

Clause 4.6 Variation Request

Redfern Place

600-660 Elizabeth Street, Redfern

Submitted to Department of Planning, Housing and Infrastructure
on behalf of Bridge Housing

SSD-51274973



'Gura Bulga'

Liz Belanjee Cameron

'Gura Bulga' – translates to Warm Green Country. Representing New South Wales.



'Dagura Buumarri'

Liz Belanjee Cameron

'Dagura Buumarri' – translates to Cold Brown Country. Representing Victoria.



'Gadalung Djarri'

Liz Belanjee Cameron

'Gadalung Djarri' – translates to Hot Red Country. Representing Queensland.

Ethos Urban acknowledges the Traditional Custodians of Country throughout Australia and recognises their continuing connection to land, waters and culture.

We pay our respects to their Elders past, present and emerging.

In supporting the Uluru Statement from the Heart, we walk with Aboriginal and Torres Strait Islander people in a movement of the Australian people for a better future.

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1.0 Introduction

1.1 Overview

This clause 4.6 Variation Request has been prepared by Ethos Urban on behalf of Bridge Housing. It is submitted to NSW Department of Planning, Housing and Infrastructure (DPHI) in support of a development application (DA) for a proposed mixed use development comprising four new buildings that provide social and affordable housing, social and disability support, a community facility and commercial uses on land at 600-660 Elizabeth Street, Redfern (the site).

Clause 4.6 of the Sydney Local Environmental Plan 2012 (SLEP) enables City of Sydney Council to grant consent for development even though the development contravenes the development standard. This Clause 4.6 Variation Request relates to the development standard for height under clause 4.3 of the SLEP and should be read in conjunction with the Environmental Impact Statement (EIS) prepared by Ethos Urban dated 28 June 2024.

The objectives of clause 4.6 are to provide an appropriate degree of flexibility in applying certain development standards, and to achieve better outcomes for and from development by allowing flexibility in particular circumstances. Clause 4.6(3) requires that development consent must not be granted to development that contravenes a development standard unless the consent authority is satisfied the applicant has demonstrated that:

- compliance with the development standard is unreasonable or unnecessary in the circumstances (clause 4.6(3)(a)), and
- there are sufficient environmental planning grounds to justify the contravention of the development standard (clause 4.6(3)(b)).

This document demonstrates that compliance with the building height development standard is unreasonable and unnecessary in the circumstances of the case and that the variation is minor, at just 0.49% for a small portion of a single building's parapet and slab, and there are sufficient environmental planning grounds to justify contravention of the development standard. As such, this document satisfies the provisions of clause 35B(2) of the *Environmental Planning and Assessment Regulation 2021* (EP&A Regulation).

This clause 4.6 Variation Request demonstrates that, notwithstanding the non-compliance with the height development standard:

- The proposed development achieves the objectives of clause 4.3 of the SLEP as:
 - The overall development responds to the existing and future character of the area and fits within the site's existing and future surrounding context.
 - The proposed development responds appropriately to surrounding heritage items and the height variation does not result in any additional overshadowing of Redfern Park and Oval between 9am and 3pm.
 - The overall development will have an acceptable impact on views from the surrounding public domain and nearby tall residential dwellings and the variation will not create any perceptible additional impacts to views.
 - The height exceedance remains appropriate for the context of the site and allows for appropriate height transitions from Central Sydney and Green Square Town Centre by not increasing the overall height of the tallest building on the site (S2).
 - The proposed development achieves the inferred objectives of Clause 6.59, since it contributes to achieving the objectives of the site-specific Planning Proposal.
- There are sufficient environmental planning grounds to vary the control in this instance because:
 - Despite the height variation, the development continues to be consistent with the objects of the EP&A Act.
 - The height exceedance does not result in any additional overshadowing of Redfern Park and Oval, the Walker Street Solar Plane and other residents surrounding the site.
 - The proposed development is consistent with the Planning Proposal objectives and desired future character, despite the variation.
 - The variation results in development that provides appropriate transitions in height across the site, from the taller buildings and sloping topography to the east with the lower scale surrounding residential dwellings and open space to the south and west.

Therefore, the DA may be approved with the variation as proposed in accordance with the flexibility allowed under clause 4.6 of the SLEP.

It is also of note that under the *Environmental Planning and Assessment Act 1979*, s4.33(1), a consent authority must not:

- a) refuse its consent to a Crown development application, except with the approval of the Minister, or
- b) impose a condition on its consent to a Crown development application, except with the approval of the applicant or the Minister.

1.2 Legal Guidance

The Land and Environment Court has established a set of factors to guide assessment of whether a variation to development standards should be approved. The original approach was set out in the judgment of Justice Lloyd in *Winten Property Group Ltd v North Sydney Council* [2001] 130 LGERA 79 at 89 in relation to variations lodged under State Environmental Planning Policy 1 – Development Standards (SEPP 1). This approach was later rephrased by Chief Justice Preston, in the decision of *Wehbe v Pittwater Council* [2007] NSWLEC 827 (Wehbe). While these cases referred to the former SEPP 1, the analysis remains relevant to the application of Clause 4.6(3)(a). Further guidance on Clause 4.6 of the Standard Instrument has been provided by the Land and Environment Court in a number of decisions, including:

- *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118;
- *Turland v Wingecarribee Shire Council* [2018] NSWLEC 1511;
- *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1009;
- *Micaul Holdings Pty Limited v Randwick City Council* [2015] NSWLEC 1386; and
- *Moskovich v Waverley Council* [2016] NSWLEC 1015.

In accordance with the above requirements, this Clause 4.6 Variation Request:

- identifies the site and proposed development (**Section 2.0**);
- identifies the development standard to be varied (**Section 3.0**);
- establishes that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case (**Section 4.0**); and
- demonstrates there are sufficient environmental planning grounds to justify the contravention (**Section 5.0**).

2.0 Site and Proposed Development

2.1 Site Context

600-660 Elizabeth Street (the site) is situated in the Redfern Estate within the suburb of Redfern and the City of Sydney local government area (LGA).

Redfern Estate is a precinct to the south of Sydney's CBD that is known for its Aboriginal community and rich history of social and public housing in urban Sydney, as well as being a thriving cultural centre of arts, entertainment, retail and startup businesses. In addition to the redevelopment at the subject site which was previously occupied by public housing, Redfern is experiencing extensive growth along the Innovation Corridor, including the Redfern North Eveleigh Mixed-Use Renewal Precinct, Waterloo Social Housing Estate and the Waterloo Metro transport and over-station development.

The site's locational context is provided in **Figure 1**.

