

# **Attachment C**

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| <p><b>Clause 4.6 Variation Request – Height of Buildings</b></p> |
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# REQUEST TO CONTRAVENE A DEVELOPMENT STANDARD UNDER CLAUSE 4.6

Cl 4.3, Sydney LEP 2012: Height of Buildings



5 Victoria Road, Glebe NSW

Alterations and additions to existing dwelling house and change of use to a dual occupancy (detached)

16 June 2022 | P397

Revision C

## PCN Urban

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## 1.0 INTRODUCTION

This request to contravene a development standard in respect of height of buildings under Clause 4.3 of Sydney LEP 2012 is submitted to accompany a development application for:

*alterations and additions to an existing dwelling house and change of use to a dual occupancy (detached)*

at 5 Victoria Road, Glebe NSW.

It has been prepared with particular reference to the decisions of the Court in respect of:

- Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118;
- Four2Five Pty Limited v Ashfield Council [2015] NSWLEC 90;
- Wehbe v Pittwater Council [2007] NSWLEC 827;
- Al Maha Pty Ltd v Huajun Investments Pty Ltd [2018] NSWCA 245 (Al Maha);

and other relevant case law.

## 2.0 THE DEVELOPMENT STANDARD

### 2.1 The applicable planning instrument which specifies the development standard:

Sydney Local Environmental Plan 2012 (SLEP 2012)

### 2.2 The number of the relevant clause:

Clause 4.3 – Height of buildings.

### 2.3 The provisions of the relevant clause:

Clause 4.3 – Height of buildings.

The development standard to which this request for contravention relates is Clause 4.3(2) of SLEP 2012 – Height of buildings, which specifies that:

*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.*

The nominated height on the map is 6m.

## 3.0 THE CONTRAVENTION SOUGHT:

### 3.1 Description of the contravention:

The proposed development would contravene the development standard as follows:

#### 3.1.1 Maximum building height:

6m

#### 3.1.2 Existing height:

- 8.7m (to ridge of existing dwelling 'Dwelling 1'); and
- 6.6m (top of awning over rear terrace of existing dwelling 'Dwelling 1').

#### 3.1.3 Proposed height:

- Dwelling 1: 6.9m (to highest point of proposed replacement awning over rear terrace)
- Dwelling 2: 8.8m (to highest point on ridge of Dwelling 2)

#### 3.1.4 Extent of proposed contravention:

- Dwelling 1: 0.9m
- Dwelling 2: 2.8m

### 3.1.5 Elements comprising contravention:

- Dwelling 1:
  - The replacement awning over the rear terrace; and
  - New glazed doors to rear terrace in the existing external wall.
- Dwelling 2:
  - Each of the hipped roofs to varying degrees; and
  - A small wedge shaped portion (up to 0.4m) of the external walls of the master bedroom and the kitchen/pantry.

### 3.1.6 Illustration of proposed contravention:



Figure 1: Western elevation showing the contravention being the new construction above the red dashed line.

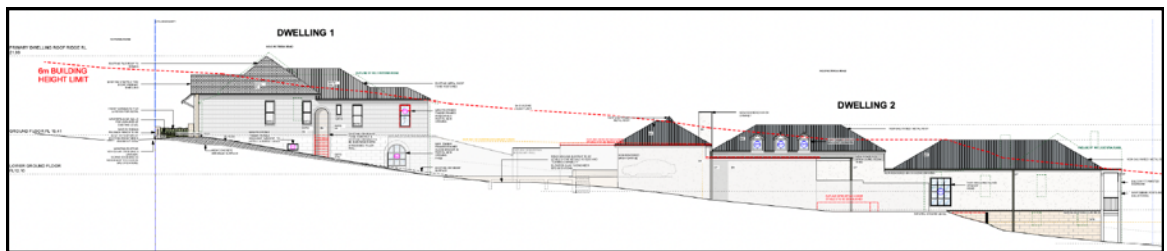


Figure 2: Eastern elevation showing the contravention being the new construction above the red dashed line.

