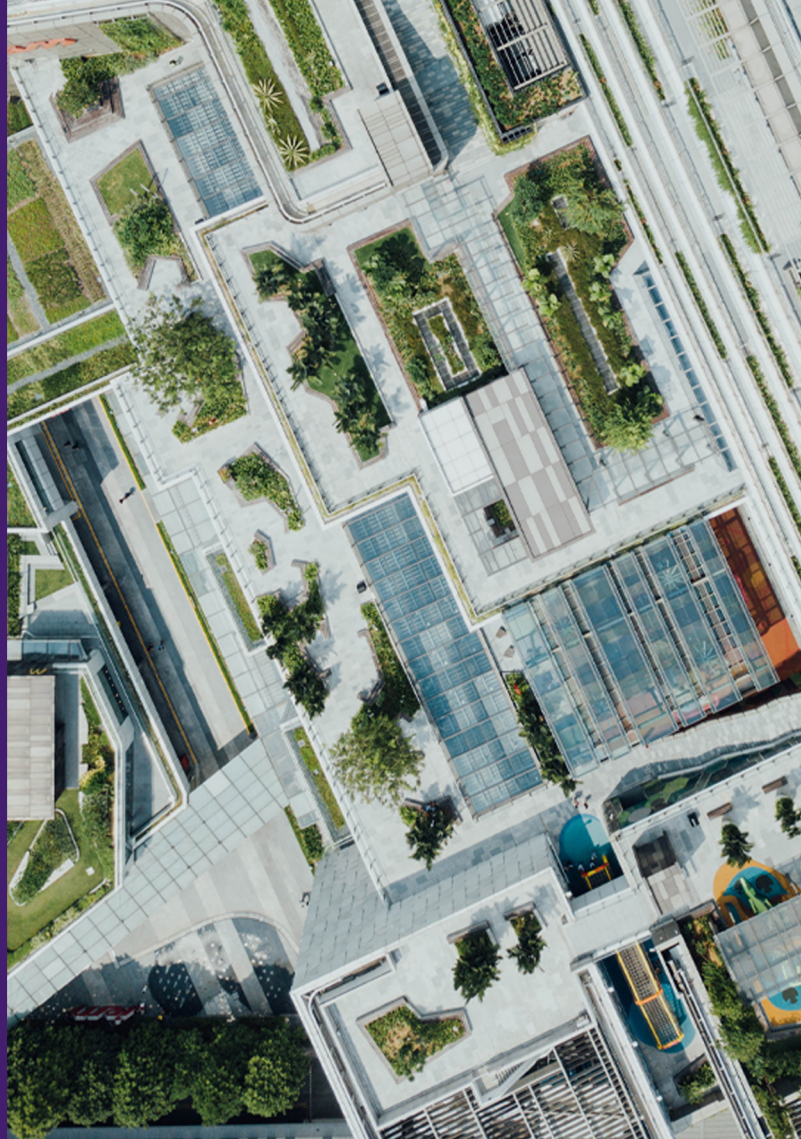


Attachment C

<p>Clause 4.6 Variation Request – Height of Buildings</p>
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357 Glebe Point Road, Glebe NSW 2037

Revised Clause 4.6 Variation to Height
of Buildings

On behalf of Visionland Glebe Pty Ltd

July 2023

The Planning Studio acknowledges the traditional custodians of the lands + waters of Australia, particularly the Gadigal People on whose traditional lands our office is located, and pay our respects to Elders past, present + emerging. We deeply respect the enduring Connection to Country + culture of Aboriginal and Torres Strait Islander peoples and are committed to walk alongside, listen + learn with community as we plan for equitable, sustainable, generous, and connected places. Always was, Always will be.

