

Attachment C

Clause 4.6 Variations

5.2 Clause 4.6 Variation: Height of Building Standard

This clause 4.6 variation seeks to vary the Height of Building standard stipulated in Clause 4.3- Height of Buildings of the SLEP2012.

1. Height of Buildings (Clause 4.3)

Clause 4.3 (2) states

(2) The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.

The height of building map displays a maximum height of 22 metres for the subject site.

Pursuant to the SLEP2012 definition:

building height (or height of building) means the vertical distance between ground level (existing) and 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.

Clause 4.3 of the SLEP2012 lists the following objectives regarding height of building:

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

The proposed development has been carefully designed and configured with regard to minimizing the height variation and associated impacts. The height additions proposed via this application including timber lined acoustic screens are modest in nature and compatible with existing rooftop elements including a water tank and lift motor rooms. All of the proposed roof structures are below the existing roof height of the building. The height is considered appropriate with that found in the surrounding context (including the recently approved rooftop at 64 Kippax Street, Surry Hills) and offers a unique benefit of a rooftop garden which although above the height standard will significantly improve the amenity of the area (air improvements through landscaping, vista and view improvements from surrounding building). All of which are in line with Councils policies and support for green roofs in the City of Sydney. The proposal ensures suitable height transitions between new and old developments and holistically presents an improved building outcome and view corridor then that which currently exists on the site.

The following are important to understand when reviewing the proposals compliance with the objectives for height of building within the City of Sydney given the existing scale of the building.

Height control: 22m

Existing building height (Maximum): 37m

Proposed works: (top of timber screens): 34.01m

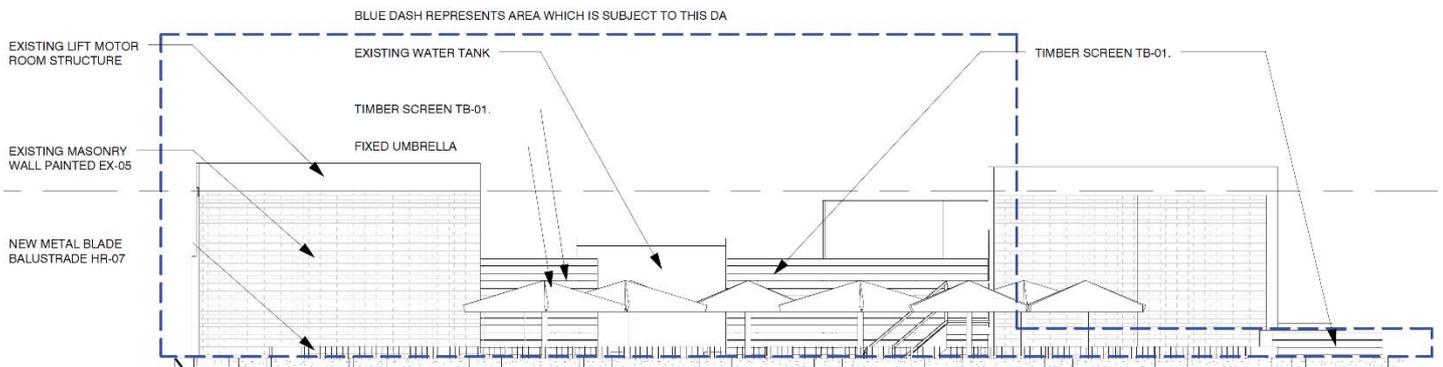
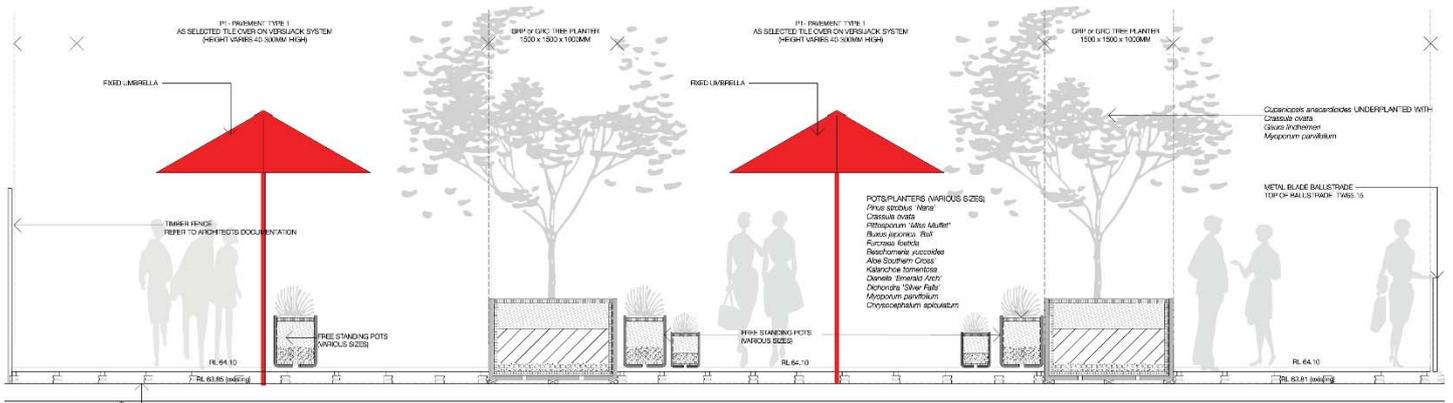
The site has a maximum height of building standard of 22 metres. The existing building on the site variably exceeds this standard given the 9 storey form and the slope of the natural ground level running west to east through the site. No building height increases are proposed via this application, how build form proposed (timber screens, metal balustrades, planters and pavers) are proposed above the 22m LEP height control. These features relate solely to suitable and functional design to provide safety for use of the rooftop garden

