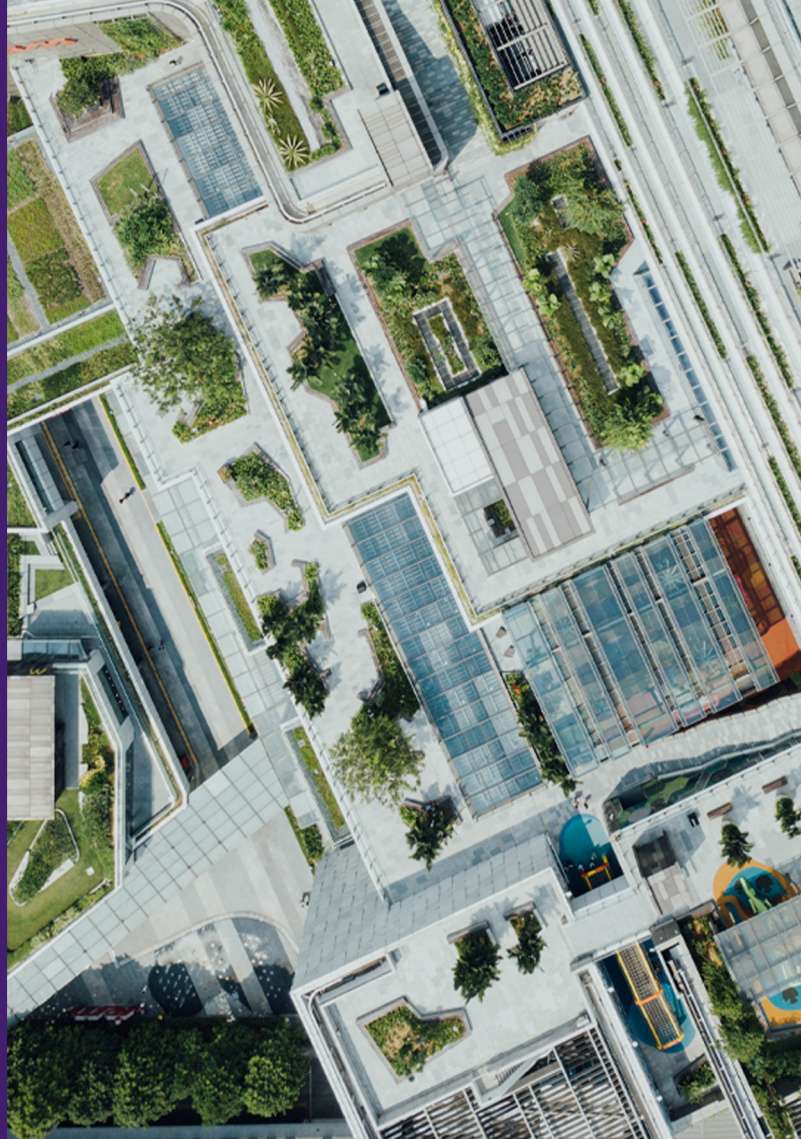


Attachment C

<p>Clause 4.6 Variation Request Height of Buildings</p>
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184-200 Broadway, Chippendale NSW 2008

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

On behalf of Tricon Management
Group

2 July 2025

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




Project Director

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Revision	Revision Date	Status	Authorised	
			Name	Signature
V1	11 December 2024	Final	Kate Bartlett	
V2	7 April 2025	Post Lodgement	Kate Bartlett	
V3	3 July 2025	Post Lodgement	Kate Bartlett	

* This document is for discussion purposes only unless signed and dated by the persons identified. This document has been reviewed by the Project Director.

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1 Introduction

This Clause 4.6 Variation Request seeks to allow a variation to the Height of Buildings development standard associated with the Development Application at 184-200 Broadway, Chippendale NSW 2008 (the site).