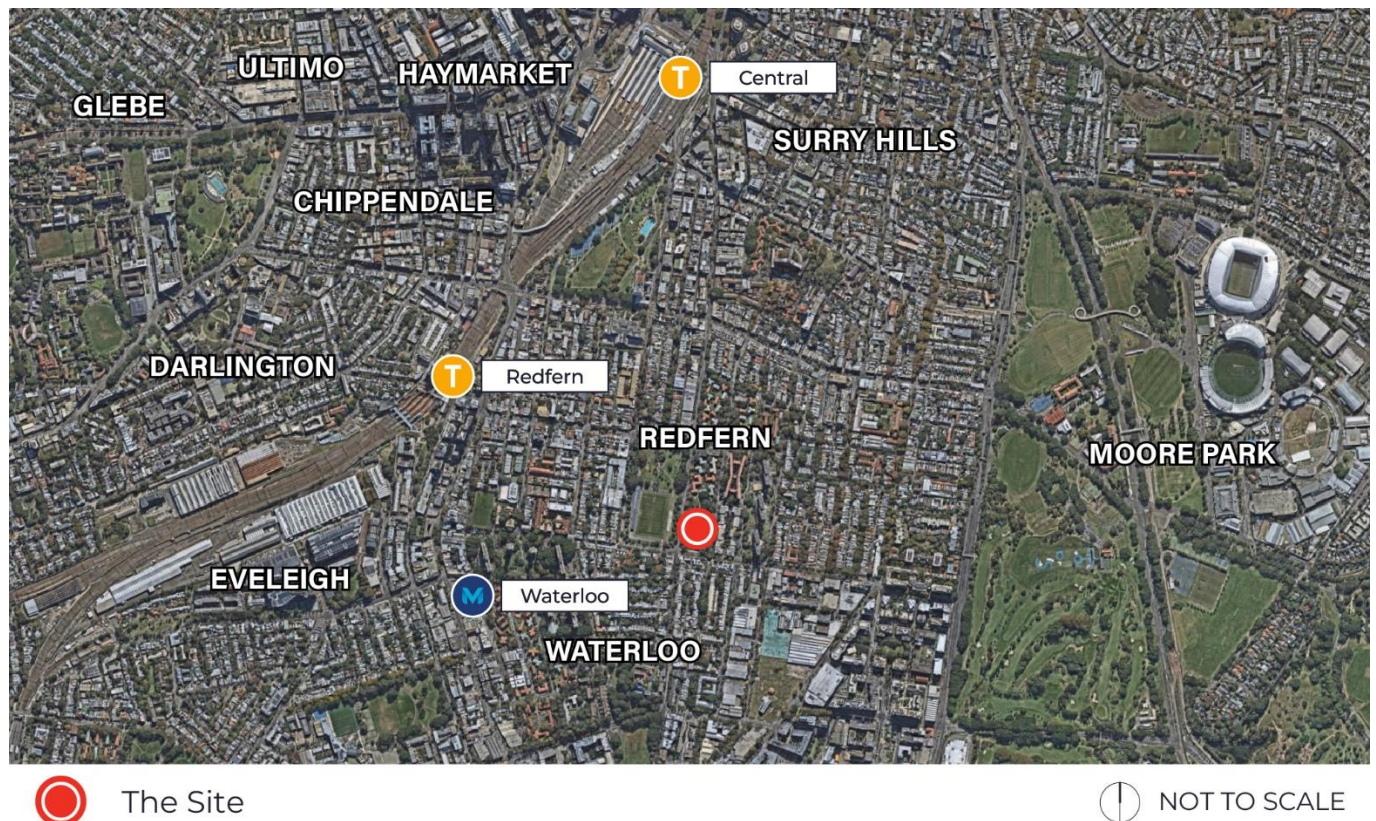


Figure 1 Site Context Map

Source: Nearmap and Ethos Urban

2.2 Site Description

The site is legally described as Lot 1 DP1249145 and is rectangular in shape covering an area of approximately 10,850m². It has a frontage of approximately 145m to Elizabeth Street to the west, 75m to Phillip Street to the south, 145m to Walker Street to the east and 75m to Kettle Street to the north.

The site is largely partially vacant (approximately 70% of the entire site). Buildings to the site's southern portion are currently occupied by the Policy Citizens Youth Club (PCYC) South Sydney and for recreational purposes.

A site aerial map is provided in **Figure 2**.



 The Site

 NOT TO SCALE

Figure 2 Site Aerial Map

Source: Nearmap and Ethos Urban

2.3 Description of the Proposed Development

The SSDA seeks consent for the detailed design, construction and operation of a mixed use development comprising four new buildings that provide social and affordable housing, a community facility and commercial uses.

Specifically, this development application seeks consent for the following:

- demolition of existing buildings;
- tree removal;
- bulk earthworks including excavation;
- construction of a one (1) three (3) storey community facility building (Building S1);
- construction of two (2) residential flat buildings (Buildings S2 and S3) up to 14 and 10 storeys respectively comprising a mixture of social and affordable housing;
- construction of one (1) five (5) storey mixed use building (Building S4) comprising commercial uses on the ground level and social and disability support housing above;
- construction of one (1) basement level below Buildings S2, S3 and part of S4 accessible from Kettle Street; and
- site-wide landscaping and public domain works including north-south and east-west pedestrian through-site link and dedications for footpath widening along Elizabeth Street and Phillip Street.

A photomontage of the proposed development is shown at **Figure 3**.



Figure 3 *Proposed Development Photomontage (Overall Site)*

Source: Hayball, Silvester Fuller and Architecture AND

3.0 Planning instrument, development standard and proposed variation

A summary of the environmental planning instrument (EPI), development standard and proposed variation is summarised in **Table 1**.

The variation is the result of a very small portion of the Building S3 roof level slab and parapet protruding up to 0.32m above the building height standard (0.49%) as shown in **Figure 7**. The reason for the variation is predominantly related to the structural and servicing requirements being able to be accommodated in the design of the building, which results in an extremely minor height variation.

Table 1 Planning instrument, development standard and proposed variation

Matter	Comment
Environmental planning instrument (EPI) sought to be varied	Sydney Local Environmental Plan 2012 (SLEP)
The site's land use zone	R1 General Residential
Development standard sought to be varied	<p>Clause 4.3 Height of buildings</p> <p>The objectives of this clause are as follows:</p> <ul style="list-style-type: none"> (a) to ensure the height of development is appropriate to the condition of the site and its context, (b) to ensure appropriate height transitions between new development and heritage items and buildings in heritage conservation areas or special character areas, (c) to promote the sharing of views outside Central Sydney, (d) to ensure appropriate height transitions from Central Sydney and Green Square Town Centre to adjoining areas
Type of development standard	Numerical development standard
Numeric value of the development standard in the EPI	RL64.8m (map extract provided in Figure 4).
Difference between the existing and proposed numeric values. Variation percentage between the proposal and the EPI	<p>The proposed maximum height of building is RL65.12m which exceeds the maximum building height control of RL64.8.</p> <p>The proposal exceeds the maximum RL64.8m by 0.32m, which is a variation of 0.49%.</p>
Visual representation of the proposed variation	Refer to Figure 4 to Figure 7 .

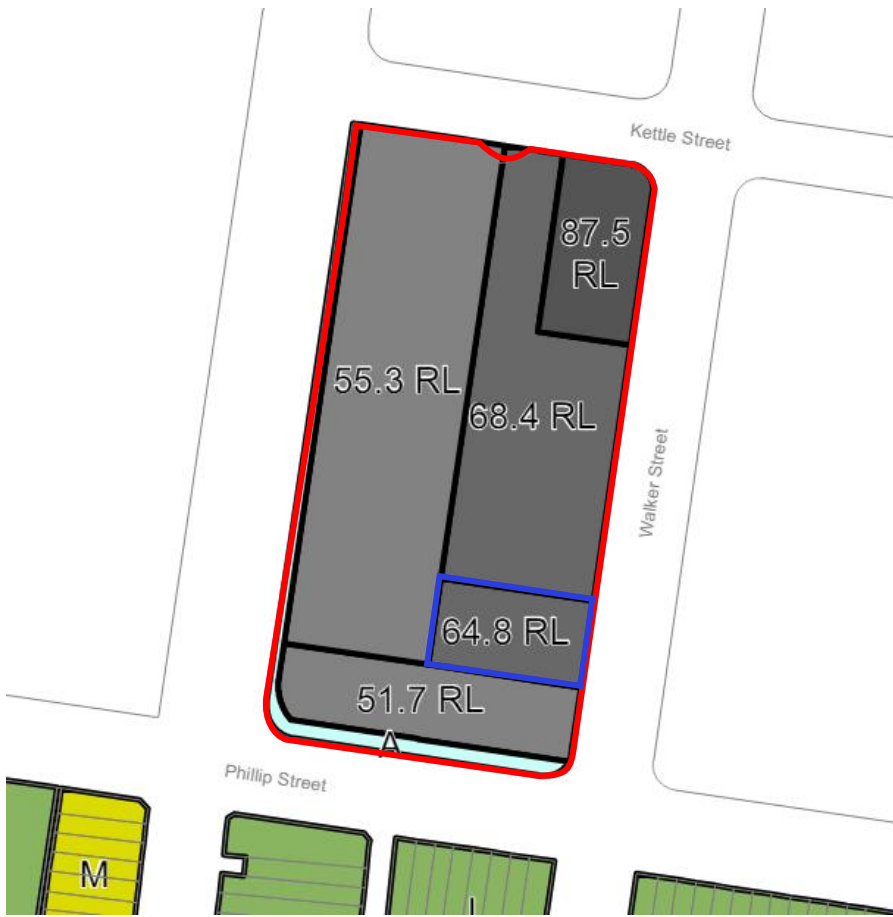


Figure 4 Extract of Height of Buildings Map (site outlined in red, and approximate location of the building height variation outlined in blue)

