

# **Attachment J**

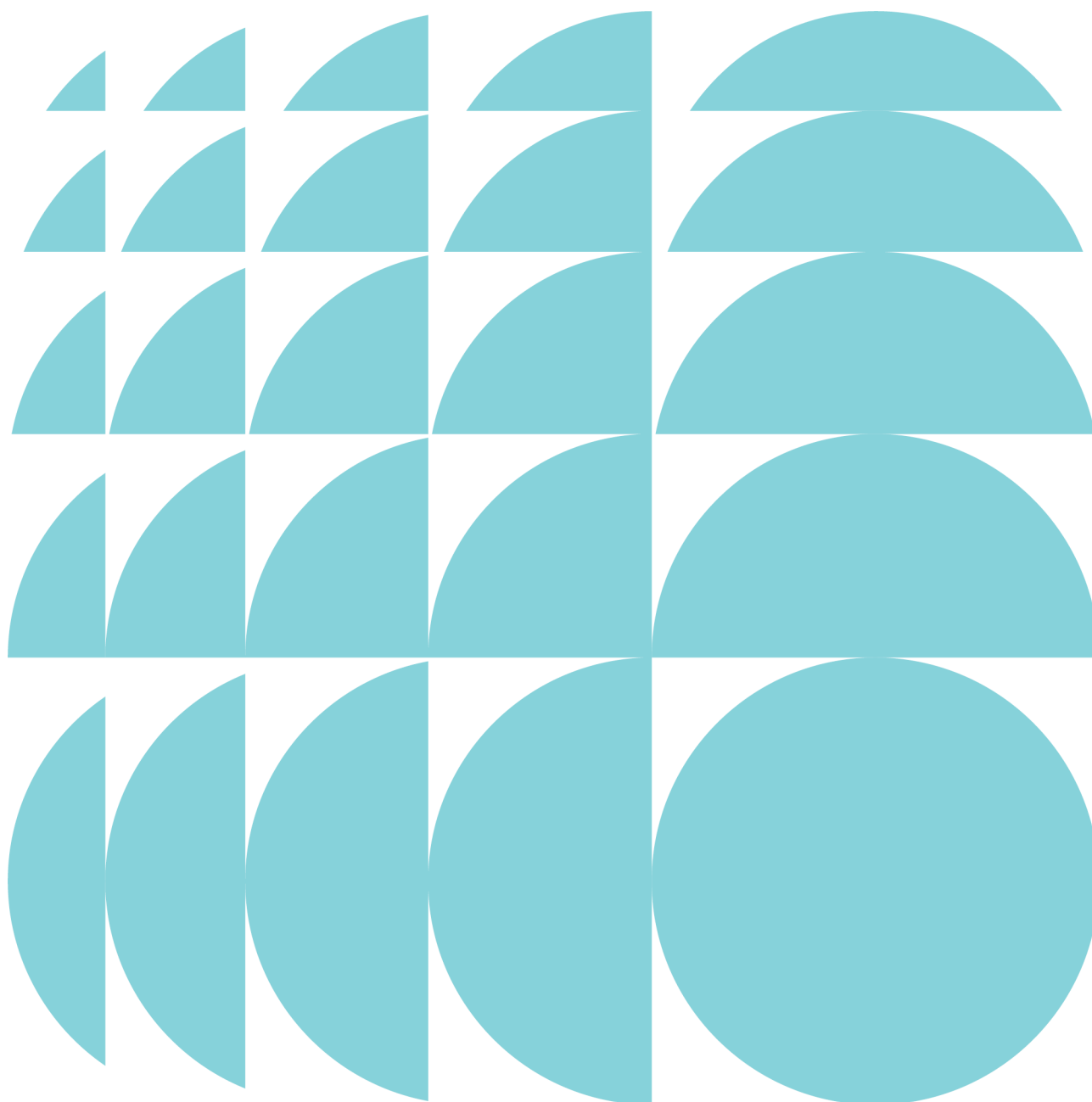
<p><b>Clause 4.6 Variation Request – Height of Buildings</b></p>
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## Clause 4.6 Variation - Height of Buildings

422-424 Cleveland Street, Surry Hills

Submitted to City of Sydney Council  
On behalf of Pyrafount No. 6 Pty Ltd

17 June 2021 | 2190997



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# Contents

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1.0	Introduction	2
2.0	Development Standard to be Varied	3
2.1	Is the Planning Control in Question a Development Standard?	3
2.2	Relevant Development Standard	3
2.3	Variation Sought	4

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3.0	Justification for Contravention of the Development Standard	5
3.1	Role of the consent authority	5
3.2	Clause 4.6(3)(a): Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case	6
3.3	Clause 4.6(3)(b): Environmental planning grounds to justify contravening the development standard	9
	Environmental impacts	10
3.4	Clause 4.6(4)(a)(i): The applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3)	12
3.5	Clause 4.6(4)(a)(ii): In the public interest because it is consistent with the objectives of the zone and development standard	12
3.6	Other Matters for Consideration	13

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4.0	Conclusion	14
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## Figures

Figure 1	Height of Buildings Map	3
Figure 2	Proposed section illustrating height variation	4
Figure 3	Building height plane illustrating proposed variation	4
Figure 4	Sections of the proposal in the context of the site	7
Figure 5	Visuals of the proposed building in Context	8
Figure 6	Sections of the proposal illustrating the circulation strategy	10

