

SCEGGS DARLINGHURST

CLAUSE 4.6 VARIATION - HEIGHT OF BUILDING STANDARD

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FINAL
PREPARED FOR SCEGGS DARLINGHURST

URBIS

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1. INTRODUCTION

This Clause 4.6 variation request has been prepared by Urbis on behalf of SCEGGS Darlinghurst in support of the proposed development within SSD-8993. The proposed development within SSD-8993 includes a concept development application (**DA**) for building envelopes, building locations, vehicular entrances, and land uses to facilitate the SCEGGS Darlinghurst 2040 Masterplan, and detailed DA for the first stage of the 2040 Masterplan being the demolition of Wilkinson House and the detailed design and construction of a new building in place of Wilkinson House.

This request seeks to vary the height of building development standard prescribed under clause 4.3 of *Sydney Local Environmental Plan 2012 (SLEP)*.

We note that clause 42 of *State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017* allows for the granting of consent for a development that is designated as State Significant Development (**SSD**) even though the development would contravene a development standard imposed by this or any other environmental planning instrument under which the consent is granted. Notwithstanding, the NSW Department of Planning, Industry and Environment (**DPIE**) has requested the preparation of a clause 4.6 variation request for abundant caution and best practice.

This request contains justified reasoning supporting conclusions in respect of the above two matters, specifically that:

- Objectives of the development standard will be achieved, notwithstanding that the numerical limit of the height of building standard will be exceeded, and in doing so establishes that compliance with the standard is unreasonable or unnecessary (Initial Action at [17]) – Refer to **Section 6.3.1** of this Request
- There are sufficient environmental planning grounds to support the proposed development notwithstanding the numerical limit of the height of building standard will be exceeded (Initial Action at [24]) – Refer to **Section 6.3.2** of this Request

As stated in Initial Action at [25], clause 4.6(3) does not require the consent authority to form its own opinion of satisfaction regarding the matters identified in clause 4.6(3)(a) and (b), but only indirectly must be satisfied that the applicant's written request has adequately addressed those matters. This request does that, and therefore the consent authority is open to be satisfied that subclause 4.6(3) has been met.

Following the receipt of concurrence from the Secretary, the remaining question for the consent authority is whether the proposed development will be in the public interest because:

1. It is consistent with the objectives of the development standard; and
2. It is consistent with the objectives for development within the zone.

While this request is not legally obligated to demonstrate satisfaction of clause 4.6(4) and (5), **Sections 6.3.3-6.3.6** of this request provides material to assist the consent authority to reach satisfaction that the development is consistent with the objectives for development within the R1 General Residential zone and usefully addresses the matters that the consent authority need to address when exercising the function of the Secretary.

2. ASSESSMENT FRAMEWORK

2.1. CLAUSE 4.6 OF SYDNEY LOCAL ENVIRONMENTAL PLAN 2012

Clause 4.6 of SLEP includes provisions that allow for exceptions to development standards in certain circumstances. The objectives of clause 4.6 are:

- *to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
- *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

Clause 4.6 provides flexibility in the application of planning provisions by allowing the consent authority to approve a development application that does not comply with certain development standards, where it can be shown that flexibility in the particular circumstances of the case would achieve better outcomes for and from the development.

In determining whether to grant consent for development that contravenes a development standard, clause 4.6 requires that the consent authority consider a written request from the applicant, which demonstrates:

- 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.*

Furthermore, the consent authority must be satisfied that 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, and the concurrence of the Secretary has been obtained.

In deciding whether to grant concurrence, subclause (5) requires that the Secretary consider:

- a) Whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
- b) The public benefit of maintaining the development standard, and*
- c) Any other matters required to be taken into consideration by the Secretary before granting concurrence.*

[Note: Concurrence is assumed pursuant to *Planning Circular No. PS 18-003 Variations to Development Standards* dated 21 February 2018].

This document forms a clause 4.6 written request to justify the contravention of the height of building development standard in clause 4.3 of the SLEP. The assessment of the proposed variation has been undertaken in accordance with the requirements of the SLEP, clause 4.6 Exceptions to development standards.

2.2. NSW LAND AND ENVIRONMENT COURT: CASE LAW

Several key New South Wales Land and Environment Court (**NSW LEC**) planning principles and judgements have refined the manner in which variations to development standards are required to be approached.

The correct approach to preparing and dealing with a request under clause 4.6 is neatly summarised by Preston CJ in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118:

[13] The permissive power in cl 4.6(2) to grant development consent for a development that contravenes the development standard is, however, subject to conditions. Clause 4.6(4) establishes preconditions that must be satisfied before a consent authority can exercise the power to grant development consent for development that contravenes a development standard.