Source: NSW Legislation

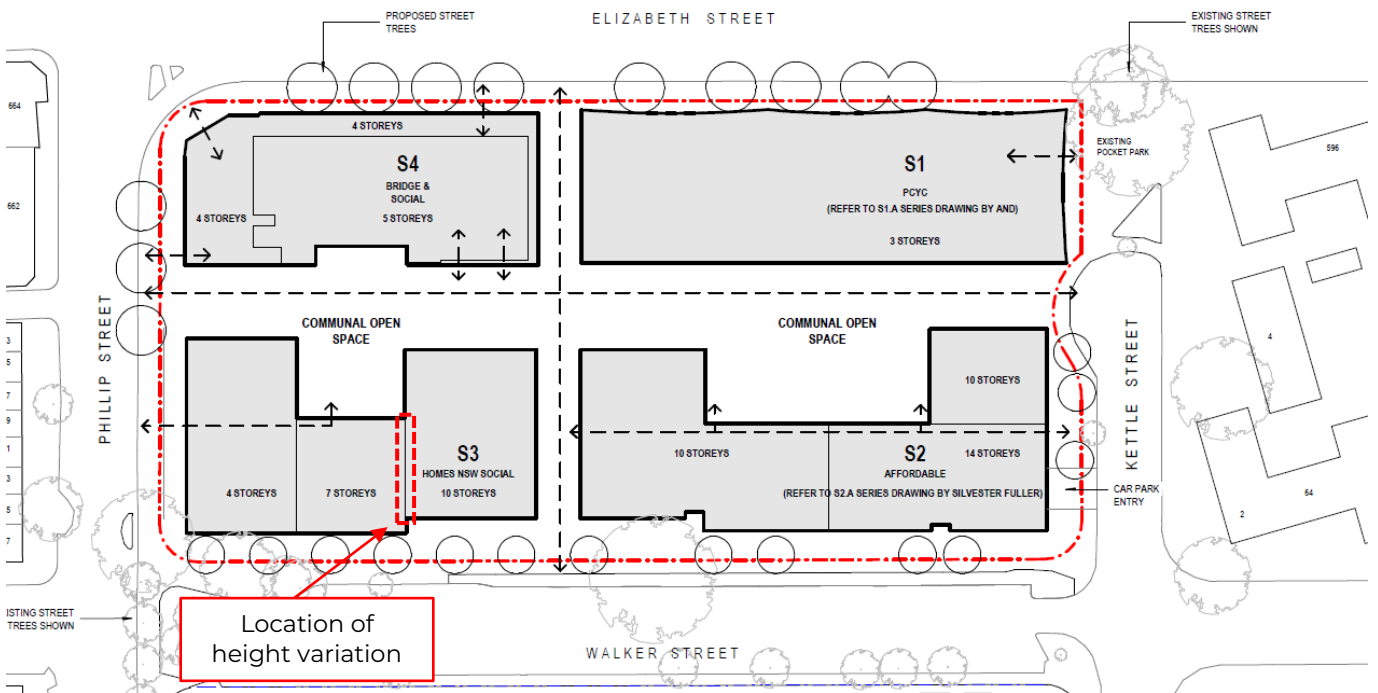


Figure 5 Proposed site layout showing each building and location of height variation

Source: Hayball

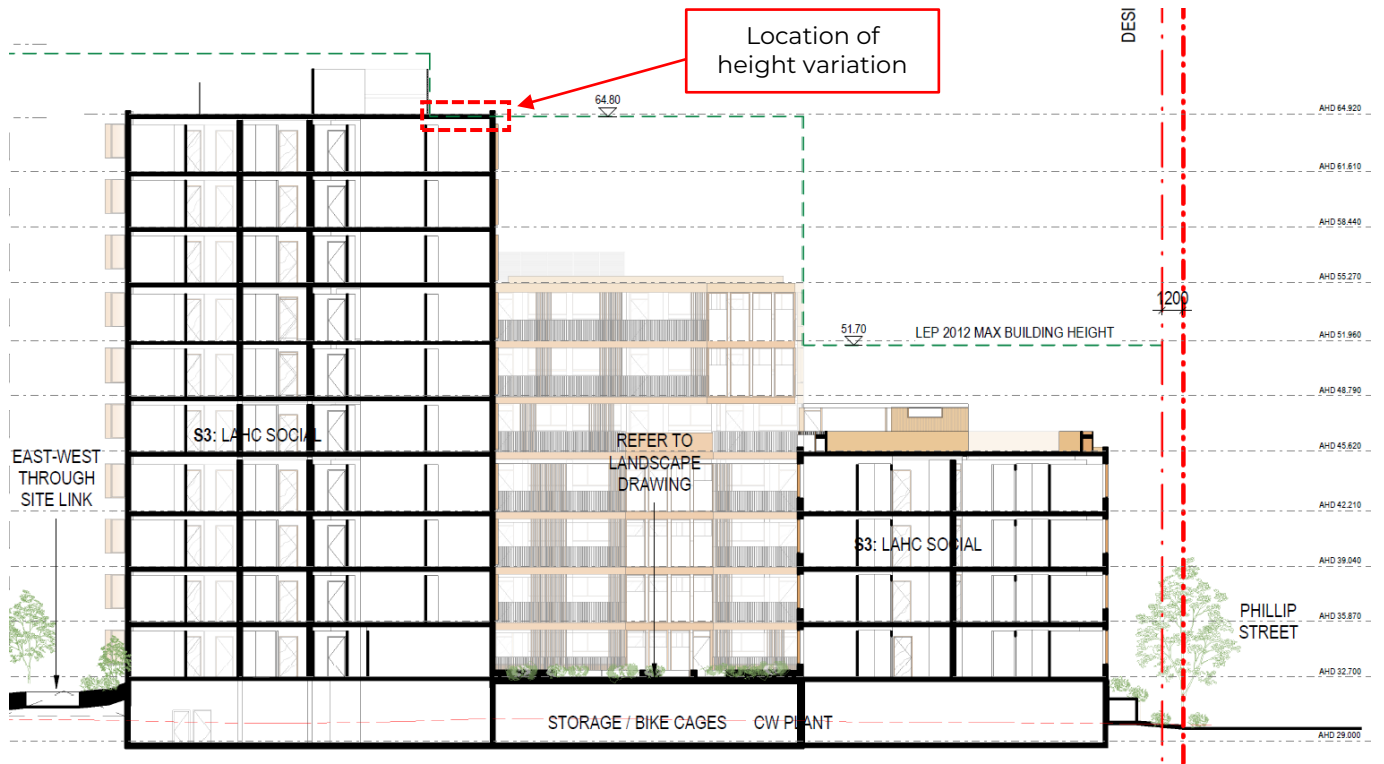


Figure 6 Section Drawing of Building S3, LEP building height standard shown in green

