

Attachment D

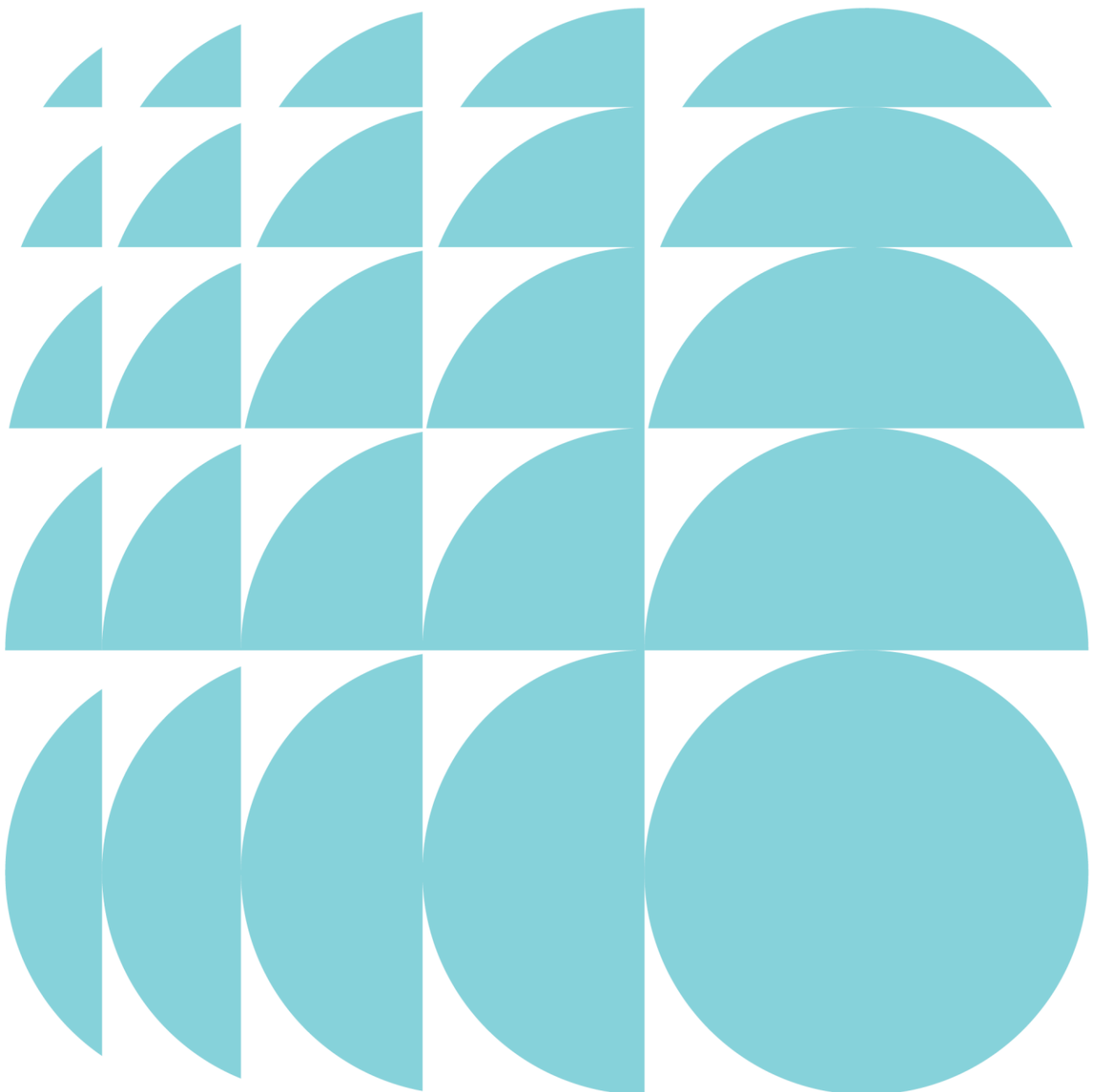
Clause 4.6 Variation Request

**Clause 4.6 Variation - Building Height
Variation**

44-48 O'Dea Avenue, Waterloo
Stage 2 DA – Building A (Lot 6)

Submitted to City of Sydney
On behalf of Crown W48 Pty Ltd

15 April 2019 | 17539



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1.0 Introduction

Clause 4.6 of the *Sydney Local Environmental Plan 2012* (SLEP 2012) allows Council to grant consent for development even though the development seeks to depart from 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.

Assistance on the approach to justifying a contravention to a development standard is taken from the applicable decisions of the NSW Land and Environment Court in:

1. *Wehbe v Pittwater Council* [2007] NSWLEC 827;
2. *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1009;
3. *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118; and
4. *Baron Corporation Pty Ltd v The Council of the City of Sydney* [2018] NSWLEC 1552.

