

Attachment C

Clause 4.6 Variation Request – Height of Buildings

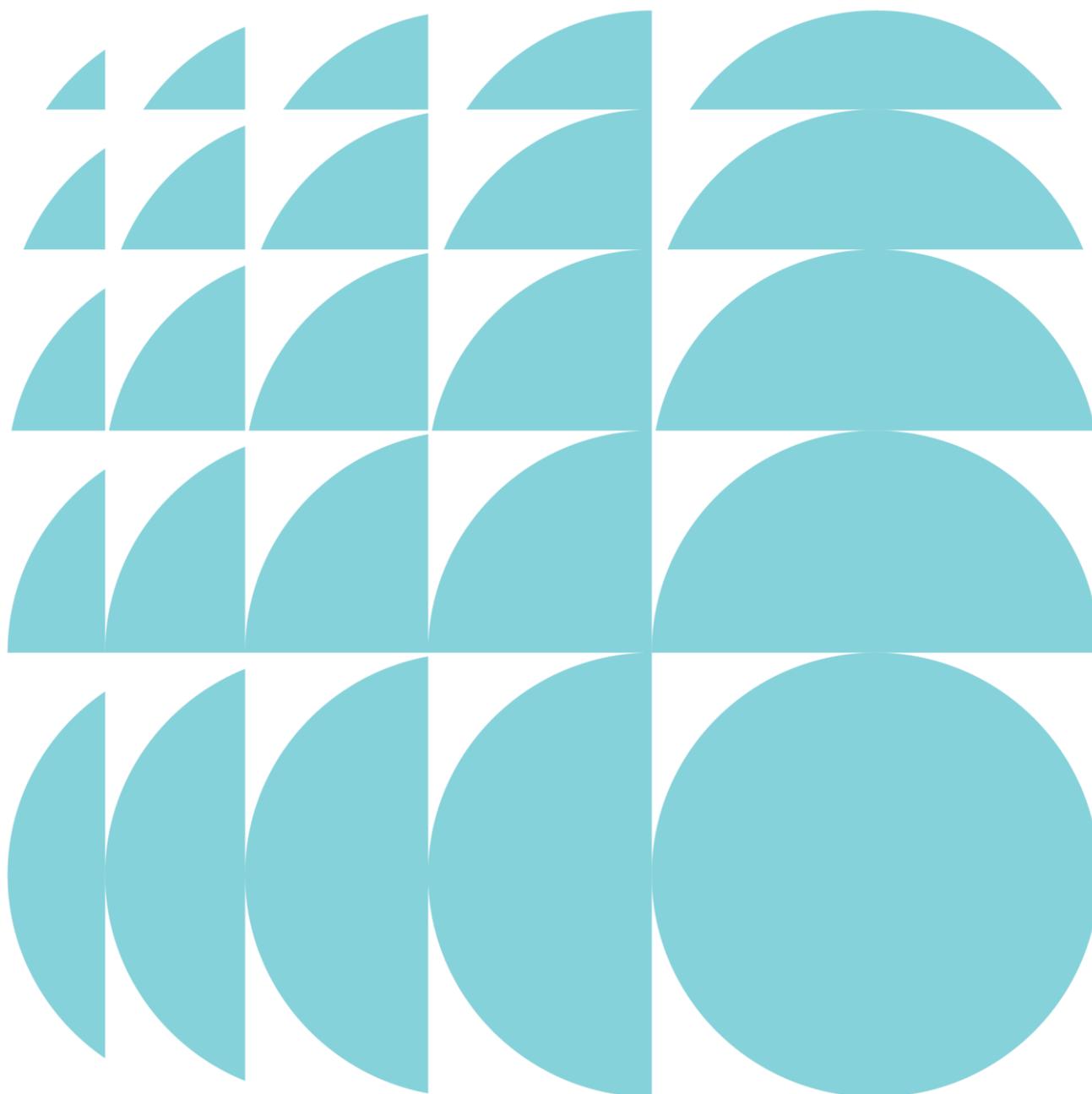
Amended Clause 4.6 Variation Request

2-38 Baptist Street and 397-399 Cleveland Street,
Redfern

Height of buildings development standard

Submitted to City of Sydney
On behalf of Surry Hills Project Pty Ltd

11 October 2019 | 218365



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1.0 Introduction

This clause 4.6 variation request has been prepared by Ethos Urban on behalf of Surry Hills Project Pty Ltd. It is submitted to the City of Sydney Council (the Council) in support of a development application (DA) for the mixed-use development at 2-38 Baptist Street and 397-399 Cleveland Street, Redfern (the site).

Clause 4.6 of the *Sydney Local Environmental Plan 2012* (Sydney LEP) enables Council to grant consent for development even though the development contravenes a development standard. The clause aims to provide an appropriate degree of flexibility in applying certain development standards to achieve better outcomes for and from development.

