Four2Five Pty Ltd v Ashfield Council* [2015] NSWCA 248 ('Four2Five No 3')

Consideration of these judgements provides the following key principles which assist in the application and assessment of variations to development standards under Clause 4.6:

- a) Where the objectives are expressly and clearly stated in the controls, those are the relevant objectives for the purposes of clause 4.6 (paragraph [57] in Four2Five No. 1);
- b) For the purposes of clause 4.6(3)(b), the 'sufficient environmental planning grounds' have to be particular to the circumstances of the proposed development on the site (paragraph [60] in Four2Five No. 1); and
- c) Although the five methods of establishing that compliance with a standard is unreasonable or unnecessary as identified by Preston J in *Wehbe v Pittwater Council* [2007] NSWLEC 827 remain relevant, something more than demonstrating that the objectives of the standard can be achieved (referred to as Method 1 in *Wehbe*) is required in order to satisfy clause 4.6(3)(a). This is because the test of achievement of objectives is now separately addressed in clause 4.6(4)(a)(ii).

With regards to the above, Method 1 in *Wehbe v Pittwater Council* [2007] NSWLEC 827 requires a demonstration that the objectives of the relevant development standard are achieved notwithstanding the proposed non-compliance with the numerical standard.

As noted above, a consequence of the Four2Five decisions is that it is now necessary to demonstrate something more than achieving the objectives of the standard. This means that if a development that contravenes the development standard will achieve the objective of the development standard to a greater degree than a development that complied with the standard, then that variation would satisfy the requirements of clause 4.6.

## 5.0 Assessment of the proposed variation

An assessment of the proposed variation is provided below against the above identified requirements of Clause 4.6 of the SLEP 2012.

### A written request must be provided

This document is provided on the behalf of the applicant as a written request which seeks to justify contravention of the standard.

### Compliance with the standard is unreasonable or unnecessary in the circumstances of the case

It is considered that compliance with the standard is unreasonable or unnecessary in the circumstances of the case for the following reasons:

- The site is ideally located, in the locality of Woolloomooloo, with extraordinary views to a number of Sydney landmarks (Sydney Cove, Sydney Harbour Bridge and CBD skyline), which requires a design response that will allow these views to be enjoyed and celebrated.
- The site is positioned on a corner lot, with a number of varied building heights surrounding the site, requiring a best practice urban and sustainable design response to the treatment of the roof, creating a more pleasant, and attractive outlook from surrounding buildings.
- This variation in height achieves the objectives of Clause 4.3(1), as the additional height increase takes advantage of the sites context, whilst ensuring there are no unacceptable impacts on the character of the area, surrounding heritage items, or view sharing.
- Development confined to compliance with the HOB standard is impossible to achieve as the current height of building already exceeds the SLEP 2012 maximum height of building development standard by **0.74m**. At **17.04m**, the height of the proposed balustrade exceeds the SLEP 2012 HOB development standard by **2.04m**, representing a variation of **13.6%** above the development standard. Clause 4.6 is therefore the enabling clause to allow the installation of a quality green roof on the subject site.
- By not allowing an increase in height for the installation of a green roof would result in a poor urban design outcome for the site, as it would not take full advantage of the sites exceptional attributes including context, locality, views, accessibility. Critically there a limited negative environmental outcomes resulting from the proposal which would justify its refusal.
- It is also important to note Councils Green Roofs and Walls Policy and Implementation Plan (2014), in which Council adopted to encourage an increase of green roofs in the City of Sydney local government area. This proposal directly responds to Council's policy.
- The proposal, inclusive of the minor height of building variation, is a superior planning outcome to what would be achieved by a strictly complying development. An increase in the maximum building height would allow many additional benefits from the installation of a green roof. These benefits are referenced in Council's Roofs and Walls Policy (2014) and identified below.
  - o Increasing amenity and useable private open space
  - o Visual advantage – creating a more pleasant view from other buildings
  - o Reducing the urban heat island effect
  - o Reducing heating and cooling costs
  - o Prolonging lifespan of the roof
  - o Improving air quality in the locality
  - o Improve water runoff management
  - o Increase biodiversity

