

CLAUSE 4.6
VARIATION
REQUEST - HEIGHT
SECTION 4.55(1A)
SCEGGS
DARLINGHURST
CONCEPT PLAN
(SSD8993)

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 adopted 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 seeks to facilitate the intended modification of the building envelope approved under the Concept State Significant Application (concept SSD 8993). The approved building envelop is also the existing Wilkinson House building, and for the purpose of this application it is herein referred to as the 'approved Wilkinson House building envelope'.

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

This Clause 4.6 request should be read in conjunction with the Statement of Modification for context.

2. RELEVANT ASSESSMENT FRAMEWORK

2.1. SYDNEY LOCAL ENVIRONMENTAL PLAN 2012

Clause 4.6 of 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] NSW LEC*
- *Moskovich v Waverley Council [2016] NSW LEC 1015*

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

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.

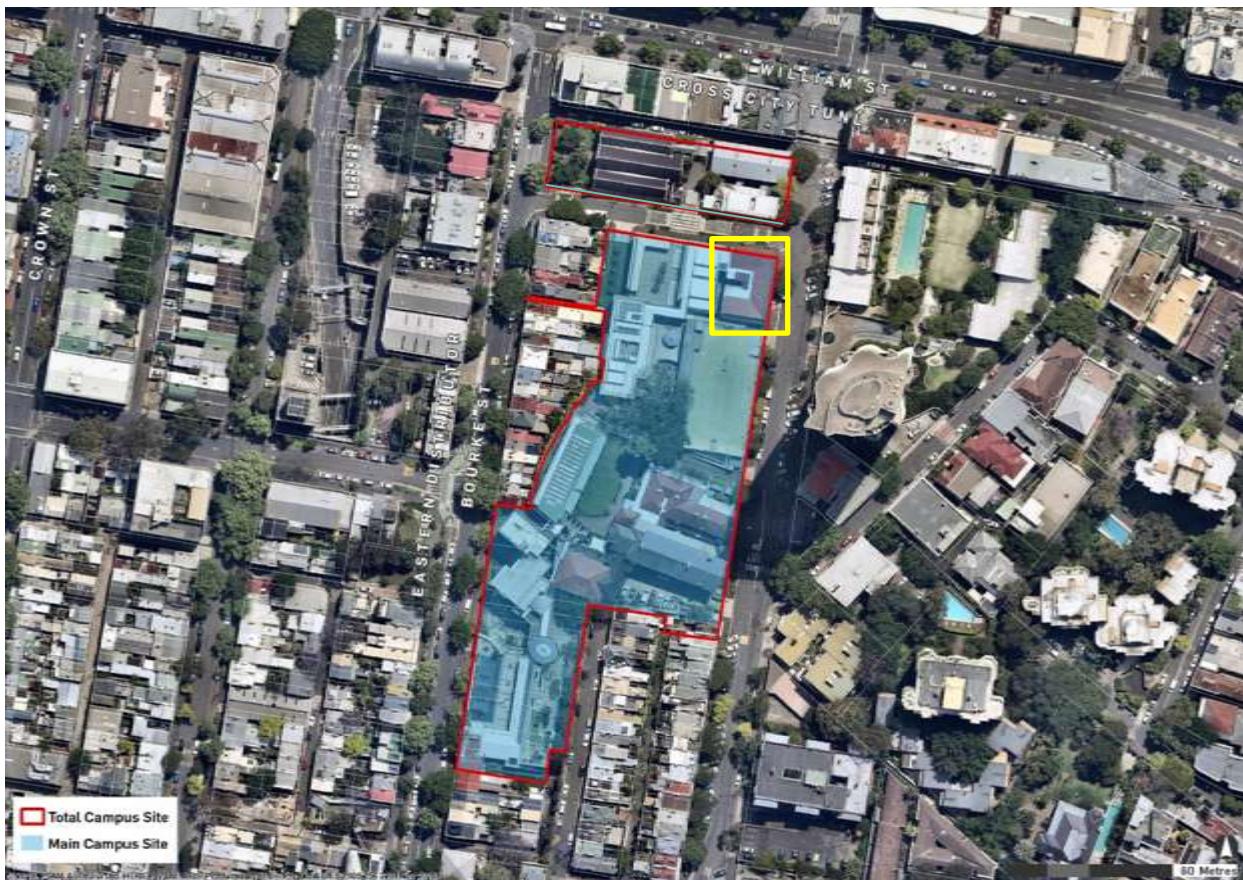
The total SCEGGS Darlinghurst campus comprises the area highlighted in Figure 1, which includes the main school campus located at 215 Forbes Street, a single terrace at 217 Forbes Street and properties within the St Peters Precinct. The total SCEGGS Darlinghurst campus comprises several land parcels and has a total area of 13,676sqm. The total campus includes frontages to St Peters Street, St Peters Lane and Thomson Street.