An excerpt of the proposed works is provided below:

Landscape Terrace:



Landscape Terrace: Elevation (excerpts):



Landscape Terrace/Garden (Aerial/Plan Form):



The proposal is considered to be compatible with the future desired character of Surry Hills and within the confines of clause 4.6 in regard to height of building given the minor encroachments on the roof and maintenance at a max height to that which currently exists. All works proposed via this application remain less than the maximum building height which currently exists.

Any works above level 6 on the existing building would trigger a Clause 4.6 variation, however when compared against the benefit of utilised existing wasted space on the roof, the impacts are very minor. The variation to the existing building height control will not impact upon the fundamental detail of the building's design which proposes a high-quality development in a key urban area. The variation is also significantly recessed from building boundaries/edges. The existing building height is known to the area and as such this should take precedence over Councils height of building standard. To the public this height is current and as such the provision of a development which don't now exceed this existing height should be seen as a positive as opposed to strict compliance and abidance with the City of Sydney height control.

The proposal meets the objectives of Clause 4.3. The variation has negligible impacts above that permissible within the height control and will not impact amenity of the neighbouring properties and streetscape. The proposal will not present a development with excessive bulk and scale or cause significant view impacts.

2. Consistency with the aims of Clause 4.6

Given the proposal involves a departure from the height of building control of the SLEP2012, a formal variation to the standard is sought under Clause 4.6 - Exceptions to Development Standards. Consent may, subject to Clause 4.6, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument.

The following considerations are addressed below in respect of this request to vary the strict application of Clause 4.3 of the LEP.

"That compliance with the development standard is unreasonable and unnecessary in the circumstances of the case;

That there is sufficient environmental planning grounds to justify contravening the development standard;

The proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out;

The public benefit of maintaining the development standard; and

Any other matters required to be taken into consideration by the Director-General before granting concurrence."

It is submitted that strict compliance with the height of building control is not necessary in the circumstances for the following reasons.

The development standard is unreasonable and unnecessary in the circumstances of the case;

The existing building exceeds Council's height of the building control and the proposed works are below the existing maximum building height. The development standard is therefore unreasonable and unnecessary in the circumstances of the site (given the existing scale). The building has formed a part of the Surry Hills streetscape for a number of years and represents a familiar view in terms of scale. The variation to the SLEP2012 should therefore be viewed contextually and on a merit assessment in light of this existing nature. The only prominent additions above the council's height of building control are the metal balustrade for safety on the rooftop and the provision of timber screens for privacy and solar protection. The rest of works are at ground level and involve an infill slab, paving, small planters and masonry works.