## Appendices

A	Architectural Drawings	
	<i>JSA Studio</i>	

## 1.0 Introduction

This clause 4.6 variation request has been prepared by Ethos Urban on behalf of Pyrafount No. 6 Pty Ltd. It is submitted to the City of Sydney Council (the Council) in support of a development application (DA) for the redevelopment of 422-424 Cleveland Street, Surry Hills (the site) which involves:

- Restoration of the existing intact fabric and façade of ‘The Kirk’ building;
- Partial demolition works including the demolition of the dilapidated timber framed rear extension to The Kirk and outhouse to the north of the existing building which is currently in disrepair;
- Renovation and fit-out of The Kirk community hall (former church hall), including the installation of a new stage area;
- Use of the site as a boarding house, café, and community/entertainment venue.
- Construction of a new six (6) level building extension, including basement, at the rear northern end of the site with full integration with the existing building, comprising:
  - A new basement with co-working/workshop, amenities, and lift access.
  - A ground floor café and foyer, community hall/event space, loading dock, motorcycle and bicycle parking.
  - A further four (4) levels of boarding house accommodation providing twenty-six (26) rooms, inclusive of two (2) accessible rooms, two (2) artist-in-residence rooms with attached common artists’ studios, one (1) building manager’s room, and a common living room, separate laundry room and common open space.
  - Associated vertical circulation including two (2) elevators, and internal fire stair and lobby areas.
- The proposed hours of operation for the community hall are:
  - Monday – Saturday: 7am – midnight
  - Sunday: 7am - 10pm
- The proposed hours of operation of the ground floor café are:
  - Monday – Saturday: 8am – 12am
  - Sunday: 8am – 10pm
- Associated landscaping works, including new tiled paving over the existing High Holborn Street carriageway outside the entrance of the new café.

The maximum building height that applies to the site under clause 4.3 of the *Sydney Local Environmental Plan 2012* (Sydney LEP 2012) is 15 metres. The vertical distance from existing ground level to the highest point of the proposed building is 15.875m which varies the maximum height control development standard in the Sydney LEP 2012 by 0.875m.

Clause 4.6 of the Sydney LEP 2012 enables Council to grant consent for development even though the development contravenes a development standard. The clause aims to provide an appropriate degree of flexibility in applying certain development standards to achieve better outcomes for, and from, development.

This clause 4.6 variation request has been prepared to address the variation to the development standard for height of buildings under clause 4.3 of the Sydney LEP 2012 and should be read in conjunction with the Statement of Environmental Effects (SEE) prepared by Ethos Urban dated 17 September 2020, and supporting documentation submitted on 16 June 2021.

This variation request demonstrates that compliance with the height of buildings development standard of the Sydney LEP 2012 is unreasonable and unnecessary in the circumstances of the case and that there are sufficient environmental planning grounds to justify contravention of the standard.

Notwithstanding the variation to the height of buildings development standard, the proposed development:

- Achieves the objectives of clause 4.3 of the Sydney LEP 2012 by:
  - Ensuring that the height of the development is in-keeping with the scale and character of neighbouring buildings and is of a form that will not result in any negative environmental impacts.
  - Respecting the character appearance and scale of nearby buildings within the heritage conservation area, and adjacent to the site.
  - Ensuring an appropriate transition in height to neighbouring buildings given the surrounding 4-5 storey height context.
  - Ensures that the scheme is aligned with existing floor levels of the retained building and will be DDA compliant since the proposed boarding house and new creative/community uses can be served by a lift.
- Is in the public interest because it is consistent with the objectives of both the development standard and the B4 Mixed Use zone.
- Is consistent with the Greater Sydney Regional Plan, District Plan and City of Sydney strategic planning policies and does not raise any matter of significance for State or regional planning.

Therefore, the consent authority can be satisfied that there is sufficient justification for the variation to the height of buildings development standard, as proposed in accordance with the flexibility allowed under Clause 4.6 of the Sydney LEP 2012.

## 2.0 Development Standard to be Varied

### 2.1 Is the Planning Control in Question a Development Standard?

The height of buildings control in clause 4.3 of the Sydney LEP 2012 is a development standard.

### 2.2 Relevant Development Standard

This clause 4.6 variation request seeks to justify a proposed contravention of the height of buildings development standard set out in the Sydney LEP 2012. Under clause 4.3 of the Sydney LEP 2012, the site is mapped with a height of 15 metres as shown on the Height of Buildings Map (sheet 015) (refer to **Figure 1**).



