

Attachment C

<p>Clause 4.6 Variation Request – Height of Buildings</p>
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URBIS

CLAUSE 4.6 VARIATION REQUEST - BUILDING HEIGHT

Belvoir Street Theatre
Warehouse Renewal

Prepared for
TKD ARCHITECTS C/- BELVOIR STREET THEATRE LTD
4 September 2023

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Project Code	P37366
Report Number	01 – Final (04/09/2023)

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1. INTRODUCTION

This Clause 4.6 Variation Request ('the Request') has been prepared on behalf of the Belvoir Street Theatre company ('the Applicant') and accompanies a Development Application (DA) for alterations and additions at 286-490 Elizabeth Street, Surry Hills.

The Request seeks an exception from the height of buildings development standard prescribed for the site under clause 4.3 of Sydney Local Environmental Plan 2012 (SLEP 2012).

The variation request is made pursuant to clause 4.6 of SLEP 2012 and should be read in conjunction with the Statement of Environmental Effects prepared by Urbis.

The following sections of the report include:

- **Section 2:** description of the site and its local and regional context, including key features relevant to the proposed variation.
- **Section 3:** brief overview of the proposed development as outlined in further detail within the SEE and accompanying drawings.
- **Section 4:** identification of the development standard which is proposed to be varied, including the extent of the contravention.
- **Section 5:** outline of the relevant assessment framework for the variation in accordance with clause 4.6 of the LEP.
- **Section 6:** detailed assessment and justification of the proposed variation in accordance with the relevant guidelines and relevant planning principles and judgements issued by the Land and Environment Court.
- **Section 7:** summary and conclusion.

2. SITE CONTEXT

The site is known as 486-490 Elizabeth Street, Surry Hills (legally described as Lot 1 DP 738508) and is in the City of Sydney LGA. The allotment is regular in shape with an area of approximately 667sqm.

The site is in the City Fringe area of Surry Hills, known for accommodating a thriving, regionally significant cluster of creative sector business, arts and cultural enterprises. The immediate context contains a mix of building heights and land uses, including low to medium rise residential buildings (townhouses and apartment buildings), together with commercial office and retail uses along Elizabeth Street.

The site is located at the intersection of Elizabeth and Belvoir Streets and is currently occupied by a warehouse style building, constructed in the late 1920s. The external walls of the building are brickwork, and the window frames comprise timber and steel.

Currently, the site accommodates a furniture shop at ground and mezzanine levels, with offices and rehearsal space for The Belvoir Theatre on Levels 2 and 3. Access to Belvoir Street Theatre spaces is gained from Belvoir Street via the former loading dock entrance.

Belvoir Street falls from east to west, with the building footprint accommodating a level change of approximately 3.7m from the Elizabeth Street footpath level to the eastern extent of the building envelope.

Two mature street trees are present on the Elizabeth Street frontage.

Figure 1 – Aerial Photograph



Source: Urbis

3. PROPOSED DEVELOPMENT

This Clause 4.6 Variation Request has been prepared to accompany a DA for alterations and additions to the BST's warehouse building at 18 Belvoir Street, Surry Hills.

A detailed description of the proposed development is provided in the Statement of Environmental Effects prepared by Urbis. The proposal is also detailed within the architectural drawings that form part of the DA.

A summary of the key features of the proposed development is provided below:

- Demolition of existing internal structures (partition walls, amenities, stairs) and of the existing roof structure.
- Construction of a new entrance / lobby and expansion of glazed openings on Elizabeth Street.
- Erection of a 2.76sqm vertical projecting wall sign on the Elizabeth Street elevation, which is proposed to be illuminated between 5:30pm to 10:30pm each day.
- Installation of a lift servicing all floors of the building.
- Introduction of double height rehearsal spaces at Ground Floor (replacing the former retail use), involving the creation of voids on Level 1.
- Reconfigured administrative and support spaces for the BST on Ground, Level 1, and Level 2 (including new amenities, bicycle parking, storage areas).
- Conversion of Level 3 to a commercial office tenancy, plus the introduction of a one-storey vertical addition (also for commercial office) to a maximum height of 17.62m.

Figure 2 – Photomontage of Proposal



Source: TKD

4. VARIATION OF BUILDING HEIGHT STANDARD

This section of the report identifies the development standard that is proposed to be varied, including the extent of the contravention. A detailed justification for the proposed variation is provided in Section 6.

4.1. DEVELOPMENT STANDARD

This Clause 4.6 Variation seeks variation to Clause 4.3 of SLEP 2012. As shown below in **Figure 3** the SLEP 2012 identifies a maximum HOB of **15m** for the site.