When viewed from the surrounding streetscape, the proposal development will show significant improvements through the provision of a green roof. This not only provides environmental benefits, it improves view corridor and vista's over the site and is compatible with Council policy supporting green roof's in dense urban environments.

When viewed from surrounding high rise structures, the balustrade and rooftop plant structures will present as minor in scale and insignificant to the surrounding built environment particularly when viewed alongside significant (soft and hardscape) landscape upgrades.

That there is sufficient environmental planning grounds to justify contravening the development standard;

The proposal does not hinder the orderly economic potential of surrounding properties. The benefits of providing considerably improved commercial tenancies and a communal rooftop area significantly improves the amenity of the building. The benefits of the development as a whole to both the building tenants and the enhancement of high-rise views through landscaping significantly and substantially outweigh the negligible impacts associated with additional height on the roof.

The proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out.

The proposal is consistent with the objectives for development within the B4 Mixed Use Zone. An analysis of the proposal in line with these zone objectives has been undertaken as follows:

- *To provide a mixture of compatible land uses.*
- *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.*
- *To ensure uses support the viability of centres.*

The proposal complies with the above objectives by providing new and improved commercial space and a ground level restaurant (as approved) within the Surry Hills Precinct. This represents a suitable integration of uses within a key mixed use development area. The development is accessible being within walking distance of Central Station and encourages walking/cycling through bicycle facilities. The provision of environmental beneficial rooftop garden facilities also significantly enhances the buildings presence and improves amenity for occupants.

The public benefit of maintaining the development standard

Under Clause 4.6 (5b) of the SLEP2012, the consent authority must consider if there is public benefit associated with maintaining the development standard.

Given the nature of the proposed variation (compatible with the existing building height), the public benefits far exceed any negative impacts associated with the variation.

As previously justified within this variation report, the environmental benefits of the rooftop terrace, including view and vista impacts represents a significant public improvement to that which currently exists (a vacant concrete slab rooftop with services and lift overruns). Not only does this provide improved amenity for the occupants of the building, it enhances the high-rise context of Surry Hills. This has a direct correlation with Councils policies in support of green roofs for developments in the City of Sydney Local Government Area.

The public benefits of the broader development far outweigh any extremely minor view impacts associated with negligible height of Councils height control, which does not exceed the existing maximum building height.

Any other matters

Under Clause 4.6(5c) of the SLEP2012 (the consent authority) must consider if the proposal raises any other matters for consideration. Given the nature of the proposed variation and its use, no matters are raised by this proposal.

For the reasons outlined above, the proposed minor variation to the SLEP2012 Height of Building standard should be supported.

Summary and Conclusion

A variation to the strict application of Council's Height of Building development standard is considered appropriate for the site at 10-14 Waterloo Street, Surry Hills.

The variation to the height of control is sought to propose a rooftop balustrade for security, landscape (soft and hardscape) additions to the rooftop and for timber screens on the rooftop for privacy and solar protection. The proposed additions do not present as excessive and do not increase the height of the existing building, they are all located below the existing maximum height plane.

Given the improved visual nature of the rooftop, these height additions are considerable appropriate for the site, offering significant benefits to both building tenants, cityscape views and environmental benefits from landscaping in such a dense urban environment.

The variation has been reviewed against relevant LEC court principles in regard to height and is considered suitable in the context of the site and the merit analysis required given the existing scale and the proposed building improvements.

5.2 Clause 4.6 Variation: Floor Space Ratio Standard

This section addresses an exception to the development standard “Floor Space Ratio”: Clause 4.4 of the Sydney Local Environmental Plan 2010. The proposal relates to alterations and additions to an existing commercial building at 10-14 Waterloo Street, Surry Hills.

This request has been prepared to provide written justification for the proposed variation to the Floor Space Ratio (FSR) development standard stipulated in Clause 4.4, Floor Space Ratio of the SLEP2012.