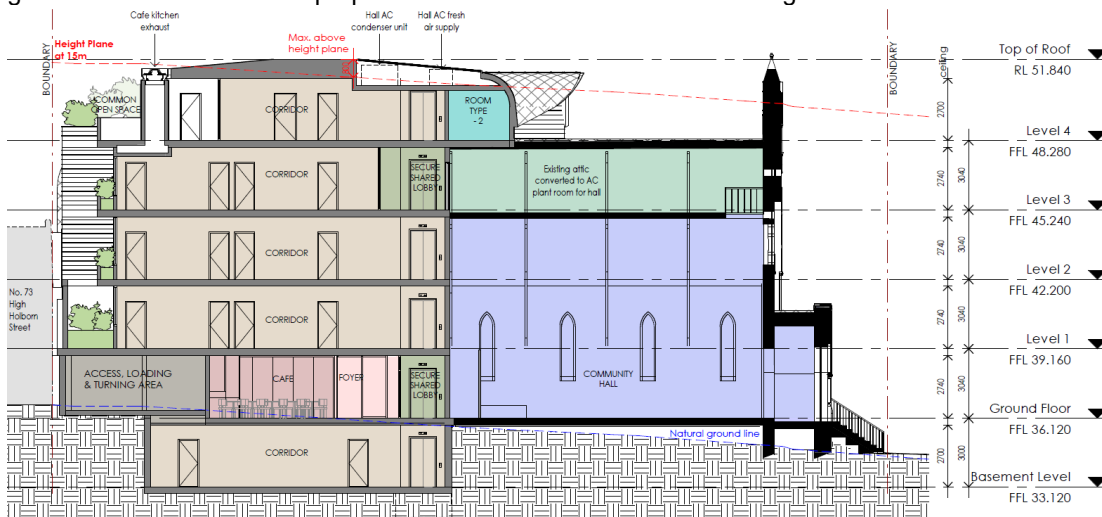
**Figure 1** Height of Buildings Map

Source: City of Sydney, Ethos Urban

### 2.3 Variation Sought

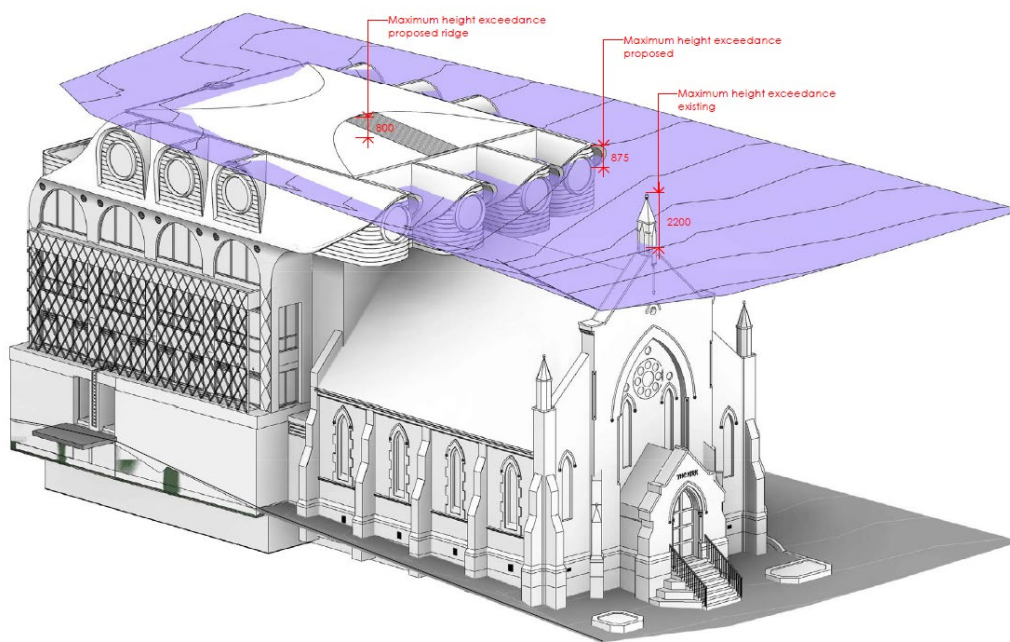
The maximum height of building development standard established for the site under the Sydney LEP 2012 is 15m. The proposal seeks a maximum height of 15.875m (RL 51.84) which varies the height of buildings standard by 0.875m, or 5.8% as shown in **Figure 2** and **Figure 3**. The natural ground level of the site varies, and inclines from south to north by approximately 1.9m, contributing to the requirement for a variation.

The variation to the building height is limited to the curved roof form which has been designed to incorporate the lift overrun, AC condenser units and fresh air inputs. The final of the existing deconsecrated church building at the site exceeds the building height development standard in its current form by 2.2m (12.6%) at the Cleveland Street frontage, with the ornamental spire in the façade rising above the height plane. The height in this portion of the site is greater than the roof of the proposed addition and will remain unchanged.



**Figure 2** Proposed section illustrating height variation

Source: JSA Studio



**Figure 3** Building height plane illustrating proposed variation

Source: JSA Studio

### 3.0 Justification for Contravention of the Development Standard

Clause 4.6(3) of the Sydney LEP 2012 provides that:

#### 4.6 Exceptions to development standards

- (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.*

Furthermore, clause 4.6(4)(a) of the Sydney LEP 2012 provides that:

- (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.*

Assistance on the approach to justifying a contravention to a development standard is also to be taken from the applicable decisions of the NSW Land and Environment Court in:

1. *Wehbe v Pittwater Council* [2007] NSW LEC 827.
2. *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1009.
3. *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 (Initial Action).
4. *Al Maha Pty Ltd v Huajun Investments Pty Ltd* [2018] NSWCA 245 (Al Maha).