This clause 4.6 variation request relates to the height of buildings development standard under clause 4.3 of the Sydney LEP and should be read in conjunction with the Statement of Environmental Effects (SEE) prepared by Ethos Urban dated September 2018 including supporting documentation.

The site is subject to seven different height standards and through the design excellence process has achieved a 10% variation to those standards. The development complies with all the height standards with the exception of part of the development, being the southern portion of Building C.

This clause 4.6 variation request deals with those minor variations and demonstrates that compliance with the height of buildings development standard is unreasonable and unnecessary in the circumstances of the case and that there are sufficient environmental planning grounds to justify contravention of the standard.

This clause 4.6 variation request demonstrates that:

- The proposed development achieves the objectives of the height of buildings development standard because:
 - the height of development is appropriate to the condition of the site and its context;
 - the height of the development appropriately transitions to the heritage item located on the site and buildings in the adjacent heritage conservation area;
 - the development does not result in any public or private view loss.
- The objectives of the height development standard would be thwarted if compliance was required as the proposed building height enables efficient use of the land commensurate to the density envisaged for the site. The resulting height variation is a result of distributing the available GFA to the upper levels of the building which offers an improved overall planning outcome for the site.
- There are sufficient environmental planning grounds to justify the contravention of the height development standard including the following:
 - The proposed development is of a suitable height given the site's unique setting and the specific design response which results in minimal visual impact when viewed from the public domain;
 - The proposed development will not adversely impact on the understanding of the heritage item located on the site nor the adjacent conservation area or nearby heritage items;
 - The proposed development is within the substantive maximum height of buildings development standard for the site, demonstrating that the development as a whole is of a desirable scale for the site;
 - The proposed development results in a superior planning outcome for the site and provides enhanced amenity to the public through the site link and residential apartments within the development; and
 - The proposed development appropriately manages the site's sensitivities and constraints through innovative urban design and architectural solutions.
- The proposed development is consistent with the objectives of the B2 Local Centre zone as it:
 - Enables a mix of retail and business uses to be accommodated on the site that will directly service the needs of people who live in, work in and visit the local area;

- Provides a mix of commercial premises including retail and office premises which will provide direct and indirect employment opportunities;
- Provides employment generating uses in an accessible location;
- Provides bicycle storage facilities to encourage cycling;
- Provides a through site link to optimise accessibility and walkability; and
- Includes appropriate residential uses so as to support the vitality of the locality.

Therefore, the DA may be approved with the variations as proposed in accordance with the flexibility allowed under clause 4.6 of the Sydney LEP.

2.0 Background

The site's setting in relation to surrounding development is illustrated in **Figure 1**.

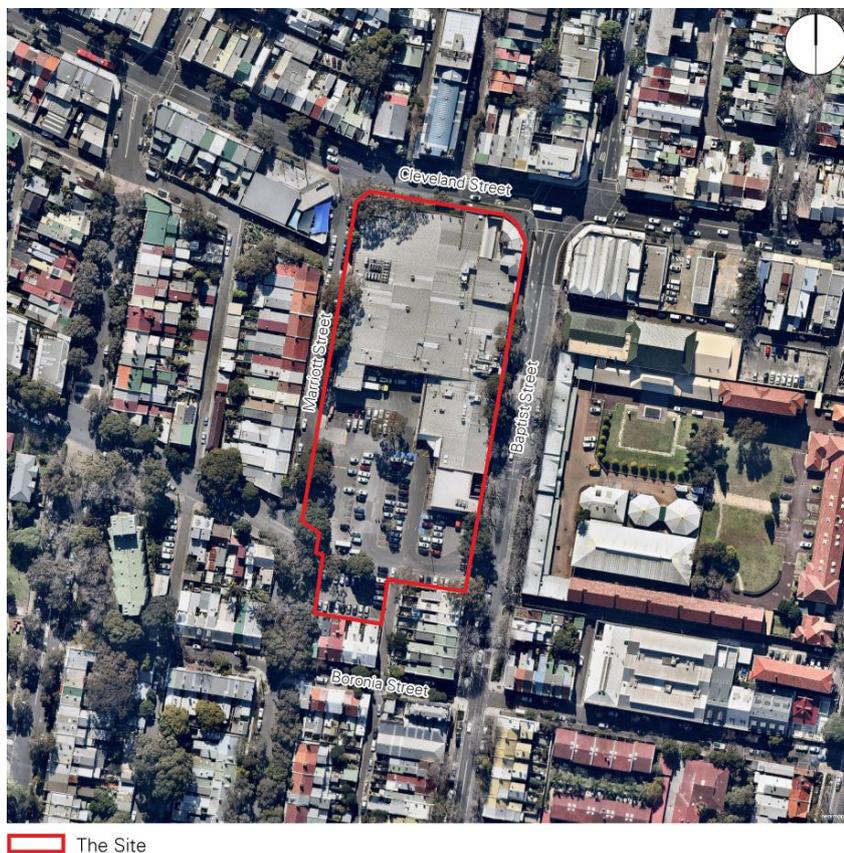


Figure 1 Aerial Map

Source: *Nearmaps and Ethos Urban*

The site has been the subject of a recent Planning Proposal (PP_2017_SYDNE_005_00) which was gazetted on 24 August 2018.