[14] The first precondition, in cl 4.6(4)(a), is that the consent authority, or the Court on appeal exercising the functions of the consent authority, must form two positive opinions of satisfaction under cl 4.6(4)(a)(i) and (ii). Each opinion of satisfaction of the consent authority, or the Court on appeal, as

to the matters in cl 4.6(4)(a) is a jurisdictional fact of a special kind: see *Woolworths Ltd v Pallas Newco Pty Ltd* (2004) 61 NSWLR 707; [2004] NSWCA 442 at [25]. The formation of the opinions of satisfaction as to the matters in cl 4.6(4)(a) enlivens the power of the consent authority to grant development consent for development that contravenes the development standard: see *Corporation of the City of Enfield v Development Assessment Commission* (2000) 199 CLR 135; [2000] HCA 5 at [28]; *Winten Property Group Limited v North Sydney Council* (2001) 130 LGERA 79; [2001] NSWLEC 46 at [19], [29], [44]-[45]; and *Wehbe v Pittwater Council* (2007) 156 LGERA 446; [2007] NSWLEC 827 at [36].

- [15] The first opinion of satisfaction, in cl 4.6(4)(a)(i), is that the applicant's written request seeking to justify the contravention of the development standard has adequately addressed the matters required to be demonstrated by cl 4.6(3). These matters are twofold: first, that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case (cl 4.6(3)(a)) and, secondly, that there are sufficient environmental planning grounds to justify contravening the development standard (cl 4.6(3)(b)). The written request needs to demonstrate both of these matters.
- [16] As to the first matter required by cl 4.6(3)(a), I summarised the common ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary in *Wehbe v Pittwater Council* at [42]-[51]. 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.
- [17] The first and 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: *Wehbe v Pittwater Council* at [42] and [43].
- [18] A second way is to establish that the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary: *Wehbe v Pittwater Council* at [45].
- [19] A third way is to establish that the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable: *Wehbe v Pittwater Council* at [46].
- [20] A fourth way is to establish that the development standard has been virtually abandoned or destroyed by the Council's own decisions in granting development consents that depart from the standard and hence compliance with the standard is unnecessary and unreasonable: *Wehbe v Pittwater Council* at [47].
- [21] A fifth way is to establish that the zoning of the particular land on which the development is proposed to be carried out was unreasonable or inappropriate so that the development standard, which was appropriate for that zoning, was also unreasonable or unnecessary as it applied to that land and that compliance with the standard in the circumstances of the case would also be unreasonable or unnecessary: *Wehbe v Pittwater Council* at [48]. However, this fifth way of establishing that compliance with the development standard is unreasonable or unnecessary is limited, as explained in *Wehbe v Pittwater Council* at [49]-[51]. The power under cl 4.6 to dispense with compliance with the development standard is not a general planning power to determine the appropriateness of the development standard for the zoning or to effect general planning changes as an alternative to the strategic planning powers in Part 3 of the EPA Act.
- [22] These five ways are not exhaustive of the ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary; they are merely the most commonly invoked ways. An applicant does not need to establish all of the ways. It may be sufficient to establish only one way, although if more ways are applicable, an applicant can demonstrate that compliance is unreasonable or unnecessary in more than one way.
- [23] As to the second matter required by cl 4.6(3)(b), the grounds relied on by the applicant in the written request under cl 4.6 must be "environmental planning grounds" by their nature: see *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90 at [26]. The adjectival phrase "environmental planning" is not defined, but would refer to grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s 1.3 of the EPA Act.

- [24] 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].
- [25] The consent authority, or the Court on appeal, must form the positive opinion of satisfaction that the applicant’s written request has adequately addressed both of the matters required to be demonstrated by cl 4.6(3)(a) and (b). As I observed in *Randwick City Council v Micaul Holdings Pty Ltd* at [39], the consent authority, or the Court on appeal, does not have to directly form the opinion of satisfaction regarding the matters in cl 4.6(3)(a) and (b), but only indirectly form the opinion of satisfaction that the applicant’s written request has adequately addressed the matters required to be demonstrated by cl 4.6(3)(a) and (b). The applicant bears the onus to demonstrate that the matters in cl 4.6(3)(a) and (b) have been adequately addressed in the applicant’s written request in order to enable the consent authority, or the Court on appeal, to form the requisite opinion of satisfaction: see *Wehbe v Pittwater Council* at [38].
- [26] The second opinion of satisfaction, in cl 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 cl 4.6(4)(a)(i) in that the consent authority, or the Court on appeal, must be directly satisfied about the matter in cl 4.6(4)(a)(ii), not indirectly satisfied that the applicant’s written request has adequately addressed the matter in cl 4.6(4)(a)(ii).
- [27] The matter in cl 4.6(4)(a)(ii), with which the consent authority or the Court on appeal must be satisfied, is not merely that the proposed development will be in the public interest but that it will be in the public interest because it 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. If the proposed development is inconsistent with either the objectives of the development standard or the objectives of the zone or both, the consent authority, or the Court on appeal, cannot be satisfied that the development will be in the public interest for the purposes of cl 4.6(4)(a)(ii).
- [28] 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)). Under cl 64 of the *Environmental Planning and Assessment Regulation 2000*, the Secretary has given written notice dated 21 February 2018, attached to the *Planning Circular PS 18-003* issued on 21 February 2018, 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.
- [29] On appeal, the Court has the power under cl 4.6(2) to grant development consent for development that contravenes a development standard, if it is satisfied of the matters in cl 4.6(4)(a), without obtaining or assuming the concurrence of the Secretary under cl 4.6(4)(b), by reason of s 39(6) of the *Court Act*. Nevertheless, the Court should still consider the matters in cl 4.6(5) when exercising the power to grant development consent for development that contravenes a development standard: *Fast Buck\$ v Byron Shire Council* (1999) 103 LGERA 94 at 100; *Wehbe v Pittwater Council* at [41].

