

# **Attachment C**

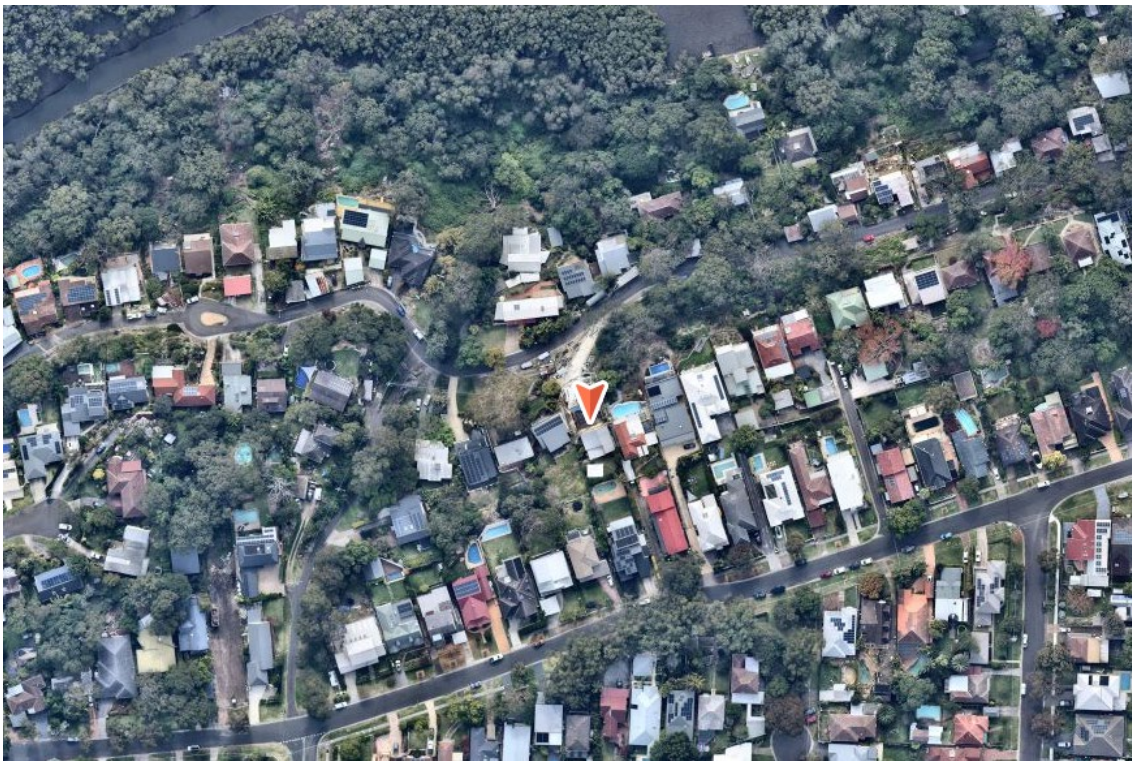
**Clause 4.6 variation request – height of  
buildings**



# Clause 4.6 Variation Report

## Height of buildings

93 Wigram Road, Glebe NSW 2037



### Alterations and additions to an existing dwelling house

Prepared by: Strategic Approvals  
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## 1.0 Introduction

This Clause 4.6 exemption justification accompanies the Development Application for the Alterations and additions to an existing dwelling house located at 93 Wigram Road, Glebe NSW 2037. The purpose of this report is to justify specific variations from the LEP that have arisen due to the development sought for approval under a Development Application. This report specifically analyses these variations in accordance with clause 4.6 of the Standard Instrument—Principal Local Environmental Plan and Sydney Local Environmental Plan 2012. In accordance with SLEP 2012, this written clause 4.6 variation request:

- Identifies the relevant development standard requested to be varied.
- Identifies the extent of the variation.
- Justifies that compliance with the development standard is unreasonable given the matters of the proposal.
- Justifies that the proposal is in line with the objectives of the development standard.

The development proposal consists of the following elements:

- Alterations and additions to an existing dwelling house

In terms of contextual appropriateness and effect to public amenity the application results in a severely positive outcome. This is due to the preservation of the existing dwelling which contains all of the heritage importance. The proposed works are primarily an addition to the existing dwelling that renew a dilapidated rear façade with laneway frontage resulting in an improved streetscape impact. Furthermore, the strategic design utilises the existing steep topography afforded to the land which contains a 4m differential in height between the front and rear of the lot.

## 2.0 Applicable Legislation and Controls

This written clause 4.6 variation request has been prepared with regard to the following articles:

- *Varying development standards: A Guide*, prepared by the Department of Planning and Infrastructure dated August 2011.
- Relevant case law directly addressing the considerations for assessing development standards:
  - o *Wehbe v Pittwater Council* [2007] NSWLEC 827; and
  - o *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1009; and
  - o *Randwick City Council v Micaul Holdings Pty Ltd* [2016] NSWLEC 7; and
  - o *Abrams v The Council of the City of Sydney (No 2)* [2018] NSWLEC 85.
- Environmental Planning and Assessment Act 1979 referred to as EP&A (1979).
- Environmental Planning and Assessment Regulation 2021 referred to as EP&R (2021).
- Standard Instrument—Principal Local Environmental Plan referred to as the Standard Instrument.
- NSW Legislation, 2024) referred to as SLEP (2012).
- Sydney Development Control Plan 2012 referred to as SDCP (2012).



