

**CLAUSE 4.6
VARIATION
REQUEST - HEIGHT
SSD-19989744
SCEGGS
DARLINGHURST
ADAPTIVE RE-USE
OF WILKINSON
HOUSE**

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PREPARED FOR SCEGGS DARLINGHURST LIMITED

URBIS

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1. INTRODUCTION

This Clause 4.6 Variation Request (**Clause 4.6 Request**) has been prepared on behalf of the SCEGGS Darlinghurst Limited (**the Applicant**) pursuant to Clause 4.6 'Exceptions to Development Standards' of the *Sydney Local Environmental Plan 2012 (SLEP 2012)*.

This Clause 4.6 Request seeks a variation to the maximum Height of Building (**HOB**) development standard under Clause 4.3 of the SLEP 2012 for land at 215 Forbes Street, Darlinghurst (legally described as Lot 200 DP1255617), which is occupied by the long-standing SCEGGS main school campus.

This variation to the maximum HOB is to accompany the first detailed SSDA (SSD-19989744.) under the Concept DA SSD 8993, for the adaptive reuse of Wilkinson House for general school learning areas and sport facilities to support the secondary school, including alteration and additions to the existing Wilkinson House.

This Clause 4.6 Request is structured in the following manner:

- **Section 2:** Relevant Assessment Framework
- **Section 3:** Site and Surrounding Locality
- **Section 4:** The Proposed Development
- **Section 5:** Extent of Contravention
- **Section 6:** Clause 4.3 - Building Height
- **Section 7:** Conclusion

2. RELEVANT ASSESSMENT FRAMEWORK

2.1. SYDNEY LOCAL ENVIRONMENTAL PLAN 2012

Clause 4.6 of the SLEP 2012 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 strictly 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 that concurrence of the Secretary has been obtained. In deciding whether to grant concurrence, subclause (5) of clause 4.6 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. The assessment of the proposed variation has been undertaken in accordance with the requirements of the SLEP 2012, 'Clause 4.6 - Exceptions to Development Standards'.

2.2. NSW LAND & ENVIRONMENT COURT: CASE LAW (TESTS)

Planning principles and judgements issued by the Land and Environment Court (**NSW LEC**) provide guidance in relation to requests to vary a development standard under Clause 4.6 of the SLEP 2012.

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:

- *Winten v North Sydney Council*
- *Wehbe v Pittwater [2007] NSW LEC 827*
- *Four2Five Pty Ltd v Ashfield Council [2015] NSW LEC*
- *Randwick City Council v Micaul Holdings Pty Ltd [2016] NSWLEC*
- *Moskovich v Waverley Council [2016] NSWLEC 1015*
- *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118*

2.2.1. Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSW LEC 118

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. In reflecting upon recent case law regarding clause 4.6 variation requests, Chief Judge Preston confirmed (in this judgement):

- The consent authority must, primarily, be satisfied the applicant's written request adequately addresses the 'unreasonable and unnecessary' and 'sufficient environmental planning grounds' tests:

"that the applicant's written request ... 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 ... and, secondly, that there are sufficient environmental planning grounds to justify contravening the development standard ..." [15]

- On the 'Five Part Test' established under *Wehbe v Pittwater Council* [2007] NSWLEC 827:

"The 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..." [22]

- That Clause 4.6 does not directly or indirectly establish a test that the non-compliant development should have a neutral or beneficial effect relative to a compliant development:

"Clause 4.6 does not directly or indirectly establish this test. The requirement in cl 4.6(3)(b) is that there are sufficient environmental planning grounds to justify contravening the development standard, not that the development that contravenes the development standard have a better environmental planning outcome than a development that complies with the development standard." [88]

This Clause 4.6 variation has specifically responded to the matters outlined above and demonstrates that the request meets the relevant tests with regard to recent case law.

3. THE SITE

3.1. SCEGGS CAMPUS

SCEGGS Darlinghurst is an independent girls' school. 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, which includes the main school campus located at 215 Forbes Street, a single terrace at 217 Forbes Street and properties within the St Peters Precinct. The total SCEGGS Darlinghurst campus comprises several land parcels and has a total area of 13,676sqm. The total campus includes frontages to St Peters Street, St Peters Lane and Thomson Street.

This Clause 4.6 request only applies to the main campus located at 15 Forbes Street, Darlinghurst, legally described as Lot 200 DP1255617. The St Peters Precinct and 217 Forbes Street does not form part of the detailed SSD application.

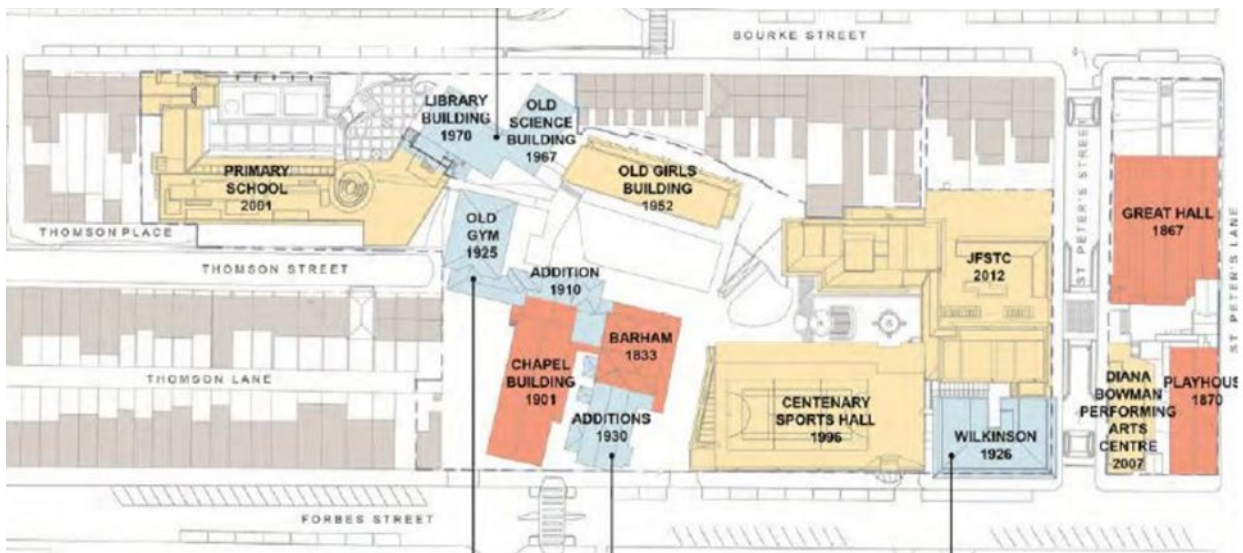
The main school campus comprises both a primary and secondary school, accessed from Bourke Street and Forbes Street respectively.

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, and an east to west fall along St Peters Street.

Figure 1 Site location (Wilkinson House outlined in yellow)



Source: Six Maps



Source: AJ+C

3.2. THE SITE - WILKINSON HOUSE

This clause 4.6 request relates to the Wilkinson House (the site) development area only, which is located within the main campus site, and is bounded by Forbes Street to the east and St Peters Street to the north. Centenary Sprots Hall is located directly to the south of the site, Joan Freeman building is located directly to the west on St Peters Street and Diana Bowman Performing Arts Centre is located on the opposite side of St. Peter Street.

Wilkinson House was designed by Emil Sodersten and is representative of 1920s apartment buildings. Whilst the site is listed as a local heritage item under the SLEP 2012, the building has been identified as comprising moderate heritage significance due to the social significance of being associated with SCEGGs boarders and for its historical significance associated with Emil Sodersten.

The School purchased the building in 1962 and subsequently used it as a boarding house. Following the cessation of boarding requirements at the main school campus, Wilkinson House was converted into staff facilities and learning spaces. The adaptation of the building for classroom required the creation of new openings in divisional walls and altering the internal layout of the building.

Wilkinson House has been used for 20 years by SCEGGs for teaching purposes, including general learning areas, staff rooms, study and student rooms. The useability of these rooms for full secondary school classes is challenged, and the internal circulation currently does not comply with fire safety and accessibility requirements.