The DA seeks approval for the adaptive reuse of the 'Telstra Building Exchange' building and construction of a 5-storey tourism and visitor accommodation building (backpackers accommodation) containing:

- 148 rooms with 1,047 beds in configurations of 4, 5, 6 and 8 bed rooms;
- 570m² of communal indoor space on lower ground, ground floor and first floor, with lower-ground and first floor for use by guests of the backpackers accommodation only;
- 189m² of communal outdoor space in new courtyard at lower ground floor that is carved out of the centre of the existing building and open to the sky;
- Unlicensed café (167m²) for a maximum of 78 patrons on ground floor that is publicly accessible;
- Level 5 modified as a licensed bar and roof terrace for a maximum of 250 patrons (Category A Premises), and garden with a lap pool and sunbathing deck along the southern side of the building;
- Primary building entrance from Broadway, with on-site loading occurring at the existing driveway and loading bay off Knox Street; and
- New public access point connecting to Grafton Lane at Level 1 of the building to enable connectivity between the site, City Road and the Lansdowne Hotel.

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

- Clause 4.3 – Height of Buildings

This Clause 4.6 Variation Request demonstrates that compliance with the development standard is unreasonable and unnecessary in the circumstances of the case and that the justification is well founded. The variation allows for a development that represents the orderly and economic use of the land in a manner which is appropriate when considering the site's context and existing building, and as such, is justified on environmental planning grounds.

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

2 Clause 4.6 Exceptions to Development Standards

Clause 4.6 of the SLEP 2012 aims to provide an appropriate degree of flexibility in applying certain development standards to achieve better outcomes for and from development.

SLEP2012 Clause 4.6 Exceptions to development standards of the reads 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 to development that contravenes a development standard unless the consent authority is satisfied the applicant has demonstrated that—
 - a. compliance with the development standard is unreasonable or unnecessary in the circumstances, and
 - b. there are sufficient environmental planning grounds to justify the contravention of the development standard.
4. The consent authority must keep a record of its assessment carried out under subclause (3).

3 The Development Standard to be varied

This Clause 4.6 Variation Request has been prepared in a written format, seeking to justify the variation to the following development standard in the SLEP2012:

- Clause 4.3 (Height of Buildings) – which permits a maximum Height of Buildings of 25m. Refer to the Figure below.

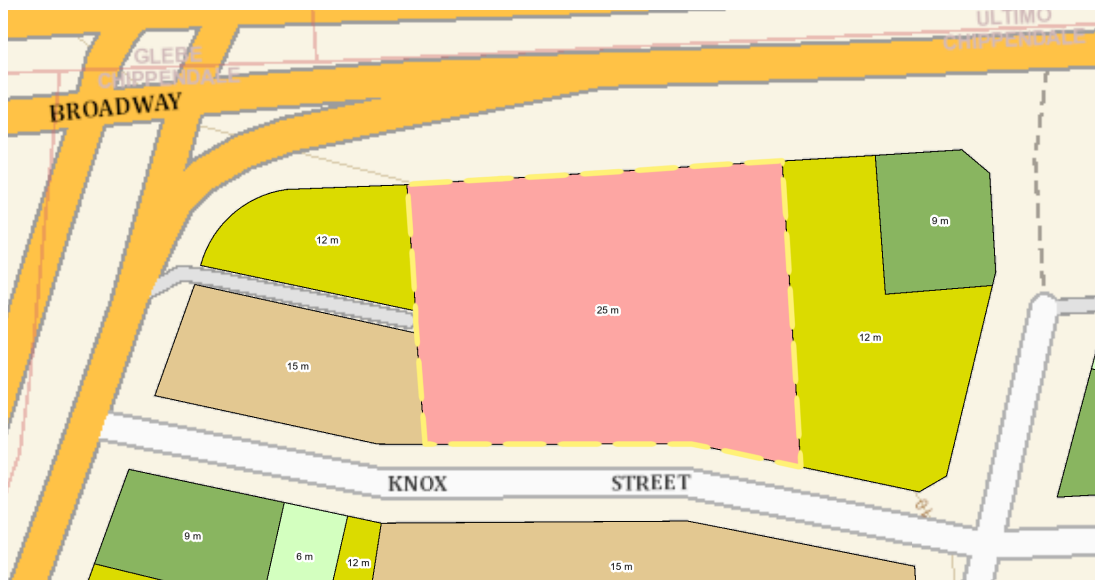


Figure 1: Height of Buildings SLEP 2012 map extract (NSW Planning Spatial Viewer)

4.3 Height of buildings

- 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.
- 2) The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.

