

Attachment C

<p>Clause 4.6 Variation Request – Height of Buildings</p>
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Clause 4.6 – Exceptions to Development Standards Request to Vary Clause 4.3 – Height of Buildings

Address: 26-28 Rainford Street, Surry Hills

Proposal: Alterations and additions to the existing dwelling

Date: 12 October 2021

1.0 Introduction

This is a written request to seek an exception to a development standard pursuant to Clause 4.6 – Exceptions to Development Standards of Sydney Local Environmental Plan (SLEP) 2012. The development standard for which the variation is sought is clause 4.3 Height of Buildings under SLEP 2012.

2.0 Description of the planning instrument, development standard and proposed variation

2.1 *What is the name of the environmental planning instrument that applies to the land?*

The Sydney Local Environmental Plan (SLEP) 2012.

2.2 *What is the zoning of the land?*

The land is zoned R1 General Residential.

2.3 *What are the Objectives of the zone?*

The objectives of the zone are:

- *To provide for the housing needs of the community.*
- *To provide for a variety of housing types and densities.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To maintain the existing land use pattern of predominantly residential uses.*

2.4 *What is the development standard being varied?*

The development standard being varied is the height of buildings development standard.

2.5 *Is the development standard a performance based control? Give details.*

No, the height of buildings development standard is a numerical control.

2.6 *Under what clause is the development standard listed in the environmental planning instrument?*

The development standard is listed under Clause 4.3 of SLEP 2012.

2.7 What are the objectives of the development standard?

The objectives of Clause 4.3 are:

- (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.”

2.8 What is the numeric value of the development standard in the environmental planning instrument?

Clause 4.3 establishes a maximum height of buildings control for the site as illustrated in the extract of the Height of Buildings Map included in Figure 1 below.



Figure 1: Extract of SLEP 2012 Height of Buildings Map

2.9 What is the proposed height in the development application and what is the percentage variation (between the proposal and the environmental planning instrument)?

The proposed maximum building height is 12.366m which is marginally less (115mm) than the existing maximum building height of 12.481m.

Table 1 details the proposed numeric breaches and the percentage of variation to the development standards. This includes details of the existing building heights for comparison.

Control	Height location	Proposed height	Compliance	Variation	% Variation
9m	Ridge	12.046 - 12.366 (existing 12.481m)	No	3.046m - 3.366m (existing 3.481m)	33.8% - 37.4% (existing 38.67%)
9m	Parapet (front)	10.20m (existing)	No	1.2m (existing)	13.3%(existing)

Table 1: Description of the variations to the building height standard

A visual representation of the existing and proposed building heights in relation to the 9m building height control is provided in Figures 2 and 3.

