

Attachment D

Clause 4.6 Statement - Building Separation (ADG)

URBIS

CLAUSE 4.6 - BUILDING SEPARATION

86-90 Bay Street, Ultimo

Prepared for
HBB PROPERTY
6 February 2026

URBIS STAFF RESPONSIBLE FOR THIS REPORT WERE:

Director	Tim Blythe
Associate Director	Naomi Daley
Consultant	
Project Code	P0043774
Report Number	Final



The river is the symbol of the Dreaming and the journey of life. The circles and lines represent people meeting and connections across time and space. When we are working in different places, we can still be connected and work towards the same goal.

Title: Sacred River Dreaming
Artist Hayley Pigram
Darug Nation
Sydney, NSW

Acknowledgement of Country

Urbis acknowledges the Traditional Custodians of the lands we operate on.

We recognise that First Nations sovereignty was never ceded and respect First Nations peoples continuing connection to these lands, waterways and ecosystems for over 60,000 years.

We pay our respects to First Nations Elders, past and present.

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REQUEST TO VARY A DEVELOPMENT STANDARD

REQUEST TO VARY CLAUSE (2) (B) OF SECTION 69 IN THE HOUSING SEPP 2021

Address: 86-90 Bay Street, Ultimo

Date: 6 February 2026

SITE AND PROPOSED DEVELOPMENT

1. Site Description

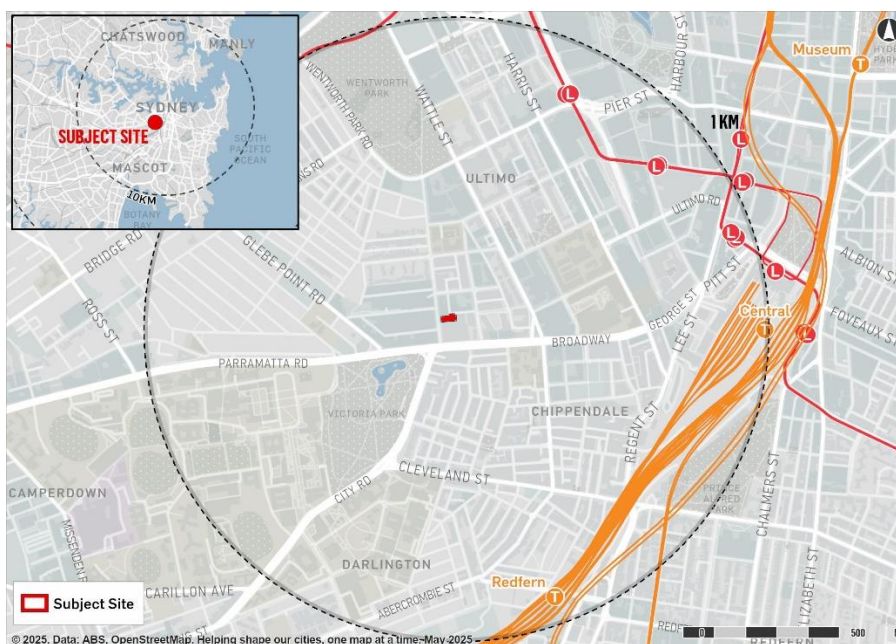
The key features of the site are summarised in the following table.

Table 1 Site Description

Site Characteristic	Description
Country	Gadigal Country
Address	86-90 Bay Street, Ultimo
Legal Description (Title Particulars)	CP/-/SP21479
Zoning	MU1 – Mixed Use
Existing Use / Structures	86-90 Bay Street contains a four-storey commercial building with a partial lower ground floor and below ground carpark accessed via St Barnabas Street. Due to the existing building's scale and architecture, it is noted to contribute negatively to the Bay Street, streetscape and considered detracting by the City of Sydney Development Control Plan SDCP 2012.
Site Area	1,011m ²
Existing GFA	2,685m ²
Site Frontages	The site frontage is on Bay Street and a side secondary frontage to St Barnabas Street
Topography	There is a cross fall of 800mm along Bay Street and a 3m fall to the back lane St Barnabas Street.
Vegetation	The site contains no existing vegetation.
Flooding/Overland Flow	The site is not located within a flood planning area.
Heritage	The site is identified as a detracting building within the Mountain Street Heritage Conservation Area. To the north of the site is heritage listed 4 storey building Reader's Digest and to the south is 5 storey Uni Lodge (student accommodation), which has been recently refurbished.
Vehicular Access	Vehicle access for parking and waste collection via St Barnabas Street.
Adjacent land uses North	The land uses directly to the north of the site consist of mixed-use developments, including shop top housing and residential flat buildings including a recent approval for co-living. The International Grammar School is approx. 400m to the north of the site.