This Clause 4.6 request demonstrates that:

- a) The height variation relates to an encroachment of the proposed Level 4, 5 and Roof level (with a maximum height of RL 46.31m) by approximately 650mm into the southern portion of the site, which is afforded a lower height limit of RL 41.46m. The variation is a result of providing an efficient and consistent residential floorplate arrangement;
- b) The objectives of the height control are achieved notwithstanding the variation in that:
 - The proposal still provides a building with maximum heights that are appropriate for the site and contribute to the definition of the surrounding street network, including a four-storey component with retail shopfronts fronting Archibald Avenue, which is consistent with Lachlan Precinct Strategy within the SDCP 2012;
 - The proposed still provides a lower height component fronting Archibald Avenue has been designed to present a consistent streetscape height with the adjoining building to the west at 11B Lachlan Street, resulting in an appropriate height transition to surrounding areas;
 - Amenity of the public domain is retained as the taller building form maintains its position within the northern portion of the site;
 - There are no impacts on height transitions to any heritage items, conservation areas or special character areas; and
 - Important view corridors, primarily views to the Sydney CBD, are unaffected by the proposal and appropriate building separation has been maintained to ensure sharing of views is promoted.
 - It is noted that the building results in 6 storeys for a small section (unrelated to the variation sought under this Clause 4.6 request) due to the arrangement of levels and the slope of the site, which is technically inconsistent with Section 5.4.3.2 of SDCP 2012 which allows for a maximum of 5 storeys within the northern portion of the site.
- c) There are sufficient environmental planning grounds to justify contravening the development standard, namely:
 - Acceptable solar access to surrounding buildings and the public domain is retained when compared to a building fully compliant with the LEP building envelope and Stage 1 approved envelope;
 - The proposed minor encroachment of Level 5 and the roof terrace results in additional bulk that is essentially imperceptible when viewed from the public domain, due to its minor extension of the north-south

- axis (by approximately 2%) and the location of the encroachment being setback from the street frontage;
and
- An appropriate street-frontage height is retained along Archibald Avenue, while the taller component of the building remains setback from the Archibald Avenue frontage.
- d) The proposal is consistent with the objectives of the height of buildings development standard; and
e) The proposal is consistent with the objectives of the B4 Mixed Use zone.

As per the above, the consent authority can be satisfied that compliance with the height of buildings development standard is unreasonable and unnecessary since the objectives of the control are achieved notwithstanding the non-compliance. Further, the consent authority can also be satisfied that the proposal is in the public interest because it is consistent with the objectives of the height control and is consistent with the objectives of the B4 Mixed Use zone, also described above.

The concurrence of the Secretary of the Department of Planning and Environment (DPE) is also required before the consent authority can grant development consent (cl 4.6(4)(b)). The matters the Secretary is required to consider before providing concurrence have been provided at **Section 4.5**.

This report should be read in conjunction with the supporting material prepared by Silvester Fuller (**Attachment A**).

2.0 Development Standard to be Varied

2.1 Is the Planning Control in Question a Development Standard

The height of building control in Clause 4.3 of the SLEP 2012 is a development standard.

2.2 Relevant Development Standard

The development standard that is sought to be varied as part of this application is clause 4.3 of the SLEP 2012, relating to the maximum building height. It should be noted that the Stage 1 DA (D/2016/1450) was approved with building envelope and accompanying maximum heights of RL 46.31 and RL 41.46 (m AHD) for the site. A separate Section 4.55 application has been submitted to Council to vary the approved building envelope and the proposed exceedance to maximum building height and to ensure consistency between the Stage 1 consent and the Stage 2 detailed proposal.

Clause 4.3 of the LEP is reproduced below in its entirety and an extract of the relevant Height of Buildings Map, to which that clause applies, is reproduced in **Figure 1**. The site is subject to two separate maximum heights. A height of RL 46.31m applies to a part the site fronting Lachlan Place and Tung Hop Street. A maximum height of RL 41.46m is afforded to the rest of the site.

Maximum heights ranging between RL 27.0m and RL 52.15m surround the site.

“Clause 4.3 Height of buildings

- (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.*
- (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.”*

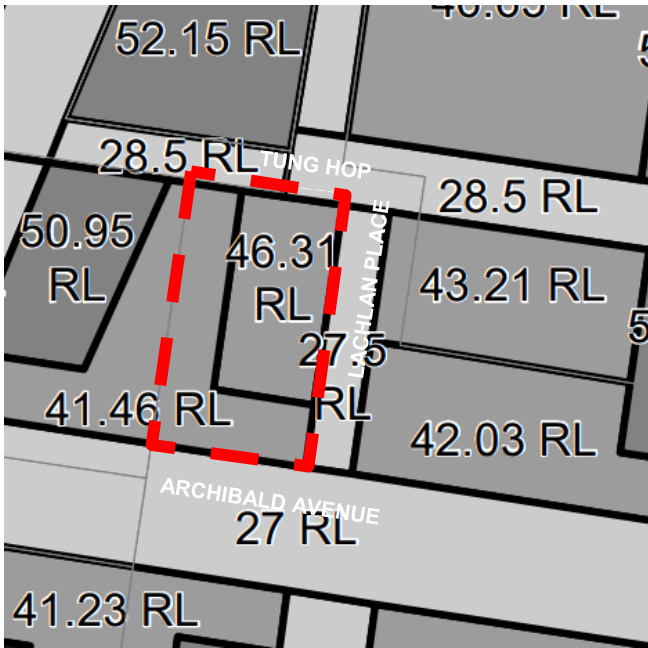


Figure 1 Extract of the LEP maximum building height (site indicated red)

Source: SLEP 2012

2.3 Variation Sought

As illustrated in **Figure 1** above, the site is afforded two different height controls being RL 41.46m and RL 46.31m. This allows for the accommodation of a taller built form within the northern section of the site. The proposed scheme provides a building that largely complies with the site's maximum height controls. The variation sought relates to a small part of the building's floor plate at Levels 4 – Roof within the southern section of the site.