Concept SSD 8993 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 did not form part of the Concept SSD application.

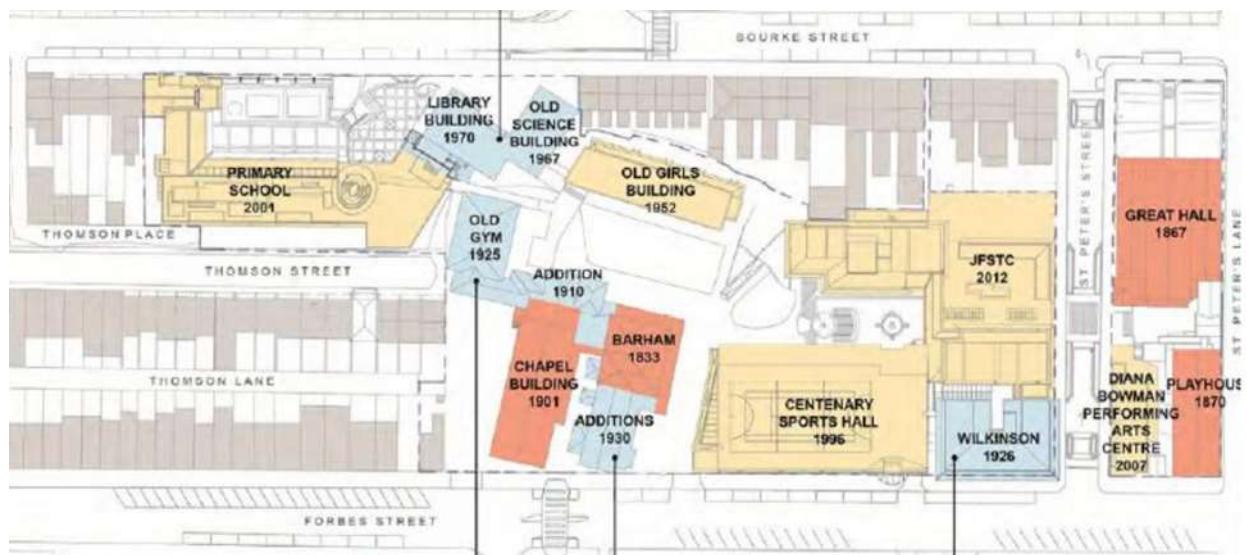
The main school campus comprises both a primary and secondary school, accessed from Bourke Street and Forbes Street respectively.

Wilkinson House 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 and Diana Bowman Performing Arts Centre is located on the opposite side of St. Peter Street.

Figure 1 Site location (Wilkinson House outlined in yellow)



Source: Six Maps



Source: AJ+C

4. DEVELOPMENT BACKGROUND

4.1. 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 Peter'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. In lieu, the existing Wilkinson House envelope was approved for adaptive re-use subject the preparation of a Heritage Conservation Management Plan.

4.2. 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 item, 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 Planning Secretary on 6 December 2021.

5. PROPOSED MODIFICATION

It is important to note that Wilkinson House has not undergone major building upgrades since 2002, which was when the building was converted from boarding house to teaching facility and staff facility (the Secondary Education Centre). Therefore, the building is in a significant need for an upgrade to comply with current Building Code of Australia (**BCA**) requirements, fire safety requirements, accessibility standards as well as adapting to the educational needs of SCEGGS.

The primary purpose of the modification application is to make amendments to the approved Wilkinson House building envelope (which is also the existing building envelope) and associated conditions under the Concept SSD. The amendments to the building envelope intent to provide equitable access and improve the quality of the teaching facilities within the building.

This application is lodged concurrently with the first detailed SSDA (SSD-19989744) under the Concept Approval for the adaptive reuse of Wilkinson House. Accordingly, this modification seeks to reflect the proposed detailed design of Wilkinson House, which includes minor external alterations and additions, internal alterations and landscape changes.

5.1. SUMMARY OF PROPOSED MODIFICATIONS

The Section 4.55(1A) modification application seeks to amend the concept approval for SCEGGS main school campus in the following ways:

- Amend the approved Wilkinson House building envelope to allow for minor protrusion beyond the approved building envelope:
 - extend the approved building envelope of Wilkinson House further to the south to accommodate a lift.
 - slightly increase the building envelope height by 330mm.
 - extend the building envelope over the roof of Joan Freeman building to the northwest.
 - Minor extension to the southwestern façade.
- Concept landscape changes to remove the lightwell landscape element in the Wilkinson House.
- Amend condition B12 (d) *Traffic, Access, Car and Bicycle Parking* to replace the requirement of Road Safety Evaluation (**RSE**) to design-based Road Safety Audit (**RSA**).
- Additionally, to facilitate the proposed design changes, the modification seeks to amend the following conditions:
 - Condition A4 Terms of Consent: Architectural drawings and Concept Landscape drawings
 - Condition A5 Terms of Consent: Concept Proposal envelope for the Wilkinson House
 - Condition A12 Gross Floor Area: Site Wide maximum GFA and Wilkinson House GFA