3. SITE AND LOCALITY

3.1. THE SITE

The SCEGGS Darlinghurst campus is located between Forbes and Bourke Streets within the inner-city suburb of Darlinghurst. The total SCEGGS Darlinghurst campus comprises the area highlighted in **Figure 1** and includes the main school campus, a single terrace at 217 Forbes Street, and properties within the St Peters Precinct. The main school campus comprises both a primary and secondary school, accessed from Bourke Street and Forbes Street respectively.

The total SCEGGS Darlinghurst campus comprises several parcels and has a total land area of 13,676sqm. The total campus includes frontages to St Peters Street, St Peters Lane, and Thomson Street.

The SSD DA however only applies to the main campus site, excluding 217 Forbes Street, which comprises several irregular lots outlined in **Table 1** and has a total land area of 11,519sqm. The main campus site has the following street frontages:

- 133 m eastern frontage to Forbes Street
- 62 m northern frontage to St Peters Lane
- 84 m western frontage to Bourke Street
- 10 m southern frontage to Thomson Street

The main campus site has significant level changes with a fall of approximately 11.3m from the southern end of Forbes Street to the northern intersection with St Peters Street. The existing ground levels of each of the existing buildings across the site vary from approximately RL 28.7m to RL 40.19m.

Figure 1 – Site Location



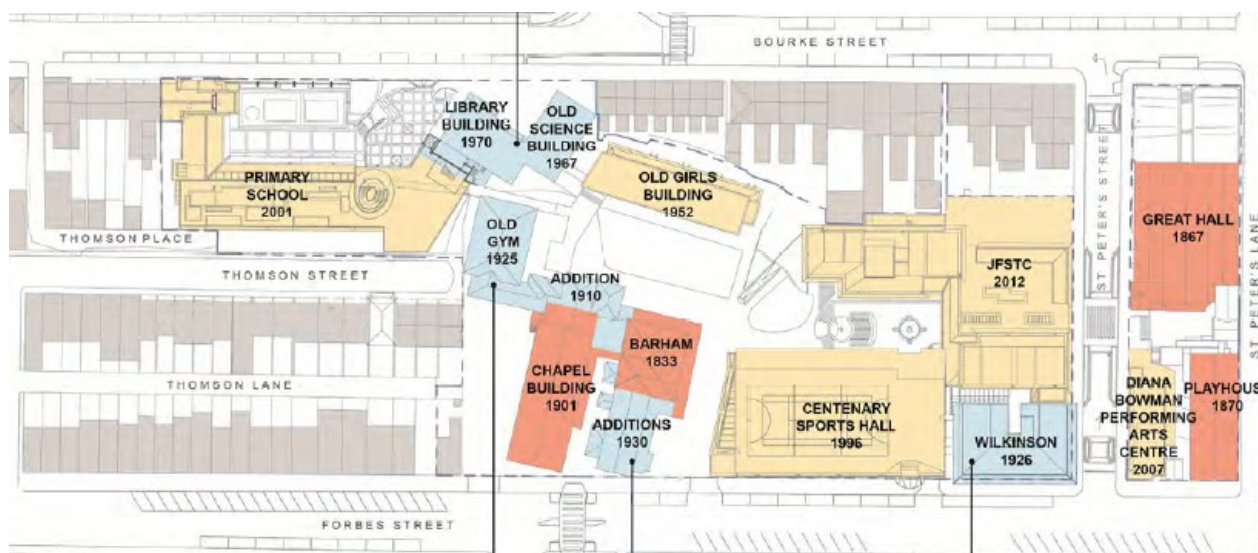
Table 1 – Site Description

Site Address	Legal Description	Existing Development
165-215 Forbes Street, Darlinghurst	Lot 100 in DP 1151279	Main School site including Wilkinson House, Joan Freeman Science Building, Centenary Sports Hall. Yellow Building, Barham Building, Chapel Building, Old Gym
	Lot 18 in DP131188; Lot 8 in DP 253598; Lots 9, 10, 11 in DP 52048; Lots 17-18 in DP53158;	Library Building and Science Building
	Lots 1-5 in DP 11394996; Lot 1 in DP707816	Primary School
224 Bourke Street, Darlinghurst	Lot E in DP 108903	
226 Bourke Street, Darlinghurst	Lots C and D in DP 108903	

3.2. EXISTING DEVELOPMENT

SCEGGS Darlinghurst has been located on the main campus site since 1901. Since this time, the School has progressively adaptively reused and altered existing buildings on the site and immediate surrounds and constructed new purpose-built educational facilities on the site. These buildings have been progressively completed, rebuilt, and redeveloped over the almost 120-year history of the School on the site to continually respond to changing educational needs. The existing buildings on the site are illustrated in **Figure 2** below.