It is noteworthy that the building does not, at any instance, exceed the maximum height control of RL 46.31m. The variation sought under this application is the result of a small part of the building's upper level footprints exceeding the building height control of RL 41.46m within the southern portion of the site only. This is discussed in more detail below. **Section 4** provides further discussion and justification of the height exceedance.

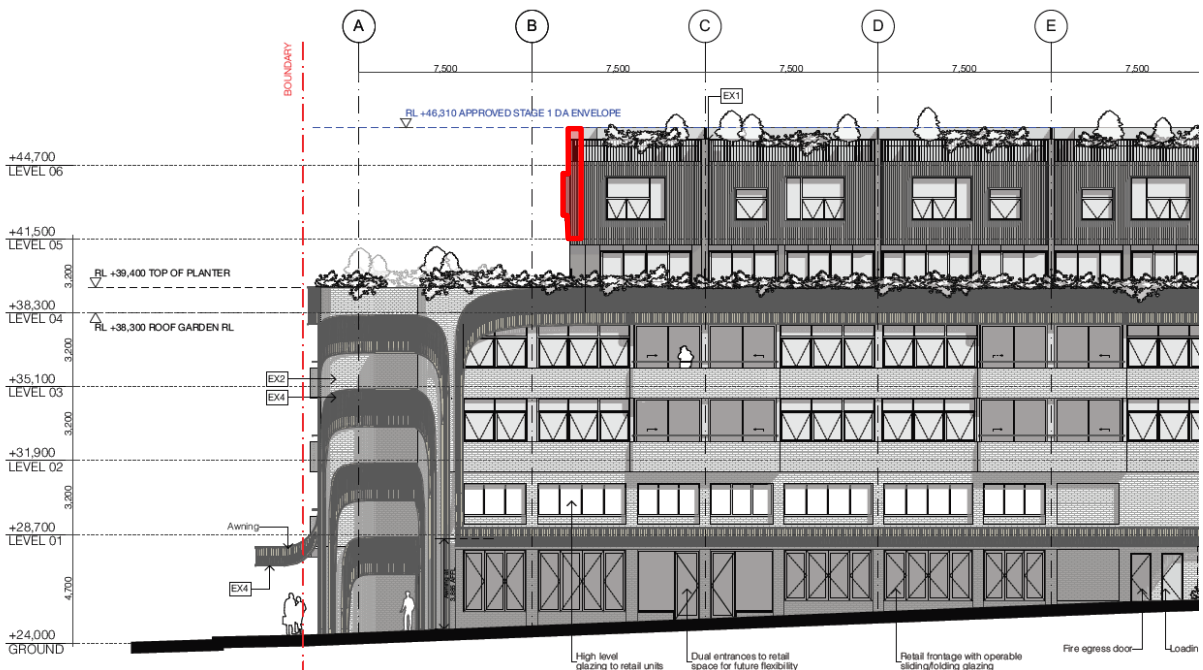


Figure 2 East Elevation with height exceedance shown in red

Source: Adapted from Silvester Fuller

As shown in **Figure 2** on the previous page, a small portion of the building footprint of the Level 4 to Roof Level encroaches into the portion of the site with a lower height limit. The encroachment into the southern lot is by approximately 650mm. Since the Level 5 floor level is RL 41.50m and the height limit is RL 41.46m, the top 40mm of Level 4 is above the height limit along with Level 5 and the roof.

The maximum height of the proposed building is RL 46.30m, meaning for the small section of encroachment, the building exceeds the RL 41.46m height limit by 4.84m, or 11.7%.

The proposed development otherwise complies with the height limits across the site.

3.0 Background and Context to the Variation

3.1 Surrounding Context

The site is situated within the north-eastern extent of the Green Square Renewal Precinct within the City of Sydney Local Government Area (LGA). More specifically, the site falls within Green Square’s Lachlan Precinct area located approximately 1km north-east of Green Square Railway Station and Green Square Town Centre. **Figure 3** below illustrates the context of the site within the wider locality.

The site is accessible from an array of public transport modes provided in proximity to the site, including Green Square Railway Station, the Route 302 and 303 buses along O’Dea Avenue and existing cycle infrastructure including the Green Square to CBD separate cycle route.

Given the location of the site within the broader Green Square Renewal precinct, the site is surrounded by parcels of land that are either undergoing redevelopment and construction or have just recently been completed.