4 Extent of Variation to the Development Standard

The subject application proposes a maximum building height of 30.205m (max RL 45.520 AHD), which represents a 5.205m or 20.8% variation to the height control utilising the 'Bettar' height methodology given the sloping site nature (details of approach shown in **Figure 4** and **Figure 5** below). The proposed building height, including the variation, is the same as the existing maximum building height RL, as the application is seeking to adaptively reuse the existing building on site.

However, there are new building elements proposed within the existing building setbacks along Broadway (primarily related to the common access stair) that increase in height from the existing at this location, due to the stepped form of the existing building. Refer to Figures below.



Figure 2: Existing stepped form above height control of Telstra building from Broadway and Knox St interfaces (CBRE, annotated by TPS)

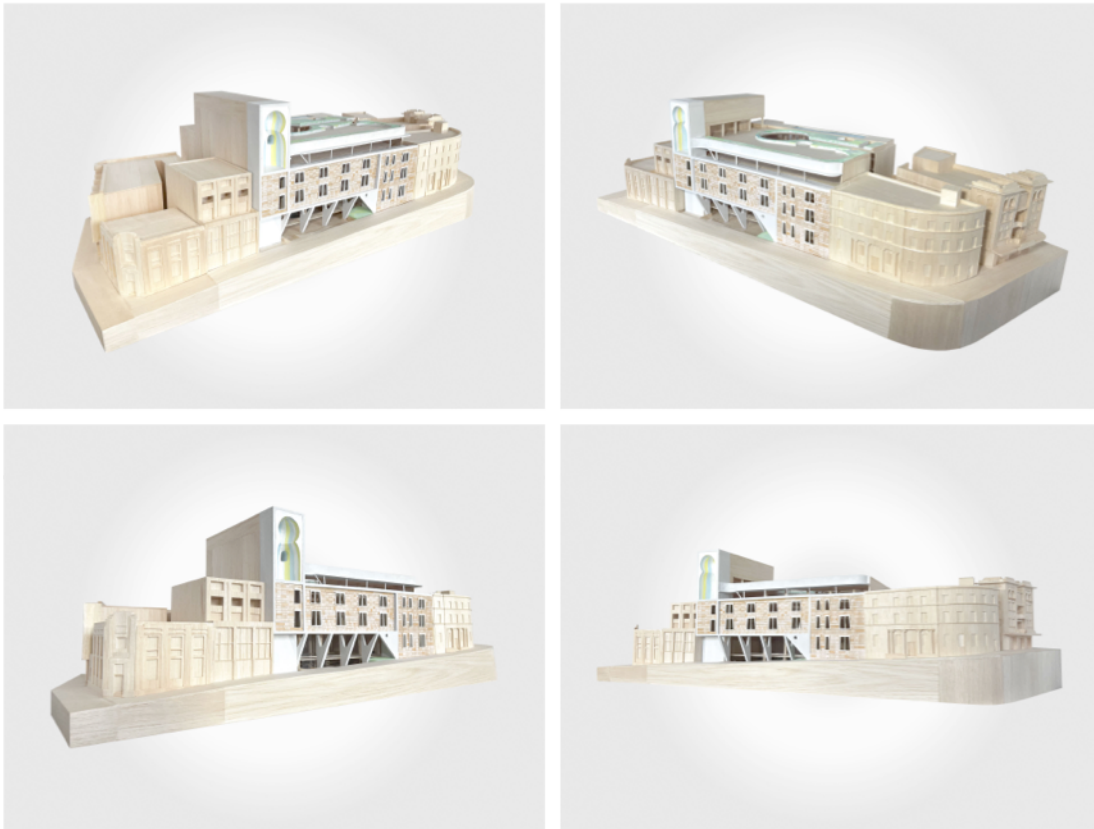


Figure 3: Proposed development model with surrounds showing infilling of built form along Broadway above height control (Durbach Block Jaggers)