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## 3.0 Site location

The subject site is located at 93 Wigram Road, Glebe NSW 2037. The property is legally identified as Lot 31 in Deposited Plan 9002 and consists of a regular shaped land parcel that has a lot size of 706.37m<sup>2</sup>.



Image 1: Aerial image showing the subject site and its general surroundings (Nearmap, 2024).





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## 4.0 Description of non-compliance

### 4.1 – Maximum Building Height

The maximum permissible Building Height is 6m. The proposed building height exceeds 6m and therefore a variation under clause 4.6 of the SLEP 2012 is sought.



Image 3: SLEP (2012) MBH Map. (Source: NSW Legislation, 2024)

Development Standard	Allowable Maximum Building Height	Existing Building Height	Proposed Building Height of New Addition
SLEP 2012 Clause 4.3	6.5m	8.8m	6.8m-7.9m

The proposed development results in a breach of the maximum building height that is permissible under clause 4.3 of the SLEP 2012. It is important to note that the existing dwelling presents a building height of 8.8m at the roof ridge of RL 18.81 which is significantly above the 6m limitation as well as the proposed rear addition.

The SLEP 2012 defines building height 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,



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

All building height calculations have been calculated based on this definition and specifically exclude the chimney. It is important to note that based on the definition, the building height is measured to the **highest point** of the building so there is technically no change to the existing building height. In this regard the 4.6 report solely focuses on the breach in height in relation to the proposed structures only.

In the case of *Merman Investments Pty Ltd v Woollahra Municipal Council [2021]*, the Court ruled that 'ground level (existing)' within the footprint of the existing building should be considered as the existing excavated ground level on the site. This decision alters the calculation of a building's height, necessitating measurement from the excavated ground level within the footprint of the existing building to the highest point of the proposed structure above as is a similar scenario in the proposed development.