The Planning Proposal was supported by a site-specific development control plan (DCP) prepared in accordance with clause 7.20 of the Sydney LEP. The site specific DCP can be found under Section 6.2.8 of the *Sydney Development Control Plan 2012 (Sydney DCP)*.

A competitive design alternatives process was conducted for the project in May 2018. This process was conducted in accordance with the endorsed Design Excellence Strategy for the site, the City of Sydney Competitive Design Policy 2013 and the Competitive Design Alternative Brief, dated March 2018. The competitive process included four (4) invited competitors, being partnerships of architectural firms, to prepare design alternatives in response to the Brief.

The Selection Panel was of the opinion that the SJB, Architect Prineas and Aspect Studio scheme was capable of achieving design excellence and was selected as the winner of the design alternatives process (see Section 1.2.2 of the Statement of Environmental Effects).

The SJB, Architect Prineas and Aspect Studio submission presented a modified building massing to that envisaged under the DCP and the Brief. The alternative envelope projects into the central open space area to create three distinct internal courtyard areas instead of a single central open space as shown in the DCP. The redistribution of building mass also enabled a lower frontage to Marriott Street which better suited the scale of the existing terraces. The Selection Panel noted that while the scheme departs from the DCP envelopes, it displays the most merit and is worthy of Council's support.

The proposed development comprises two distinct components – a vibrant and active base comprising predominately public aspects including retail and communal open space and a residential/commercial upper.

The proposed built form consists of seven (7) new individual building elements (identified as Building A to Building G). Buildings A to F are positioned with vertical elements, fronting Baptist and Marriot Streets. Building elements are also positioned more centrally within the site, creating distinct open spaces rather than a single, large communal area that lacks identity.

Upper portions of each building element are staggered and provide varied heights to maximise roof terraces, rooftop gardens as well as reducing perceived height, bulk and scale.

The remaining building, Building G, is positioned adjacent to the Former Bank of NSW heritage item (Building H), orientated east west fronting Cleveland Street. Building G will reflect a single mass yet will be articulated with shop fronts and be separated from the remainder of the site by the proposed pedestrian through site link which will connect Marriott Street and Baptist Street, refer to **Figure 2**.



Figure 2 Proposed Building Layout

Source: SJB

3.0 Development Standard to be Varied

3.1 Height of Buildings Development Standard

This clause 4.6 variation request seeks to justify contravention of the height of buildings development standard set out in clause 4.3 of the Sydney LEP. Clause 4.3 provides that:

- (1) *The objectives of this clause are as follows:*
 - (a) *to ensure the height of development is appropriate to the condition of the site and its context,*
 - (b) *to ensure appropriate height transitions between new development and heritage items and buildings in heritage conservation areas or special character areas,*
 - (c) *to promote the sharing of views,*
 - (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.*

(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.

Clause 6.39 sub clause (5) of the Sydney LEP provides that “development consent must not be granted to development that results in a building on the land identified as “Area 9” on the Height of Buildings Map being higher than an incline plane extending from RL 34.5 along the land’s western boundary to RL 35.65 along the land’s eastern boundary”.

An excerpt of the Height of Buildings Map, identifying the maximum building height applying to the site is shown in **Figure 3** and the height plane relevant to Area 9 in **Figure 4**. The maximum building height applying to the site ranges between 9m and 25m without design excellence.

Clause 6.21(7) of Sydney LEP makes provision for the project to be eligible for an additional 10% in building height above that shown on the height of buildings map. As the project has completed a design alternatives process in accordance with the *Competitive Design Policy 2013* and the winning scheme is considered to exhibit design excellence, the maximum permissible building height applied to the project ranges from 9.9m-27.5m above existing ground level.

