

Attachment C

<p>Clause 4.6 Variation Request – Height of Buildings</p>
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Clause 4.6 Exceptions to development standards Written request – Height of Buildings

Demolition of existing structure and construction of a mixed use boarding house and part ground floor café development.



7 Layton Street, Camperdown

Prepared for: Prescott Architects

Project No: D441

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**Clause 4.6 Written Request to Vary a Development Standard
Sydney Local Environmental Plan 2012**

Applicant's name	Prescott Architects
Site address	7 Layton Street, Camperdown
Proposal	Demolition of existing structures and construction of a mixed use boarding house and part ground floor café development.
Environmental Planning Instrument	<i>Sydney Local Environmental Plan 2012 (SLEP 2012)</i>
Development standard to be varied	<p>Clause 4.3 – Height of buildings</p> <p>The relevant subclause states:</p> <p><i>(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.</i></p>

Below is the written request relating to the proposed variation to Clause 4.3 of SLEP 2012 in accordance with the provisions of clause 4.6 of SLEP 2012.

Details of development standard sought to be varied

Clause 4.3 of SLEP 2012 prescribes the maximum height of buildings for land to which the plan applies. The entirety of Clause 4.3 is reproduced below:

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.*

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.*

The height of building map prescribes a maximum building height of 18 metres to the majority of the subject site.

The proposal includes a maximum building height of 18.32m which exceeds the maximum prescribed 18m building height limit. This represents a 0.32m (1.8%) variation to the development standard. It is noted that the natural ground level slopes towards the rear of the site with the exceeding building height limited to the lift overrun and the rear portion of the level 5 roof ranging from 0.19m to 0.32m (1.1% to 1.8%) based on:

- an existing ground level at the proposed lift shaft of RL20.81m (RL39.00m – RL 20.81 = 18.19m); and
- the lowest existing ground level for the Level 5 roof of RL20.47m (RL38.79m – RL 20.47m = 18.32m) (refer to **Figure 1**).

A small portion of the site is affected by a 12 metre building height limit; however, there are no non-compliances within this part of the site.

Clause 4.6 Exceptions to Development Standards - Sydney Local Environmental Plan 2012

Clause 4.6 of *SLEP 2012* is the mechanism by which a consent authority is able to grant consent to a development despite non-compliance with a prescribed development standard. Clause 4.6 is reproduced below:

- (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 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 E3 Environmental Management or Zone E4 Environmental Living.

- (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),
- (cgi) clause 6.40 (2–32 Junction Street, Forest Lodge),
- (cgj) clause 6.43 (Danks Street South Precinct),
- (ch) Division 1 of Part 7 (Car parking ancillary to other development).

4.6(3) compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and there are environmental planning grounds to justify the contravention of the standard

The authority established by *Four2Five Pty Ltd v Ashfield Council* (2015) NSWCA 248, necessitates that environmental planning grounds for the proposed variation must be established aside from the consistency of the development with the objectives of the standard and the objectives of the zone.

In *Wehbe V Pittwater Council* (2007) NSW LEC 827, Preston CJ set out the following 5 different ways in which an objection (variation) may be well founded:

1. *The objectives of the standard are achieved notwithstanding non-compliance with the standard;*
2. *The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;*
3. *The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;*
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;*
5. *The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard that would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.*

It is generally understood that Clause 4.6(3) can be satisfied if it is established that a development satisfies one or more of points 2-5 above.

Having regard for the authority within *Wehbe*, compliance with the maximum height of buildings development standard has been determined to be unreasonable and unnecessary in the circumstances of the case, and the following outlines the environmental planning grounds for the proposed variation:

- The exceedance to the prescribed 18m building height is considered minor being up to 0.32m and a 1.8% variation to the height limit. It is noted the majority of the sixth storey complies with the height limit. The non-complying elements relate to the lift overrun and a small part at the rear of the level 5 roof.