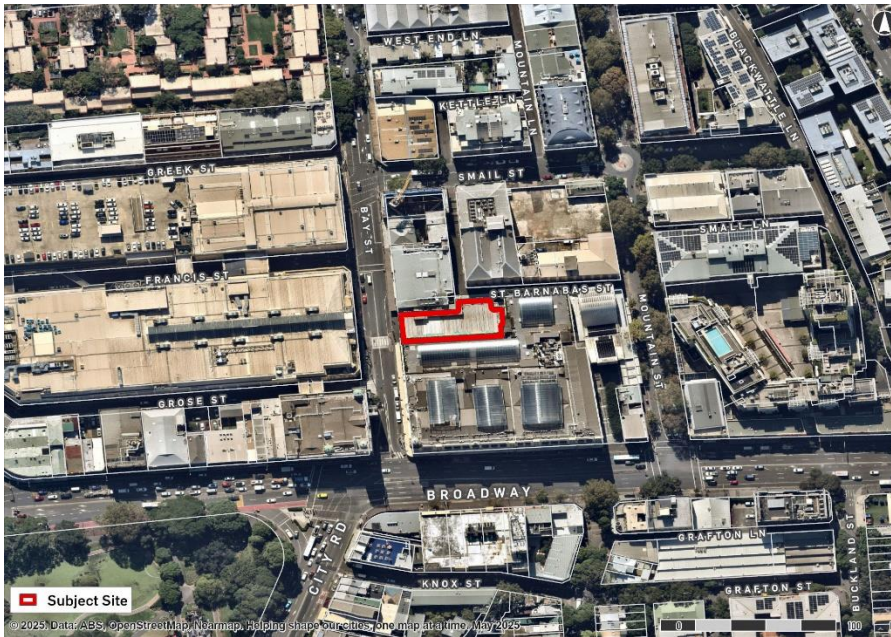
Site Characteristic	Description
Adjacent land uses East	Land uses directly to the east of the site include mixed use developments, including shop top housing and residential flat buildings. Developments range between 2 and 7 storeys. The site is approx. 700m away from Wattle Street, a classified road. Further east includes significant tertiary education facilities, including both Tafe NSW Ultimo and the University of Technology Sydney, Ultimo campus.
Adjacent land uses South	The south of the site consists of mixed-use developments, including residential, commercial and retail development adjoining Broadway. St Barnabas' Anglican Church is situated across the road from the south boundary of the site. Broadway is located 75m south of the site and is a classified road and a major artery of the Sydney Road network.
Adjacent land uses West	The land uses to the west of the site include an E1 – Local Centre zone which encompasses Broadway Shopping Centre and local neighbourhood shops along Broadway and Glebe Point Road. Further west includes Victoria Park and the University of Sydney, a significant tertiary education facility.
Public Transport	The site is proximate to buses on City Road, Broadway, and Glebe Point Road that connect to the Inner West and CBD. The site is within walking distance or short bus ride to Central railway station which provides metro, heavy rail, and light rail services to most of Greater Sydney.
Open Space	There is currently no open space on the site. The site is proximate to Victoria Park, Chippendale Green, and Wentworth Park.

Figure 1 Regional Context Map



Source: Urbis2025

Figure 2 Aerial Photograph



Source: *Urbis2025*

Photographs of the existing development and surrounding context are provided below.

Figure 3 Site Photos



Picture 1 View of the site looking northeast.

