

# **Attachment C**

<p><b>Clause 4.6 Variation Request – Height of Building</b></p>
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## CLAUSE 4.6 VARIATION TO CLAUSE 4.3 – HEIGHT OF BUILDINGS OF THE SYDNEY LOCAL ENVIRONMENTAL PLAN 2012

### 1. Introduction

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This variation statement seeks to address the proposed variation to Clause 4.3 of the Sydney Local Environmental Plan 2012 (SLEP12), which relates to the height of buildings development standard.

This submission is made under Clause 4.6 of the *SLEP12 – Exceptions to development standards* and is a “written request” as referred to in subclause (3).

The submission accompanies a development application incorporating architectural plans prepared by Benson McCormack Architecture Pty Ltd.

The proposed development seeks for the demolition of all existing structures and redevelopment of the site to contain a four-storey boarding house development containing 35 boarding rooms inclusive of an on-site managers room along with associated site works and landscaping at 1-3 Goddard Street, Erskineville.

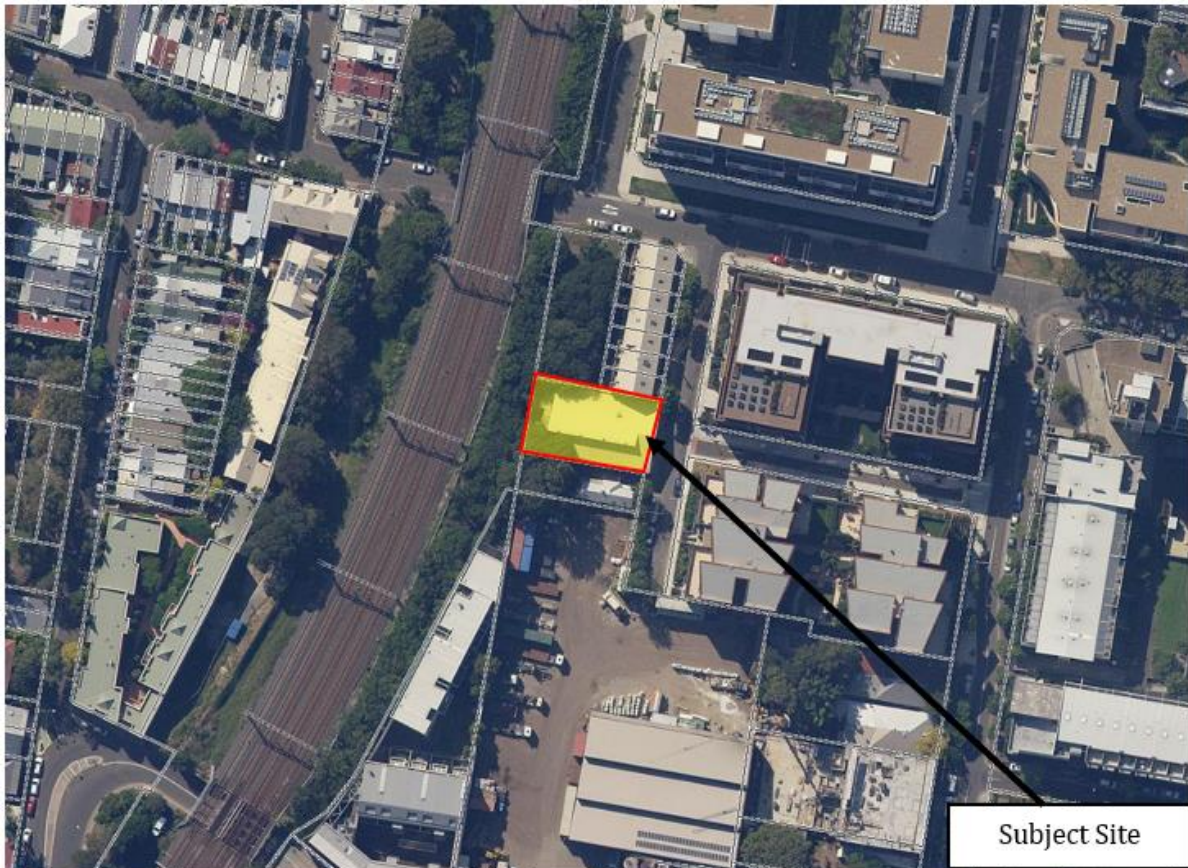
As detailed in this written request for a variation to Clause 4.3 Height of buildings under the SLEP 2012, the proposed development meets the requirements prescribed under Clause 4.6 of the SLEP 2012.