Wilkinson House comprises four storeys and 1,161.90sqm of GFA. Wilkinson House has a maximum height measured to the existing roof of RL 45.52.

Figure 2 Wilkinson House as viewed from Forbes Street



Source: Urbis, 2021

Of note, the Joan Freeman Science Building is located directly west of the Wilkinson House. The Joan Freeman Science building (see

Figure 3) is also four storeys and has a maximum height of RL45.89 measured to the top of the rooftop plant enclosure.

Figure 3 Wilkinson House and Joan Freeman building as viewed from St Peters Street



Source: Urbis, 2021

4. BACKGROUND

4.1.1. Concept SSDA

Conditional Development Consent was granted by the IPC on 22 May 2020 to the Concept DA (SSD 8993) for the redevelopment of SCEGGs at its main campus at 215 Forbes Street, Darlinghurst, excluding St Peters's Precinct and 217 Forbes Street.

Specifically concept approval was granted for:

- demolition of Science and Library Building, Old Gym Building, part of additions to Barham Building;
- conservation works to the existing Barham Building for use for general school purposes;
- three building envelopes and land use comprising:
 - maximum six storey Multi-Purpose Building envelope for general school purposes and childcare centre and including pick-up/drop-off and car parking facilities;
 - four storey Wilkinson House building envelope for general school purposes (as Amended by Condition A5); and
 - maximum three storey Administration Building Envelope for general school purposes.

Development Consent was not granted for Stage 1 works to Wilkinson House, including the demolition of existing Wilkinson House, excavation of a basement and construction of a new 4 storey building for general school purposes.

The IPC included a condition of consent (Condition A13) that requires the Applicant to prepare a CMP for the site prior to any development applications associated with the Concept proposal being submitted. The Commission also stated that the CMP must also address options for the adaptive re-use of Wilkinson House.

4.1.2. Modifications

Since the IPC Conditional Concept Approval, a number of modification applications have been submitted and subsequently approved.

SSD 8993 MOD 1

Section 4.55(1) Modification was approved by DPIE on 15 January 2021 to amend Condition A5 and A13 of the consent to:

- correct an administrative error in a plan refence in Condition A5; and
- remove the requirement for endorsement of the CMP by Heritage NSW, Department of Premier and Cabinet (Heritage NSW) in Condition A13. Noting that the site subject to the SSD is a local heritage time, Heritage NSW does not have a role in endorsing CMPs for local heritage items and since the date at which the project was determined, no longer review or endorses CMPS for state heritage items. The CMP will be endorsed by the Planning Secretary.

SSD 8993 MOD 2

A more recent Section 4.55(1a) Modification was approved by DPIE on 6 July 2021, which relates to the staging of the Heritage Conservation Management Plan (**CMP**) under Condition A13 of the Consent. The approval allows the CMP to prepared in the following stages:

- a whole of site CMP to provide a high-level strategic CMP for the SCEGGs main campus – endorsed prior to any future detail SSDAs.
- individual detailed CMPs that are specific to Wilkinson House, Barham and the Chapel Building – to be submitted prior to or as part of any subsequent detailed development application(s) involving these buildings.

The site wide CMP was endorsed by the DPIE on 6 December 2021.

SSD 8993 MOD 3

A concurrent modification to the Concept DA (SSD 8993) will be lodged with the SSDA as to modify the approved building envelope. This modification will reflect and ensure the proposed detailed design of Wilkinson House is consistent with the building envelope under the Concept Approval (as modified).

5. PROPOSED DEVELOPMENT

Wilkinson House presents a rare opportunity for preservation and adaptively re use a historically significant building for SCEGGS, to ensure its future conservation, management and ongoing use.

As a heritage-listed building originally constructed in 1928 and designed by architect Emil Sodersten, the building can no longer meet the current or future educational needs of the school, and does not comply with current codes and standards, which impose safety and accessibility risk for students.

The primary educational objective of the proposal is to provide a greater range of large, flexible, compliant, accessible and collaborative learning spaces within Wilkinson House and provide for contemporary education needs.

Balancing the heritage significance of the building and contemporary educational needs, the design strategy has been underpinned by the policies outlined in the Wilkinson House CMP.

5.1. SUMMARY OF PROPOSED DEVELOPMENT

The proposal is for the adaptive re-use of Wilkinson House. Specifically, this request accompanies an application that seeks consent for the following works:

- Retain existing external perimeter walls/facades.
- Undertake conservation works, including restoring heritage façades by removing unsympathetic additions e.g. security bars to balconies.
- Construct an extension to the south, to accommodate a lift core for equitable access, circulation and a meeting room. The extension will also connect Wilkinson House to the wider campus.
- Reconstruct mansard roof in copper with angled blades and clerestory operable windows. Construct a new level 3 within the roof space, accommodating a GLA, multi-purpose room, amenities, careers office, and a private outdoor roof terrace.
- Construct new basement sporting facility which directly connects to the existing Centenary Sports Hall to the south. The proposal requires excavation be taken to a depth of approximately 2.5-3 metres within the southern portion of the Wilkinson House site to accommodate a larger basement footprint than currently exists.
- Retain and restore existing heritage entrance lobby and lounge hall.
- Demolish internal stairs, walls, floors and ceilings to all levels.
- Construct new internal learning spaces, break out spaces, staff rooms, meeting rooms, amenities and stair/circulation over ground, levels 1 and 2.
- Enclose existing balconies with recessed glazing to incorporate balcony spaces as part of the new functional, regular-shaped learning spaces
- Upgrade all services including electrical, mechanical, hydraulic, fire, etc.
- Provide a plant enclosure on top of the Joan Freeman roof (the north eastern portion of the roof), to accommodate air condenser units. The plant enclosure has a maximum RL of 45.77, which matches the height of the existing car park exhaust located on the roof of the Joan Freeman building. The height is slightly below the roof extension of Wilkinson House.
- Provide opportunity to incorporate heritage interpretation of the former residential flat building. Interpretation could include:
 - Interpretation of the original staircase into a student led artwork, to be installed on the northern wall of GLA 9 on level 3.
 - Interpretation of placement of balconies and original rooms inlaid in ceiling and common areas, to recall the original layout of the building.

As the project progresses to post approval, the project team will continue to work with City of Sydney Council before finalising the heritage interpretation strategy.

- 10 demountable classrooms are proposed to be erected on the site during construction to ensure the school can continue to function during the construction period. Demountable classrooms are provided on grade south of the Chapel Building, at the upper level of the Centenary Sports Hall, and within the Library Building landscaped roof terrace.

Figure 4 Proposed Wilkinson House CGI.