#### 3.1 Role of the consent authority

The role of the consent authority in considering this request for a clause 4.6 variation has been recently explained by the NSW Court of Appeal in *Initial Action* and in *Al Maha* to require that the consent authority needs to be satisfied in relation to two matters:

- That the applicant's request has adequately addressed the matters in in clause 4.6(4)(a)(i).
- That the proposed development will be in the public interest because of its consistence with the objectives of the development standard and the zone objectives.

The Council is required to form these two opinions first before it considers the merits of the DA and it can only consider the merits of the DA if it forms the required satisfaction in relation to the matters. In particular, the Council needs to be satisfied that there are proper planning grounds to grant consent and that the contravention of the standard is justified.

This report provides the basis for the Council to reach this level of satisfaction.

The relevant matters contained in clause 4.6 of the Sydney LEP 2012, with respect to the height of buildings development standard, are each addressed below, including with regard to the above decisions.



### 3.2 Clause 4.6(3)(a): Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case

In *Wehbe*, Preston CJ of the Land and Environment Court provided relevant assistance by identifying five traditional ways in which a variation to a development standard had been shown as unreasonable or unnecessary. However, it was not suggested that the types of ways were a closed class, i.e. there may be other ways.

While *Wehbe* related to objections made pursuant to *State Environmental Planning Policy No. 1 – Development Standards* (SEPP 1), the analysis can be of assistance to variations made under clause 4.6 where subclause 4.6(3)(a) uses the same language as clause 6 of recently repealed SEPP 1 (see *Four2Five* at [61] and [62]; *Initial Action* at [16]).

As the language used in subclause 4.6(3)(a) of the Sydney LEP 2012 is the same as the language used in clause 6 of SEPP 1, the principles contained in *Wehbe* are of assistance to this clause 4.6 variation request. The five ways outlined in *Wehbe* are:

- The objectives of the standard are achieved notwithstanding non-compliance with the standard (**First Way**).
- The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary (**Second Way**).
- The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable (**Third Way**).
- 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 (**Fourth Way**).
- 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 would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone (**Fifth Way**).

This clause 4.6 variation request establishes that compliance with the development standard is unreasonable or unnecessary in the circumstances because the objectives of the height of buildings development standard are achieved notwithstanding the non-compliance with the standard (the First Way).

#### 3.2.1 The underlying objectives or purposes of the development standard

The objectives of the development standard contained in clause 4.3 of the Sydney LEP 2012 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*

### 3.2.2 The objectives of the standard are achieved notwithstanding non-compliance with the standard

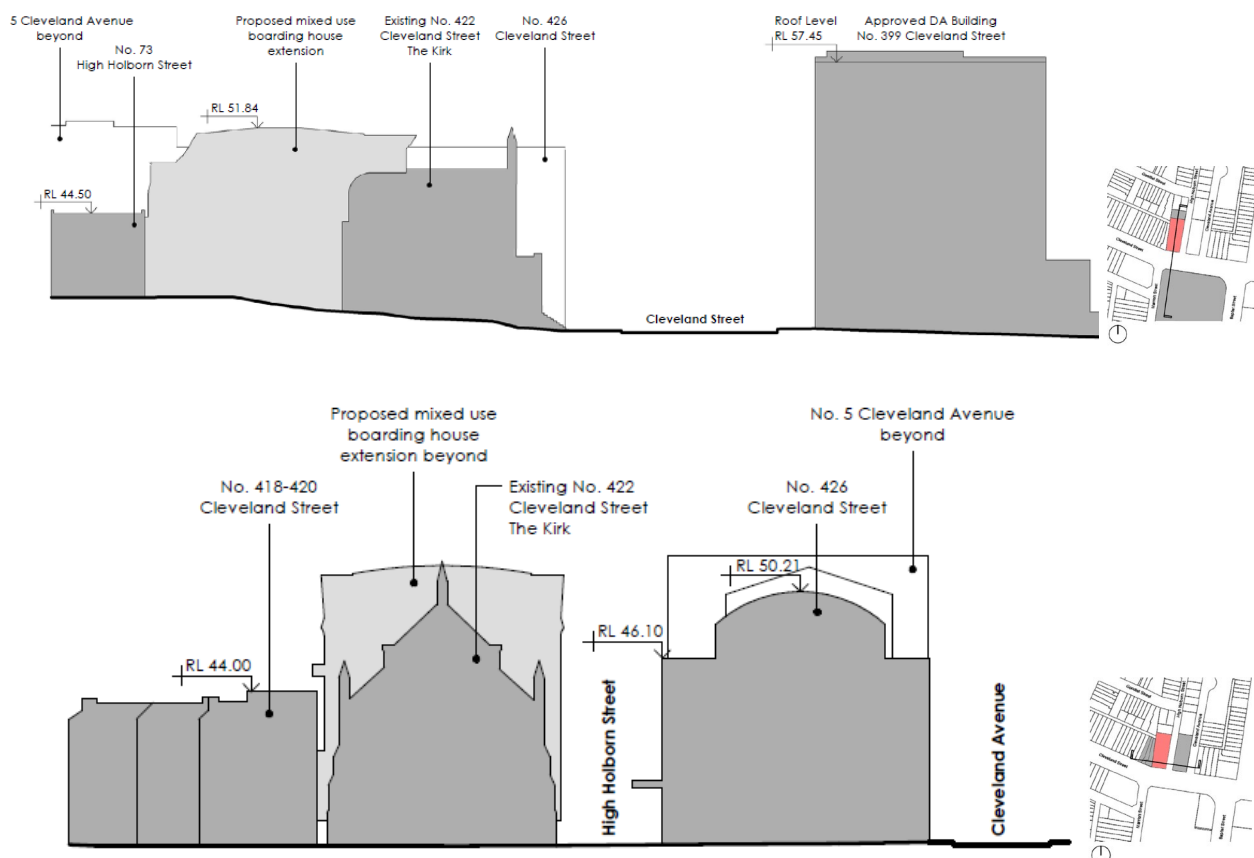
**Objective 4.3 (1)(a)** is “to ensure the height of development is appropriate to the condition of the site and its context”.