Source: Hayball

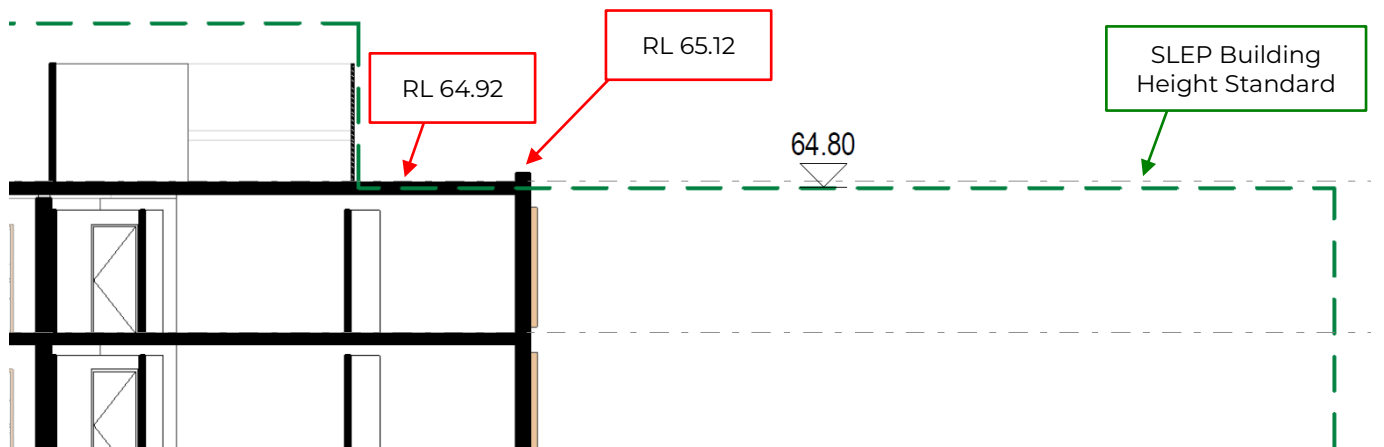


Figure 7 Close-up Section Drawing of Building S3, Showing Variation and LEP building height standard

Source: Hayball

4.0 Justification for Contravention of the Development Standard

Clause 4.6(3) of the SLEP provides that:

4.6 Exceptions to development standards

- (3) Development consent must not be granted for development that contravenes a development standard unless the consent authority is satisfied the applicant has demonstrated that:
- (a) compliance with the development standard is unreasonable or unnecessary in the circumstances, and
 - (b) there are sufficient environmental planning grounds to justify the contravention of the development standard.

Assistance on the approach to justifying a contravention to a development standard is also to be taken from the applicable decisions of the NSW Land and Environment Court in:

1. *Wehbe v Pittwater Council* [2007] NSW LEC 827 (*Wehbe*);
2. *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1009 (*Four2Five*);
3. *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 (*Initial Action*)

Role of the consent authority

The role of the consent authority in considering this request for a clause 4.6 variation has been explained by the NSW Court of Appeal in *Initial Action*. This requires the consent authority being satisfied that the applicant's written request has adequately addressed the matters in clause 4.6(4)(a)(i).¹

The consent authority is required to form this opinion first before it considers the merits of the DA and it can only consider the merits of the DA if it forms the required satisfaction in relation to the matter. In particular, the consent authority needs to be satisfied that there are sufficient environmental planning grounds to grant consent and that the contravention of the standard is justified.

This document provides the basis for the consent authority to reach this level of satisfaction. The relevant matters contained in clause 4.6 of the SLEP with respect to the height of buildings development standard, are each addressed below, including with regard to the above decisions.

4.1 Clause 4.6(3)(a): Compliance with the development standard is unreasonable or unnecessary in the circumstances

In *Wehbe*, Preston CJ of the Land and Environment Court provided relevant assistance by identifying five traditional ways in which a variation to a development standard had been shown as unreasonable or unnecessary. However, it was not suggested that the types of ways were a closed class.

While *Wehbe* related to objections made pursuant to *State Environmental Planning Policy No. 1 – Development Standards* (SEPP 1), the analysis can be of assistance to variations made under clause 4.6 where subclause 4.6(3)(a) uses similar language to clause 6 of SEPP 1 (see *Four2Five* at [61] and [62]).

As the language used in subclause 4.6(3)(a) of the SLEP is essentially the same as the language used in clause 6 of SEPP 1, the principles contained in *Wehbe* are of assistance to this clause 4.6 Variation Request.

The five methods outlined in *Wehbe* include:

- The objectives of the standard are achieved notwithstanding non-compliance with the standard (**First Method**).
- The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary (**Second Method**).
- The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable (**Third Method**).

¹ Clause 4.6(4)(a)(i) has since been repealed. The note under clause 4.6(3) references the EP&A Regulation which requires a development application for development that proposes to contravene a development standard to be accompanied by a document setting out the grounds on which the applicant seeks to demonstrate the matters in clause 4.6(3)(a) and (b).

- 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 (**Fourth Method**).
- The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone (**Fifth Method**).

This clause 4.6 variation request establishes that compliance with the development standard is unreasonable or unnecessary in the circumstances of the proposed development because the objectives of the standard are achieved and accordingly justifies the variation to the height development standard pursuant to the first Method.

4.1.1 The objectives of the standard are achieved notwithstanding non-compliance with the standard

The objectives of the development standard contained in clause 4.3 of the SLEP are:

- (a) to ensure the height of development is appropriate to the condition of the site and its context,*
- (b) to ensure appropriate height transitions between new development and heritage items and buildings in heritage conservation areas or special character areas,*
- (c) to promote the sharing of views outside Central Sydney,*
- (d) to ensure appropriate height transitions from Central Sydney and Green Square Town Centre to adjoining areas,*
- (e) in respect of Green Square—*
 - (i) to ensure the amenity of the public domain by restricting taller buildings to only part of a site, and*
 - (ii) to ensure the built form contributes to the physical definition of the street network and public spaces.*

The site specific LEP clause, Clause 6.59, does not have objectives listed in the SLEP. Notwithstanding, the objectives of the clause can be inferred from the Planning Proposal which established the site-specific clause. The objectives of the Planning Proposal were as follows—

Introduce new planning controls for the site under the Sydney LEP 2012

Facilitate development of the site for new social and affordable housing

To deliver a high-quality, predominately residential development, supported with a range of small-scale neighbourhood uses, that will renew the site and contribute to local character

Provide floor space for the continued operation of the Police Citizens' Youth Club

To facilitate development that responds to its context and achieves a high level of amenity to neighbouring properties; and

To ensure no overshadowing to Redfern Park.

The proposed development achieves the above objectives as described below.

Objective (a): to ensure the height of development is appropriate to the condition of the site and its context

The height of the development has been designed so that it is appropriate to the condition of the site and context, for the reasons described below.

Relationship to Redfern Park and Oval and Phillip Street Residence

Redfern Park and Oval, which are large areas of open space comprising minimal built form, are located immediately to the west of the site across Elizabeth Street. The proposed development has been designed to respond to these low scale open spaces. Specifically, the proposed buildings step down in height towards Elizabeth Street, with S1 being three-storeys tall and S4 being five-storeys tall, both buildings complying with the maximum SLEP height limit. Further, the proposed development as a whole does not cause any additional overshadowing of Redfern Park between 9am and 3pm, in accordance with the SLEP (Clause 6.59) and Design

Guide. Shadow diagrams for 21 June are provided in **Figure 8**, showing no additional overshadowing mid-winter (which is the worst-case scenario).

The stepped form of Building S3 to the south was implemented to preserve sunlight to Phillip Street residences with north facing windows. As can be seen below, the proposed development inclusive of the height variation does not impact on the Phillip Street residences beyond 9am.

The minor height variation to S3 does not impact the interface with Redfern Park since it is minor in extent and located away from Elizabeth Street where it would have minimal impact to the park. The variation also does not result in any overshadowing of Redfern Park.



Figure 8 Morning shadow diagrams for the proposed development, 21 June (mid-winter)

Source: Hayball

Alignment with Planning Proposal (PP-2020-456)

The site subject to a Planning Proposal that implemented site-specific controls to facilitate the redevelopment of the site. This Planning Proposal was gazetted in February 2022 and the appropriate height and density for the future redevelopment of the site was established.

