

# **Attachment C**

## **Clause 4.6 Variation Request – Height of Buildings**

**ANNEXURE C**

**Clause 4.6 Variation –  
Building Height**



# Clause 4.6 Variation Statement – Maximum Height (Clause 4.3)

## 1. Height of Buildings standard

Clause 4.3(2) of *Sydney Local Environmental Plan 2012* (SLEP 2012) relates to the maximum height requirements and refers to the Height of Buildings Map. Building height is defined as:

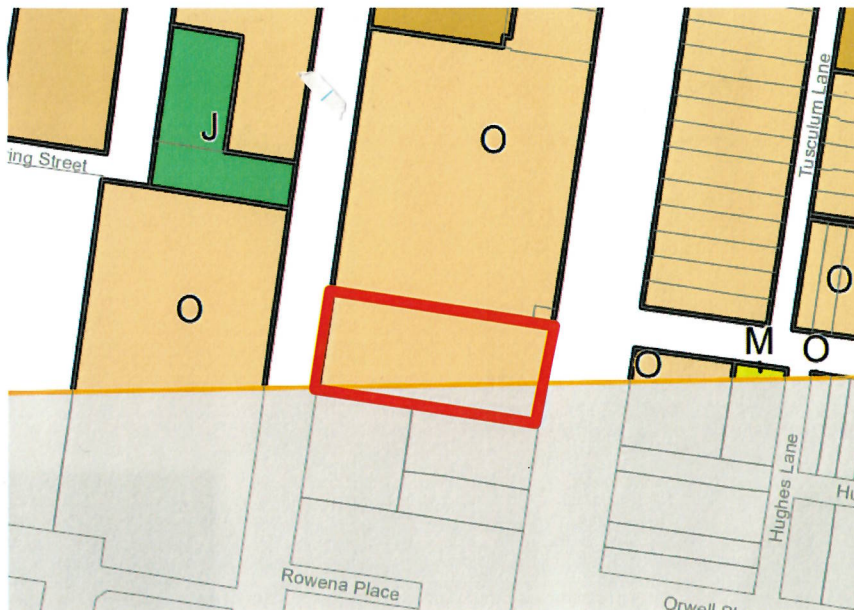
**building height (or height of building)** means—

(a) in relation to the height of a building in metres—the vertical distance from ground level (existing) to the highest point of the building, or

(b) in relation to the RL of a building—the vertical distance from the Australian Height Datum to the highest point of the building,

including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like.

The relevant map [sheet HOB\_0021] indicates that the subject site contains a maximum building height of 15m, as demonstrated in **Figure 20** below.



**Figure 20** Extract from Height of Buildings Map [O=15m]

This application has been amended pursuant to *Part 2 Development for affordable housing, Division 1 In-fill affordable housing, Section 16 Affordable housing requirements for additional floor space ratio*, subsection (3) of the Housing SEPP. Specifically, this application seeks to benefit from the 21% floor space ratio and building height bonuses under Section 16(3) of the Housing SEPP, where affordable housing is provided to 10.5% of the total GFA for a minimum 15-year period. Accordingly, and per the Housing SEPP, the subject site is permitted a maximum building height of 18.15m, where the 15m limit applies.

However, this development application was made, but not determined on or before 14 December 2023, and therefore the recent reforms cannot apply per *Schedule 7A Savings and transitional provisions, Section 8 State Environmental Planning Policy Amendment (Housing) 2023* of the Housing SEPP. Notwithstanding this, the intent of the Housing SEPP has been satisfied and therefore the maximum building height, as increased by the bonuses, are a matter for consideration.

## 2. Proposed variation to height of buildings development standard

The proposed development has a maximum height of 24.88m as measured to the balustrades of the Level 08 private open space, addressing Brougham Street, from the existing ground level, and therefore non-compliant. The non-compliance is a maximum of 9.88m or 65.8%. This is consistent with the definition of building height contained within the SLEP, in which it has been measured from the existing ground level.

As noted above, this application has been amended pursuant to the recently amended Housing SEPP. In this regard, the proposal will exceed the maximum 18.15m height permitted by the Housing SEPP by 6.73m or 37%.

The proposed height is as follows:

<b>Table 5 Maximum building heights</b>			
<b>Component</b>	<b>Building Height</b>	<b>Variation (Base Standard)</b>	<b>Housing SEPP Bonus Height</b>
<b>Victoria Street</b>			
Parapet edge fronting Victoria Street	15.4m	0.4m or 2.6%	Compliant
Planter boxes fronting Victoria Street	16.2m	1.2m or 8%	Compliant
Balustrades fronting Victoria Street	18m	3m or 20%	Compliant
<b>Brougham Street</b>			
Roof form, Level 04 apartments	16.6m	1.6m or 10.6%	Compliant
Awning structures, Level 05 apartments	19.8m	4.8m or 32%	Non-compliant, 1.65m or 9%
Roof form, Level 06 apartments	20.4m	5.4m or 36%	Non-compliant, 2.25m or 12.4%
Balustrades, Level 08 apartments	24.88m	9.88m or 65.8%	Non-compliant, 6.73m or 44.8%
Roof form, Level 09	19.7m	4.7m or 31.3%	Non-compliant, 1.55m or 10.3%
<b>Centrally within site</b>			
Lift core	22.9m	7.9m or 52.6%	Non-compliant, 4.75m or 26.1%
Stair core	21.6m	6.6m or 44%	Non-compliant, 3.45m or 19%
Balustrades to swimming pool	21.35m	6.35m or 42.3%	Non-compliant, 3.2m or 17.6%
Balustrades to communal open space	19.2m	4.2m or 28%	Non-compliant, 1.05m or 5.7%

The above measurements are from the existing ground level, where set by the lowest excavated floor level of the existing building. Where the landform has not been previously modified, it is measured from the existing topography.



This method for measurement is consistent with the findings of *Merman Investments Pty Ltd v Woollahra Municipal Council [2021] NSWLEC158*.

Of relevance to this application, the existing building is also non-compliant with the development standard as measured from the existing ground level. Specifically, the following is noted:

#### Brougham Street

- o Maximum height of 30.8m (15.8m or 105%) to the roof top element (RL45.31) addressing Brougham Street;
- o Height of 30.5m (15.5m or 103%) to the upper parapet edge (RL42.35) addressing Brougham Street;
- o Height of 22.6m (7.6m or 50.6%) to the parapet edge (RL 34.61) fronting Brougham Street.

#### Victoria Street

- o Height of 21.2m (6.2m or 41.3%) to the roof element (RL49.11) fronting Victoria Street;
- o Height of 18.8m to 19m (3.8m to 4m or 25.3%) to the building core (RL 45.01 to 46.43) fronting Victoria Street;
- o Height of 17.7m (2.7m or 18%) to the parapet edge (RL 43.45) around roof top open space; and
- o Height of approximately 15.2m (0.2m or 1.3%) to the parapet edge addressing the public domain.

Figures 21 to 23 below are height blanket diagrams as measured from existing finished floor level when comparing the existing and proposed buildings.