The site is located in a densely urbanised inner-city location, with a variety of building typologies and scales in the locality. Surrounding built forms can be characterised by a variety of mid-rise buildings and terraces and higher density forms of development. The site sits on Cleveland Street, and is directly opposite the approved redevelopment of the Surry Hills Shopping Village which provides new buildings up to seven (7) storeys in height.

The existing deconsecrated church on the site already exceeds the height of buildings development standard by 2.2m along Cleveland Street. This form is consistent with the variety of building scales along Cleveland Street, in particular the mixed use building located further to the east, which have similar heights, including: 426 Cleveland Street (3-4 storeys), 5 Cleveland Avenue (3 Storeys), and the Crown Hotel 591 Crown Street (3-4 storeys).

JSA Studio has prepared a number of sections to illustrate the relationship of the proposal with the existing and future surrounding context, demonstrating the appropriateness of the building scale, particularly to the neighbouring building east along Cleveland Street and south to the Surry Hills Shopping Village (refer to **Figure 4**). These sections illustrate that the building accords with the surrounding context of taller buildings and is consistent in the approach to setting back taller elements of buildings from the northern side of Cleveland Street.

The proposed building height, at 15.875m is consistent with the surrounding context, and the conditions of the site which already contain a building that exceeds the 15m height limit. It is considered that notwithstanding the non-compliance with the height of buildings standard, the proposal will meet the aims of objective 4.3(1)(a).



**Figure 4** Sections of the proposal in the context of the site

Source: JSA Studio

**Objective 4.3 (1)(b)** is “to ensure appropriate height transitions between new development and heritage items and buildings in heritage conservation areas or special character areas”

The proposed development retains the existing deconsecrated church building, which is identified as having a positive contribution to the heritage conservation area. Works will be undertaken to restore and repair parts of this building. The retention of the existing building on the site, and recessed nature of the boarding house addition ensures a degree of consistency in street level perception along Cleveland Street as demonstrated in **Figure 5** below.

The proposal also provides a smooth height transition from Cleveland Street to the lower scale residential terraces to the north and north-west. The built form to the south and east of the site is generally larger in scale. The development provides a varied scale with both the new addition and retained church reading as one highly articulated form. Due to the topography of the locality, rising away from Cleveland Street, the proposal also has a reduced sense of scale to established building forms at higher topographies.

The proposed boarding house addition to the existing church building will effectively infill a largely vacant rear yard to the north of the existing building, but will take cues from the height and scale of the existing building and neighbouring properties so as to ensure an appropriate height and scale that will not negatively impact the character or appearance of the heritage conservation area. The proposal will meet the aims of objective 4.3(1)(b).



**Figure 5** Visuals of the proposed building in Context

Source: JSA Studio

**Objective 4.3 (1)(c)** is “to promote the sharing of views”.

Given the immediate dense context of the site, and the orientation of the existing building, the proposed boarding house addition will not obscure any views across the site. Considering the proposed variation, the minor exceedance of the height of buildings development standard would not impact any existing or likely future views. No neighbouring properties are orientated to have significant views looking south, north or east across the site. The nearby development across High Holborn Street has limited short-distance views looking west across the site, however, these are limited by the existing building and by trees along Goodlet Lane.

**Objective 4.3 (1)(d)** is not applicable since the site is not located in Central Sydney or Green Square Town Centre.

**Objective 4.3 (1)(e)** is not relevant since the site is not within Green Square Town Centre.

### 3.2.2.1 Conclusion on Clause 4.6(3)(a)

The above section has demonstrated that compliance with the height of buildings development standard is unreasonable or unnecessary in the circumstances of the case. The objectives of the height of buildings development standard, set out in clause 4.3, have been achieved by the proposed development notwithstanding minor exceedances as a result of:

- The proposed lift overruns which seeks to improve accessibility and to deliver DDA compliance to the overall development;
- Floor to ceiling heights of 2.7m that provide increased residential amenity to the proposed boarding rooms; and
- A cohesive architectural roof form that serves to conceal plant equipment and lift overruns providing improved design excellence on the site.

### 3.3 Clause 4.6(3)(b): Environmental planning grounds to justify contravening the development standard

Clause 4.6(3)(b) of the Sydney LEP 2012 requires the contravention of the development standard to be justified by demonstrating that there are sufficient environmental planning grounds to justify the contravention. The focus is on the aspect of the development that contravenes the development standard, not the development as a whole. Therefore, the environmental planning grounds advanced in the written request must justify the contravention of the development standard and not simply promote the benefits of carrying out the development as a whole (*Initial Action* at [24]).