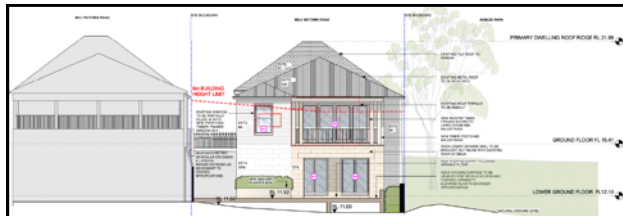


Figure 3: Rear elevation showing contravention showing the contravention (being the new construction above the red dashed line) in the context of the adjacent dwelling at 1 Alexandra Lane which has a hipped roof which also contravenes the development standard.

### 3.1.7 Causes of the contravention:

The contravention would result from the following existing circumstances

- The non-compliant height of the existing dwelling which results in a non-compliant height for the roof of any rear balcony awning addition on the front dwelling;
- The naturally sloping topography of the site;
- The utilisation of a hipped roof of a pitch compatible with the character of the existing dwelling and the conservation area for Dwelling 2 (see Fig. 3); and
- The avoidance of excessive changes of level in a building already split over two levels at the ground floor.
- The adoption of tree sensitive construction methods to protect the health of significant trees within Jubilee Park immediately to the west, the extensive root systems of which would be located within the footprint of the proposed building. This involves the use of a suspended concrete slab which provides

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generally good clearance above the natural ground level to bridge over tree roots and maintain the existing soil grade as much as possible (refer to Arboricultural Impact Assessment Report prepared by Urban Arbor Pty Ltd dated 12 October 2021 and Fig. 4). The report notes that 7 trees could be impacted as follows:

- *Tree 10: Ginkgo biloba located in Jubilee Park to the west: The proposed second dwelling and covered patio encroach into the TPZ by 23% (6m<sup>2</sup>) and into the SRZ, which is major TPZ encroachment and indicates that if significant roots are impacted within this area, the stability and/or condition of the tree will potentially be impacted. To retain the tree in a viable condition, it must be demonstrated that the footings of the secondary dwelling and covered patio can be constructed via a tree sensitive method to bridge over significant roots and reduce the impact to the trees root system.*
- *Tree 16: Jacaranda mimosifolia located in Jubilee Park to the west: The existing dwelling is located in the TPZ of this tree and occupies 9% (13m<sup>2</sup>) of the TPZ area. The footings of the existing dwelling are likely to be restricting root growth into this area. The proposed development works in the TPZ outside the footprint of the existing dwelling include the construction of a terrace area, which encroaches into the TPZ by 7% (9.8m<sup>2</sup>) but not into SRZ. This TPZ encroachment is located in an area of the TPZ between the trunk and footings of the existing dwelling, where there could be a build-up of roots that have deflected away from the dwelling footings, indicating that the tree will potentially be impacted. To retain the tree in a viable condition, it must be demonstrated that the footings of the terrace can be constructed via a tree sensitive method to bridge over significant roots and reduce the impact to the trees root system.*
- *Tree 17: Cinnamomum camphora located in Jubilee Park to the west: The tree is located in the adjoining park. Significant development works are proposed in the TPZ. The proposed terrace addition to the existing dwelling, second dwelling foyer, driveway and associated retaining walls encroach encroachment and indicates that if significant roots are impacted within this area, the stability and/or condition of the tree will potentially be impacted. The proposed sections indicate that all of these structures are proposed to be above the existing soil grade in the TPZ. To retain the tree in a viable condition, it must be demonstrated that the footings of all of these structures can be constructed via a tree sensitive method to bridge over significant roots and reduce the impact to the trees root system.*
- *Tree 18: Ficus rubiginosa located in Jubilee Park to the west: Significant development works are proposed in the TPZ. The proposed secondary dwelling/foyer, driveway and associated retaining walls encroach into the TPZ by 22% (80.5m<sup>2</sup>) and into the SRZ, which is major TPZ encroachment and indicates that if significant roots are impacted within this area, the stability and/or condition of the tree will potentially be impacted. The proposed sections indicate that all of these structures are proposed to be above the existing soil grade in the TPZ. To retain the tree in a viable condition, it must be demonstrated that the footings of all of these structures can be constructed via a tree sensitive method to bridge over significant roots and reduce the impact to the trees root system.*
- *Tree 19: Ficus rubiginosa located in Jubilee Park to the west: The proposed second dwelling encroaches into the TPZ by 34% (242.5m<sup>2</sup>) and into the SRZ, which is major TPZ encroachment and indicates that if significant roots are impacted within this area, the stability and/or condition of the tree will potentially be impacted. The proposed sections indicate that the majority of the secondary dwelling will be located above the existing soil grade in the TPZ. There is a small section of the laundry/bathroom that extends below the existing grade. However, the base of the proposed slab in this location is indicated at an RL of 6.20. The RL of the soil grade in the park adjacent to this section of the dwelling is 5.3. This indicates that the base of slab will be that roots extend under the existing boundary wall and then return upwards 900mm towards the surface into this area, indicating that this section of cut will not impact the tree root system. To retain the tree in a viable condition, it must be demonstrated that all other footings for the dwelling in the TPZ can be constructed via a tree sensitive method to bridge over significant roots and reduce the impact to the trees root system.*
- *Tree 20: Lophostemon confertus located in Jubilee Park to the west: The proposed second dwelling encroaches into the TPZ by 19% (49.4m<sup>2</sup>) but not into the SRZ, which is major TPZ encroachment and indicates that if significant roots are impacted within this area, the condition of the tree will*