### 2. Site Background

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The subject site is located on the western side of Goddard Street. The site is legally known as Lot 1 in Deposited Plan 741276 and is commonly referred to as No. 1-3 Goddard Street, Erskineville.

The site is rectangular in shape with a frontage of 18.03m to Goddard Street, with the rear property boundary measuring 18.08m in its length. Both side boundaries provide for a length of 30.62m, respectively. The overall site area measures 552.7m<sup>2</sup>. Refer to Figure 1 – Site Location Map.



Source: <https://maps.six.nsw.gov.au/>

*Figure 1: Site Location Map*

Located on the subject site at present is a two-storey disused warehouse built form which is of an older style and character.

Development within the immediate locality is mixed in nature with a series of residential properties located to the north of the site. These are of a more contemporary housing stock. Immediately to the south at No. 5 Goddard Street is a single storey dwelling house which is of an older housing stock. Immediately opposite the subject site is a recently completed 5-storey residential flat building development which addresses nearby McDonald Street. There also several recently completed residential flat buildings within immediate vicinity of the subject site.

Immediately to the north of the subject site is Kirsova 1 Playground which provides for an area of public recreation within proximity of the subject site and for the benefit of the local community. This space is appropriate in facilitating more passive recreational opportunities.

Erskineville Oval along with Harry Noble Reserve are located approximately 480m of the subject site in a north-eastern orientation which provide for more expansive public green open spaces within the locality. These spaces are of an appropriate size and dimension to facilitate a various degree of active and passive recreational opportunities. Sydney Park is located at an approximate distance of 330m south of the subject site which offers a comparable amenity.

Alexandria-Erskineville Bowling Club is located at an approximate distance of 480m north-east of the site which diversifies the recreational opportunities made available within the locality.

Erskineville Public School is situated at an approximate distance of 356m north of the subject site. There are also several goods and services located within the locality namely those along nearby Euston Road.

The subject site is well serviced by public transport being located approximately 500m walking distance to Erskineville Train Station, 650m walking distance to St Peters Railway Station, and between 350m-650m from a series of bus services. These provide regular services to the City, Liverpool, and provide connectivity to the broader Sydney metropolitan rail network. Furthermore, the subject site is situated within proximity to a series of designated commuter and recreational cycle routes and car share pods.

The site is considered to be appropriately located and conducive to the proposed development.

### **3. Clause 4.6**

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This submission is made under Clause 4.6 of the Sydney Local Environmental Plan 2012 – Exceptions to development standards. Clause 4.6 states the following:

#### ***“4.6 Exceptions to development standards***

- (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) *Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living if:*
- (a) *the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or*
  - (b) *the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.*