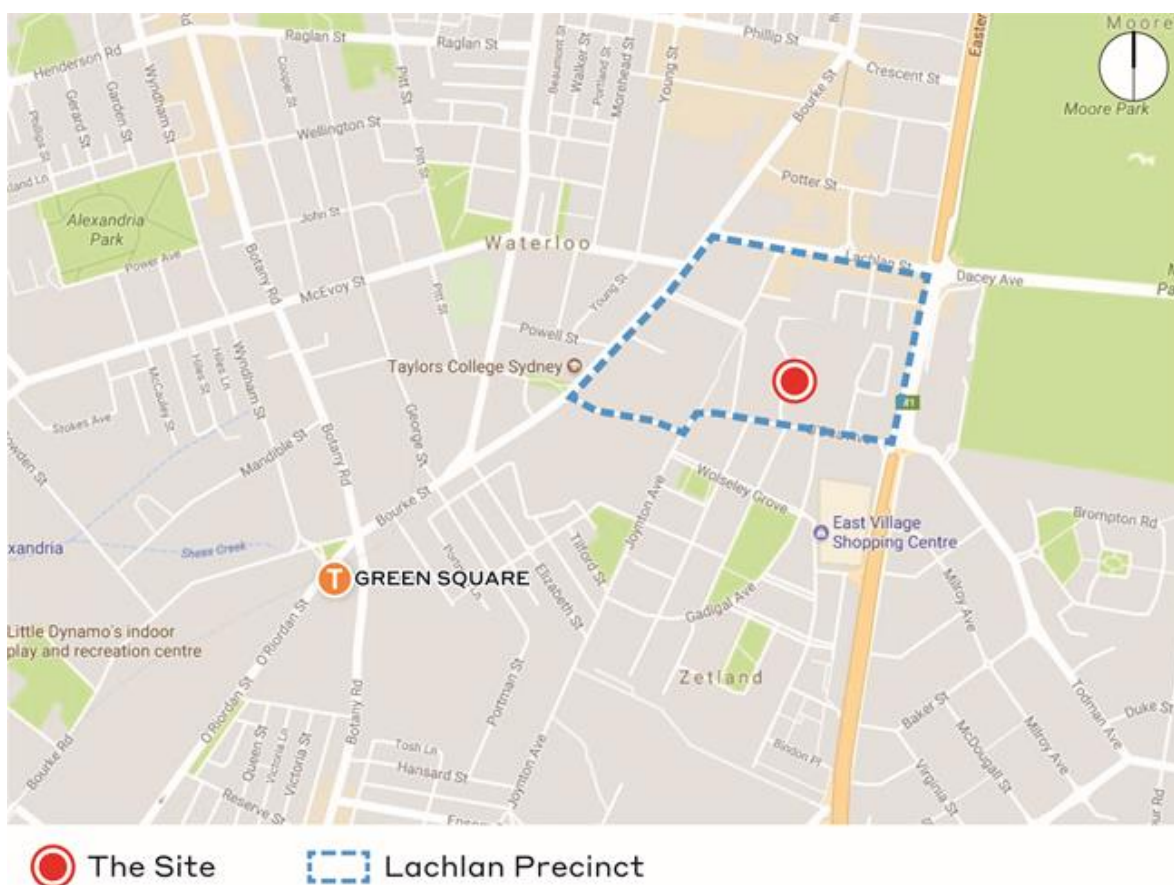


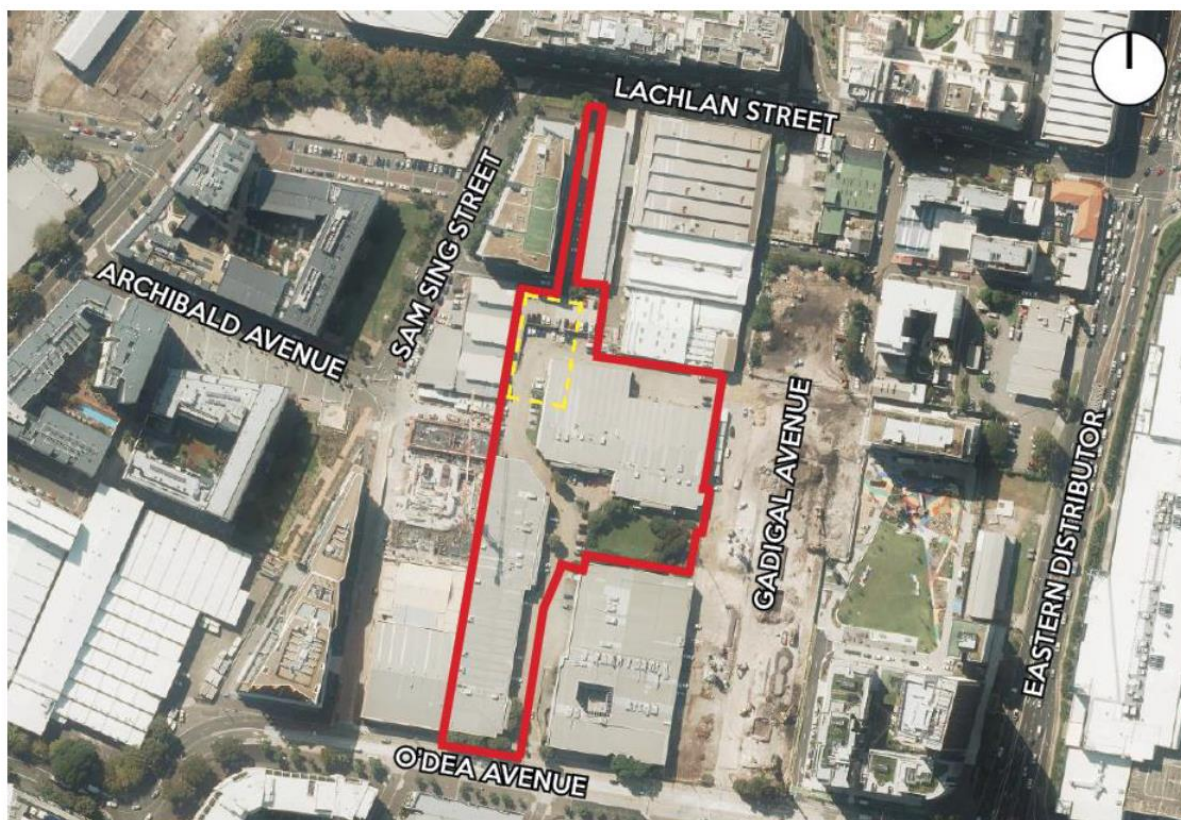
Figure 3 Locational context

3.2 The Site

The site forms a part of a wider land parcel known as 44-48 O'Dea Avenue, Waterloo legally described as SP44338 and Lot 20 in DP 1225160. The site has an approved paper subdivision plan which subdivides the wider land parcel into multiple development lots in accordance with Council's vision for the master planned redevelopment of the Lachlan Precinct.

The proposed development is situated at the north western portion of the wider Stage 1 site, within future Lot 6. The site primarily fronts the proposed Lachlan Place (east) and is also bordered by Archibald Avenue (south) and Tung Hop Street (north).

The western boundary of the site is contiguous with the neighbouring lot (side boundary) of 11B Lachlan Street, Waterloo. This site, formerly a light industrial warehouse, is currently under development with approval for a part two and part seven storey mixed use development comprising 61 residential apartments, 2 retail units and two basement levels of carparking (D/2013/1163). **Figure 4** below identifies the extent of the subject site within the wider Stage 1 land parcel.



Stage 1 Site Boundary
 The Site

Figure 4 Aerial photo of the overall site (outlined red) and Building A development lot (outlined yellow)

4.0 Justification for Contravention of the Development Standard

Clause 4.6(3) of the SLEP 2012 provides that:

4.6 Exceptions to development standards

- (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.*

Further, clause 4.6(4) of the SLEP 2012 provides that:

- (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.*

Assistance on the approach to justifying a contravention to a development standard is also to be taken from the applicable decisions of the NSW Land and Environment Court and the NSW Court of Appeal in:

1. *Wehbe v Pittwater Council* [2007] NSW LEC 827;
2. *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 100;
3. *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118;
4. *Turland v Wingecarribee Shire Council* [2018] NSWLEC 1511; and
5. *Baron Corporation Pty Ltd v The Council of the City of Sydney* [2018] NSWLEC 1552.

The relevant matters contained in clause 4.6 of the SLEP 2012, with respect to the maximum building height development standard, are each addressed below, including with regard to these decisions.

4.1 Clause 4.6(3)(a): Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case

In *Wehbe*, Preston CJ of the Land and Environment Court identified five ways in which it could be demonstrated that compliance with a development standard is unreasonable or unnecessary in the circumstance of the case. His Honour in that case (and subsequently in *Initial Action*) confirmed that the types of ways that it could be shown that compliance with a development standard is unreasonable or unnecessary in the circumstances of the case, was not limited to the five ways identified in *Wehbe*.

