

Attachment C

Clause 4.6 Variation Request - Height of Buildings

Clause 4.6 Variation Request – Height of Buildings

545-549 South Dowling Street, Surry Hills



'Gura Bulga'

Liz Belanjee Cameron

'Gura Bulga' – translates to Warm Green Country. Representing New South Wales.

By using the green and blue colours to represent NSW, this painting unites the contrasting landscapes. The use of green symbolises tranquillity and health. The colour cyan, a greenish-blue, sparks feelings of calmness and reminds us of the importance of nature, while various shades of blue hues denote emotions of new beginnings and growth. The use of emerald green in this image speaks of place as a fluid moving topography of rhythmical connection, echoed by densely layered patterning and symbolic shapes which project the hypnotic vibrations of the earth, waterways and skies.

Ethos Urban acknowledges the Traditional Custodians of Country throughout Australia and recognises their continuing connection to land, waters and culture.

We acknowledge the Gadigal people, of the Eora Nation, the Traditional Custodians of the land where this document was prepared, and all peoples and nations from lands affected.

We pay our respects to their Elders past, present and emerging.

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1.0 Introduction

This clause 4.6 variation request has been prepared by Ethos Urban on behalf of Property Industry Foundation. It is submitted to City of Sydney Council (the Council) in support of a development application (DA) Council for transitional care housing at 545-549 South Dowling Street, Surry Hills (known as Haven House).

The proposed development seeks consent for:

- Demolition of the existing building, including tree removal.
- Construction and use of a part three (3) / part four (4) storey residential flat building (RFB) comprising;
 - 10 apartments with the following mix:
 - 1 x studio apartment.
 - 9 x two-bedroom apartments.
 - Communal facilities including;
 - Lower ground floor communal space consisting of a hot desk area, kitchen facility, storage and meeting rooms.
 - Communal roof top terrace.
 - Back of house facilities, comprising;
 - Bulk store room.
 - 11 secure bicycle storage spaces.
 - Resident locker area.
 - Plant room.
- Landscaping works including 13% deep soil planting.

Clause 4.6 of the Sydney Local Environmental Plan 2012 (Sydney LEP) enables City of Sydney 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 relates to the Height of Buildings development standard 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 10 October 2022, including supporting documentation as modified by the response to Council Requests for Information. This clause 4.6 variation request demonstrates that compliance with the maximum height development standard is unreasonable and unnecessary in the circumstances of the case and that there are sufficient environmental planning grounds to justify contravention of the standard. It demonstrates that, notwithstanding the non-compliance with the maximum height 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 unreasonable environmental impacts.
 - Respecting the character, appearance and scale of the surrounding heritage conservation area (HCA) including the retained heritage fabric, and nearby heritage buildings.
- The proposed development provides affordable housing to young people engaged in employment, education or training that provides a stable base from which young people can participate in society, achieve their education and employment goals, and sustain positive healthy living outcomes.
- Supporting technical studies which accompany this DA confirm that the proposed development will not give rise to any significant adverse environmental impacts, and that any potential impacts can be addressed through appropriate mitigation measures.
- Will promote the orderly and efficient use of land, in accordance with the objects of the *Environmental Planning and Assessment Act 1979* (the Act).
- Will remain in the public interest, notwithstanding the proposed variation to the development standard.
- Will not result in any adverse environmental impacts as a result of the variation to the maximum building height.

In light of the above, the consent authority can be satisfied that there is sufficient justification for the variation to the 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 Variation Sought

This clause 4.6 variation request seeks to justify contravention of the building height development standard set out in clause 4.3 of the Sydney LEP 2012. Clause 4.3 provides that the maximum height shown on the Height of Buildings Map for the site is 12m. An excerpt from the Sydney LEP 2012 map sheet is shown at **Figure 1**.



Figure 1 Excerpt from Sydney LEP 2012 Height of Buildings Map

Source: City of Sydney via NSW Legislation

The proposed development will comprise a residential flat building for the provision of transitional housing for homeless youth. The western edge of the proposed development exceeds the 12m height plane by approximately 1.6m in total, which comprise the following breaches in differing locations:

- 900mm to 1600mm to the plant roof (in line with the lift overrun) (RL 50.10).
- 330mm to the eastern skylight (RL 50.315).