*Note. When this Plan was made it did not include all of these zones.*

- (7) *After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).*
- (8) *This clause does not allow development consent to be granted for development that would contravene any of the following:*
- (a) *a development standard for complying development,*
  - (b) *a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,*
  - (c) *clause 5.4,*
  - (ca) *clause 4.3 (Height of buildings), but only in relation to land shown as being in Area 1 or Area 2 on the Height of Buildings Map,*
  - (cab) *clause 4.5A (Balconies on certain residential flat buildings),*
  - (cb) *clause 5.3A (Development below ground level in Zone RE1),*
  - (cc) *clause 6.10 (Heritage floor space),*
  - (cd) *clause 6.11 (Utilisation of certain additional floor space requires allocation of heritage floor space),*
  - (cda) *clause 6.11A (Temporary alternative heritage arrangements in relation to allocation of heritage floor space),*
  - (ce) *clause 6.17 (Sun access planes),*
  - (cf) *clause 6.18 (Exceptions to sun access planes),*
  - (cg) *clause 6.19 (1) (d)–(h) and (j), unless the additional overshadowing is caused by playground equipment, a shade structure, an awning, a sculpture or artwork, or a community notice or public information sign,*
  - (cga) *clause 6.26 (AMP Circular Quay precinct),*
  - (cgb) *clause 6.29 (58–60 Martin Place, Sydney),*
  - (cgc) *clause 6.33 (230–238 Sussex Street, Sydney),*
  - (cgd) *clause 6.35 (45 Murray Street, Pyrmont), but only if the development is an alteration or addition to an existing building,*
  - (cge) *clause 6.36 (12–20 Rosebery Avenue, 22–40 Rosebery Avenue and 108 Dalmeny Avenue, Rosebery),*
  - (cgf) *clause 6.37 (296–298 Botany Road and 284 Wyndham Street, Alexandria),*
  - (cgg) *clause 6.41 (7–15 Randle Street, Surry Hills),*
  - (cgh) *clause 6.42 (102–106 Dunning Avenue, Rosebery),*
  - (cgh) *clause 6.40 (2–32 Junction Street, Forest Lodge),*
  - (ch) *Division 1 of Part 7 (Car parking ancillary to other development).*

This submission has been prepared having regard to the following guideline judgements:

- 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');
- Micaul Holdings Pty v Randwick City Council [2015] NSWLEC 1386;
- Randwick City Council v Micaul Holdings Pty Ltd [2016] NSWLEC 7; and
- Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118.

The use of Clause 4.6 to enable an exception to this development standard is appropriate in this instance and the consent authority may be satisfied that all requirements of Clause 4.6 have been satisfied in terms of the merits of the proposed development and the content in this Clause 4.6 variation request report.

Clause 4.6 Exceptions to development standards establishes the framework for varying development standards applying under a local environmental plan. Subclause 4.6(3)(a) and 4.6(3)(b) requires that a consent authority must not grant consent to a development that contravenes a development standard unless a written request has been received from the applicant that seeks to justify the contravention of the standard by demonstrating that:

*4.6(3)(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*

*4.6(3)(b) that there is sufficient environmental planning grounds to justify contravening the development standard.*

In addition, 4.6(4)(a)(i) and (ii) requires that development consent must not be granted to a development that contravenes a development standard unless the:

- (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*

The Environmental Planning Instrument to which these variations relate to is the SLEP12. The development standard to which this variation relates is Clause 4.3 – Height of buildings, which reads as follows:

(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.
- Note. No maximum height is shown for land in Area 3 on the Height of Buildings Map. The maximum height for buildings on this land are determined by the sun access planes that are taken to extend over the land by clause 6.17.
- (2A) Despite any other provision of this Plan, the maximum height of a building on land shown as Area 1 or Area 2 on the Height of Buildings Map is the height of the building on the land as at the commencement of this Plan.

Council's maps identify a maximum building height on the site of 12m. refer to Figure 2 below:



Source: Sydney Local Environmental Plan 2012

Figure 2: Height of Buildings Map

#### 4. Extent of Non-Compliance

In accordance with Clause 4.3 of the SLEP12, the maximum building height prescribed for the subject site is 12m.

The current proposal seeks a maximum building height of 13.56m. The proposal therefore exceeds the standard by 1.56m or 13%.

It is our submission that the breach to the building height control will not impact on the amenity of the development or adjoining properties, nor will the variation compromise the architecture of the building or the bulk and scale of the development.

A degree of flexibility is considered reasonable in this instance.

## 5. Is Compliance with the Development Standard Unreasonable or Unnecessary in the Circumstances of the Case?

The proposed variation from the development standard is assessed against the required tests in Clause 4.6. In addition, in addressing the requirements of Clause 4.6(3), the accepted five possible approaches for determining whether compliances are unnecessary or unreasonable was established by the NSW Land and Environment Court in *Wehbe v Pittwater Council* [2007] NSWLEC 827 at [42] – [49].