Table of Contents

1	Introduction	3
2	Clause 4.6 Exceptions to Development Standards	3
3	The Development Standard to be varied.....	5
4	Extent of Variation to the Development Standard	6
5	Objectives of the Standard.....	9
6	Objectives of the Zone	9
7	Assessment	9
7.1	The Objectives of the Standard are Achieved Notwithstanding Non-Compliance with the Standard (Wehbe#1).....	9
7.1.1	Objectives of Clause 4.3 - Height of Buildings Development Standard ..	9
7.2	Clause 4.6(3)(b) - There are sufficient Environmental Planning Grounds to Justify Contravening the Development Standard.....	12
7.3	Clause 4.6(4)(a)(i) – 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.....	13
8	Secretary’s Concurrence	14
8.1	Clause 4.6(5)(a): Any Matters of Significance for State or Regional Environmental Planning.....	14
8.2	Clause 4.6(5)(b): Any Public Benefit of Maintaining the Development Standard	15
8.3	Clause 4.6(5)(c): Other Matters Required to be Taken into Consideration Before Granting Concurrence	15
9	Conclusion.....	15

Schedule of Figures

Figure 1: Height of Buildings Map Extract (SLEP 2012).....	5
Figure 2: Height Plane Control - Terraces (DKO Architecture/Archer Studio).....	8
Figure 3: Height Plane Control - RFB (DKO Architecture/Archer Studio).....	8
Figure 4: Approved Concept Envelope RLs (DKO Architecture/Archer Studio).....	10
Figure 5: Approved Concept Envelope and protrusions (DKO Architecture/Archer Studio).....	11

1 Introduction

This Clause 4.6 Variation Request relates to the Development Application (DA) for 357 Glebe Point Road, Glebe NSW 2037 (subject site), for a residential flat building development.

The Clause 4.6 Variation Request seeks to vary one development standard within the Sydney Local Environmental Plan 2012 (SLEP2012):

- Clause 4.3 – Height of Buildings

The Clause 4.6 variation request seeks to vary the maximum height of building standard which applies to the site under Clause 4.3 of the Sydney Local Environmental Plan 2012 (the SLEP). The maximum height of buildings standard which applies to the area of variation is 9m. It is noted that a 27m height control also applies to part of the site. However, no variation is sought to this standard as part of the application.

This Clause 4.6 Variation Request demonstrates that, notwithstanding the non-compliances, the proposed development:

- Achieves the objectives of the development standard in Clause 4.3 of SLEP 2012, despite the non-compliance with the numerical standard in Clause 4.3;
- Achieves the objectives of the E1 Local Centre zone under SLEP 2012;
- Will deliver a development that is appropriate for its context, despite the numerical breach to development standard 4.3, and therefore has sufficient environmental planning grounds to permit the variation; and
- Therefore, is in the public interest.

As a result, the DA may be approved as proposed in accordance with the flexibility afforded under Clause 4.6 of the SLEP 2012.

2 Clause 4.6 Exceptions to Development Standards

Clause 4.6 of the SLEP 2012 aims to provide an appropriate degree of flexibility in applying certain development standards to achieve better outcomes for and from development. Specifically, the objectives of this clause are:

- To provide flexibility in the application of a development standard; and
- To achieve better outcomes for and from development.

Clause 4.6 enables a variation to the relevant development standards in the SLEP2012 for Clause 4.3 (Height of Buildings) – which ordinarily permits a maximum Height on the subject site of 9m. A 27m height control applies to other parts of the site, but no breach of this control is proposed.

Clause 4.6 requires that a consent authority be satisfied of three matters before granting consent to a development that contravenes a development standard:

- That the applicant has provided a written request that has adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case;



- That the applicant has provided a written request that has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard; and
- That 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.

The consent authority's satisfaction as to those matters must be informed by the objectives of Clause 4.6, which are:

- providing flexibility in the application of the relevant control; and
- to achieve better outcomes for and from development.

Clause 4.6 of the SLEP 2012 reads as follows:

Clause 4.6 Exceptions to development standards

1. *The objectives of this clause are as follows:*
 - (a) *to provide an appropriate degree of **flexibility in applying certain development standards** to particular development,*
 - (b) ***to achieve better outcomes for and from development by allowing flexibility** in particular circumstances.*
2. *Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*
3. *Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*
 - (a) *that compliance with the development standard is **unreasonable or unnecessary in the circumstances of the case**, and*
 - (b) *that there are **sufficient environmental planning grounds to justify contravening the development standard.***
4. *Development consent must not be granted for development that contravenes a development standard unless:*
 - (a) *the consent authority is satisfied that:*
 - (i) *the applicant's written request has adequately **addressed** the matters required to be demonstrated by subclause (3), and*
 - (ii) *the proposed development will be **in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out**, and*
 - (b) *the concurrence of the Secretary has been obtained.*



5. In deciding whether to grant concurrence, the Secretary must consider:
- (a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and
 - (b) the public benefit of maintaining the development standard, and
 - (c) any other matters required to be taken into consideration by the Secretary before granting concurrence.