5 Assessment

5.1 Clause 4.6(3)(a) – compliance with the development standard is unreasonable or unnecessary in the circumstances of the case

As detailed in *Williams v Ku-ring-gai Municipal Council* [2017] NSWLEC 1098, *Wehbe v Pittwater Council* [2007] NSWLEC 827 at [44]–[48], a number of approaches could be used to establish that compliance with a development standard is unreasonable or unnecessary.

Furthermore, *Preston CJ in Wehbe v Pittwater Council* (2007) 156 LGERA 446 [42]–[51] outlined five common ways in which an applicant might demonstrate that compliance with a development standard is unreasonable and unnecessary which are summarised below:

- **Test 1:** The objectives of the standard are achieved notwithstanding non-compliance with the standard;
- **Test 2:** The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;
- **Test 3:** The underlying objective or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;
- **Test 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; or
- **Test 5:** The compliance with development standard is unreasonable or inappropriate due to existing use of land and current environmental character of

the particular parcel of land. That is, the particular parcel of land should not have been included in the zone.

These five ways to demonstrate that compliance is unreasonable or unnecessary are not exhaustive.

With respect to the subject application, we consider strict compliance with the height of buildings standard as 'unreasonable or unnecessary' in the circumstances for the following reasons:

- The existing building already exceeds the Height of Buildings control, with no further building height proposed beyond the existing maximum RL of RL45.520 AHD. At the Broadway interface, the building is proposed to be infilled at certain elements – refer to the white areas shown in the 3D model in **Figure 3** above. This brings the built form to align with the adjacent heritage item, being the former English, Scottish & Australian Bank and the podium of the mixed-use development to the east, which is driven by heritage and urban design outcomes.
- The new building elements above the height control in this location solely relate to the common connector stair and associated architectural feature, as shown in **Figure 4**, which is a section from the submitted 3D model with variation dimensions outlined, including the RLs at Broadway and Knox St. **Figure 5** shows where the cross-section is taken from in plan form.