Proposed Buildings S1, S2 and S4 all comply with the applicable maximum height standards. Further, Building S3 is separated into three volumes to ensure a stepped height is provided to transition from the taller Building S2 down to the surrounding low-rise terraces and Building S4. Two of the Building S3 volumes comply with the applicable height standard. As such, the proposed variation is restricted to a very small portion of the development (a single element of Building S3), is not on the tallest part of the building, and is very minor in extent (less than 1%). The stepping down in height as per the SLEP 2012 is also intended to maintain solar access to the nearby terraces on the southern side of Phillip Street. The proposed height for S3 has carefully considered solar access to the front windows of these terraces and is compliant with the relevant detailed Design Guide control. As is shown in **Figure 6**, the proposed height of the other two building elements is well below the SLEP 2012 height limit to ensure this solar access is retained.

The proposed development is therefore considered to be of a height and density that is consistent with that envisaged at the Planning Proposal stage, notwithstanding the minor variation to height for a portion of Building S3.

Relationship to broader surrounding context

The locality currently comprises a mix of medium to high density residential apartments and terrace housing ranging from 3 storeys to 10 storeys on Kettle Street (**Figure 9**) and up to 17 storeys at Poet's Corner on Morehead Street (**Figure 10**). The heights of existing surrounding building heights in storeys are provided at **Figure 11**. This image shows that there are some tall buildings surrounding the site, including Poet's Corner which is up to 17-storeys and the Waterloo Estate towers which are up to 32-storeys in height – both significantly taller than the proposed development. To the south of the site is a lower context, generally two-storey terrace housing with a height limit control of 9m.

Further, there are several nearby future developments that propose tall heights, including:

- Waterloo Metro Quarter OSD (Over-Station Development) - 23, 25 and 29 storeys.

- Waterloo Social Housing Estate Redevelopment – includes four (4) tall buildings between 2 and 33 storeys high.

A map illustrating the future context of the site's surrounding area is provided in **Figure 12**.

The proposed development has been designed to respond to the existing and future character of the precinct with regard to height, bulk and scale. Specifically, the proposed heights on the overall site have been designed to step down from 14-storeys near the higher existing buildings of Poet's Corner in the east towards Phillip Street and Redfern Park down to five and three storeys. The proposed minor variation to part of Building S3 does not impact the relationship of the proposed development with the surrounding building heights since it is minor in nature and is located at a central height in the proposed stepped form – not the overall maximum height of the development.

Therefore, the proposal is considered to be of a height that is consistent with existing and future surrounding development.



Figure 9 Residential apartments on Kettle Street

Source: Ethos Urban



Figure 10 Residential apartments on Morehead Street

Source: Ethos Urban

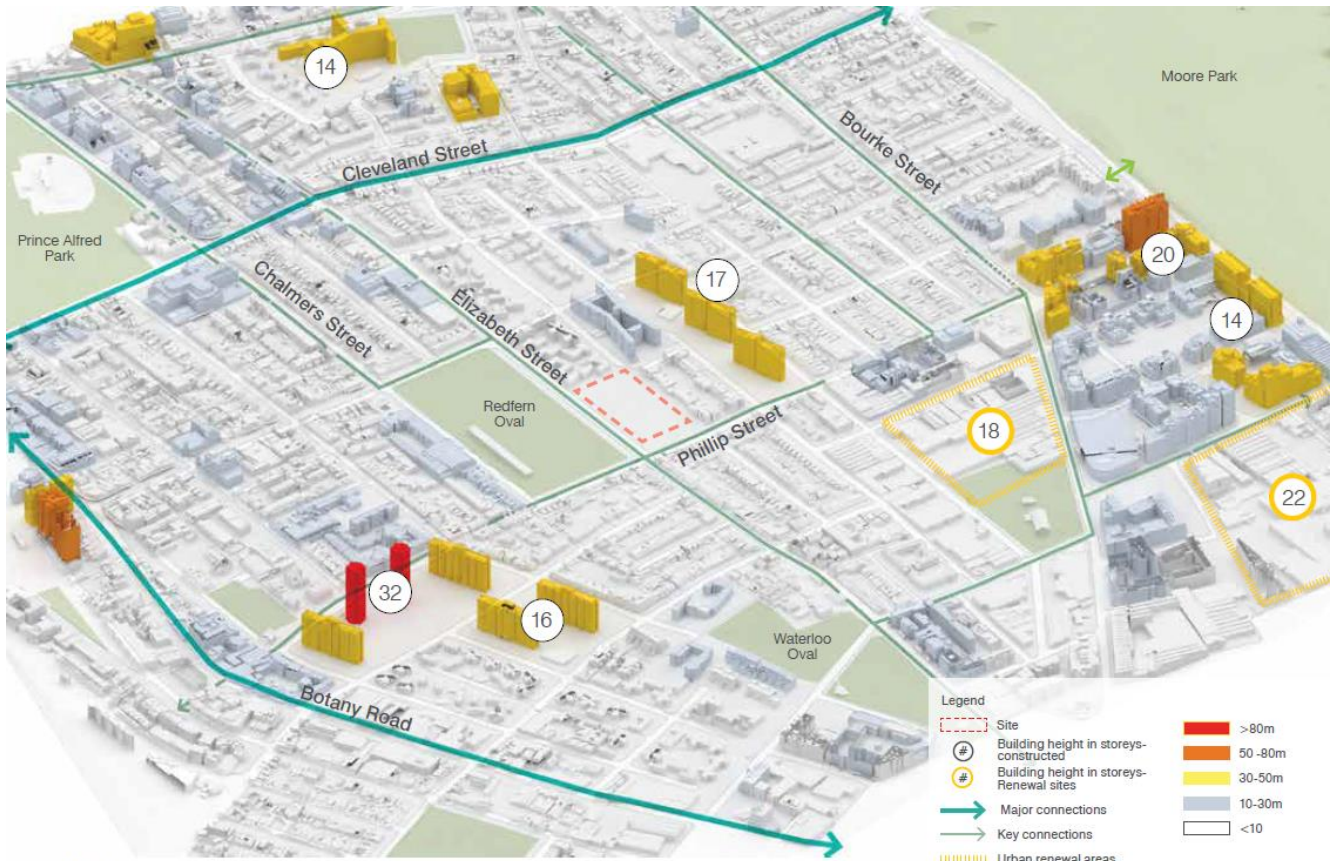


Figure 11 Contextual analysis of surrounding building heights

Source: Architectus



Figure 12 Site Surrounding Area Future Context

Source: Ethos Urban

Consistency with the desired future character for the site

As abovementioned, The Guide supplements the provisions of the SLEP by providing more detailed provisions to guide development at the site.

Specifically, Part 2.1 provides a future character statement. An assessment of the proposed development against the future character statement is provided in below.

Table 2 Assessment against the future character statement

Future Character Statement	Assessment
The future development has:	-
(a) substantial affordable housing occupying the land	<p>The proposed development provides 100% affordable and social housing, totalling 355 dwellings. Specifically:</p> <ul style="list-style-type: none"> • 147 social housing dwellings. • 197 affordable housing dwellings. • 11 specialist disability accommodation dwellings (including a carers unit). <p>The proposed variation facilitates the above apartments being realised and constructed in S3.</p>
(b) a PCYC or similar community facility on site	<p>A community facility, intended for use by PCYC, is proposed in Section 1 (S1) of the development. This is unaffected by the proposed variation.</p>
(c) very high levels of environmental performance including PV arrays that supply substantial energy, smart use of water and passive design features like external sun access and shading and natural cross ventilation suitable for Sydney’s climate	<p>The proposed development will provide high levels of environmental performance through the provision of:</p> <ul style="list-style-type: none"> • Photovoltaic panels on the rooftop of Building S4 for on-site renewable energy generation. This energy will be used for the centralised domestic hot water heat pumps, all common area lighting and ventilation, lifts and the commercial office space energy demand. • Water sensitive urban design including: <ul style="list-style-type: none"> - Centralised rainwater capture tank will be installed to retain water for irrigation, complemented by sensor-based irrigation systems adjusting watering schedules based on weather and soil conditions. - Rainwater is captured from non-trafficable roof surfaces for landscape irrigation, conserving water resources. - Water leak detection systems are installed throughout the premises, reporting to the Building Management System (BMS) to promptly address any issues. - High-efficiency WELS water fixtures and fittings will be installed to help minimize water usage. • Maintaining and replacing street trees will be to provide shade, mitigate heat, and enhance biodiversity. • Façade shading and balcony depths are optimised to maximise passive design solutions, providing both shade and ample daylight while reducing cooling energy use. <p>The proposed development will achieve the following ESD targets and benchmarks:</p> <ul style="list-style-type: none"> • All Development: <ul style="list-style-type: none"> - 5-star Green Star Buildings Design and As Built • Residential Development: <ul style="list-style-type: none"> - BASIX Energy 62 + 5 - BASIX Water 40 - NatHERS Thermal Comfort 7 Star average • Commercial Areas <ul style="list-style-type: none"> - 5.5-star NABERS Energy rating - 4.5-star NABERS Water rating <p>The proposed variation does not impact the above being achieved.</p>