3 The Development Standard to be varied

This Clause 4.6 variation has been prepared as a written request seeking to justify a contravention of the maximum Height of Buildings development standard as set out in Clause 4.3(2) of the SLEP 2012.

Clause 4.3(1) states:

4.3 Height of buildings

Clause 4.3 of the SLEP has the following Objectives:

- 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.

As identified on the SLEP 2012 Height of Buildings Map associated with Clause 4.3, the site is subject to a height limit of 9m (refer to **Figure 1**).

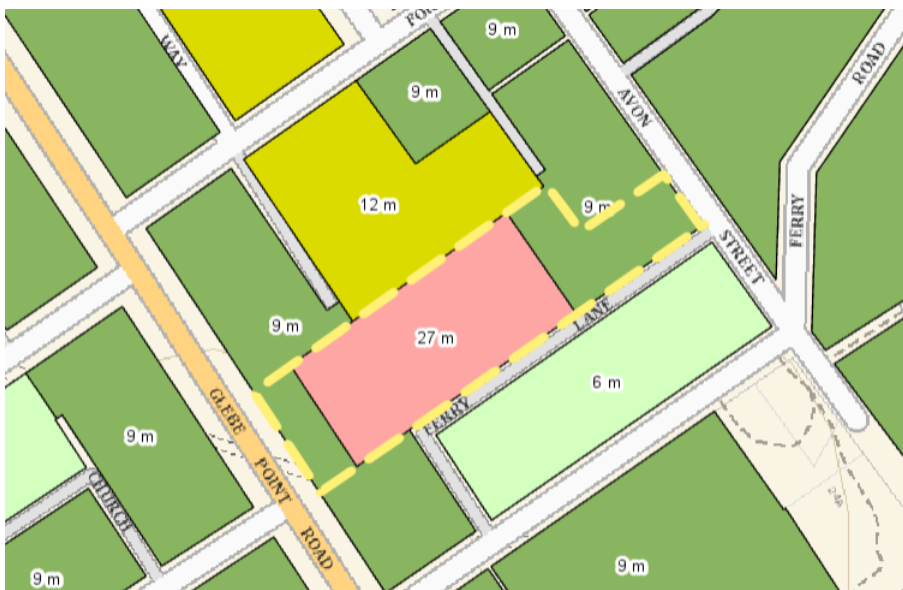


Figure 1: Height of Buildings Map Extract (SLEP 2012)



4 Extent of Variation to the Development Standard

As addressed above, Clause 4.3 of the SLEP 2012 prescribes a maximum height of 9m for the site. The proposed maximum building height is 10.56m using the approach adopted in *Merman Investments Pty Ltd v Woollahra Municipal Council [2021] NSWLEC 1582*.

The table below describes what is proposed at the site and the extent of the variation to the development standard sought:

Note – Terrace 1 complies with the 9m HOB control and there is no ‘Terrace 4’ as this was removed since the original concept approval.

Table 1 – Proposed variation to HOB development standard			
Area	Height permitted under SLEP 2012	Proposed	Variation and comment
Terrace 2	9m	9.59m Roof RL 34.29 Existing Ground Level (EGL) RL: 24.7	6.5% variation due to existing ground level being measured from the existing swimming pool on site, which has a lower RL
Terrace 3	9m	10.56m Roof RL 33.96 EGL RL: 23.4	17% variation due to existing ground level being measured from the existing swimming pool on site, which has a lower RL
Terrace 5	9m	9.57m Roof RL 32.75 EGL RL: 23.18	6.3% Variation due to existing ground level being measured from sunken courtyard, which has a lower RL and the need to raise the proposed terrace levels to meet updated flood requirements.
Terrace 6	9m	9.78m Roof RL: 33.25 EGL RL: 23.47	8.6% Variation due to existing ground level being measured from sunken courtyard, which has a lower RL and the need to raise the proposed terrace