It is proposed to provide 6,288.2 sqm of gross floor area on the site, equating to an additional 18.2sqm to that which currently exists on the site (by providing rooftop amenities associated with the rooftop garden). The site has an area of 823sqm. Permissible, existing and proposed GFA are detailed below demonstrating the very minor increase proposed via this application:

- Site Area: 823 sqm
- Permissible: (FSR 3.5:1): 2880.5
- Existing: 6,270 (FSR 7.62)
- Proposed: 6,288.2 sqm (FSR 7.64)
- Comparison of existing v proposed GFA, 18.2 sqm of additional GFA on rooftop.

A variation to the strict application of the FSR standard is considered appropriate for the subject site as:

- The objectives of the SLEP2012 FSR control are achieved notwithstanding the technical non-compliance.
- The objectives of the SLEP2012 B4 Mixed Use Zone are achieved notwithstanding the technical non-compliance.
- There are sufficient environmental planning grounds to support the proposed variation (given the existing scale of several surrounding buildings and the existing building footprint on the site)
- The public benefit of maintaining the development standard is not eroded by the proposal given the significant building improvements/improved commercial opportunities and green roof. The proposal will improve the buildings presentation from the surrounding sky line and when viewed as a whole, provides improved commercial floor space and tenant amenities contributing to the City of Sydney.
- The public benefit of maintaining the development standard is not eroded by the proposal given the community benefit associated with the restoration upgrades of the existing building and the provision of a rooftop garden.

Further detail of the above is provided in the following sections:

1: Clause 4.6 Considerations

As this proposal involves a departure from the FSR control of the SLEP2012, a formal variation to this standard is required under *Clause 4.6 - Exceptions to Development Standards*. This provision allows consent to be granted for a development even though it would contravene a development standard imposed by this or any other planning instrument.

The provisions of Clause 4.6, which the consent authority must have regard to in determining whether a development that contravenes a development standard should be supported, includes the following:

- *That compliance with the development standard is unreasonable and unnecessary in the circumstances of the case; Cl 4.6 (3)(a)*
- *That there is sufficient environmental planning grounds to justify contravening the development standard; Cl 4.6 (3) (b)*
- *The proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out: Cl 4.6 (4)(a)(ii)*
- *The public benefit of maintaining the development standard, and Cl 4.6 (5)(b)*
- *Any other matters required to be taken into considered by the Director-General before granting concurrence Cl 4.6 (5)(c)*

An assessment of the proposed FSR variation in accordance with the above is provided below.

2: The Proposed Variation

This Clause 4.6 variation seeks to vary the floor space ratio standard stipulated in Clause 4.4- Floor Space Ratio of the SLEP2012.

Clause 4.4 (2) states:

(2) The maximum floor space ratio for a building on any land is not to exceed the floor space ratio shown for the land on the [Floor Space Ratio Map](#).

The Floor Space Ratio Map sets a maximum floor space ratio of 3.5:1. For the purpose of calculating FSR, the SLEP2012 provides the following definition:

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.*

It is proposed to provide 6,288.2 sqm of gross floor area on the site which has an area of 823 sqm. This equates to an FSR of 7.64:1 and 12.8sqm of additional GFA (representing less than half a percent (%) increase in GFA, therefore very minor). The existing rooftop is currently in an undesirable state which would considerably benefit from redevelopment for improved commercial viability. This coupled with the landscaped rooftop terrace presents a significant building improvement suitable for the Surry Hills locality and one which provides environmental, social and economic benefits.

3: Objectives of the Zone and the Standard

Clause 4.6(4)(a)(ii) states that a request for exemption from a development standard must establish that the proposed variation is consistent with both the objectives of the zone and standard.

Objectives of the B4 Mixed Use zone:

- *To provide a mixture of compatible land uses.*
- *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.*
- *To ensure uses support the viability of centres.*

The proposal involves the redevelopment of an existing use on the site, which is permissible within the B4 zone. The revamping of the existing commercial building supports the viability Surry Hills as a centre and contributes to a suitable mix of uses with Surry Hills. The maintenance of key commercial floorpace as opposed to new residential development is important in this area to maintain diversity and job opportunities within the city fringe. The proposal is considered to be entirely compliant and compatible with the objectives of the B4 Mixed Use zone as it applies to the site.