The Dictionary of the SLEP 2012 defines building height as:

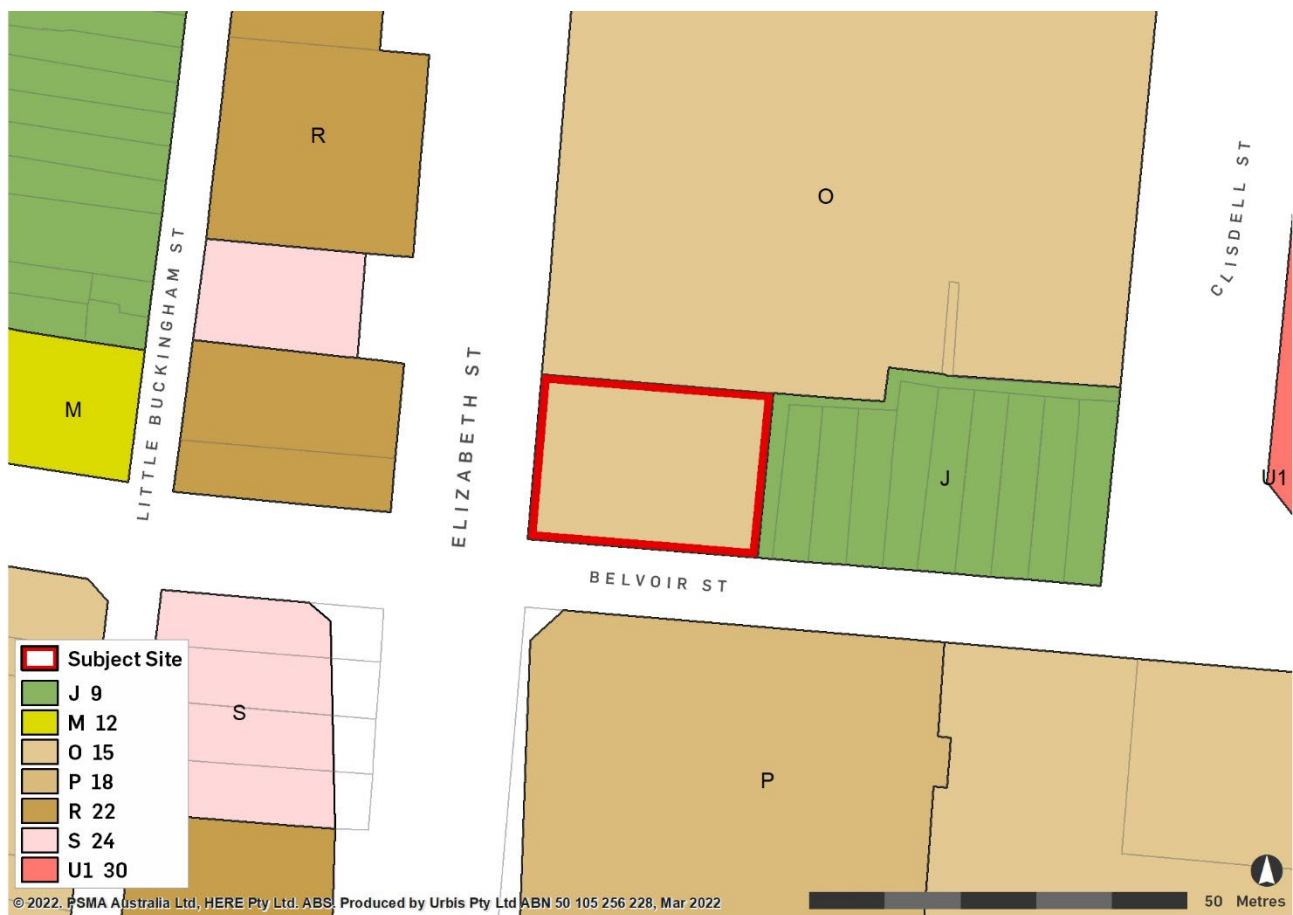
building height (or height of building) means—

(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.