5.2. BUILDING ENVELOPE CHANGES

It is proposed to modify the approved building envelope to accommodate the following:

- External extension to the southern façade with a maximum RL of 46.44. The extension will provide for equitable lift access within Wilkinson House and connect Wilkinson House with other school facilities. Equitable access is currently not been provided within the building.
- Minor extension to the southwestern façade to accommodate a future BCA compliant stairwell and a fire room.
- Increase the overall building envelope height to a maximum parapet height of RL45.85m (330mm height increase compared to the approved building envelope). The minor height increase will allow for the required floor to ceiling height for a large multipurpose space on the upper level.
- Minor western extension to the roof of Joan Freeman building for a future plant closure for condenser units. The extension has a maximum RL of 45.77, which matches the maximum height of the existing

Joan Freeman building. The height of the extension is slightly below the proposed building envelope height of Wilkinson House.

It is noted that the modification proposed to the concept SSD building envelope does not seek consent for any physical works commencing on site. As discussed, a detailed SSDA seeking consent for the detailed design and adaptive reuse of Wilkinson House has been submitted to the DPIE concurrently with this modification application and will facilitate the works identified above.

6. EXTENT OF VARIATION

6.1. VARIATION TO MAXIMUM BUILDING HEIGHT

As shown below in Figure 2 the relevant HOB Map contained in the SLEP 2012 nominates a maximum HOB of 15m for the site.

Figure 2 Maximum Building Height



Source: SLEP 2012

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. The sloping topography is shown on the proposed elevation in Overall, the modified building envelope largely complies with the LEP height control.

Due to the sloping topography, the proposed modification has the following areas of non-compliance (refer to Figure 5):

- The amended building envelope largely complies at the eastern portion (along Forbes Street) of the building envelope, with minor height exceedance of approx. 0.12m, which relates to a corner of the approved building envelope.
- The proposed building envelope extension to Joan Freedman roof has a maximum height of 16.4m, which exceeds the height control by 1.4m. The proposed extension is intended to accommodate a rooftop plant enclosure (to be established under detailed SSDA).
- The overall height increase to Wilkinson House building envelope will have a maximum height of 16.37m, which exceeds the height control by 1.37m at the northern portion of the Wilkinson House building.
 - When compared to the approved building envelope, the proposed height increase is 330m, which is minor in nature.

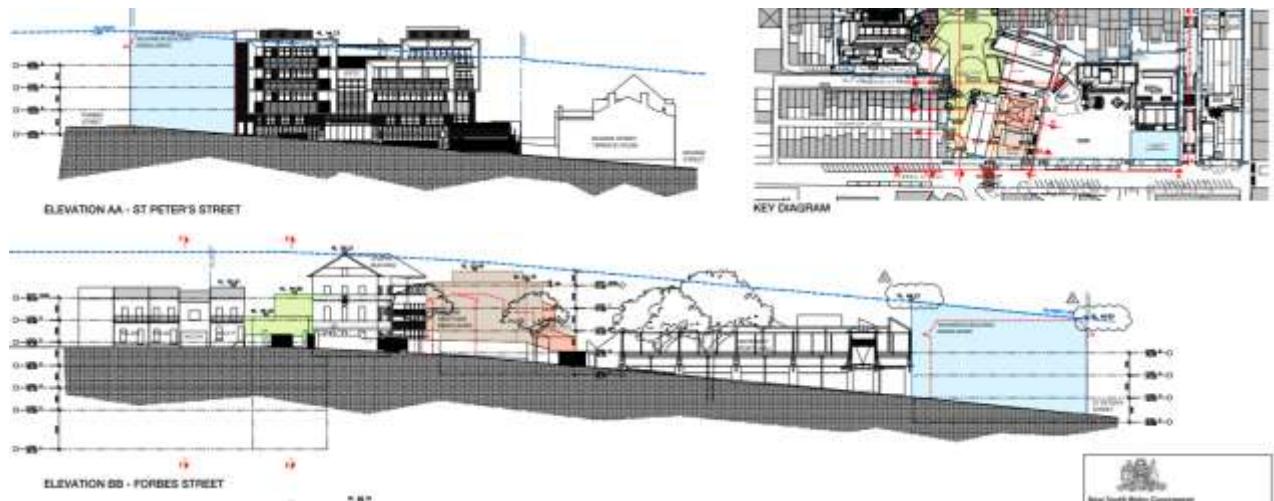
- Due to sloping topography, only the northern portion of the envelope exceeds the 15m height control. The area of non-compliance relates to the roof of the building and is limited within the built form fronting St Peters Street.