Figure 2 – Existing buildings on the site



Source: TKD Architects

The existing buildings on the site vary in scale from two to three storeys (Barham) to six storeys (Old Science and Library buildings). While the Old Science and Library buildings on Bourke Street contain the tallest buildings on the site, given the location of a cliff edge running through the site, the original Chapel Building on Forbes Street remains the 'highest' building on the site with a maximum four storey rise on Forbes Street and a maximum RL of 56.21m.

Importantly, the existing Library Building, Old Science Building and Wilkinson House building on the site currently exceed the numeric height of building standard within the SLEP as discussed below.

4. THE PROPOSED DEVELOPMENT

4.1. DEVELOPMENT OVERVIEW

This clause 4.6 variation request relates to proposed alterations to existing buildings and new buildings proposed within SSD-8993 to deliver upon the SCEGGS Darlinghurst 2040 masterplan. The proposed development, as sought to be amended within the Response to Submissions Report (**RtS Report**), is described as follows:

- Concept approval of the 2040 Masterplan for the SCEGGS Darlinghurst campus, including:
 - Conceptual approval for the demolition of the following buildings:
 - Wilkinson House fronting Forbes Street
 - Library and science building fronting Bourke Street
 - The old gym building at the northern end of Thomson Street
 - Part of the additions to the Barham Building fronting Forbes Street
 - Conservation works to the existing Barham Building within the school premises to remove non-original building fabric and use for general school purposes
 - Building envelopes and land use for the following new buildings:
 - Four-storey school building at the corner of Forbes Street and St Peters Street for general school purposes
 - Maximum six storey multi-purpose building fronting Bourke Street for general school purposes and a centre based childcare facility
 - On-site vehicular drop-off with associated car parking from Bourke Street within the multi-purpose building
 - Maximum three-storey administration building fronting Forbes Street for general school purposes
- Detailed consent for the demolition of Wilkinson House, basement excavation, and construction of a new four storey building (new Wilkinson House) comprising approximately 1,325sqm of GFA and a building height between 15m and 16.3m for the purposes of new learning and education spaces.

Concept development consent is sought for '*educational establishment*' and '*early education and care facility*' land uses as defined under the standard instrument LEP across the site the subject of this SSD DA.

The following design principles, or design guidelines, have been developed to inform future development on the main school campus:

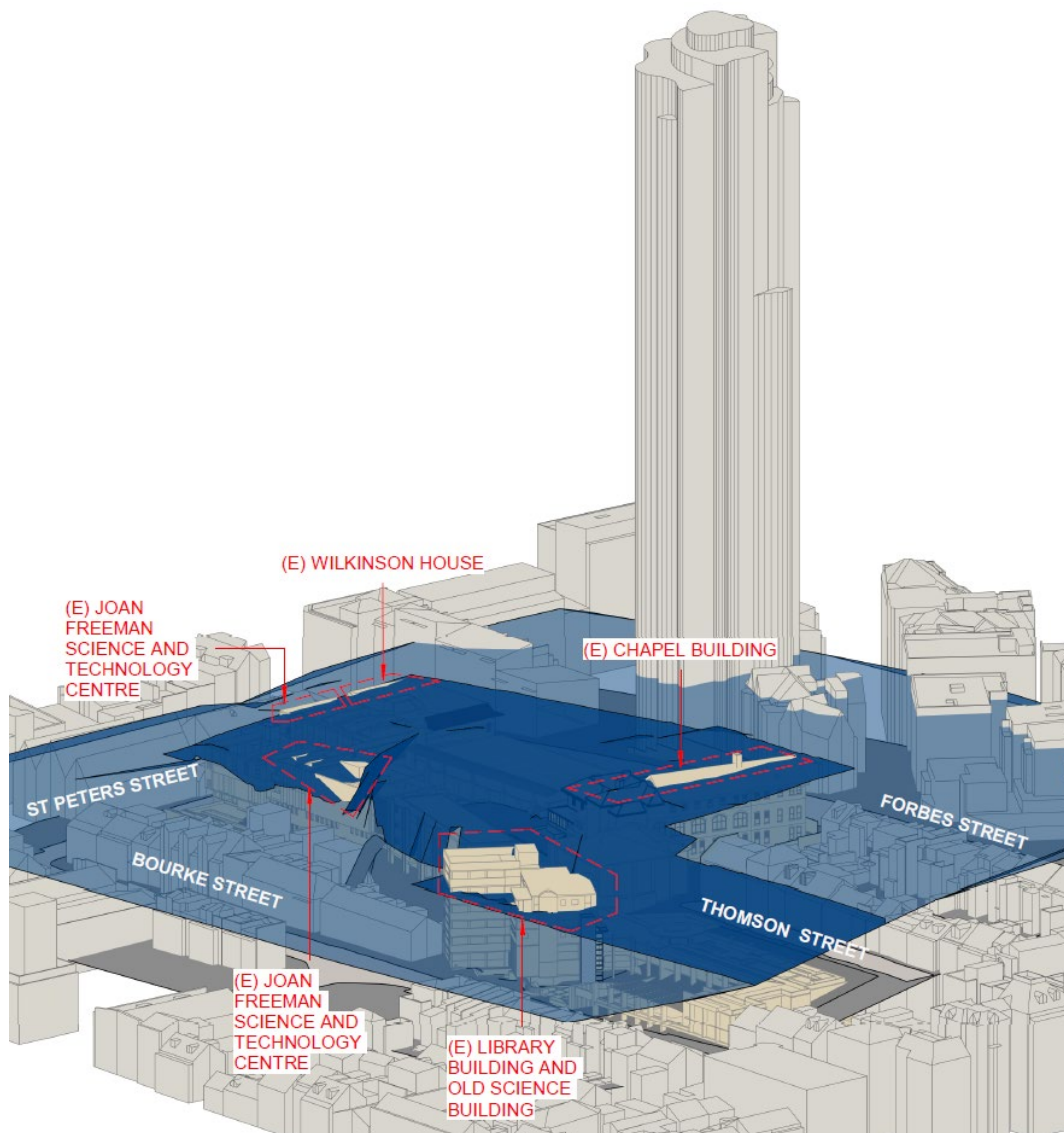
- Maintain and enhance the key pedestrian spine running north south through the campus.
- Maximise useful outdoor open play space.
- Restore the key heritage features of the campus – Barham and the Chapel Building.
- Demolish later ad-hoc additions and underutilised and outmoded buildings.
- Create a revitalised main entry and create a visual link between the entry and the heart of the school.
- Relate to the two-storey terrace house scale and alignment on Bourke Street and then setback above this level to minimise views over neighbours and overshadowing.
- Maintain or improve views to the city for Thomson Street residents from the principal ground and first floor levels by setting the new building form back from the existing Library Building and Old Science Building.