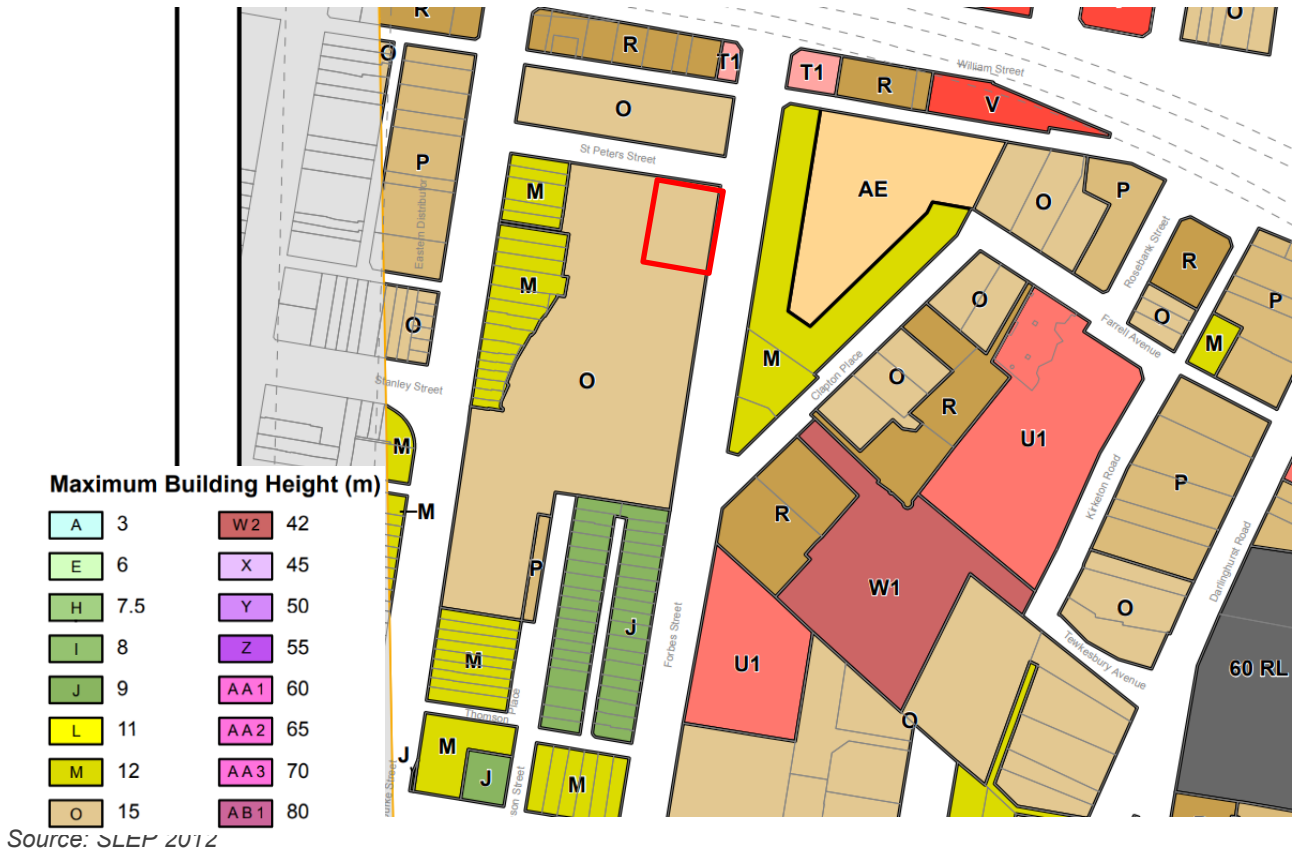
Source: Smart Design Studio, 2021

6. EXTENT OF CONTRAVENTION

6.1. VARIATION TO MAXIMUM BUILDING HEIGHT

As shown below in Figure 5 the relevant HOB Map contained in the SLEP 2012 nominates a maximum HOB of 15m for the site.

Figure 5 Maximum Building Height



The proposed building height is measured in accordance with the RLEP 2012 definition:

building height (or height of building) means:

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

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

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

The 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 site also has a fall of approximately 3.5m from the eastern end to the western end of St Peters Street.

Due to the significant fall across the site, varying ground levels apply to the main school campus. Portions of the existing Wilkinson House building exceeds the 15m height limit at the northern corner of Forbes Street by 0.12m.

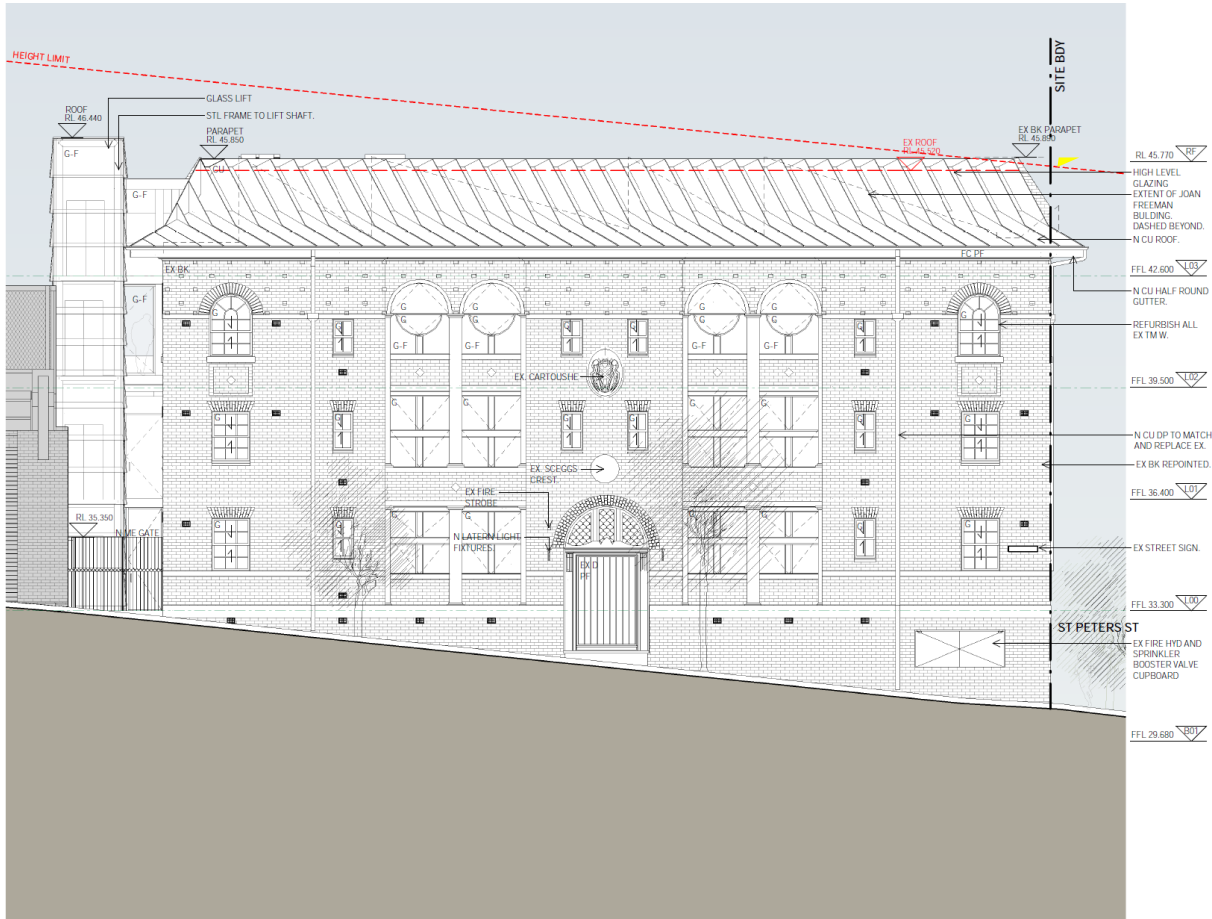
Along St Peters Street, the existing Wilkinson House building has a maximum building height of 16.04m, which exceeds the height control by 1.04m. The existing Joan Freeman Building is approx.16.3m, which exceeds the height control by approx.1.3m.

The proposed lift overrun has a maximum height of 13.24m at RL of 46.44, which complies with the 15m height control.

The area of proposed non-compliance is described as follows (and illustrated in Figure 6 and Figure 7):

- The proposed roof form largely complies at the eastern portion of the site (along Forbes Street), with minor height exceedance of approx. 0.12m, which relates to a corner of the existing building envelope.