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

Figure 4.

Due to the sloping topography, varying ground levels apply to the main school campus. Portions of the approved Wilkinson House building envelope exceeds the 15m height limit at the northern corner of Forbes Street by 0.12m. Along St Peters Street, the approved Wilkinson House building envelope has a maximum building height of 16.04m, which exceeds the height control by 1.04m.

Figure 3 Approved (Existing Elevation) outlined in red



Overall, the modified building envelope largely complies with the LEP height control.

Due to the sloping topography, the proposed modification has the following areas of non-compliance (refer to Figure 5):

- The amended building envelope largely complies at the eastern portion (along Forbes Street) of the building envelope, with minor height exceedance of approx. 0.12m, which relates to a corner of the approved building envelope.
- The proposed building envelope extension to Joan Freedman roof has a maximum height of 16.4m, which exceeds the height control by 1.4m. The proposed extension is intended to accommodate a rooftop plant enclosure (to be established under detailed SSDA).
- The overall height increase to Wilkinson House building envelope will have a maximum height of 16.37m, which exceeds the height control by 1.37m at the northern portion of the Wilkinson House building.
 - When compared to the approved building envelope, the proposed height increase is 330m, which is minor in nature.
 - Due to sloping topography, only the northern portion of the envelope exceeds the 15m height control. The area of non-compliance relates to the roof of the building and is limited within the built form fronting St Peters Street.