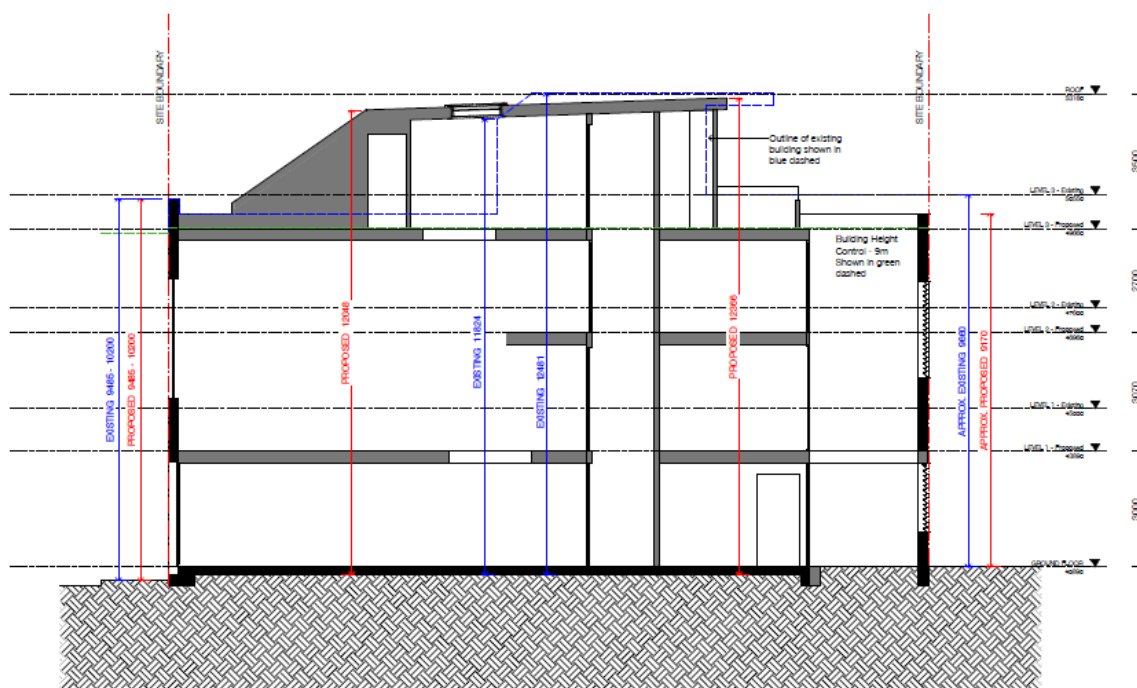


Figure 2: Existing and proposed building heights section

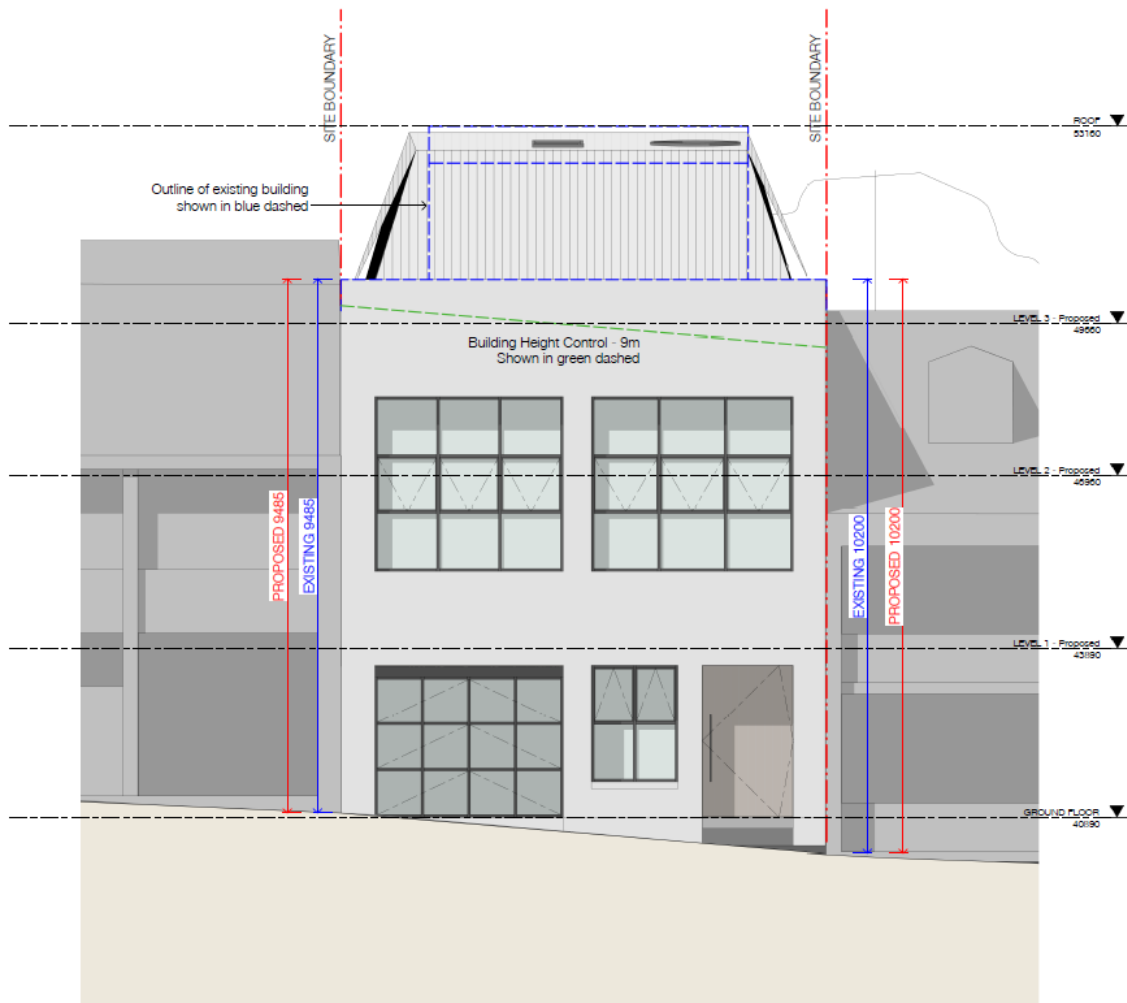


Figure 3: Existing and proposed building heights southern elevation

3.0 Assessment of the Proposed Variation

3.1 Overview

Clause 4.6 Exceptions to development standards establishes the framework for varying development standards applying under a local environmental plan.

Objectives to Clause 4.6 at 4.6(1) 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.”

Clause 4.6(3)(a) and 4.6(3)(b) require 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:

- “(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.”

Clause 4.6(4)(a)(i) and (ii) require 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”*

Clause 4.6(4)(b) requires that the concurrence of the Secretary be obtained, and Clause 4.6(5) requires the Secretary in deciding whether to grant concurrence 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.”*

This application has been prepared in accordance with the NSW Department of Planning, Infrastructure and Environment (DPI&E) guideline *Varying Development Standards: A Guide*, August 2001, and has incorporated as relevant principles identified in the following 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 Limited v Randwick City Council [2015] NSWLEC 1386;*
- *Randwick City Council v Micaul Holdings Pty Ltd [2016] NSWLEC 7;*
- *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118;*
- *RebelMH Neutral Bay v North Sydney Council [2019] NSWCA 130;*
- *Baron Corporation v The Council of the City of Sydney [2019] NSWLEC 61;* and
- *Al Maha Pty Ltd v Huajun Investments Pty Ltd [2018] NSWCA 245.*

3.2 Clause 4.6 (3)(a) requires demonstration that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case

3.2.1 Is a development which complies with the standard unreasonable or unnecessary in the circumstances of the case?

A development that strictly complies with the height of buildings standard is unreasonable or unnecessary in this circumstance for the following reasons:

- The proposal is consistent with the objectives of the building height standard and the objectives of the R1 General Residential zone as outlined in section 3.4 below;