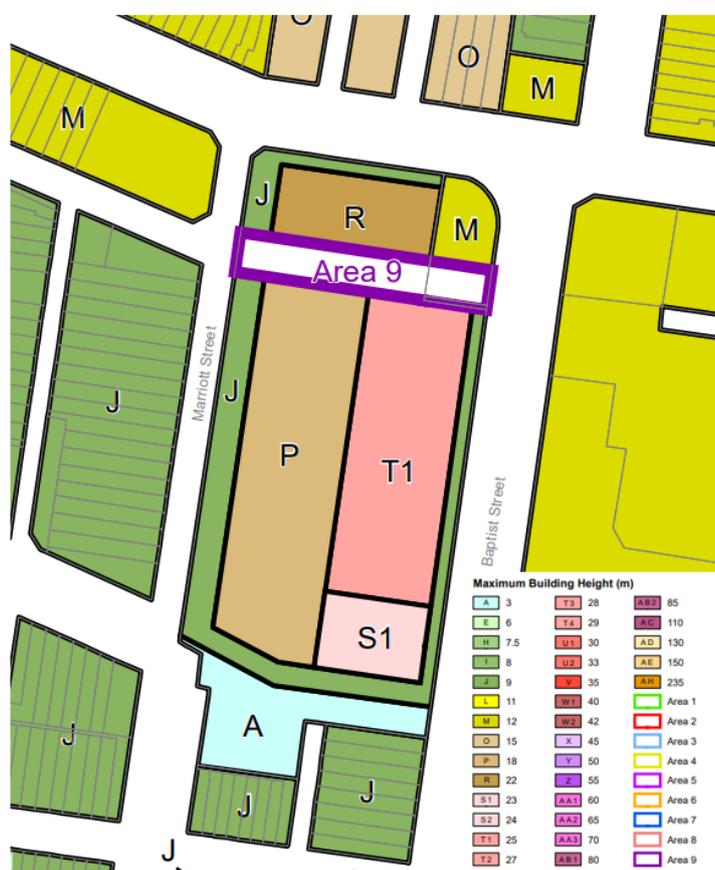


Figure 3 Excerpt of Height of Buildings Map

Source: Sydney Local Environmental Plan 2012

Figure 6.62
Through site link -
long-section

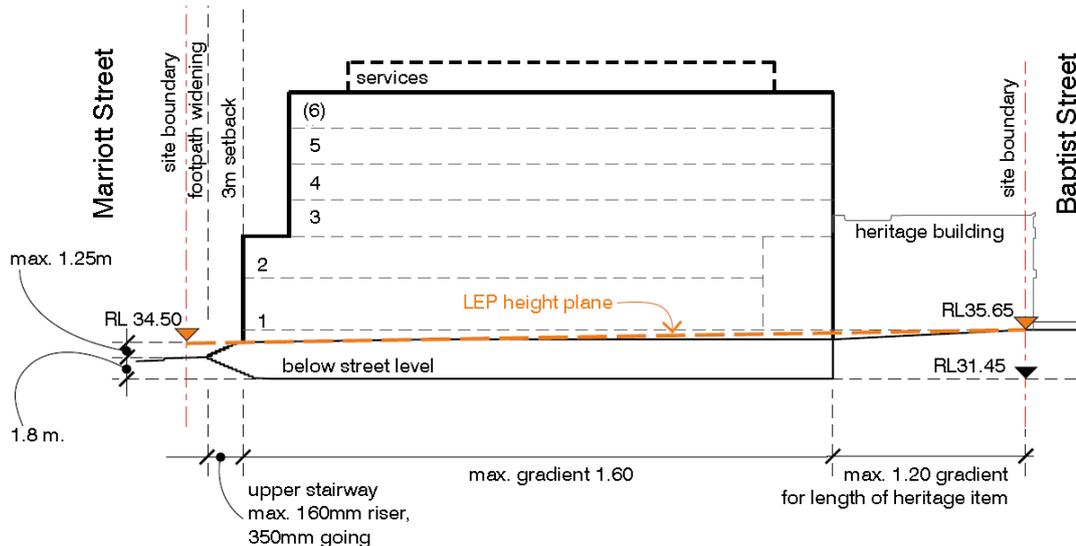


Figure 4 Through Site link long Section

Source: DCP 2012

3.2 Extent and Nature of the Variation

The maximum building 9m (9.9m with the design excellence) height zone is shown in blue in **Figure 5**. This maximum height does not apply evenly across the entirety of the roof area of all buildings. The area of the built form which exceeds the maximum building height limit is shown in green in **Table 1** and **Table 2**.



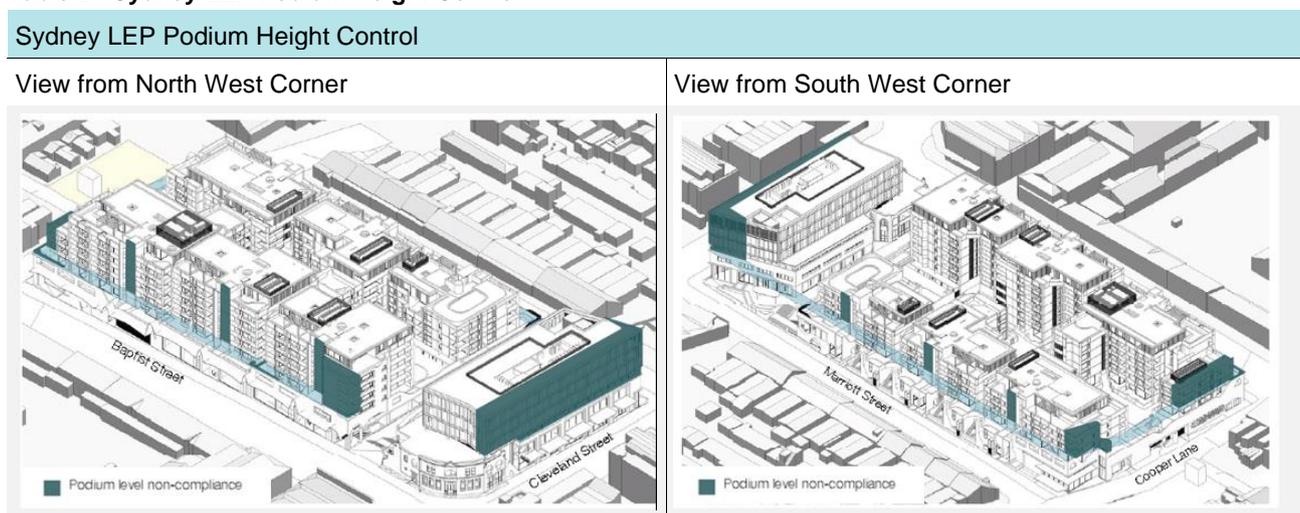
Figure 5 Sydney LEP Podium level height non-compliances