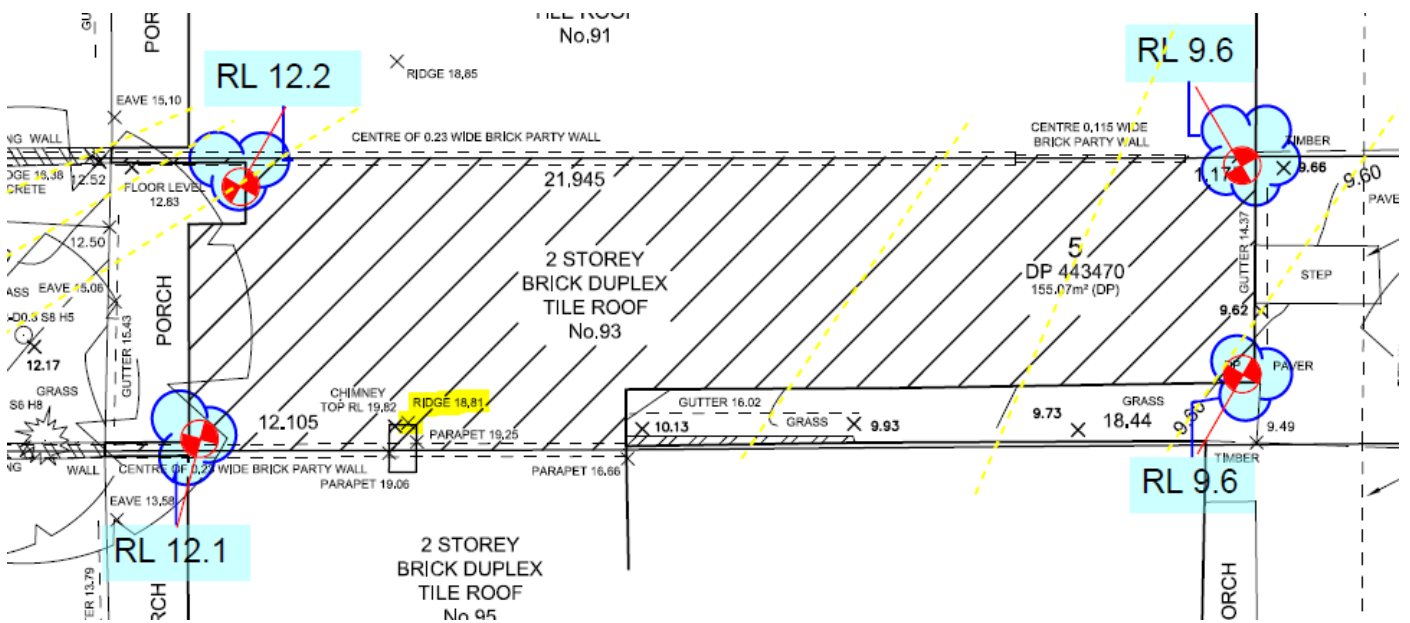


Image 4: Assessment of site survey to confirm levels

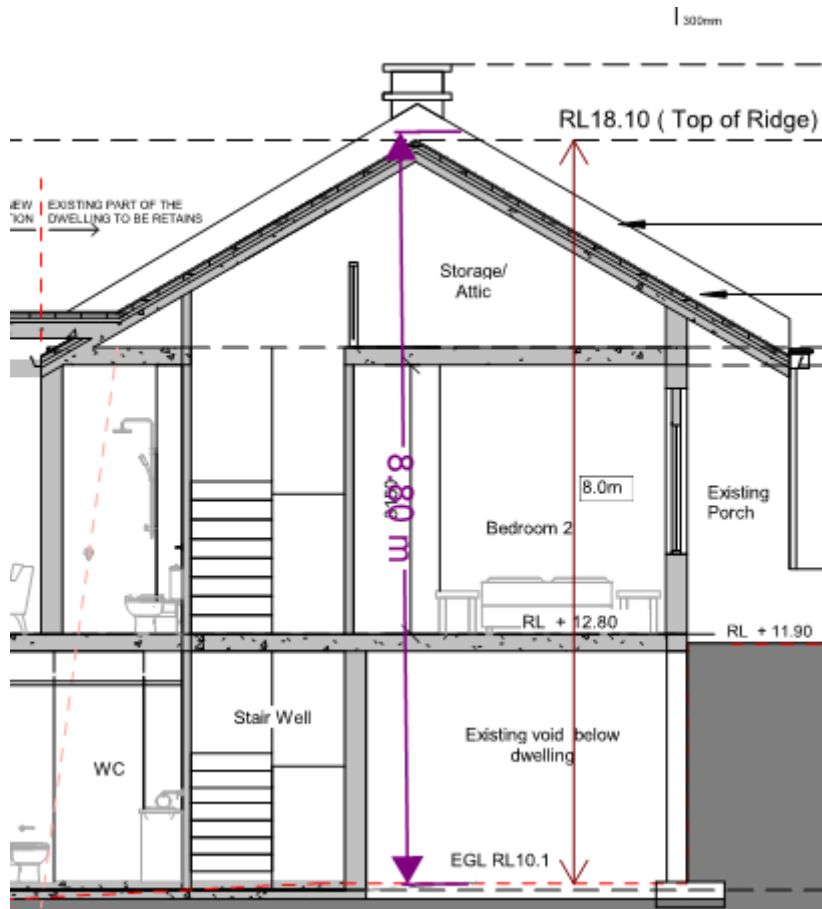


Image 5: Extract of the architectural plans showing the maximum proposed building height at a determined point

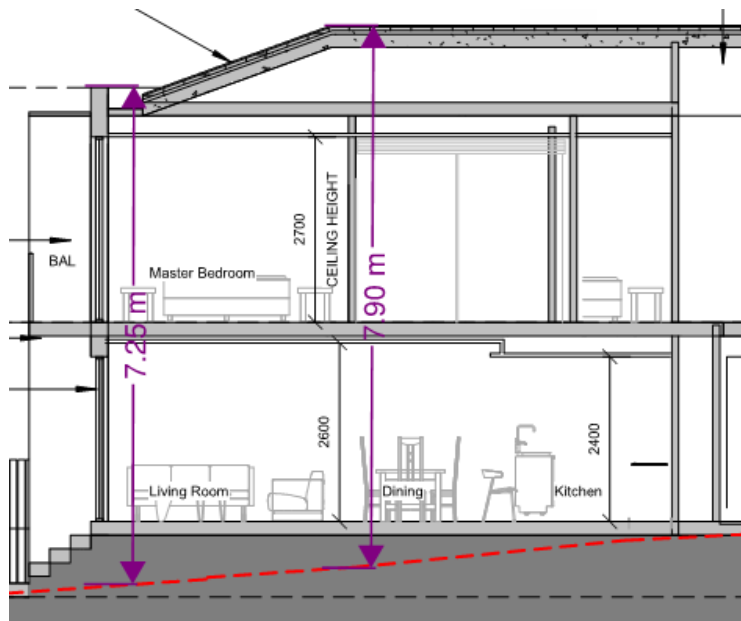


Image 6: Extract of the architectural plans showing the maximum proposed building height of 7.9m at a determined point



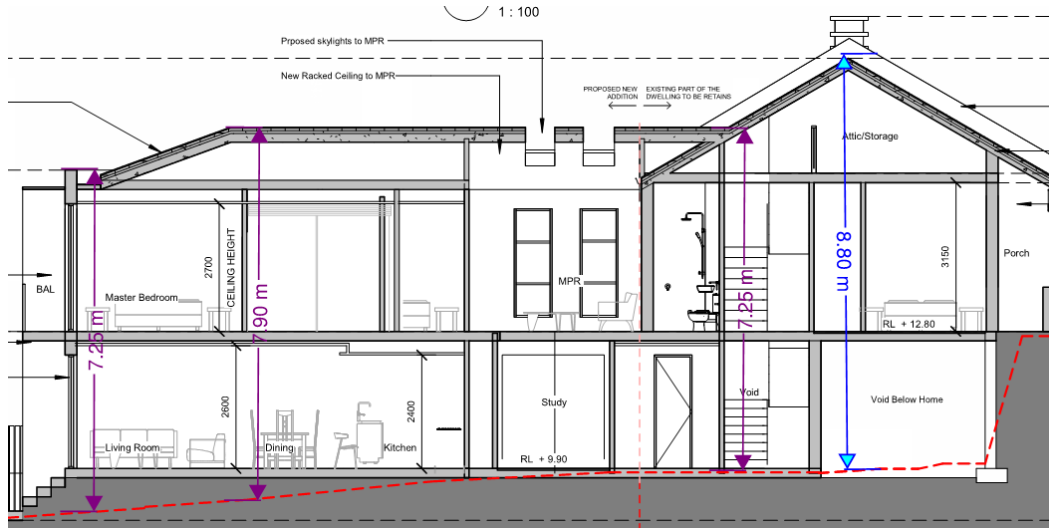


Image 7: Extract of the architectural plans showing the maximum proposed building height breaches at a determined section



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## 5.0 Clause 4.6 Analysis

This section of the report specifically analyses the requirements of clause 4.6 of the SLEP 2012 directly against the development proposal.