Figure 3 – Sydney LEP 2012 Height of Buildings Map



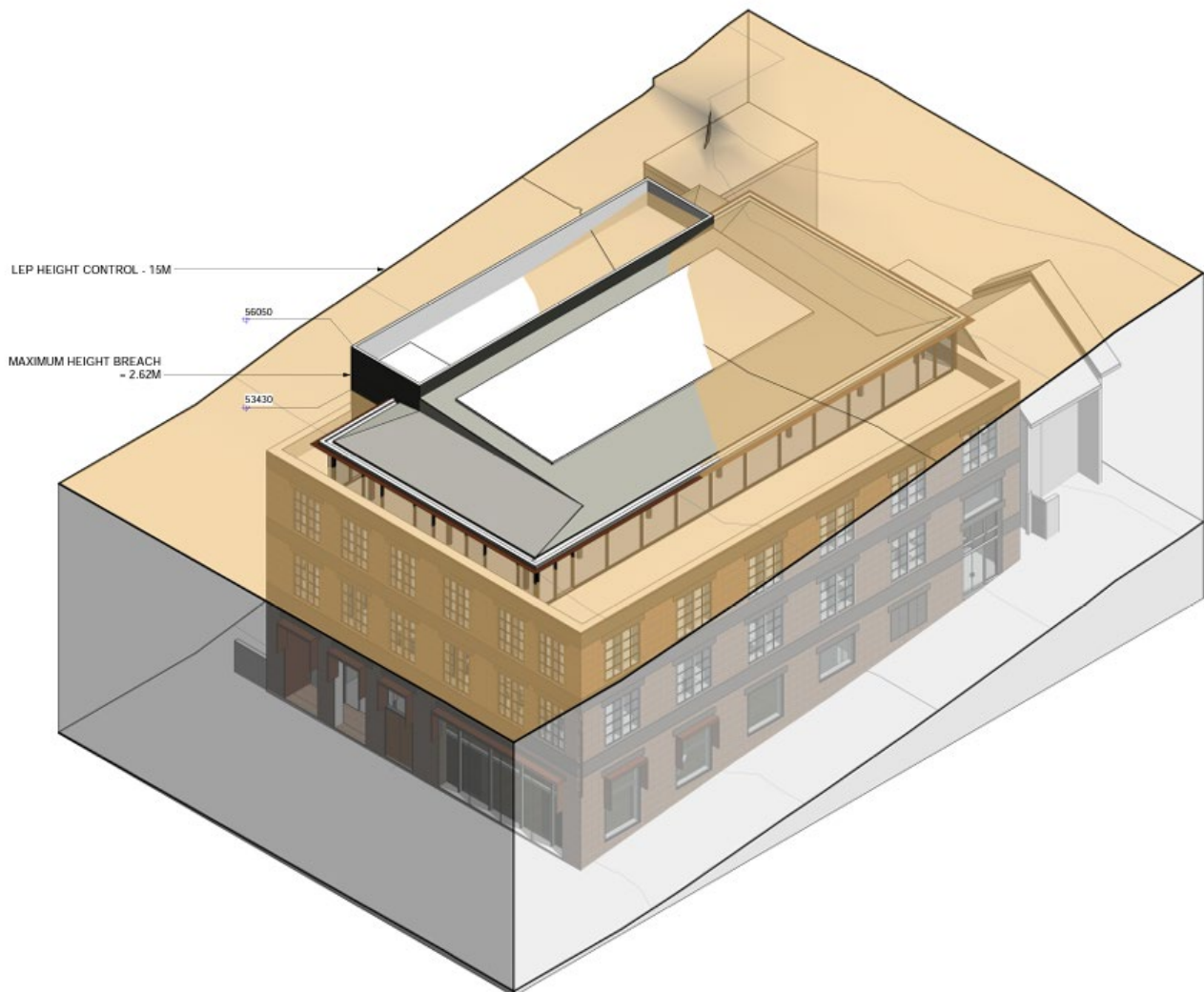
Source: Urbis

4.2. PROPOSED VARIATION TO HEIGHT OF BUILDINGS

The proposal seeks approval for exceedances to the 15m height plane across the western end of the fourth level rooftop, plant screen and lift overrun areas. The highest point of the building is to be built to a height of 17.62m which results in a variation of 2.62m.

With consideration of the sloped nature of the site (east to west), only the corner point of the proposed rooftop plant screen will reach a height of 17.62m with the rest of the development being at a lower height, and a substantial portion of the building being below the 15m HOB plane. **Figure 4** demonstrates the areas of the proposed development that will exceed the 15m HOB plane.

Figure 4 – Height Plane Diagram Showing Height Variation (orange: 15m SLEP 2012 height plane)



Source: TKD

5. RELEVANT ASSESSMENT FRAMEWORK

Clause 4.6 of the SLEP 2012 includes provisions that allow for exceptions to development standards in certain circumstances. The objectives of clause 4.6 of the SLEP 2012 are:

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

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

In determining whether to grant consent for development that contravenes a development standard, clause 4.6(3) requires that the consent authority to consider a written request from the applicant that seeks to justify the contravention of the development by demonstrating:

- (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.*

Clause 4.6(4)(a) requires the consent authority to be satisfied that the applicant's written request adequately addresses each of the matters listed in clause 4.6(3). The consent authority should also be satisfied that the proposed development will be in the public interest because it is consistent with the objectives of the standard and the objectives for development within the zone in which it is proposed to be carried out.

Clause 4.6(4)(b) requires the concurrence of the Secretary to have been obtained. In deciding whether to grant concurrence, subclause (5) requires that the Secretary consider:

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

The concurrence of the Secretary can be assumed to have been granted for the purpose of this variation request in accordance with the Department of Planning Circular PS 18–003 'Variations to development standards', dated 21 February 2018. This circular is a notice under section 64(1) of the Environmental Planning and Assessment Regulation 2000 and provides for assumed concurrence. A consent granted by a consent authority that has assumed concurrence is as valid and effective as if concurrence had been given.

This clause 4.6 request demonstrates that compliance with the height of building development standard prescribed for the site in clause 4.3 of the SLEP 2012 is unreasonable and unnecessary, that there are sufficient environmental planning grounds to justify the requested variation and that the approval of the variation is in the public interest because it is consistent with the development standard and zone objectives.

In accordance with clause 4.6(3), the applicant requests that the height of buildings development standard be varied (subject to the applicant's position that such a request should not actually be necessary).

6. ASSESSMENT OF CLAUSE 4.6 VARIATION

The following sections of the report provide a comprehensive assessment of the request to vary the development standards relating to the height of building in accordance with clause 4.3 of SLEP 2012.