While *Wehbe* related to objections made pursuant to State Environmental Planning Policy No. 1 – Development Standards (SEPP 1), the analysis is applicable to variations made under Clause 4.6 where subclause 4.6(3)(a) uses the same language as Clause 6 of SEPP 1 (see *Four2Five* at [61] and [62]).

As the language used in subclause 4.6(3)(a) of the SLEP 2012 is the same as the language used in Clause 6 of SEPP 1, the principles contained in *Wehbe* are applicable to this Clause 4.6 variation request. Specifically, this Clause 4.6 variation request establishes that primarily compliance with the development standard is unreasonable

or unnecessary in the circumstances of the proposed development because objectives of the standard are achieved notwithstanding the non-compliance with the standard (First Way).

4.1.1 First Way: The objectives of the standard are achieved notwithstanding non-compliance with the standard

The objectives of the building height development standard as set out by Clause 4.3(1) of the Sydney LEP 2012 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.*

The proposed development achieves the objectives of Clause 4.3 Height of Buildings as discussed below.

Objective (a): To ensure the height of development is appropriate to the condition of the site and its context

The proposal, inclusive of the variation, achieves the above objective by resulting in an appropriate height regarding the condition of the site and its context. The Building A site is situated at a significant and prominent intersection (between Archibald Avenue and Lachlan Place) within the Lachlan Precinct. The proposed built form will provide a unique building at this key intersection which is consistent with the SDCP 2012 Lachlan Urban Strategy objectives in that it will introduce a variety of building forms that adequately responds to the hierarchy of streets and open spaces. The increase in building height due to the minor protrusion of the southern portion of the taller building volume, does not change how the height of the development responds to the site context, with the taller volume of the building remaining substantially setback from the Archibald Avenue frontage. The proposal, inclusive of height exceedance, addresses and respects the surrounding hierarchy of streets and the intended massing in the SLEP, while allowing for the building to be structurally aligned and providing appropriate internal and external amenity outcomes.

Despite the technical height exceedance, the proposal still delivers a building that is consistent with the height envisaged for the site in context of its transformation to a vibrant mixed-use activity centre. Importantly, this proposed variation will not result in additional storeys (excepting a separate technical variation sought to the SDCP height in storeys control) and will not exceed the maximum GFA allocated to the site under the SLEP 2012 and the Stage 1 DA and does not exceed the overall maximum height of RL 46.31. The proposed variation is minor and integrated with the overall design language and materiality of the building and will not be readily apparent at street level.