- The variation to the standard does not contribute to unreasonable impacts in terms of overshadowing, privacy, visual impacts or view loss to adjoining or surrounding properties.
- The existing building on the site already exceeds the height standard, with a maximum overall height of 12.481m, some 3.481m above the 9m height standard. The new third storey will sit below the ridge

height of the existing building with a variable ridge height of 12.046m-12.366m, thereby marginally reducing the maximum height non-compliance.

- The existing parapet to Rainford Street, which is to be retained, currently exceeds the height limit with a maximum height of 10.2m. The retention of the parapet height maintains the step in the existing built form, which follows the topography of Rainford Street, as it falls to the east towards Bourke Street.
- The scale of the proposed development is consistent with the desired scale of the surrounding development and streetscape, within the Surry Hills Central locality as identified in the SDCP 2012. Specifically, the proposal maintains the two storey scale to Rainford Street and the rear of the site. While the proposal enlarges the floorplate of the third (uppermost) storey, it sits below the ridge height of the existing storey and is setback from the front and rear parapet and is a receding form. The extracts of the photomontages prepared by SJB Architects included in Figures 4 to 7 below, demonstrate that the third storey will continue to be largely indiscernible above the parapet of the existing building, when viewed from Rainford Street.
- The proposed development is generally compliant with the controls, or the intent of the controls, contained in the SDCP 2012, including the controls contained in Section 4.1 relating to alterations and additions.
- The proposal does not have any adverse impacts on the heritage significance of the heritage conservation area. As outlined in the Heritage Impact Statement (HIS) prepared by John Oultram Heritage & Design, the proposal is for alterations and minor additions to an existing building of very minor heritage significance and the heritage impacts will be nil or minor. The works will have a limited and acceptable impact on the surrounding streetscape and little impact on the conservation area and are consistent with the heritage provisions of the DCP 2012.