The cumulative impact of these breaches will result in a variation to the height of the development by a maximum standard of 1.6m (or by 13%). This variation relates to a minimal area of the proposed development (being 11% of the total site area) as illustrated in the 3D height plane diagram provided at **Figure 2**. Architectural drawings providing further detail of the variation are provided at **Appendix A** of the SEE.



Figure 2 3D Height Plane Diagram

Source: Fitzpatrick + Partners

3.0 Justification for Contravention of the Development Standard

Clause 4.6(3) of the Sydney LEP 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.*

Further, clause 4.6(4)(a) of the Sydney LEP 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; and
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).
5. *Turland v Wingecarribee Shire Council* [2018] NSWLEC 1511.
6. *Micaul Holdings Pty Limited v Randwick City Council* [2015] NSWLEC 1386.
7. *Moskovich v Waverley Council* [2016] NSWLEC 1015.
8. *Baron Corporation Pty Ltd v The Council of the City of Sydney* [2018] NSWLEC 1552 (Baron Corporation).

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

3.1 Role of the Consent Authority

The role of the consent authority in considering this written 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 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 consent authority 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 consent authority 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 consent authority to reach the required level of satisfaction.

This clause 4.6 variation request is proposed in context of clause 4.3 of the Sydney LEP 2012. Relevant matters contained in clause 4.6 of the Sydney LEP 2012, with respect to the height development standard, are each addressed below.

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.

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 SEPP 1 (see *Four2Five* at [61] and [62]).

As the language used in subclause 4.6(3)(a) of the Sydney LEP 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 methods outlined in *Wehbe* include:

- The objectives of the standard are achieved notwithstanding non-compliance with the standard (**First Method**).
- The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary (**Second Method**).
- The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable (**Third Method**).
- 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 Method**).
- 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 Method**).

This clause 4.6 variation request establishes that compliance with the development standard is unreasonable or unnecessary in the circumstances of this particularly site because the objectives of the height development standard and the zone are achieved notwithstanding the non-compliance with the standard (**First Method**).

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 are:

- (1) The objectives of this clause are as follows—
 - (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 outside Central Sydney,
 - (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 (a): to ensure the height of development is appropriate to the condition of the site and its context

The proposed variation results in an appropriate height for the site and its context, as described below.

The proposed development is identified as a corner site, having three boundary frontages which do not adjoin to any other building. Accordingly, the site has a unique opportunity to present built form that responds to its context and constraints. The site is located in Surry Hills, immediately south of the Sydney CBD. The site is also in close proximity to local centres such as Haymarket, Darlinghurst, Redfern and the Sydney CBD which comprise some of the highest densities in Sydney.

The overall built form and height of the building has taken contextual cues from adjacent building to the north of the site.