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

Figure 4 Proposed Elevation

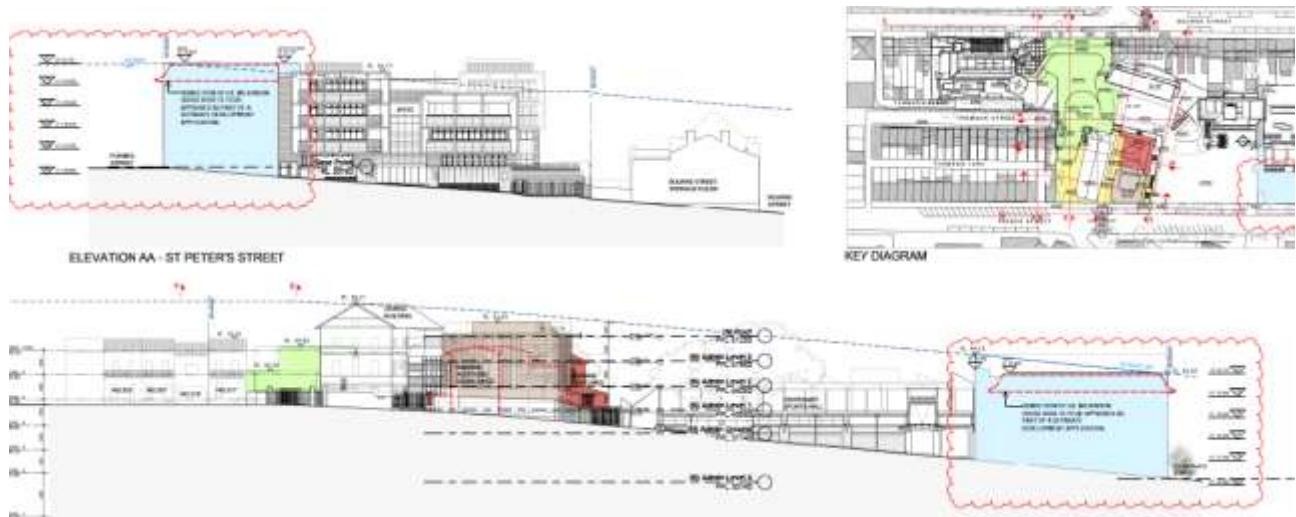
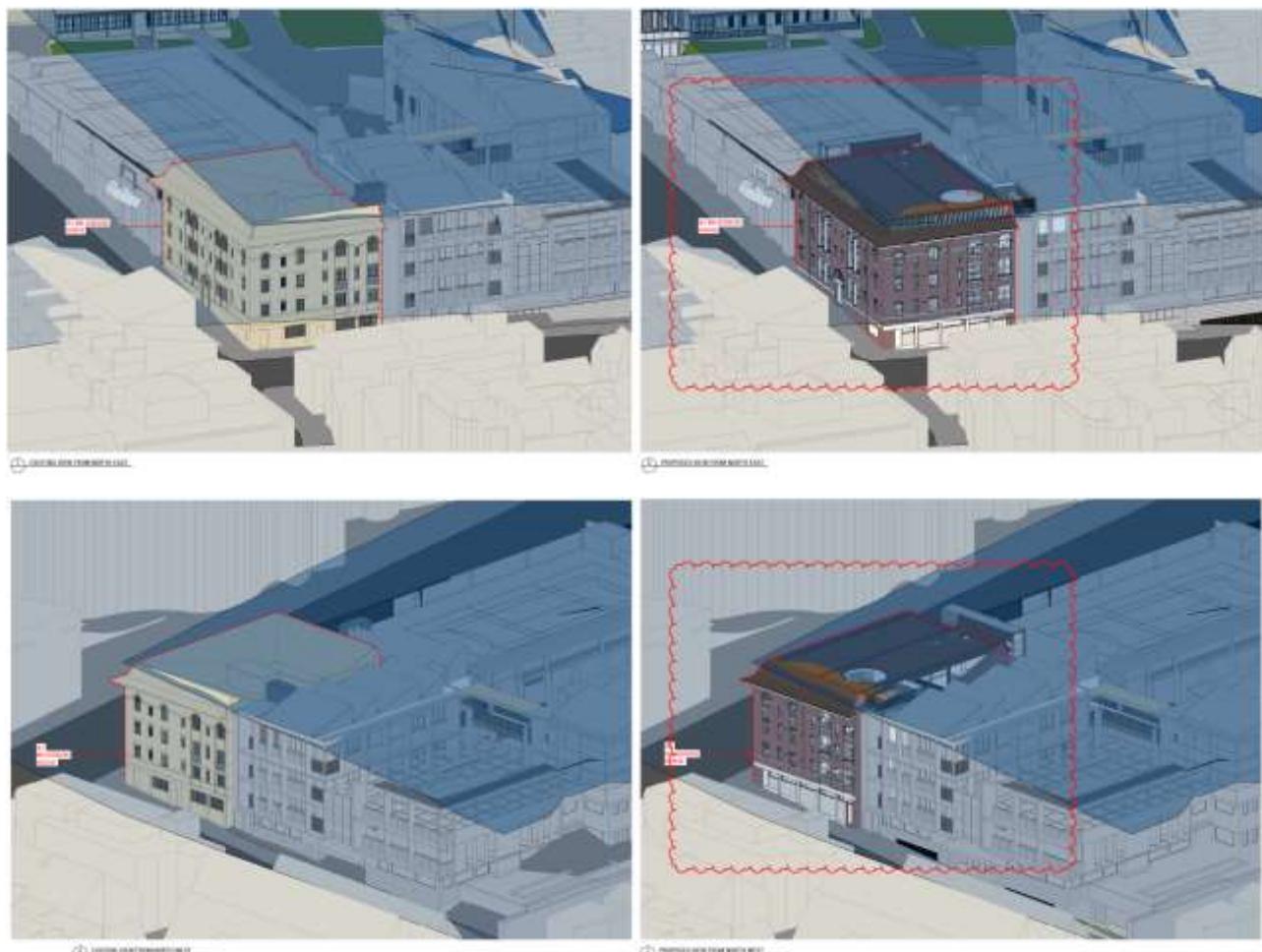


Figure 5 Roof Area above 15m – approved and proposed



Source: *smart design studio*

The areas of non-compliance have been measured in accordance with the SLEP 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.

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,*

An assessment of the proposed development against each of these objectives is undertaken below in Section 0.

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 approved Wilkinson House building envelope already exceeds the maximum 15m height control by 1.04m along St Peters Street. The existing Joan Freeman building also 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 are 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 and improved internal amenity, 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

Due to the sloped nature of the site, the approved building envelope exceeds the height control. The proposed modification will result in a minor additional height non- compliance at northern portion of the site, which is along the St Peters Street frontage.

The proposed Wilkinson House building envelope height is 16.37m, which is 0.33m above the approved building envelope 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.

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.

Overall, the modified building envelope largely complies with the LEP height control. The minor encroachment would result in negligible environmental and amenity impact, including privacy, visual amenity, overshadowing and on the surrounding heritage items.

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

Built Form and View Impacts

- 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.
- The modified building envelope will maintain compliance with the 15m building height limit across the majority of the Wilkinson House building envelope and along Forbes Street.

- Along St Peters Street, the area of non-compliance is only 330mm higher than the approved building envelope, which also did not comply with the height limit. The height non-compliance is inconsequential to the overall built form and is barely noticeable from the streetscape.
- The proposed overall height of the building envelope (which includes the area of non-compliance) aligns with the height of the recently completed Joan Freeman building and therefore sits comfortably within the streetscape.
- The proposed building envelope extension to Joan Freedman roof has a maximum height of 16.4m, which exceeds the height control by 1.4m. The proposed extension will accommodate a plant enclosure for air condensers (to be built as part of the separate SSDA). The overall scale and form of this extension is consistent with the height of the existing car park exhaust. Accordingly, the area of non-compliance will result in a consistent built form scale and minimal visual impact.
- The area of non-compliance does not obstruct the important views of the Sydney skyline or any iconic buildings, namely when viewed from Horizon Apartments and 186 Forbes Street north.