Detailed consideration has been given to the following matters within this assessment:

- Varying development standards: A Guide, prepared by the Department of Planning and Infrastructure dated August 2011.
- Relevant planning principles and judgements issued by the Land and Environment Court.

The following sections of the report provides detailed responses to the key questions required to be addressed within the above documents and clause 4.6 of SLEP 2012.

6.1. IS THE PLANNING CONTROL A DEVELOPMENT STANDARD THAT CAN BE VARIED? – CLAUSE 4.6(2)

The height of building development standard prescribed by clause 4.3 of the SLEP 2012 is a development standard capable of being varied under clause 4.6(2) of SLEP 2012.

The proposed variation is not excluded from the operation of clause 4.6(2) as it does not comprise any of the matters listed within clause 4.6(6) or clause 4.6(8) of SLEP 2012.

6.2. IS COMPLIANCE WITH THE DEVELOPMENT STANDARD UNREASONABLE OR UNNECESSARY IN THE CIRCUMSTANCES OF THE CASE? – CLAUSE 4.6(3)(A)

Historically, the most common way to establish a development standard was unreasonable or unnecessary was by satisfying the first method set out in *Wehbe v Pittwater Council* [2007] NSWLEC 827. This method requires the objectives of the standard are achieved despite the non-compliance with the standard.

This was recently re-affirmed by the Chief Judge in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 at [16]-[17]. Similarly, in *Randwick City Council v Micaul Holdings Pty Ltd* [2016] NSWLEC 7 at [34] the Chief Judge held that “establishing that the development would not cause environmental harm and is consistent with the objectives of the development standards is an established means of demonstrating that compliance with the development standard is unreasonable or unnecessary”.

This Request addresses the first method outlined in *Wehbe v Pittwater Council* [2007] NSWLEC 827. This method alone is sufficient to satisfy the ‘unreasonable and unnecessary’ requirement.

- ***The objectives of the standard are achieved notwithstanding non-compliance with the standard*** (the first method in *Wehbe v Pittwater Council* [2007] NSWLEC 827 [42]-[43])

The specific objectives of the development standard as specified in clause 4.3 of SLEP 2012 are detailed in Table 1 below. An assessment of the consistency of the proposed development with each of the objectives is also provided.

Table 1 – Assessment of Consistency with Clause 4.3 Objectives

Objectives	Assessment
<p><i>To ensure the height of development is appropriate to the condition of the site and its context</i></p>	<p>The proposed height is appropriate considering the site context as:</p> <ul style="list-style-type: none"> ▪ The proposed fourth storey addition, rooftop plant and lift overrun are located near the north of the site and setback from the southern, warehouse building parapet so as to minimise visibility from the street frontages and maintain the legibility of the existing warehouse form. ▪ This siting strategy also successfully mitigates adverse shadowing impacts to neighbouring residential uses. Notably the proposal complies with the SDCP overshadowing controls, which requires that new development does not create any additional overshadowing onto a neighbouring dwelling where that dwelling currently receives less than 2 hours direct sunlight to habitable rooms and private open space. ▪ The proposed building height is consistent with the 4-storey max building height in storeys prescribed in the Sydney DCP 2012. ▪ The contravention to the 15m HOB is largely a result of the sloped nature of the site (which falls approximately 3.7m). ▪ The proposed 4-storey building height is appropriate within the Elizabeth Street area which features many taller, multi-storey buildings. The non-uniform nature of building heights in the area is reflected in the ‘Prince Alfred Park South’ SDCP 2012 locality statement which encourages “a mix of building types to reflect the diversity of form and mass”. In this respect, the building height is considered appropriate for its context.
<p><i>To ensure appropriate height transitions between new development and heritage items and buildings in heritage conservation areas or special character areas</i></p>	<ul style="list-style-type: none"> ▪ The proposed 4-storey building height (max RL 56.05m) generally aligns (and is lower than) the height of the neighbouring heritage building at 480 Elizabeth Street (RL 57.2m), as well as the multi-storey residential apartment building on the opposite side of Elizabeth Street (533-567 Elizabeth Street – RL 62.69m) and the Chinese Consulate Building (539-541 Elizabeth Street – RL 58.69m). ▪ The proposal provides an appropriate setback and massing strategy that ensures the building is appropriately scaled and will maintain non-dominant relationships with surrounding buildings, streets and the broader urban context. ▪ The vertical addition is appropriately setback from the building edge, maintaining a complimentary relationship to the original (heritage) built fabric. ▪ Urbis Heritage has prepared a HIS which concludes the proposal will not have any adverse impacts on the significance of the subject building, or adjoining heritage items and conservation areas.

Objectives	Assessment
<i>To promote the sharing of views outside Central Sydney</i>	The proposed vertical addition will not result in the loss of any significant views from the surrounding public domain or private properties.
<i>To ensure appropriate height transitions from Central Sydney and Green Square Town Centre to adjoining areas</i>	N/A – site not located near Central Sydney or Green Square Town Centre.
<i>In respect of Green Square—</i> <ul style="list-style-type: none"> ▪ <i>to ensure the amenity of the public domain by restricting taller buildings to only part of a site, and</i> ▪ <i>to ensure the built form contributes to the physical definition of the street network and public spaces.</i> 	N/A

As outlined in the table above, the objectives of the development standard are achieved, notwithstanding the non-compliance with the standard in the circumstances described in this variation report.

