

Attachment D

<p>Clause 4.6 Variation Request – Floor Space Ratio</p>

The logo for URBIS, featuring the word "URBIS" in a bold, sans-serif font. The text is contained within a square frame that is open on the right side. A thick black horizontal line extends from the right side of the square frame across the top of the page. A thick black vertical line extends from the top of the page down to the top of the square frame.

CLAUSE 4.6 VARIATION REQUEST - FSR

Belvoir Street Theatre
Warehouse Renewal

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

URBIS STAFF RESPONSIBLE FOR THIS REPORT WERE:

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Project Code P37366
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Aboriginal and Torres Strait Islander people make in
creating a strong and vibrant Australian society.**

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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 486-490 Elizabeth Street, Surry Hills.

The Request seeks an exception from the floor space ratio development standard prescribed for the site under clause 4.4 of Sydney Local Environmental Plan 2012 (SLEP 2012).

The proposal maintains the same amount of GFA compared with the existing building (2,272sqm). Therefore, the FSR variation does not seek to provide any additional density or gross floor area (GFA).

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. DRIVERS FOR GFA / BUILDING RECONFIGURATION

The primary driver for the planned alterations and additions is the age of the building and its incompatibility for use with the creative and performing arts. In summary, the building needs upgrades in several key areas:

- Since Belvoir Street Theatre purchased the building in the early 2000s, only minor and piecemeal renovations have been undertaken, and functionally, the building is no longer an appropriate place to work for all members of the community:
 - The administrative spaces are inappropriate for modern work practices and frequently leak during heavy rainfall, despite numerous repairs; and
 - The performance, rehearsal and technical spaces are rudimentary and have poor access.
- The performance spaces are located on the top floor and do not afford appropriate public access, precluding them from being used for activities that are community focussed.
- The existing retail space on Ground and mezzanine levels is of low quality and does not offer Belvoir Street Theatre any synergy or opportunity to build relationships within the broader creative arts industry.
- There is inadequate universal/equal access throughout the building. The only universal access provided is via a stair climber platform lift, which no longer delivers an appropriate solution.
- The building services throughout the entire building need to be upgraded to meet current code compliance.

In view of these existing constraints, the project plans to deliver on the following key outcomes for the BST and the community:

- Provision of additional performance spaces for the performing arts community through transformation and reorganisation of existing facilities.
- Creation of a new, prominent Elizabeth Street frontage for the Belvoir Street Theatre (as a whole), improving its presence and community awareness.
- Address the physical deterioration of the building to ensure compliance with WHS requirements and improve the work and performance spaces for Belvoir Street Theatre's permanent staff and guest artists.
- Provide new versatile working spaces for creative industries; and
- Create future income streams for the Belvoir Street Theatre through a greater range of spaces available for arts and allied creative industries.

Other options were considered by Belvoir Street Theatre. Only upgrading the office and support spaces will see the rest of the building deteriorate further. The lack of equitable access and other amenities means (without upgrade) there will only ever be very low yielding commercial space in the building.

This, in combination with the deteriorating building condition, will mean the costs to maintain the building could be more than the rental returns in the medium to long term. In short, a 'business as usual' approach will ultimately lead to the long-term decline of the Belvoir Street Theatre as one of Australia's pre-eminent theatre companies. This is a project to safeguard the next generation of theatre participants.

3. 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

4. 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 486-490 Elizabeth 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

5. 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.

5.1. DEVELOPMENT STANDARD

This Clause 4.6 Variation seeks variation to Clause 4.4 of SLEP 2012. As shown below in **Figure 3** the SLEP 2012 identifies a maximum FSR of **3:1** for the site.