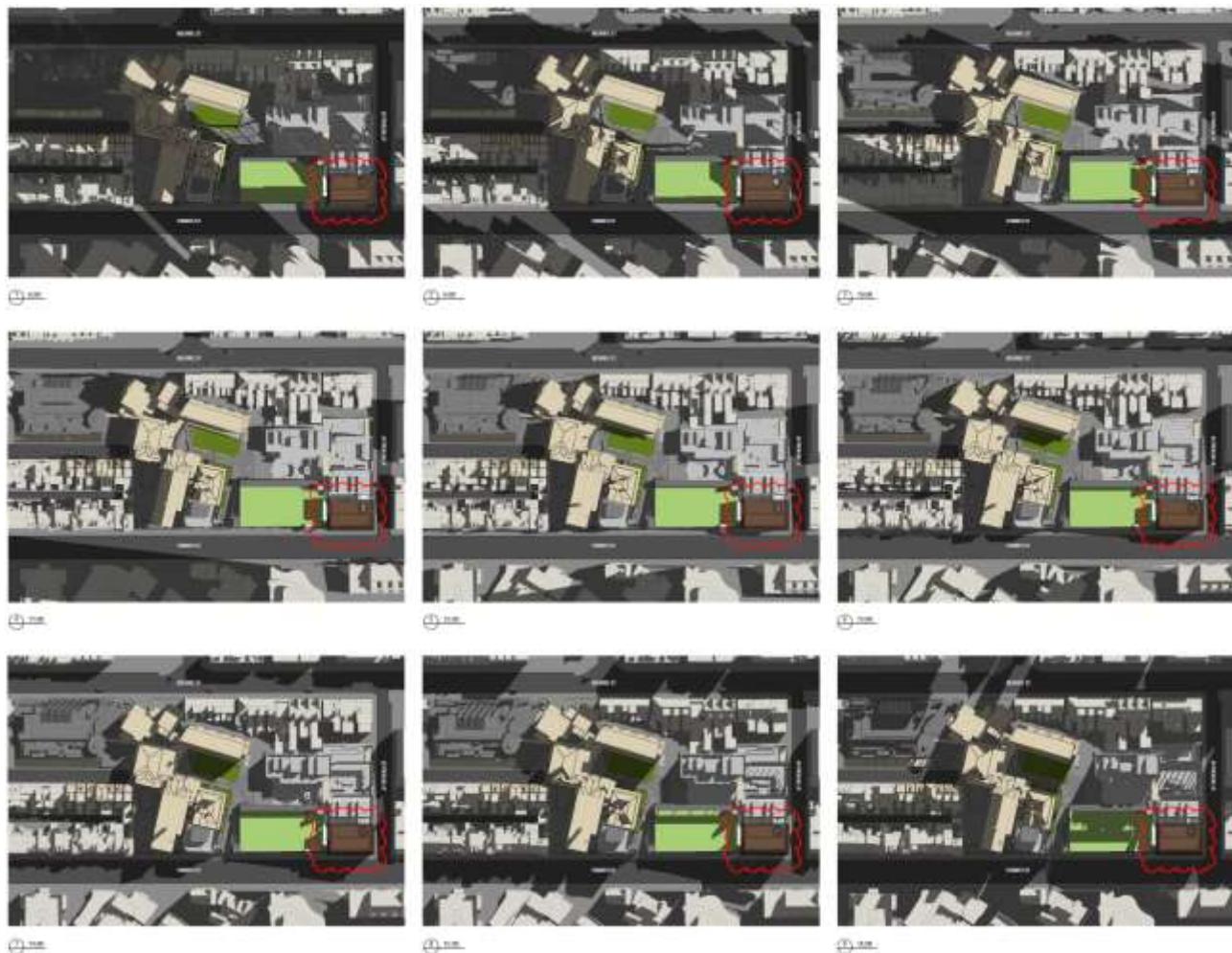
Heritage

A Heritage Impact Statement prepared by Urbis and accompanied the Modification Application. The statement supports the proposed modification. The Heritage Impact Statement concluded that the proposal, including the area of height non-compliance is considered to be consistent with the relevant heritage objectives of the Sydney LEP.

Other Environmental Impacts

- The area of non-compliance at Wilkinson House relates to the roof space, which has no windows and will not impact on privacy.
- The area of height non-compliance will not have any shadow impacts on any neighbouring residential properties. Compared to the approved building envelope, the proposed building envelope will result in similar shadow impact to its surrounds. The additional shadow from the amended building envelope (which includes 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 4 below.