5. EXTENT OF CONTRAVENTION

Under the SLEP, the primary allotments of the site are subject to a maximum 15m height of building control. Of the proposed building envelopes and detailed design of a new Wilkinson House building, two buildings are proposed to exceed the maximum 15m height of building control as described below.

It is noted that due to the significant fall across the site and varying ground levels that apply to the main school campus, portions of the existing buildings on the site already exceed the 15m height of building standard as illustrated below.

Figure 3 - Existing buildings on the site exceeding the height of building standard



Picture 1 - Aerial looking north east across the site

Source: Tanner Kibble Denton Architects

5.1. WILKINSON HOUSE

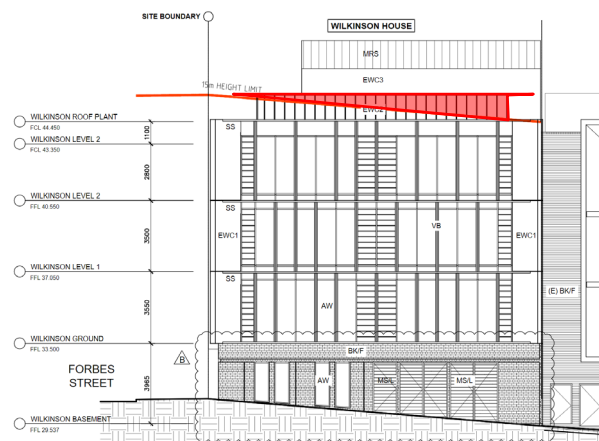
The existing Wilkinson House building marginally exceeds the 15m height of building standard at the western corner of the St Peters Lane frontage due to the natural fall in the land. The proposed Wilkinson House building will also exceed the 15m height of building standard at this location as shown in **Figure 4**. The maximum height exceedance proposed for the proposed Wilkinson House building is 1.3m.

Figure 4 – Proposed variation to the height of building standard (Wilkinson House)



Picture 2 – Existing Northern Elevation

Source: Tanner Kibble Denton Architects



Picture 3 – Proposed Northern Elevation

Source: Tanner Kibble Denton Architects

Note: While it may look that the building exceeds the height control by more than 1.3m in **Picture 3**, this additional massing is towards the southern portion of the site where it complies with the height control due to the slope of the land. For clarity the extent of the non-compliance is shaded in red above.

5.2. MULTI-PURPOSE BUILDING

The existing library building, and the existing old science building fronting Bourke Street currently exceed the 15m height of building standard largely due to the fall in the land as a result of the historic cliff face present on the site.

The proposed multi-purpose building, as proposed to be amended through the RtS Report will exceed the maximum height of building standard by 2.49m at the Bourke Street frontage. As illustrated at **Figure 5**, this height exceedance is less than the existing buildings fronting Bourke Street.

The proposed multi-purpose building is significantly less than the maximum height of building standard (by approximately 3.06m) as the site rises to the east. As illustrated in **Figure 5** and **Figure 6** the proposed multi-purpose building is recessive and lower than the maximum height of the demolished Gym Building and the Chapel Building (to be retained).