Accordingly, the built form (inclusive of the exceedance) delivers a building that continues to be appropriate to the condition of the site and its surrounding context.

Objective (b): To ensure appropriate height transitions between new development and heritage items and buildings in heritage conservation areas or special character areas

The proposed development, inclusive of the variation, achieves the above objective in that there are no heritage items, conservation areas or special character areas surrounding the site.

Objective (c): To promote the sharing of views

The proposed development, inclusive of the variation, achieves the above objective since it will not impact on any significant views. Views to the city are the primary significant views in the Green Square and Lachlan Precinct. The additional massing related to the variation is minor and at a height and location that does not impact the views of

surrounding properties. Furthermore, the building has been designed to achieve compliance with minimum separation distances to promote views sharing.

Objective (d): To ensure appropriate height transitions from Central Sydney and Green Square Town Centre to adjoining areas

The proposed development, inclusive of the variation, achieves the above objective in that the overall height of the building remains the same and provides appropriate transition to the surrounding areas. The proposed variation of the height control is due to the building footprint at upper levels being marginally longer on its north-south axis (by approximately 2%) compared to that envisaged in the SLEP 2012. The extension of the building footprint to the south is of a scale that will not impact the height transition between Central Sydney or Green Square and their surrounding areas.

Objective (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

The proposed development, inclusive of the variation, achieves the above objective in that the tallest part of the building is still vastly restricted to the northern portion of the site. The proposed variation still allows the lower portion of the building to be appropriately setback from Archibald Avenue. Due to the location and minor extent of the variation, any additional massing will be almost imperceptible when viewed from the public domain and additional overshadowing of the public domain is negligible (see **Attachment A**, drawing 440-441). As such, the proposed building, inclusive of the variation, will continue to maintain the amenity of the public domain.

(ii) to ensure the built form contributes to the physical definition of the street network and public spaces.

The proposed development, inclusive of the variation, achieves the above objective as the building will continue to respond to the surrounding street network in a manner consistent to that envisaged by the controls. The lower portion of the building fronts Archibald Avenue, while the taller component remains appropriately setback from Archibald Avenue, defining Lachlan Place as intended in the LEP and DCP controls. Hence the building form at the street edge will continue to positively define and reinforce the street network and public domain of the Lachlan Precinct.

4.1.2 Conclusions on Clause 4.6(3)(a)

In summary, compliance with the maximum height of building development standard is unreasonable or unnecessary in this case, because the proposed development achieves the objectives of the height of building development standard set out within Clause 4.3 of the SLEP 2012:

- The proposal provides a building of the same overall height and in the same location as envisaged by the SLEP 2012 and the SDCP 2012 (Lachlan Precinct), excepting a technical variation sought to the SDCP height in storeys control not strictly related to the height variation sought;
- No heritage items, conservation areas or special character areas are located in the vicinity of the site and therefore none are impacted by the proposal;
- The proposed development does not impact any significant views, particularly views towards the Sydney CBD and has been designed to achieve compliance with minimum separation distances to promote the sharing of views;
- The minor additional massing does not impact the height transition from Green Square Town Centre to adjacent areas, while the stepped form towards Archibald Avenue still provides an appropriate height transition to directly surrounding areas; and
- The proposal restricts the taller form to the northern portion of the site as envisaged in the SLEP 2012 and the SDCP 2012, responding to and defining the street network of the Lachlan Precinct. The location and minor extent of the variation means any additional massing will be virtually imperceptible from the surrounding public domain and will ensure its amenity.

4.2 Clause 4.6(3)(b): Environmental planning grounds to justify contravening the development standard

Clause 4.6(3)(b) of the SLEP 2012 requires the contravention of the development standard to be justified by demonstrating that there are sufficient environmental planning grounds to justify contravening the development standard. The focus is on the aspect of the development that contravenes the development standard, not the development as a whole. Therefore, the environmental planning grounds advanced in the written request must justify the contravention of the development standard and not simply promote the benefits of carrying out the development as a whole (*Initial Action v Woollahra Municipal Council* [24] and *Turland v Wingecarribee Shire Council* [42]). Further, compliance with other planning instruments, such as SEPP65 and the Apartment Design Guide, does not justify non-compliance with the development standard and is not sufficient environmental planning grounds to justify contravening the development standard (*Baron Corporation Pty Ltd v The Council of the City of Sydney* [58]).

In *Four2Five*, the Court found that the environmental planning grounds advanced by the applicant in a Clause 4.6 variation request must be particular to the circumstances of the proposed development on that site. In this instance the relevant aspect of the development is the additional building height that exceeds the development standard. There are sufficient environmental planning grounds to justify contravention of the height development standard in this specific instance including:

- An acceptable built form, visual impact and height transition; and
- An acceptable solar access and overshadowing impact.

These environmental planning grounds are discussed below.

Visual impact and height transition

The building massing envisaged by the SLEP 2012 and approved as part of the Stage 1 development consent reads as a taller volume along Lachlan Place, with a four-storey street frontage height along Archibald Avenue to the south. This massing is intended to help define the street network, by providing a consistent street frontage height to Archibald Avenue and an appropriate height transition away.