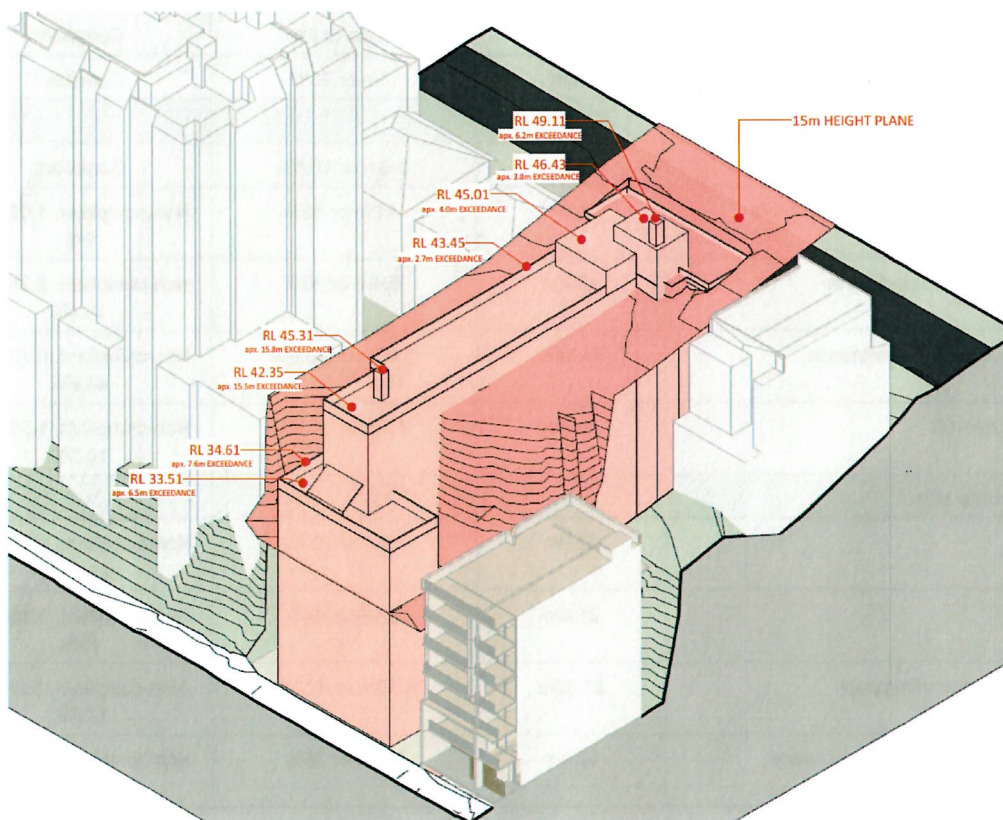


Figure 21 Height blanket diagrams of existing building

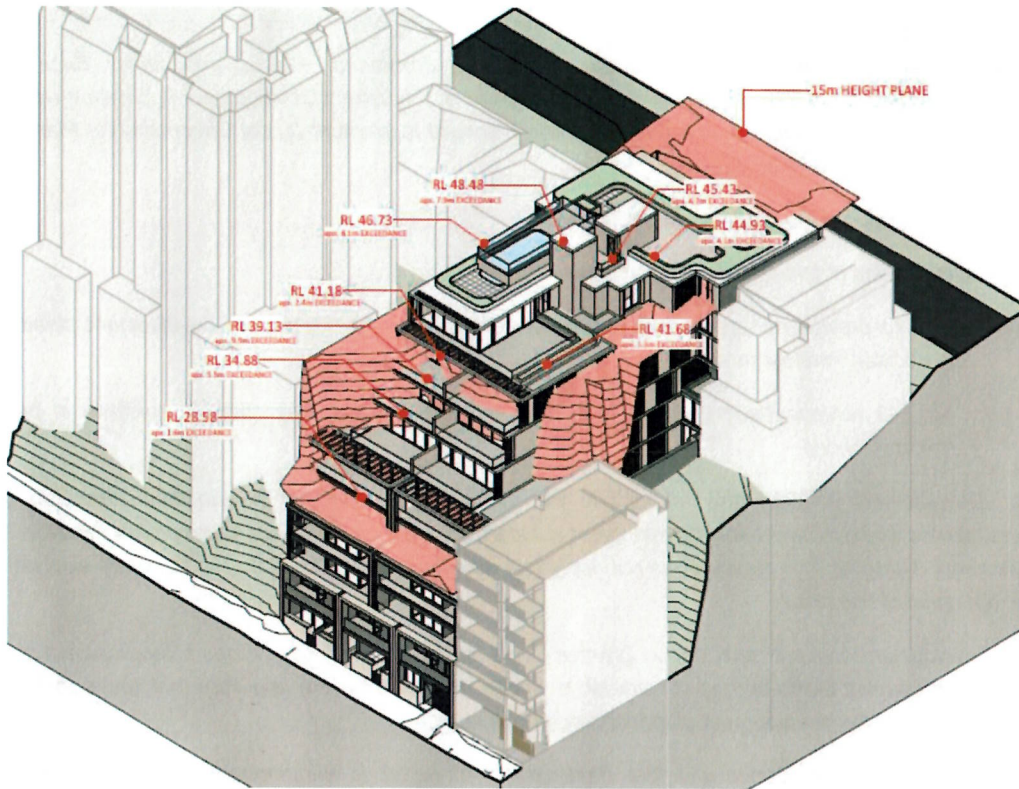


Figure 22 Height blanket diagram of proposed building with base (15m) standard

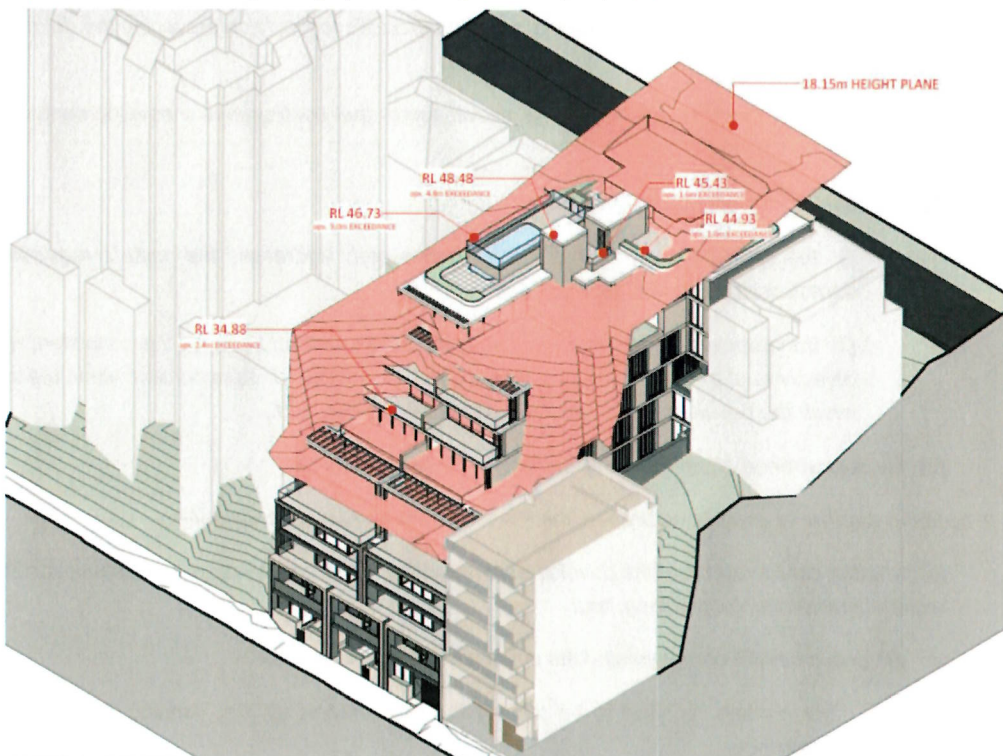


Figure 23 Height blanket diagram of proposed building with bonus (18.15m) standard