### 5.1 Clause 4.6 Preamble

Clause 4.6 exists within the SLEP 2012 and Standard Instrument to allow the consideration of variations to specific development standards contained within an LEP. NSW consists of a vast topography and many differing locales that contain unique attributes. Situations arise where the LEP requirements may be considered overbearing or impose unreasonable restrictions on potential development of land that prevents best use. Clause 4.6 allows the consideration for these developments to come to fruition if there is solid justification to do so in accordance with the requirements of clause 4.6 and relevant objectives of the SLEP 2012.

Clause 4.6 states: *(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.*

Development standards are defined in the Environmental Planning and Assessment Act 1979 as **development standards** means provisions of an environmental planning instrument or the regulations in relation to the carrying out of development, being provisions by or under which requirements are specified or standards are fixed in respect of any aspect of that development, including, but without limiting the generality of the foregoing, requirements or standards in respect of—

- (a) the area, shape or frontage of any land, the dimensions of any land, buildings or works, or the distance of any land, building or work from any specified point,*
- (b) the proportion or percentage of the area of a site which a building or work may occupy,*
- (c) the character, location, siting, bulk, scale, shape, size, height, density, design or external appearance of a building or work,*
- (d) the cubic content or floor space of a building,*
- (e) the intensity or density of the use of any land, building or work,*
- (f) the provision of public access, open space, landscaped space, tree planting or other treatment for the conservation, protection or enhancement of the environment,*
- (g) the provision of facilities for the standing, movement, parking, servicing, manoeuvring, loading or unloading of vehicles,*
- (h) the volume, nature and type of traffic generated by the development,*
- (i) road patterns,*
- (j) drainage,*
- (k) the carrying out of earthworks,*
- (l) the effects of development on patterns of wind, sunlight, daylight or shadows,*
- (m) the provision of services, facilities and amenities demanded by development,*
- (n) the emission of pollution and means for its prevention or control or mitigation, and*
- (o) such other matters as may be prescribed.*



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In this scenario development consent is being sought for a deviation from the maximum building height prescribed in clause 4.3 of the SLEP 2012. This is permissible according to clause 4.6 of the SLEP 2012 as the exceedance of a specified EPI requirement (Development control) occurs in relation to the prescribed maximum building height.

## 5.2 Clause 4.6(3)(a) Unreasonable or unnecessary

Preston CJ identified five typical scenarios to justify the “unreasonable and unnecessary” requirement of the PLEP 2014 Clause 4.6 contained in the dealings of *Wehbe v Pittwater Council* [2007]. While it is noted that these 5 justifications were not an exhaustive list of all possible justifications, and that the case dealings were specific to *State Environmental Planning Policy No. 1 – Development Standards (SEPP 1)*, it provides a widely accepted methodology in determining the validity of a written clause 4.6 variation request. The five methodologies established in *Wehbe v Pittwater Council* [2007] to determine the justification of a clause 4.6 variation request can be surmised as follows:

1. *The objectives of the standard are achieved notwithstanding non-compliance with the standard* (methodology 1).
2. *The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary* (methodology 2).
3. *The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable* (methodology 3).
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* (methodology 4).
5. *“The zoning of the particular land” was “unreasonable or inappropriate” so that “a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land” and that “compliance with the standard would be unreasonable or unnecessary”* (methodology 5).

This clause 4.6 variation request establishes that compliance with the maximum building height development standard is unreasonable or unnecessary in the circumstances of the proposed development and justifies the variation to the control because *the underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable* and also because that *the objectives of the standard are achieved notwithstanding non-compliance with the standard*.

Clause 4.3 of the SLEP 2012 provides the following objectives in relation to maximum building height:

*(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.*

The proposal is consistent with the above objectives as the application strongly achieves the above objectives and in fact, clause 4.3, if enforced, would directly contravene these objectives as it would prevent good residential amenity from being achieved through an unreasonable restriction on the typically acceptable built form of low-density development which is emphasised in the existing breach of maximum building height that pertains to the existing dwelling.



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**Objectives (a) and (b)** - *To ensure the height of development is appropriate to the condition of the site and its context and to ensure appropriate height transitions between new development and heritage items and buildings in heritage conservation areas or special character areas,*

There is no numerical compliance methodology in relation to this objective as this objective is of a qualitative nature and focuses on the conditions of the site and general context. One needs to look no further than the existing dwelling which currently has a building height of 9.4m. The proposed rear addition is a clear modern delineation in structure from the existing dwelling that fronts Wigram Road. The rear addition is the portion subject to the clause 4.6 variation and will not be viewable from Wigram Road given the significant set down from the existing ridge height, one must assess this portion in the local context of Wigram Lane which adjoins to the rear of the subject property, furthermore the rear addition is only viewable from particular vantage points along Wigram Lane so it is therefore imperative to utilise Wigram Lane when assessing the streetscape impacts.

Wigram Road, along with the subject site, is generally located within the R1 Zone and is predominantly surrounded by R1 Zone land. Whilst majority of the lots within this zone contain dwelling houses, directly opposing the proposed rear addition exists a vast residential flat building located at 11 Wigram Lane. The development within this area is afforded a maximum building height of 9m This development consists of a row of terraces each spanning 3 stories and approximately 9.5-10m in height.