Future Character Statement	Assessment
(d) a rich landscape setting with substantial tree canopy cover and landscaping that screens walls that protect the interiors of buildings from flooding	The landscape design underwent a thorough design review as part of the Design Excellence Process. As a result, the proposed development provides comprehensive, site-wide landscaping that screens walls and a substantial tree canopy that exceeds the landscape and deep soil area targets for the site, This is described further in the Landscape Plans and Landscape Report appended to the EIS. The site has been designed to comply with the relevant flood planning levels as per the Flood Impact Assessment prepared by BG&E as part of the EIS, including raising the central publicly accessible area of the site to RL32.10. Flood storage is also provided beneath building S4 to ensure floodwaters are conveyed appropriately in a flood event. The proposed variation does not impact the landscape design or flood characteristics of the development.
(e) building heights that maintain solar access to Redfern Park throughout the year	As shown in Figure 8 and described above, the proposed buildings, inclusive of the height variation, do not overshadow Redfern Park and Oval between 9am and 3pm. The minor extent of the variation and its location away from the Elizabeth Street frontage mean that solar access is retained to the park.
(f) a permeable pattern of walking connections through the site that also provide on-site at grade servicing	The development includes two through site links located in north south and east west directions as envisioned throughout The Guide. Servicing is provided from within the basement, per consultation and advice from the Design Review Panel and the City of Sydney technical staff, resulting in a fully pedestrian and cycle environmental within the site. Therefore, the proposed variation does not impact the walking connections provided at the site.
(g) commercial, community and/or retail uses fronting Elizabeth Street at ground level	The proposed development provides commercial and community uses fronting Elizabeth Street. The proposed variation does not impact the provision of these uses at the Elizabeth Street frontage.
(h) a rich variety of architectural approaches, diverse apartment types, building heights and form in a collection of well-constructed, low maintenance buildings	The proposed overall development provides a range of building types, with heights ranging from RL51.7 to RL87.5. A tailored design excellence process resulting in three architects and a landscape architect designing the project means there will be a rich variety of architecture at the site. The development also has considered the construction and maintenance of the buildings throughout the design review process to ensure design excellence can be achieved. This includes the provision of natural materials for the exterior of the building that are able to weather and age gracefully over time, which is critical to the success of affordable and social housing development that will be owned long-term and in single ownership. Notwithstanding the proposed variation, the development will result in appropriate building heights and form, with the variation being minor in nature and restricted to building S3 (which is not the tallest building on the site).
(i) a built form that responds to the lower scale of the buildings to the south, by stepping down in height towards Phillip Street	The overall development responds to the lower scale buildings to the south through stepped forms lowering in height towards Phillip Street, acknowledging the surrounding building heights. The proposed variation is minor in extent and does not seek to increase the maximum height of S3, nor does it apply to the largest building in the precinct. Therefore, the development steps down in height to the south as desired.

Therefore, the height of the development is appropriate to the condition of the site and its context and the development achieves objective (a) notwithstanding the variation.

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

The site is located adjacent to the State heritage item, Redfern Park and Oval (Item 02016) and within the vicinity of Waterloo, Redfern Estate and Baptist Street Heritage Conservation Areas (HCAs).

The development as a whole, including S3, has been designed to implement heights that appropriately respond to surrounding existing and new development as well as heritage items and conservation areas. Specifically, Building S3 has been designed so that the height steps down from a maximum of 10 storeys at the northern end, 7 storeys at its centre and 4 storeys at the Phillip Street boundary. A Statement of Heritage Impact has been prepared by Extent Heritage and is appended to the EIS. The Statement concludes that in relation to building heights:

- The reticulation and stepped design of building S3 and the upper floor setback of S4 provide a sensitive interface to the adjoining Waterloo Heritage Conservation area on Phillip Street.
- The proposal will have no direct impact to the aesthetic significance or fabric of Redfern Park and Oval or the surrounding HCAs.
- The proposed building heights ensure a predominately mid-scale development that responds to the adjacent heritage conservation areas and ensures no overshadowing to Redfern Park.

Further, the development (inclusive of the variation) does not overshadow the Redfern Park heritage item to the between 9am and 3pm, as described above.

For the reasons above, the proposal achieves objective (b) notwithstanding the variation.

Objective (c): to promote the sharing of views outside Central Sydney

The site is located outside of Central Sydney as defined in the SLEP. The Planning Proposal for the site established an appropriate urban design framework for the site including preferred building layouts and heights, considering a range of environmental factors. Despite the minor variation, the proposal is consistent with the urban framework set out for the site. As such there will be no impacts on view sharing beyond those envisaged at the Planning Proposal stage as a result of this variation.

Notwithstanding, a desktop analysis of potential surrounding views has been undertaken to assess if there will be any adverse impacts from the proposed development inclusive of the height variation. Most dwellings surrounding the site are low scale, ranging from one to three-storeys in height and do not have any notable high value views or vistas. The exception to this is the taller residential buildings to the east of the site, who are likely to have views and outlook towards Redfern Park and Oval across the subject site. For views from the residential buildings directly to the north-east of the site and the location of the variation across the Kettle Street / Walker Street intersection, there will be minimal impact on views/outlook as the primary views are to the east and the proposed development will not be visible. For the development on Morehead Street, views towards Redfern Oval may be partly impacted by the proposed development – however the land slopes steeply up towards Morehead Street which reduces the visibility of the proposed development. For occupants of the Morehead Street dwellings at a height which can see over the surrounding trees and lower scale buildings, it is likely that the proposed development will not significantly alter any views to Redfern Oval. Further, the proposed height variation to Building S3 is minor and would not result in any further obstruction of views.

A Visual Impact Assessment has been prepared by Ethos Urban and is appended to the EIS. The Visual Impact Assessment considers views from the public domain surrounding the site and concludes that while the proposal will have a considerable visual impact on the character of the existing visual environment, the proposed variation will not increase the visual impact of the development. Further, the visual impact is considered reasonable and acceptable considering the needs of affordable housing. The design also incorporates a range of measures to avoid and minimise any potential significant adverse visual impacts and there is considerable opportunity to further develop and refine the proposal, in particular through the provision of height transitions towards Phillip Street and the Redfern Park and Oval, as part of the subsequent SSDA process to further mitigate visual impact, inclusive of the proposed variation.

For these reasons, the proposed development achieves objective (c) notwithstanding the proposed variation.

Objective (d): to ensure appropriate height transitions from Central Sydney and Green Square Town Centre to adjoining areas

As described in the assessment against objective (a) above, the proposed development inclusive of the height variation:

- Aligns with the key building height principles of the Planning Proposal and results in three of the four buildings complying with the building height development standard.
- Is of a height that is consistent with surrounding existing and future development.
- Relates to Redfern Park and Oval in a sensitive and appropriate manner, and causes no additional overshadowing of the park/oval between 9am and 3pm.
- Is consistent with the desired future character of the area.