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potentially be impacted. The proposed sections indicate that the majority of the secondary dwelling will be located above the existing soil grades in the TPZ. There is a small section of the laundry/bathroom that extends below the existing grade. However, the base of the proposed slab in this location is indicated at an RL of 6.20. The RL of the soil grade in the park adjacent to this section of the dwelling is 5.3. This indicates that the base of slab will be located 900mm above the soil grade at the base of trunk. It is very unlikely that roots extend under the existing boundary wall and then return upwards 900mm towards the surface into this area, indicating that this section of cut will not impact the tree root system.

- *Tree 21: Ficus rubiginosa located in Jubilee Park to the west: The proposed second dwelling encroaches into the TPZ by 28% (169.7m<sup>2</sup>) but not into the SRZ, which is major TPZ encroachment and indicates that if significant roots are impacted within this area, the condition of the tree will potentially be impacted. The proposed sections indicate that the majority of the secondary dwelling will be located above the existing soil grade in the TPZ. There is a small section of the laundry/bathroom that extends below the existing grade. However, the base of the proposed slab in this location is indicated at an RL of 6.20. is 5.3. This indicates that the base of slab will be located 900mm above the soil grade at the base of trunk. It is very unlikely that roots extend under the existing boundary wall and then return upwards 900mm towards the surface into this area, indicating that this section of cut will not impact the tree root system. To retain the tree in a viable condition, it must be demonstrated that all other footings for the dwelling in the TPZ can be constructed via a tree sensitive method to bridge over significant roots and reduce the impact to the trees root system.*

The report recommends the following construction methods:

- *The proposed structures (secondary dwelling, covered patio, terrace addition, retaining walls) will encroach into the TPZ of several trees (see above for tree numbers) by more than 10% and could potentially impact the trees. To reduce the impact to the trees and retain the trees in a viable condition, the footings of the proposed structures will need to be tree sensitive to bridge over significant roots that are located within this area. To minimise root loss in the TPZ of the trees, the footings of the proposed structures should be pier and beam/suspended slab style footings to bridge over significant tree roots and minimise root loss. To ensure that significant tree roots are retained, it must be demonstrated by the project engineer that the following construction methods can be implemented. If the construction cannot be completed in accordance with these specifications, the trees may not be viable for retention;*
  - *All excavations for piers must be carried out manually under the supervision of the project Arborist (see section 11 for details of manual excavation and project Arborist).*
  - *The location of piers must be flexible to avoid significant roots (roots greater than 40mm in diameter). All roots greater than 40mm in diameter must be retained unless the project Arborist has assessed and approved in writing that severing the root will not impact the condition or stability of the tree. If the location of piers cannot be flexible during the construction phase, then significant roots will be impacted and to assess the impact to the tree.*
  - *Cross beams/slabs must be located on or above the existing soil grades.*
  - *The piers should be located a minimum of 200mm from any root to be retained that is greater than 40mm in diameter.*

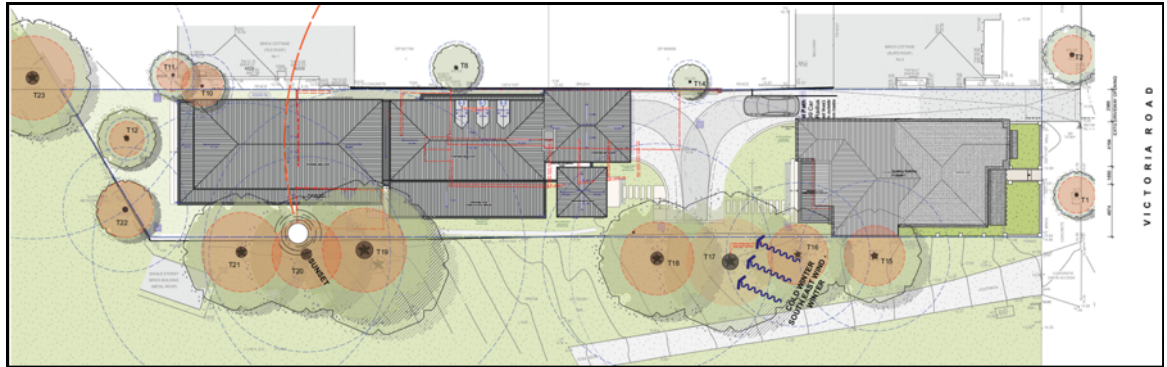


Figure 4: Proposed site plan showing location of existing trees and tree protection zones (blue dashed circles).

#### 4.0 PROVISIONS OF CLAUSE 4.6

##### 4.1 Cl. 4.6(1): Objectives

Clause 4.6 seeks to provide appropriate flexibility to the application of development standards in order to achieve better planning outcomes both for the development and from the development. The objectives of Clause 4.6 are as follows:

| Cl. 4.6(1) Objectives of Clause |   |   |
|---------------------------------|---|---|
| Clause                          | Control   | Justification   |
| (1)(a)                          | to provide an appropriate degree of flexibility in applying certain development standards to particular development | The proposal contravenes the standard which sets a maximum building height. It seeks to utilise this clause to provide appropriate flexibility in application of the standard to permit approval.   |
| (1)(b)                          | to achieve better outcomes for and from development by allowing flexibility in particular circumstances             | <p>The proposal would achieve better outcomes:</p> <ul style="list-style-type: none"> <li>● <b>For</b> the development: The contravention would permit: <ul style="list-style-type: none"> <li>● Dwelling 1: The replacement of an existing awning and glazed doors to the rear tarrace.</li> <li>● Dwelling 2: Less internal changes of level to produce a more functional layout which would also better facilitate aging in place.</li> </ul> </li> <li>● <b>From</b> the development: The contravention would result in: <ul style="list-style-type: none"> <li>● Dwelling 1: More considered and appropriate architectural detail to the rear terrace.</li> <li>● Dwelling 2: A more appropriate roof form and pitch compatible with adjacent dwellings the character of the surrounding conservation area; and</li> <li>● Preservation of the health of the significant trees on the site by avoiding excavation and disturbance of their roots within the tree protection zones (which extend under the entire width of the proposed dwelling).</li> </ul> </li> </ul> |