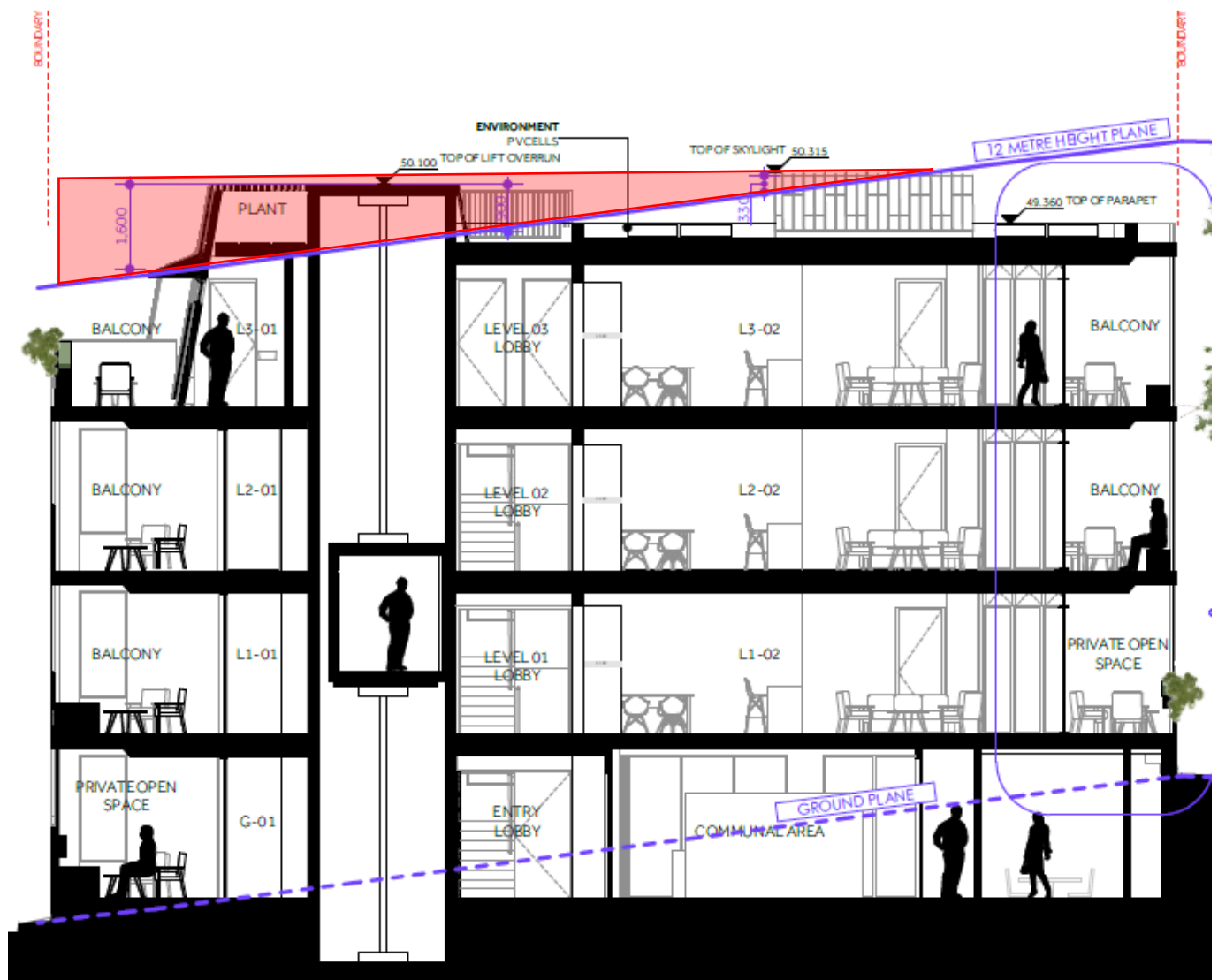


Figure 3 Section of proposed development

Source: Fitzpatrick + Partners

Should the proposal seek to fully comply with the prescribed building height limit and to provide complaint floor to ceiling heights, the lift servicing the top floor as well as the western top floor would have to be removed. This would result in a built form that is not compatible or consistent with the proportions of the adjacent corner buildings, or the existing character of neighbouring streetwall heights along Chapman Lane (refer to **Figure 4**).



Figure 4 3D massing of surrounding height transition along Phelps Street, Chapman Lane and South Dowling

Source: Fitzpatrick + Partners

The additional height has facilitated the inclusion of an additional apartment at the western elevation, which assists in providing more rooms to help The Salvation Army accommodate a greater amount of youth in transitional housing, resulting in a positive community benefit.

It is noted that the site slopes dramatically from South Dowling Street to Chapman Lane. This is reflected in the section provided at **Figure 3** on the previous page, which elucidates the areas exceeding the height variation on the western part of the site. Accordingly, for the reasons stated above it has been considered that the proposal is appropriate to the condition of the site and its context.