Clause 4.5(2) of the SLEP 2012 defines *floor space ratio* as:

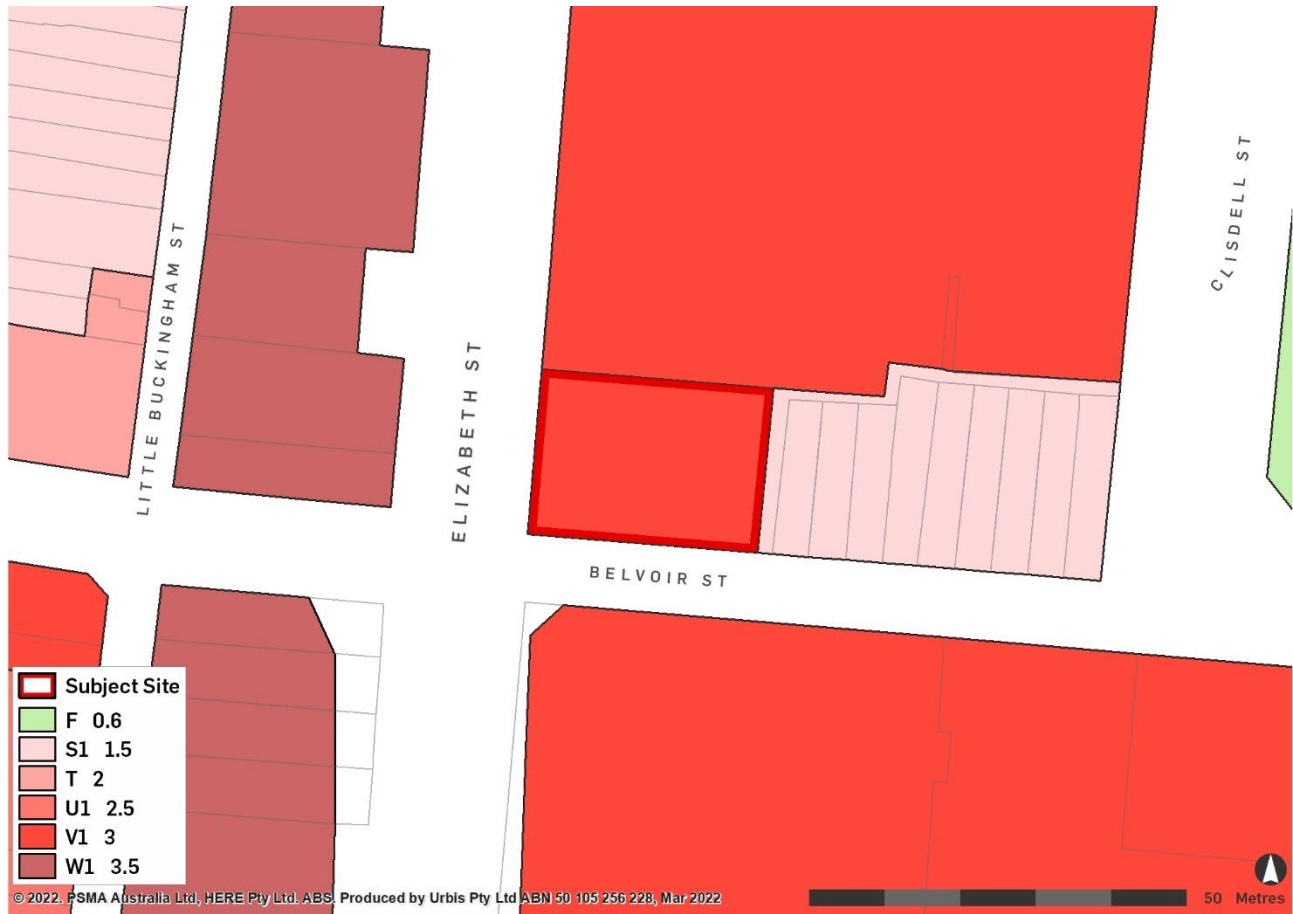
*The **floor space ratio** of buildings on a site is the ratio of the gross floor area of all buildings within the site to the site area.*

The SLEP Dictionary also defines *gross floor area* as:

***gross floor area** means the sum of the floor area of each floor of a building measured from the internal face of external walls, or from the internal face of walls separating the building from any other building, measured at a height of 1.4 metres above the floor, and includes—*

- (a) the area of a mezzanine, and*
- (b) habitable rooms in a basement or an attic, and*
- (c) any shop, auditorium, cinema, and the like, in a basement or attic,*
but excludes—
- (d) any area for common vertical circulation, such as lifts and stairs, and*
- (e) any basement—*
 - (i) storage, and*
 - (ii) vehicular access, loading areas, garbage and services, and*
- (f) plant rooms, lift towers and other areas used exclusively for mechanical services or ducting, and*
- (g) car parking to meet any requirements of the consent authority (including access to that car parking), and*
- (h) any space used for the loading or unloading of goods (including access to it), and*
- (i) terraces and balconies with outer walls less than 1.4 metres high, and*
- (j) voids above a floor at the level of a storey or storey above.*

Figure 3 – Sydney LEP 2012 Height of Buildings Map



Source: Urbis

5.2. PROPOSED VARIATION TO FLOOR SPACE RATIO

The FSR control is 3:1. The proposed FSR is 3.4:1 (which maintains an existing non-compliance, i.e., no additional GFA proposed):

- Existing site area: 666.7sqm.
- Existing GFA: 2,272sqm.
- Proposed GFA: 2,272sqm (neutral).

NOTE: The proposal maintains the same amount of GFA compared with the existing building (2,272sqm). Therefore, the FSR variation does not seek to provide any additional density or gross floor area (GFA).

6. 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 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 FSR development standard prescribed for the site in clause 4.4 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 FSR development standard be varied (subject to the applicant's position that such a request should not actually be necessary).

7. 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 FSR in accordance with clause 4.4 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.

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

The FSR development standard prescribed by clause 4.4 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.

7.2. 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 4.4 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 4.4 Objectives

Objectives	Assessment
<p><i>To provide sufficient floor space to meet anticipated development needs for the foreseeable future</i></p>	<p>The proposal results in the same amount of floor space as the existing building. However, the floor space is reconfigured to revitalise and better activate the streetscape, while providing more functional space for the Belvoir Street Theatre’s operational requirements (addressing issues with the existing building’s condition – refer to Section 2 of this report). The commercial office component is intended to be leased to a tenant allied in the cultural and creative industry, providing a mixture of compatible employment generating land uses in accordance with the MU1 (Mixed Use) zone objectives. In combination, the works under this DA seek to safeguard the future of the Belvoir Street Theatre.</p>
<p><i>To regulate the density of development, built form and land use intensity and to control the generation of vehicle and pedestrian traffic</i></p>	<p>As above, the neutral GFA balance means the ‘density’ of the development has not increased from the existing condition. In relation to built form impacts resulting from the reconfiguration of floor space (i.e., vertical addition), these are considered acceptable because:</p> <ul style="list-style-type: none"> ▪ The proposed 4-storey building height generally aligns with the height of the neighbouring heritage building located at 480 Elizabeth Street, as well as the neighbouring, multi-storey residential apartment buildings on the opposite side of Elizabeth Street. ▪ 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. This has the effect of: <ul style="list-style-type: none"> - 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. <p>In relation to vehicle and pedestrian traffic:</p> <ul style="list-style-type: none"> ▪ The proposal maintains the existing parking provision (of zero spaces) and loading / servicing arrangements. The TIS prepared with the DA confirms the DA “<i>will not result in any additional trip generation or traffic impacts</i>”. ▪ Given the nature of uses proposed (and the neutral GFA balance) there is not anticipated to be any adverse pedestrian traffic impacts. In fact, the introduction of a new entrance / lobby on Elizabeth Street will improve pedestrian access to the building compared with the existing condition.