There are sufficient environmental planning grounds to justify contravening the development standard

It is considered there are sufficient environmental planning grounds to justify contravening the development standard:

- The building will continue to function as a mixed-use building, with retail along the ground floor and residential above, consistent with the objectives of the B4 mixed-use zone.
- The proposal is appropriate in the context of Woolloomooloo locality and character of Cowper Wharf Roadway, and surrounding green roof development.
- The breach in additional height does not add to the visual bulk and scale of the building from the public domain.
- View impacts are minimal, given the context of the surrounding environment and outlook. Surrounding residents will still achieve a degree of view sharing, as detailed in the SEE and supporting View Impact Assessment.
- Overshadowing impacts are minimal and solar access is retained to adjoining properties to the south and east.

*Particular nature of the subject site*

The subject site is considered to be located in an extraordinary location in relation to the sites context, locality, accessibility and views. Refer to Figures 10-13.



Figure 10 – The roof top, looking north-west  
Looking north-west from the roof top of the subject site with views of Woolloomooloo Wharf and Sydney Harbour Bridge



Figure 11 – The roof top, looking west  
Looking west from the roof top of the subject site toward Sydney CBD skyline

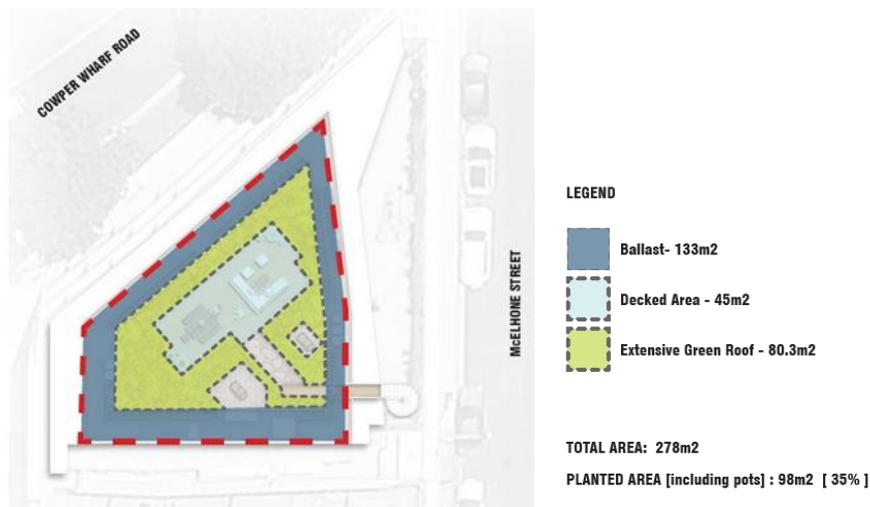


Figure 12 – The roof top, looking east  
Looking east from the roof top of the subject site.



Figure 13 – The roof top, looking south  
Looking south from the roof top of the subject site.

As a result, a best practice, sustainable and urban design response has been considered for the site, which provides the addition of an extensive and high quality green roof system to the existing mixed-use building. The intention of the green roof is to service the current Level 4 Penthouse apartment, which will benefit from highly valuable views to the harbour (north), including Sydney Harbour Bridge (north-west) and CBD skyline (west). To achieve this, as well as ensure that surrounding development continues to maintain a high level of amenity, privacy, sun access and shared views, the green roof has been carefully designed on the upper roof level, setback from the property boundary, by the lower roof level, along with low fibreglass pots, solar panels and glass balustrade detailing. The upper roof level will comprise a total of 98 square metres (35%) of landscaping and planting, and 45 square metres of composite decking (refer to Figure 14).