In the matter of *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1008, Pearson C states:

*“...the case law developed in relation to the application of SEPP 1 may be of assistance in applying Clause 4.6. While Wehbe concerned an objection under SEPP 1, in my view the analysis is equally applicable to a variation under Clause 4.6 where Clause 4.6 (3)(a) uses the same language as Clause 6 of SEPP 1.”*

In the decision of *Wehbe vs Pittwater Council*, Preston CJ summarised the five (5) different ways in which an objection under SEPP 1 has been well founded and that approval of the objection may be consistent with the aims of the policy. The five possible ways are as set out below:

<b>First</b>	<i>The most commonly invoked way is to establish that compliance with the development standards is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard.</i>  <i>The rationale is that development standards are not ends in themselves but means of achieving ends. The ends are environmental or planning objectives. If the proposed development proffers an alternative means of achieving the objective, strict compliance with the standard would be unnecessary and unreasonable. (applicable)</i>
<b>Second</b>	<i>A second way is to establish that the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary. (not applicable)</i>
<b>Third</b>	<i>A third way is to establish that the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable. (not applicable)</i>
<b>Fourth</b>	<i>A fourth way is to establish that 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 (not applicable).</i>
<b>Fifth</b>	<i>A fifth way is to establish that “the zoning of particular land” was “unreasonable or inappropriate” so that “a development standard appropriate for that zoning was also unreasonable or unnecessary as it applied to that land” and that “compliance with the standard in that case would also be unreasonable or unnecessary. (not applicable)</i>

In respect of the height of buildings standard as it applies to the subject property, the first method is invoked.

It is acknowledged that the variation is in part attributed to the availability of the additional floor space as granted by ARH SEPP. It is considered that there must therefore be some flexibility in the application of Council's development standards including height, floor space ratio, and



setbacks. In a decision of the Land and Environment Court, *Abdul-Rahman v Ashfield Council* [2015] NSWLEC 1122, Commissioner O’Neil stated the following:

*“I accept the argument put by the applicant that the consequence of the SEPP ARH incentives, which seek to facilitate the effective delivery of new affordable rental housing by way of expanded zoning permissibility, floor space ratio bonuses and non-discretionary development standards, is to expand the permissible building envelope for a site in some way, although pursuant to cl 16A of SEPP ARH, any increase of the building envelope has to be compatible with the character of the local area. In this matter, the proposal complies with the FSR development standard in LEP 2013 and does not seek the benefit of the FSR incentive of SEPP ARH at cl 13, however the principle of an expanded building envelope in recognition of the contribution of affordable rental housing made by the proposal is still relevant.”*

In keeping in with the above, the proposed variations to the building height are partly attributable to the increased density available on the site. The proposal has achieved compliance with the maximum floor space ratio prescribed for the subject site with the proposed setbacks having no negative impact upon the neighbouring sites nor upon the existing character of the locality.

### **Compliance with objectives of standard**

The objectives supporting the height of buildings control identified in Clause 4.3 are discussed below. Consistency with the objectives and the absence of any environmental impacts, would demonstrate that strict compliance with the standards would be both unreasonable and unnecessary in this instance.

The discussion provided below demonstrates how the proposal is consistent with the objectives of Clause 4.3.

*(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.*

#### Objective

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

#### Comment:

The height variation, which is being sought, would have no impact upon the architectural quality of the built form, nor its expression. As viewed from the street, the proposal presents itself as 3 storeys with the fourth floor having been setback from the street. The breach to height only occurs at the fourth storey, and as such from the streetscape the breach would not be read. The fourth storey, and thus the height breach is recessed from Goddard Street.

In the context of the site a desirable presentation and integration is still being achieved, notwithstanding a variation to height.

The breaching elements do not detract from the visual interest and high architectural quality of the proposal. All elements of the building, inclusive of those which breach the maximum height standard, harmoniously work together to provide for a high-quality architectural expression and visual interest.

A variation to the height of building standard, will still allow for a landscaped front setback to be provided along Goddard Street and will not detract from the proposal's capacity to offer a consistent streetscape presentation.

The additional height will also allow for increases in the provision of affordable rental housing within a locality that is well connected to local amenities, services and public transport infrastructure. A variation will allow for an increased housing choice in the locality and will contribute to the positive residential amenity that is being created.