### 3. Clause 4.6 to SLEP 2012

Clause 4.6 was amended by the *Standard Instrument (Local Environmental Plans) Amendment (Exceptions to Development Standards) Order 2023* on 1 November 2023. However, the current Development Application was lodged before this date, so (in accordance with clause 8(1) of the *Standard Instrument (Local Environmental Plans) Order 2006*) the former terms of clause 4.6 still apply.

The objectives and provisions of clause 4.6 are as follows:

(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 Planning Secretary has been obtained.*

(5) *In deciding whether to grant concurrence, the Planning 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 Planning Secretary before granting concurrence.*

(6) Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone C2 Environmental Conservation, Zone C3 Environmental Management or Zone C4 Environmental Living if—

(a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or

(b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.

(7) After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).

(8) This clause does not allow development consent to be granted for development that would contravene any of the following—

(a) a development standard for complying development,

(b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,

(c) clause 5.4,

(caa) clause 5.5,

(ca) clause 4.3 (Height of buildings), but only in relation to land shown as being in Area 1 or Area 2 on the Height of Buildings Map,

(cab) clause 4.5A (Balconies on certain residential flat buildings),

(cb) clause 5.3A (Development below ground level in Zone RE1),

(cc) clause 6.10 (Heritage floor space),

(cd) clause 6.11 (Utilisation of certain additional floor space requires allocation of heritage floor space),

(cda) clause 6.11A (Temporary alternative heritage arrangements in relation to allocation of heritage floor space),

(cdb) clause 6.16 (Erection of tall buildings in Central Sydney),

(ce) clause 6.17 (Sun access planes),

(cf) clause 6.18 (Overshadowing of certain public places), unless the additional overshadowing is caused by playground equipment, a shade structure, an awning, a sculpture or artwork, a community notice or a public information sign,

(cg) clause 6.19 (View planes), except in relation to the Martin Place View of western sky view protection plane,

(cga) clause 6.26 (AMP Circular Quay precinct),



*(cgb) clause 6.29 (58–60 Martin Place, Sydney),*

*(cgc) clause 6.33 (230–238 Sussex Street, Sydney),*

*(cgd) clause 6.35 (45 Murray Street, Pyrmont), but only if the development is an alteration or addition to an existing building,*

*(cge) clause 6.36 (12–20 Rosebery Avenue, 22–40 Rosebery Avenue and 108 Dalmeny Avenue, Rosebery),*

*(cgf) clause 6.37 (296–298 Botany Road and 284 Wyndham Street, Alexandria),*

*(cgg) clause 6.41 (7–15 Randle Street, Surry Hills),*

*(cgh) clause 6.42 (102–106 Dunning Avenue, Rosebery),*

*(cgi) clause 6.40 (2–32 Junction Street, Forest Lodge),*

*(cjj) clause 6.43 (Danks Street South Precinct),*

*(cgk) clause 6.52 (1–11 Oxford Street, Paddington),*

*(cgl) clause 6.55—4–22 Wentworth Avenue, Surry Hills,*

*(cgm) clause 6.56—24–40 Wentworth Avenue, Surry Hills,*

*(cgn) clause 6.58—187–189 Thomas Street, Haymarket,*

*(ch) Division 1 of Part 7 (Car parking ancillary to other development),*

*(ci) clause 6.19A (Views of Sydney Harbour),*

*(cj) clause 6.21E(2) and (5) (Tower cluster areas),*

*(ck) clause 6.60C—2 Chifley Square, Sydney,*

*(cl) clause 6.60D—Oxford Street Cultural and Creative Precinct,*

*(cm) clause 6.60E—Flinders Street and Oxford Street.*

*(cn) clause 6.60G—15–23 Hunter Street and 103–107 Pitt Street, Sydney.*

The development standards in Clause 4.3 are not “expressly excluded” from the operation of Clause 4.6.

Objective 1(a) of Clause 4.6 is satisfied by the discretion granted to a consent authority by virtue of Subclause 4.6(2) and the limitations to that discretion contained in subclauses (3) to (8). This submission will address the requirements of Subclauses 4.6(3) & (4) in order to demonstrate to the consent authority that the exception sought is consistent with the exercise of “an appropriate degree of flexibility” in applying the development standard, and is therefore consistent with objective 1(a). In this regard, the extent of the discretion afforded by Subclause 4.6(2) is not numerically limited, in contrast with the development standards referred to in, Subclause 4.6(6).

It is hereby requested that a variation to this development standard be granted pursuant to Clause 4.6 so as to permit a maximum building height of 24.88m where the 15m height limit applies, which equates to a numerical variation of 9.88m or 65.8%, noting that the maximum height relates to the balustrades serving the Level 08 open space, as measured from existing ground level. The proposal also seeks other variations to the maximum height throughout the site as identified within Section 2 of this Variation and consent is also sought for these.

#### **4. Compliance is unreasonable or unnecessary in the circumstances of the case (Clause 4.6(3)(a))**

Of relevance to Clause 4.6(3)(a), in *Wehbe v Pittwater Council (2007) NSW LEC 827* Preston CJ sets out ways of establishing that compliance with a development standard is unreasonable or unnecessary. It states, inter alia:

*“ An objection under SEPP 1 may be well founded and be consistent with the aims set out in clause 3 of the Policy in a variety of ways. The most commonly invoked way is to establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard.”*

The judgement goes on to state that:

*“ The rationale is that development standards are not ends in themselves but means of achieving ends. The ends are environmental or planning objectives. Compliance with a development standard is fixed as the usual means by which the relevant environmental or planning objective is able to be achieved. However, if the proposed development proffers an alternative means of achieving the objective strict compliance with the standard would be unnecessary (it is achieved anyway) and unreasonable (no purpose would be served).”*

Preston CJ in the judgement then expressed the view that there are 5 different ways in which an objection may be well founded and that approval of the objection may be consistent with the aims of the policy, as follows (with emphasis placed on number 1 and 5 for the purposes of this Clause 4.6 variation [our underline]):

1. The objectives of the standard are achieved notwithstanding non-compliance with the standard;
2. The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;
3. The underlying object of purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;
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;
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 that would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.