Table 1 – Proposed variation to HOB development standard			
Area	Height permitted under SLEP 2012	Proposed	Variation and comment
			levels to meet updated flood requirements.
Terrace 7	9m	10.05m Roof RL: 33.75 EGL RL: 23.7	11.6% Variation due to existing ground level being measured from the existing sunken courtyard, which has a lower RL and the need to raise the proposed terrace levels to meet updated flood requirements.
Terrace 8	9m	9.59m Roof RL: 34.00 EGL RL: 24.41	6.5% Variation due to existing ground level being measured from the existing sunken courtyard, which has a lower RL and the need to raise the proposed terrace levels to meet updated flood requirements.
Level 2 of Residential Flat Building	9m	10.27 Roof RL 35.9 EGL: 25.63	14.1% Variation due to existing ground level being measured from the existing sunken courtyard, which has a lower RL and the need to raise the future residential flat building to meet updated flood requirements. Minor additional height as a consequence of new non-trafficable planted roof.



The height variation is illustrated in **Figure 2** and **Figure 3**.

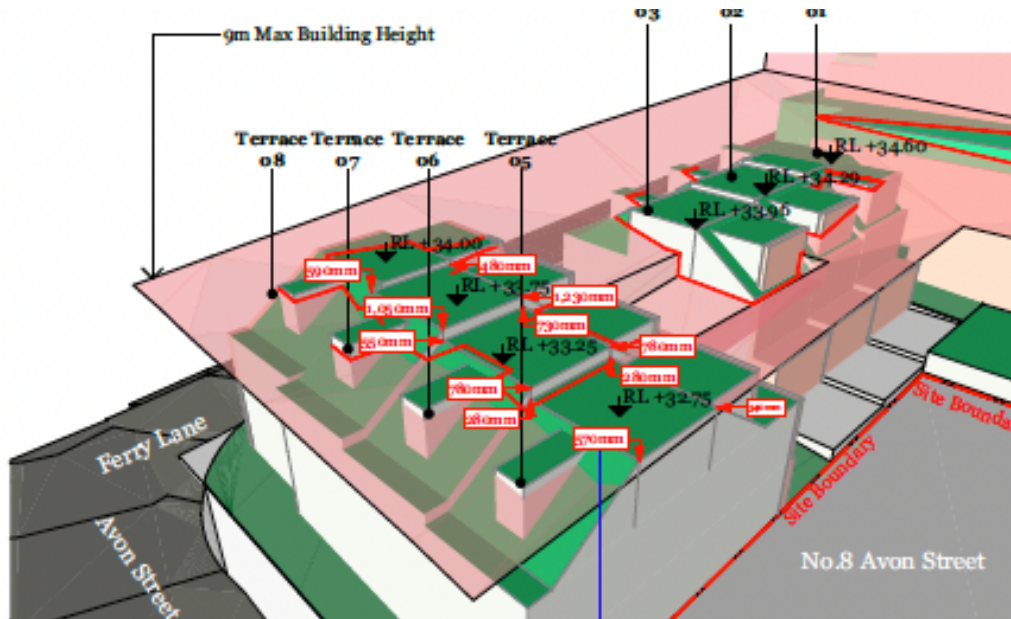


Figure 2: Height Plane Control - Terraces (DKO Architecture/Archer Studio)