Objective

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

Comment:

The proposed variation would not result in a built form which is dissimilar to many residential flat building developments which are of a more contemporary housing stock within the locality. These generally provide for heights of between 5-7 storeys. A 4-storey development is proposed in this instance with the variation to height not resulting in a form which is inconsistent with prevailing heights in the area. The transition of building heights is therefore not compromised by the proposed variation.

There are no heritage conservation areas or items of heritage which immediately adjoin the subject site. A heritage conservation area (C23) is located on the opposite site of the Rail Corridor to the west of the subject site. However, this is at an approximate distance of 85m to the west. A heritage conservation area (C3) is also situated to the north of the subject site at an approximate distance of 200m. Heritage conservation area (C2) is located to the east of the subject site at an approximate distance of 370m. The most proximate heritage item is Item No. I2246 which is located at an approximate distance of 100m south-east of the subject site.

Given the distance of the site from any heritage items and conservation areas, the additional height of 0.56m is not considered to be perceived from such locations. The variation, being minimal, would therefore have no adverse impression upon such areas and items.

Objective

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

Comment:

There are no significant views to or from the subject site that would be impacted by the proposed variation. This is not of an extent that would in any way compromise any views or vistas if they were otherwise available.

Objective

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

Comment:

The subject site is not located within Central Sydney nor is it located within Green Square. The objective is therefore not applicable in this instance.

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*

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

Comment:

The subject site is not located within Green Square and therefore this objective is not applicable.

**6. Are there Sufficient Environmental Planning Grounds?**

A contravention of Clause 4.3 of SLEP12 is justified as there are sufficient environmental planning grounds to do so. These grounds, which are particular to the circumstances of the site, are as follows:

It is important to recognise that the site has been identified as flood affected. In designing to the required flood level, this has resulted in the overall building having been raised.

Flooding advice received in this regard for the proposed development indicates that the minimum flood planning level for residential habitable rooms on the subject site is 9.43mAHD. As per the submitted site survey, the existing floor level at the site ranges from between 8.05mAHD to 8.09mAHD. This indicates that the floor level of the proposed development has had to be raised between 1.34m – 1.38m to accommodate for the flooding constraint at the site.

The proposed breach in height is directly related to an environmental constraint at the subject site being its identification as a flood affected lot.

With respect to bulk and scale, proposed level 4, being where the breach to height occurs, has been designed in a manner which mitigates its visibility to Goddard Street. This pertains to its recession from the street. The street frontage height of 3 storeys and parapet achieves compliance with Clause 4.3 of the SLEP12. Compliance is also achieved with the maximum degree of FSR permitted at the site. The breaching elements do not result in a non-compliant FSR which reinforces an appropriate bulk and scale of development at the site.

Notably, a flat roof form is also proposed for the built form and the breaching elements which harmonises with the more contemporary nature of the proposal whilst also assisting to minimise the impression of bulk and scale from the breach to the neighbouring sites and to the public domain.

Given the orientation of the subject site, there are no overshadowing impacts to northern sites. A degree of overshadowing is inevitable with respect to the southern neighbour given the site's location on the western side of the street and the neighbours location to the south of the site.

The submitted shadow diagrams have distinguished between the existing and proposed shadowing impacts.

Between the hours of 9am-11am the immediate neighbour to the south is currently overshadowed, with additional shadows falling on the roof of the southern dwelling. The additional shadows extend beyond the southern neighbour to the vacant portion of the site further to the south where there is no deemed impact as it does not appear there are any sensitive land uses.

Similarly, between 11am and 3pm, additional shadows fall beyond the southern dwelling along the eastern portion of the southern neighbour and towards the street.

Additional shadows impact upon the vacant portion of the site further to the south, with there being no adverse impacts upon any other neighbouring residential dwelling beyond the existing condition.

There is a minor degree of additional shadow cast to the built form on the opposite side of Goddard Street at 3pm, however, there is no additional affectation to this form prior to 3pm. It is therefore considered that appropriate solar access relationships between neighbouring sites are maintained.

There are no expansive areas of glazing which breach the maximum height limit. With these being generally contained within a compliant height limit. Where there are instances of glazing which breach the height limit these are contained to very upper most part of the windows and would be inconsequential. Therefore, the breaching elements of the built form would not give rise to any adverse visual privacy impacts.