Relevantly, in *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118* (paragraph 16), Preston CJ makes reference to *Wehbe* and states:

*“...Although that was said in the context of an objection under State Environmental Planning Policy No 1 – Development Standards to compliance with a development standard, the discussion is equally applicable to a written request under cl 4.6 demonstrating that compliance with a development standard is unreasonable or unnecessary.”*

Clause 4.6(3)(a) requires that the written request to vary a development standard demonstrate that compliance with the development standard is unnecessary or unreasonable in the circumstances of the case. Requiring strict compliance with the standard is unreasonable or unnecessary because:

- the development is consistent with the standard and zone objectives, even with the proposed variation (refer to Section 7 below);
- there are no additional significant adverse impacts arising from the proposed non-compliance; and
- important planning goals are achieved by the approval of the variation.



In addition to the above and in accordance with 5 of *Wehbe V Pittwater Council*, strict compliance with all current planning provisions, namely building height, is incompatible as it applies to land that should have not been included in the zoning. That is, at the time the SLEP 2012 was adopted, the existing development on the site and numerous developments within the surrounding locality, did not comply with the maximum building height of 15m. The adopted SLEP 2012 did not take into account the height of the existing built forms, and importantly, that it is improbable that existing buildings of this scale would be demolished and rebuilt with a compliant building height of 15m. If the SLEP 2012 was prepared with detailed consideration of the existing building heights in the locality, it would have included controls which are more reflective of that already established on-site and within the surrounding locality.

In this regard, the current 15m maximum building height is illogical and inappropriate at the time it was implemented as part of the SLEP 2012, failing to consider the context of the locality and contribution of the existing building on-site to the height of buildings development standard.

On this basis, the requirements of Clause 4.6(3)(a) are satisfied.

#### **5. Sufficient environmental planning grounds (Clause 4.6(3)(b))**



Having regard to Clause 4.6(3)(b) and the need to demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard. Specifically, Preston CJ in *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118* (paragraph 24) states:

*The environmental planning grounds relied on in the written request under cl 4.6 must be "sufficient". There are two respects in which the written request needs to be "sufficient". First, the environmental planning grounds advanced in the written request must be sufficient "to justify contravening the development standard". The focus of cl 4.6(3)(b) is on the aspect or element of the development that contravenes the development standard, not on the development as a whole, and why that contravention is justified on environmental planning grounds. The environmental planning grounds advanced in the written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole: see *Four2Five Pty Ltd v Ashfield Council [2015] NSWCA 248* at [15]. Second, the written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard so as to enable the consent authority to be satisfied under cl 4.6(4)(a)(i) that the written request has adequately addressed this matter: see *Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90* at [31].*

The assessment of this numerical non-compliance is also guided by the decisions of the NSW LEC in *Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90* and *Four2Five Pty Ltd v Ashfield Council [2015] NSWCA 248* whereby Justice Pain ratified the original decision of Commissioner Pearson. The following planning grounds are submitted to justify contravening the maximum building height:

#### **1. The building height has already been established for the subject site**

- a. As measured from the existing ground level, the current building on-site is a maximum height of 30.9m (15.9m or 106%) to the roof element addressing Brougham Street. Additional existing non-compliances range between 5.2m to 15.3m to the envelope and parapet edges of the building directly fronting Brougham Street. Centrally within the site, non-compliances range between 1.8m to 2.1m. Orientated towards Victoria Street, an existing building height of 18.5m to 21.2m to the building core and roof top elements. Finally, there is an additional non-compliance of 15.2m to the parapet edge addressing Victoria Street. As the existing buildings has been in-situ for a considerable period of time, the height, bulk and scale on the subject site has been established.



The surrounding developments similarly exceed the maximum building height, namely, Nos. 101-115 Victoria Street to the north. This demonstrates that existing buildings exceeded the building height standard (of 15m) upon adoption of SLEP 2012. This results in an eclectic mix of heights and built forms. As such, flexibility to the standard should be applied as the height of buildings on site and within the locality pre-date the implementation standard.

- b. The proposal is therefore designed to ensure consistency with the established building height on-site and to the neighbouring properties, both existing and recently approved. Specifically, and orientated towards Brougham Street, the breach is at its greatest to the balustrades of the Level 08 private open space, as measured from the existing floor level, with a height of 24.88m, which is recessed from the public domain. There are additional variations to Brougham Street, ranging between 1.6m to 5.4m, which pertain to balcony and parapet elements, awnings and balustrades, all of which recess from the public domain as building height increases. Centrally, the proposal includes non-compliances of 22.9m to the lift overrun, 21.6m to the stair core and 21.35m to the communal open space elements. Importantly, the proposal is designed to reduce the extent of non-compliances to Victoria Street, with the parapet edges of the primary façade obtaining a maximum height of 15.4m. Whilst non-compliant, the extent of variations are reduced and specifically located and designed to provide a more suitable response to the streetscape, as is consistent with the neighbouring properties.
- c. Ultimately, the proposed development seeks to reimagine the character of the site through removing a detracting building, which exceeds the development standard, and provide a contemporary form which responds to surrounding developments and heritage character of the locality. The proposal will strategically relocate built form and floor area as to reduce the extent of variation and environmental impact, when compared to the existing building, through aligning with neighbouring properties and recessing the extent of non-compliances. As a result, the proposal achieves the following:
- The proposal considerably reduces the established building height, bulk and scale, as it opposes Brougham Street. The sheer nine storey façade and maximum building height of 30.3m to 30.9m addressing Brougham Street has been removed, with a recessed built form which responds to the topography. The proposal provides for a parapet height to Brougham Street, which is consistent with that recently approved Nos. 30A-34 Brougham Street. The non-compliances to the upper levels are then recessed and stepped as to reduce visual and physical impact. The non-compliances are located within a highly articulated form including vertical and horizontal elements, balcony, and glazed elements.
  - Centrally within the site, the proposed communal open space, including swimming pool, balustrades and building core, are appropriately setback from the public domain as to mitigate impact. Where the building envelope exceeds the maximum height (centrally within the site), this also forms part of an articulated form appropriate setback from the site boundaries, thus reducing adverse impacts; and



- To Victoria Street, the proposal is predominantly compliant with the standard and is consistent with the building height of the neighbouring heritage item to the south, thus limiting any impact. Not only is this consistent with the existing building, it represents a significant improvement in architectural character and form. The minor non-compliances to the balustrades and planter boxes where approaching Victoria Street will be setback and concealed by the compliant form, thereby mitigating impacts.