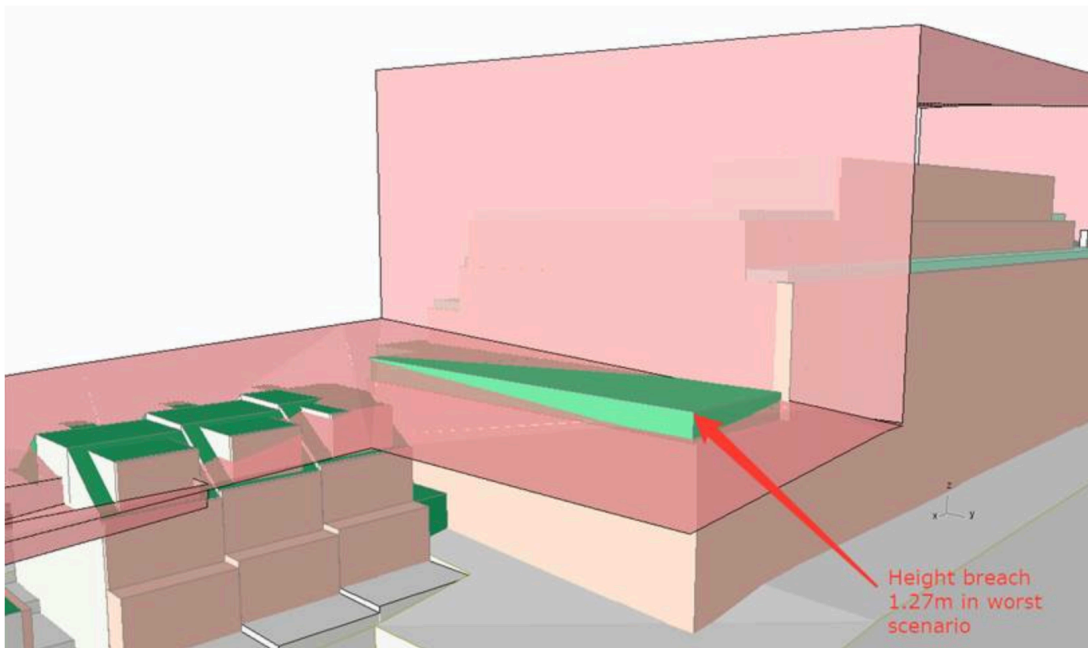


Figure 3: Height Plane Control - RFB (DKO Architecture/Archer Studio)



5 Objectives of the Standard

Clause 4.3 of the SLEP has the following Objectives:

- 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.

6 Objectives of the Zone

The objectives of the E1 Local Centre zone are as follows:

- *To provide a range of retail, business and community uses that serve the needs of people who live in, work in or visit the area.*
- *To encourage investment in local commercial development that generates employment opportunities and economic growth.*
- *To enable residential development that contributes to a vibrant and active local centre and is consistent with the Council's strategic planning for residential development in the area.*
- *To encourage business, retail, community and other non-residential land uses on the ground floor of buildings.*
- *To maximise public transport patronage and encourage walking and cycling.*

7 Assessment

Clause 4.6(3)(a) - Is Compliance with the development standard unreasonable or unnecessary in the circumstances of the case?

Compliance with the height standard is considered unreasonable and unnecessary in the circumstances for the reasons outlined in **Section 7.1 below**.

7.1 The Objectives of the Standard are Achieved Notwithstanding Non-Compliance with the Standard (Wehbe#1)

The following sections demonstrate that the proposed variation will result in a built form outcome that achieves the objectives set out under Clause 4.3 of the SLEP2012.

7.1.1 Objectives of Clause 4.3 - Height of Buildings Development Standard

The following sections demonstrate that the objectives associated with the Clause 4.3 development standard are achieved notwithstanding the proposed non-compliance.



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

The subject application was granted a Concept Envelope approval under D/2017/582 in November 2018, which granted consent to the building envelopes of 8 terraces within the overall approval at the subject location. Figure 3 below is a snapshot of the maximum RLs approved for the concept envelope of the terraces in D/2017/582.

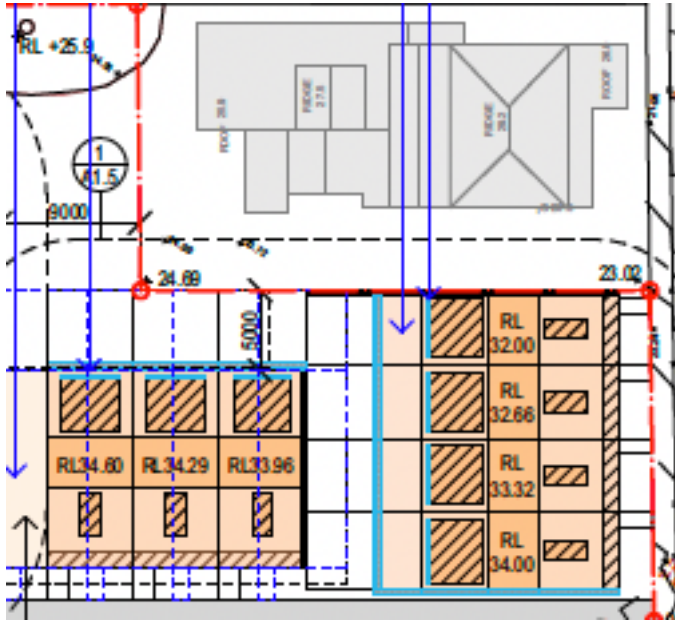


Figure 4: Approved Concept Envelope RLs (DKO Architecture/Archer Studio)