VIEW 1 - Existing



VIEW 1 - Proposed

Figure 4: Extract from photomontages showing existing and proposed views looking east along Rainford Street near the intersection with Crown Street (SJB Architects)



VIEW 2 - Existing



VIEW 2 - Proposed

Figure 5: Extract from photomontages showing existing and proposed views looking east along Rainford Street west of the intersection with Collins Street (SJB Architects)



VIEW 3 - Existing



VIEW 3 - Proposed

Figure 6: Extract from photomontages showing existing and proposed views looking east along Rainford Street. This view is east of the intersection with Collins Street (SJB Architects)



Figure 7: Extract from photomontages showing existing and proposed views looking west along Rainford Street. (SJB Architects)

3.2.2 Would the underlying objective or purpose be defeated or thwarted if compliance was required?

Not contested. The underlying objective or purpose of the development standard would not be defeated or thwarted if compliance was required.

3.2.3 Has the development standard been virtually abandoned or destroyed by the Council's own actions in departing from the standard?

It cannot be said that the height of buildings development standard has been abandoned, however it is noted that both the existing building on site and the adjoining building at 22 Rainford Street exceed the height of buildings development standard.

3.2.4 Is the zoning of the land unreasonable or inappropriate?

Not contested. The zoning of the land is appropriate for the site.

3.3 *Clause 4.6 (3)(b) requires demonstration that there are sufficient environmental planning grounds to justify contravening the development standard*

It is considered that there are sufficient environmental planning grounds to justify contravening the development standard as outlined below.

Context

The site is located within the Surry Hills Central locality under the SDCP 2012. Locality statements provide direction and principles for development controls and built form guidelines specific to the character of the area. Development within localities must achieve and satisfy these principles. The statement for this specific locality states it is to “*maintain the transition in scale and use, from large footprint warehouse buildings in the west to small lot retail, shop-top and terrace houses in the east.*”

It is considered the proposed development adheres to the principles of the locality statement. The proposal maintains the two storey street frontage scale of the existing building. The replacement third storey is setback behind the front parapet which minimises the visibility of additions within the streetscape, as evidenced by Figures 3 and 4 above. The proposed additions will maintain the scale of low residential terrace style development that characterises Rainford Street and in this regard is consistent with the locality statement contained in the SDCP 2012.

Rainford Street is a short, narrow street running between Crown and Bourke Streets. It is lined with an eclectic mix of two-storey residential terraces from the late nineteenth and early twentieth centuries, several inter-war commercial buildings and modern townhouse infill development.

Existing development

The existing building on site currently does not comply with the height standard at the parapet or the ridge height. The proposal seeks to minimise changes to street elevation and the existing parapet, which at 10.2m exceeds the 9m height control. The proposal retains the existing parapet height and two storey frontage, thereby retaining the buildings relationship to the Rainford Street and the conversation area. On this basis the non-compliance attributed to the parapet is considered acceptable.

The existing building accommodates a third storey that is 12.481m at its highest point, some 3.481m above the 9m height standard. The third storey is setback from both the front and rear parapets to minimise its appearance from Rainford Street, and the bulk and scale from surrounding properties. As detailed in the HIS, the existing third storey is a modern addition (circa 1990s) that has no heritage value.