In *Four2Five*, the Court found that the environmental planning grounds advanced by the applicant in a Clause 4.6 variation request must be particular to the circumstances of the proposed development on that site at [60]. In this instance the relevant aspect of the development are part of the fourth floor and roof structures that result in the exceedance of the development standard.

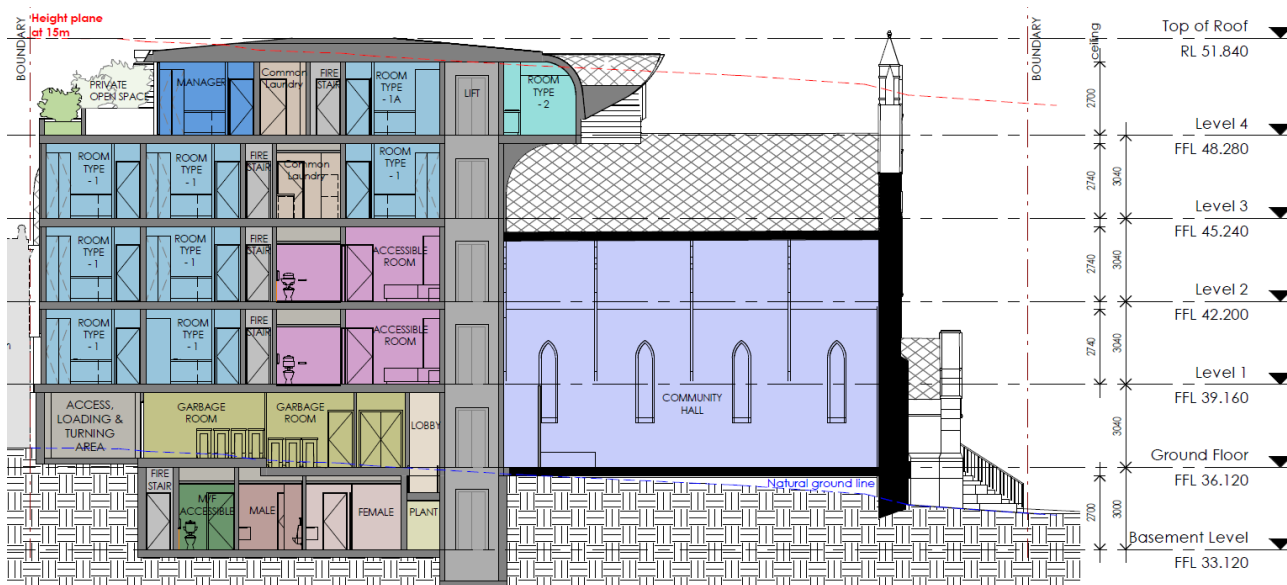
There are sufficient environmental planning grounds to justify contravention of the height of buildings development standard in this specific instance, as described below.

#### Circulation Integration

The proposed building addition has been designed with regard to the internal floor levels of the retained deconsecrated church building on the site. By incorporating the internal floor levels of the new addition at equivalent heights to the existing levels, step free and equitable access is able to be provided across the buildings.

To ensure that the scheme is DDA compliant, the floor levels of the new addition have been matched to that of the church building, and the lift and fire stairs have been strategically located to provide circulation and emergency egress for both separate buildings. **Figure 6** illustrates a section through the buildings and identifies the circulation strategy which has shaped the overall building form.

While the proposed circulation strategy has positive benefits of providing an accessible and safe outcome, it does contribute to the required height variation, lifting the levels of the new addition, and ultimately pushing the lift core and fire stairs to a centralised location at a higher point of the site. On balance, the benefits of the circulation strategy outweigh the minor requirement to vary the height of buildings development standard.



**Figure 6 Sections of the proposal illustrating the circulation strategy**

Source: JSA Studio

**Residential Amenity**

The proposed height variation is also in part a result of the design intent to provide a high level of residential amenity to the boarding house rooms. The proposed design seeks to improve the amenity to boarding rooms with floor to ceiling heights of 2.7m.

If strict compliance was required with the height of buildings development standard, some floor to ceiling levels may be required to be minimised. Considering the important amenity benefits these features provide, and due to the lack of any environmental impacts associated with the minor height variation, strict compliance is not considered necessary in this instance.

**Environmental impacts**

The development would exceed the height of buildings development standard by 0.875m. This portion of the building is limited to architectural roof form which accommodates plant and lift overrun. There would be no useable GFA provided above the line of the height of buildings development standard. As such, there would be no additional loss of privacy or intensification of use resulting from the portion of the building that exceeds the development standard.

In terms of overshadowing, the 0.875m exceedance would be negligible. Surrounding residential properties are already significantly overshadowed by the existing building on site, and neighbouring buildings of a similar height.

It follows that there would be no adverse environmental impacts as a result of the portion of the development that would exceed the height control.

