

Attachment D

<p>Clause 4.6 Variation Request – Height of Buildings</p>
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Address: Nos. 10 - 12 Egan Street, Newtown
Proposal: Boarding House
NOVEMBER 2020

CLAUSE 4.6 VARIATION

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EGAN STREET, NEWTOWN

PROJECT INFORMATION

The Proposal: This Clause 4.6 Variation accompanies additional documentation submitted in support of Development Application No. D/2020/517 for the adaptive reuse of an existing factory for a two storey boarding house development comprising 19 rooms at Nos. 10 – 12 Egan Street, Newtown.

Site: Lot 1 Deposited Plan 77654
Nos. 10 – 12 Egan Street
NEWTOWN NSW 2042

Architect:



Level 2, Nos. 12 - 16 Queen Street
CHIPPENDALE NSW 2008



CLAUSE 4.6 VARIATION – BUILDING HEIGHT

SYDNEY LOCAL ENVIRONMENTAL PLAN 2012

The Sydney Local Environmental Plan 2012 was gazetted on 14 December 2012 and applies to all land within the Sydney local government area (LGA). The aims of the LEP are as follows:

- a) *to reinforce the role of the City of Sydney as the primary centre for Metropolitan Sydney,*
- b) *to support the City of Sydney as an important location for business, educational and cultural activities and tourism,*
- c) *to promote ecologically sustainable development,*
- d) *to encourage the economic growth of the City of Sydney by—*
 - i. *providing for development at densities that permit employment to increase, and*
 - ii. *retaining and enhancing land used for employment purposes that are significant for the Sydney region,*
- e) *to encourage the growth and diversity of the residential population of the City of Sydney by providing for a range of appropriately located housing, including affordable housing,*
- f) *to enable a range of services and infrastructure that meets the needs of residents, workers and visitors,*
- g) *to ensure that the pattern of land use and density in the City of Sydney reflects the existing and future capacity of the transport network and facilitates walking, cycling and the use of public transport,*
- h) *to enhance the amenity and quality of life of local communities,*
- i) *to provide for a range of existing and future mixed-use centres and to promote the economic strength of those centres,*
- j) *to achieve a high quality urban form by ensuring that new development exhibits design excellence and reflects the existing or desired future character of particular localities,*
- k) *to conserve the environmental heritage of the City of Sydney,*
- l) *to protect, and to enhance the enjoyment of, the natural environment of the City of Sydney, its harbour setting and its recreation areas.*

Clause 4.6 – Exceptions to Development Standards

Clause 4.3(2) of the LEP prescribes a maximum building height of 9 metres. The new corrugated iron roof proposed as part of the intended adaptive reuse and conservation of the heritage item will reduce the height of the existing pitched roof of the building from 9.195 metres to 9.14 metres above ground level (existing). The new roofing will however constitute development in breach of the prescribed maximum building height.

Clause 4.6 of the LEP permits development, even though would contravene a development standard, to achieve better planning outcomes.

(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.*

Comment: The Schedule of Conservation Works details that a new galvanised steel roof with dormers is proposed. The retained queen post trusses will be generally relieved of their structural purpose with a new structural system put in place. The trusses will be exposed to view and run through the boarding house rooms and over the side courtyards. The proposal seeks flexibility in application of

the development standard, where the building height standard is breached by the existing building, and this proposal seeks in part to replace the roof to ensure the long term conservation of the heritage building.

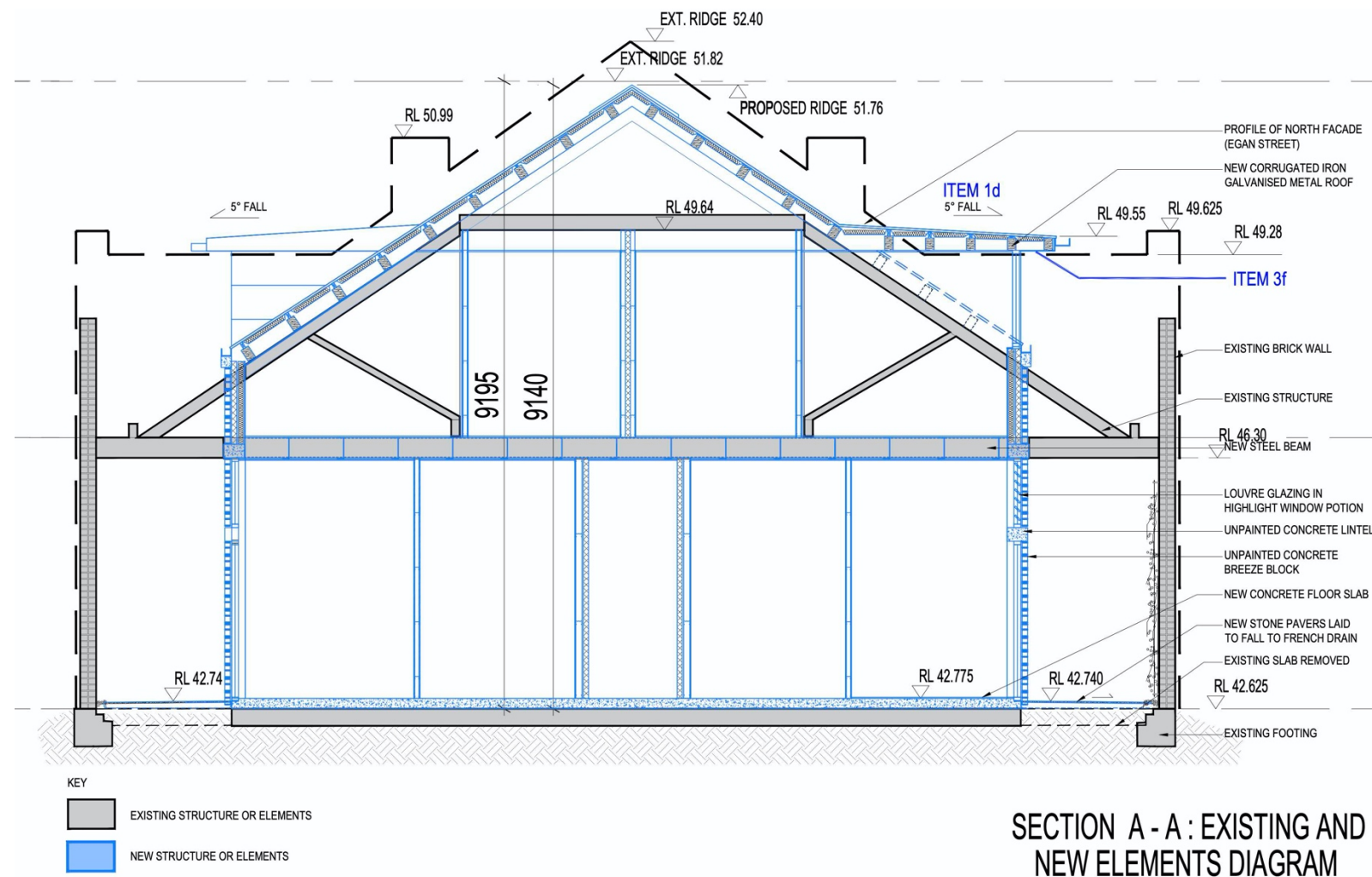
The new roof will actually reduce the height of this pitched building element from 9.195 metres to 9.14 metres (existing bookend parapet heights are unaffected).