Source: SJB

Table 1 - Proposed heights across the site

Building	Street Wall Height	Proposed Street Wall height	Variation	Height	Proposed Overall Height	Variation
A	9.9m	10.1m	2%	27.5m	26.6m	0%
B	9.9m	8.5m	0%	27.5m	26.2m	0%
C (north)	9.9m	10.3m	4%	27.5m	27.5m	0%
C (south)	9.9m	10.3m	4%	25.3m	25.3m	0%
D	9.9m	8.2m	0%	19.8m	18.7m	0%
E	9.9m	9.4m	0%	19.8m	18.9m	0%
F	9.9m	11.2m	13%	19.8m	18.4m	0%
G	9.9m	23.7m	139%	24.2m	23.7m	0%
H	Not relevant	Not relevant	Not relevant	12m	10.8m	0%

Table 2 - Sydney LEP Podium Height Control



4.0 Justification for Contravention of the Development Standard

Clause 4.6(3) of the Sydney LEP provides that:

4.6 Exceptions to development standards

- (3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard 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.

Further, clause 4.6(4)(a) of the Sydney LEP provides that:

- (4) Development consent must not be granted for development that contravenes a development standard unless:
 - (a) the consent authority is satisfied that:

- (i) *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
 - (ii) *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, and*
- (b) *the concurrence of the Secretary has been obtained.*

Assistance on the approach to justifying a contravention to a development standard is also to be taken from the applicable decisions of the NSW Land and Environment Court and the NSW Court of Appeal including:

1. *Bates Smart Pty Ltd v Council of the City of Sydney* [2014] NSWLEC 1001;
2. *Wehbe v Pittwater Council* [2007] NSWLEC 827;
3. *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1009; and
4. *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118.

The relevant matters contained in clause 4.6 of the Sydney LEP, with respect to the height of buildings development standard, are each addressed below, including with regard to the above decisions of the Court.

4.1 Clause 4.6(3)(a): Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case

In *Wehbe*, Preston CJ of the Land and Environment Court identified five ways in which it could be shown that a variation to a development standard was unreasonable or unnecessary. However, His Honour in that case (and subsequently in *Initial Action*) confirmed that the types of ways that it could be shown that compliance with a development standard was unreasonable or unnecessary in the circumstances of the case was not limited to the five ways identified in *Wehbe*.

While *Wehbe* related to objections made pursuant to *State Environmental Planning Policy No. 1 – Development Standards* (SEPP 1), the analysis is applicable to variations made under clause 4.6 where subclause 4.6(3)(a) uses the same language as clause 6 of SEPP 1 (see *Four2Five* at [61] and [62]).

As the language used in subclause 4.6(3)(a) of the Sydney LEP is the same as the language used in clause 6 of SEPP 1, the principles contained in *Wehbe* are applicable to this clause 4.6 variation request.

The five methods outlined in *Wehbe* include:

- The objectives of the standard are achieved notwithstanding non-compliance with the standard (**First Method**).
- The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary (**Second Method**).
- The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable (**Third Method**).
- The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable (**Fourth Method**).
- The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone (**Fifth Method**).

Of particular relevance in this matter, in establishing that compliance with the height development standard is unreasonable or unnecessary is the First Method and Third Method.

4.1.1 The underlying objectives or purposes of the development standard

The objectives of the building height development standard contained in clause 4.3 of the Sydney LEP are:

- (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.

4.1.2 The objectives of the standard are achieved notwithstanding non-compliance with the standard

Objective (a): to ensure the height of development is appropriate to the condition of the site and its context

The proposed development, whilst exceeding the maximum building street wall height (9m or 9.9m with design excellence), complies with the maximum building heights of between 12m and 25m (plus 10% for design excellence) that apply to the significant majority of the site which ensures that the development is of an appropriate scale to the condition of the site and its context within the Cleveland Street locality.