**Consistency with Objects of the EP&A Act**

In *Initial Action*, the Court stated that the phrase “environmental planning grounds” is not defined but would refer grounds that relate to the subject matter, scope and purpose of the EP&A Act, including the objects in section 1.3 of the Act. While this does not necessarily require that the proposed development should be consistent with the objects of the Act, nevertheless, as set out in **Table 1** we consider the proposed development is broadly consistent with each object, notwithstanding the proposed variation of the height development standard.

**Table 1 Assessment of consistency of the proposed development with the Objects of the EP&A Act**

Object	Comment
(a) to promote the social and economic welfare of the community and a better environment by the proper	The proposed height variation will promote the economic and social welfare of the community by improving the built form in

Object	Comment
management, development and conservation of the State's natural and other resources	the area and reinvigorating the site which has become disused over time. The mixture of boarding house rooms, a new café, and the rejuvenated cultural/creative community hall space will directly contribute to the vibrancy of the locality and community and provide diversity of housing offer.
(b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment	The proposal, inclusive of height variation, will promote ecologically sustainable development by achieving the required environmental requirements of SEPP BASIX, as well as providing both residential accommodation and cultural/creative uses in the refurbished building.
(c) to promote the orderly and economic use and development of land	The proposed height variation promotes the orderly and economic use and development of land by co-locating a new boarding house and community uses on the site within the site's permissible and environmental density. This proposal will provide a mix of land uses and increase the density of the site commensurate to its location close to Central Sydney, nearby transportation linkages, and a wide variety of services and facilities. The height variation itself will not provide for additional GFA or intensification of the proposed use, with no useable GFA above the height limit.
(d) to promote the delivery and maintenance of affordable housing	The proposed height variation facilitates a boarding house, offering a diversity in the type of residential accommodation of sufficient number of rooms and a varying price point for accommodation in the competitive inner-city market. The height variation contributes to an overall integrated design and the delivery of affordable housing rooms with community space.
(e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats	The proposed height variation or proposal generally will not have any impact on threatened species or ecological communities.
(f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage)	No items or areas of built or cultural heritage will be negatively impacted by the proposed height variation, and the proposed development (with height variation) will ensure the cultural qualities of the existing building are retained and continued on the site. The height variation is set back from the main façade of the church building and the development will facilitate repair and restoration to the church. Therefore, the sustainable management of heritage can continue in light of the proposal.
(g) to promote good design and amenity of the built environment	The proposed height variation will promote good design and amenity of the built environment by exhibiting a unique and bespoke design which considers the layered history of the site and deconsecrated church building, The Kirk.
(h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants	The proposed development, inclusive of the variation, will comply with the relevant provisions of the BCA and will promote the health and safety of occupants.
(i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State	This object is not relevant to this proposal, however, the proposal has adhered to the required planning processes for the site and scale of development, and implements a state policy (the SEPP ARH) at the local level.
(j) to provide increased opportunity for community participation in environmental planning and assessment	The proposed development will be publicly exhibited in accordance with the requirements of Council's Community Participation Plan.

### 3.3.1 Conclusion on clause 4.6(3)(b)

For these reasons, there are sufficient environmental planning grounds to justify the contravention of the maximum building height development standard, as it promotes good design and amenity of the built environment.

### 3.4 **Clause 4.6(4)(a)(i): The applicant’s written request has adequately addressed the matters required to be demonstrated by subclause (3)**

This written request adequately and comprehensively addresses the matters required to be demonstrated by subclause (3).

### 3.5 **Clause 4.6(4)(a)(ii): In the public interest because it is consistent with the objectives of the zone and development standard**

In *Initial Action* at [27], it was held that it is the proposed development’s consistency with the objectives of the development standard and the objectives of the zone that make the proposed development in the public interest. The proposal is in the public interest because it is consistent with the objectives of the development standard and the objectives of the zone.

#### **Consistency Caselaw**

Consistency has been defined throughout caselaw including the following Land and Environment Court cases:

- *Addenbrooke v Woollahra Municipal Council* [2008] NSWLEC 190
- *Schaffer Corporation v Hawkesbury City Council* (1992) 77 LGRA 21
- *Raassis v Randwick City Council* [2019] NSWLEC 1040
- *Abrams v Council of City of Sydney* [2018] NSWLEC 1648
- *Kingsland Developments v Parramatta Council* [2018] NSWLEC 1241
- *Dem Gillespies v Warringah Council* (2002) 124 LGERA 147

In these cases, consistency is considered to be different to that of ‘achievement’. The term ‘consistent’ has been considered in a judgements of the Court in relation to zone objectives and has been interpreted to mean “compatible” or “capable of existing together in harmony” (*Dem Gillespies v Warringah Council* (2002) 124 LGERA 147; *Addenbrooke Pty Ltd v Woollahra Municipal Council* [2008] NSWLEC 190) or “not being antipathetic” (*Schaffer Corporation v Hawkesbury City Council* (1992) 77 LGRA 21). Whichever interpretation is adopted the test of “consistency”, is less onerous than that of “achievement”.

#### **3.5.1 Consistency with objectives of the development standard**

The proposed development is consistent with the objectives of the height of buildings development standard, for the reasons discussed in **Section 3.2.2** of this report.

### 3.5.2 Consistency with objectives of the zone

The proposed development is consistent with the objectives of the B4 Mixed Use Zone, as demonstrated below.