- **The underlying object or purpose would be undermined, if compliance was required with the consequence that compliance is unreasonable** (the third method in *Wehbe v Pittwater Council* [2007] NSWLEC 827 [42]-[43] as applied in *Linfield Developments Pty Ltd v Cumberland Council* [2019] NSWLEC 131 at [24])

Not replied upon.

- **The burden placed on the community (by requiring strict compliance with the HOB standard) would be disproportionate to the (non-existent or inconsequential) adverse consequences attributable to the proposed non-compliant development** (cf *Botany Bay City Council v Saab Corp* [2011] NSWCA 308 at [15]).

Not replied upon.

6.3. ARE THERE SUFFICIENT ENVIRONMENTAL PLANNING GROUNDS TO JUSTIFY CONTRAVENING THE DEVELOPMENT STANDARD? – CLAUSE 4.6(3)(B)

The Land & Environment Court judgment in *Initial Action Pty Ltd v Woollahra Council* [2018] NSWLEC 2018, assists in considering the sufficient environmental planning grounds. Preston J observed:

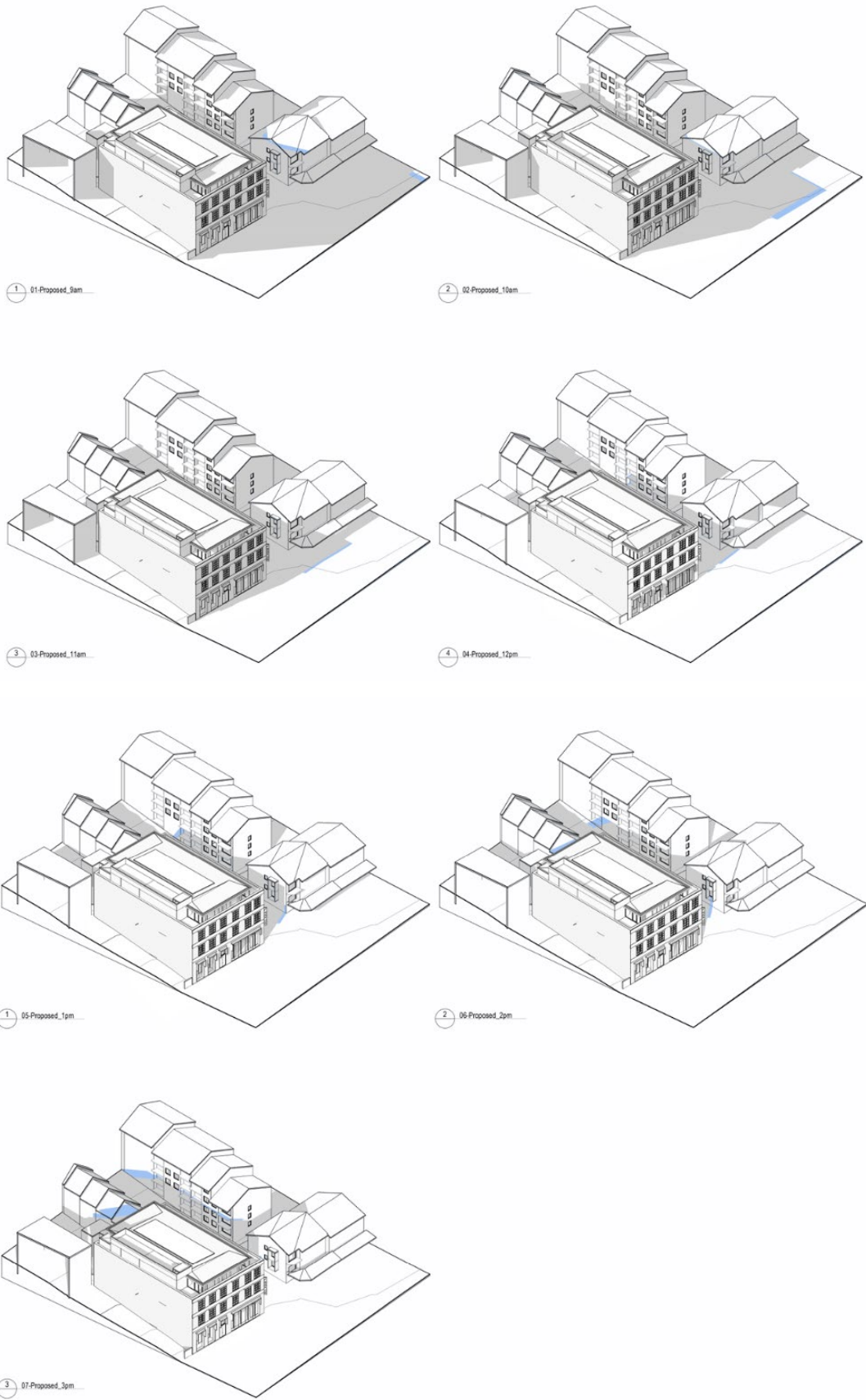
“...in order for there to be 'sufficient' environmental planning grounds to justify a written request under clause 4.6, the focus must be on the aspect or element of the development that contravenes the development standard and the environmental planning grounds advanced in the written request must justify contravening the development standard, not simply promote the benefits of carrying out the development as a whole; and...there is no basis in Clause 4.6 to establish a test that the non-compliant development should have a neutral or beneficial effect relative to a compliant development”