## 4.2 Cl. 4.6(3): Justification of the Contravention of the Development Standard

Under the provisions of clause 4.6(3) – Exceptions to development standards of SLEP 2012, the consent authority must consider a written request from the applicant that seeks to justify the contravention of the development standard. This justification is summarised in the table below:

| Cl. 4.6(3) Justification of Contravention |  |   |
|---|--|---|
| Clause                                    | Control  | Justification   |
| 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: | This written request addresses this clause.   |
| 4.6(3)(a)                                 | That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case see the test under <i>Wehbe v Pittwater Council</i> below), and  | <p>Compliance with the development standard is unreasonable given that:</p> <ul style="list-style-type: none"> <li>• Part of the non-compliance is associated with the non-compliance of the existing dwelling (Dwelling 1); and</li> <li>• The non-compliance is necessary to avoid excavation and disturbance of the roots (and thus health) of the significant trees adjacent the site (Dwelling 2).</li> </ul> <p>Compliance with the development standard is unnecessary given that:</p> <ul style="list-style-type: none"> <li>• The proposal would satisfy the objectives of the development standard and the zone notwithstanding the non-compliance.</li> </ul>  |
| 4.6(3)(b)                                 | That there are sufficient environmental planning grounds to justify contravening the development standard.   | <p>Contravention of the development standard would result in a more satisfactory environmental planning outcome. Specifically, the contravention would:</p> <ul style="list-style-type: none"> <li>• Dwelling 1: Allow additions to the existing dwelling consistent with its current built form (which already exceeds the height standard);</li> <li>• Dwelling 2: Allow the construction of the proposed additional dwelling without significant excavation to avoid the disturbance of the extensive network of tree roots within its footprint to preserve the health of significant trees adjacent the site (refer to arborist report); and</li> <li>• Dwelling 2: Provide a built form, roof type and pitch for the additional dwelling consistent with the height and character of adjacent dwellings and the broader conservation area.</li> </ul> |
|   | As established in Initial Action [23], 'environmental planning grounds' refer to grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s 1.3 of the EPA Act. These are as follows:                                     | See below:  |
| 1.3(a)                                    | to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,  | N/A   |
| 1.3(b)                                    | to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making  | Dwelling 2: The contravention would enable more ecologically sustainable development by protecting the health of significant trees located in the adjacent Jubilee Park.  |

| <b>Cl. 4.6(3) Justification of Contravention</b> |   |   |
|--|---|---|
| <b>Clause</b>                                    | <b>Control</b>  | <b>Justification</b>  |
|  | about environmental planning and assessment,  |   |
| 1.3(c)   | to promote the orderly and economic use and development of land,  | The contravention is required to develop the land to the maximum density permitted Sydney LEP 2012 which provides for a more economic use of the land and its associated infrastructure including utilities, public transport.  |
| 1.3(d)   | to promote the delivery and maintenance of affordable housing,  | N/A   |
| 1.3(e)   | to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats, | The contravention would: <ul style="list-style-type: none"> <li>• Dwelling 2: Protect the health and longevity of the existing significant trees adjacent the site; and</li> <li>• Marginally lessen the incentive for new development on the urban fringe and the associated impacts upon natural environments.</li> </ul> |
| 1.3(f)   | to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),  | Dwelling 1: The contravention would enable replacement of a rear which is more consistent with the character of the conservation area.<br>Dwelling 2: The contravention would enable a roof form which is more consistent with the character of the conservation area.  |
| 1.3(g)   | to promote good design and amenity of the built environment,  | Dwelling 1: The contravention would allow a more functional and architecturally appropriate awning over the existing rear upper level terrace.<br><br>Dwelling 2: The contravention would avoid excessive changes of level to provide improved amenity, safety and allowance for aging in place.                            |
| 1.3(h)   | to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,                          | Dwelling 1: The contravention would allow adequate weather protection to the existing rear upper level terrace.<br><br>Dwelling 2: The contravention would increase safety for occupants by reducing excessive internal changes in floor level.   |
| 1.3(i)   | to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,                 | Not applicable.   |
| 1.3(j)   | to provide increased opportunity for community participation in environmental planning and assessment.  | Not applicable.   |