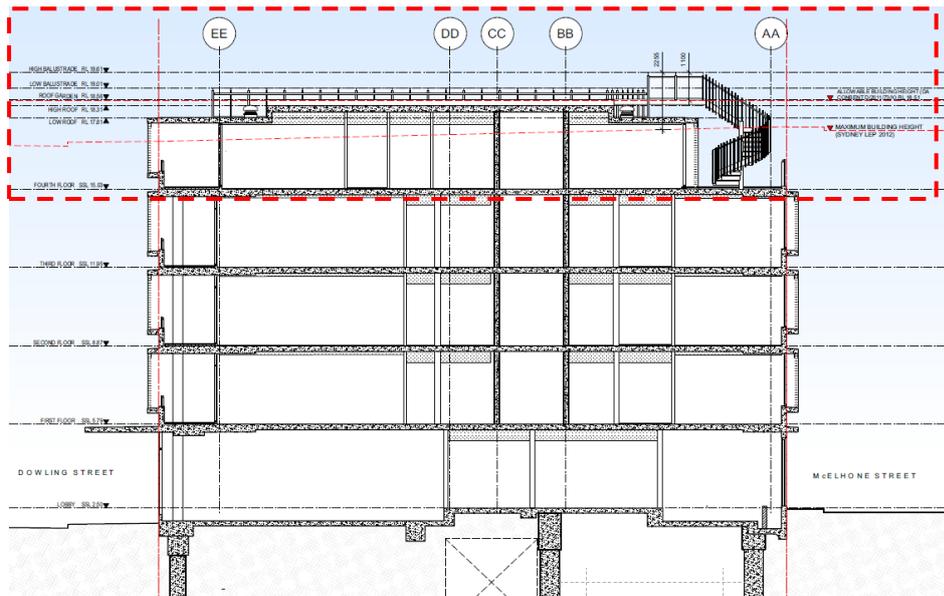
**Figure 14 - Roof plan**

Landscape concept design showing key plan and breakdown of planted areas

**Height**

As a result of treating the existing roof with extensive planting, decking, and glass balustrade, the proposal results in a marginal non-compliance in relation to the maximum HOB for the site.

At 17.04m, the height of the proposed new green roof (namely the balustrade) exceeds the maximum HOB development standard by 2.04m, representing a variation of 13.6% above the standard. Refer to Figure 15 below.



**Figure 15 – Section plan**

The area of the building to which this application relates to is shown in red

Based on the above, it is impossible to comply with the HOB development standard, as the height of the existing building already exceeds the maximum HOB pursuant to Clause 4.3 in Sydney LEP 2012.

Clause 4.6 is therefore the relevant clause and enabling planning pathway to allow the installation of a quality green roof, providing maximum use of the roof top, consistent with Council's Green Roofs and Walls Policy (2014).

Complying development provides an inferior design and planning outcome, inconsistent with Council's Green Roofs and Walls Policy

Based on the above, and the relatively minor impact of the proposal, it is considered that complying with the HOB development standard (15m) or approved HOB subject to D/2011/73/K (15.94m), would not utilise the site to its maximum potential.

Specifically, the proposal would respond to actions and objectives outlined in Council's policy including:

*Greening Sydney Plan (2012):*

- Promote the use of green roofs and green walls on new buildings and development;
- Increase the number of green roofs and walls in the city; and

*Green Roofs and Walls Policy (2014):*

- Slowing and cleaning stormwater
- Reducing impacts of the urban heat island effect
- Creating additional space for urban greenery, food production and private open space
- Improving air quality
- Improving amenity and liveability of the city

- *Increasing the absorption of carbon dioxide*
- *Increasing habitat to support biodiversity*
- *Improving building efficiency through heating, cooling and sound insulation*
- *Improving the efficiency of solar panels; and*
- *Extending roof life.*

The proposal is therefore considered acceptable and appropriate in respect to the Sydney Greening Plan and Green Roofs and Walls Policy, and Implementation Plan.

The consent authority must consider the written request

This written request is to be provided by the applicant to the City of Sydney Council, satisfying the requirements of this part.

Consent authority is satisfied that the written request has adequately addressed the matters that are required to be demonstrated

It is considered that sufficient detail has been provided within this document which adequately addresses the matters which are required to be demonstrated.