Figure 6 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.

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?

7.2.2.1. 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 modified building envelope largely complies with the LEP height control.</p> <p>The area of non-compliance (of 0.12m) along Forbes Street relates to a corner of the approved building envelope. Therefore, this non-compliance will not</p>

Objectives	Proposal/Assessment
	<p>create adverse impact to the built form character of the existing site context.</p>
	<p>The proposed building envelope result in 0.33m height increase above the approved building envelope, which is 1.37m above the height limit. This represents 2% height increase when compared to the approved building envelope and 9.3% of building height development standard. The area of non-compliance relates to portion of the roof space.</p>
	<p>Along St Peters Street, the area of non-compliance is inconsequential to the overall built form and is barely noticeable from the streetscape when compared to the approved. The overall height of the building envelope (which includes the area of non-compliance) aligns with the height of the recently completed Joan Freeman building and therefore sits comfortably within the streetscape.</p>
	<p>The proposed building envelope extension to Joan Freedman roof has a maximum height of 16.4m, which exceeds the height control by 1.4m. The proposed extension will accommodate a plant enclosure for air condensers (to be built as part of the separate SSDA). The overall scale and form of this extension is consistent with the height of the existing car park exhaust. Accordingly, the area of non-compliance will result in a consistent built form scale as the existing context with minimal visual impact.</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><i>b) to ensure appropriate height transitions between new development and heritage items and buildings in heritage conservation areas or special character areas,</i></p>	<p>Under SLEP the site is identified as local heritage item (I301): “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>A Heritage Impact Statement prepared by Urbis and accompanied the Modification Application. The statement supports the proposed modification. The Heritage Impact Statement concluded that the proposal, including the area of height non-</p>

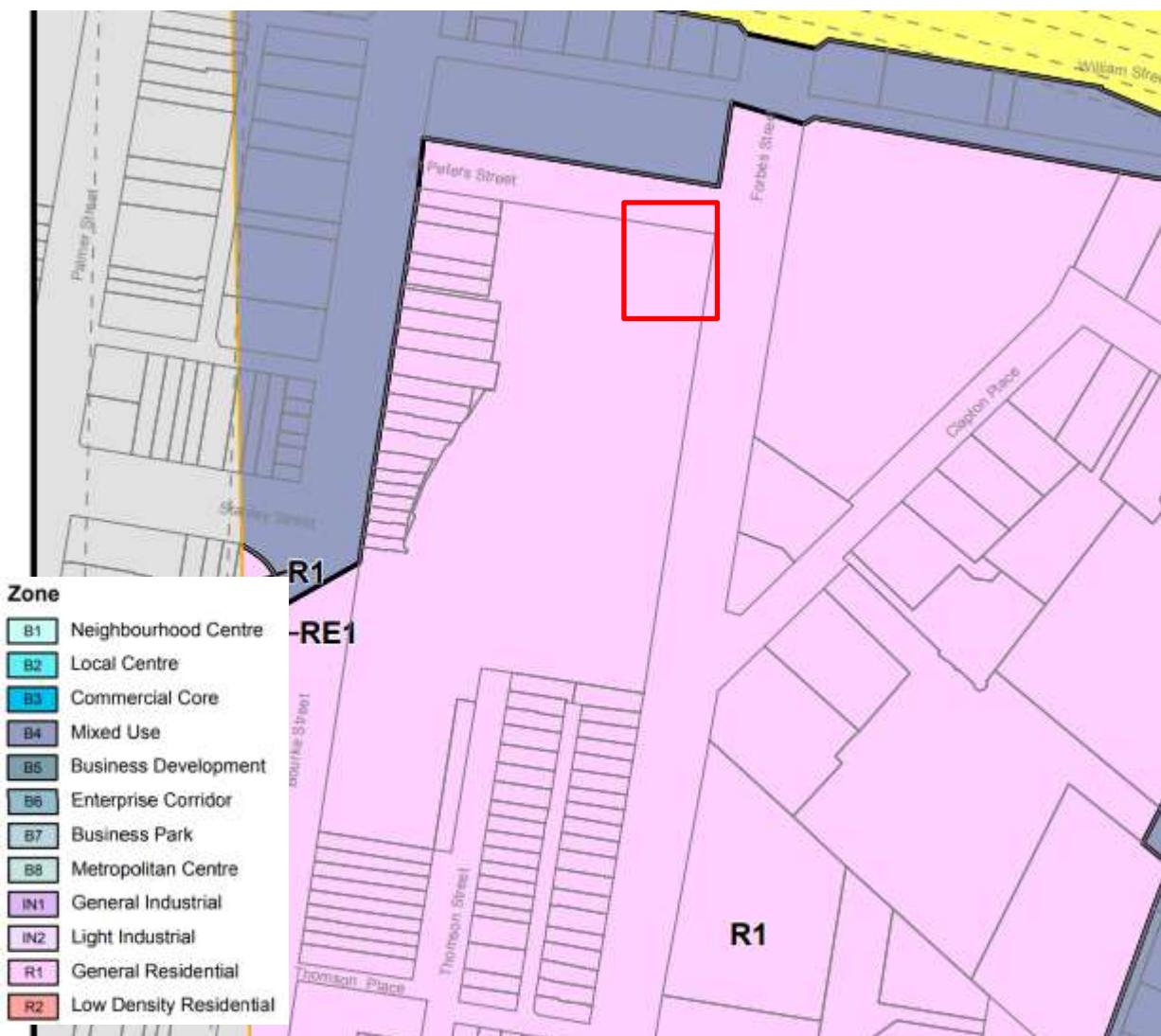
Objectives	Proposal/Assessment
<p>c) <i>to promote the sharing of views</i></p>	<p>compliance is considered to be consistent with the relevant heritage objectives of the Sydney LEP.</p> <p>View comparison has been prepared by Virtual Idea to assess impact between the approved built form and the proposed building envelope, including any impact from the area of non-compliance.</p> <p>When compared to the approved building envelope, the area of non-compliance will not impact on views from Horizon Apartments towards the south Sydney CBD. The area of non-compliance do not obstruct the important views of the Sydney skyline or any iconic buildings.</p> <p>Similarly, for 186 Forbes Street, when compared to the approved building envelope, views towards the skyline and the south Sydney CBD will be retained. The area of non-compliance do not obstruct the important views of the Sydney skyline or any iconic buildings. View impact is summarised as low.</p> <p>In summary, the area of non-compliance do not obstruct the important views of the Sydney skyline or any iconic buildings, namely when viewed from Horizon Apartments and 186 Forbes Street north.</p>