Source: *Urbis, 2025*



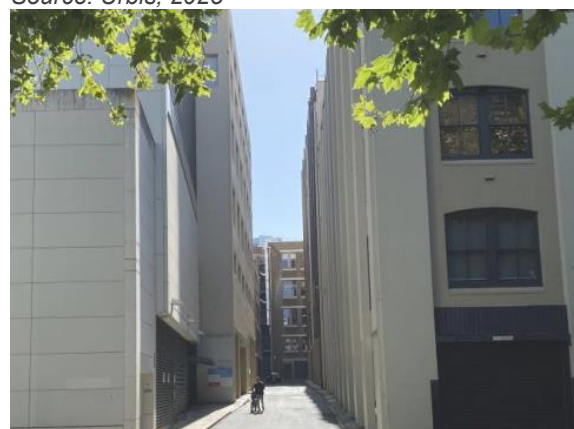
Picture 2 View of the façade along Bay Street

Source: *Urbis, 2025*



Picture 3 View of the site and Bay Street looking north.

Source: *Urbis, 2025*



Picture 4 View of St Barnabas Street located on the northern boundary of the site looking west.

Source: *Urbis, 2025*

2. Proposed Development

The key features and details of the proposed mixed use co-living development at 86-90 Bay Street, Ultimo for which consent is sought as per below:

- Demolition of a 4 storey detracting building.
- Construction of a new 8 storey building comprising:
 - 137 apartments across levels 1-7
 - Lower ground floor parking with 3 loading bays, 1 accessible car parking space and 2 car share spaces
 - Landscaped terrace with seating on level 6
 - Communal area on level 6
 - Landscaped central courtyard with seating on the ground floor
 - Ground Floor Retail along Bay Street
 - End of Trip Facilities on the lower ground floor

The development proposes an FSR of 4.5:1 across the site with a total GFA of 4,550m²

The proposal is in accordance with the Architectural Plans and Design Report prepared by Fitzpatrick + Partners that accompany this DA. The following sections provide additional details on specific aspects of the proposal.

PLANNING INSTRUMENT, DEVELOPMENT STANDARD AND PROPOSED VARIATION

3. What is the planning instrument you are seeking to vary?

State Environmental Planning Policy (Housing) 2021

4. What is the site's zoning?

MU1 Mixed Use zone

5. What is the development standard to be varied?

Part 3 Co-living housing, Section 69, (2)(b) if the co-living housing has at least 3 storeys—the building will comply with the minimum building separation distances specified in the Apartment Design Guide.

6. Type of development standard?

Numerical Development Standard

7. What is the numeric value of the development standard in the environmental planning instrument?

Minimum building separation distances specified in the Apartment Design Guide *Part 2 Developing the controls 2F Building separation* are outlined below. The distances of relevance are indicated by a red box.

Building Height	Separation Distance
Up to 8 storeys (approximately 25m)	9-18m of which: • 18m between habitable rooms/balconies • 12m between habitable and non-habitable rooms • 9m between non-habitable rooms
Up to 4 storeys (approximately 12m)	6-12m of which: • 12m between habitable rooms/balconies • 9m between habitable and non-habitable rooms • 6m between non-habitable rooms

It is noted that this development standard has been applied both internally on site (between the two 'buildings' on site) and externally (between 86-90 Bay Street and adjoining developments).

8. What is the difference between the existing and proposed numeric values? What is the percentage variation (between the proposal and the environmental planning instrument)?

A review of the proposal's exceedance in proportion (percentage variation) is detailed below.

Table 2 Percentage variation of exceedance

Building element	Permitted distance	Proposed distance	Percentage variation from the standard (%)
5-8 storeys (internal facing)	18m between balconies	14m	22.22%
5-8 storeys (external facing)	18m between habitable rooms	11.365m	38.89%

5-8 storeys (internal facing)	18m between balconies	14m	22.22%
5-8 storeys (external facing) (levels 5-6)	18m	6.45m	65.56%
Up to 4 storeys (external facing)	12m	6.45m	48.33%
5-8 Storeys (external facing) (7-8)	18m	11.365m	36.11%