Therefore, the proposal is of a height that is consistent with its surrounding context and that transitions from higher surrounding buildings to lower terrace houses and open space. The proposal will not create a new tallest building in the locality. By extension, the proposal will re-enforce the height of locality and assist in providing height transitions from Central Sydney and Green Square Town Centre.

Further, the proposed height variation is isolated to Building S3, which is not the tallest building of the site (some 16m lower than S2 which is the tallest building on the site). As such, the height variation of Building S3 does not increase the overall impact of the development on the site's broader context.

Therefore, the proposal achieves objective (d), notwithstanding the variation.

Objective (e): in respect of Green Square—

(i) to ensure the amenity of the public domain by restricting taller buildings to only part of a site, and

(ii) to ensure the built form contributes to the physical definition of the street network and public spaces.

The site is not located within Green Square. Therefore, the objective does not apply to the proposed development.

Objectives of Clause 6.59 (inferred from Planning Proposal Objectives)

The proposed development achieves the inferred objectives of Clause 6.59, since it contributes to achieving the objectives of the site-specific Planning Proposal. An assessment of the proposal against the Planning Proposal objectives is provided in **Table 3**.

Table 3 Assessment of the proposed development against the Planning Proposal objectives

Objective	How it is achieved
Introduce new planning controls for the site under the Sydney LEP 2012	The development, inclusive of the height variation, will be assessed against the new controls that were adopted in the SLEP.
Facilitate development of the site for new social and affordable housing	The proposed development, including the height variation, will result in 355 new social and affordable dwellings.
To deliver a high-quality, predominately residential development, supported with a range of small-scale neighbourhood uses, that will renew the site and contribute to local character	The design of the proposed development includes a competition winning design and has been assessed by a Design Review Panel, who conclude that the design is capable of achieving design excellence in accordance with the SLEP. The proposal includes predominantly residential development, as well as a community facility and commercial floor space.
Provide floor space for the continued operation of the Police Citizens' Youth Club	A new community facility is proposed (Building S1). The building has been designed to accommodate the needs of the PCYC.
To facilitate development that responds to its context and achieves a high level of amenity to neighbouring properties; and	As described above, the proposal, inclusive of the proposed height variation, has been designed to respond to its specific context and ensure a high level of amenity to surrounding properties. This includes the height transitions towards the terrace houses located on Phillip Street.
To ensure no overshadowing to Redfern Park.	The proposed development, inclusive of the height variation, will not overshadow Redfern Park as described above.

4.1.2 Conclusion on clause 4.6(3)(a)

The above section has demonstrated that compliance with the height of buildings development standard is unreasonable or unnecessary in the circumstances. The objectives of the height of buildings development standard, set out in Clause 4.3, have been achieved by the proposed development notwithstanding the variation as:

- The proposed development has been designed to respond to the existing and future character of the site and its surrounding context, and the variation of Building S3 results in a height that is appropriate for the site.

- An appropriate transition to the adjacent heritage items and HCAs is achieved through height transitions and maintaining solar access to Redfern Park and terraces on Walker Street and Phillip Street, notwithstanding the variation, as supported by the heritage consultant Extent in the Statement of Heritage Impact appended to the EIS.
- Views from key public vantage points and surrounding buildings are unlikely to be negatively impacted due to the location and scale of surrounding development and the topography which rises to the east.
- The proposed development will not have a significant impact the height transitions from Central Sydney and Green Square Town Centre to adjoining areas, given the height variation is isolated to Building S3 which is not the tallest building of the site.
- The proposed development achieves the inferred objectives of Clause 6.59, since it contributes to achieving the objectives of the site-specific Planning Proposal.

4.2 Clause 4.6(3)(b): Environmental planning grounds to justify contravening the development standard

Clause 4.6(3)(b) of the SLEP requires the consent authority to be satisfied the applicant has demonstrated that there are sufficient environmental planning grounds to justify the contravention. The focus is on the aspect of the development that contravenes the development standard, not the development as a whole. Therefore, the environmental planning grounds advanced in the written request must justify the contravention of the development standard and not simply promote the benefits of carrying out the development as a whole (*Initial Action* at [24]).

In *Four2Five*, the Court found that the environmental planning grounds advanced by the applicant in a Clause 4.6 Variation Request must be particular to the circumstances of the proposed development on that site at [60]. In this instance the relevant aspect of the development is Building S3 that results in the exceedance of the development standard.

There are sufficient environmental planning grounds to justify contravention of the height development standard in this specific instance, as described below.

4.2.1 Ground 1: Consistency with Objects of the EP&A Act

In *Initial Action*, the Court stated that the phrase “environmental planning grounds” is not defined but would refer to grounds that relate to the subject matter, scope and purpose of the EP&A Act, including the objects in section 1.3 of the Act. While this does not necessarily require that the proposed development should be consistent with the objects of the Act, nevertheless, as set out in **Table 4** it is considered that the proposed development is broadly consistent with each object, notwithstanding the proposed variation of the height development standard.

Table 4 Assessment of consistency of the proposed development with the Objects of the EP&A Act

Object	Comment
(a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State’s natural and other resources	<p>The overall development promotes the social and economic welfare of the community through the provision of social and affordable housing, specialist disability housing, a community facility and office space for a community housing provider. This will significantly benefit the local community and those in need. The amount of housing and community facility area proposed is commensurate with that envisaged for the site at the Planning Proposal stage despite the variation.</p> <p>If the development was to comply with the height development standard, less housing for those in need would be provided, which would result in less positive impact on the social and economic welfare of the community.</p> <p>As such, the proposed variation will promote the economic and social welfare of the community by providing much needed social and affordable housing for the community during a housing crisis.</p>

Object	Comment
(b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment	The proposed development will achieve a high level of ecologically sustainable development, as discussed above in Row 3 of Table 2 above.
(c) to promote the orderly and economic use and development of land	<p>The site was subject to a site-specific Planning Proposal which sought to facilitate future development for affordable housing and community uses on the site. The proposed development is generally consistent with the Planning Proposal vision for the site and has undergone extensive design evolution and revision to provide the most orderly and economic use and development of the land. As a result, the overall development provides community facilities, affordable, social and specialist disability housing at an appropriate site. These are uses for which it is difficult to compete with private market uses that can be considered the highest and best use.</p> <p>The proposed height variation is minor and will still achieve an overall height and density commensurate with that deemed appropriate at the Planning Proposal stage. In the absence of the variation, less affordable housing would be provided. Further, the scaling down of height of Building S3 is well below the permitted maximum height control in the SLEP 2012, ensuring solar access to the nearby Phillip Street terraces.</p>
(d) to promote the delivery and maintenance of affordable housing	The overall development provides a range of housing tenures including 197 housing units, 147 social housing units and ten (10) disability support units (plus a carers unit).
(e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats	The proposed height exceedance will have no adverse impact on threatened species or ecological communities. A BDAR Waiver was granted by DPHI and Biodiversity Conservation and Science Group meaning no further assessment of biodiversity impacts in accordance with the <i>Biodiversity Conservation Act 2016</i> is required.
(f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage)	<p>The proposed height exceedance does not hinder the overall development's sustainable management of the built and cultural heritage as:</p> <ul style="list-style-type: none"> • The Aboriginal Cultural Heritage Assessment prepared for the Planning Proposal found no Aboriginal sites, objects, sandstone rock outcrops or culturally modified trees on the site. • A range of stakeholders including Aboriginal groups were consulted with throughout the design process. These groups have shown their support of the affordable and social housing provided despite the FSR variation. <p>Therefore, no items or areas of built or cultural heritage will be negatively impacted by the proposal. This is confirmed through the Heritage Impact Statement appended to the EIS.</p>
(g) to promote good design and amenity of the built environment	The proposal contributes to good design amenity of the built environment through the provision of high-quality buildings that are capable of exhibiting Design Excellence, as determined by the project Design Review Panel. A high level of amenity is retained for surrounding dwellings as described above. A complete assessment of the amenity for the proposed development is provided in the EIS. The development will achieve a high level of amenity for occupants.