Image 8: Photo taken of the directly opposite development located on Wigram Lane

The numerical breach is not an accurate depiction of the non-compliance as the measurement is taken from ground level (existing). This means that the height of the structure is misleading as the under-croft level is a man-made void area that exists where natural earth would have once been. To reinforce this, if the void did not exist then the visual impact, bulk and scale of the proposed addition would be identical, as the finished height of a structure at 6m beyond this point would ultimately exist in the same location as the proposed addition.



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It is evident that in the immediate context the proposed rear addition is appropriate and satisfies these objectives for the following reasons:

1. The proposed addition is approximately 7.25m high at its closest point to the rear boundary which is significantly below both the 9m adjoining maximum building height and the actual height of the directly opposing buildings.
2. The proposed rear addition maintains a highest point of 7.9m at the middle portion of the lot which is not an accurate depiction of the actual visual impact due to the steepness of the lot as it slopes towards the rear.
3. The primary dwelling which is retained exceeds a building height of 8.8m and the proposed rear addition is set down 2m from the ridge height meaning it cannot be viewed from the primary Road.
4. The proposed breach in height arises largely to the steep and inconsistent NGL height differential across the topography of the site
5. The proposed rear addition consists of two-storeys which is directly consistent with Wigram Lane that consist of both 2 and 3 storey buildings.
6. The proposed addition does not cause any viewing opportunity loss to the adjoining dwellings
7. The proposed addition does not result in unacceptable overshadowing
8. Council has a continual pattern of approving clause 4.6 variations to the maximum building height within the local context. Some examples of these are shown below, however, there are too many to list.
9. The proposed rear portion of the roof has been designed to ensure a consistent form when compared to #91 in terms of visual impact and height.

D/2013/1635	11	Northcoast Road	Glebe	R1 General Residential	Height	The proposed modifications in form is sympathetic to and compatible with the streetscape and surrounding development	47%	24/02/2014
D/2013/1903	201-205	Glebe Point Road	Glebe	B2 Local Centre Zone	Height	Minor in nature, won't cause adverse amenity impacts	13%	17/03/2014
D/2013/883	10	Maxwell Street	Glebe	B4 - Mixed uses	Height	The proposal will not result in any unreasonable amenity impacts	0.2%	10/04/2014
D/2014/514	20	Ferry Street	Glebe	R1 - General Residential	Floor Space Ratio	Variation will not impose any additional impact on neighbouring properties residential amenity	6%	19/05/2014
D/2014/421	16	Queen Street	Glebe	R1 - General Residential	Floor Space Ratio	Does not result in any unreasonable adverse amenity impacts	25%	2/06/2014
D/2013/1590/A	64	Glebe Point Road	Glebe	B2 - Local Centre Zone	Height	Minor non-compliance below existing ridge line	17%	4/06/2014
D/2014/561	61	Boyce Street	Glebe	R1 General Residential	Floor Space Ratio	No adverse amenity, streetscape or heritage impacts	13%	31/07/2014
D/2014/182	50-54	Cowper Street	Glebe	R1 General Residential	Height	Will not result in the unacceptable impacts on the amenity of the neighbouring properties	33.0%	25/08/2014
D/2014/851	34	Boyce Street	Glebe	R1 General Residential	Floor Space Ratio	Additional floor space not visible from the public domain	4.3%	28/08/2014
D/2014/921	25	Arundel Street	Glebe	R1 General Residential	Height / Floor Space Ratio	Neglig ble additional visual or amenity impacts	7% / 66%	15/09/2014
D/2014/955	18	Oxley Street	Glebe	R1 General Residential	Height	Replacement and extension of pergola at same height as existing	22.2%	19/09/2014
D/2014/1085	16	Boyce Street	Glebe	R1 - Residential	Height	The proposed attic roof extension will sit under the existing ridge height and will not be readily visible	2.9%	21/10/2014
D/2014/1013	15	Mansfield Street	Glebe	R1 - Residential	Height	Considered appropriate to corner site	5.2%	21/11/2014
D/2014/822	15	Forsyth Street	Glebe	R1 - Residential	Floor Space Ratio	Will not result in an impoact to surrounding properties	3.2%	02/12/2014
D/2014/1314	15	Hegarty Street	Glebe	R1 - Residential	Height	The increased height will not be visible from Hegarty Street and will not result in an adverse impact on residential amenity	19%	17/12/2014
D/2014/1525	17	Lombard Street	Glebe	R1 - Residential	Height	Under existing building height, no amenity impacts	4.0%	05/01/2015