Figure 5 – Proposed East-West Section (Multi-purpose building)

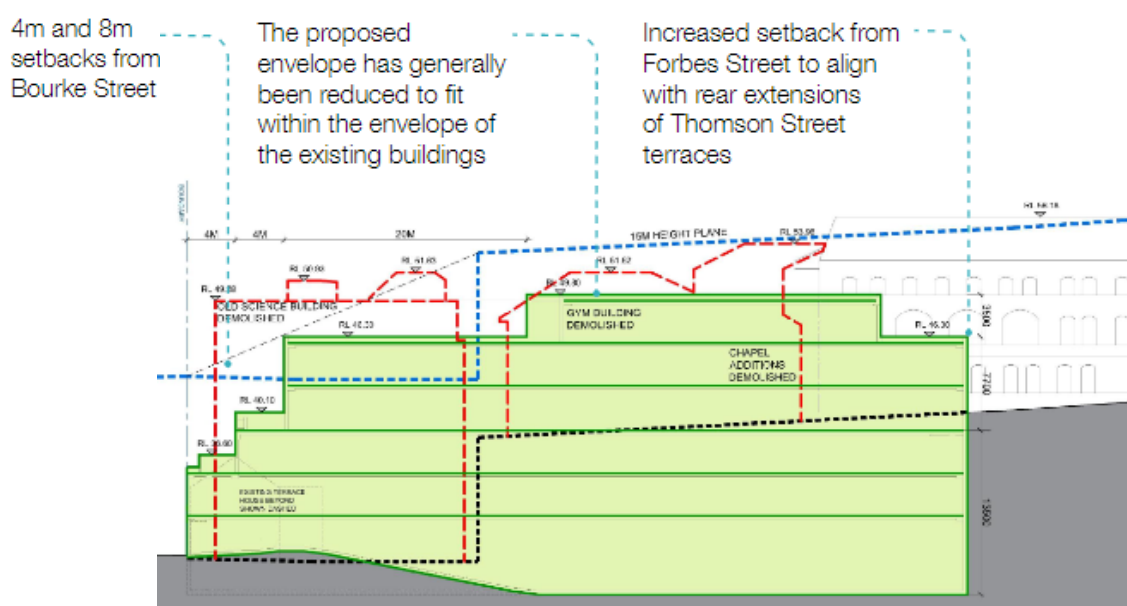
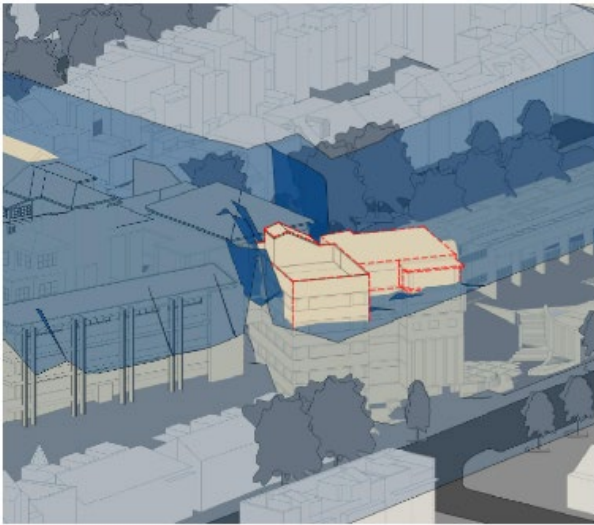
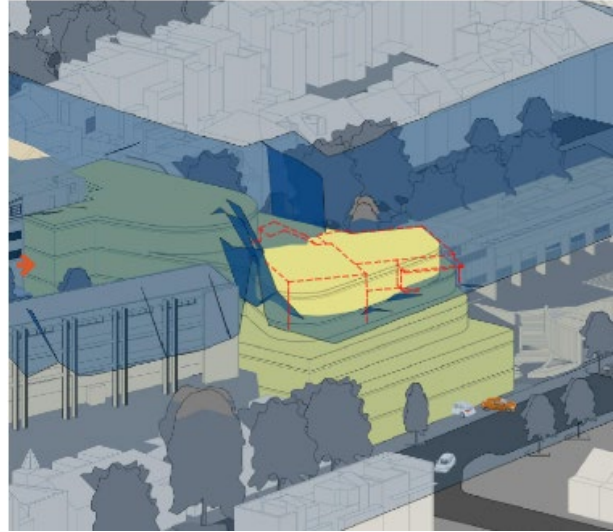


Figure 6 – 3D Height Plane – Aerial View to Multipurpose building from Northwest compared to height control



Picture 4 – Existing building massing on site
Source: Tanner Kibble Denton Architects



Picture 5 – Proposed building massing on site
Source: Tanner Kibble Denton Architects

6. CLAUSE 4.6 VARIATION REQUEST: HEIGHT OF BUILDING STANDARD

The following sections of the report provide an assessment of the request to vary the development standard relating to the maximum height of building standard in accordance with clause 4.6 of SLEP.