9. Visual representation of the proposed variation 9.1 Internal Visual Representation

Figure 4 Courtyard section – internal separation distances

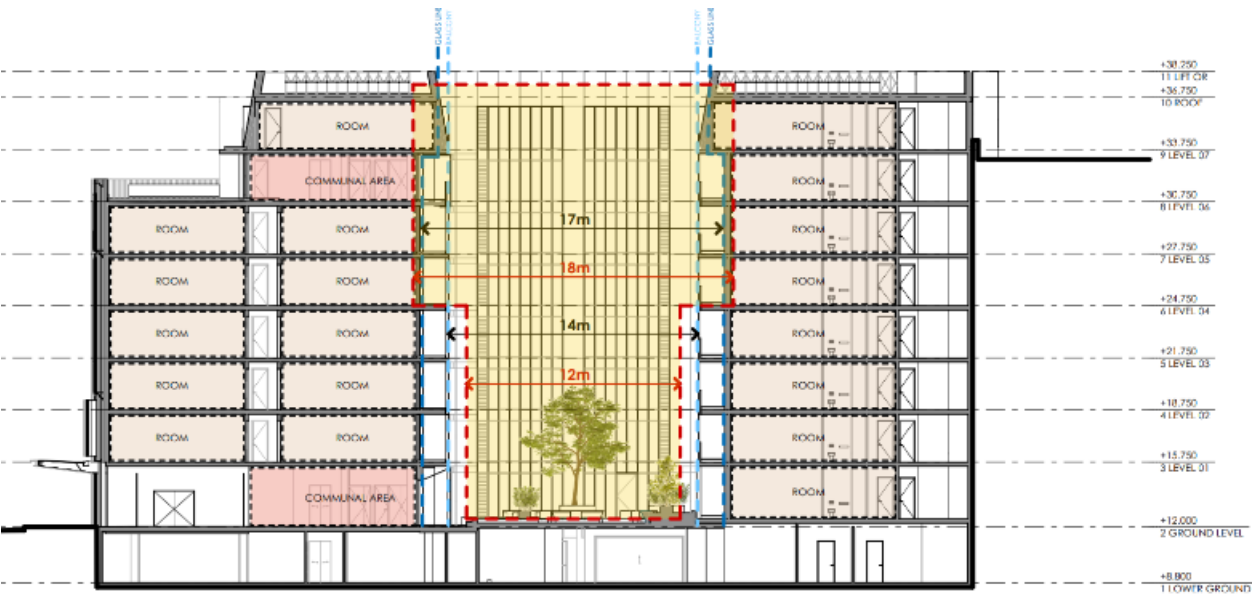


Figure 5 typical courtyard – internal separation between units

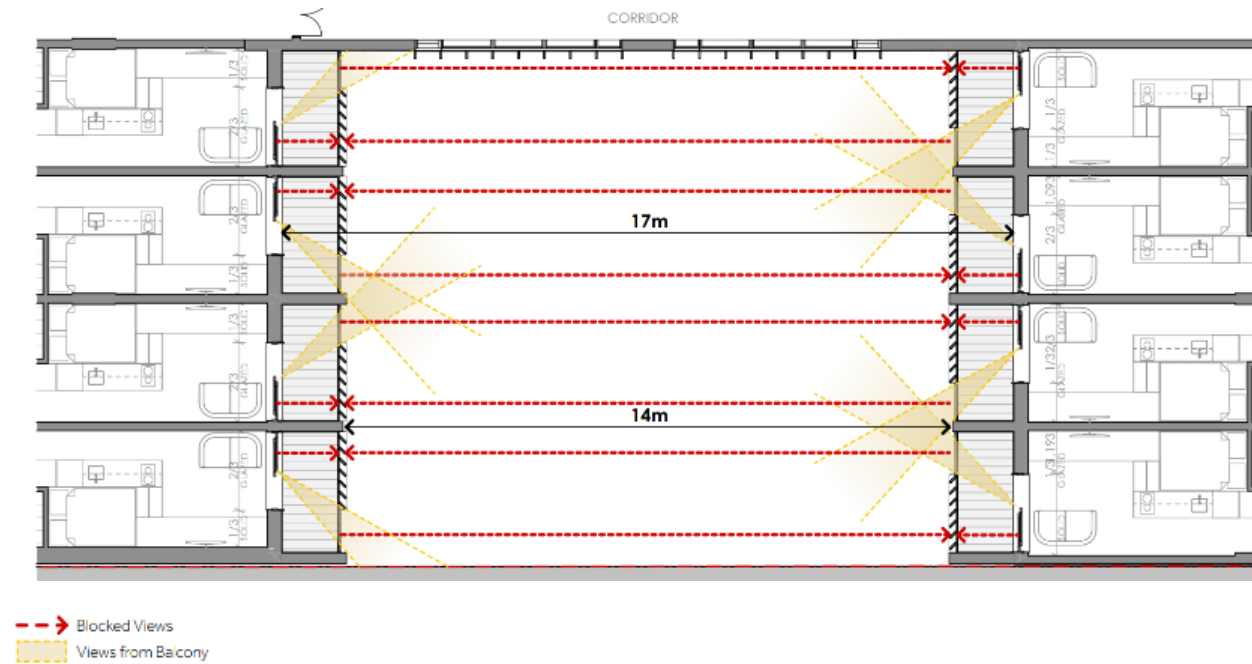
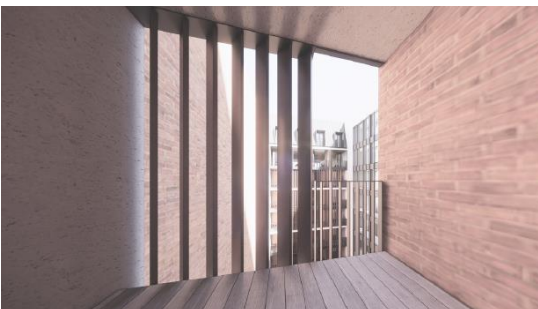