Figure 6 Area of non-compliance- East Elevation (highlighted in yellow)

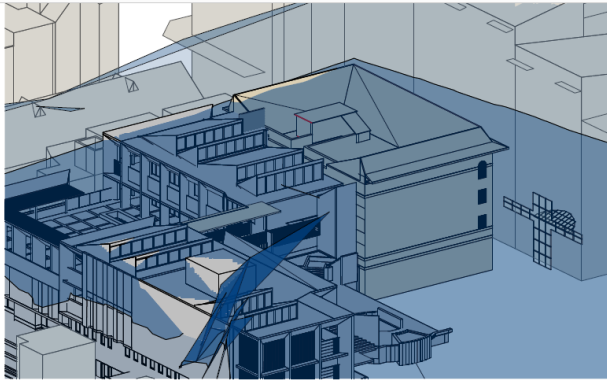


Source: smart design studio

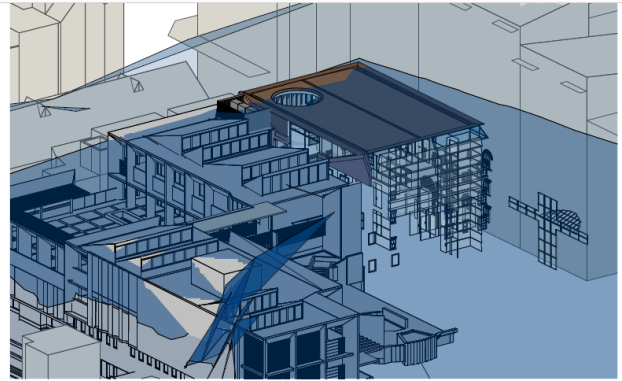
- The proposed roof form has a maximum height of 16.37m at the northern portion of the Wilkinson House building and exceeds the height limit by 1.37m along St Peters Street:
 - The area of non-compliance relates to the top portion of the roof form.
 - The existing tiled mansard roof is to be reconstructed which results in a nominal increase in total building height of approximately 330mm when compared to the existing roof form. The proposed roof reference the vertical articulation of the original Emil Sodersten elevations, therefore restoring the roof form to its original design.
- The proposed plant enclosure on top of the eastern portion of Joan Freeman roof has a RL of 45.77, which exceeds the 15m height limit by approx. 1.4m along St Peters Street.
 - The proposed extension is to accommodate a plant enclosure for air condensers.
 - It should be noted that the proposed plant enclosure finishes at the same RL as the existing carpark exhaust enclosure and is slightly below the height of the new Wilkinson House roof.

Accordingly, a Clause 4.6 exception to the development standard is required to justify the proposed variations.

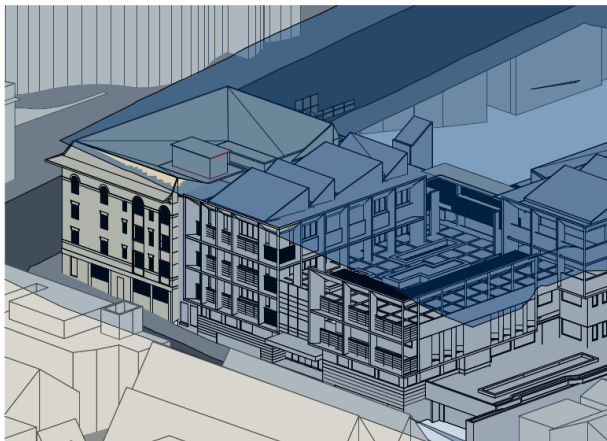
Figure 8 3D Height Plane diagram



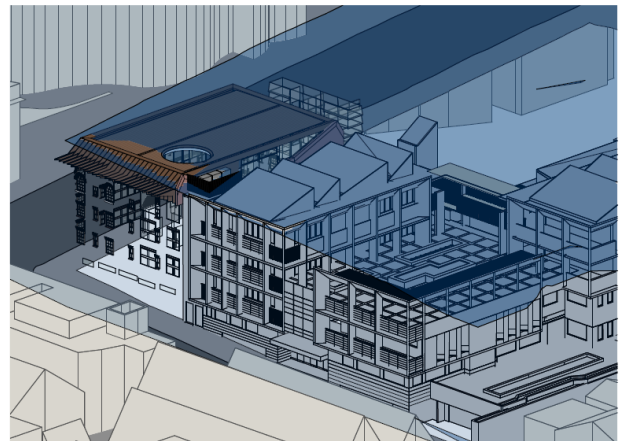
1 EXISTING VIEW FROM SOUTH WEST



2 PROPOSED VIEW FROM SOUTH WEST



3 EXISTING VIEW FROM NORTH WEST



4 PROPOSED VIEW FROM NORTH WEST

Source: smart design studio

7. CLAUSE 4.3 – HEIGHT OF BUILDING

The following sections provide a comprehensive assessment of the request to vary the Building Height development standard in accordance with Clause 4.6 of the SLEP 2012. Detailed consideration has been given to the NSW LEC case law identified within **Section 2** when undertaking this assessment.

7.1. KEY QUESTIONS

7.1.1. Is the Planning Control a Development Standard?

The maximum height of building control prescribed under clause 4.3 of the SLEP 2012 is a development standard capable of being varied under clause 4.6 of SLEP.

7.1.2. Is the Development Standard excluded from The Operations 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 2012.

7.1.3. What is the Underlying Object or Purpose of The Standard?

The objectives of the height of building standard as per the SLEP 2012 are as follows:

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

As assessment of the proposed development against each of these objectives is undertaken below in Section 7.2.3.

7.2. CONSIDERATION

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

The common way in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary is detailed in the ‘five-part test’ outlined in the *Wehbe v Pittwater [2007] NSWLEC 827*.

It is not considered necessary for an application to need to establish all of the tests or ‘ways’ a development standard is unreasonable or unnecessary. **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.

This development is justified against the first and fourth of the Wehbe tests as set out below.

Compliance with the development standard is considered unreasonable and unnecessary in the circumstance of the application based on the following:

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

The proposed modification will satisfy the objectives of the standard as detailed in Section 6.2.3.1 of this report.

Test 2: The underlying objectives 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 council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable

The existing Wilkinson House building already exceeds the maximum 15m height control by 1.04m along St Peters Street. The existing Joan Freeman building exceeds the height control by approximately 1.3m along St Peters Street. It would be unreasonable or unnecessary to require compliance with the height control, having regard to the existing development context.

Space within inner-city school sites is extremely limited and as such the provision of multi-storey buildings are necessary. To retain the approved building envelope and achieve the educational floor space requirements for the school's future operations, including the provision of equitable access, it is necessary to exceed the maximum height of building development standard.

Consent authority has therefore demonstrated the virtual abandonment of the control by the approval of the Concept SSD for the Wilkinson House building envelope and the approval of the Joan Freeman building. Consequently, it is considered unnecessary and unreasonable to require compliance with the control in regard to the proposed modification.

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 is in circumstances of the case would also be unrealistic or unnecessary

Not relied upon.

7.2.2. Clause 4.6(3)(b) – Are There Sufficient Environmental Planning Grounds to Justify Contravening the Development Standard

The proposed Wilkinson House building height is 16.37m, which is 0.33m above the existing building and 1.37m above the height limit. This represents 2% height increase when compared to the approved building envelope and 9.1% increase of building height development standard.

The proposed extension to Joan Freeman building has a height of 16.4m, which is 0.1m increase to the existing Joan Freeman Building and 1.4m above the height limit. This represents 0.6% height increase when compared to the existing building envelope and 9.3% increase of building height development standard.

Due to the sloped nature of the site, the area of non-compliance relates to the northern portion of the site at the St Peters Street frontage.

With consideration of the existing building height context across the wider SCEGGS campus, and the existing height non-compliance, the area of non-compliance can be considered as minor. This amount of height non-compliance results in a built form that is of a similar scale to other existing buildings located within the SCEGGS campus.

Built form and environmental impact from the height non-compliance is discussed below:

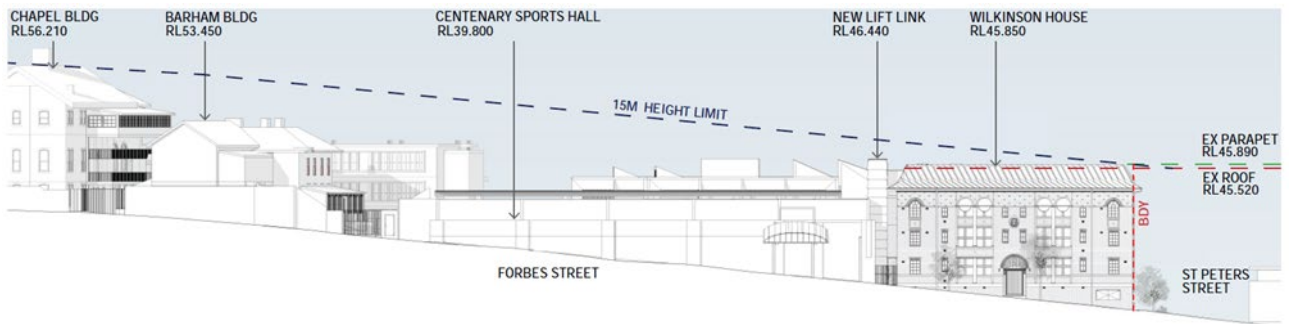
Built Form Impacts

Despite the height non-compliance, the proposal complies with the maximum floor space ratio for the site and therefore represents a development of a density that has been envisioned for this site and locality. Streetscape impact is detailed below:

- Forbes Street:
 - The proposed new roof form has a maximum RL of 45.85, which largely complies with the height standard along Forbes Street. The roof form exceeds the height limit at the north-eastern corner of the building by 0.12m, which is minor. The area of height non-compliance cannot be easily perceived from Forbes Street.