Consent authority is satisfied that development is 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

*Objectives of the zone*

Objectives of the B4 Mixed Use zone are:

The objectives of the B4 Mixed Use Zone are provided below:

- *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 ensure uses support the viability of centres*

Based on the above, the proposal will not impact the objectives of the B4 Mixed Use land use zone. The building will continue to serve as non-residential along the ground floor, with residential apartments above. The green roof will serve as additional useable, private open space for the Level 4 Penthouse apartment. The green roof will provide a practical solution for additional open space in an urban, waterfront context.

From a strategic planning perspective, it would be unreasonable and unnecessary to comply with the HOB development standard, if there are no impacts or design deficiencies associated with that exceedance and when the immediate area benefits from the variation to the control.

The importance of the residential component of development within a B4 Mixed Use Zone is recognised in the Department of Planning's Practice Note, PN 11-002 Preparing LEPs using the Standard Instrument: standard zones, which identifies that *'the residential development component in this zone can form an important element in revitalising and sustaining the area'*.

The green roof will provide a sustainable, urban design solution for the existing roof, which will prolong the lifespan of the roof, and contribute to reducing the heat island effect.

In consideration of this and the relatively minor impact of the proposal, in our opinion it is considered acceptable in the circumstances of the proposal.

*Objectives of the Development Standard*

Objectives of Clause 4.3 Height of Buildings, pursuant to Sydney LEP 2012 are:

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

- (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,*
- (e) *in respect of Green Square:*
  - (i) *to ensure the amenity of the public domain by restricting taller buildings to only part of a site, and*
  - (ii) *to ensure the built form contributes to the physical definition of the street network and public spaces.*

Responses to the relevant objectives are outlined below.

- (a) *to ensure the height of development is appropriate to the condition of the site and its context.*

The height of the proposed development will result in a maximum height of 17.04m. The proposed development considers the urban, waterfront frontage and context of the area and believes the proposed green roof to be consistent with the Woolloomooloo locality, and built form character of Cowper Wharf Roadway.

Given the proposal does not add to the visual bulk or scale of the building, combined with a carefully selected landscaping and materials and finishes palette, we consider the proposal to be appropriate to the condition of the site and its local and surrounding context. Importantly, the negative outcomes of the proposal are modest, achieving reasonable view sharing and minimal overshadowing.

- (b) *to ensure appropriate height transitions between new development and heritage items and buildings in heritage conservation areas or special character areas.*

The site is not a listed heritage item, but is located in the Woolloomooloo Conservation Area. The site is also identified as a neutral item of heritage under SDCP 2012. Due to the particular nature of the site and the recent development, the proposal is not considered to be in opposition to the surrounding Heritage Conservation Area. This is primarily due to the modest addition to the building and that the style is in keeping with the existing building.

- (c) *to promote the sharing of views.*

A View Analysis has been prepared by Eeles Trelease to inform the proposed green roof development and height of building increase at 65 Cowper Wharf Roadway. Refer to Attachment G. This is supported with an assessment using view sharing principles found in *Tenacity Consulting v Warringah council [2004] NSWLEC 140*, para.26-29. Refer to Section 4.5 of the SEE.

A summary of the view assessment is provided below.

Overall, view impacts are considered to be minor, with the proposal resulting in an additional 1.1m in height (based on the approved DA height in 2011). In summary, view analysis shows that:

- Views west to the Sydney skyline are maintained.
- Hard structures, such as the roof deck and aluminium stair, make little difference to the perceived mass.

- The glass balustrade, a soft structure, allows views through to landmarks beyond (refer to Viewpoints 1,2 and 3.)
- Views north to Sydney Harbour are minimally impacted by the proposed garden (refer to Viewpoints 4.1, 4.2 and 5).
- High priority views to the Harbour Bridge (to the north-west) are maintained from the private terrace apartments in the Admiralty Gardens building (67 Cowper Wharf Roadway). Refer to Viewpoint 1.
- Partial views are maintained to the Harbour Bridge from the communal roof terrace of 67 Cowper Wharf Roadway, whilst existing views are already constrained by the developed subject site (approved in 2011, and constructed in 2014). Importantly, Viewpoint 2 is taken at the front edge of the balcony, which is considered to be a lower priority view, as it would not be expected for a person to be at this location for an extended period of time, nor used during all months of the year.