The development provides a compatible new use to the former factory and does so with adaptive works that minimise adverse heritage impacts. The application is accompanied by a Schedule of Conservation works that recommends replacement of the existing roof, and suggests these works have no impact on the building's heritage value.

It is therefore requested that flexibility be applied in the circumstances., as the resultant development reduces building height and as a consequence has no adverse impacts on the streetscape or upon adjoining properties. A better planning outcome for the conservation of the building is achieved by permitting replacement of the existing roof sheeting.

(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.

Comment: The development standard to be contravened is Clause 4.3(2) of the LEP, which states the height of a building is not to exceed the maximum height shown for the land on the Height of Building Map. The LEP prescribes a maximum building height of 9 metres. The new roof cladding has a maximum height of 9.14 metres, representing a 1.6% variation to the development standard. It is noted the building height clause is not expressly excluded from the operation of Clause 4.6.



(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.*

Comment: This submission is a written request for consideration by the consent authority.

Compliance with the development standard is considered unreasonable and unnecessary in the circumstances of this case, given the proposed development seeks to adaptively reuse an existing heritage building, and given replacement of the roof is considered necessary for the long term conservation of the building. Replacement of the roof sheets and purlins physically **reduces** the height of the building.

Contravention of the development standard by the proposal does not give rise to any adverse environmental impact, as there is no loss of views, outlook or solar access resulting from the roof's ridge being lowered.

Given there are no adverse environmental impacts, and the essential nature of the proposed roofing works in relation to the ongoing conservation of the existing heritage structure, it is affirmed there are suitable environmental planning grounds to justify contravention of 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.*

Comment: The site is zoned R1 General Residential. The objectives of the zone are as follows:

- *To provide for the housing needs of the community.*

When compared to other local government areas throughout NSW, the City of Sydney has a disproportionately high number of non-private dwellings, 11% of the city's total housing stock in 2019. This is partly attributed to the city traditionally having a high concentration of boarding houses which accommodates people on lower incomes. The development clearly satisfies this objective of providing for this accommodation demand, by providing a form of 'affordable' housing accommodation within the suburb of Newtown.

- *To provide for a variety of housing types and densities.*

Non-private dwellings, such as student accommodation and boarding houses, provide additional diversity in the rental market. While often absorbing more than 30% of lower income renters, and therefore not considered an ‘affordable housing’ product (see Housing for All – City of Sydney Local Housing Strategy), these rentals continue to meet an important need in the inner city and ease pressure on the wider market.

- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

N/A

- *To maintain the existing land use pattern of predominantly residential uses.*

Adaptive reuse of this factory building for residential accommodation clearly satisfies this objective, and removes a former now prohibited land use, eliminating an intrusive ‘existing use’.

Each of the relevant stated objectives of the residential zone are clearly satisfied by the proposed development. The proposed variation to the prescribed building height standard, which physically reduces the existing building’s height, will not cause any adverse impact to nearby residents.

The objectives of the building height standard are addressed as follows:

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

There is a reduction in the maximum height of the building (pitched roof ridge) proposed, and the parapets bookending the building and adjoining Egan Street remain unaffected by the proposal. The height of development is therefore 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,*

The site comprises a heritage item within a heritage conservation precinct. There is only a negligible change in building height proposed, and this does not adversely effect any existing transitional building heights.

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

There is no view loss to any adjacent property as a result of this proposal.

- (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.*

Comment: The contravention raises no matters of State or regional significance. Given the proposed development is consistent with the desired future character of development in the precinct, effectively reduces the building's height, has no adverse impacts on adjacent properties and seeks to promote the ongoing conservation of a heritage item, there is no public benefit in maintaining the development standard.

No other matters are required to be taken into consideration by the Director-General.

- (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 land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Rural Small Holdings, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living.

Comment: The proposal is not for contravention of a subdivision control.

- (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).*

Comment: The consent authority will keep a record of the determination.

- (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).

Comment: The proposal is not for complying development. The development standard does not arise from the regulations in connection with BASIX. The standard does not arise from Clause 5.4 or any of the other exclusions listed.



Daniel McNamara
Director