Objectives	Assessment
<i>To provide for an intensity of development that is commensurate with the capacity of existing and planned infrastructure</i>	The proposal provides the same amount of floor space as the existing building. On this basis, the DA will not place any undue burden on the capacity of existing or planned infrastructure.
<i>To ensure that new development reflects the desired character of the locality in which it is located and minimises adverse impacts on the amenity of that locality</i>	<p>The proposed works are in keeping with the desired future character of the Prince Alfred Park East locality as identified under the Sydney DCP 2012, as they will have no adverse impact on the view corridors along Elizabeth Street; retain the existing warehouse building; activate the Elizabeth Street streetscape; and compliment the mixed-use character of the locality.</p> <p>More specifically, The HIS prepared by Urbis concludes that the proposed works will have a positive impact on the existing site (which includes a warehouse building older than 50 years) and the broader locality (which includes adjoining heritage items and a Heritage Conservation Area).</p> <p>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 (refer to commentary on built form / massing above).</p>

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.

7.3. 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”

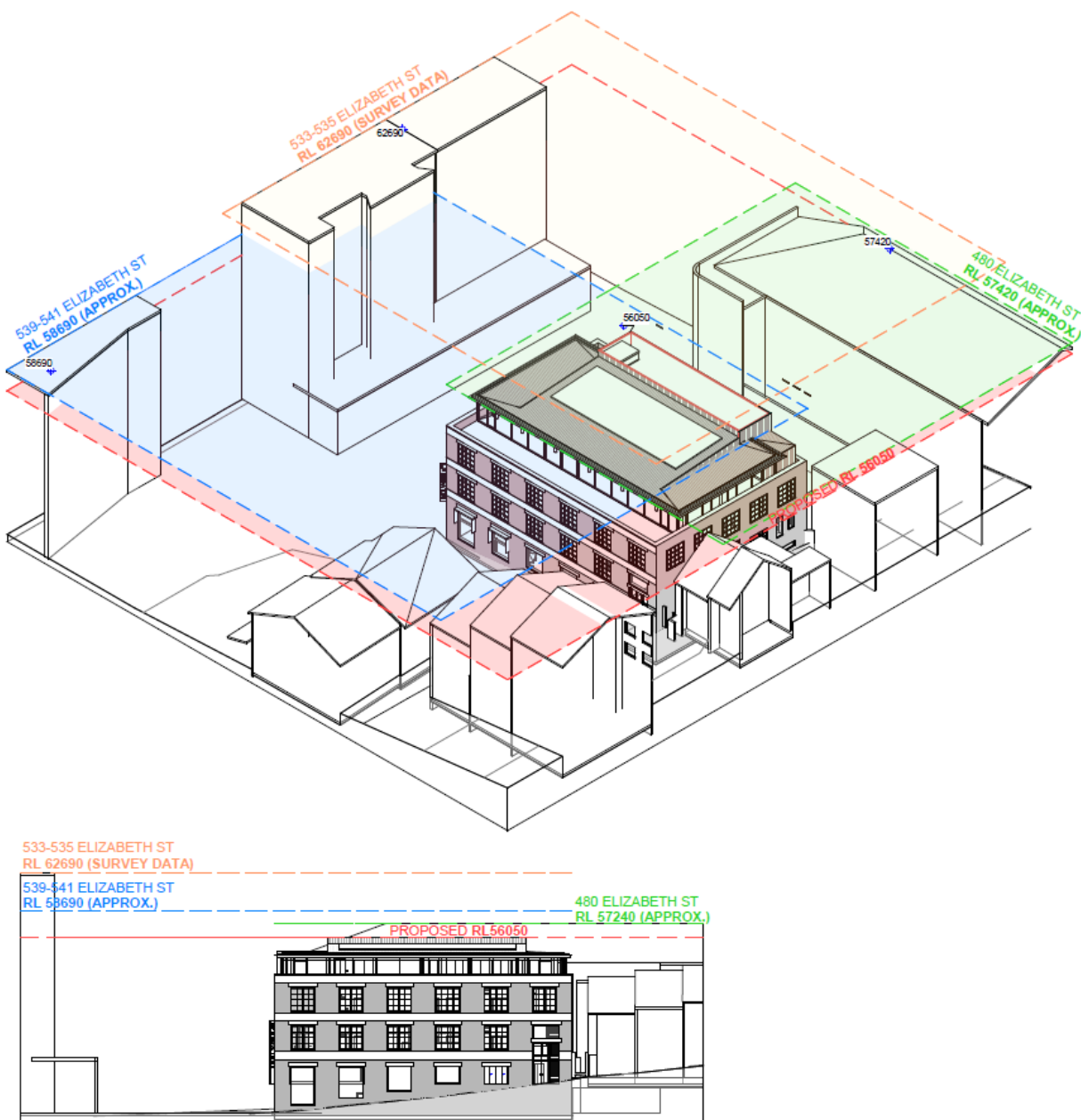
The proposed development is supportable on environmental planning grounds for the following reasons:

- **The proposal maintains the same amount of GFA compared with the existing building (2,272sqm). Therefore, the FSR variation does not seek to provide any additional density or gross floor area (GFA).**
- **The reconfiguration of floor space (resulting in a neutral GFA balance) is required by the Applicant to improve the long-term viability of the building, which was purchased in the early 2000s, but is no longer an appropriate place to work due to its lack of universal access and physical deterioration (despite numerous repairs). Refer to Section 2 of this report for a detailed overview of the existing building’s constraints, together with a summary of the benefits offered by the works sought under this DA.**
- The proposal is consistent with the objectives of the development standard as provided in clause 4.4 of the SLEP 2012 and the MU1 (Mixed Use) zone objectives.
- The built form impacts resulting from the reconfiguration of floor space (i.e., vertical addition), are acceptable because:
 - 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.
 - The proposed 4-storey building height resulting from the GFA reconfiguration (vertical addition) 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”*; and
 - The proposed 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) – refer to Figure 4.
- 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 (and more functional/ appropriate) floor space for the performing arts industry and includes various green travel / sustainability initiatives – consistent with the objectives of the MU1 (Mixed Use) zone.

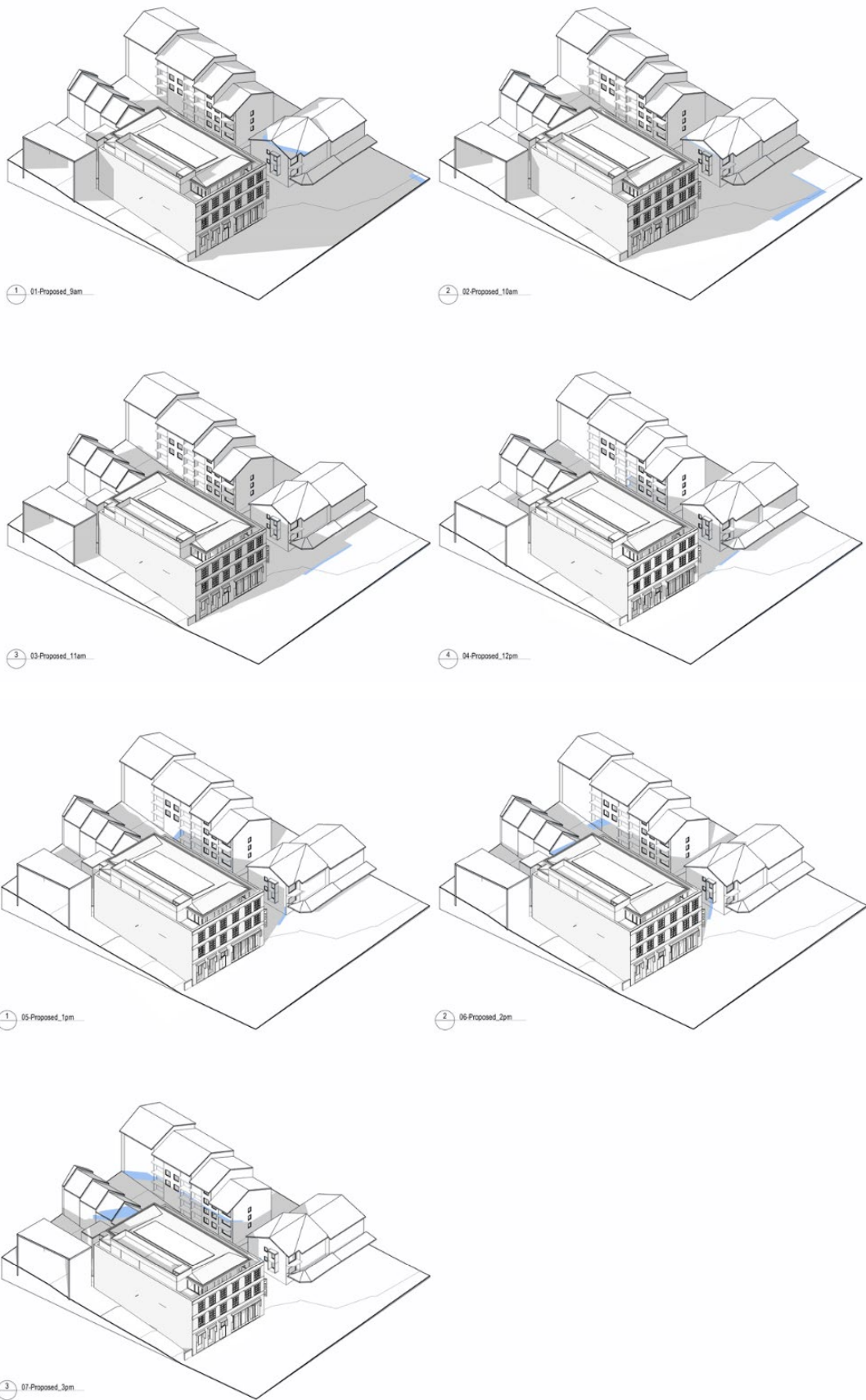
As such, given the high level of compliance with other key development standards, the alignment with the desired future character of the area (both in terms of built form and land use) and the appropriate mitigation of environmental impacts, the variation to the development standard is supportable on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

Figure 4 – Surrounding Height Comparison Drawing



Source: TKD

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



Source: TKD Architects