The development has been designed to respond to the unique setting of the immediate surroundings. The variations to the 9m (9.9m with design excellence) maximum street wall height are minor and result from the design response which articulates the façade with some elements pushing forward and others pulled back. This is considered to be a positive feature (and a superior planning outcome) and was supported in the Design Excellence process.

Strict compliance with the maximum street wall height development standard would result in less articulation and a weaker design response. Notwithstanding the variation to the maximum street wall height development standard, the proposed development achieves the desired character of the Cleveland Street Precinct.

In addition, the height variation does not result in any adverse impacts to the Precinct for the following reasons:

- All proposed buildings align to their respective street frontage. Terrace housing along Marriott Street and retail outlets along Marriott and Baptist Street will provide street activation;
- A range of building heights across the site are provided. Heights along Marriott Street are proposed to be lower than those along Baptist Street to ensure greater sympathy and retain amenity for the existing low scale residential terraces to the west; and
- Deliberate design development and materiality responds to and complements the existing heritage item on the site (as discussed further below in relation to objective (b)).

It is therefore considered that the proposed building height is appropriate to the condition of the site and its context.

Objective (b): to ensure height transitions between new development and heritage items and buildings in heritage conservation areas or special character areas

- Deliberate design development and materiality responds to and complements the existing heritage items on and surrounding the site and the conservation area. Specifically, the proposed development:
 - Retains and restores the existing heritage item (Former Bank of NSW, Building H) located on the corner of the site. Where new development abuts the heritage item that development complies with the relevant development standard ensuring an appropriate scale in relation to the item;
 - Uses materiality which responds to Surry Hills predominant masonry-built fabric;
 - Uses upper level setbacks which are recessed inwards from the street, reducing the perceived bulk and scale of development to the existing surrounding terrace housing, shop fronts and laneways within the surrounding Baptist Street heritage conservation area;

- Provides sufficient separation and transition in built form from the site to the surrounding heritage items; and
- Does not result in any adverse impacts from the height exceedance.

Objective (c): to promote the sharing of views

That part of the development that departs from the height standard has no impact on existing public or private views. The proposed built form ensures internal privacy and view sharing for the future residents of the development.

Objective (d): to ensure appropriate height transitions from Central Sydney and Green Square Town Centre to adjoining areas

The site is not located in the transition areas surrounding Central Sydney and Green Square Town Centre. This objective is not applicable.

4.1.3 The object or purpose would be defeated or thwarted if compliance was required

The Cleveland Street area is a precinct which is currently undergoing a transition from a low-quality built form to a more vibrant mixed-use neighbourhood. This is evident in the objectives of the B2 Local Centre land use zone and the site-specific planning provisions that apply to the site. The proposed development is consistent with this transition and has been specifically designed to respond to the unique site context.

The proposed building height enables efficient use of the land commensurate to the density envisaged for the site. The resulting height variation is a result of distributing the available GFA to the upper levels of the building. As such, the proposal offers an improved planning outcome for the site which is also consistent with the objectives of the standard and therefore this outcome would be thwarted if compliance with the standard was required. Accordingly, Method 1 is considered to be met.

4.1.4 Conclusion on clause 4.6(3)(a)

Strict compliance with the maximum building height prescribed under clause 4.3 of the Sydney LEP is considered unreasonable and unnecessary in the specific circumstances for the following reasons:

- The underlying objectives of the standard are achieved, notwithstanding the non-compliances with the numerical control as:
 - The proposed building height is considered suitable given the site's unique setting and the specific design response;
 - The proposal will not adversely impact on any items of heritage, specifically the heritage item located on the site and will not impact on the understanding of heritage items located away from the site; and
 - The proposed built form, notwithstanding the exceedances of the maximum building height, has no impact on existing public or private views and provides enhanced internal and external amenity.
- The objectives of the standard would be defeated or thwarted if compliance was required.

4.2 Clause 4.6(3)(b): Environmental planning grounds to justify contravening the development standard

4.2.1 Ground 1: Reduced visual impact

The built form seeks to minimise the bulk and scale of the proposed development when viewed from Baptist Street, Cleveland Street and Marriot Street. The extent of visual impact as a result of the height variation to the street wall height is not of discernible scale. The building has been appropriately modulated (by recessing the upper levels) at the streetscape interface. This will minimise visual bulk and scale when viewed from the streetscape and the park at the south. Further, the building materiality and landscaping will serve to screen the upper levels and reduce visual prominence. Overall, the proposed development results in a positive visual impact when viewed from the public domain.

4.2.2 Ground 2 – Impacts on surrounding development

The development has the potential to impact on the existing low scale residential terraces directly to the south of Building C, along Baptist Street and the terraces on the western side of Marriott Street from Building G. To determine any additional impact on these terraces, the built form of the building has been compared to the impacts which would otherwise occur if the building was designed in accordance with the site-specific DCP.