Object	Comment
(h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants	The proposed development, inclusive of the variation, can comply with all relevant requirements of the BCA and will promote the health and safety of occupants.
(i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State	This object is not relevant to this proposal, however, the proposal has adhered to the required planning processes for the site and scale of development.
(j) to provide increased opportunity for community participation in environmental planning and assessment	The proposed development will be publicly exhibited in accordance with the requirements of Council's Community Engagement Strategy and Community Participation Plan.

4.2.2 Ground 2: No additional impact on overshadowing to Redfern Park and surrounding residential areas

As described in **Section 4.1.1**, the contravention to the building height standard is justified as it maintains solar access to the adjacent Redfern Park and Oval.

Specifically, as shown in **Figure 8**, Building S3's height and the overall development does not result in any overshadowing of Redfern Park and Oval between 9am and 3pm and is therefore consistent with the context of Redfern Park and Oval, the requirements of Clause 6.59 of the SLEP and The Guide.

The proposal also has an appropriate impact on the surrounding residential areas. This is measured through the Walker Street Solar Plane in the Design Guide. The Design Guide stipulates the following:

Overshadowing of the land on the eastern side of Walker Street must ensure that at least 70% of the western face of a plane formed on the alignment of the western boundary of 57 Walker Street Redfern (Lot 100 DP 1168202) for its entire length between RL 32.7 and RL 59.6 receives 2 hours of sunlight on 21 June between 9am and 3pm.

As shown in **Figure 13**, compliance with the above is achieved with 72.1% of the Walker Street Solar Compliance Plane will receive 2 hours or more of sunlight between 9am and 3pm on 21 June, notwithstanding the variation to height of Building S3. It is noted that the area of Building S3 that exceeds the height limit does not contribute to the shadow cast on the Walker Street Solar Plane which is predominately impacted by the shadow cast of Building S2.

72.1%

Percentage of surface receiving 2hrs or more of sunlight between 9am - 3pm in mid winter (21st June)

○ < 2hrs Sunlight
 ● > 2hrs Sunlight

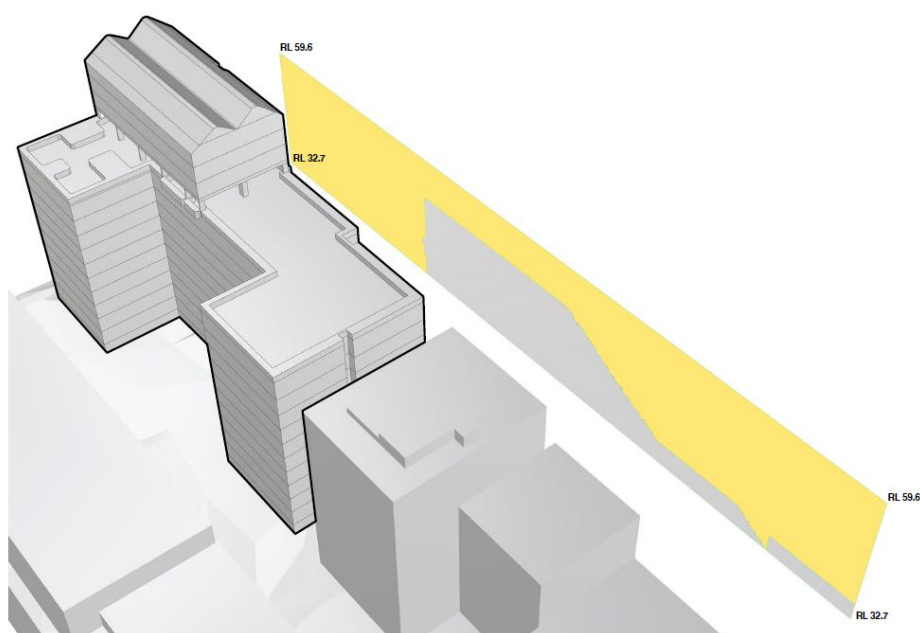


Figure 13 Walker Street Solar Compliance Plane diagram

Source: Hayball

4.2.3 Ground 4: Consistency with the Planning Proposal objectives and desired future character

As described in **Section 4.1.1**, the proposed development is consistent with the objectives of the Planning Proposal and the desired future character for the site described in the planning framework, notwithstanding the variation. The proposed height exceedance is isolated to one part of Building S3. Building S3 is the only building out of the four buildings that has a portion of its form that exceeds the height development standards as prescribed in the SLEP. All the other buildings on the site comply with the relevant height control.

The minor and isolated extent of the variation means it has no impact on the ability of the development to achieve the Planning Proposal objectives and the desired future character.

4.2.4 Ground 5: Appropriate height transitions

As described in **Section 4.1.1** (Objective (a)), despite the slight contravention of the height development standards, the development provides an appropriate height transition across the site from taller buildings and sloping topography to the east with the lower scale surrounding residential dwellings and open space to the south and west.

Specifically, Building S3 has been designed so that the height steps down from a maximum of 10 storeys at the northern end, 7 storeys at its centre and 4 storeys at the Phillip Street boundary.

Additionally, the subject of the proposed height variation is on Building S3 which is not the tallest building of the site, and the overall development is compliant with the height controls.

Therefore, the height variation proposed to part of Building S3 does reduce the development's ability to provide appropriate height transitions across the site due to its minor extent and isolated location.

4.2.5 Conclusion on clause 4.6(3)(b)

There are sufficient environmental planning grounds to support contravention of the development standard in this circumstance, including:

- The development is consistent with the objects of the EP&A Act.
- The variation does not result in any additional overshadowing impacts.
- The proposed development is consistent with the Planning Proposal objectives and desired future character, despite the variation.
- The variation results in development that provides appropriate transitions in height across the site, from the taller buildings and sloping topography to the east with the lower scale surrounding residential dwellings and open space to the south and west.

5.0 Conclusion

The assessment above demonstrates that compliance with the height development standard contained in clause 4.3 of the SLEP is unreasonable and unnecessary in the circumstances and that there are sufficient environmental planning grounds to justify the contravention. It is considered that the variation allows for the orderly and economic use of the land in an appropriate manner, whilst also allows for a better outcome in planning terms.

This clause 4.6 variation demonstrates that, notwithstanding the non-compliance with the height development standard:

- The proposed development achieves the objectives of clause 4.3 of the SLEP as:
 - The overall development responds to the existing and future character of the area and fits within the site's existing and future surrounding context.
 - The proposed development responds appropriately to surrounding heritage items and the height variation does not result in any additional overshadowing of Redfern Park and Oval between 9am and 3pm.
 - The overall development will have an acceptable impact on views from the surrounding public domain and nearby tall residential dwellings and the variation will not create any perceptible additional impacts to views.
 - The height exceedance remains appropriate for the context of the site and allows for appropriate height transitions from Central Sydney and Green Square Town Centre by not increasing the overall height of the tallest building on the site (S2).
 - The proposed development achieves the inferred objectives of Clause 6.59, since it contributes to achieving the objectives of the site-specific Planning Proposal.
- There are sufficient environmental planning grounds to vary the control in this instance because:
 - Despite the height variation, the development continues to be consistent with the objects of the EP&A Act.
 - The height exceedance does not result in any additional overshadowing of Redfern Park and Oval, the Walker Street Solar Plane and other residents surrounding the site including the Phillip Street terraces.
 - The proposed development is consistent with the Planning Proposal objectives and desired future character, despite the variation.
 - The variation results in development that provides appropriate transitions in height across the site, from the taller buildings and sloping topography to the east with the lower scale surrounding residential dwellings and open space to the south and west.

Therefore, the consent authority can be satisfied that this Clause 4.6 Variation Request has demonstrated the matters in clause 4.6(3) of the SLEP and may grant development consent notwithstanding the contravention of the height development standard.