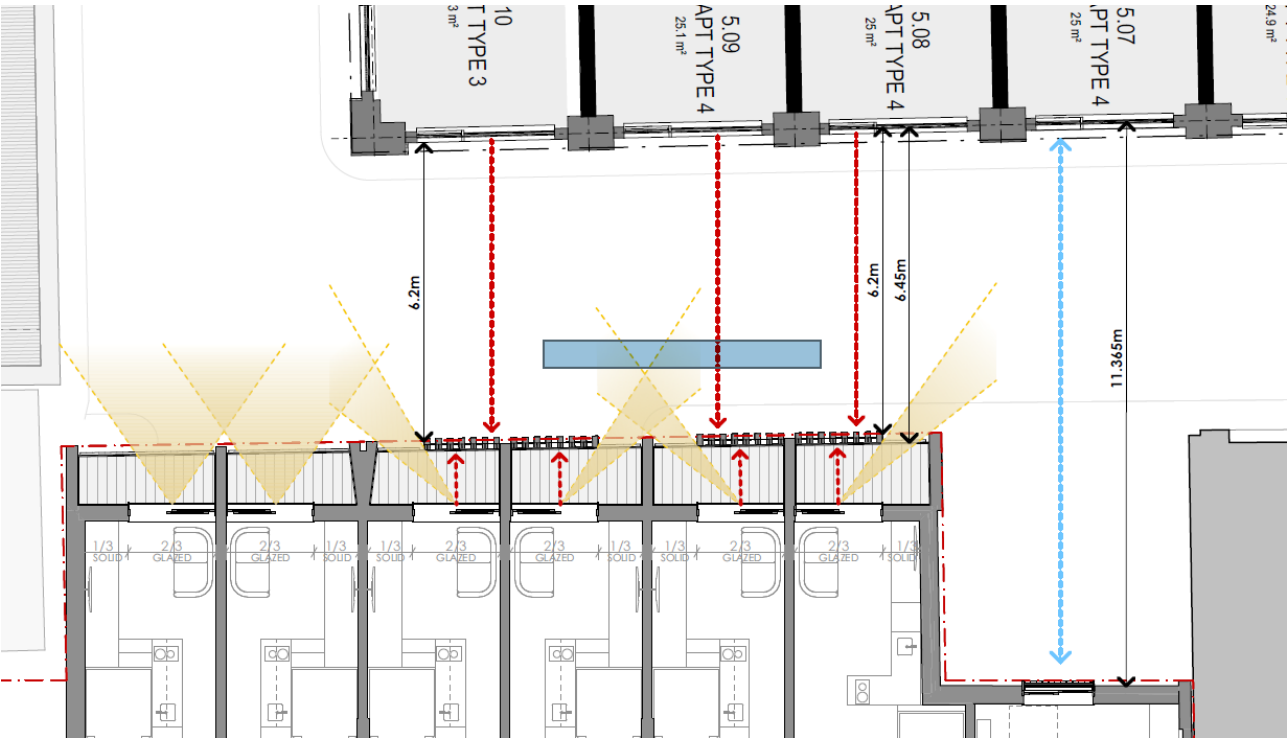
Figure 6 Typical view from courtyard balconies



