

# **Attachment C**

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

## Clause 4.6 – Exceptions to Development Standards

Request to Vary Clause 4.3 – Height of Buildings in Sydney Local Environmental Plan 2012

**Address:** 263-279 Broadway, Glebe (Lots 100, 101 and 102 in DP 1067149)

**Proposal:** Demolition of the existing buildings and construction of a mixed use development containing co-living for student accommodation and commercial uses, located at 263-279 Broadway, Glebe ('the site').

**Date:** 23 January 2024

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### 1. Introduction

This document is a written request submitted under Clause 4.6 of the Sydney Local Environmental Plan (SLEP) 2012 to vary the Clause 4.3 Height of Buildings development standard applying to the proposed development.

### 2. Description of the Environmental Planning Instrument, development standard and proposed variation

#### 2.1. *What is the name of the environmental planning instrument that applies to the land?*

The Sydney Local Environmental Plan (SLEP) 2012.

#### 2.2. *What is the zoning of the land?*

The land is zoned E1 Local Centre.

The objectives of the zone are:

To provide a range of retail, business and community uses that serve the needs of people who live in, work in or visit the area;

To encourage investment in local commercial development that generates employment opportunities and economic growth;

To enable residential development that contributes to a vibrant and active local centre and is consistent with the Council's strategic planning for residential development in the area;

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

To maximise public transport patronage and encourage walking and cycling.

### 2.3. What is the development standard being varied?

The development standard being varied is the Height of Buildings development standard.

### 2.4. Is the development standard a performance based control?

Clause 4.3 is a numerical control.

### 2.5. Under what Clause is the development standard listed in the environmental planning instrument?

The development standard is listed under Clause 4.3 of SLEP 2012.

### 2.6. What are the objectives of the development standard?

The objectives 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 - to ensure the amenity of the public domain by restricting taller buildings to only part of a site, and to ensure the built form contributes to the physical definition of the street network and public spaces."

### 2.7. What is the numeric value of the development standard in the environmental planning instrument?

Clause 4.3 establishes a variable maximum building height of up to RL 38, RL 39.30, and RL 40 for the site, as illustrated in the extract of the Height of Buildings Map included in Figure 1 below.

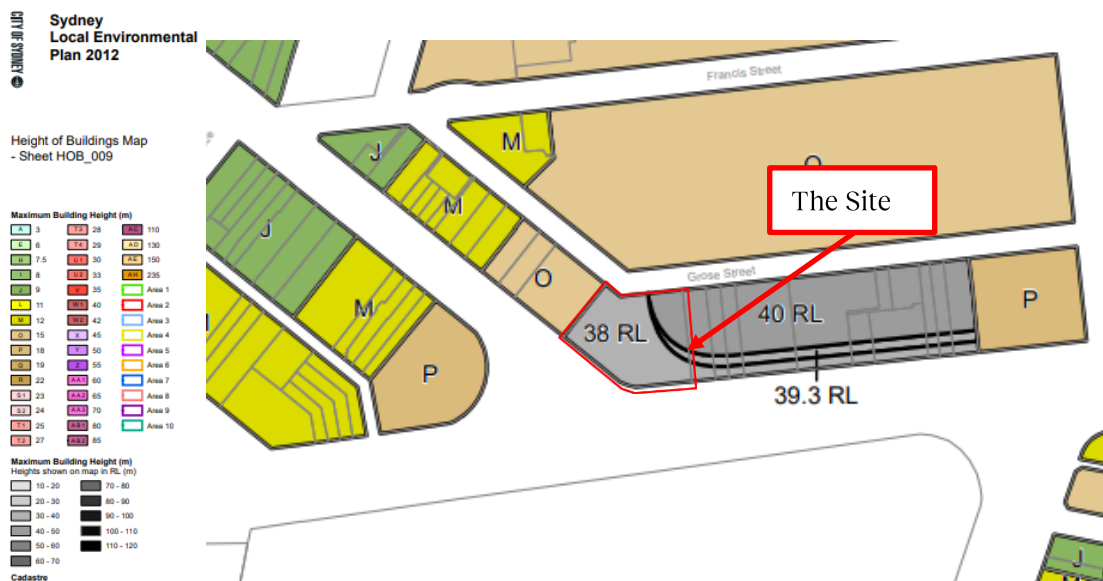


Figure 1: Extract from SLEP 2012 Height of Buildings Map

**2.8. What is the proposed numeric value of the development standard in the development application?**

The numeric breaches of the height are variable and relate to structures above the roof slab. The building parapet/ street wall height complies with the RL 38 height standard. Table 1 below details the proposed numeric breaches and the percentage of variation to the development standards.