The proposed development is supportable on environmental planning grounds for the following reasons:

- The proposal (notwithstanding the LEP HOB contravention) is consistent with the objectives of the development standard as provided in clause 4.3 of the SLEP 2012.
- The proposal maintains the same amount of GFA compared with the existing building (2,272sqm). Therefore, the height variation does not seek to provide any additional density or gross floor area (GFA).
- The portion of height non-compliance has largely resulted from the natural fall of the site (of approximately 3.7m) from the eastern extent of the building envelope to the Elizabeth Street footpath level.
- Having regard to the built form in the locality, the proposal represents an appropriate addition to the streetscape – refer to Figure 6.
- The footprint of the top floor vertical addition has been placed toward the northern end of the site, away from the sensitive residential / southern interface (setback 3.79m). This has the effect of:
 - Minimising its visibility from both Elizabeth and Belvoir Streets.
 - Ensuring the proposal complies with Council’s DCP overshadowing controls (see further explanation below).
 - Ensuring the building is appropriately scaled and will maintain non-dominant relationships with surrounding buildings, streets and the broader urban context; and
 - Maintaining a complimentary relationship to the original (heritage) built fabric, including the building’s legibility as an Inter-War Functionalist warehouse.
- As demonstrated in the Overshadowing Diagrams prepared by TKD Architects (refer Figure 5 below), the proposed increase to building height will not result in any perceivable overshadowing impacts:
 - The minimal additional shadow primarily falls on non-sensitive locations (roofs, roads), with only minor affectation to a small number of adjoining windows between 12pm and 3pm.
 - Notwithstanding these minor impacts, the proposal is capable of compliance with the Sydney DCP, specifically Section 4.2.3.1(3), which requires that new development does not create any additional overshadowing onto a neighbouring dwelling where that dwelling currently receives less than 2 hours direct sunlight to habitable rooms and private open space.
- More broadly, the proposal will provide the renewal of an existing heritage building and deliver a positive social and economic contribution to the city through the delivery of additional floor space for the performing arts industry, and includes various green travel / sustainability initiatives – consistent with the objectives of the MU1 (Mixed Use) zone.

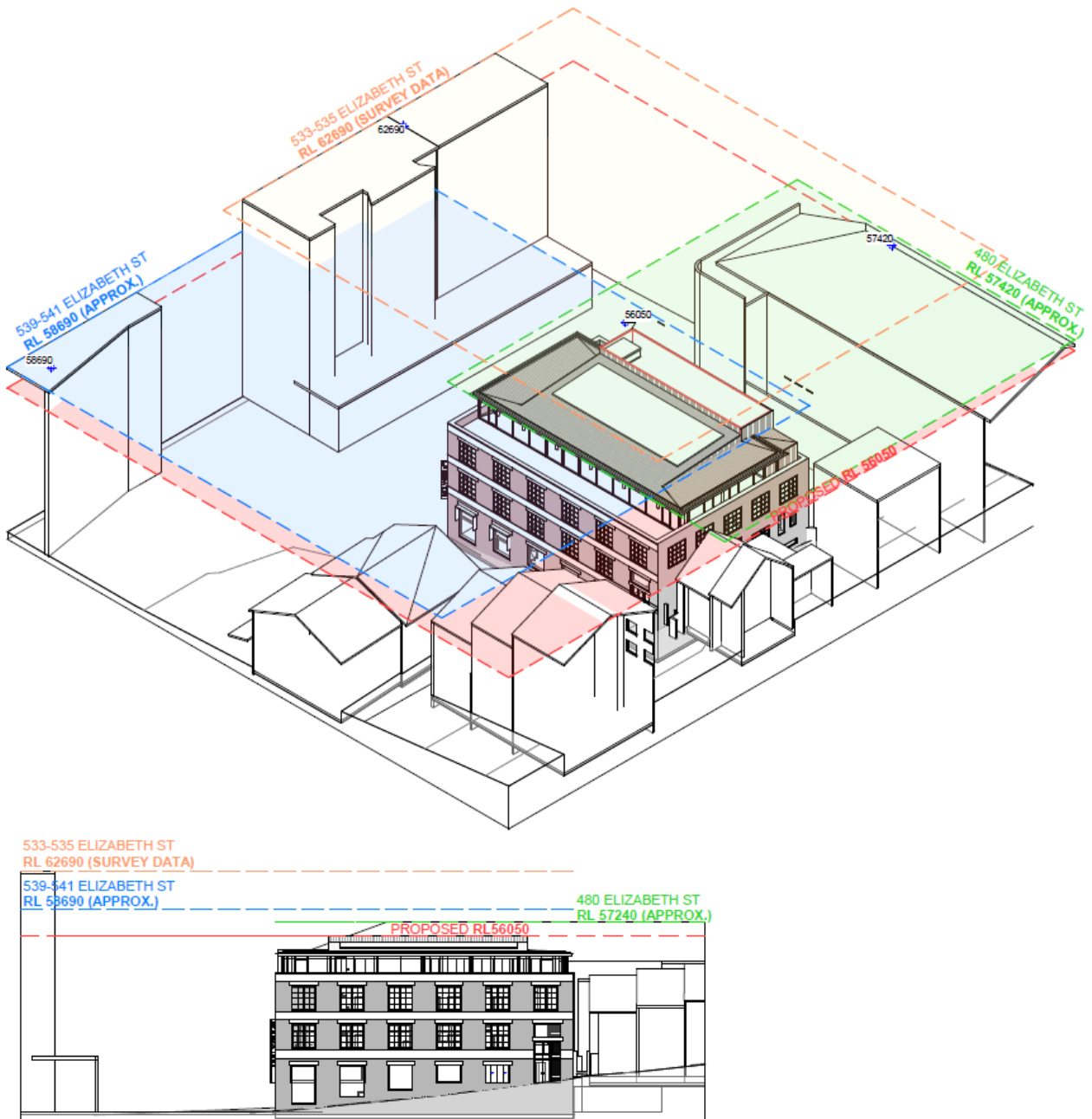
As such, given the high level of compliance with other key development standards, the alignment with the desired future character of the area (both in terms of built form and land use) and the appropriate mitigation of environmental impacts, the variation to the development standard is supportable on environmental planning grounds.