Objectives of the Floor Space Ratio Development Standard

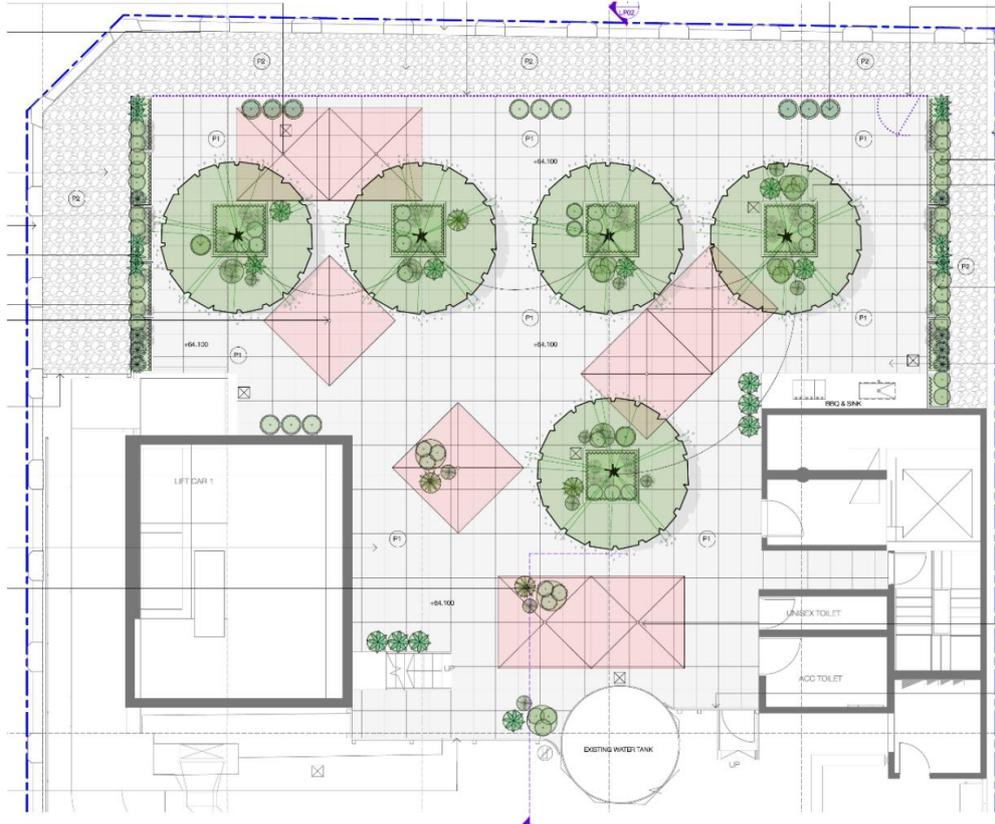
Whilst the proposal seeks a variation to Councils numerical FSR standard, it is consistent with the relevant objectives of the controls as detailed below:

- (a) to provide sufficient floor space to meet anticipated development needs for the foreseeable future,*
- (b) to regulate the density of development, built form and land use intensity and to control the generation of vehicle and pedestrian traffic,*
- (c) to provide for an intensity of development that is commensurate with the capacity of existing and planned infrastructure,*
- (d) 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.*

The proposed commercial revamping maintains and provides improved commercial floor space which meets anticipated development needs and commercial demand within Surry Hills. As part of the process, improved tenant amenity is being proposed in the form of a rooftop garden. This maintains the areas mixed use vitality to complement the recent expansion of high rise residential converted from previous commercial uses on surrounding sites. The proposal responds to density controls by providing reduced GFA then the existing built form and improves amenity both internally within the building and external when viewed from the city scape.

Visually the proposal conforms to the existing and surrounding context, particularly its immediate interface and the provision of a green roof will provide significant environmental and social benefits including improved view corridors facing over the site.

