

## **Attachment C**

**Clause 4.6 Height Variation Request**

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**Re: Clause 4.6 Submission for:  
Clause 4.3 Height of Buildings  
of Sydney LEP 2012**

**To accompany the development application for proposed alterations and additions to  
Unit 901, 13-15 Bayswater Road, Potts Point**

**1.0 Introduction**

This Clause 4.6 variation request is in relation to alterations and additions to unit 901, 13-15 Bayswater Road, Potts Point.

The request seeks to vary the Building Height Development Standard of 27m height specified in Clause 4.3 of the Sydney LEP 2012.

The height of the proposed pergola is RL77.92 which is 5m above the permitted height. This is a variation of 18.5%. The existing buildings plant room does not comply at 34.8m high (RL80.72). The proposed pergola is 2.8m below the height of the plant room.

**2.0 Compliance with the Development Standard is Unreasonable and Unnecessary in the Circumstances of the Case**

Clause 4.6(3)(a) requires the applicant to demonstrate that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.

The existing site does not comply with the required Building Height. Strict compliance for Unit 901, 13-15 Bayswater Road, Potts Point would be therefore considered unreasonable given that the development is 2.8m below the existing Plant Room and neighbouring terraces have 3.4m high pergolas recently approved.

An assessment is provided below in regard to the five part test under *Wehbe v Pittwater Council*. As demonstrated below, there are sufficient environmental planning grounds to justify the variation and compliance with the standard is considered unreasonable and unnecessary in this instance.

As demonstrated below, the proposal satisfies number one of the test established in *Wehbe* and for that reason, the development standard is considered unreasonable and unnecessary in this instance.

**Test 1. The objectives of the standard are achieved notwithstanding non-compliance with the standard.**

It is felt the objectives of the standard have been achieved notwithstanding non-compliance with the numerical standard as detailed below.

(a) *to ensure the height of development is appropriate to the condition of the site and its context,*  
The pergola and plant room will not affect the public domain as it is not visible to the street below being located on the rooftop level.

A maximum height of 27m is permitted for the site under the development standard. The existing plant room is RL80.72 (34.8m) in height from natural ground level on Goderich Lane. This is an existing variation of 7.8m or 28.8%. The proposed shade structure is RL 77.92 which is 2.8m below the height of the existing plant room.

It is felt the height of the development is appropriate to the site as council have recently approved a 3.4m high pergola to the adjacent southern rooftop terrace. Rooftop terraces in the surrounding area have covered pergolas and therefore is in context with the surrounding neighbourhood.

Therefore we request a variation for the height of the pergola which is only 5m or 18.5% above the height limit. Due to the height of the existing Plant Room it does not result in an increase in height to the overall building.

(b) *to ensure appropriate height transitions between new development and heritage items and buildings in heritage conservation areas or special character areas,*  
The development respects the existing ridge height being located lower than the existing plant room. At 2.8m below the existing Plant Room there is an appropriate height transition to other buildings. Being located at a lower level it maintains the general bulk of the existing building therefore it is considered to meet height transitions within the heritage conservation area.

The proposed development would not be visible from the street due to the setback and location of the rooftop.

The proposed development does not encroach into the curtilages of any heritage items due to the distance separating the existing building from any heritage building. The development will not block any public view of a heritage item given it's location on the rooftop and distance from any heritage building.

(c) *to promote the sharing of views,*

- The pergola will not obstruct any views from adjacent rooftops. There is an existing 2m high solid wall located on the southern and western boundary separating the neighbouring rooftop terraces. This provides privacy between dwellings and prevents any views between the terraces.
- Council have recently approved a 3.4m high pergola to the southern rooftop terrace.
- The structure will not adversely impact the character of the area as it is not visible from the streetscape and located at the rear of the site.
- The development will not impact any public views due to its location on the rooftop and the distance between the existing building and surrounding buildings. A Residential building located to the south is approximately 76m away and therefore will not be impacted due to the distance between the two sites.

(d) *to ensure appropriate height transitions from Central Sydney and Green Square Town Centre to adjoining areas,*

Not applicable.

(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.*

Not applicable.

**Test 2. The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary.**

As it has been established the objectives have been meet in Test 1, compliance with Test 2 is not applicable.

**Test 3. The underlying objective or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable.**

As it has been established the objectives have been meet in Test 1, compliance with Test 2 is not applicable.

**Test 4. The development standard has been virtually abandoned or destroyed by the council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable.**

As it has been established the objectives have been meet in Test 1, compliance with Test 2 is not applicable.

**Test 5. The compliance with development standard is unreasonable or inappropriate due to the existing use of land and current environmental character of the particular parcel of land. That is, the particular parcel of land should not have been included in the zone.**

As it has been established the objectives have been meet in Test 1, compliance with Test 2 is not applicable.