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

The proposed development is located in the Bourke Street South HCA which is mapped as being of local significance under the Sydney LEP. The existing building on site is identified as a detracting building in the Sydney Development Control Plan 2012 (Sydney DCP). The site is also located in the immediate vicinity of heritage items at 553–561 South Dowling Street (Item I1637) and 563–579 South Dowling Street (Item I1637). It is noted that the proposed development does not adjoin or is not directly opposite these items of heritage significance, and therefore provide sufficient separation between the two.

Further, the lift overrun, which comprises the largest variation to the height of building standard, is localised to the centre of the building and is not readily perceivable from the public domain. Accordingly, the proposals visible built form aligns with the surrounding built form. This is supported by the Heritage Impact Assessment appended to the Development Application at **Appendix L**. The report confirms that the articulation and scale of the proposed development is compatible with the surrounding built and landscaped form, notably along the South Dowling Street frontage which contains multiple commercial buildings of similar height and scale. Further, the front, side and rear setbacks are consistent with the existing and established frontages and no significant view lines within the HCA will be obscured by the proposed structure, aligning with the general scale of the twentieth century commercial premises fronting South Dowling Street.

For these reasons, the proposed height has been designed to reflect the sites unique context, and to be compatible with the scale of development on South Dowling Street. As noted above, the perceived height of the building from most vantage points will not be noticeable and will not impact on significant views. Hence, the proposed development continues to ensure an appropriate height transition despite the height contravention.

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

The site is located outside of Central Sydney as defined in the Sydney LEP. Due to the site's location and the height and scale of the surrounding buildings, the proposal does not impact views to the Sydney CBD.

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

The site is not located within proximity to areas within the Central Sydney or Green Square boundaries and is located within Surry Hills which is characterised by a mixed range of development types of differing heights, uses and densities. Notwithstanding this, the proposal is considered to provide a consistent height of building to the existing neighbouring building to the north, representing a coherent built form outcome within the same block.

Objective (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.

The site is not located within Green Square. Therefore, the objective does not apply to the proposed development.

3.2.3 Conclusion on clause 4.6(3)(a)

In summary, compliance with the building height development standard is considered unreasonable and unnecessary since:

- The variation results in a height that is appropriate for the site and its context, which will better transition heights in the locality and respond to the site's location as a corner building.
- An appropriate transition to surrounding heritage items is achieved, notwithstanding the variation.
- Views from any key public vantage points and surrounding buildings will not be negatively impacted.
- The proposal remains consistent with the height of many of the surrounding buildings and therefore does not impact height transitions between Central Sydney and Green Square.

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

3.3.1 Ground 1: Flooding

During flood investigations of the site, it was determined by Northrop (refer to **Appendix M**) that the proposed development is required to adopt mitigation measures to minimise the risk of flooding. Specifically, a recommendation is for the ground floor finished floor level of the proposed building to be raised to RL36.60 (calculated from the 1% AEP + 500mm, as advised by Northrop at **Appendix M**) to mitigate any potential risk of flooding within the development, without providing the need to include flood gates as the primary measure to manage stormwater flow across the site. Therefore, the contravention to the building height development standard is necessary to mitigate the risk of flooding and in turn is considered a more appropriate planning outcome given the site's topographical and flood risk constraints.

3.3.2 Ground 2: Topography

The site has a fall of approximately 3.1m from the east to the west of the site. This topography results in the maximum height of the building being under the height limit on South Dowling Street and above it on Chapman Lane. As discussed in **Section 2** above, the proposal has been designed to respond to the surrounding context and in particular to reflect the proportions of the adjacent building at 517-543 South Dowling Street to the north. Accordingly, the areas of the building which are above the height limit are a consequence of the topography of the site and the need to respond to environmental impacts whilst ensuring consistency with the surrounding built form character.

3.3.3 Ground 3: Visual Impact and Built Form Transition

As shown in the Architectural Plans and discussed in **Section 3** above, the proposed development seeks approval for an exceedance to the 12m building height control by a maximum of 1.6m, primarily resulting from the lift overrun and inclusion of skylight to achieve good residential amenity. As shown in the Architectural Plans and **Figure 4**, the proposal clearly responds to the form of the adjoining developments.