## **2. The topography contributes to the extent of non-compliance**

- a. The topography is a site-specific reason that contributes to the extent of this variation. Specifically, the topography falls significantly from Victoria Street to Brougham Street by approximately 18.5m. Centrally and towards the western boundary, the site contains a steep topographical decline of 12m. This topographical decline directly results in, and exacerbates, the extent of non-compliance centrally within the site and towards the Brougham Street frontage. Specifically, the maximum extent of non-compliance, being 24.88m, is part of the site where the topography falls most steeply. This is a specific condition that the LEP height limit does not contemplate, in that the height limit applies equally to a vast area of the LGA with distinctly different topography and contributes to the extent of non-compliance.
- b. Whilst the topographical variation increases the extent of non-compliance for a portion of the site, it is considered acceptable as the built form is designed to maintain the street frontage height of built form addressing both Victoria and Brougham Street. Further to this, the non-compliances, where visible from the public domain, are recessed and integrated into the contemporary design to mitigate any adverse impact to bulk and scale of the site. Centrally, the provision of appropriate setbacks from side boundaries and a stepped built form similarly mitigates impacts to the surrounding developments. Importantly, the existing building contains variations to the maximum building height, which have been refined as part of this proposal.
- c. To request strict compliance will require significant modification to the built form which will create an incoherent architectural design and will not provide for any distinctive benefits to the character of the locality or amenity of surrounding properties. Specifically, providing a strictly compliant form to Brougham Street and centrally will create detached and inefficiently designed built forms, for vehicle access and parking, provision of services, apartment layout and overall architectural design, which will not result in the delivery of a feasible development. Furthermore, the removal or further recessing of certain elements, such as balconies and awnings, is also inferior as it will result in an inconsistent and stepped streetscape. Strict compliance is therefore considered to be both unreasonable and unnecessary in the circumstances of the development. As discussed, the remaining height non-compliances have been measured from the existing excavated ground levels, in which it is consistent with the existing buildings and surrounding developments.

## **3. The bonuses under the recently amended Housing SEPP are a matter for consideration**



- a. D/2023/862 was lodged with Council on 21 September 2023. At the time in which this application was lodged, the proposed changes to the Housing SEPP were exhibited via the Department of Planning's media release dated 15 June 2023 titled '*New planning rules mean more affordable housing*'. Following this and on 14 December 2023, the amendments were gazetted and formed part of the Housing SEPP. As these amendments were exhibited and subsequently gazetted, they are a matter for consideration under Section 4.15(1)(a)(ii) of the *Environmental Planning and Assessment Act, 1979* (EP&A Act). As a result, these amendments are both imminent and certain, carrying determinative weight as they establish an appropriate density of development for affordable, transit orientated development.
- b. When considering the maximum building height with the bonuses afforded by the Housing SEPP, being 18.15m, the following is noted:
  - i. The proposed development is fully compliant along Victoria Street;
  - ii. Centrally, the built form exceeds the 18.15m standard to the lift overrun, fire stairs and communal open space, which provides a high quality area with high levels of amenity, including solar access, privacy and views. The lift overrun and stairs also provide equitable access and enable safe exit (in the event of a fire) and to remove these elements to improve compliance, would be an inferior outcome; and
  - iii. The non-compliances to Brougham Street are a result of the steeply sloping topography and generally limited to light-weight, open balcony elements and minor building slabs. The increased height reduces the extent of non-compliance as it pertains to internalised floor area and is therefore an improved outcome.
- c. Object 1.3(d) of the EP&A Act is to "*promote the delivery and maintenance of affordable housing*". Whilst the recent Housing SEPP reforms do not strictly apply, the proposal will deliver a distinctive public benefit through the provision of 5 affordable housing apartments, which will be allocated for a period of 15 years to a registered community housing provider. The considerable public benefit afforded by delivering a high quality contemporary development, with an appropriate quantum of affordable housing, must be considered in this variation request. To require strict compliance with the base standard or bonus height would significantly impact the provision of affordable housing, communal open space and high quality apartments.

**4. The proposed non-compliances allow for the delivery of a well-considered, stepped built form**

- a. As detailed above, the minor parapet non-compliances to Victoria Street and greater non-compliances to Brougham Street allow for the delivery of built forms which are compatible with the surrounding developments, including neighbouring heritage items. The proposal is consistent with the building height already established on-site, however, conceals the extent of variations within a high quality, contemporary form, which is inclusive of appropriate architectural design elements and materiality. As detailed, the existing building varied the height standard upon implementation of SLEP and to request strict compliance will result in an inconsistent streetscape character, particularly when considering the relationship to the surrounding streetscape.



- b. Following the above, the non-compliances orientated towards Brougham Street form part of a recessive form, inclusive of increased setbacks, balcony elements, awning structures and glazing. Importantly, where the extent of non-compliance is greatest, this predominantly pertains to open form elements (as outlined above) thereby reducing the bulk and scale of the variations. Where the non-compliance pertains to internalised floor area, this is appropriately concealed as will therefore not be visually obtrusive or jarring as viewed from the public domain. It is important to note that the narrower width of Brougham Street, and considerable building height of neighbouring developments, namely Nos. 101-115 Victoria Street (to the north), limits the visual and physical impacts of the variation.

**5. The proposed non-compliances allow for the delivery of a roof top communal open space**

- a. The rooftop provides high quality communal open space. In order to provide the optimal equitable access to this space, the lift overrun and building core must necessarily breach the height control, in this instance by 21.6m to 22.9m. The following alternatives are both considered to be inferior when compared to that proposed:
- Provide access to the roof-top via a stair lift. This is suboptimal and should not be pursued given the operational inadequacies of a stair lift and minimal impact created by the lift overrun, as discussed in this Variation;
  - To remove the lift core and only allow access via the stairs from the uppermost apartments. This would result in a privatised the roof top terrace, reducing the amenity for the remainder of the apartments and is also suboptimal; and
  - To locate the communal open space at ground level would be inferior as it will achieve subpar amenity, namely solar access, privacy and outlook.
- b. There are additional non-compliances as they pertains to the swimming pool, balustrades, planter boxes and remaining area of the communal open space. Whilst removal of this element would improve compliance with the development standard, it will result in the deletion of the communal open space and would be a detriment to the amenity of future occupants without any benefit to the character of the locality and amenity of neighbouring properties.
- c. The social benefits of providing access to a high quality communal open space within a contemporary residential flat building in a highly sought after location should be given weight in the consideration of the variation request. It would be a loss to the community (and contrary to the public interest) to deny the variation and require the removal of the building core and communal open space due to the existing site conditions (Planning Ground 1) and topography (Planning Ground 2).
- d. The roof top communal open area provides a consolidated open space with good solar access for future residents as encouraged by the Apartment Design Guide (Part 3D). This is good design and amenity of the built environment (objectives of Act).

6. **The non-compliances achieve a high level of design excellence/good design, based on site analysis**

- a. As discussed under Planning Ground 4, the majority of non-compliances are designed so that they are open in form, light-weight in nature and are appropriately setback to limit any adverse impact to the streetscape, as viewed from the public domain. This has been achieved through the provision of balcony elements, awning structures, glazing and louvers fronting the public domain, therefore reducing bulk, scale and visual impact.
- b. Per Planning Ground 2, the site contains a steep topographical decline from Victoria Street to Brougham Street, of approximately 18.5m. Whilst the proposal remains non-compliant due to the steep topography, it is designed to reduce the extent of non-compliance. The proposal provides a stepped built form which incorporates increased setbacks from the street frontage boundaries, thus responding to the topography of the site. Furthermore, appropriate setbacks are also provided to the northern and southern (side) boundaries to mitigate impacts to neighbouring properties. These design measures represent a significant improvement over the existing site conditions, are consistent with the character of surrounding developments and result in a reduction in non-compliances, which is a direct result of site analysis and iterative process.
- c. To Victoria Street, the proposal is predominantly compliant and is entirely compatible with the building height and character of neighbouring properties, particularly, the heritage items. The setbacks and parapet height (including non-compliances) align with those to the south and provide a continuous and consistent streetscape approach. The non-compliances as they pertain to the building core, balustrades and planter boxes, are appropriately setback from Victoria Street. This ensures that they will be predominantly obscured as viewed from the public domain, per **Figure 24** below.