Overall, it is considered that the design of the proposed roof top represents the most feasible and best practice urban design outcome for the site.

#### Public interest

For all the forgoing reasons, Council would be satisfied that, as a consequence of consistency with zone objectives and a superior planning outcome, it is in the public interest to vary the standard.

## 6.0 Conclusion

This application sets out all of the material required by the Council to allow it to be satisfied that the variation request pursuant to clause 4.6 should be upheld.

In summary, those requirements are:

1. *There must be a **written request** from the applicant that seeks to justify the contravention of the standard.*

This application satisfies this requirement.

2. *That written request must justify contravention of the standard by demonstrating, as required by clause 4.6(3), that:*
  - a) ***Compliance with the development standard is unreasonable or unnecessary in the particular circumstances of the case;***
    - The subject site already exceeds the SLEP 2012 maximum HOB development standard, with an approved building height of 15.94m. Therefore, it is impossible for a green roof to comply with the maximum HOB limit (15m), and therefore inhibits the subject site from installing a green roof under the current development standard.
    - There are a number of buildings in close proximity to the site that benefit from the installation of green roofs. As such, the proposal is consistent with the approved green roofs in the area, and in support of Councils Green Roofs and Walls Policy (2014).
  - b) ***There are sufficient environmental planning grounds to justify contravening the development standard***
    - The building will continue to function as a mixed-use building, with retail along the ground floor and residential above, consistent with the objectives of the mixed-use zone.
    - The proposal is appropriate in the context of Cowper Wharf Roadway locality, and nearby green roof development.
    - The breach in additional height does not add to the visual bulk and scale of the building.
    - Solar access is retained to adjoining properties.
    - View impacts are minor and are maintained through the proposed clear glass balustrade. It is important to note, unobstructed views of Sydney Harbour Bridge can still be from the Admiralty Gardens building, from the north portion of the communal roof, as opposed to the south-western end (where view analysis has been undertaken).
3. *The consent authority must consider the written request.*

Having considered this written request Council would be satisfied that the requirements of Clause 4.6 have been satisfied.

4. The consent authority must be satisfied that:
  - a) ***the written request has adequately addressed the matters that are required to be demonstrated by clause 4.6(3), i.e. compliance is unreasonable and unnecessary and sufficient environmental planning grounds; and***

For the reasons set out above, the Council would be so satisfied.

- b) ***the development is in the public interest because it is consistent with the objectives of the particular standard and does not impact the objectives for development within the zone in which the development is proposed to be carried out.***
- The proposal will not alter the objectives of the B4 Mixed Use land use zone. The building will continue to serve as retail and commercial use along the ground floor, with residential apartments above. The addition of the green roof will serve as additional useable, private open space for the Level 4 Penthouse apartment. The green roof will provide a practical solution for additional open space in an urban context.
  - The extent of variation sought is to provide a green roof consistent with Councils Green Roofs and Walls Policy (2014), and surrounding green roofs in the area.
  - Given the unique context of the site and its location, there are no adverse impacts which would arise from the variation, with the exception of minor view impacts at the south-western end of the communal roof terrace at the Admiralty Gardens building (67 Cowper Wharf Roadway). Unobstructed views are likely to be achieved when positioned in the northern portion of the Admiralty Gardens communal roof terrace.
  - The development results in a better urban design and planning outcome than a complying development, or no treatment to the existing roof.

In light of the above, Council can be satisfied that the proposal will achieve each of the relevant objectives in a manner which is better than a development which strictly complied with the standard.

It follows that compliance with the applicable HOB development standard is impossible, unreasonable and unnecessary in the circumstances of the subject site and all components of Clause 4.6 are satisfied.

The applicant requests that the Council concludes that the variation to the development standard is well-founded and should be approved in the particular circumstances of this proposal.