Source: Fitzpatrick + Partners

9.2 External Visual Representation

Figure 7 Separation distances from 1-3 Smail Street



Source: Fitzpatrick + Partners 2025

Figure 8 Detail view of block breezeway to affected apartments



Source: Fitzpatrick + Partners 2025

Figure 9 Typical living room view towards brick privacy measure



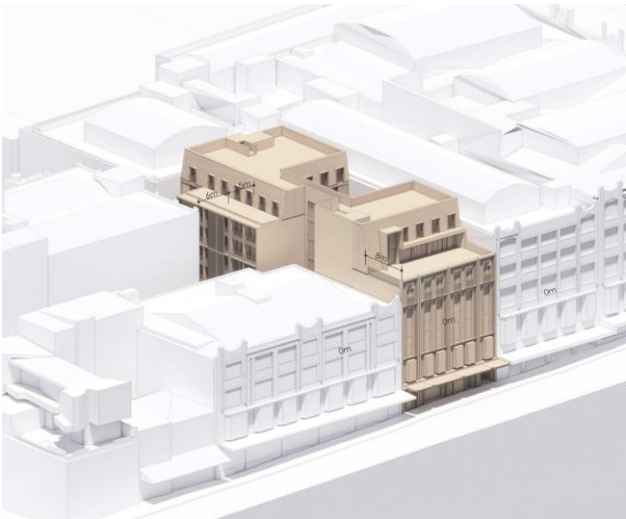
Source: *Fitzpatrick + Partners* 2025

Figure 10 View from 1-3 Smail Street, Ultimo



Source: *Fitzpatrick + Partners*

Figure 11 Building separation between 1-3 Smail Street, Ultimo



Source: *Fitzpatrick + Partners 2025*

JUSTIFICATION FOR THE PROPOSED VARIATION

10. How is compliance with the development standard unreasonable or unnecessary in the circumstances of the particular case?

There are 5 common ways that compliance with a development standard may be demonstrated to be unreasonable or unnecessary (as transposed in items a to e the Table below). An applicant must satisfy at least one. In relation to the subject development contravention, the table below addresses the first key question.

Key Questions	Response
a) Are the aims of the development standard achieved notwithstanding the non-compliance?	▪ <i>Ensure that new development is scaled to support the desired future character with appropriate massing and spaces between buildings.</i> - The strategic context of the site and context encourages greater housing supply, that is diverse, affordable and is located with access to jobs, services and public transport. The proposal utilises the existing building footprint and provides 137 co-living apartments with retail at the ground floor, and an EoT facility on the lower ground floor. - The distribution of mass has been purposefully sited, with recessed top floor and higher elements located to the east, ensuring the Bay Street elevation when viewed from the public domain is compliant and contextually appropriate. - The massing has been pulled back from the north and the west on the upper levels to reduce potential bulk and scale impacts to the streetscape and adjoining developments and provide as much space between buildings to the north as possible, and solar access to the west. - The ADG requires a 12m separation for buildings up to 4 storeys and 18m for 5 to 8 storeys. The proposed courtyard provides an increased distance for the first 4 floors and for the last 4 floors offers 14m between balconies and 17m between glazed faces. Along the northern face of the building, the proposal is constrained to provide 6m of building separation only. Strict compliance with the Housing SEPP would negate the redevelopment of the site for housing purposes. ▪ <i>Assist in providing residential amenity including visual and acoustic privacy, natural ventilation, sunlight and daylight access and outlook.</i> - Externally, by providing a street façade built to the boundary on St Barnabas with recessed balconies screened by a brick breezeway provides robust privacy to and from the northern property at 1-3 Smail Street. To further mitigate, glazed areas have been reduced to 2/3 of the room's overall width and the breezeway to the full extent of the glazed areas. - Internally, as the site is within a dense urban environment with obstructed natural light to the south and east and reduced existing separation to the north, the creation of an internal courtyard open to the weather provides a biophilic design principles. This courtyard approach allows for natural light and air into the units. A minor non compliance internally does not reduce the internal amenity. Further mitigation measures (against the non compliance) have been incorporated to the last 4 levels of offsetting the rooms on each side of the courtyard, reducing the glazing and adding in a fixed screen. This ensures privacy is maintained and a good level of amenity if also resulting. Internally, if a complaint building setbacks were proposed, this would involve