Overshadowing

SJB has prepared a shadow analysis for the proposed development (refer to **Appendix A** and **Section 4.7** of the SEE). The study demonstrates the shadow impacts generated from the development as proposed, and the shadow impacts generated from the development if it were to be developed in accordance with the site-specific DCP. The analysis has been undertaken in one-hour intervals between 9:00am and 3:00pm on the most recent winter solstice (21 June).

The analysis demonstrates that the existing residential terraces along Baptist Street to the south of the site are subject to overshadowing between 9:00am and 10:00am (refer to **Figure 6**). This occurs regardless of whether Building C was to be developed as proposed, or in accordance with the site-specific DCP.



Figure 6 Building C and G DCP envelope (left) and Building C and G proposed (right) - 9:00am

Source: SJB

- Building C will front the existing residential development south of the site. It has been appropriately setback at the lower and upper level, almost entirely consistent with the site specific DCP controls. The height and setbacks to Building C have been further improved since the development was awarded design excellence;
- The perceived bulk and scale of Building C is also modulated by the physical separation provided from the landscaped setback and 9m public share way.
- The variation to the height standard on Building C does not cause any additional amenity impacts on surrounding properties and, as now proposed, better responds to those properties than a compliant scheme.

It is recognised that Building G (as proposed) would cause a similar but slightly increased extent of overshadowing to the northern most terraces along Marriott Street at 9:00am. The overshadowing is gone by 10:00am however when the shadow falls largely on the street (refer to **Figure 7**).



Figure 7 Building C and G DCP envelope (left) and Building C and G proposed (right) - 10:00am

Source: SJB

There is no material change to the amenity impacts to the northern most terraces whose solar access after 10.00am on the shortest day of the year will be unaffected.

4.2.3 Ground 3: Increased amenity and accessibility to the through site link and residential development

The proposed massing on the site has been revised from the massing in the competitive design process to increase the level of solar access to both the through site link within the development and maximise the number of apartments receiving at least two hours of direct sunlight. Overall, the proposed development achieves 2 hours direct sunlight to 60.5% of apartments within the development on 21 June between 9am and 3pm. If the development was to measure from 8:45am to 3pm the development would achieve 87%.

This is achieved by redistributing the bulk away from the building edges and towards the centre of the site. The stepping provides a more sympathetic interface to Baptist and Marriott Street and Cooper Lane while maximising amenity along the public plaza and open space areas within the site.

4.2.4 Conclusion on clause 4.6(3)(b)

In summary, the environmental planning grounds which justify the proposed variation to the maximum building height include:

- Reduced visual impact on Baptist Street, Marriot Street and Cooper Street; and
- A better articulated built form which better integrates with the surrounding area.

4.3 Clause 4.6(4)(a)(ii): In the public interest because it is consistent with the objectives of the zone and development standard

4.3.1 Consistency with objectives of the development standard

The proposed development is consistent with the objectives of the height of buildings development standard, for the reasons discussed in **Sections 4.1.2 to 4.1.5** of this report.

4.3.2 Consistency with objectives of the zone

The proposed development has been assessed against the objectives for the B2 – Local Centre zone as outlined below. The departures from the height of building development standards do not result in any inconsistencies with the objectives of the zone.

Objective (a): To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area

- The proposed development provides a mix of uses that will directly service the needs of people who live, work and visit the local area.
- The proposed development also provides a range of retail outlets and a dedicated Coles supermarket. These uses will directly serve the residents of the proposed development and existing residents in the locality. The proposed development will better serve the retail needs of people who live, work and visit the local area without the need for outbound commuting.

Objective (b): To encourage employment opportunities in accessible locations

- The proposed development will contain enhanced commercial floor space, including retail and office premises. These uses will provide direct and indirect employment opportunities on the site on both a permanent and part-time basis.
- The site is also located in an accessible location:
 - It is in walking distance (1.5km) of Redfern and Central Railway Station, located west and north west of the site, respectively. Both stations provide adjoining bus routes, forming a transport cluster. Central Station also provides a connection to the Sydney Light Rail Network;
 - Two bus stops (route 355 and the Metrobus route M50) are located along Cleveland Street, directly in front of the site's primary frontage. Route 355 provides connections from Marrickville to Bondi via Moore Park and Erskineville while the M50 provides a metro service from Coogee to Drummoyne via Rozelle and Randwick;
 - Two bus stops (route 302 and 303) are located along Baptist Street, along the eastern frontage of the site. Route 301 provides access from Eastgardens to Circular Quay via Kingsford while route 303 provides access from Sans Souci to Circular Quay;
 - The future South East Light Rail Link will include a light rail stop approximately 550m north of the site, on the corner of Marlborough and Devonshire Streets;
 - The future Waterloo Station, forming part of Sydney Metro, will be located approximately 1.6km south west of the site; and
 - The site is easily accessible by bicycle via the existing road network. It is noted the proposed development will provide end of trip facilities for all the commercial uses onsite to encourage active transport uses.

Objective (c): To maximise public transport patronage and encourage walking and cycling

The proposed development provides bicycle parking and end of trip facilities for both the residential and commercial uses for the site. This will encourage residents and employees to utilise active forms of transport such as walking and cycling.