- Overall, the minor area of height non-compliance will not impact the streetscape presentation along Forbes Street.

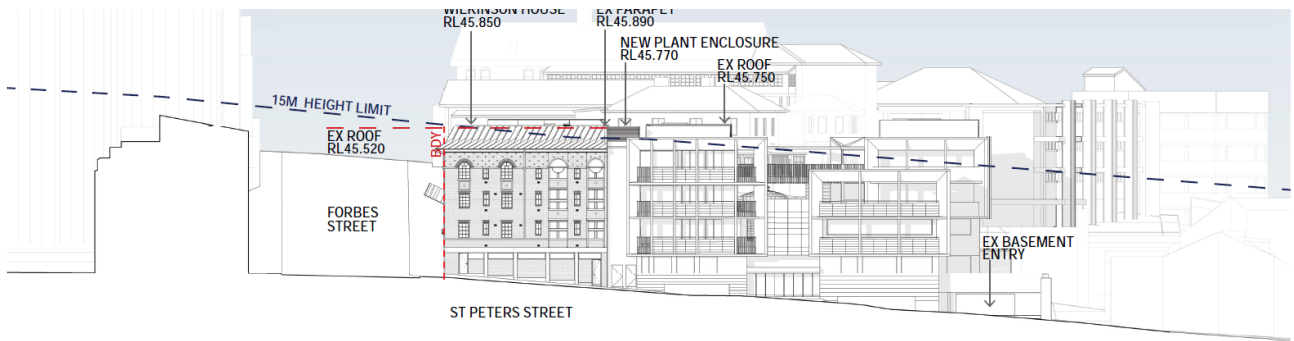
Figure 9 Forbes Street elevation



Source: smart design studio

- St Peters Street:
 - The area of height non-compliance along St Peters Street relates to a portion of the new roof form and the plant enclosure on top of the Joan Freeman building.
 - Similar to the existing roof form, the new copper roof also exceeds the 15m height limit by additional 330mm. The slight increase in height of 330mm is immaterial and the new roof form does not have a significant impact on bulk and scale
 - The proposed roof maintains the existing roof form and the increase in height is very minimal that it will not be noticeable from Forbes Street. The copper material is also sympathetic to the surrounding architectural context. Overall, the proposed built form is consistent with the scale of the buildings along St Peters Street.
 - The proposed new roof plant enclosure on top of the Joan Freeman building has the same RL as the existing carpark exhaust enclosure on Joan Freeman Building. The enclosure will be screened with acoustic louvers to minimise visual impact.

Figure 10 St Peters Street elevation



Source: smart design studio

View impact

The proposed detailed design of Wilkinson House, including the area of height non-compliance from the nominal roof height increase of 330mm and the plant enclosure has been designed with consideration on potential view impacts to the Sydney skyline and local character views from the public domain and private residential dwellings.

Massing images of the existing building and the proposed detailed design and associated view impact have been prepared by Virtual Ideas.

Horizon Apartments – from RL 42.5 and RL 48.5m:

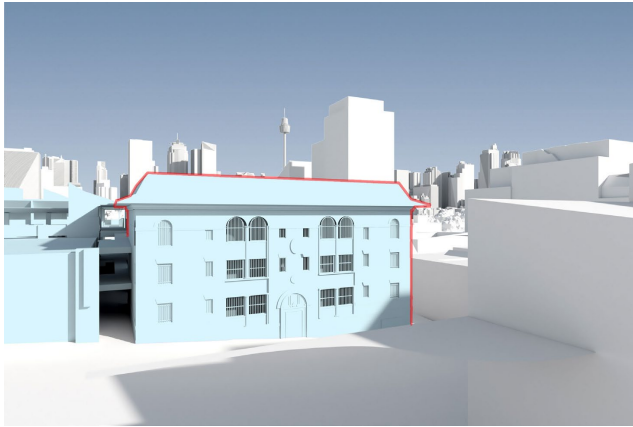
AT level 2 vantage point (RL 42.5) minor impact is associated with views towards non-iconic, regional views of the eastern CBD due to additional lift addition, which complies with the height limit. Iconic views towards

Centre Point Tower are not impacted. No view impact will result from the area of non-compliance at this location.

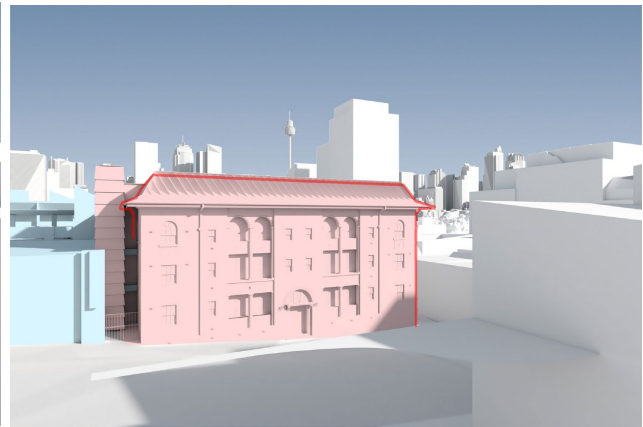
At Level 3 (RL 48.5), views towards the immediate non-iconic, regional views of the eastern CBD are improved slightly with the proposed roof form despite the height non-compliance.

Overall, the area of non-compliance does not obstruct the important views of the Sydney skyline or any iconic buildings for Horizon Apartment.

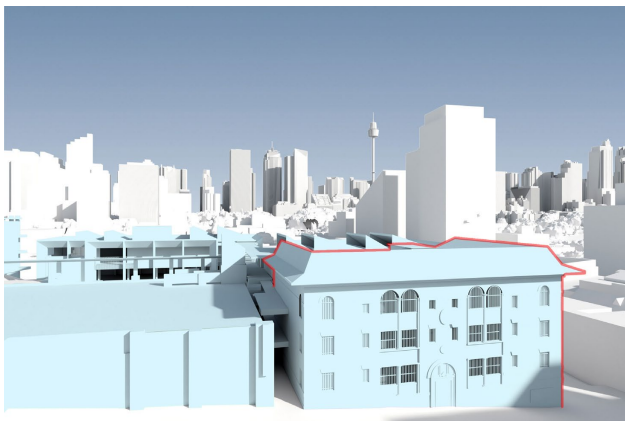
Figure 11 Comparison of proposed massing of Wilkinson House – from Horizon Apartment