- The proposal provides a slender contemporary building with a 5 storey street wall and upper 6th storey setback 3.0m from the front facade so as not be readily visible from the street. The non-complying height would largely be hidden from vantage points within the surrounding streetscape.
- The proposed building height is consistent with the building heights of recent developments in the immediate surrounds. In particular, the design provides a similar street height as 1 Layton Street which provides a 5 storey street wall and set back 6th storey.
- The rear adjoining local heritage item at 6-10 Mallet Street is a 6 storey converted warehouse building which is prescribed the same maximum 18m building height and 5 storey building height under SLEP 2012 and SDCP 2012 respectively. The maximum height of the proposal is lower than the roof ridge height of the heritage item. A reduction to a compliant building height of 18m would not be discernible from the streetscape noting the exceeding building height would largely not be visible from surrounding vantage points and the proposal is already lower than the adjoining 6 storey heritage item.
- The additional building height will not result in privacy impacts to adjoining properties.
- The solar impacts of the proposal on the adjoining sites are consistent with a compliant scheme, noting the immediately adjoining residential sites at 2-8 Isabella Street are located to the south of the site and would be overshadowed by any redevelopment of the site to a five storey height.
- Compliance with the 18m height requirement would not improve the amenity to adjoining properties or improve the design of the building. Rather it would decrease the amenity provided to future lodgers within the communal areas and potentially reduce the amount of affordable rental housing provided to the site.
- The 18m maximum height standard for a 5 storey building within the B4 Mixed Use zone would have contemplated a 4.5m floor to ceiling height for a commercial ground floor and minimum 3.1m floor to ceiling height for residential storeys above for an approximate 16.9m building height (excluding plant). The proposal provides 3.0m floor to ceiling heights for the first five storeys to provide a building height of 15m, well below the standard. The proposed sixth storey has a floor to ceiling height of 2.99m and presents an opportunity to provide additional affordable rental housing that marginally exceeds the standard with no material amenity impacts to adjoining properties.

Clause 4(a)(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,

In the recent judgement within *Initial Action*, Preston CJ indicated that a consent authority only needs to be satisfied that an applicant has adequately addressed the matters within clause 4.6(3), and that, pursuant to 4.6(4)(a)(ii), the development is consistent with the objectives of the standard

and consistent with the objectives of the zone. Although not strictly required, this variation has addressed the reasons that the development satisfies 4.6(4)(a)(ii).

The objectives of the B4 Mixed Use zone are as follows:

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

The proposal seeks to provide additional affordable rental housing in the form of 17 boarding rooms to meet the needs of the local community. The proposed boarding house development and ground floor café tenancy are complementary to the Camperdown local centre and B4 Mixed Use zone. The development will not result in any additional adverse environmental impacts beyond those already contemplated within the prescribed height standards for the site.

- *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 proposed development is consistent with the above objective as it will provide a mixture of compatible residential and retail land uses within an accessible location. Bicycle parking is proposed in favour of car parking, which will maximise public transport patronage and encourage walking and cycling.

- *To ensure uses support the viability of centres.*

The proposed development will revitalise the currently underutilised site with a new ground floor café tenancy and new residential accommodation in the form of boarding rooms within the Camperdown local centre. The proposed development will support the viability of the centre.

The objectives of Clause 4.3 Height of Buildings of SLEP 2012 are as follows:

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

The proposal responds to the site's attributes, being long, narrow, and adjoining two heritage items. The proposal provides a slender contemporary building with a 5 storey street wall and upper 6th storey setback 3.0m from the front facade so as not to be readily visible from the street. As per the existing building on site, the proposed building is setback from the nil setback heritage item at 7-11 Layton Street. The proposed building height is consistent with the building heights of recent developments in the immediate surrounds. In particular, the design provides a similar street height as 1 Layton Street, which is characterised a 5 storey street wall and a set back 6th storey. Further, it is noted that the block in which the site sits is prescribed a 5 storey building height under the SDCP 2012 height in storeys map, despite the adjoining local heritage item at 6-10 Mallet Street having a 6 storey building height. Surrounding blocks to the north and south are prescribed with a maximum height of 6 storeys.