With respect to acoustic amenity, there would be no adverse impacts resulting from the breach. Communal areas are located at the ground level and towards the rear of the site.

Therefore, there is no obligation to provide communal space at a roof level, which reduces the potential of acoustic amenity impacts from having part of the roof space breach the maximum height standard.

## **7. Is the Variation in the Public Interest?**

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Clause 4.6 states that the development consent must not be granted for development that contravenes a development standard unless 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 to be carried out.

It is considered that this submission provides sufficient environmental planning grounds to justify contravening the development standard under Part 6.

The development as proposed will be in the public interest as it is consistent with the objectives of Clause 4.3.

The variation is not considered to detract from the desired future character of the area, as the breach does not generate an unreasonable bulk or scale when compared to the development character of the area. The variation does not impact upon the capacity of the development to adhere to Council's provisions regarding general design and amenity outcomes, solar access, privacy and landscaping provisions.

The building will therefore contextually align with surrounding properties and there would be no restriction on providing an excellent amenity to residents due to the variation.

Furthermore, it is important to also consider the objectives of the B4 Mixed Use zone in relation to the development. Additional comments with respect to the proposals positive response to each objective are also provide below. The objectives of this zone are as follows:

#### *1 Objectives of zone*

- *To provide a mixture of compatible land uses.*
- *To integrate suitable business, office, residential 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*

#### Objective

- *To provide a mixture of compatible land uses.*

#### Comment:

The proposal provides for a residential land use. The surrounding development is also predominantly residential, with significant new housing stock being located within the area. A variation to the maximum height of buildings development standard would not impede upon the proposed use of the site.

#### Objective

- *To integrate suitable business, office, residential and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.*

#### Comment:

The subject site is benefited by its proximate location to public transport infrastructure being situated approximately 500m walking distance to Erskineville Train Station, 650m walking distance to St Peters Railway Station, and between 350m-650m from a series of bus services. These provide regular services to the City, Liverpool, and provides connectivity to the broader Sydney metropolitan rail network. The subject site is located within close proximity to a series of designated commuter and recreational cycle routes and car share pods. The proposed residential development is therefore well-located to encourage public transport patronage and to encourage walking and cycling.

The additional height will not compromise the sites location to such amenities. Rather, this will allow for a well-designed boarding house to be accommodated at the site that will offer a positive residential amenity for future residents and no detriment to neighbouring sites.

#### Objective

- *To ensure uses support the viability of centres*

#### Comment

The subject site is located approximately 400m walking distance from the closest B2 Local Centre zone. It is considered that the provision of residential accommodation within walking distance to this local centre zoned land supports the viability and the vitality of the local centre. The additional building height will allow for a boarding house development that is able to provide

accommodation for additional residents in the locality so that they can utilise the goods and services which are offered in nearby centres.

## **8. Public Benefit of Maintaining the Standard**

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It is considered that the public benefit will not be undermined by varying the standard. The proposal provides for a high-quality boarding house development in keeping with the desired land uses and objectives of the B4 Mixed Use zone.

Given the site's orientation, location and context it is considered that the site is well suited for the development.

The development is generally consistent with the current planning controls.

It is not considered that the variation sought raises any matter of significance for State or Regional environmental planning.

The departure from the height of buildings control within the SLEP12 allows for the orderly and economic development of the site in a manner which achieves the outcomes and objectives of the relevant planning controls.

## **9. Is the Variation Well Founded?**

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It is considered that this has been adequately addressed in Parts 6 and 7 of this submission. In summary, this Clause 4.6 Variation is well founded as required by Clause 4.6 of the SLEP12 in that:

- ❑ Compliance with the development standard would be unreasonable and unnecessary in the circumstances of the development;
- ❑ There are sufficient environmental planning grounds to justify the departure from the standard;
- ❑ The variation does not undermine the objectives of the standard to be varied (Height of buildings), as well as the objectives of the B4 Mixed Use zoning of the land;
- ❑ The proposed development is in the public interest and there is no public benefit in maintaining the standard;
- ❑ The breach does not raise any matter of State or Regional Significance; and
- ❑ The development submitted aligns with the predominantly residential nature of the neighbourhood noting there are examples of residential flat buildings in the surrounding street which are of a similar height, bulk and scale as to the boarding house development proposed. A variation would not disturb this evolving character of the area.