| <b>Control</b> | <b>Proposed height and location<br/>Proposed height</b> | <b>Compliance</b> | <b>Variation</b> | <b>% Variation</b> |
|----------------|---|-------------------|------------------|--------------------|
| RL 38          | RL38.45 PV panels                                       | No                | 0.45m            | 1.2%               |
|                | R39.00 -RL39.44 top of landscape planters               | No                | 1m-1.44m         | 2.6%-3.8%          |
|                | RL40.43 hydraulics and mechanical plant (roof)          | No                | 2.43m            | 6.4%               |
|                | RL41.20 communal living space (roof)                    | No                | 3.20m            | 8.42%              |
|                | RL41.20 fire stair 2                                    | No                | 3.20m            | 8.42%              |
|                | RL43.00 mechanical plant (above communal living space)  | No                | 5m               | 13.1%              |
| RL 39.30       | RL40.43 hydraulics and mechanical plant (roof)          | No                | 1.13m            | 2.9%               |
|                | RL41.20 communal living space (roof)                    | No                | 1.90m            | 4.8%               |
|                | RL43.00 mechanical plant (above communal living space)  | No                | 3.70m            | 9.4%               |
| RL 40          | RL41.20 communal living space (roof)                    | No                | 1.20m            | 3%                 |
|                | RL41.20 fire stair 1                                    | No                | 1.20m            | 3%                 |
|                | RL43.00 lift overrun                                    | No                | 3m               | 7.5%               |
|                | RL43.00 mechanical plant (above communal living space)  | No                | 3m               | 7.5%               |

Table 1: Description of the variations to the building height standard

A visual representation of the proposed height variation is shown in Figure 2.

**2.9. What is the percentage variation (between the proposal and the environmental planning instrument)?**

The proposal exceeds the variable building height development standards by a minimum of 1.2% and a maximum of 13.1%. With the exception of the exceedance of 13.1%, all exceedances are less than 10%.