Figure 5 – Proposed Development Shadow Diagrams (blue: additional overshadowing)



Source: TKD Architects

Figure 6 – Surrounding Height Comparison Drawing



Source: TKD

6.4. HAS THE WRITTEN REQUEST ADEQUATELY ADDRESSED THE MATTERS IN SUB-CLAUSE (3)? – CLAUSE 4.6(4)(A)(I)

Clause 4.6(4)(a)(i) states that development consent must not be granted for development that contravenes a development standard unless the consent authority is satisfied that the applicant’s written request has adequately addressed the matters required to be demonstrated by subclause (3).

Each of the sub-clause (3) matters are comprehensively addressed in this written request, including detailed consideration of whether compliance with a development standard is unreasonable or unnecessary in the circumstances of the case. The written request also provides sufficient environmental planning grounds, including matters specific to the proposal and the site, to justify the proposed variation to the development standard.

6.5. IS THE PROPOSED DEVELOPMENT IN THE PUBLIC INTEREST? – CLAUSE 4.6(4)(B)(II)

Clause 4.6(4)(a)(ii) states development consent must not be granted for development that contravenes a development standard unless the consent authority is satisfied the proposal will be in the public interest because it is consistent with the objectives of the development standard and the objectives for the zone.

The consistency of the development with the objectives of the development standard is demonstrated in Table 1 above. The proposal is also consistent with the land use objectives that apply to the site under the Sydney LEP 2012. The site is located within the MU1 (Mixed Use) zone. The proposed development is consistent with the relevant land use zone objectives as outlined in Table 2 below.

Table 2 – Assessment of Compliance with Land Use Zone Objectives

Objective	Assessment
<p><i>To encourage a diversity of business, retail, office and light industrial land uses that generate employment opportunities.</i></p> <p><i>To ensure that new development provides diverse and active street frontages to attract pedestrian traffic and to contribute to vibrant, diverse and functional streets and public spaces.</i></p>	<p>The proposal will maintain the existing Belvoir Street Theatre use on-site, and the proposed vertical addition will allow for their rearrangement to make the space more functional and activate the Elizabeth Street frontage (through new openings, larger areas of glazing, signage, and visual connections to the creative space inside the building).</p> <p>The proposed vertical addition is intended to be leased as new commercial office space to a tenant allied in the cultural and creative industry, creating a mixture of compatible employment generating land uses.</p>
<p><i>To minimise conflict between land uses within this zone and land uses within adjoining zones.</i></p>	<p>The proposal maintains the existing ‘creative industry’ use and introduces a new ‘office premises’ use. These uses are permitted with consent and are highly suitable for the site (and MU1 zone more broadly). The environmental analysis undertaken as part of this DA demonstrates the proposal will not have any adverse impacts on the adjoining land, including the residential uses on the southern side of Belvoir Street.</p>
<p><i>To encourage business, retail, community and other non-residential land uses on the ground floor of buildings.</i></p>	<p>The proposal seeks to locate a non-residential use on the ground floor of the building, consistent with this zone objective.</p>

Objective	Assessment
<i>To ensure land uses support the viability of nearby centres.</i>	The proposed commercial space facilitated by the vertical addition will support the viability of the Surry Hills area, including its role within the 'Eastern Creative Precinct', as outlined in the Sydney LSPS.
<i>To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.</i>	<p>The site is close to Central Station, Chalmers Street / Elizabeth Street buses and the Surry Hills Light Rail stop. It is well connected to public transport.</p> <p>The proposed vertical addition will allow for the facilitation of additional office space in this accessible location. Additionally, a Green Travel Plan has been prepared, which outlines various strategies to maximise public transport patronage and encourage sustainable modes of transport.</p>

6.6. HAS THE CONCURRENCE OF THE PLANNING SECRETARY BEEN OBTAINED? – CLAUSE 4.6(4)(B) AND CLAUSE 4.6(5)

The Secretary can be assumed to have concurred to the variation under Department of Planning Circular PS 18–003 'Variations to development standards', dated 21 February 2018.