The proposal seeks to replace the existing third storey with a new addition, with a larger floor plate. The new third storey will sit just below the ridge height of the existing building with a variable ridge height of 12.046m-12.366m, thereby marginally reducing the maximum height non-compliance. The new third storey is also setback behind the front and rear parapet. While it is closer to the parapet than the existing level, the roof plane has been steeply angled away from the Rainford Street. This ensures the higher parts of the roof that reach 12.046m-12.366m, are setback some 5m from the parapet. The use of a mansard roof form minimises the bulk and intrusion to the adjoining properties and from street level. The approach to the siting, height and design of the addition has sought to minimise its visual impact on Rainford Street, surroundings street and adjacent properties. While the new addition is larger than, as illustrated in Figures 5 and 5, its visibility from Rainford Street, comparative to the existing, is immaterial. On this basis, the variation to the height stand is justified.

3.4 *Is the proposed development in the public interest because it is consistent with the objectives of the particular standard and the objectives for development in the zone?*

3.4.1 Objectives of the Height of Building standard

The proposal remains consistent with the objectives of the height of buildings standard outlined in Clause 4.3 despite the non-compliance, as demonstrated below:

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

As outlined in Section 3.2.1 and 3.3 the height of the 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,”

Rainford Street is located within a conservation area and is characterised by a variety of building types and sizes. The subject building is not one of a group or row of buildings. As outlined in the HIS, the current building is a neutral element within the streetscape. The proposed new addition will not result in a discernible increase in the height and scale of the existing dwelling and will have minimal visibility from Rainford Street and the surrounding streets. In this regard, the proposal does not impact on existing height transitions that be apparent across the conservation area.

“(c) to promote the sharing of views,”

The proposal does not adverse impact on significant views. The proposal maintains the existing vista along Rainford Street.

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

While the development site is not located in Central Sydney or Green Square, it does not impact on the provision of appropriate height transitions to the 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.”*

This objective is not applicable to the proposal.

3.4.2 Objectives of the zone

The objectives of the R1 General Residential zone are addressed as follows:

“To provide for the housing needs of the community.”

The proposed alterations and additions will continue to facilitate the use of the building for residential purposes and will significantly improve the amenity of the building for residential use through the provision of a courtyard, terrace and additional amenities.

“To provide for a variety of housing types and densities.”

The proposal contributes to the variety of housing types within Surry Hills and the wider Sydney LGA.

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

The proposal does not inhibit any existing or future land uses intended to meet the day to day needs of residents. The proposed development will provide valuable residential accommodation in close proximity to a range of facilities and services.

“To maintain the existing land use pattern of predominantly residential uses.”

The proposal maintains the existing residential use on site.

3.5 *Whether contravention of the development stand raises any matter of significance for the State or regional Environmental Planning?*

The contravention of the development standard in this case does not raise an issue of State or regional planning significance as it relates to local and contextual conditions.

3.6 *Is there public benefit in maintaining the development standard?*

Generally speaking, there is a public benefit in maintaining standards. However, there is public benefit in maintaining a degree of flexibility in specific circumstances. For reasons outlined in Section 3.2, 3.3 and 3.4 in the specific circumstances of this case, there is no public benefit in maintaining the development standard.

3.7 *Is the objection well founded?*

For the reasons outlined in previous sections, it is considered that the objection is well founded in this instance and that granting an exception to the development can be supported in the circumstances of the case.

The proposed development will satisfy the R1 zone objectives and the objectives of Clause 4.3 Height of Building standard and does not hinder the attainment of the objects specified with Section 1.3(a), (b), and (c) of the Act.

4.0 Conclusion

The proposed variation is based on the reasons contained within this formal request for an exception to the Height of Buildings standard.

The proposal accords with the stated objectives for the R1 Residential zone and Clause 4.3 Height of Buildings development standard. The proposal maintains a scale that is consistent with the existing development on site and will not result in discernible change to the streetscape of Rainford Street or the character of the conservation area. Furthermore, the overall height of the proposal sits below the existing height.

Noting the nature of the non-compliance, the proposal does not contribute to any adverse streetscape, heritage or amenity impacts.

A development strictly complying with the numerical standard would not discernibly alter the overall scale of the building or improve the amenity of surrounding development or public domain.

As demonstrated in this submission, it would be unreasonable for strict compliance with the height control to be enforced. It is concluded that the variation to the height development standard is well founded as compliance with the standard is both unnecessary and unreasonable in the circumstances of this case.