Further, both the lift overrun and the proposed eastern skylight are contained to the centre of the building's rooftop level, meaning that the breach in height limit of these structures are unlikely to be perceivable from the public domain.

3.3.4 Ground 4: Solar Access and Overshadowing

The development has been carefully designed as to not impact the adjacent buildings solar access. As illustrated at **Figure 5** below, the proposed development has a negligible impact on the surrounding developments and is only a minor difference to the current building's overshadowing. Such minimal overshadowing is due to the small component of the built form exceeding the maximum height as well as the massing of the lift overrun purposefully designed in the centre of the building to minimise any overshadowing impacts.

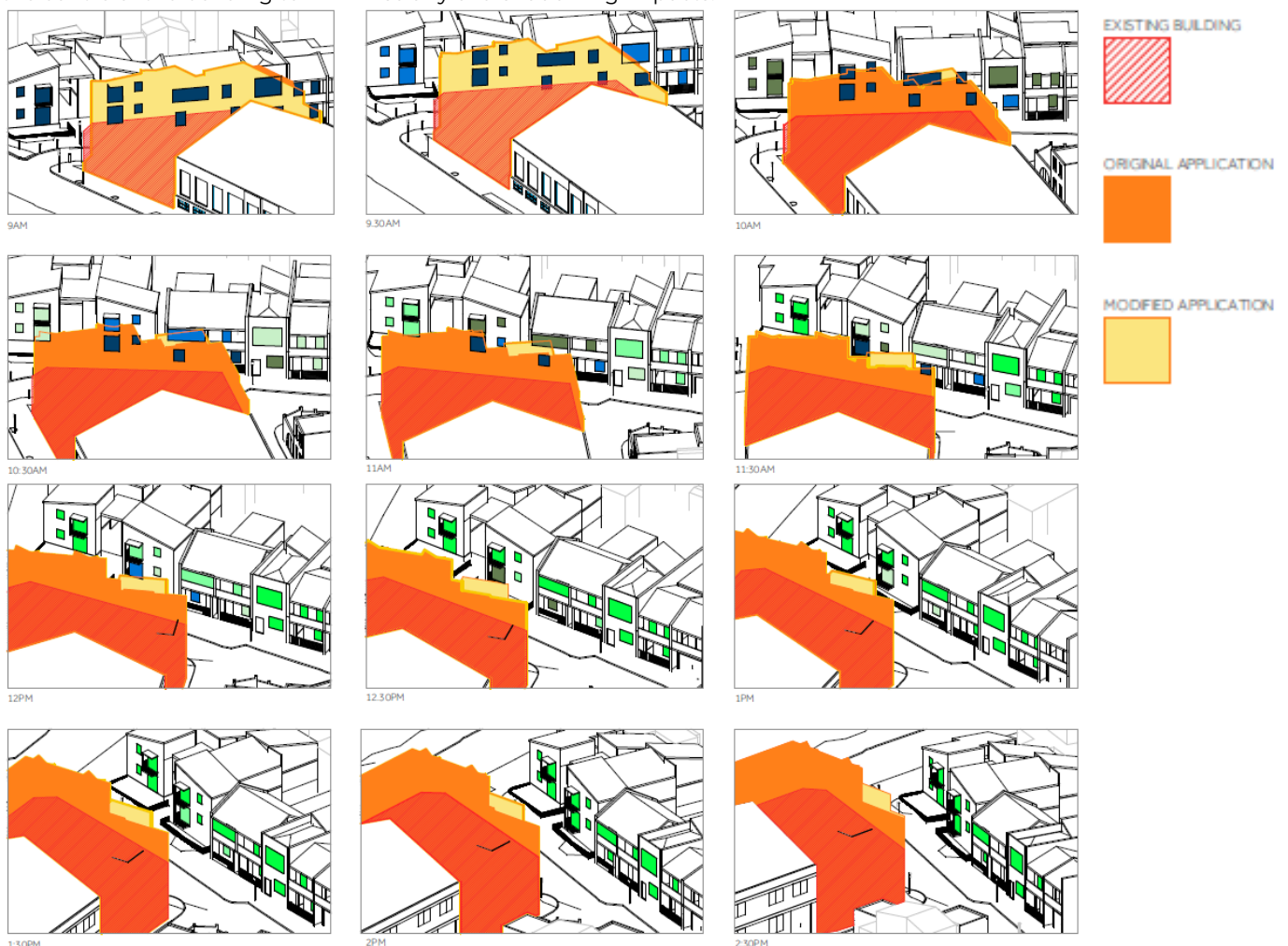


Figure 5 Sun shadow diagrams 21st June in half hour increments

Source: Fitzpatrick + Partners

3.3.5 Environmental Impacts

The proposed development, despite the contravention of the height of buildings development standard, does not cause significant additional environmental impact which would render it incompatible with its surrounding land uses and ensures the proposal is appropriate for the context of the site. In particular, the areas of non-compliance will not result in significant additional overshadowing impacts to the surrounding public realm or existing residential receivers surrounding the site.

In regard to privacy for surrounding residential receivers, as a corner site, the building benefits from separation from adjacent developments. Accordingly, the areas of additional height will not cause any significant additional impacts to the existing residential receivers surrounding the site in terms of overlooking and privacy. In regard to view impacts, there are no known views obtained over the existing site. Accordingly, the additional height will not disrupt views from surrounding properties.

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 proposal is broadly consistent with each object, notwithstanding the proposed variation of the height development standard.

Table 1 Consistency with 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 management, development and conservation of the State's natural and other resources	The proposed height variation will promote the social and economic welfare of future residents by enabling a higher building performance through the provision of a lift and additional opportunity for a residential dwelling at the western elevation.
(b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment	The proposed variation allows for building services to be located above the mapped maximum height limit. It will facilitate the usability of the highest storey through the inclusion of the lift, providing a highly sustainable development outcome. Further, the minor building height variation will have no negative impact on environmental and social considerations and will support the economic health of Sydney.