**Figure 24** Perspective as viewed from Victoria Street

- d. To Brougham Street, and as discussed, whilst the non-compliant elements will be visible from the public domain, they are lesser in height than the existing building (on-site), are consistent with the neighbouring approval at Nos. 30A-34 Brougham Street, and are subordinate to the rock outcrop and built form at Nos. 101-115 Victoria Street. The utilisation of light-weight, open form elements within a recessive built form, where non-compliant, ensures that the proposal will nestle comfortably when viewed from Brougham Street. **Figure 25** below shows the proposed development as viewed from Brougham Street, including the approved development at Nos. 30A-34.



**Figure 25** Excerpt from Visual Impact Imagery prepared by *Urbaine*

**7. The non-compliance will contribute to the character of the locality**

- a. Object 1.3(g) of the EP&A Act 1979 is “to promote good design and amenity of the built environment”. As detailed, the proposal will provide a built form which is consistent with (or lesser) the building height already established on-site, however, substantially improves and enhances architectural design and character. Whilst the proposal will remain as non-compliant, there will be a significant improvement to the visual and physical appearance of the development, including a reduction of bulk and scale to Brougham Street where the existing non-compliance is most prevalent. This will reduce the apparent height, bulk and scale and ultimately contribute to the character of the locality, future residents and surrounding properties. Importantly, the existing building and its non-compliances are visually obtrusive and jarring and do not provide any benefit to the character of the locality. **Figure 26** below shows the visual improvement to views gained from Brougham Street, shown in purple.



**Figure 26** Excerpt from Visual Impact Imagery prepared by *Urbaine*, showing views gained in purple.

- b. As considered in *Woollahra Municipal Council v SJD DB2 Pty Limited [2020] NSWLEC 115*, the desired future character is subjective and can be set by the existing, recently approved and proposed buildings within the neighbourhood. In this regard, the existing buildings and surrounding developments (existing and approved), which has been in-situ for a considerable period of time, have established the building height and character of development of the locality. Although the proposed development generally maintains the established height, bulk and scale, it provides an architectural design which will significantly improve the character of the development. As discussed in this Variation, the proposed development reduces the maximum building height of the development to Brougham Street, resulting in variations centrally within the site. While the proposal will result in non-compliances with the development standard, this represents a more skilful design when compared to the existing building.
  
- c. As detailed in Section 4 of this Variation, per 5 of *Wehbe V Pittwater Council*, the current 15m maximum building height is illogical and inappropriate at the time it was implemented as part of the SLEP 2012, failing to consider the context of the locality and contribution of the existing building on-site to the height of buildings development standard. It is therefore unlikely that a building which contravenes the building height development standard to a significant degree, as is existing, will be demolished and rebuilt with a compliant height. As such, whilst the proposal is non-compliant, the significant improvements offered by this proposal are considered a superior outcome.
  
- d. Finally, the existing building on-site is identified as an 'detracting' item within the *Potts point Heritage Conservation Area*. The proposal will deliver a development which is to be identified as 'neutral' within the conservation area and appropriately relate to the surrounding heritage items.



As identified in the Heritage Impact Statement prepared by *Urbis*, the proposed architectural design and selected materiality will positively contribute to the streetscape character of the locality.

**8. The range of amenity impacts have been established by the existing development**

- a. As detailed, the proposed development will generally maintain the height, bulk and scale established by the existing building. Resultantly, the range of amenity impacts created by the proposed development are consistent with those already established on-site. That is, the non-compliance will not result in any adverse impact to the overshadowing, views or privacy of the surrounding locality beyond that created by the existing buildings.
- b. It is therefore considered that there is an absence of any significant material impacts attributed to the breach on the amenity or the environmental values of surrounding properties, the amenity of future building occupants and on the character of the locality. Specifically:
  - i. The extent of the additional height creates no adverse additional overshadowing impacts to adjoining properties when compared to the existing building envelope. That is, despite the additional shadow cast by the new non-compliances, this is relatively minor ensuring that the proposal will not impact the solar gain of the surrounding locality. The proposal will not create any adverse overshadowing impact to properties to the south, when considering the existing building and context of the locality. Per the Solar Impact Assessment, the development will create a minor solar impact to the private open space of Apartment 3 as located within No. 119 Victoria Street, from 1:00pm to 1:15pm. Whilst there will be an impact to this property, this is very minor and the private open space will retain 1 hour and 15 minutes of solar access during mid-winter, also noting that the living area will be unaffected by the proposal. Given the site orientation, and location of Apartment 3 on the lower levels of the neighbouring property, overshadowing is unavoidable. Notwithstanding, whilst the development will result in a minor loss of solar access (for a maximum of 15 minutes), a suitable quantum is maintained. In totality, the development will have a negligible impact to No. 119 Victoria Street, with all apartments maintaining appropriate solar access. As such and in totality, additional overshadowing caused by the non-compliant elements would be insignificant; and
  - ii. The height breach does not result in any adverse additional privacy impacts. Where non-compliant, appropriate setbacks are provided to both side boundaries, with landscaped elements, blank facades and privacy screens incorporated as a visual and physical buffer to the neighbouring properties. This ensures that that any additional loss of privacy caused by the non-compliant elements would be insignificant; and
  - iii. The height of building breach does not result in adverse view loss when compared to the existing building on-site. When considering the extent of view sharing, it is noted that the height breach is generally consistent with the existing building and the additional extent of

variation (centrally within the site) will not result in any adverse view loss to Sydney Harbour. This is confirmed in the View Loss Assessment prepared by *Planning Ingenuity* and View Impact Imagery prepared by *Urbaine*. As such, it is anticipated the extent of view loss caused by the non-compliant element would be insignificant or nil.

**9. Orderly and economic use of the land**

- a. Object 1.3(c) of the EP&A Act 1979 is “to promote the orderly and economic use and development of land”. A shorter building would unnecessarily result in a suboptimal provision of housing and communal open space on the site. This would reduce the contribution of the development to meeting the R1 zone objective to ‘provide for the housing needs of the community’. The removal of residential apartments, inclusive of affordable housing, and communal open space will not only impact the overall architectural design resulting in inconsistency with the streetscape character of the locality, but will also reduce the quality of housing within the R1 zone. This will simply divert people to be residents in areas with reduced opportunity for access to transport links or an urban environment well-suited for walking and cycling.
- b. It would be a loss to the community to require strict compliance and ultimately stifle redevelopment. The current building is dilapidated and in a state of disrepair, with a subpar level of amenity for future occupants. To require strict compliance would result in a development retaining the existing built form, with tokenistic alterations and additions, as a fully compliant development would not be feasible. In contrast, submission of this application, requiring variation to maximum building height, will result in the delivery of 25 high quality residential apartments, inclusive of affordable housing, that will provide for a significant social benefit to the locality in terms of built form, landscaped network, sustainability, architectural merit and visual impact, which is significantly improved when compared to the existing, at the same time as appropriately managing amenity impacts.
- c. In addition, the social benefits of providing high quality communal open space within a well-designed development in a highly accessible area should be given weight in the consideration of the variation request. It would be a loss to the community (and contrary to the public interest) to deny the variation and require the removal of communal services due to the existing site conditions and topography.