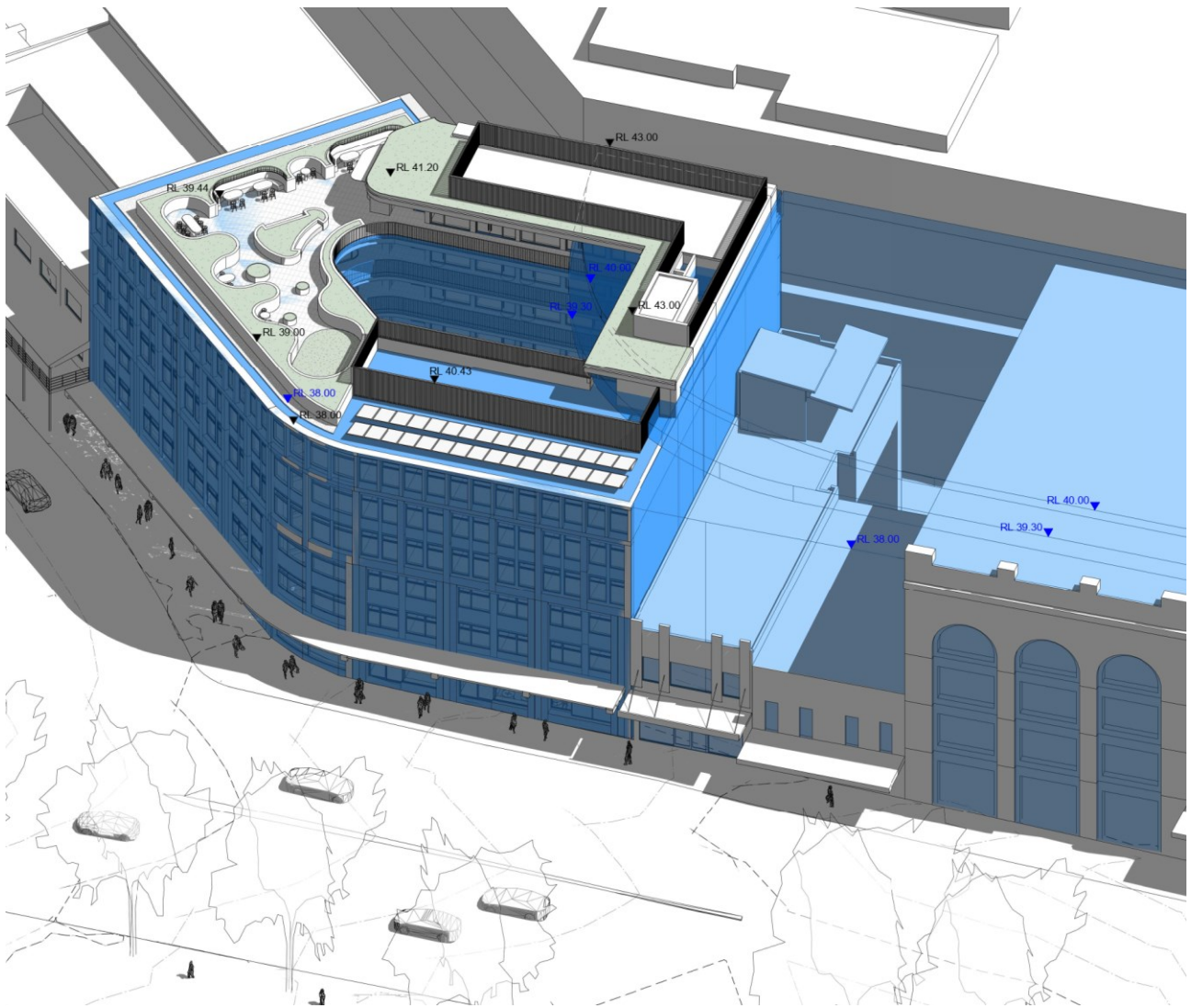


Figure 2: Extract of the LEP Height Envelope Diagram (Source: SJB Architects)

### 3. Justification of the Proposed Variation

#### 3.1. Clause 4.6 Exceptions to Development Standards

Clause 4.6 establishes the framework for varying development standards in an Environmental Planning Instrument.

Clause 4.6(3)(a) and 4.6(3)(b) require that a consent authority must not grant consent to a development that contravenes a development standard unless a written request has been received from the applicant that seeks to justify the contravention of the standard by demonstrating that:

- (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 standards.”

This written request has been prepared in accordance with the *Guide to Varying Development Standards*, published by the NSW Department of Planning and Environment in November 2023 and has regard to the following judgements:

- *Winten Property v North Sydney Council (2001) NSW LEC 46;*
- *Wehbe v Pittwater Council (2007) NSW LEC 827;*

- *Four2Five Pty Ltd v Ashfield Council (2015) NSW LEC 90*;
- *Randwick City Council v Micaul Holdings Pty Ltd (2016) NSW LEC 7*;
- *Moskovich v Waverley Council (2016) NSW LEC 1015*;
- *Initial Action Pty Ltd v Woollahra Municipal Council (2018) NSW LEC 118*;
- *Bringham v Canterbury-Bankstown Council (2018) NSW LEC 1046*;
- *Initial Action Ltd v Woollahra Municipal Council (2019) NSW LEC 1097*;
- *RebelMH Neutral Bay Pty Limited v North Sydney Council (2019) NSWCA 130*;
- *SJD DB2 Pty Ltd v Woollahra Municipal Council (2020) NSW LEC 112*;
- *WZSydney Pty v Ku-ring-gai Municipal Council (2023) NSW LEC 1065*;
- *Sioud v Canterbury-Bankstown Council (2023) NSW LEC 1171*;
- *Big Property Group Pty Ltd v Randwick City Council (2021) NSW LEC 1161*; and
- *Denny v Optus Mobile Pty Ltd (2023) NSW LEC 27*.

### **3.2. Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case?**

The five common ways to establish whether compliance with the development standard is unreasonable or unnecessary have been summarised in *Wehbe v Pittwater Council [2007] NSWLEC 827* and are outlined as follows:

Compliance with the development standard is unreasonable or unnecessary if the:

1. objectives of the development standard are achieved notwithstanding the non-compliance
2. underlying objective or purpose is not relevant to the development
3. Underlying objective or purpose would be defeated or thwarted if compliance was required
4. development standard has been virtually abandoned or destroyed by the council's own actions in granting consents departing from the standard
5. zoning of the land on which the development is proposed was unreasonable or inappropriate.