(c) to promote the orderly and economic use and development of land	The site is strategically located, in close proximity to existing heavy rail, bus and light rail service future commuters. Strict compliance with the maximum building height control would be a lost opportunity to enable services and enable additional accommodation for youth in need, adding to the diversity of Surry Hills. The proposal, with a variation to the maximum building height control, continues to provide a balanced and orderly design outcome that responds to the unique characteristics of the site and does not represent the over intensification or overdevelopment of the land.
(d) to promote the delivery and maintenance of affordable housing	The proposal delivers affordable housing in the form of transitional care housing for homeless youth.
(e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats	The proposal 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)	The proposal will not impact built or cultural heritage. Refer to the Heritage Impact Assessment provided at Appendix L for further details.
(g) to promote good design and amenity of the built environment	The proposal will promote good design and amenity of the built environment by exhibiting a high quality and sculptured design which adds to the architectural diversity of Surry Hills.

Object	Comment
(h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants	The proposal 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 the strategic planning priorities for employment growth in Surry Hills and more broadly City of Sydney.
(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.

3.3.6 Conclusion on clause 4.6(3)(b)

There are sufficient environmental planning grounds to justify contravening from the development standard as:

- The additional height will not result in adverse environmental impacts including overpacking, privacy and views.
- The additional height supports the functionality of the building through the inclusion of a lift, designed in the centre of the building to reduce any visual impacts and ensure it is not readily perceivable from the public domain.

3.4 Clause 4.6(4)(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.
- *Raïssis 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 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 development standard, for the reasons discussed in **Section 3.1.2** of this report.

3.5.2 Consistency with objectives of the zone

The proposed development is consistent with the objectives of the MU1 – Mixed Use Zone, as demonstrated below. The minor departure from the height of building standard does not result in any inconsistencies with the objective of the zone.

To encourage a diversity of business, retail, office and light industrial land uses that generate employment opportunities.

The proposal provides a residential flat building for the purposes of transitional care. This land use is compatible to the Surry Hills area, which generally comprises of residential accommodation with part ground floor non-residential associated use.