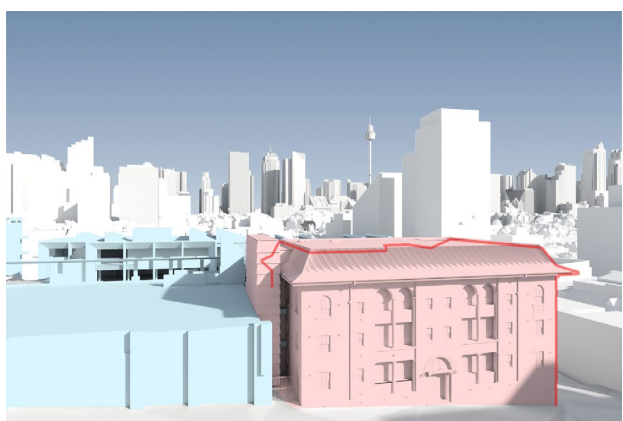
Existing view from RL 42.5



Proposed view from RL 42.5



Existing view from RL 48.5



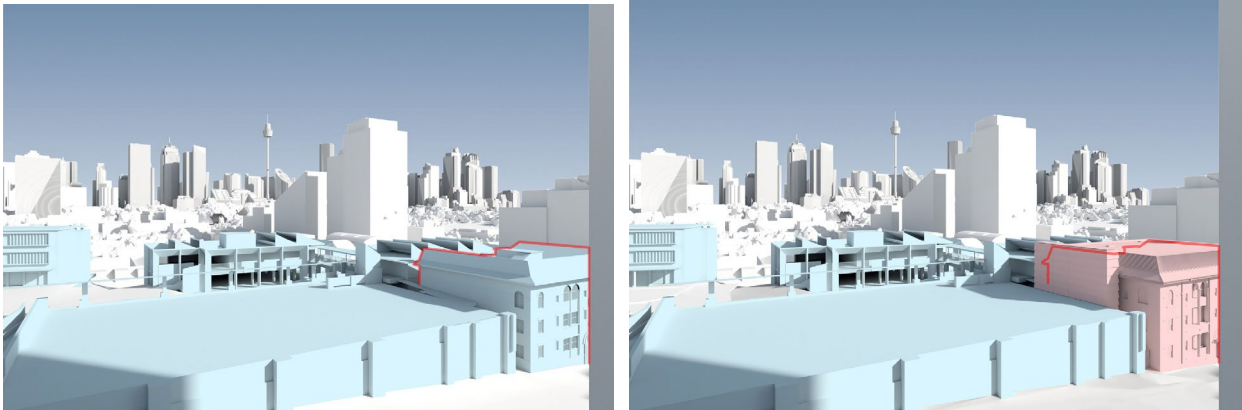
Proposed view from RL 48.5

Source: *Virtual Idea*

186 Forbes Street, Darlinghurst

The area of roof non-compliance slightly impacts non-iconic, regional views of the eastern CBD. However the area of non-compliance will not have a significant impact on views towards the Sydney CBD with iconic Sydney city skyline views maintained.

Figure 12 Comparison of proposed massing of Wilkinson House – from 186 Forbes Street North



Existing view from RL 51.6

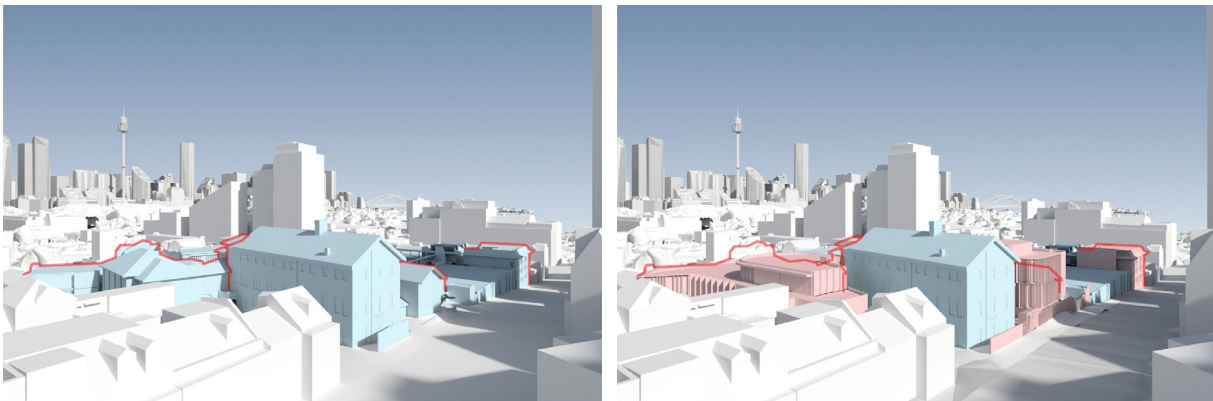
Proposed view from RL 51.6

Source: *Virtual Idea*

200 Forbes Street, Darlinghurst

Properties at 200 Forbes Street currently benefit from north western views towards the Sydney CBD including the centre-point tower and towards the Sydney harbour and portions of the Sydney Harbour Bridge. These views towards iconic elements and the broader Sydney city skyline are retained and not impacted by the area of non-compliance.

Figure 13 Comparison of proposed massing of Wilkinson House – from 200 Forbes Street



Existing view from RL 65

Proposed view from RL 65

Source: *Virtual Idea*

In summary, the potential view impacts associated with the area of non-compliance is negligible to nil, with view from neighbouring properties retained, including the protection of significant views to the Sydney skyline and iconic elements.

Heritage

The area of non-compliance will not impact on the heritage significance of the building. The proposed roof (including the area of non-compliance) maintains the overall outer roof form, ensuring that the architectural character of Wilkinson House is maintained. The roof addition is also located within the existing ridge height of the western parapet wall. The rooftop plant on top of Joan Freeman building will not impact on heritage significance of Wilkinson House.

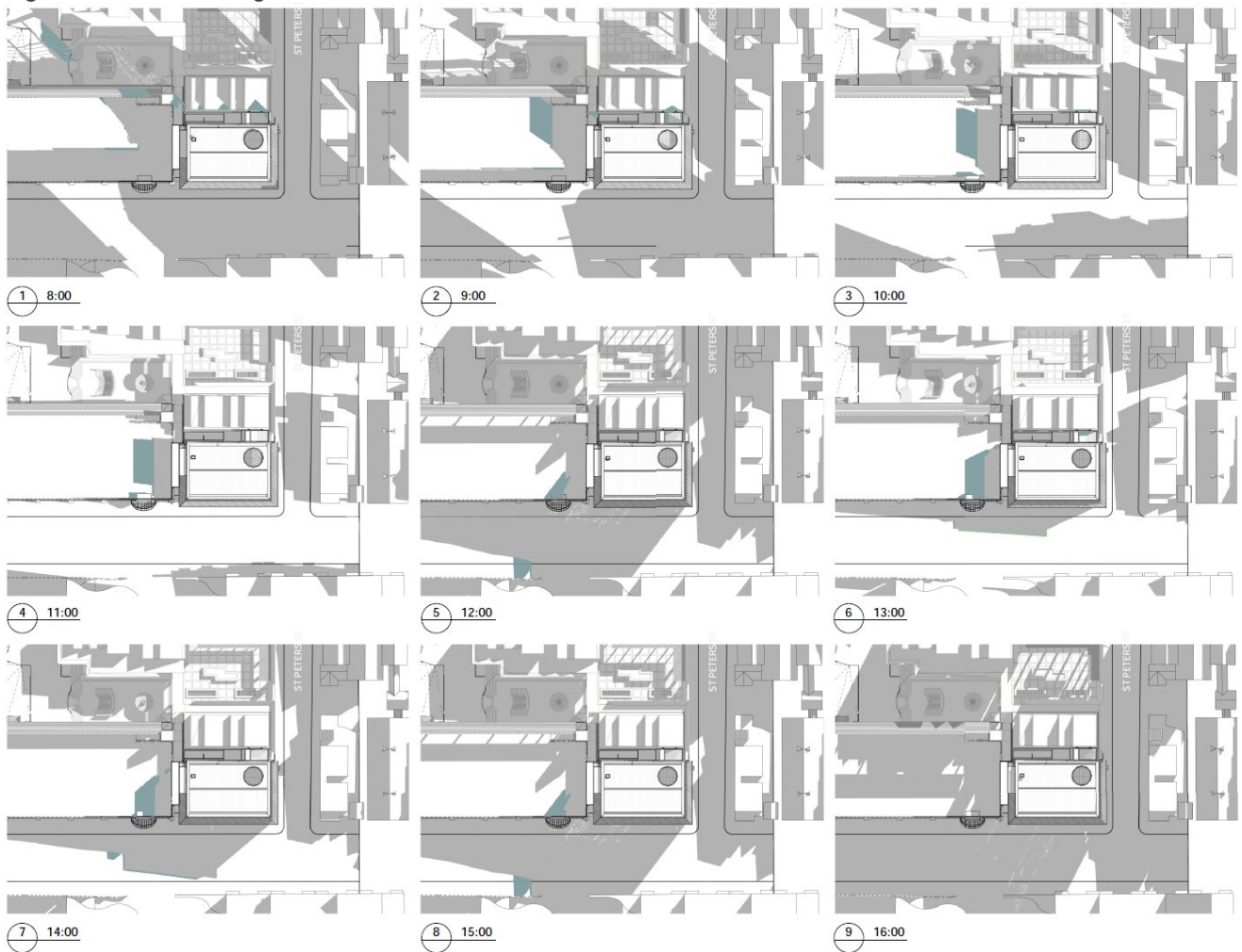
As the overall external character and form of Wilkinson House will only be minorly altered through the, area of non-compliance, it is considered that there are no detrimental impacts to either the SCEGGS Darlinghurst campus, the East Sydney HCA or the surrounding heritage items.