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D/2016/127	13	Alexandra Road	Glebe	R1 Residential	Height	The proposal is considered not to have unreasonable impact on the amenity of the adjoining properties or the street scape	18.0%	23/05/2016
D/2016/105	31	Glebe Street	Glebe	R1 Residential	Height	The proposal is considered not to have unreasonable impact on the amenity of the adjoining properties or the street scape	1.0%	25/05/2016
D/2015/1794	83	Bay Street	Glebe	R1 Residential	Height	The proposal is considered not to have unreasonable impact on the amenity of the adjoining properties or the street scape	40.0%	27/06/2016
D/2015/1596	117	St Johns Road	Glebe	R1 Residential	Floor Space Ratio	Exceedence of FSR is a result of the resultant site area following subdivision, the proposed form complies with the remaining controls in terms of bulk and scale and would not require design amendments if the proposed site areas were larger to comply with the applicable FSR.	14.0%	4/08/2016
D/2016/50	363	Glebe Point Road	Glebe	B2 Local Centre	Height	The departure is an existing non-compliance and the proposal is considered not to have any unreasonable impacts on the amenity of the adjoining properties or the street scape'	38.0%	24/10/2016
D/2016/582	213	Broadway	Glebe	B2 Local Centre	Height	The proposal is considered not to have unreasonable impact on the amenity of the adjoining properties or the street scape	100.0%	24/10/2016
D/2016/532	3	Hegarty Street	Glebe	R1 Residential	Height / Floor Space Ratio	The proposal is considered not to have unreasonable impact on the amenity of the adjoining properties or the street scape	13.5% / 10%	12/12/2016
D/2016/1274	425	Glebe Point Road	Glebe	R1 - Residential	Height	The proposal is considered not to have unreasonable impact on the amenity of the adjoining properties or the street scape	12.2%	12/01/2017
D/2016/1397	18	Oxley Street	Glebe	R1 - Residential	Floor Space Ratio	The proposal is considered not to have unreasonable impact on the amenity of the adjoining properties or the street scape	9.1%	19/01/2017
D/2016/1396	4	Toxteth Road	Glebe	R1 - Residential	Floor Space Ratio	The proposal is considered not to have unreasonable impact on the amenity of the adjoining properties or the street scape	14.0%	24/01/2017
D/2016/1609	443	Glebe Point Road	Glebe	R1 - Residential	Height / Floor Space Ratio	The proposal is considered not to have unreasonable impact on the amenity of the adjoining properties or the street scape	41% / 27%	27/02/2017
D/2016/1729	292	Glebe Point Road	Glebe	R1 - Residential	Height	The proposal is considered not to have unreasonable impact on the amenity of the adjoining properties or the street scape	7.0%	28/02/2017

D/2016/1328	21	Queen Street	Glebe	R1 - Residential	Floor Space Ratio	The proposal is considered not to have unreasonable impact on the amenity of the adjoining properties or the street scape	24.6%	10/03/2017
D/2016/1419	38	Toxteth Road	Glebe	R1 - Residential	Floor Space Ratio	The proposal is considered not to have unreasonable impact on the amenity of the adjoining properties or the street scape	11.0%	15/03/2017
D/2016/1742	19	Alexandra Road	Glebe	R1 - Residential	Height	The proposal is considered not to have unreasonable impact on the amenity of the adjoining properties or the street scape	22.0%	28/03/2017
D/2016/1754	1	Wentworth Street	Glebe	Glebe Affordable Housing R1 - Residential	Height / Floor Space Ratio	The proposal is considered not to have unreasonable impact on the amenity of the adjoining properties or the street scape and is consistent with the Stage 1 DA approved envelopes, massing and density	118% / 32.6%	15/05/2017
D/2017/89	5	Ferry Road	Glebe	R1- Residential	Height	The proposal is considered not to have unreasonable impact on the amenity of the adjoining properties or the streetscape	2.5%	01/06/2017
D/2017/140	73	Wigram Road	Glebe	R1- Residential	Height / Floor Space Ratio	The proposal is considered not to have unreasonable impact on the amenity of the adjoining properties or the streetscape	20% / 4%	08/06/2017
D/2017/138	14	Oxley Street	Glebe	R1- Residential	Height	The proposal is considered not to have unreasonable impact on the amenity of the adjoining properties or the streetscape	34.0%	16/06/2017
D/2017/641	8	Cook Street	Glebe	R1- Residential	Floor Space Ratio	The proposal is considered not to have unreasonable impact on the amenity of the adjoining properties or the streetscape	15.8%	21/06/2017
D/2016/1109	4	Elger Street	Glebe	Glebe Affordable Housing R1 - Residential	Height / Floor Space Ratio	The proposal is considered not to have unreasonable impact on the amenity of the adjoining properties or the streetscape and consistent with the Stage 1DA	155% / 18.2%	27/06/2017
D/2016/1806	3	Leichhardt Street	Glebe	R1- Residential	Height	The proposal is considered not to have unreasonable impact on the amenity of the adjoining properties or the streetscape	33.0%	11/07/2017
D/2017/978	63	Bay Street	Glebe	R1- Residential	Floor Space Ratio	The existing building already significantly exceeds both the height and FSR control. The proposal is considered not to have unreasonable impact on the amenity of the adjoining properties or the street scape	21.0%	06/10/2017
D/2017/1277	180	Glebe Point Road	Glebe	R1- Residential	Floor Space Ratio	The proposal is considered not to have unreasonable impact on the amenity of the adjoining properties or the streetscape	6.2%	13/11/2017

Image 9: Extracts of previously approved clause 4.6 variations (all variations relating to height only are to be disregarded)