In granting these maximum RLs, the Court (who was the consent authority) considered these maximum heights to be suitable and consistent with the objectives that:

- height of development is appropriate to the condition of the site and its context.
- to ensure appropriate height transitions between new development and heritage items and buildings in heritage conservation areas or special character areas,
- to promote the sharing of views,

The envelopes were carefully chosen to ensure they were compatible with the surrounding conservation area context, which had a range of one, two and sometimes three storey terraces. They were also designed to deliver a suitable transition from the conservation area dwellings on Avon Street and Ferry Lane to the higher density Forsyth Towers to the north.

The subject application does not seek to increase the terraces above the approved maximum RLs for Terraces 1-3.

No change is proposed to the building envelope height of these terraces beyond that already deemed consistent with the objective of the height control. Rather, the measurement of 'existing ground level' has been clarified further in the Court since the subject Concept DA was granted consent.

At the time of the Concept DA's original consent, 'existing ground level' was measured as an average of the survey points at the boundaries of the site. However, since then, further clarification has been provided through the Court as to how to measure 'existing ground level' when a site is developed, but in areas where survey RLs can be taken. Although the subject site is 'developed', at the rear of the site, where the terraces are proposed to be



located, sits a landscaped area comprising a swimming pool, retaining walls and a sunken paved courtyard.

As these locations can be surveyed, the subject application has measured 'existing ground level' from the survey points in the landscaped pool, garden and courtyard, which sit lower than the surrounding public domain, such as footpaths and the street level. As such, the application results in a slight variation to some of the building heights of the terraces noted in Table 1 above.

In addition, slight increases have subsequently been required to the height of Terraces 5-8 in order to meet Council's updated flood management requirements. The maximum increase in the height of these terraces is 75cm, which has no visible impact on the surrounding context of the area.

With respect to the variation to the 9m portion of the residential flat building, this has been partially driven by the more detailed survey and flood levels, and partially driven by the opportunity to obtain a better design outcome through the provision of a non-trafficable green roof at the edge of this built form. It also provides for further visual and acoustic separation from the dwellings to the north along Avon Street (refer to Figure below).