**10. The proposal meets aims and objectives of key planning documents**

- a. The proposed development meets the objectives of the development standard and meets the objectives of the R1 General Residential zone (as further detailed in Section 7 below);
- b. The proposed development achieves the objects in Section 1.3 of the EPA Act, specifically:
  - i. The proposal promotes the orderly and economic use and development of land through the redevelopment of an underutilised site for residential uses (1.3(c));
  - ii. The proposal promotes the delivery and maintenance of affordable housing (1.3(d)); and



- iii. The proposed development promotes good design and amenity of the built environment through a well-considered design which is responsive to its setting and context (1.3(g)).
- c. The variation to the height of buildings development standard will give better effect to the aims of *State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development* (SEPP 65). In particular:
- i. The proposed variation will provide more sustainable housing in social and environmental terms and better achieve urban planning policies (clause 2(3)(a)(i));
  - ii. to achieve better built form and aesthetics of buildings and of the streetscapes and the public spaces they define (clause 2(3)(b));
  - iii. to contribute to the provision of a variety of dwelling types to meet population growth (clause 2(3)(f));
  - iv. Approval of the proposed variation will support a variety of housing types by providing a well-located and compact development that will be a better choice for families (clause 2(3)(g)).

The above environmental planning grounds are not general propositions and are unique circumstances to the proposed development, particularly given the established building height on the subject site, existing and desired future character of the locality and steep topography. Insistence on strict compliance with the height will result in an incoherent architectural design and removal roof top open spaces, which is a disproportionate outcome given the limited impacts of the proposal. Importantly, the additional height does not significantly impact the amenity of the public domain or surrounding properties (when compared to the existing buildings) and has been designed in such a way to ensure the additional height is compatible with the public domain.

It is noted that in *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118*, Preston CJ clarified what items a Clause 4.6 does and does not need to satisfy. Importantly, there does not need to be a "better" planning outcome:

*86. The second way is in an error because it finds no basis in cl 4.6. Clause 4.6 does not directly or indirectly establish a test that the non-compliant development should have a neutral or beneficial effect relative to a compliant development. This test is also inconsistent with objective (d) of the height development standard in cl 4.3(1) of minimising the impacts of new development on adjoining or nearby properties from disruption of views or visual intrusion. Compliance with the height development standard might be unreasonable or unnecessary if the non-compliant development achieves this objective of minimising view loss or visual intrusion. It is not necessary, contrary to what the Commissioner held, that the non-compliant development have no view loss or less view loss than a compliant development.*

*87. The second matter was in cl 4.6(3)(b). I find that the Commissioner applied the wrong test in considering this matter by requiring that the development, which contravened the height development standard, result in a "better environmental planning outcome for the site" relative to a development that complies with the height development standard (in [141] and [142] of the judgment). Clause 4.6 does not directly or indirectly establish this test. The requirement in cl 4.6(3)(b) is that there are sufficient environmental planning grounds to justify contravening the development standard, not that the development that contravenes the development standard have a better environmental planning outcome than a development that complies with the development standard.*

As outlined above, it is considered that in many respects, the proposal will provide for a better planning outcome than a strictly compliant development. At the very least, there are sufficient environmental planning grounds to justify contravening the development standard.

**6. The applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), (Clause 4.6(4)(a)(i))**

Preston CJ in *Initial Action Pty Ltd v Woollahra Municipal Council* details how Clause 4.6(4)(a) needs to be addressed (paragraphs 15 and 26 are rephrased below):

The first opinion of satisfaction, in clause 4.6(4)(a)(i), is that a written request seeking to justify the contravention of the development standard has adequately addressed the matters required to be demonstrated by clause 4.6(3). These matters are twofold: first, that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case (clause 4.6(3)(a)) and, secondly, that there are sufficient environmental planning grounds to justify contravening the development standard (clause 4.6(3)(b)). This written request has addressed Clause 4.6(3)(a) in Section 4 above (and furthermore in terms of meeting the objectives of the development standard, this is addressed in Section 7 below). Clause 4.6(3)(b) is addressed in Section 5 above.

The second opinion of satisfaction, in clause 4.6(4)(a)(ii), is that the proposed development will be in the public interest because it is consistent with the objectives of the particular development standard that is contravened and the objectives for development for the zone in which the development is proposed to be carried out. The second opinion of satisfaction under cl 4.6(4)(a)(ii) differs from the first opinion of satisfaction under clause 4.6(4)(a)(i) in that the consent authority, or the Court on appeal, must be directly satisfied about the matter in clause 4.6(4)(a)(ii), not indirectly satisfied that the applicant's written request has adequately addressed the matter in clause 4.6(4)(a)(ii). The matters in Clause 4.6(4)(a)(ii) are addressed in Section 7 below.

**7. 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 (Clause 4.6(4)(a)(ii))**

**Height of Buildings Objectives**

The objectives and relevant provisions of Clause 4.3 of SLEP 2012 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.*

In order to address the requirements of subclause 4.6(4)(a)(ii), each of the relevant objectives of Clause 4.3 are addressed in turn below. It is noted that objectives (d) and (e) do not apply to the proposal and are therefore not considered.

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



The subject site is located within the *Potts Point Heritage Conservation Area*. The proposal has undertaken detailed site and contextual analysis to ensure that the proposed height variations are an appropriate response to the conditions of the site and surrounding context. Furthermore, the proposal has also considered the building envelope, footprint and height of existing building, which have been in-situ for a considerable period of time and have established a height which is appropriate to the immediate and wider context of the locality. Similarly, the height and context of surrounding development, including those both existing and recently approved, have also been considered.

As discussed, the non-compliant elements as they address Brougham Street predominantly relate to balcony elements, awning structures, glazing and louvers, which are contained within a recessive built form and are designed as open and light-weight structures. These design measures and consistency with the established building heights, both existing and neighbouring, ultimately limits the visual and physical impact of the variations as viewed from the public domain. This is considered to be an appropriate response to the conditions of the site and surrounding context. To Victoria Street, the proposal is predominantly compliant with the building height and has been designed to provide a parapet edge which is consistent with the neighbouring heritage items. Where there are non-compliance, these are setback from the compliant envelope below therefore mitigating impact and ensuring appropriateness of bulk and scale in the locality.

As detailed, the proposal is designed with a maximum building height which ensures a consistency in streetscape and built form character of the locality. That is, as the built form addresses both frontages, the proposal will either predominantly comply with the development standard and where it is exceeded, be compatible with the surrounding development in a well-designed form as to minimise impact. As a result, the perceived height, bulk and scale of the development is consistent with (or lesser) that which is existing and is appropriate to the locality. It is prudent to note that to Brougham Street, the existing building contains a sheer, nine storey façade with significant height non-compliance to physical built form. This is substantially reduced as part of the proposed scheme and replaced with balcony elements, awning structures, louvers and glazing, within a recessive form, which are open and light weight in nature. To Victoria Street, the building envelope is consistent with that existing on-site and in the surrounding context, with non-compliances (to communal open space elements) concealed from the public domain.