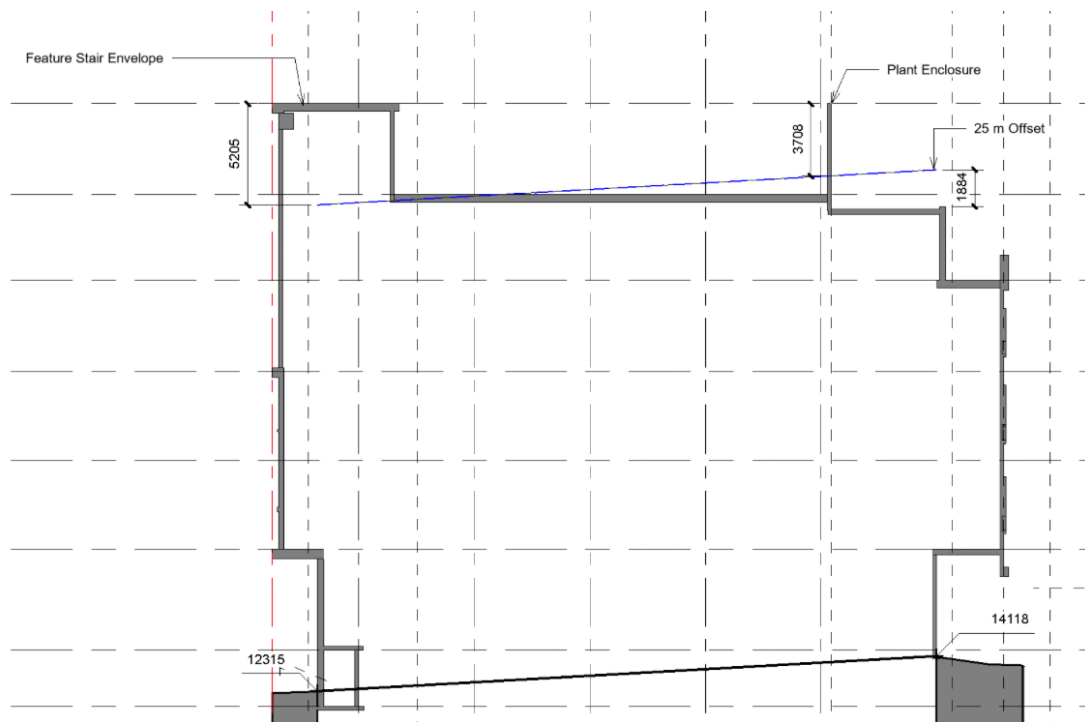


Figure 4: Cross section from 3D model showing new building 'feature stair' element above height control on Broadway (Tricon)

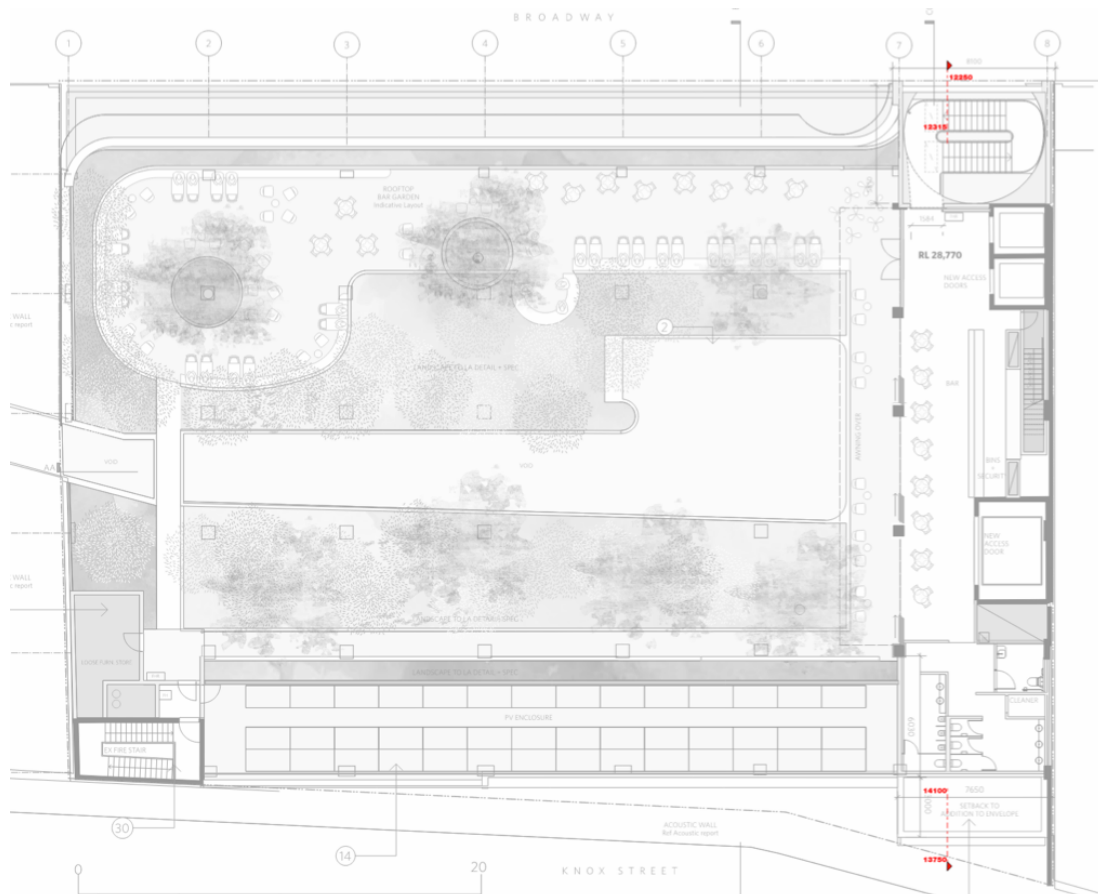


Figure 5: Site plan showing where Section is cut and relevant RLs at footpaths of Broadway and Knox St (DBJ – updated by Tricon)