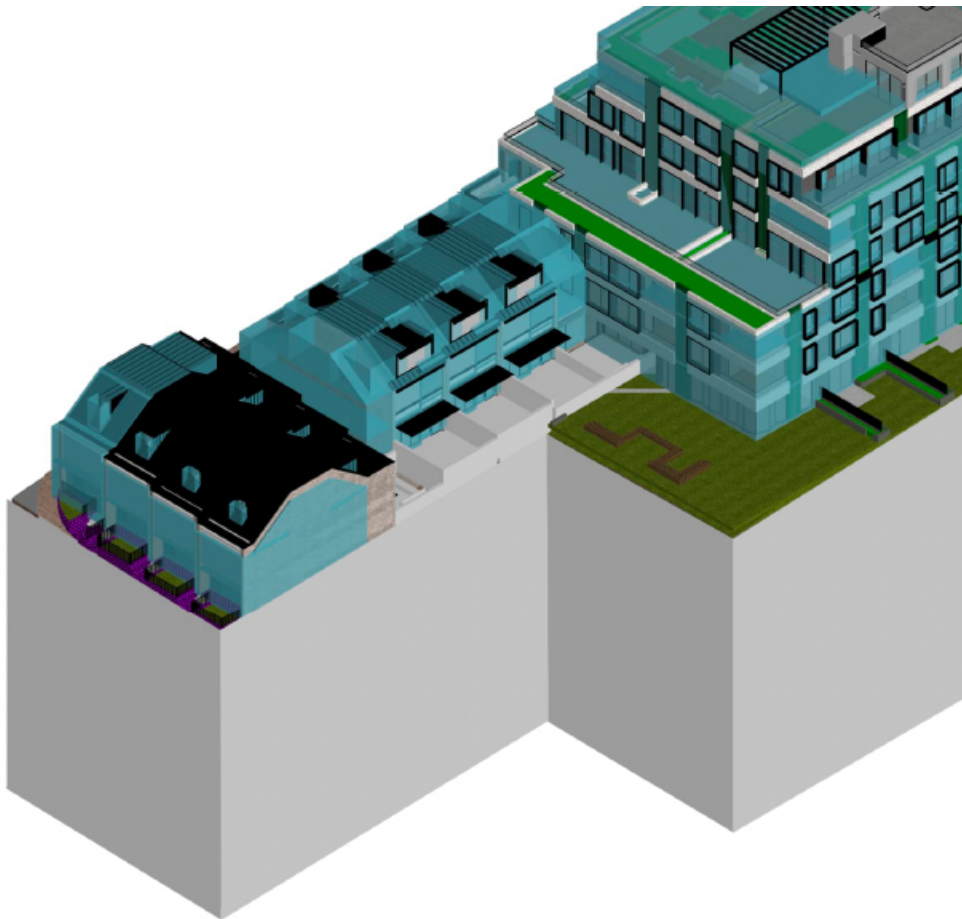


Figure 5: Approved Concept Envelope and protrusions (DKO Architecture/Archer Studio)

As the variation to the height control has largely occurred as a result of a re-clarification on the measurement of 'existing ground level' and further evolution of Council's flood controls, the subject application continues to meet the objective of the height control, despite the numerical variation.



(b) to ensure appropriate height transitions between new development and heritage items and buildings in heritage conservation areas or special character areas,

For the reasons outlined above, the minor changes to the building height for Terraces 5-8 will continue to ensure an appropriate height transition between new development and the surrounding buildings in the conservation area. The terraces will step in a similar manner to the surrounding buildings on Avon Street and Ferry Lane and will be of a contextually appropriate height to surrounding buildings.

As noted above, the new non-trafficable planter edge on the roof of level 2 of the residential flat building will enable a better transition through introduction of greenery and additional building setbacks to the Avon Street terraces.

(c) to promote the sharing of views outside Central Sydney,

The proposed terraces, and their minor elements that exceed the LEP height control, will not create any impact on local views or outlook.

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

Not applicable.

(e) in respect of Green Square—

to ensure the amenity of the public domain by restricting taller buildings to only part of a site, and

to ensure the built form contributes to the physical definition of the street network and public spaces.

Not applicable.

7.2 Clause 4.6(3)(b) - There are sufficient Environmental Planning Grounds to Justify Contravening the Development Standard.

Clause 4.6(3)(b) of the SLEP 2012 requires that the consent authority be satisfied that the applicant's written request has adequately demonstrated that:

There are sufficient environmental planning grounds to justify contravening the development standard.

The environmental planning grounds relied on in the written request under Clause 4.6 must be sufficient to justify contravening the development standard. 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 (Turland v Wingecarribee Shire Council [2018] NSWLEC 1511 and Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118), also 'Rebel MH' and 'Baron' (2019).

The environmental planning grounds relied upon to justify the exceedance of the development standard in the circumstances of the proposal are considered sufficient and specific to the site and the proposed contravention. Further discussion is provided below.

- As noted in above, the variation sought is as a result of the particular environmental planning grounds related to the site's existing topography – including a swimming pool



and sunken internal landscaped area compared to the higher surrounding public domain such as footpaths and the street carriage. In addition, Council's revised flood protection controls have required that the finished floor level of Terraces 5-8 be slightly raised, which creates a minor additional height variation for these terraces.

- The proposed development elements that exceed the 9m height limit are mostly within the existing envelope of the building, and do not increase the existing maximum building height of the dwellings beyond that previously approved for Terraces 1-3. In this regard, they have no adverse environmental impacts.
- The only additional height relates to Terraces 5-8 due to the need to lift the finished floor level to comply with Council's updated flood planning controls. The building height increase is a maximum of 75cm and will not create any additional impacts with respect to view loss, overshadowing or privacy.
- The variation related to the residential flat building is also partially due to the introduction of a non-trafficable green planter on the roof of level 2, which will provide an improved outcome in design, environment and amenity for surrounding residents.