Overall, the proposed height non-compliance and the overall amended building envelope is considered to be consistent with each of the relevant objectives of Clause 4.3 of the SLEP 2012.

7.2.2.2. Land Use Zones

The site is zoned R1 General Residential as identified within Figure 5.

Figure 7 Land Use Zoning Map



Source: SLEP 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 and the overall amended building envelope is considered to be consistent with each of the 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 proposed height non-compliance and modifications to the building envelope will facilitate a future built form that comprises an improved

Objectives	Proposal/Assessment
	educational development outcome. These upgrades will provide the appropriate BCA, access and fire safety design requirements as well as general improvements to the quality of the educational services provided at the site.
<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.

Overall, the proposal is considered to be consistent with each of the land use objectives for the R1 General Residential zone as prescribed by the SLEP 2012.

7.2.3. 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.

7.2.4. 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.

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

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

The benefit of the amended building envelope is to facilitate a built form that is able to provide compliant and equitable access within the building envelope and connect Wilkinson House to the wider campus. In addition, the amended building envelope and 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.

7.2.6. 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 Section 4.55 (1a) Modification Application to Department of Planning, Industry and Environment (**DPIE**) for alterations to the approved building envelope at 215 Forbes Street, Darlinghurst, under the approved concept SSDA (SSD 8993).

In accordance with Clause 4.6 of the SLEP 2012, the building height non-compliance is justified based on the following reasons:

- The proposed modification to the Wilkinson House building envelope and associated area of height non-compliance will facilitate the intended alterations and additions to the building under a detailed SSDA (SSD-19989744), which is being prepared concurrently. This will facilitate the appropriate upgrades to the educational facilities as well as compliance with modern BCA, access and fire safety standards.
- The SLEP 2012 prescribes a maximum HOB for the site of 15m. Overall, the modified building envelope largely complies with the LEP height control. The minor encroachment would result in negligible environmental and amenity impact, including privacy, visual amenity, overshadowing and on the surrounding heritage items.
- Due to the sloping topography, the approved Wilkinson House envelope and the existing Joan Freeman already exceeds the height control. The proposed Wilkinson House building envelope height is 16.37m, which is 0.33m above the approved building envelope 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.

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 scale and intensity of a development that has been envisioned for this site and locality.
- The Heritage Impact Statement concluded that the proposal, including the area of height non-compliance is considered to be consistent with the relevant heritage objectives of the Sydney LEP.
- 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 24 January 2022 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).

In preparing this report, Urbis was required to make judgements which may be affected by unforeseen future events, the likelihood and effects of which are not capable of precise assessment.

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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This report has been prepared with due care and diligence by Urbis and the statements and opinions given by Urbis in this report are given in good faith and in the reasonable belief that they are correct and not misleading, subject to the limitations above.