6.1. CLAUSE 4.3 HEIGHT OF BUILDING STANDARD

The relevant maximum height of building standard under the SLEP is 15m. The objectives of the height of building development standard as per subclause 4.3(1) of the SLEP 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,*
- (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*

6.2. KEY QUESTIONS

Is the Planning Control a Development Standard?

The height of building control prescribed under clause 4.3 of the SLEP is a numeric development standard generally capable of being varied under clause 4.6 of SLEP,

Is the Development Standard Excluded from the Operation of Clause 4.6?

The development standard is not excluded from the operation of clause 4.6 as it is not listed within clause 4.6(6) or clause 4.6(8) of SLEP, as the site is not located within 'Area 1' or 'Area 2' on the Height of Buildings Map.

What is the Underlying Object or Purpose of the Standard?

The objectives of the standard are clearly established in the relevant LEP as set out in Section 6.1 of this report.

6.3. CONSIDERATION

6.3.1. Clause 4.6(3)(a) – Compliance with the Development Standard is Unreasonable or Unnecessary in the Circumstances of the Case

The common ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary are listed within the 'five-part test' outlined in *Wehbe v Pittwater [2007] NSWLEC 827*. These tests are outlined in **Section 2.2** of this request (paragraphs [17]-[21]).

An applicant does not need to establish all of the tests or 'ways'. **It may be sufficient to establish only one way**, although if more ways are applicable, an applicant can demonstrate that compliance is unreasonable or unnecessary in more than one way

The development is justified against one of the Wehbe tests as set out below.

Test 1: The objectives of the development standard are achieved notwithstanding non-compliance with the standard

The proposed development achieves the objectives of the development standard as outlined within **Table 2**.

Table 2 – Assessment of Achievement of Objectives of Height of Building Standard

Objectives	Achievement
<i>(a) to ensure the height of development is appropriate to the condition of the site and its context,</i>	As the proposed variation to the height of building standards are largely consistent with existing buildings on the site that pre-dated the imposition of the height of building standard prescribed in the SLEP, the proposed buildings heights are considered appropriate to the condition of the site and its context. The site falls from the Forbes Street frontage to Bourke Street, and from Liverpool Street to St Peters Land. The proposed new Wilkinson House building complies with the height control at the eastern and southern portions of the site. To the west the proposed height of the Wilkinson House building aligns with the recently completed Joan Freeman building and therefore sits comfortably within the streetscape. The proposed height of the building at Bourke Street is a reduction from the existing development. The proposed building reintroduces a two-three storey podium that reflects the prevailing character of Bourke Street. From the Thompson Street terraces, the proposed building reads as a two and three storey building form, which is entirely consistent with the two and three storey terraces along Thompson Street As such, the proposal presents an appropriate height to the existing condition of Bourke Street, Forbes Street, and Thompson Street.
<i>(b) to ensure appropriate height transitions between new development and heritage items and buildings in heritage conservation areas or special character areas,</i>	As the proposed variation to the height of building standards, the proposed buildings heights are considered appropriate in the heritage conservation area. Notably, the proposed height at the Bourke Street interface has been substantially reduced from the existing building envelopes, and at the lower levels presents as a two-and three storey podium that addresses the height and scale of the adjacent terrace dwellings and the prevailing character of Bourke Street.
<i>(c) to promote the sharing of views,</i>	As the proposal largely falls within the building envelopes of existing buildings on the site, the proposal has a minor impact on views towards Sydney Harbour and Sydney CBD from adjacent properties as demonstrated within the RtS Report.
<i>(d) to ensure appropriate height transitions from Central Sydney and Green Square Town Centre to adjoining areas,</i>	The proposed variation to the height of building standard does not preclude the achievement of an appropriate height transition from Central Sydney to adjoining areas.

Objectives	Achievement
	The proposed scale of development sought is consistent with the existing scale of development (and in the case of the multi-purpose building, a reduction in exceedance to the height control). The proposed variation to the height control relates largely to the existing fall in land, where if the measurement of the control were taken from the highest point of the existing ground level of the building– the development would comply. Notwithstanding, the proposal is of a suburban scale and does not proposed building heights that are inconsistent with the character of Darlinghurst and the surrounding locality.
(e) <i>in respect of Green Square—</i> (i) <i>to ensure the amenity of the public domain by restricting taller buildings to only part of a site, and</i> (ii) <i>to ensure the built form contributes to the physical definition of the street network and public spaces</i>	Not relevant.

In summary, the objectives of the development standard are achieved (as required under clause 4.6(3)(a)) and the development is consistent with the objectives of the development standard (as required under clause 4.6(4)(a)(ii)) 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

Not relied upon.

Test 3: The underlying objective or purpose of the standard would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable

Not relied upon.

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

Not relied upon.

Test 5: The zoning of the particular land on which the development is proposed to be carried out was unreasonable or inappropriate so that the development standard, which was appropriate for that zoning, was also unreasonable or unnecessary as it applied to that land and that compliance with the standard in the circumstances of the case would also be unreasonable or unnecessary

Not relied upon.

6.3.2. Clause 4.6(3)(b) – Are there Sufficient Environmental Planning Grounds to Justify Contravening the Development Standard?