- The remainder of building elements above the 25m height control is the existing plant enclosure, which contains AC condensers, lift overrun, and mechanical plant and equipment only.
- Apart from the new stair connector and architectural feature on Broadway, and the existing roof top plant equipment in the existing variation, the remainder of the building sits within the 25m height limit as prescribed by the height of development standard under SLEP 2012.

The Figures below show the building elements that sit above the 25m height plane.



Figure 6: Existing North Elevation (Durbach Block Jaggers)

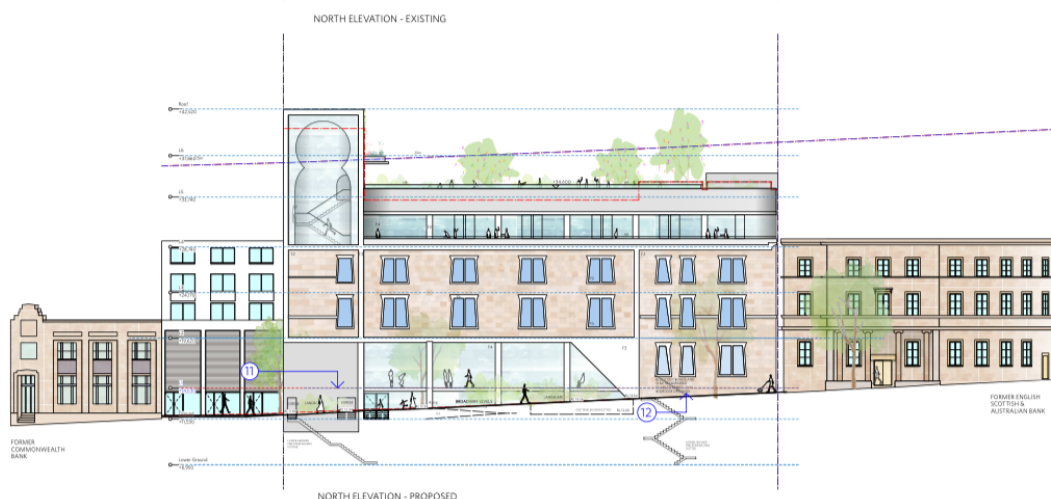


Figure 7: Proposed North Elevation (Durbach Block Jagers)

- Further, the changes to façade and materials of the new element of the building protruding above the height control (being the north-eastern connector stair) that is visible from the public domain, will represent an improvement to the current circumstances. It will include an open upper level with a shaped space influenced by the tower and domes of the Grace Bros. building to the north. The space will be an inverse of the tower and domes and will be expressed in the façade.
- The proposed alterations to the building are of a high architectural standard, contributing to the character of the conservation area.

With respect to the subject application, we consider that compliance with the development standard is unreasonable and unnecessary when considered holistically with the development outcome being sought.

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

Clause 4.6(3)(b) of the SLEP 2012 requires that the consent authority be satisfied that:

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

The environmental planning grounds relied on in the written request under Clause 4.6 must be sufficient to justify contravening the development standard. The focus is on the aspect of the development that contravenes the development standard, not the development as a whole. Therefore, the environmental planning grounds advanced must justify the contravention of the development standard and not simply promote the benefits of carrying out the development as a whole (*Turland v Wingecarribee Shire Council [2018] NSWLEC 1511* and *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118*), also 'Rebel MH' and 'Baron' (2019).

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

The variation sought is no different to the existing non-compliance as the application seeks adaptive reuse of the existing building. The majority of the development, including all development floor space sits beneath the 25m height control, with only a small new section

of the building seeking to 'match' the existing maximum RL of 45.520. This additional element of building seeking to breach the height control, is driven by site-specific heritage and urban design outcomes for the built form facing Broadway.