These are five common ways that clause 4.6(3)(a) can be addressed but are not the only ways and are not exhaustive.

This written request relies on the first test described in *Wehbe*, in that objectives of the development standard are achieved notwithstanding the non-compliance. An assessment of the proposal against the relevant objectives of the building height standard contained in clause 4.3(1) is provided below.

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

The proposal is of an appropriate height and scale within the context of the site and locality. The new building responds to the height of surrounding development, including existing heritage listed buildings, and has been designed to minimise any potential overshadowing, visual privacy, or view impacts. This is supported by the SOHI as discussed in the response to the following objective. Furthermore, the proposal is the outcome of a competitive design excellence process and was selected as the preferred design due to its design excellence merits, which includes its response to the site context.

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

Notwithstanding the height variation, the proposal responds to and reinforces the scale of a number of buildings in the immediate context, including University Hall, 255 Broadway and the former Grace Brothers Building, and the Glebe Heritage Conservation Area (HCA). This is reinforced in the SOHI which indicates the following:

- The scale of the development is contextually appropriate, being of similar scale to other contemporary buildings in the immediate vicinity and adopting design cues in relation to heritage items. There is no adverse effect on the setting of nearby heritage items or on their identified significant qualities.
- With a street wall height of at RL 38.0, the proposal is consistent with the planning controls and compatible with the parapet of University Hall which is at RL38.14.
- The proposed scale is compatible with the notable corner siting of the building, which is reflected at the rear by the bend in the street and reinforces the gateway location. It also complements the scale of nearby prominent heritage listed corner buildings, in particular University Hall and also the former Grace Brothers Building.

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

The proposal retains important views from key points along Broadway and Glebe Point Road, and from the Victoria Park as illustrated in the view analysis diagram included in the Architectural Package.

The view analysis demonstrates that views from Victoria Park of Central Sydney will not be adversely affected by the proposal. The proposed building will be largely screened by the mature boundary fig trees, and other vegetation that is visible in views further within the park. Unobstructed sky views above the tree trees will also be retained (Refer to Figure 3 and 4).

The view analysis includes three specific view locations from Broadway and Glebe Point Road, referred to as A, B and C, which are identified in site specific provisions contained in Section 6.3.15 in the SDCP 2012. The SDCP provisions seek to ensure that building elements above the designated street wall height of RL38.0, are not visible from street level.

The analysis demonstrates that the roof-top structures exceeding the height controls, will not be visible from point A on Glebe Point Road (Refer Figure 5). However, as illustrated in Figure 6 and 7 portions of the plant and lift overrun will be partially visible from Point B and to a much lesser extent Point C. Both points are located to the east along Broadway.

As these structures are setback above the street wall height and distributed towards the rear (northern) and eastern edges of the building, they do not dominate or detract from the Broadway view corridor. The appearance of non-complying plant from Point C, is largely indiscernible.

The RL38 height limit is highlighted in Figures 6 and 7. In accordance with the site specific provisions contained in Section 6.3.15 of the Sydney DCP 2012, development is required to achieve a street wall height of RL38 to align with the predominant parapet datum of neighbouring heritage items. The proposal complies with the requirement. As can be seen in Figures 6 and 7, with the future redevelopment of the adjoining sites up to the street wall height of RL38, the non-compliant roof-top structures will no longer be visible from Points B and C on Broadway.

It is important to note, the non-compliant roof-elements are shaded in yellow so that they can readily be identified for the purposes of this submission. However, as the material selection of these elements will be integrated with the rest of the building, they will be less visible than they appear in Figure 6.

Noting the site's location within the Glebe HCA and proximity to heritage items, the SOHI demonstrates that the proposal retains important views and will not generate adverse impacts on views in the locality.



Overall, the proposal will have negligible impacts on views from surrounding residential properties, including city views, view of Victoria Park and sky views.