Key Questions	Response
	the removal of the internal balconies which is viewed as a sub standard outcome. - The proposed setbacks provide a green roof at level 7 and a landscaped level 6 terrace. These outdoor spaces minimise additional bulk and scale, increase building separation where possible and improve visual and acoustic amenity (level 6 terrace is along Bay Street façade not adjoining neighbours).. ▪ <i>Provide suitable areas for communal open spaces, deep soil zones and landscaping.</i> - The building footprint tightly fits within a dense urban area of Ultimo and is surrounded by existing developments that reduce access to natural light. The built form however has responded to this setting through the inclusion of communal open space via the internal courtyard that is open to the sky allowing natural light and ventilation into the development and on the level 6 terrace. In accordance with the open space provision under the Housing SEPP, the proposal seeks consent for a total of 4.5% of landscaping (not including the green roof) across the site, 35m2 in the courtyard and 11m2 on level 6. This level of open space is compliant.
b) Are the underlying objectives or purpose of the development standard not relevant to the development? (Give details if applicable)	Not replied upon
c) Would the underlying objective or purpose be defeated or thwarted if compliance was required? (Give details if applicable)	Not replied upon
(d) Has the development standard been virtually abandoned or destroyed by the council's own actions in granting consents departing from the standard?	Not replied upon
e) Is the zoning of the land unreasonable or inappropriate so that the development standard is also unreasonable or unnecessary?	Not replied upon

11. Are there sufficient environmental planning grounds to justify contravening the development standard?

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"

There are sufficient environmental planning grounds to justify the proposed variation to the development standard, including the following:

- By implementing mitigation measures where the proposal does not comply with the numerical building separation guidelines in the Apartment Design Guideline, the co-living housing development will provide alternative options to the private residential market and therefore provide a diversity of housing choice, affordability, and opportunities catering to the demographics of the locality. This aligns with the aims of the Housing SEPP to facilitate the effective delivery of new well-located housing.
- The proposed development aims to remove a detracting item within the heritage conservation area which is considered supportable from a heritage outcome.
- The proposed development lessens the traffic and parking impact at the site, whilst contributing positively to the housing needs of the community. The design is carefully considered to be consistent with the future character of the area, as demonstrated by compliance with the objectives of the MU1 zone.
- Significant amounts of landscaped and communal open spaces are provided to enhance the amenity for residents of the site.
- The development forms a consistent character with adjoining heritage buildings along Bay Street by use of contextual materials and design inclusive of a continuous stepped down awning. The development therefore forms part of a broader character area and is suitable in context of the heritage conservation area within which it is located.
- The Apartment Design Guidelines for Building Separation are unreasonable to comply with at the site due to the highly dense area and tight footprint. Specifically, to the northern neighbours at 1-3 Smail Street. Compliance with the Building Separation guidelines would make the proposal unfeasible, so considering this the new co-living scheme is built with recessed balconies screened by a brick breezeway offering robust privacy to and from the property across the street. To further mitigate the issue the glazed areas have been reduced to 2/3 of the room's overall width and the breezeway to full extent of the glazed areas. Therefore, the potential privacy impacts are mitigated to an acceptable level.
- The creation of an internal courtyard allows the residents to enjoy a high level of residential amenity whilst living in a dense, central location. The courtyard provides residents with access to high quality open space. As the courtyard is open to the weather and is designed with biophilic design principles natural light and air will be able to penetrate the units.

The resultant building form does not create any significant adverse impacts on the immediate surrounding area from the perspective of visual privacy. Therefore, there is sufficient environmental planning grounds to justify contravening the development standard.

12. Is there any other relevant information relating to justifying a variation of the development standard? (If required)

ADG as a guideline document

The ADG is not intended to be, and should not be applied as, a set of strict development standards.

Planning Circular PS 17-001 states that if it is not possible to satisfy the design criteria, the consent authority is to consider how, through good design, the objective can be achieved. Design guidance can be used to assist in this process. This has been demonstrated in the design response (detailed above) as the proposal minimises privacy impact and increases amenity by offsetting the rooms on each side of the internal courtyard, reduced the glazing width and adding fixed screens and a bricked breezeway element on the part of the northern elevation.

Public Benefit

The proposed development achieves the aims of the Apartment Design Guideline despite the non-compliance, and the contravention has been demonstrated to be appropriate and supportable in the circumstances of the case. There would be no public benefit in maintaining the development standard in this case.

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