Other Environmental Impacts

- The area of non-compliance largely relates to the roof space and the rooftop plant enclosure.

- The new roof form incorporates vertical ribs, derived from original elevation drawings, which will shelter classrooms and roof top terraces, prevents overlooking whilst providing framed views out to the city beyond.
- The plant enclosure is screened to minimise acoustic impact and will not result in privacy impact.
- Compared to the existing built form, the proposed building will result in similar shadow impact to its surrounds. The additional shadow from the overall built form, which includes the areas of non-compliance falls within the SCEGGS campus and does not result in additional overshadowing to private open space of dwellings on Forbes Street from 9:00am to 3:00pm in mid-winter. This is demonstrated in the shadow diagrams in Figure 14 below.

Figure 14 Shadow Diagrams



Source: smart design studio

Accordingly, it is considered that there are sufficient environmental grounds to justify the proposed variation to the HOB control.

7.2.3. 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?

7.2.3.1. Clause 4.3 – Height of Building

A key element of considering a request to vary a development standard under Clause 4.6 of the SLEP 2012 is consideration of the underlying objectives of the development standard. Table 1 assesses the proposed height non-compliance against the relevant objectives of Clause 4.3 of the SLEP 2012.

Table 1 Clause 4.3 Assessment

Objectives	Proposal/Assessment
<p>a) <i>to ensure the height of development is appropriate to the condition of the site and its context,</i></p>	<p>Overall the proposed alteration and additions fully complies with the height control to the southern portion of the site and largely complies with the height control along Forbes Street, with minor exceedance of approx. 0.12m at the corner of the roof. The area of non-compliance is the same extent as the existing roof form. Therefore, the area of non-compliance can maintain the same development streetscape context.</p> <p>The area of height non-compliance along St Peters Street relates to a portion of the new roof form and the plant enclosure on top of the Joan Freeman building.</p> <p>Similar to the existing roof form, the new copper roof exceeds the 15m height limit by additional 330mm. The slight increase in height of 330mm is minor when compared to the existing building. The new roof form does not have a significant impact on bulk and scale</p> <p>The proposed roof maintains the existing roof form and the increase in height is very minimal that it will not be noticeable from Forbes Street. The copper material is also sympathetic to the surrounding architectural context. Overall, the built form is consistent with the scale of the buildings along St Peters Street.</p> <p>The proposed new roof plant enclosure on top of the Joan Freeman building has the same RL as the existing carpark exhaust enclosure on Joan Freeman Building. Accordingly, the proposed plant height is consistent with existing structure onsite. The enclosure will be screened with acoustic louvers to minimise visual impact.</p> <p>Despite the height non-compliance, the proposal complies with the maximum floor space ratio for the site and therefore represents a development of a density that has been envisioned for this site and locality.</p>

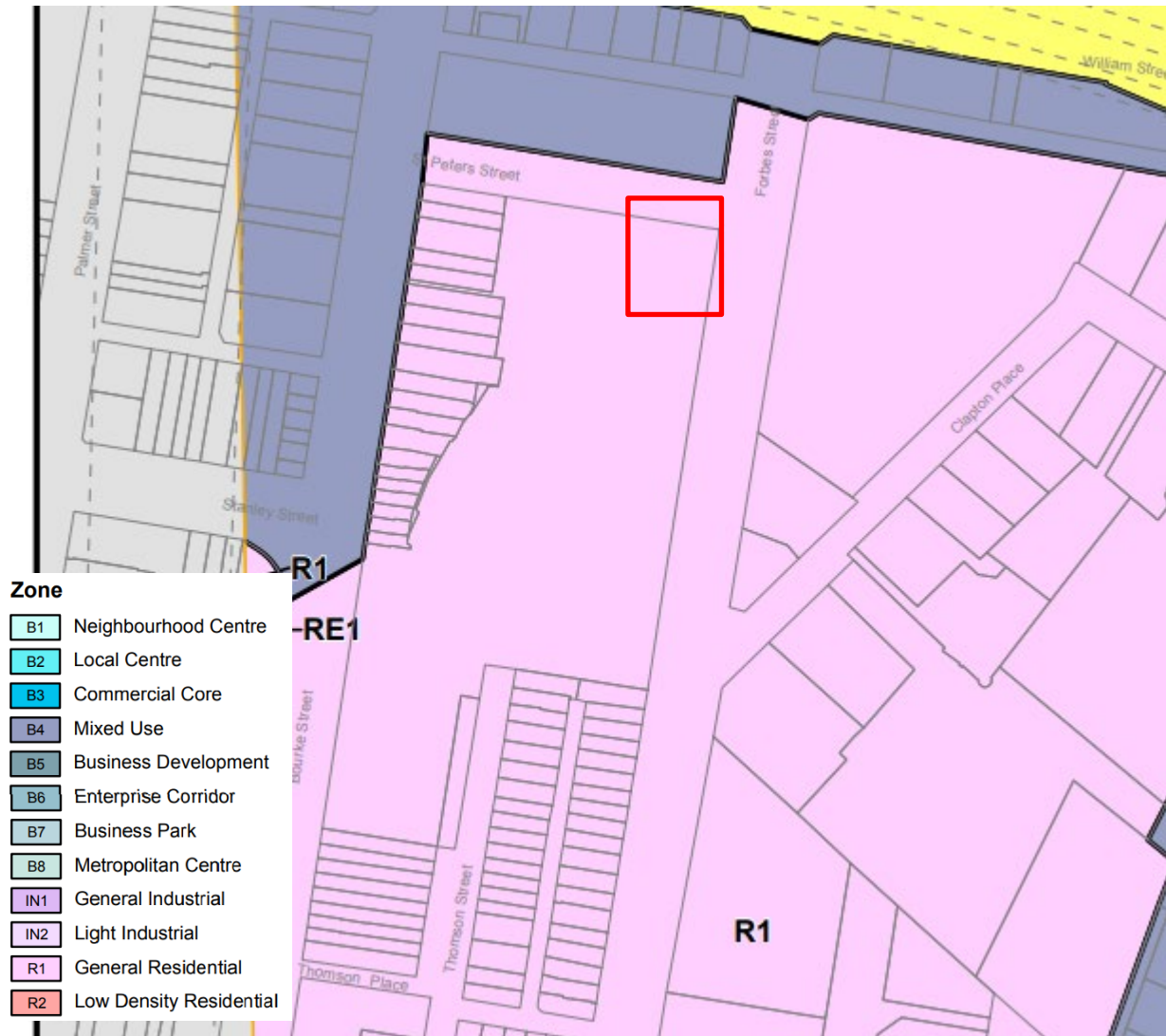
Objectives	Proposal/Assessment
<p>to ensure appropriate height transitions between new development and heritage items and buildings in heritage conservation areas or special character areas,</p>	<p>With the consideration of the height context across the wider SCEGGS campus, the area of non-compliance can be considered minor, and will remain consistent with condition of the site and its context,</p> <p>Under Sydney Local Environmental Plan 2012 (SLEP), the site is identified as local heritage item (I301):</p> <p>“SCEGGS including Barham, Church Building and Wilkinson House and their interiors and grounds”.</p> <p>The site is also within the East Sydney heritage conservation area (C13).</p> <p>The area of non-compliance will not impact on the heritage significance of the building. The proposed roof (including the area of noncompliance) maintains the overall outer roof form, ensuring that the architectural character of Wilkinson House is maintained. The roof addition is also located within the existing ridge height of the western parapet wall. The rooftop plant on top of Joan Freeman building will not impact on heritage significance of Wilkinson House.</p> <p>As the overall external character and form of Wilkinson House will only be minorly altered through the, area of non-compliance, it is considered that there are no detrimental impacts to either the SCEGGS Darlinghurst campus, the East Sydney HCA or the surrounding heritage items.</p>
<p>b) <i>to promote the sharing of views</i></p>	<p>As discussed in Section 7.2.7 of this statement, the potential view impacts associated with the area of non-compliance have varying degrees of impact, from nil and negligible. When compared to the existing Wilkinson House, the view from neighbouring properties is retained, including the protection of significant views to the Sydney skyline and iconic elements.</p>

Overall, the proposal is considered to be consistent with each of the relevant objectives of Clause 4.3 of the SLEP 2012.