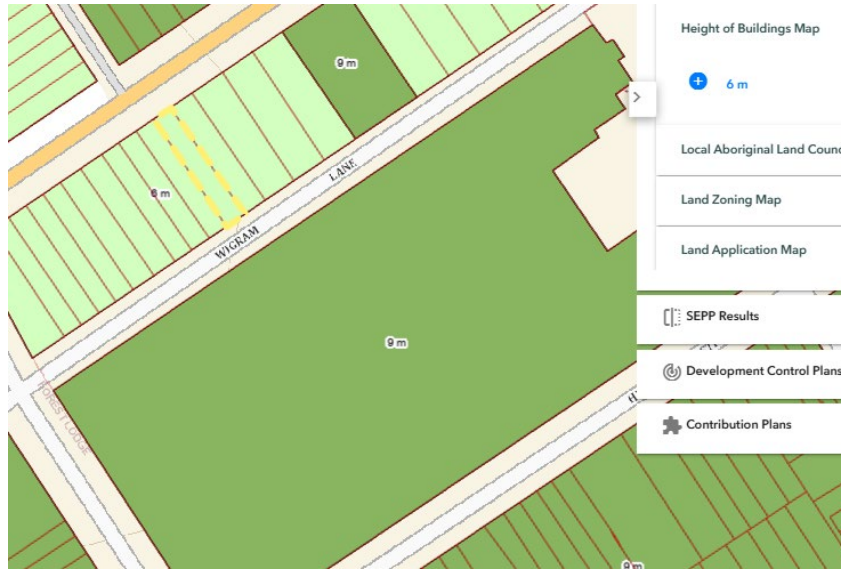


Image 10: Extract of the spatial viewed (NSW Planning Portal Spatial Viewer) revealing the adjoining maximum permissible building height

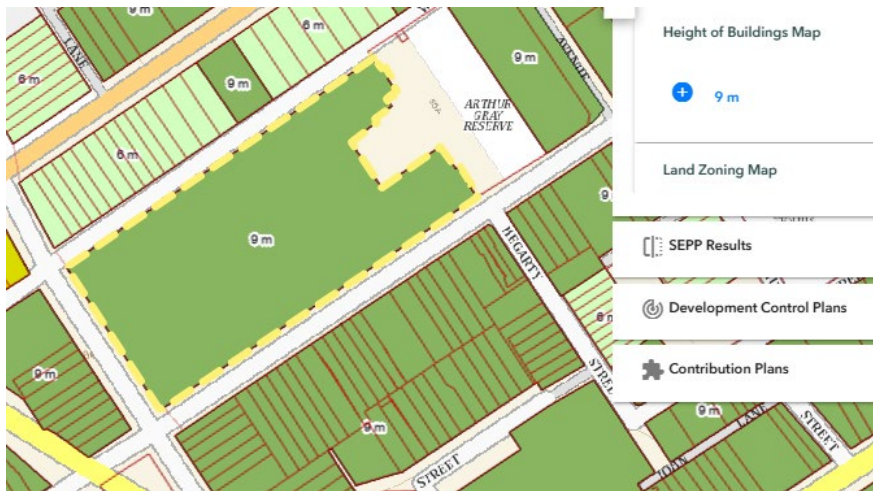


Image 11: Extract of the spatial viewed (NSW Planning Portal Spatial Viewer) revealing the adjoining maximum permissible building height

### Objectives (d) and (e)

These objectives are not relevant to the proposal as the lot is not located within the specifically referenced areas within the City of Sydney LGA.



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## 5.4 Zone Objectives Analysis

The SLEP 2012 provides the following objectives of the R1 zone:

### **Objectives of zone**

- *To provide for the housing needs of the community.*
- *To provide for a variety of housing types and densities.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To maintain the existing land use pattern of predominantly residential uses.*

The ultimate aim of the proposal is to create an adequate dwelling that can cater to a small-medium sized family. The reality of terrace building typologies is that the lots are generally constrained and factoring in heritage conservation principles it is difficult to find a balance between the maximisation of amenity/liveability and the built environment. The application preserves the entirety of the existing dwelling whilst proposing a rear addition that is not viewable from primary road. Furthermore, in the streetscape context of the rear addition, the proposed structure is consistent with the type of dwelling that exists along Wigram Lane.

The need for additional liveable space is especially important in the current climate as professionals are working from home at unprecedented rates. The additional habitable space facilitates and promote ones ability to work from home. The current dwelling is insufficient in providing ample space for a small-medium family without factoring in storage, working from home and general quality of life. In this regard the proposal strongly meets the objectives and fundamental adopts these objectives as the principal reason for the proposed addition.

## 5.5 Clause 4.6(3)(b): Environmental Planning Grounds

The case of *Initial Action Pty Ltd v Woollahra Council* [2018] NSWLEC 2018 provides clarification on the appropriate approach of considering the environmental planning grounds in relation of clause 4.6 variation requests. In the case, Preston CJ determined that a clause 4.6 variation request does not necessarily require that a contravention of a planning control must result in a neutral or better environmental outcome than if the development was to strictly comply. These observations can be surmised into two points made by Preston CJ as follows;

First, the environmental planning grounds advanced in the written request must be sufficient “to justify contravening the development standard”. The focus of clause 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.

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.

With consideration to the above, the environmental planning ground that justify the breach in Maximum building height are are:

- The increased building is considered orderly development of the land within the local context as it does not deviate from the street pattern
- The existing and retained dwelling significantly exceeds the height of the proposed rear addition.





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- The height of the proposed structure is misleading as the under-croft level is a man-made void area that exists where natural earth would have once been. The measurement to NGL does not provide an accurate depiction of real height of the proposed rear addition.
- The increased building height only exists for a modest span of the roof located centrally and to the rear lot
- The development is in keeping with the local context and there is no detriment to the public domain.
- The proposed addition results in the renewal of a dilapidated rear façade and greatly benefits the aesthetic impact to streetscape amenity and public spaces
- The proposed works are considered orderly development of the land.
- There are no negative effects in relation to overshadowing, privacy or acoustic amenity.
- The scale and bulk of the proposal is consistent with the surrounding locale.