Proposed landscaped roof and species list:



Species list:



4: The Development Standard is unreasonable and unnecessary in the circumstances of the case

Clause 4.6(3)(a) of the SLEP2012 states that the proposed variation to the development standard must demonstrate that compliance with the development standard is *'unreasonable or unnecessary in the circumstances of the case'*.

In determining a merits based assessment for the floor space ratio of the development due consideration has been given to the above objectives and the planning principles set by the Land and Environment Court of NSW, Planning Principle - floor space ratio (Salanitro-Chafei V Ashfield Council (2005) NSWLEC 366) and Project Venture Developments v Pittwater Council (2005) NSW LEC 91).

It is acknowledged that the purpose of Clause 4.6 is to provide an appropriate degree of flexibility in applying certain development standards. In this regard the FSR of the existing building on the site (7.62:1) exceeds the FSR control of 3.5:1 as specified by the SLEP2012. Given the proposed application FSR is less than that which currently existing on the site, Councils assessment should be focused on this numerical difference as opposed to the variation to the specific standard. By providing flexibility in this regard, the subject proposal is capable of achieving a better development and design outcome which adequately caters for existing business demand in Surry Hills whilst improving building layout and rooftop facilities.

As outlined above, the proposed development is consistent with the underlying objectives of the FSR standard, notwithstanding the proposed variation.

In addition, the strict application of the FSR standard would limit redevelopment of the site which achieves the following key outcomes:

- Public benefit associated environmental, social and economic improvements to the building.
- The provision of a communal rooftop garden which provides direct amenity benefits to building occupants and improved visual implications for the surrounding skyline looking over the site.

5: Sufficient Environmental Planning Justification

As detailed above, there are sufficient environmental planning grounds to justify the proposed variation to the SLEP2012 FSR control. Further justification to support the proposed variation is provided below:

- The existing building exceeds the FSR limit (3.5:1). The proposed development provides a very minor GFA increase (18.2sqm) associated with providing rooftop amenities in association with rooftop amendments (including landscaping). The parameters and footprint of the existing structures have set the ground rules for the bulk, scale and mass of the proposal (hence minor nature of the proposed GFA increase is acceptable).
- The proposal presents an improved building configuration (compatible with the BCA and NCC) and a modernistic rooftop garden with significant flow on environmental and social benefits.

- The LEC planning principles on FSR relate to compatibility between subject buildings and its surrounding context to ensure the proposal is compatible with its context. The planning principle seeks qualification of the following:
 - *Are the proposals physical impacts on the surrounding development acceptable?*
 - *Is the proposals appearance in harmony with the buildings around it and the character of the street.*

In addressing the above planning principals, the physical impacts on the surrounding context are acceptable with particular regard to limited view loss, improved visual impacts, improved solar access for sites to the east from afternoon sun and increased amenity provided via the rooftop garden. The provision of rooftop screening also protects privacy implications to adjoining residential flats.

6: The Public Benefit of Maintaining the development standard.

There is very little public benefit in maintaining the development standard of FSR applicable to this site given the proposed FSR is less than that which currently exists. Additionally, the significant building improvements and rooftop garden add significant social benefits to the public in terms of cityscape views and building safety being designed up to BCA/NCC standards. Council should encourage such building upgrades via support of positive intention to upgrade old commercial stock within the City of Sydney.

Summary and Conclusion

A variation to the strict application of Council's Floor Space Ratio development standard is considered appropriate for the site at 64-76 Kippax Street, Surry Hills.

The variation to the FSR standard is solely sought for the presence of the proposed building above council's standard and is very minor (18.2 sqm of non sellable amenity space).

Given the improved visual nature of the rooftop and minimal bulk, scale, overshadowing and view implications + the perceived benefits for office workers at 10-14 Kippax Street, the proposal is acceptable. The variation to Councils FSR standard is considerable appropriate for the site, offering significant benefits to both building tenants, cityscape views and environmental benefits from landscaping in such a dense urban environment.

The variation has been reviewed against relevant LEC court principles in regards to FSR is considered suitable in the context of the site and the merit analysis required given the existing scale and the proposed building improvements.