7.2.3.2. Land Use Zones

The site is zoned R1 General Residential as identified within Figure 15.

Figure 15 Land Use Zoning Map



Source: RLEP 2012

Within the R1 Zone, 'educational establishment' and 'early education and care facility' which are permissible with development consent at the site.

The proposed height non-compliance is consistent with the relevant land use objectives for R1 General Residential zoned land as detailed within the SLEP 2012. This has been outlined in detail within Table 2.

Table 2 Consideration of Land Use Zones Objectives

Objectives	Proposal/Assessment
<i>To provide for the housing needs of the community.</i>	N/A
<i>To provide for a variety of housing types and densities.</i>	N/A
<i>To enable other land uses that provide facilities or services to meet the day to day needs of residents.</i>	The area of non-compliance will allow for building upgrades and alterations, so the building can comply with BCA, access and fire safety design requirements as well as general improvements to the quality of the educational facilities within Wilkinson House.

Objectives	Proposal/Assessment
	Overall, the proposal will provide non-residential land uses that provide improved educational facilities to meet the day to day needs of residents,
<i>To maintain the existing land use pattern of predominantly residential uses.</i>	The area of non-compliance forms part of an educational establishment, which will maintain the existing use pattern within the locality.

7.2.4. Clause 4.6(4)(b) – Concurrence of the Secretary has been Obtained

The concurrence of the Secretary has been obtained as required under clause 4.6(4)(b) and can be assumed in these circumstances.

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

The proposed non-compliance with the maximum HOB 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 and would be unlikely to result in an unacceptable precedent for the assessment of other development proposals.

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

The proposed development achieves the objectives of the HOB development standard and the land use zoning objectives despite the non-compliance.

There is no public benefit in maintaining strict compliance with the development standard as there are no unreasonable impacts that will result from the variation. Strict compliance with height standard will comprise the opportunity to provide the additional learning area and common space within the roof form. Strict compliance will also comprise the provision of air conditioning or result in the air conditioning units being located on the Wilkinson House roof, which will result in adverse heritage impact.

The benefit of the proposal is to facilitate a built form that is able to provide compliant and equitable access within the building and connect Wilkinson House to the wider campus. In addition, the area of non-compliance is able to provide for an improved educational facility with enhanced amenity, such as improved solar and ventilation and compliant floor to ceiling height.

Therefore, the benefits of the proposal outweigh any disadvantage and as such the proposal will be in the public interest. If the height standard was to be maintained, the benefits associated with the proposal will not be achieved.

7.2.7. Clause 4.6(5)(c) – Are there any other Matters Required to be Taken into Consideration by the Secretary Before Granting Concurrence?

There are no 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.

8. CONCLUSION

This Clause 4.6 variation has been prepared by Urbis Pty Ltd on behalf of the SCEGGS Darlinghurst Limited in support of a detailed SSD application (SSD-19989744) to Department of Planning, Industry and Environment (DPIE) for the adaptive re-use of Wilkinson House, including alterations and additions and located at 215 Forbes Street, Darlinghurst.

In accordance with Clause 4.6 of the SLEP 2012, the applicant recommends that compliance with the height development standard is not required for this development for the following reasons:

- The proposed alterations and additions will support the adaptive re-use of the Wilkinson House building. The development will facilitate the appropriate upgrades to the educational facilities throughout the building and will ensure compliance with modern BCA, access and fire safety standards.
- The SLEP 2012 prescribes a maximum HOB for the site of 15m. The proposal fully complies with the LEP height control at the southern portion and largely complies at the eastern portion (along Forbes Street), with minor height exceedance of approx. 0.12m, which relates to the same corner as the existing roof.
- Due to the sloping topography, the existing Wilkinson House building and the existing Joan Freeman building already exceeds the height control. The proposed Wilkinson House building height is 16.37m, which is 0.33m above the existing building height and 1.37m above the height limit. This represents 2% height increase when compared to existing building and 9.1% increase of building height development standard.

The proposed extension to Joan Freeman building has a height of 16.4m, which is 0.1m increase to the existing Joan Freeman building height and 1.4m above the height limit. This represents 0.6% height increase when compared to the existing building and 9.3% increase of building height development standard.

With consideration of the existing building height context across the wider SCEGGS campus, and the existing height non-compliance, the area of non-compliance can be considered as minor. This amount of height non-compliance results in a built form that is of a similar scale to other existing buildings located within the SCEGGS campus.

- The proposal is compliant with clause 4.6(3)(a) as well as the first and fourth method outlined by the above legal principles:
 - Strict compliance with the HOB development standard is unreasonable and unnecessary in the circumstances of the case as the general objectives of clause 4.3 of the SLEP 2012 and the R1 General Residential Zone have been achieved (as outlined in section 6.2.3 of this report).
 - The development standard has been virtually abandoned by consent authority through the issue of the past approvals for buildings that exceeds the height control and with consideration of the site topography and limited area.
 - There are sufficient environmental planning grounds to justify contravening the development standard for maximum HOB; there will be minimal environmental impacts stemming from the contravention of development standards, especially in regard to additional bulk, overshadowing, loss of views or negative built form outlook on the surrounding locality.
 - Despite the height non-compliance, the proposal complies with the maximum floor space ratio for the site and therefore represents a development density that has been envisioned for this site and locality.
- The area of non-compliance will not impact on the heritage significance of the building. The roof top addition is located within the existing ridge height of the western parapet wall. The rooftop plant on top of Joan Freeman building will not impact on heritage significance of Wilkinson House.
- The variation of the development standard will not raise any matter of significance for State or Regional environmental planning.

Based on the reasons outlined above and the contents contained throughout this Clause 4.6 Request, it is considered that maintaining strict compliance with the HOB development standard would be unreasonable and unnecessary, and therefore not be in the public interest.

Accordingly, it is concluded that this clause 4.6 request is well founded and that the particular circumstances of the case warrant flexibility in the application of the Building Height development standard as it applies to the site.

DISCLAIMER

This report is dated 3 November 2021 and incorporates information and events up to that date only and excludes any information arising, or event occurring, after that date which may affect the validity of Urbis Pty Ltd's (**Urbis**) opinion in this report. Urbis prepared this report on the instructions, and for the benefit only, of SCEGGS Darlinghurst Limited (**Instructing Party**) for the purpose of Clause 4.6 Request (**Purpose**) and not for any other purpose or use. To the extent permitted by applicable law, Urbis expressly disclaims all liability, whether direct or indirect, to the Instructing Party which relies or purports to rely on this report for any purpose other than the Purpose, and to any other person which relies or purports to rely on this report for any purpose whatsoever (including the Purpose).

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All surveys, forecasts, projections and recommendations contained in or associated with this report are made in good faith and on the basis of information supplied to Urbis at the date of this report, and upon which Urbis relied. Achievement of the projections and budgets set out in this report will depend, among other things, on the actions of others over which Urbis has no control.

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