In *Wehbe v Pittwater Council* [2007] NSWLEC 827, Preston CJ established five potential tests for determining whether a development standard could be considered to be unreasonable or unnecessary. These are examined below:

| <b>The Five Part Test:<br/>(in accordance with Preston CJ in <i>Wehbe v Pittwater Council</i> [2007] NSW LEC 827)</b> |   |  |
|---|---|--|
| <b>Part</b>   | <b>Test</b>   | <b>Discussion</b>  |
| 1.  | The objectives of the standard are achieved notwithstanding non-compliance with the standard. | The objectives of the development standard are achieved. See discussion under 3(c) above.                            |
| 2.  | The underlying objective or purpose of the standard is not relevant to the                    | The objectives of the standard are relevant to the proposal and an assessment of compliance is provided above. It is |

| <b>The Five Part Test:<br/>(in accordance with Preston CJ in Wehbe v Pittwater Council [2007] NSW LEC 827)</b> |  |  |
|--|--|--|
| <b>Part</b>  | <b>Test</b>  | <b>Discussion</b>  |
|  | development and therefore compliance is unnecessary.   | considered that the objectives of the standard have been met and therefore strict compliance is unnecessary.   |
| 3.   | The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable.  | The underlying object of the development would be thwarted if compliance were required in that the proposal would not achieve one of the objectives of the standard being 'to ensure the height of development is appropriate to the condition of the site and its context' as it would enforce a flat roofed building for Dwelling 2 which would be incompatible with the character of the conservation area. |
| 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  | The existing development already breaches the development standard therefore compliance is unreasonable (in the case of Dwelling 1).   |
| 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 would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone. | Not applicable. The zoning of the land is considered appropriate.  |

#### 4.3 Cl. 4.6(4)(a): Objectives of the Zone & Development Standard

Under the provisions of clause 4.6(4) – Exceptions to development standards of SLEP 2012, the consent authority must be satisfied that contraventions of development standards are consistent with the objectives of both the development standard itself and the zone in which the development is proposed. This assessment is summarised in the table below:

| <b>Cl. 4.6(4): Justification of contravention against development standard and zone objectives</b> |  |   |
|--|--|---|
| <b>Clause</b>  | <b>Objectives</b>  | <b>Justification</b>  |
| <b>4.3(2)</b>  | <b>Height</b>  |   |
| (a)  | to ensure the height of development is appropriate to the condition of the site and its context,   | Dwelling 1: The height of the awning would be compatible with and less than that of the existing dwelling to which it would be attached.<br>Dwelling 2: The height, roof form and roof pitch would be consistent with that of the existing building on the site (Dwelling 1), adjacent buildings and the broader conservation area. |
| (b)  | to ensure appropriate height transitions between new development and heritage items and buildings in heritage conservation areas or special character areas, | Dwelling 1: The height of the awning would be appropriate for the building to which it is attached.<br>Dwelling 2: The proposed hipped roof form would be recessive in the context of the conservation area and not compete with the character of existing contributory buildings.  |
| (c)  | to promote the sharing of views,   | The site is not located in the path of any significant view corridors and as such would not impact upon any significant views.  |
| (d)  | to ensure appropriate height transitions from Central Sydney and Green Square Town Centre to adjoining areas,  | The site is not in the vicinity of Central Sydney or Green Square Town Centre.  |