As detailed above, the site is located in walking distance to a number of existing and future public transport options. This will help maximise the use of public transport patronage to and from the site.

Objective (d): To allow appropriate residential uses so as to support the vitality of local centres

The proposed development provides a total of 157 residential units. The residential population on the site will provide a suitable level of permanent critical mass to support the Surry Hills located centre. Residents will increase local expenditure which will likely improve the trading viability and profitability for businesses along Cleveland Street and Crown Street.

4.3.3 Overall public interest

The proposed development is considered to be in the public interest as the proposed development:

- Will contribute to the local community by providing additional services and amenities to Redfern and Surry Hills;
- Will complement the transition of the existing shopping centre into a vibrant mixed use neighbourhood by providing local services and new homes with a high level of amenity; and
- Will contribute and enhance the local urban ecology by introducing a park.

4.4 Other Matters for Consideration

Under clause 4.6(5), in deciding whether to grant concurrence, the Secretary must consider the following matters:

- (5) *In deciding whether to grant concurrence, the Secretary must 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.*

These matters are addressed in detail below.

4.4.1 Clause 4.6(5)(a): Whether contravention of the development standard raises any matter of significance for State or regional environmental planning

The variation of the height of buildings development standard does not raise any matter of significance for State or regional planning. We note that the proposal is consistent with the most recent metropolitan plan for Sydney, *A Metropolis of Three Cities* in that it:

- Provides accommodation and services to meet the needs of the local population, both at the present time and in the future as Sydney's population grows and ages;
- Allows for the use of the site to continue to provide local employment opportunities;
- Will provide for an exemplary environmental outcome for the site through carbon and water sensitive design;
- Will provide increased services and amenities to Redfern, including services that will encourage cycling and active transport within the local area; and
- Does not adversely affect any heritage items or conservation areas.

4.4.2 Clause 4.6(5)(b): The public benefit of maintaining the development standard

As demonstrated above, there is no public benefit in maintaining the development standard in terms of State and regional planning objectives. As noted in the preceding sections, the proposed variation would not give rise to any unacceptable adverse environmental impacts.

It is not considered that there would be any public benefit for the proposed building height to be reduced so as to bring the development into compliance with the standard, particularly where key planning issues deriving from height, such as visual impact, have been resolved through architectural design.

4.4.3 Clause 5.6(5)(c): Any other matters required to be taken into consideration by the Secretary before granting concurrence.

There are no other relevant matters.

5.0 Conclusion

The assessment above demonstrates that compliance with the height of buildings development standard contained in clause 4.3 of the Sydney LEP is unreasonable and unnecessary in the circumstances of the case and that the justification is well founded. It is considered that the variation allows for the orderly and economic use of the land in an appropriate manner, whilst also allows for a better outcome in planning terms.

This clause 4.6 variation demonstrates that, notwithstanding the non-compliance with the height of building development standard:

- The proposed development achieves the objectives of the height of buildings development standard because:
 - the height of development is appropriate to the condition of the site and its context;

- the height of the development appropriately transitions to the heritage item located on the site and buildings in the adjacent heritage conservation area; and
- the development does not result in any public or private view loss.
- The objectives of the height development standard would be thwarted if compliance was required as the proposed building height enables efficient use of the land commensurate to the density envisaged for the site. The resulting height variation is a result of distributing the available GFA to the upper levels of the building which offers an improved overall planning outcome for the site.
- There are sufficient environmental planning grounds to justify the contravention of the height development standard including the following:
 - The proposed development is of a suitable height given the site’s unique setting and the specific design response which results in minimal visual impact when viewed from the public domain;
 - The proposed development will not adversely impact on the understanding of heritage item located on the site nor the adjacent conservation area or nearby heritage items;
 - The proposed development is within the substantive maximum height of buildings development standard for the site, demonstrating that the development as a whole is of a desirable scale for the site;
 - The proposed development results in a superior planning outcome for the site and provides enhanced amenity to the public through the site link and residential apartments within the development; and
 - The proposed development appropriately manages the site’s sensitivities and constraints through innovative urban design and architectural solutions.
- The proposed development is consistent with the objectives of the B2 Local Centre zone as it:
 - Enables a mix of retail and business uses to be accommodated on the site that will directly service the needs of people who live in, work in and visit the local area;
 - Provides a mix of commercial premises including retail and office premises which will provide direct and indirect employment opportunities;
 - Provides employment generating uses in an accessible location;
 - Provides bicycle storage facilities to encourage cycling;
 - Provides a through site link to optimise accessibility and walkability; and
 - Includes appropriate residential uses so as to support the vitality of the locality.
- The proposed development is in the public interest in light of the numerous positive social, ecological, design and economic impacts it will deliver for the site.

Therefore, the DA may be approved with the variation as proposed in accordance with the flexibility allowed under clause 4.6 of the Sydney LEP.