As confirmed by supporting consultant reports and addressed throughout this variation request, the non-compliance with the development standard does not result in any adverse environmental planning impacts. Specifically, relative to a complying scheme that reached no higher than 25m, there will be no loss of significant or iconic views; no additional privacy impacts; unacceptable traffic impacts; adverse visual impacts or additional overshadowing to residential properties.

Shadow diagrams have been submitted that demonstrate no additional overshadowing to private open space or living room windows occur as a consequence of the proposed development. The new building element breaching the height control along Broadway only casts additional shadow onto non-habitable roof elements of buildings to the east of the site between 1-3pm at 21 June. Refer to Figure below.

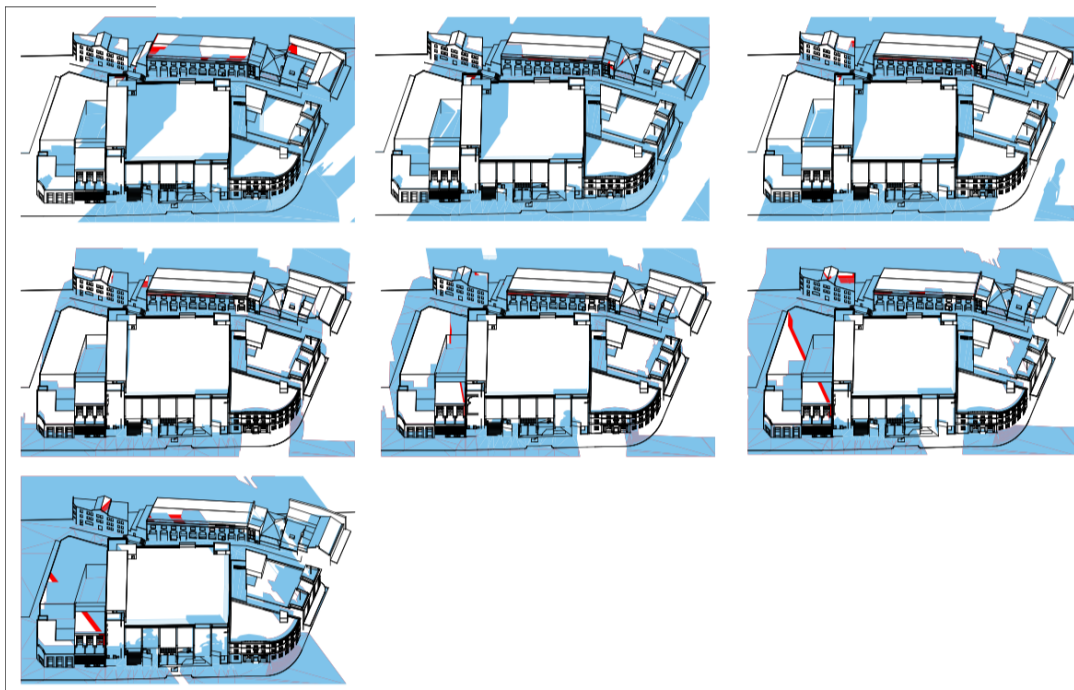


Figure 8: Current and proposed overshadowing – view from the sun 21 June (Durbach Block Jaggers)

For the reasons discussed above, it is contended that there are sufficient environmental planning grounds to justify the contravention to the development standard in the circumstances of the case, particularly given that the design provides a tailored and well considered response to the site's constraints and articulation.

6 Conclusion

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

This revised Clause 4.6 variation request demonstrates that notwithstanding the non-compliance with the Height of Buildings development standard, the proposal:



- Delivers a development that is appropriate for its context despite the breaches to development standards and therefore has sufficient environmental planning grounds to permit the variation; and
- Therefore, compliance with the development standard is unreasonable or unnecessary in the circumstances of this proposal.