Based on the above, the variation is considered to be well founded.



## 10. General

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Clause 4.6 also states that:

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

- (a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or*
- (b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.*
- (c) **Note.** When this Plan was made it did not include all of these zones.*

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

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

- (a) a development standard for complying development,*
- (b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,*
- (c) clause 5.4*
- (ca) clause 4.3 (Height of buildings), but only in relation to land shown as being in Area 1 or Area 2 on the Height of Buildings Map,*
- (cab) clause 4.5A (Balconies on certain residential flat buildings),*
- (cb) clause 5.3A (Development below ground level in Zone RE1),*
- (cc) clause 6.10 (Heritage floor space),*
- (cd) clause 6.11 (Utilisation of certain additional floor space requires allocation of heritage floor space),*
- (cda) clause 6.11A (Temporary alternative heritage arrangements in relation to allocation of heritage floor space),*
- (ce) clause 6.17 (Sun access planes),*
- (cf) clause 6.18 (Exceptions to sun access planes),*
- (cg) clause 6.19 (1) (d)–(h) and (j), unless the additional overshadowing is caused by playground equipment, a shade structure, an awning, a sculpture or artwork, or a community notice or public information sign,*
- (cga) clause 6.26 (AMP Circular Quay precinct),*
- (cgb) clause 6.29 (58–60 Martin Place, Sydney),*
- (cgc) clause 6.33 (230–238 Sussex Street, Sydney),*
- (cgd) clause 6.35 (45 Murray Street, Pyrmont), but only if the development is an alteration or addition to an existing building,*
- (cge) clause 6.36 (12–20 Rosebery Avenue, 22–40 Rosebery Avenue and 108 Dalmeny Avenue, Rosebery),*
- (cgf) clause 6.37 (296–298 Botany Road and 284 Wyndham Street, Alexandria),*
- (cgg) clause 6.41 (7–15 Randle Street, Surry Hills),*
- (cgh) clause 6.42 (102–106 Dunning Avenue, Rosebery),*
- (cgh) clause 6.40 (2–32 Junction Street, Forest Lodge),*
- (ch) Division 1 of Part 7 (Car parking ancillary to other development).*

**Comment:**

This variation does not relate to the subdivision of land. The variation sought is not contrary to subclause (6).

Should the exception to the development standard sought under this submission be supported by Council, the Council must retain a record of the assessment of this submission.

The development proposed is not complying development.

A BASIX certificate has been prepared and submitted with this development application.

The development is not affected by clause 5.4, is not located in Area 1 or 2 on the height of buildings map and is not affected by clauses 4.5A, 5.3A, 6.10, 6.11, 6.11A, 6.17, 6.18, 6.19, 6.26, 6.29, 6.33, 6.35, 6.36, 6.37, 6.41, 6.42, 6.40, Division 1 of Part 7 (car parking ancillary to other development).

## **11. Conclusion**

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The proposal does not strictly comply with the maximum building height control as prescribed by Clause 4.3 of the SLEP12. Having evaluated the likely affects arising from this non-compliance, we are satisfied that the objectives of Clause 4.6 of the SLEP12 are satisfied as the breach to the control does not create any adverse environmental impacts.

The variation to the height of buildings standard would not restrict a high-quality development and an architecturally well-designed boarding house on the subject site that will contribute to providing affordable housing in an area well serviced by educational establishments, public transport infrastructure, local amenities and retail/commercial facilities.

Consequently, strict compliance with this development standard is unreasonable and unnecessary in this particular case and that the use of Clause 4.6 of the SLEP12 to vary this development control is appropriate in this instance.

It is considered that there are sufficient environmental planning grounds to vary the standard, as a variation will result in a better environmental planning outcome.

Based on the above, it is sensible to conclude that strict compliance with the height of buildings development standard is not necessary and that a better outcome is achieved for this development by allowing flexibility in the application.

Valdis Aleidzans  
Town Planner  
**GAT & Associates**  
Plan 3316

Gerard Turrisi  
Director