*Figure 3: Views from Victoria Park. Some of the non-compliant roof elements are partly visible through the trees (Source: SJB Architects)*





Figure 4: Views from Victoria Park. Some of the non-compliant roof elements are partly visible above the trees (Source: SJB Architects)



Figure 5: View from Point A on Glebe Point Road (Source: SJB Architects)





Figure 6: View from Point B on Broadway (Source: SJB Architects)



Figure 7: View from Point C on Broadway (Source: SJB Architects)

### **3.3. Are there sufficient environmental planning grounds to justify contravening the development standard?**

It is considered that there are sufficient environmental planning grounds to justify contravening the development standard which are detailed outlined below.

#### **Avoidance of adverse impact**

The proposal does not have adverse impacts arising from the non-compliance with the building height standard as outlined below:

- The breach caused by the plant, communal living space, fire stair and other roof-top structures does not result in additional overshadowing of Broadway or Victoria Park. Overshadowing of these areas falls within the shadows cast by the compliant street wall height of RL38.0. Additional overshadowing of the adjoining building to the east is restricted to the existing metal roofs and will not have any adverse impacts. Overall, the proposal has negligible overshadowing impact to the public domain, consistent with the provisions of SDCP 2012.
- The proposal has been designed to minimise view impacts from the public domain and surrounding properties as outlined above in the assessment of the building height objective. The visibility of non-compliant built elements is minimised from key points within the public domain and do not adversely impact view corridors along Broadway or Glebe Point Road. Additionally, the proposal does not obstruct views from Victoria Park to Central Sydney.
- As detailed in the SOHI submitted with the DA and summarised below, the proposal will not have any adverse heritage impacts:

*the proposal would not have an adverse impact on the heritage values of the Glebe Point Road Heritage Conservation Area or the setting and significance of other heritage items in the vicinity of the site, which includes built development and Victoria Park. The proposed development is compatible with and sympathetic to the established character of the HCA and the Broadway streetscape.*

#### **Good design and amenity**

Part of the height non-compliance is attributed to the internal communal living space located on the roof. The location of the communal living area on the roof-top, with direct access to outdoor communal open space, maximises the amenity and usability for the benefit of students.

The communal living area has been located along the northern alignment of the roof to maximise solar access and views to the north. Consequently, the majority of the structure sits within the lower of the building height controls (RL38). While re-orienting the communal living area north-south within the higher building control RL40 would reduce the extent of breach, it would also reduce the solar access and diminish the overall amenity.

The fire stair and lift overrun are necessary to access the communal roof-top open space and communal living area. In this regard, they are integral to the increased amenity achieved from locating communal spaces on the roof-top.

The height breaches associated with the plant could potentially be reduced by distributing a greater proportion of the plant across the roof-top. The plant sitting above the communal living area, which has height of RL 43 could potentially be relocated to the western portion of the roof and thereby reduce the extent of the height breach. However, this would result in reduction in the roof-top outdoor communal open space, which provides significant amenity to the development.

The proposal is the outcome of a competitive design excellence process and was selected as the preferred design due to its design excellence merits.

### ***Ecologically Sustainable Development***

The proposal incorporates photovoltaic panels (PVs) which marginally exceed the building height by 0.45m. The PVs will not be visible from the public domain and are an integral component of the sustainability strategy for the proposal.

#### **4. Conclusion**

The proposed variation is based on the reasons contained within this formal request for an exception to the Height of Buildings standard.

The proposal accords with the stated objectives for the E1 Local Centre zone and Clause 4.3 Height of Buildings standard. The proposal is consistent with surrounding development, is appropriate for the site's context within the Glebe HCA and in proximity to a number of heritage items. As such, it is considered that the proposal is consistent with the planning purposes for the area.

The non-compliant portion of the building will not contribute to any additional overshadowing or adverse view impacts from the public domain or adjoining properties.

The non-compliance to the development standard facilitates the accommodation of density envisaged under the relevant planning controls in a manner that achieves superior amenity outcomes for student accommodation.

A development strictly complying with the numerical standard would not significantly improve the amenity of surrounding land uses. In the context of the locality, it would be unreasonable for strict compliance to be enforced.

The non-compliance is not considered to result in any precedents for future development within the locality or broader LGA, given the site circumstances and surrounding pattern of development.

As demonstrated in this submission, it would be unreasonable for strict compliance with the Height of Buildings control to be enforced. It is concluded that the variation to the Height of Buildings development standard is well founded as compliance with the standard is both unnecessary and unreasonable in the circumstances of this case.