To ensure that new development provides diverse and active street frontages to attract pedestrian traffic and to contribute to vibrant, diverse and functional streets and public spaces.

The proposed development will result in the renewal of the site which currently comprises an existing underutilised and dilapidated building and does not represent the most efficient use of land in the context of the surrounding residential context. It will provide an opportunity for development that will enhance the street frontage and pedestrian experience, increasing the vibrancy, diversity and functionality of the streetscape. The ground floor of the proposed development will comprise of productive space and will be utilised by the occupants of the building on a daily basis.

To minimise conflict between land uses within this zone and land uses within adjoining zones.

The site does not adjoin other land use zones and does not provide a land use that would result in a conflict with the existing character of residential development within the immediate context.

To encourage business, retail, community and other non-residential land uses on the ground floor of buildings

The ground floor of the building has been designed in a manner that provides non-residential land-uses which will comprise co-working spaces, private meeting rooms, computer lab and kitchen space that has been designed with the purpose of enhancing the skillset of occupants within the building and will be managed by PIF.

To ensure uses support the viability of centres.

The proposal will replace a tired and aged building with a new development that is seen to contribute to further rejuvenation of the immediate area and reactivate the site. Apartments will be provided on the ground floor, activating the public domain to generate a vibrant street environment and assisting with passive surveillance. The proposed development has also been designed with high quality amenities, including the rooftop which will include a communal space fitted with BBQ and seating amenities as well as landscaping and communal gardens. Overall, the proposal will provide for a competitive and attractive residential building which will, in turn, work to provide a vibrant urban environment.

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.

As detailed in the SEE, the site is located in walking distance to a number of existing public transport options, which will help to maximise the use of public transport patronage to and from the site. The proposal provides residential accommodation to youth who will need to utilise these key public and active transport nodes provided around the site. Further, the proposal will provide back of house facilities inclusive of 11 secure bicycle storage spaces to spur walking and cycling.

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 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 most recent metropolitan plan for Sydney, A Plan for Growing Sydney in that it:

- Safe medium-term transitional accommodation while the young person's homelessness is resolved.
- Affordable housing to young people engaged in employment, education or training that provides a stable base from which young people can participate in society, achieve their education and employment goals, and sustain positive health outcomes.
- Connection for young people to services, including employment, education, and training.
- Opportunity to develop and maintain skills to improve young people's ability to increase their social and community support networks.
- Does not affect any heritage assets.
- Is well located to public transport connections.

Furthermore, the variation of height of buildings development standard does not result in any significant adverse impact on the surrounding area, surrounding residences and enables a high quality design that is operational by the residents within the building.

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

As outlined above, there are sufficient environmental planning grounds to warrant contravention of the development standard and it is considered to be in the public interest of the variation to be supported in this case.

The proposed development will improve the built form outcome on the site by establishing a building envelope that responds to its surrounding context and existing built form along South Dowling Street, Phelps Street and Chapman Lane.

The proposed height of building exceedance will be imperceptible to the public domain and there will be no adverse solar or privacy impacts to the adjoining development. As such, the proposal will not interfere with the public interest but rather provide an improved built form outcome for safe medium-term transitional accommodation while a young person's homelessness is resolved.

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 building development standard contained in clause 4.3 of the Sydney LEP is unreasonable and unnecessary in the circumstances of the case and that the justification 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 better outcome in planning terms.

This clause 4.6 variation demonstrates that, notwithstanding the non-compliance with the height 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 heritage buildings.
- Will provide additional space for safe medium-term transitional accommodation while the young person's homelessness is resolved.
- Is in the public interest in light of the numerous positive social, ecological, design and economic impacts it will deliver for the Site.
- Will have an appropriate impact, in terms of its scale, form and massing.
- Will promote the orderly and efficient use of land, in accordance with the objects of the Environmental Planning and Assessment Act 1979 (the Act).

Therefore, the DA may be approved with the variation as proposed in accordance with the flexibility allowed under clause 4.6 of the Sydney LEP.