The Stage 2 proposal which is the subject of this Clause 4.6 variation request continues to achieve this street definition and height transition. The additional massing along the southern portion of the building is limited to the upper levels of the building and is minor in extent. A setback from the Archibald Avenue frontage of greater than 11m is still achieved despite the variation, meaning the consistent street wall height along Archibald Avenue is maintained. Further, the proposed level heights align with the adjacent development to the west of the site, along Archibald Avenue, contributing to a cohesive urban form.

Given the above, the proposed variation to height continues to provide an appropriate definition of the street network in the Lachlan Precinct and is deemed to have an acceptable visual impact. As such, there are environmental planning grounds relating to visual impact and height transition that justify contravention of the development standard.

Solar access and overshadowing

The building's additional mass that is proposed to sit outside of the SLEP 2012 maximum building height envelope, has been limited to a marginal portion of the southern section of the site for Levels 4 and above only. The location of this additional mass will result in a negligible additional overshadowing of both surrounding buildings and the public domain.

Attachment A presents shadow diagrams that compare the extent of overshadowing caused by the proposal with the Stage 1 Building envelope. Any additional overshadowing caused by the additional massing within the Stage 2 is nearly imperceptible, located within the southern section of the site and will be offset by reductions in overshadowing due to the recessing and articulation of the other aspects of the building façade. As such, the lack of overshadowing impacts on surrounding buildings and the public domain caused by the variation provides environmental planning grounds that justify contravention of the development standard.

4.2.1 Conclusion on clause 4.6(3)(b)

Considering the above, there are sufficient environmental planning grounds to justify contravening the height of building development standard in this case. These include:

- Appropriate definition of the surrounding street network still being achieved;
- Minimal visual impact caused by the additional massing when viewed from the public domain; and
- Acceptable overshadowing impacts on the surrounding public domain and existing and future surrounding developments.

4.3 Clause 4.6(4)(a)(i): The applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3)

Subclause (3) has been adequately addressed above.

4.4 Clause 4.6(4)(a)(ii): In the public interest because it is consistent with the objectives of the zone and development standard

In *Initial Action v Woollahra Municipal Council* [27], it was held that it is the proposed development's consistency with the objectives of the development standard and the objectives of the zone that make the proposed development in the public interest. The proposal is in the public interest because it is consistent with the objectives of the development standard and the objectives of the zone.

Consistency Caselaw

Consistency has been defined throughout caselaw including the following Land and Environment Court cases:

- *Addenbrooke v Woollahra Municipal Council* [2008] NSWLEC 190
- *Schaffer Corporation v Hawkesbury City Council* (1992) 77 LGRA 21
- *Raassis v Randwick City Council* [2019] NSWLEC 1040
- *Abrams v Council of City of Sydney* [2018] NSWLEC 1648
- *Kingsland Developments v Parramatta Council* [2018] NSWLEC 1241
- *Dem Gillespies v Warringah Council* (2002) 124 LGERA 147

In these cases, consistency is considered to be different to that of 'achievement'. The term 'consistent' has been considered in a judgements of the Court in relation to zone objectives and has been interpreted to mean "compatible" or "capable of existing together in harmony" (*Dem Gillespies v Warringah Council* (2002) 124 LGERA 147; *Addenbrooke Pty Ltd v Woollahra Municipal Council* [2008] NSWLEC 190) or "not being antipathetic" (*Schaffer Corporation v Hawkesbury City Council* (1992) 77 LGRA 21). Whichever interpretation is adopted the test of "consistency" is less onerous than that of "achievement".

4.4.1 Consistency with objectives of the development standard

Having demonstrated that the objectives of the height of building development standard are achieved by the proposal notwithstanding the variation, the proposed development is also consistent with the objectives of the maximum building height development standard. Refer to **Section 4.1.1** for detail:

4.4.2 Consistency with objectives of the zone

The proposed development is consistent with the objectives of the B4 Mixed Use zone, as demonstrated in the following subsections.

Objective (a): To provide a mixture of compatible land uses

The proposed development includes residential and retail land uses, with the retail provided at ground level fronting Archibald Avenue and Lachlan Place. The arrangement of land uses in the development are permissible within the zone and have been arranged within the development in such a way that they are considered to be compatible and complementary to the surrounding area.

Objective (b): 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.

The site is well located to benefit from existing cycle infrastructure, rail infrastructure (through Green Square Railway Station) and light rail infrastructure with the construction of the CBD and Eastern Suburbs Light Rail and provision of future light rail provision by the City along Gadigal Avenue. The proposal includes residential apartments that will benefit from this accessible location. Further, the land uses proposed are supported by provision of a sufficient number of bicycle parking and end-of-trip facilities.

Objective (c): To ensure uses support the viability of centres

The proposal has been designed in accordance with the controls for the Lachlan Precinct in the SDCP 2012 and will contribute to its viability. In particular, Section 5.4.1 of the SDCP 2012 provides various objectives for development within the Green Square – Lachlan Precinct centre. The proposal is consistent with the relevant overarching objectives in support of the centre as:

- The proposed land uses are consistent with those envisaged for the centre;
- The proposed building, inclusive of the proposed height variation, will facilitate a building form that responds to the surrounding street network, in particular defining Archibald Avenue with a four-storey street frontage.
- The built form results in an acceptable outcome in relation to solar access and overshadowing; and
- The proposed development, inclusive of the variation to building height, is considered to be of a high standard of architectural quality, effectively enriching the Green Square – Lachlan Precinct and contributing to the quality of the area.