7.4. 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.

7.5. 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>

7.6. 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 FSR 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 FSR development standard and the land use zone objectives despite the technical non-compliance (which is existing). 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.

8. CONCLUSION

For the reasons set out in this written request, strict compliance with the FSR development standard contained within clause 4.4 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 maintains the same amount of GFA compared with the existing building (2,272sqm). Therefore, the FSR variation does not seek to provide any additional density or gross floor area (GFA).**
- **The reconfiguration of floor space (resulting in a neutral GFA balance) is required by the Applicant to improve the long-term viability of the building, which was purchased in the early 2000s, but is no longer an appropriate place to work due to its lack of universal access and physical deterioration (despite numerous repairs). Refer to Section 2 of this report for a detailed overview of the existing building's constraints, together with a summary of the benefits offered by the works sought under this DA.**
- The proposal is consistent with the objectives of the development standard as provided in clause 4.4 of the SLEP 2012 and the MU1 (Mixed Use) zone objectives.
- The built form impacts resulting from the reconfiguration of floor space (i.e., vertical addition), are acceptable because:
 - 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.
 - The proposed 4-storey building height resulting from the GFA reconfiguration 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"*; and
 - The proposed 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).
- As demonstrated in the Overshadowing Diagrams prepared by TKD Architects, 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 (and more functional/ appropriate) 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.

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