#### ***To Provide a Mixture of Compatible Land Uses***

The proposed development will provide a mix of land uses, including community hall/event space, a café, and a boarding house. These uses are compatible with each other, and more broadly with the surrounding context, and can be serviced and operated without conflict. The proposal, inclusive of height variation, is compatible with this requirement for compatible land uses.

#### ***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 site is in an accessible location on Cleveland Street, close to bus stops which serve six (6) bus routes that run frequently between the city centre and eastern suburbs. A bus stop that serves routes running into the City Centre is located directly outside of the site. The site is a 5-minute walk to Surry Hills light rail station, and a 15 minute walk to Central Station. 18 bicycle parking spaces are proposed for use by residents, employees, and visitors to the site in accordance with the requirements of the Sydney Development Control Plan 2012.

#### ***To ensure uses support the viability of centres***

The proposed development will provide a total of 30 residential boarding rooms, a 164m<sup>2</sup> flexible creative/community hall space and a 74m<sup>2</sup> café. This range of uses will improve active frontages in the locality and expand employment floorspace that will support the viability of Surry Hills. The proposed development, inclusive of height variation, will contribute to the activation and vitality of the site and thereby contribute to the vitality of the Surry Hills local centre.

### 3.6 Other Matters for Consideration

Under clause 4.6(5), in deciding whether to grant concurrence, the Director-General must consider the following matters:

- (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.*

These matters are addressed in detail below.

#### **3.6.1 Clause 4.6(5)(a): Whether contravention of the development standard raises any matter of significance for State or regional environmental planning**

The variation of the height of buildings development standard does not raise any matter of significance for State or regional planning. We do note, however, that the proposal is consistent with the Greater Sydney Regional Plan – A Metropolis of three Cities, the District Plan and City of Sydney strategic policies in that it:

- Contributes to the social connectivity of the City of Sydney Local Government Area through the provision of an active streetscape and includes a community floorspace and retail offering.
- The development includes affordable rental housing in the form of boarding house rooms and creative and cultural space.
- Is well located for access to public transport and the inner Central Sydney.
- Will not negatively impact any heritage items. The height variation has been architecturally designed to be sympathetic and complementary to the Kirk contributory building.
- Will contribute to the generation of jobs during both the construction and operational stages.



Furthermore, the variation of the building height development standard do not result in any significant adverse impact on the surrounding area, surrounding residences and enables a more appropriate design response to the opportunities presented by the site.

### **3.6.2 Clause 4.6(5)(b): The public benefit of maintaining the development standard**

As outlined in **Section 3.3** above, there are sufficient environmental planning grounds to warrant contravention of the development standard and it is therefore considered to be in the public interest for the variation to be supported in this case. The provision of more diverse housing forms, within the site's permissible FSR and in accordance with the State Affordable Rental Housing SEPP is in the public interest.

### **3.6.3 Clause 5.6(5)(c): Any other matters required to be taken into consideration by the Director-General before granting concurrence.**

There are no other matters required to be taken into consideration.

## **4.0 Conclusion**

The assessment above demonstrates that compliance with the height of buildings development standard contained in clause 4.3 of the Sydney LEP 2012 is unreasonable and unnecessary in the circumstances of the case and that the variation is well founded. It is considered that the variation allows for the orderly and economic use of the land in an appropriate manner, whilst also allows for a positive outcome in planning terms.

This clause 4.6 variation request demonstrates that, notwithstanding the variation from the height of buildings development standard, the proposed development:

- Achieves the objectives of clause 4.3 of the Sydney LEP 2012 by:
  - Provides a building addition which fits within the densely urbanised inner-city location, contributing to the variety of building typologies and scales in the locality.
  - Ensuring that the height of the development is in-keeping with the scale and character of neighbouring buildings and the variation typical of the locality – and provide an appropriate transition in building forms along Cleveland Street, particularly from the east and south - that will not result in any negative environmental impacts.
  - Respecting the character appearance and scale of nearby buildings within the heritage conservation area, and adjacent to the site.
  - Ensuring an appropriate transition in height to neighbouring buildings given the immediate 4-5 storey height context.
  - Ensuring that the scheme is DDA compliant and that proposed boarding house and new community uses can be served by a lift.
  - Ensuring a high degree of amenity is provided to the boarding house rooms.
- Is in the public interest because it is consistent with the objectives of both the development standard and the B4 Mixed Use Zone and facilitates 30 boarding rooms for diverse housing choice; and
- Is consistent with the Greater Sydney Regional Plan, District Plan and City of Sydney Council strategic policies and does not raise any matter of significance for State or regional planning. The provision of more diverse housing forms in accordance with the State Affordable Rental Housing SEPP is in the public interest.

In particular, the variation proposed to building height will result in a positive planning outcome as it will facilitate the development of a viable boarding house redevelopment of the site, with the absence of any significant or unreasonable impacts and facilitates the viable adaptive reuse of the Kirk for creative and cultural purposes. Overall, the proposal results in an opportunity to develop the site in a manner generally consistent with the intent of the LEP and DCP controls.

Therefore, the consent authority can be satisfied that there is sufficient justification for the variation to the height of buildings development standard as proposed in accordance with the flexibility allowed under Clause 4.6 of the Sydney LEP 2012.