The Secretary can be assumed to have given concurrence as the matter will be determined by an independent hearing and assessment panel or a Sydney district or regional planning panel in accordance with the Planning Circular.

The matters for consideration under clause 4.6(5) are considered below.

- **Clause 4.6(5)(a) – does contravention of the development standard raise any matter of significance for State or regional environmental planning?**

The proposed non-compliance with the height of buildings 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.

- **Clause 4.6(5)(b) - is there a public benefit of maintaining the planning control standard?**

The proposed development achieves the objectives of the height of buildings development standard and the land use zone objectives despite the technical non-compliance. The proposed variation will facilitate the intended rearrangement of the building to revitalise and better activate the Elizabeth Street while also facilitating new commercial space in an accessible location.

Strict compliance with the planning control standard would also compromise the delivery of the desired uses, public benefits and positive social impacts that would be provided by the development.

There is no material impact or benefit associated with strict adherence to the development standard and there is no compelling reason or public benefit derived from maintenance of the standard.

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

Concurrence can be assumed, however, there are no known additional matters that need to be considered within the assessment of the clause 4.6 variation request prior to granting concurrence, should it be required.

7. CONCLUSION

For the reasons set out in this written request, strict compliance with the height of buildings development standard contained within clause 4.3 of the SLEP 2012 is unreasonable and unnecessary in the circumstances of the case. Further, there are sufficient environmental planning grounds to justify the proposed variation and it is in the public interest to do so, as summarised below:

- The proposal (notwithstanding the LEP HOB contravention) is consistent with the objectives of the development standard as provided in clause 4.3 of the SLEP 2012.
- The proposal maintains the same amount of GFA compared with the existing building (2,272sqm). Therefore, the height variation does not seek to provide any additional density or gross floor area (GFA).
- The portion of height non-compliance has largely resulted from the natural fall of the site (of approximately 3.7m) from the eastern extent of the building envelope to the Elizabeth Street footpath level.
- Having regard to the built form in the locality, the proposal represents an appropriate addition to the streetscape.
 - The non-uniform nature of building heights in the area is reflected in the ‘Prince Alfred Park South’ SDCP 2012 locality statement which encourages “*a mix of building types to reflect the diversity of form and mass*”. In this respect, the building height is considered appropriate for its context.
 - The proposed 4-storey building height (max RL 56.05m) generally aligns (and is lower than) the height of the neighbouring heritage building at 480 Elizabeth Street (RL 57.24m), as well as the multi-storey residential apartment building on the opposite side of Elizabeth Street (533-567 Elizabeth Street – RL 62.69m) and the Chinese Consulate Building (539-541 Elizabeth Street – RL 58.69m).
- The proposed building height is consistent with the 4-storey max building height in storeys prescribed in the Sydney DCP 2012.
- The footprint of the top floor vertical addition has been placed toward the northern end of the site, away from the sensitive residential / southern interface (setback 3.79m). This has the effect of:
 - Minimising its visibility from both Elizabeth and Belvoir Streets.
 - Ensuring the proposal complies with Council’s DCP overshadowing controls.
 - Ensuring the building is appropriately scaled and will maintain non-dominant relationships with surrounding buildings, streets and the broader urban context; and
 - Maintaining a complimentary relationship to the original (heritage) built fabric, including the building’s legibility as an Inter-War Functionalist warehouse.
- As demonstrated in the Overshadowing Diagrams prepared by TKD Architects (refer Figure 5 below), the proposed increase to building height will not result in any perceivable overshadowing impacts:
 - The minimal additional shadow primarily falls on non-sensitive locations (roofs, roads), with only minor affectation to a small number of adjoining windows between 12pm and 3pm.
 - Notwithstanding these minor impacts, the proposal is capable of compliance with the Sydney DCP, specifically Section 4.2.3.1(3), which requires that new development does not create any additional overshadowing onto a neighbouring dwelling where that dwelling currently receives less than 2 hours direct sunlight to habitable rooms and private open space.
- More broadly, the proposal will provide the renewal of an existing heritage building and deliver a positive social and economic contribution to the city through the delivery of additional floor space for the performing arts industry, and includes various green travel / sustainability initiatives – consistent with the objectives of the MU1 (Mixed Use) zone.

For the reasons outlined above, the clause 4.6 request is well-founded. The development standard is unnecessary and unreasonable in the circumstances, and there are sufficient environmental planning grounds that warrant contravention of the standard. In the circumstances of this case, flexibility in the application of the height of buildings development standard should be applied.

DISCLAIMER

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