There are sufficient environmental planning grounds to justify the proposed variation to the development standard, including the following:

- The building complies with the maximum floor space ratio for the site and therefore represents a scale and intensity of development that has been planned for this site and locality.

- Space within the site is extremely limited. To achieve new floor space requirements that are commensurate with the existing buildings' capacity, it has been necessary to exceed the height limit in a way that is at least the same as the existing buildings on the site.
- The proposed height of the Wilkinson House building aligns the floor levels with the adjacent Joan Freeman building to allow for greater student circulation between the buildings. This creates a greater need to exceed the height control in a way that is consistent with the height of the adjacent building.
- The area of non-compliance of Wilkinson House generally relates to the roof space, which has no windows and will not impact on privacy.
- The proposed buildings reflect the current school facilities requirements including minimum ceiling heights of 2.7m. Floor to floor heights achieve minimum ceiling heights and sufficient space for services.
- The proposed development is suitable in the context of the heritage conservation area within which it is located.
- The architectural design of the new development provides a good quality built form outcome for the site. The proposed façades of Wilkinson House are articulated using materials, fenestrations, screening and natural materials that create visual interest and assist with minimising the perceived bulk. The proposed facades reflect materials used within the heritage conservation area and the general locality.
- The design of Wilkinson House is responsive to site context and its intended function. The proposed design of the multi-purpose building will be guided through design principles as articulated within the Environmental Impact Statement submitted with SSD 8993.
- New development will not result in adverse view impacts, overshadowing or privacy issues as articulated within the RtS Report.
- The development is consistent with the Objects of the *Environmental Planning and Assessment Act 1979* by promoting the orderly and economic use and development of the land by maximising opportunities to provide new education and learning facilities within the existing school site, within the height of existing buildings on the site to minimise external impacts.
- By allowing the inclusion of clause 42 of *State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017* that allows for the granting of consent for a development that is designated as SSD even though the development would contravene a development standard imposed by an environmental planning instrument, the NSW Government has recognised that proposals of state significance must have the ability to breach development standards where necessary.

In conclusion, there are sufficient environmental planning grounds to justify contravening the development standard.

6.3.3. Clause 4.6(4)(a)(ii) – Will the Proposed Development be in the Public Interest Because it is Consistent with the Objectives of the Particular Standard and Objectives for Development within the Zone in Which the Development is Proposed to be Carried Out?

The proposed development is consistent with the objectives of the development standard as outlined within Error! Reference source not found. in **Section 6.3.1** of this Request.

The proposal is also consistent with the land use objective that applies to the site under SLEP as demonstrated within **Table 3** below. The site is located within the R1 General Residential zone.

Table 3 – Assessment of consistency with Land Use Zone objectives

Objectives	Consistency
To provide for the housing needs of the community	Not relevant.
To provide for a variety of housing types and densities	Not relevant.

Objectives	Consistency
To enable other land uses that provide facilities or services to meet the day to day needs of residents	The proposal provides non-residential land uses (educational establishment and early education and care facility) 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	Maintains the existing footprint and boundary of the SCEGGS Darlinghurst main school campus and does not seek to alter the predominant residential land use pattern of the locality.

The proposal is considered to be in the public interest as the development is consistent with the objectives of the development standard, and the land use objectives of the zone.

6.3.4. Clause 4.6(5)(a) – Would Non-Compliance Raise any Matter of Significance for State or Regional Planning?

The proposed non-compliance with the height of building development standard will not raise any matter of significance for State or regional environmental planning.

It has been demonstrated that the proposed variation is appropriate based on the specific circumstances of the case given the dramatic fall in the site levels across the site, the location and height of existing buildings on the site, and that the new development and would be unlikely to result in an unacceptable precedent for the assessment of other development proposals.

6.3.5. Clause 4.6(5)(b) – Is There a Public Benefit of Maintaining the Planning Control Standard?

The proposed development achieves the objectives of the height of building development standard and the land use zoning objectives despite the non-compliance, and the contravention has been demonstrated to be appropriate and supportable in the circumstances of the case. There would be no public benefit in maintaining the development standard in this case, as:

- Heritage values of the conservation area have been maintained by improving the Bourke Street interface compared to the existing development;
- The proposal includes a maximum building height that is recessive and lower than the original Chapel Building on the site and the existing buildings fronting Forbes Street
- The proposal respects existing view corridors from surrounding properties towards Sydney Harbour and Sydney CBD by positioning the proposed buildings predominantly within the height and envelopes of existing buildings; and
- Maintaining the standard would not deliver new education and learning spaces on the site as the highest and best use of the land would be to retain the existing buildings on the site.

6.3.6. Clause 4.6(5)(c) – Are there any other matters required to be taken into consideration by the Secretary before granting concurrence?

The Planning Circular PS 18-003, issued on 21 February 2018 (**Planning Circular**), outlines that consent authorities for SSD may assume the Secretary's concurrence where development standards will be contravened.

Nevertheless, there are no known additional matters that need to be considered within the assessment of the clause 4.6 request and prior to granting concurrence, should it be required.

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