Noting the above, the proposed design is consistent with the prevailing and emerging character of developments of a similar scale within the locality in providing zero setbacks to the street, with a five storey street wall and set back upper sixth storey. As discussed below, the proposed building height is not considered to detract from the heritage significance of both adjoining local heritage items.

(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 located within a heritage conservation area but adjoins two heritage items including:

- local heritage item I58, being a 2 storey inter war warehouse building at 9-11 Layton Street.
- local heritage item I2242, being a 6 storey converted warehouse building formerly used as the Grace Bros Repository at 6-10 Mallet Street

The proposed maximum building height of 18.32m sits lower than 6-10 Mallet Street, providing a step down in building heights from the heritage item and is generally in keeping with the envisaged building height for the site. When viewing 6-10 Mallet Street and the proposed building at the street level the additional building height would not be discernible compared with a complying building height. The proposed development is setback 6m from 6-10 Mallet Street at the rear. This maintains daylight to the windows of 6-10 Mallet Street despite not being required to do so, given the windows are built to the boundary and the building is used for commercial purposes. It is considered the proposed building form will complement the existing heritage item.

It is acknowledged there is a disparity in building heights between the existing heritage item 9-11 Layton Street and the proposal. However, this contrast is similar to that currently provided by the heritage item at 6-10 Mallet Street and newer buildings within the locality. The proposed building form and height is a minor variation from the maximum building height standard but is visually still generally in keeping with that envisaged for the site and locality under SLEP 2012. As sites to the north are redeveloped over time to a similar scale, the contrast will be visually less prominent.

Overall, it is considered that the proposed development will not have an unacceptable impact on the heritage significance of the local items.

(c) to promote the sharing of views,

The proposed development will not impact on any significant views that are available from nearby properties, or to or from important landmarks within the locality.

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

The site is not located within outskirts of Central Sydney or Green Square Town Centre. Notwithstanding, the proposed building height is in keeping with the density of the Camperdown local centre and therefore in keeping with the character of the area.

- (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 site is not located near Green Square.

Conclusion

Having regard to the judgement in *Wehbe*, the objectives of the B4 Mixed Use zone and objectives of the building height standard, the reasons for the variation can be summarised as follows:

- The proposal seeks to provide a development that is consistent with the established and the desired future character of the area.
- Strict enforcement of the height of buildings development standard in this instance would hinder the desired redevelopment outcome for the site, the orderly and economic use of the land, and would not be in line with the scale of surrounding future development as guided by the local planning provisions.
- The exceedance in the prescribed 18m building height is considered minor being up to 0.32m and a 1.8% variation to the height limit. It is noted that the majority of the sixth storey complies with the height limit. The non-complying elements relate to the lift overrun and a small part at the rear of the level 5 roof. Insistence on compliance with the 18m height limit would not improve the development noting the non-compliant elements would largely be hidden from the streetscape, and the difference between the proposal and a complying building would not be discernible at the street level.
- The development will not result in any additional adverse environmental impacts beyond those already contemplated within the prescribed height standards for the site ensuring that satisfactory residential amenity is maintained.
- Compliance with the 18m height requirement would not improve the amenity to adjoining properties nor improve the design of the building. Rather it would decrease the amenity provided to future lodgers within the communal areas and potentially reduce the amount of affordable rental housing provided to the site.

- The proposed boarding house development and ground floor café tenancy are complementary to the Camperdown local centre and B4 Mixed Use zone.
- The proposed development will provide a mixture of compatible residential and retail land uses within an accessible location. Bicycle parking is proposed in favour of car parking, which will maximise public transport patronage and encourage walking and cycling.

Given the above it is considered that the requirements of Clause 4.6 have been satisfied and that the variation to the height of buildings development standard can be approved.