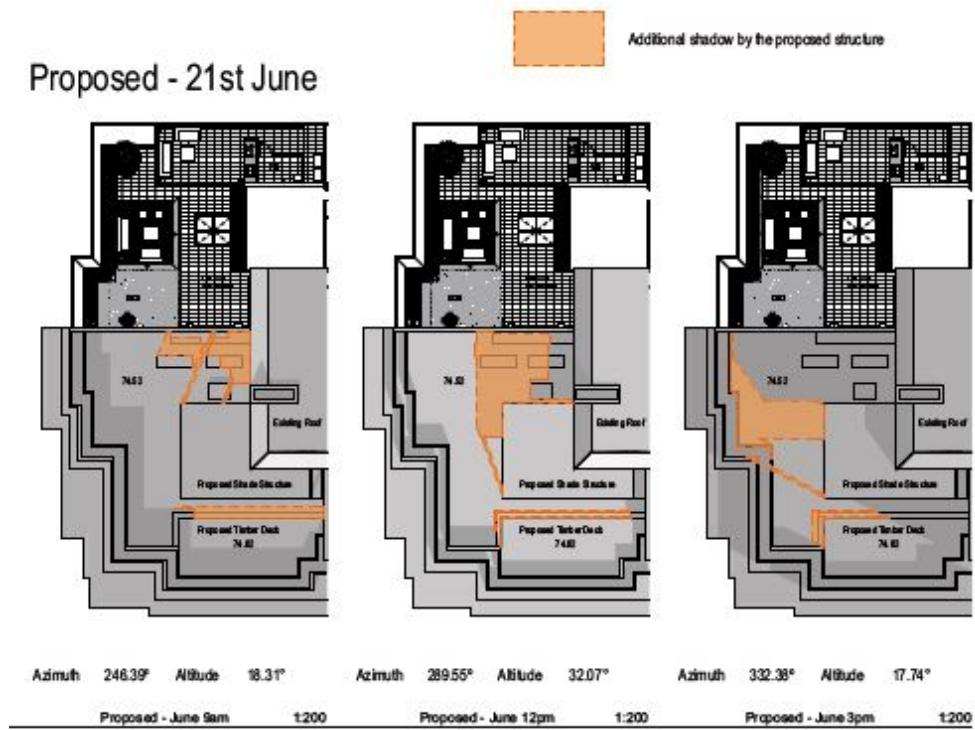
**There are sufficient environmental planning grounds to justify contravening the development standard.**

It is submitted that the variation is well founded and worthy of the Council's approval. The request relates to varying the Building Height for the Pergola and Bathroom of the Rooftop terrace.

The height of the proposed pergola and plantroom is 5m or 18.5% above the height limit of 27m. However the existing plant room is RL80.72 - 34.8m in height from natural ground level on Goderich Lane. This is an existing variation of 7.8m or 28.8%. The proposed pergola is RL 77.92 which is 2.8m below the height of the existing plant room.

The shadow diagrams provided that accompany this Development Application show the difference of overshadowing impacts of the existing rooftop versus the proposed.

The shadow diagrams show there is no impact on the neighbouring rooftop. This is due to the proposal impacting the existing site only. The increase in overshadowing is minor and inconsequential as it falls on the existing sites outdoor open tiled area.



## Proposed - 22nd March



*Figure 1 Proposed Pergola showing no impact on neighbouring rooftop*

The proposal seeks to provide a covered pergola with bathroom to meet the needs of the owners. It will provide increased amenity and does not result in any adverse impacts on the area.

- The contravention of the height control by the proposal does not give rise to any environmental effect of sufficient significance that would cause concern.
- There is no impact to existing quantity of sunlight to the neighbouring rooftop.
- The additional roof area is reasonable and consistent with neighbouring rooftop pergolas that council have recently approved. It will have minimal effect to the bulk of the existing building.

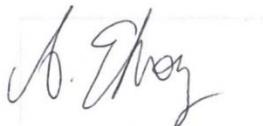
## Conclusion

For the reasons provided above, it is felt there is sufficient environmental planning grounds to justify contravening the height of buildings development standard for the pergola and bathroom.

- The proposal is consistent with the objectives of the building height standard
- The proposal is consistent with the character of the area and will have no impact to neighbouring properties and will not cause any overshadowing.
- The development is a minor modification to the existing building and will not obstruct views and as such is consistent with the objective.
- The roof top terrace is an approved open space area to the apartment. It is a non-habitable area. The proposed changes are to provide increased amenity.
- The proposal development is consistent with the objectives for developments within the B2 zone. The shade structure will provide an outdoor covered recreation area for the owners, their family and friends to enjoy.

- The existing building already exceeds the maximum height under the development standard. The shade structure is 2.8m below the existing roof structure of the building. Neighbouring rooftops have all had similar shade structures approved and it will therefore not detract from the form and scale of the existing building.

Based on the reasons outlined above, we request the variation to Clause 4.3 – the height of buildings development standard is supported by council.



Amanda Elboz  
Director