In this instance it is considered that strict compliance would not achieve any improved outcome for the development and would in fact simply result in reduced residential amenity and quality of life afforded to current and future inhabitants despite an established local context. It is reiterated that if numerical compliance is achieved with the building height standards then the objectives would not be achieved as it has been adequately demonstrated that the proposed development is in keeping with the streetscape pattern.

It is noted that Preston J provides that the development is not required to demonstrate a beneficial effect relative to a compliant development, however, in this instance it is considered that strict compliance would not achieve any improved outcome for the development and would in fact simply result in less liveable space and a constrained domicile resulting in significantly reduced residential amenity and quality of life afforded to current and future inhabitants.

The proposed development is consistent with the aims of the Policy and the objects of the EP&A Act 1979 in that:

- Strict compliance with the development standard would result in an inflexible application of the control that would not deliver any additional benefits to the owners or occupants of the surrounding properties or the general public.
- Strict compliance with the maximum building height standard in this particular instance would represent a departure from the manner in which the issue of breaches in height has been considered in recent times in the locale to the significant detriment of the current and future inhabitants and with no measurable benefit for the public or surrounding properties. Accordingly, strict compliance would simply prevent the maximisation of the use of land.
- The proposed variation allows for the most efficient and economic use of the land.
- The objectives of the zone are satisfied.
- Fundamental planning principles are satisfied as justified further above.

## 5.6 [Clause 4.6\(3\)\(c\): View Sharing Outside Central Sydney Environmental Planning Grounds](#)

Objective (c) seeks to “promote the sharing of views outside Central Sydney.” That applies to the proposal that is outside Central Sydney. The proposed development seeks to maximize residential amenity without causing any unreasonable impact on view-sharing opportunities enjoyed by neighbouring properties.

In this instance, it is considered that strict compliance with the height standard would not deliver any additional benefits to public or private view sharing, nor would it improve the environmental or social outcomes for neighbouring properties.



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## 5.7 Clause 4.6 Assessment Summary Table

4.6 Exceptions to development standards [compulsory]	Compliance Comment
<p>1) 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.</p>	<p><b>Noted.</b> This application seeks development consent for a proposal that is contravening a development standard in relation to the maximum building height.</p>
<p>2) 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—</p> <ul style="list-style-type: none"> <li>a. that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and</li> <li>b. that there are sufficient environmental planning grounds to justify contravening the development standard.</li> </ul>	<p><b>Complies.</b> Refer to section 5 of this report.</p>
<p>3) Development consent must not be granted for development that contravenes a development standard unless—</p> <ul style="list-style-type: none"> <li>a. the consent authority is satisfied that— <ul style="list-style-type: none"> <li>i. the applicant’s written request has adequately addressed the matters required to be demonstrated by subclause (3), and</li> <li>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</li> </ul> </li> <li>b. the concurrence of the Secretary has been obtained.</li> </ul>	<p><b>Council is to determine compliance with this clause and consider it in their decision.</b></p>
<p>4) In deciding whether to grant concurrence, the Secretary must consider—</p> <ul style="list-style-type: none"> <li>a. whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and</li> <li>b. the public benefit of maintaining the development standard, and</li> <li>c. any other matters required to be taken into consideration by the Secretary before granting concurrence.</li> </ul>	<p><b>The secretary is to determine compliance with this clause and consider it in their decision.</b> The proposal provides for the housing needs of the owners by providing a larger dwelling to accommodate the family’s housing needs. The proposal is entirely in keeping with the character of the area and has no unreasonable adverse impacts on neighbouring residential properties or the public domain. The proposal is therefore consistent with the objectives of the zone and in line with the public interest.</p>
<p>5) 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 E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living if—</p>	<p><b>Not applicable.</b></p>



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<p>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</p> <p>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.</p>	
<p>6) 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).</p>	<p><b>Council are to comply with this clause.</b></p>
<p>7) This clause does not allow development consent to be granted for development that would contravene any of the following—</p> <p>a. a development standard for complying development,</p> <p>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,</p> <p>c. clause 5.4.</p> <p>Direction. Additional exclusions may be added.</p>	<p><b>Not applicable.</b></p>

## 6.0 Conclusion

The proposed development is considered to be in the public interest because it will achieve all relevant objectives of the maximum building height standard and the objectives of R1 General Residential land zoning.

Furthermore, it is of a suitable scale and typology compatible with its zone, existing built context, recent and ongoing approvals.

Council are to be satisfied that this written request has adequately addressed the matters in clause 4.6 and that the proposed development is acceptable due to its consistency 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.

Having regard to the aforementioned assessments a summary as to why the development must be supported by council for the is provided below:

- The objectives and prescriptive measures of clause 4.6 are satisfied.
- Clause 4.3, if enforced, will directly contravene the objectives of clause 4.3 as well as the zoning objectives.
- The development is in keeping with the local context and there is no detriment to the public.
- The height exceedance is reasonable and does not exceed the regular pattern of granted exemptions.
- There is no negative effect to streetscape amenity or any public spaces.
- There are no unreasonable effects in relation to overshadowing, privacy or acoustic amenity.
- The proposal will result in short term employment for the building works.
- The finished structures will directly increase the usability and functionality of the existing dwelling, resulting in an increased quality of life for residents.
- The scale and bulk of the proposal is consistent with the surrounding locale.
- The heritage aspects of the existing dwelling are preserved as a result of the application.