7.3 Clause 4.6(4)(a)(i) – 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

1. The proposed development is in the public interest as it is consistent with the objectives of the development standard. The objectives of the development standard are addressed below under the relevant headings:
2. The objectives of the particular standard
 - i. It has been demonstrated elsewhere in this report that the development achieves the objectives of Clause 4.3 within the SLEP2012 notwithstanding the non-compliance with the standard.
3. The objectives for development within the zone in which the development is proposed to be carried out.
 - i. The site falls within the E1 Local Centre zone. As outlined below the proposed development is in the public interest because it is consistent with the objectives of the zone as detailed below.
 - ii. *To provide a range of retail, business and community uses that serve the needs of people who live in, work in or visit the area.* The proposal will provide quality dwellings that meet the needs of the community and are sympathetic to the surrounding conservation area.
 - iii. *To encourage investment in local commercial development that generates employment opportunities and economic growth.*

The delivery of the proposed development the local area will enable future residents to live in an accessible location to surrounding employment opportunities including the CBD, Sydney University, RPA Hospital and Glebe Point Road.



- iv. *To enable residential development that contributes to a vibrant and active local centre and is consistent with the Council's strategic planning for residential development in the area.* The proposed development will be a high-quality, utilising a range of dwelling types and employing best practice environmental and design outcomes consistent with Council's strategic planning for residential development in Glebe.
 - v. *To encourage business, retail, community and other non-residential land uses on the ground-floor of buildings.* Whilst non-residential uses were initially explored by the proponent for both the Bidura House Group and surrounding streets, the highly residential nature of Avon Street and Ferry Lane meant that commercial or retail uses would not be appropriate there. However, the communal spaces, public art and through site link are all connected through the ground-floor to enable appropriate activation.
 - vi. *To maximise public transport patronage and encourage walking and cycling.* The overall development seeks to maximise public transport patronage and encourage walking and cycling through a low-car development and appropriate bicycle parking facilities.
4. For all of the above reasons, the proposal is considered in the public interest as it is consistent with the objectives of the development standard and the E1 Local Centre zone.

8 Secretary's Concurrence

Under Clause 4.6(5) of the SLEP 2012, the Secretary's concurrence is required prior to granting consent to a variation. Under Clause 64 of the Environmental Planning and Assessment Regulation (2000), the Secretary has given written notice dated 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 Clause 4.6, subject to the conditions in the table in the notice.

The Planning Circular PS 20-002, issued on 5 May 2020 (the Planning Circular), outlines the conditions for assuming concurrence. The Planning Circular establishes that all consent authorities may assume the Secretary's concurrence under Clause 4.6 of the Standard Instrument (Local Environmental Plans) Order 2006 (with some exceptions). The RLEP 2012 is a standard instrument LEP and accordingly, the relevant consent authority may assume the Secretary's concurrence in relation to Clause 4.6(5). This assumed concurrence notice takes effect immediately and applies to pending development applications.

Under the Planning Circular this assumed concurrence is subject to conditions. Where the development contravenes a numerical standard by greater than 10%, the Secretary's concurrence may not be assumed by a delegate of council unless the Council has requested it. The variation to the Clause exceeds 10% and accordingly the Secretary's concurrence cannot be assumed.

8.1 Clause 4.6(5)(a): Any Matters of Significance for State or Regional Environmental Planning

No matters of significance for state or regional environmental planning are raised.



8.2 Clause 4.6(5)(b): Any Public Benefit of Maintaining the Development Standard

As demonstrated above there is no public benefit in maintaining the development standard in terms of State and regional planning objectives, or in terms of minimising the environmental impacts of the development given the proposal's compliance with other key LEP, DCP and built form and amenity controls.

8.3 Clause 4.6(5)(c): Other Matters Required to be Taken into Consideration Before Granting Concurrence

Other than those identified above, there are no further matters that the Secretary (or Consent Authority under delegation) must consider before granting concurrence.

9 Conclusion

The assessment above confirms that compliance with the maximum Height of Buildings development standard contained in Clause 4.3 of SLEP 2012 is unreasonable and unnecessary in the circumstances of the case and that there are sufficient environmental planning grounds to justify the contravention to the development standard.

This written request is for a variation to the Height of Buildings development standard, under Clause 4.6 of the SLEP 2012. It justifies the contravention to the development standards by demonstrating that compliance is unreasonable and unnecessary in the circumstances of the case because the proposal:

- Achieves the objectives of the development standard;
- Achieves the objectives of the E1 Local Centre zone under SLEP 2012;
- Will deliver a development that is appropriate for its context despite the breach to the Height of Buildings development standard, and therefore has sufficient environmental planning grounds to permit the variation; and
- Therefore, is in the public interest.