4.5 Secretary Concurrence

Under clause 4.6(5), in deciding whether to grant concurrence, the Secretary must consider the following matters:

- (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.*

These matters are addressed in detail below.

4.5.1 Clause 4.6(5)(a): Whether contravention of the development standard raises any matter of significance for State or regional environmental planning

The variation of the maximum building height development standard does not raise any matter of significance for State or regional planning. The proposal is consistent with the most recent metropolitan plan for Greater Sydney Region Plan in that it:

- Provides accommodation to meet the needs of the local population, both at the present time and in the future as Sydney's population grows and ages;
- Is well located for public transport connections, open space and services;
- Is designed to a high standard and offers a unique architectural design within the Lachlan Precinct, which is a key urban renewal precinct in the inner Sydney area; and
- Achieves well designed residential units that meet the design objectives and design criteria under Part 3 and Part 4 of the Apartment Design Guide.

Further, the exceedances of the RL height proposed does not result in any significant adverse impact on the surrounding area and enables an appropriate design response to the opportunities presented by the site.

4.5.2 Clause 4.6(5)(b): The public benefit of maintaining the development standard

There is no public benefit in maintaining the numerical building height development standard in this instance. As outlined in Section 4.2 above, there are sufficient environmental planning grounds to warrant contravention of the development standard and it is therefore considered to be in the public interest for the variation to be supported in this case.

4.5.3 Clause 5.6(5)(c): Any other matters required to be taken into consideration by the Secretary before granting concurrence.

None.

5.0 Conclusion

The assessment above addresses and demonstrates that compliance with the maximum building height development standard contained in Clause 4.3 of Sydney LEP 2012 is unreasonable or unnecessary in the circumstances of the case and that there are sufficient environmental planning grounds to justify the contravention.

It is considered that the height variation allows for the orderly and economic use of the land in a similar manner to that envisaged under the Sydney LEP 2012, with the additional building height limited to the southern façade upper levels, primarily as a result of the need to structurally align the cores of the building and achieve appropriate levels of residential amenity.

This Clause 4.6 variation request addresses the matters in Clause 4.6 (3) of Sydney LEP 2012, which demonstrates that notwithstanding the technical non-compliance with the maximum building height development standard. This is summarised as follows:

- a) The height variation relates to an encroachment of the proposed Level 4, 5 and Roof level (with a maximum height of RL 46.31m) by approximately 650mm into the southern portion of the site, which is afforded a lower height limit of RL 41.46m. The variation is a result of providing an efficient and consistent residential floorplate arrangement;
- b) The objectives of the height control are achieved notwithstanding the variation in that:
 - The proposal still provides a building with maximum heights that are appropriate for the site and contribute to the definition of the surrounding street network, including a four-storey component with retail shopfronts fronting Archibald Avenue, which is consistent with Lachlan Precinct Strategy within the SDCP 2012;
 - The proposed still provides a lower height component fronting Archibald Avenue has been designed to present a consistent streetscape height with the adjoining building to the west at 11B Lachlan Street, resulting in an appropriate height transition to surrounding areas;
 - Amenity of the public domain is retained as the taller building form maintains its position within the northern portion of the site;
 - There are no impacts on height transitions to any heritage items, conservation areas or special character areas;
 - Important view corridors, primarily views to the Sydney CBD, are unaffected by the proposal and appropriate building separation has been maintained to ensure sharing of views is promoted;
 - It is noted that the building results in 6 storeys for a small section (unrelated to the variation sought under this Clause 4.6 request) due to the arrangement of levels and the slope of the site, which is technically inconsistent with Section 5.4.3.2 of SDCP 2012 which allows for a maximum of 5 storeys within the northern portion of the site.
- c) There are sufficient environmental planning grounds to justify contravening the development standard, namely:
 - Acceptable solar access to surrounding buildings and the public domain is retained when compared to a building fully compliant with the LEP building envelope and Stage 1 approved envelope;
 - The proposed minor encroachment of Level 5 and the roof terrace results in additional bulk that is essentially imperceptible when viewed from the public domain, due to its minor extension of the north-south axis (by approximately 2%) and the location of the encroachment being setback from the street frontage; and
 - An appropriate street-frontage height is retained along Archibald Avenue, while the taller component of the building remains setback from the Archibald Avenue frontage.
- d) The proposal is consistent with the objectives of the height of buildings development standard; and
- e) The proposal is consistent with the objectives of the B4 Mixed Use zone.

In particular, the variation proposed to building height will result in a positive planning outcome as it will facilitate the development of a viable mixed-use redevelopment of the site, with the absence of any significant or unreasonable impacts on the amenity of existing or future residential occupants or on the surrounding public domain.

Overall, the proposal results in an opportunity to develop the site in a manner consistent with the intent of the LEP and DCP controls, and *Eastern City District Plan* which seeks to “*increase housing within the right locations*” such as Green Square and the Lachlan Precinct, which are identified urban renewal areas, in a way that will have an acceptable level of impact on adjoining properties and the public domain areas.

Therefore, the consent authority can be satisfied that there is sufficient justification for the height variation as proposed in accordance with the flexibility allowed under Clause 4.6 of the Sydney LEP 2012.