| <b>Cl. 4.6(4): Justification of contravention against development standard and zone objectives</b> |  |   |
|--|--|---|
| <b>Clause</b>  | <b>Objectives</b>  | <b>Justification</b>  |
| (e)  | in respect of Green Square:<br>(i) to ensure the amenity of the public domain by restricting taller buildings to only part of a site, and<br>(ii) to ensure the built form contributes to the physical definition of the street network and public spaces. | Not applicable – the site is not located in Green Square.                           |
| <b>2.3</b>   | <b>Zone R1 – General Residential</b>   |   |
|  | To provide for the housing needs of the community.   | The proposal would provide additional housing on the site.                          |
|  | To provide for a variety of housing types and densities.   | The proposal would provide additional variety of housing in the zone.               |
|  | To enable other land uses that provide facilities or services to meet the day to day needs of residents.   | The proposal would not be inconsistent with this objective.                         |
|  | To maintain the existing land use pattern of predominantly residential uses.   | The proposal would continue the existing pattern of predominantly residential uses. |

#### 4.4 cl. 4.6(4)(b): Concurrence

Under the provisions of clause 4.6(4)(b) – Exceptions to development standards of SLEP 2012, the consent authority must be satisfied that the concurrence of the Secretary (of the Department of Planning and the Environment) has been obtained before it can exercise the power to grant development consent for development that contravenes the development standard.

Under cl 64 of the Environmental Planning and Assessment Regulation 2000, the Secretary has given written notice dated 21 February 2018, attached to the Planning Circular PS 18-003 issued on 21 February 2018, to each consent authority, that it may assume the Secretary’s concurrence for exceptions to development standards in respect of applications made under cl 4.6, subject to the conditions in the table in the notice.

#### 4.5 Cl. 4.6(5): Criteria for Concurrence

Under the provisions of clause 4.6(5) – Exceptions to development standards of SLEP 2012, the Council or the Secretary, as the concurrence authority, is required to consider the following matters:

| <b>Cl. 4.6(5) Criteria for Concurrence</b> |   |  |
|--|---|--|
| <b>Clause</b>                              | <b>Control</b>  | <b>Justification</b>   |
| (a)  | whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and | The contravention of the development standard is associated with minor, local development. It would not materially impact demand for transport or other infrastructure. As such, it would not raise any matter of significance for State or regional environmental planning.         |
| (b)  | the public benefit of maintaining the development standard, and   | Maintenance of the development standard would be contrary to the following public benefits: <ul style="list-style-type: none"> <li>Protecting the character of the streetscape and the character of the conservation area;</li> <li>Protecting trees or other vegetation.</li> </ul> |
| (c)  | any other matters required to be taken into consideration by the Secretary before granting concurrence.                               | The matters requiring consideration are addressed above.   |

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## 5.0 CONCLUSION

This Clause 4.6 contravention request to clause 4.3 – Height of buildings of Sydney LEP 2012 should be supported on the basis that strict application of the development standard is unnecessary and unreasonable given that:

- a) The development meets the stated objectives of clause 4.3, specifically:
  - 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,
- b) The development meets the zone objectives of the R1 General Residential zone, specifically:
  - 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.
- c) There are sufficient environmental planning grounds to justify contravening the development standard, specifically:
  - The contravention would:
    - Allow minor additions (ie a rear awning and some new glazed doors) to the existing Dwelling 1 (which already breaches the height standard) consistent with its current built form;
    - Allow the construction of the proposed additional Dwelling 2 with minimal excavation and changes to ground levels to avoid the disturbance of the extensive network of tree roots within its footprint to preserve the health of significant trees adjacent the site (refer to accompanying arborist report); and
    - Provide a built form, roof type and pitch for the additional Dwelling 2 consistent with the height and character of adjacent dwellings and the broader conservation area.

For the reasons set out above, the development may be granted consent notwithstanding the contravention of the development standard in respect of height of buildings in clause 4.3 of SLEP 2012.