As a result, the proposal has been designed to ensure compatibility with the existing and desired character of the locality, including the existing building on-site and within the surrounding locality. The proposal provides a strategic response to the conditions of the site and neighbouring properties and is compliant with the development standard where it has the most bearing on character. The proposed variation is suitably designed so that it will not have any adverse visual or physical impact to the locality.

Therefore Objective (a) is achieved.

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

The subject site is within the vicinity of numerous heritage items and is located within the *Potts Point Heritage Conservation Area*. The proposal has been designed to provide an appropriate balance providing a complementary, modern form, with an urban fabric and architectural design which is compatible with eclectic mix of neighbouring properties, including those heritage listed (and not). As it relates to building height, the proposed development is designed to maintain (or reduce) that established on the subject site. That is, the building envelope and form which has the most bearing on the streetscape, conservation area and heritage items, to Victoria Street, is predominately compliant with the development standard and aligns with the neighbouring properties, which is considered acceptable.

Whilst varying the standard to Brougham Street, the non-compliances are designed so that they consistent with that existing on the subject site and neighbouring properties, both existing and approved. They are generally open in form, light-weight in nature and include necessary setbacks to minimise any impact to bulk, scale or character. Where the non-compliances pertain to internalised gross floor area, they are concealed by the described light weight elements

and retreat suitably from the public domain, thus ensuring an appropriate transition of height to the surrounding locality. In fact, the proposal represents significant, wholesale improvements when compared to the existing building, which is identified as a detracting item per SDCP and contains a sheer, unarticulated nine storey façade to Brougham Street.

Importantly, the portion of the development which has the most bearing on the character of the heritage conservation area and surrounding heritage items, to Victoria Street, is predominantly compliant with the standard, and where variations are present, they are compatible with the neighbouring heritage items, and are setback and concealed from the public domain. Subsequently and as set out in this Variation, the non-compliant elements form part of a recessive design and are consistent with the existing building and surrounding locality, to mitigate any impact to the transition of height within the locality. The recessed nature of the non-compliances is correlated with simplified architectural design, geometry and materiality, to ensure there will be a negligible impact to the character and significance of the heritage conservation area and items.

For the reasons discussed above, the extent of the height breach is appropriate and the consistent with Objective (b).

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

In terms of view loss, the proposed variations will not result in any significant loss of views or outlook when compared to the existing building. The proposed development, as described, is designed to maintain the established bulk, scale and height, albeit within a high quality, contemporary design. Where changes to the envelope are proposed throughout the development (where they are non-compliant), these have been sensitively designed as to mitigate any adverse view loss from the surrounding properties or public domain. Importantly, the bulk of changes to building envelope are located below the maximum building height and is therefore considered acceptable as discussed in the Statement of Environmental Effects.

In terms of the height which exceeds the development standard, this forms part of the envelope which addresses Brougham Street and centrally within the site. Importantly and as detailed, the building envelopes are purposefully designed as recessive to ensure that views from surrounding properties will be maintained, or in some instances, improved. The non-compliances to balcony spaces, awnings, communal open space elements and built form is strategically designed so that there will be no adverse impact to iconic views. This is shown in the View Loss Assessment prepared by *Planning Ingenuity* and View Impact Imagery prepared by *Urbaine*. In this regard, the additional building height is located centrally within the site, is appropriately setback from the site boundaries and will not create any adverse view loss to the surrounding properties.

It is also prudent to note that the current building, as it addresses the neighbouring properties, contains unarticulated, sheer facades where non-compliant with the standard. The proposal will rectify this through the provision of a highly articulated contemporary development. This ensures that the visual impact of the development is significantly reduced, thus enhancing the visual amenity of neighbouring properties.

As such, any potential view impact is a result of the proposed building envelope which complies with the development standard and is consistent with the building footprint established on the subject site. Whilst the proposal will increase the maximum building height, as shown in the supporting documentation, these non-compliant elements will not result in any additional adverse view loss. It is therefore considered that the proposal satisfies objective (c).

**Objectives of the Zone**

Clause 4.6(4)(a)(ii) requires that the consent authority be satisfied that the development is in the public interest because it is consistent with relevant zone objectives. The objectives of zone R1 General Residential, and a response as to how the proposal meets the objective is provided as follows:

- *To provide for the housing needs of the community.*





The proposal will provide 25 residential apartments, comprising 5 x 1 bedroom, 4 x 2 bedroom, 11 x 3 bedroom and 5 x 4 bedroom apartment. This also includes the allocation of 5 x 1 bedroom apartments as affordable housing, for a period of 15 years to a registered community housing provider. This will meet the housing needs of the community within the R1 zone. These apartments are generously sized and designed within a highly suitable development.

- *To provide for a variety of housing types and densities.*

As above, the proposal will provide for a mixture of apartment types, including affordable housing and larger dwellings, within the Potts Point locality. This will also include 3 adaptable apartments which will improve the availability of accessible housing.

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

The proposal is not antipathetic to this objective and will support the surrounding non-residential uses.

- *To maintain the existing land use pattern of predominantly residential uses.*

The proposal will provide a residential flat building development which is entirely compatible with the existing nature of the subject site.

The proposed development, including those parts of the building that breach the height of buildings development standard, is not antipathetic to the objectives for the zone and for that reason the proposed variation is acceptable.

#### **8. The concurrence of the Secretary has been obtained (Clause 4.6(4)(b))**

The second precondition in cl 4.6(4) that must be satisfied before the consent authority can exercise the power to grant development consent for development that contravenes the development standard is that the concurrence of the Secretary (of the Department of Planning and the Environment) has been obtained (cl 4.6(4)(b)). Per the Environmental Planning and Assessment Regulation 2021, the Secretary has given written notice, attached to the Planning Circular PS 20-002 issued on 5 May 2020, 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.

#### **9. Whether contravention of the development standard raises any matter of significance for State or Regional environmental planning (Clause 4.6(5)(a))**

Contravention of the maximum height development standard proposed by this application does not raise any matter of significance for State or regional environmental planning.

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

As detailed in this submission there are no unreasonable impacts that will result from the proposed variation to the maximum building height. As such there is no public benefit in maintaining strict compliance with the development standard. Whilst the proposed building height exceeds the maximum permitted on the site by 24.88m (65.8%), the proposed development is consistent with the objectives of the development standard and the objectives for development of the zone in which the development is proposed to be carried out. 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.

#### **11. Conclusion**

This written request has been prepared in relation to the proposed variation as it pertains to the height of buildings development standard contained in Clause 4.3 of SLEP 2012.

Having regard to all of the above, it is our opinion that compliance with the maximum height development standard is unreasonable and unnecessary in the circumstances of this case as the development meets the objectives of that standard and the zone objectives. The proposal has also demonstrated sufficient environmental planning grounds to





support the breach. Therefore, insistence upon strict compliance with that standard would be unreasonable. On this basis, the requirements of Clause 4.6(3) are satisfied and the variation supported.





