

# **Attachment D**

## **Clause 4.6 Variation Request – Floor Space Ratio**

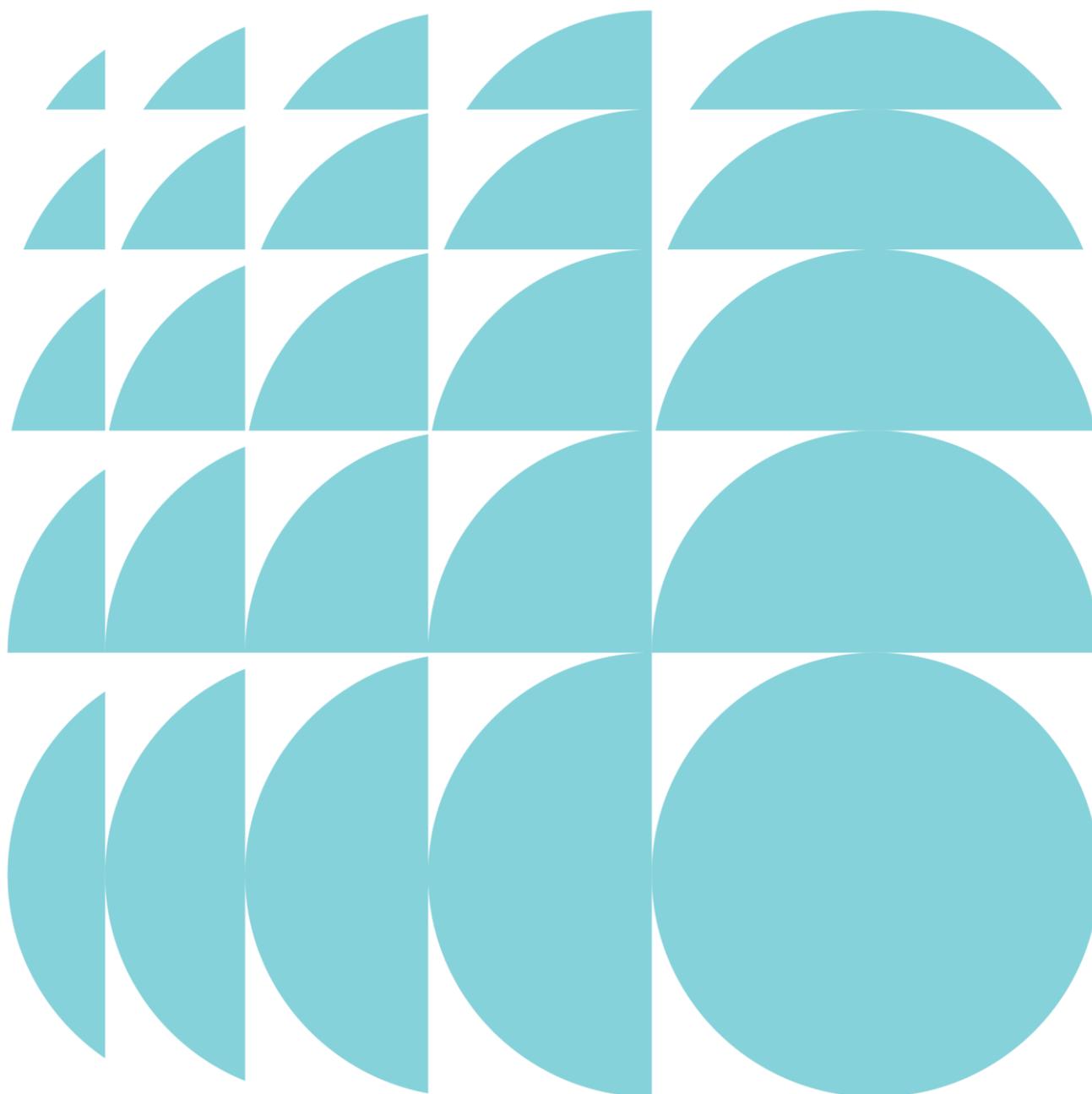
**Amended Clause 4.6 Variation**

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

Floor Space Ratio 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 (Council) in support of a Development Application (DA) for a 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* (SLEP 2012) 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 Floor Space Ratio (FSR) development standard under clause 4.4 of the SLEP 2012. It should be read in conjunction with the Statement of Environmental Effects (SEE) prepared by Ethos Urban dated September 2018 and the Addendum SEE prepared by Ethos Urban dated May 2019.

This clause 4.6 variation request demonstrates that compliance with the FSR 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.

It is important to note that the variation relates to additional GFA in the commercial building (Building G) and the FSR of the remaining buildings on the site otherwise comply with the LEP maximum. It is considered that the variation allows for the orderly and economic use of the land in an appropriate manner, whilst also allowing for a better outcome in planning terms. It will help to reduce a significant gap in commercial office floor space within the Surry Hills / Redfern area and contribute to the retention of business within the locality.

This clause 4.6 variation request demonstrates that, notwithstanding the non-compliance with the FSR development standard:

- The proposed development achieves the objectives of clause 4.4 – Floor Space Ratio in the SLEP 2012, as:
  - It will make a significant contribution to the provision of sufficient floor space to meet anticipated development needs for the foreseeable future, particularly medium sized commercial floor space within Surry Hills;
  - It will have an appropriate density, built form and land use intensity;
  - It will not generate an unacceptable amount of additional vehicle and pedestrian traffic;
  - The proposed floor space and intensity of the development, is commensurate with, and can be accommodated on the site without unreasonably impacting, existing and planned infrastructure (including from vehicle and pedestrian traffic generated by the development) particularly considering the proximity of the site to public transport options including busses, future light rail and Central and Redfern train stations;
  - The built form reflects the desired character of the locality; and
  - It minimises adverse impacts on the locality including in terms of overshadowing, visual impact, and loss of privacy.
- The underlying object or purpose of the FSR development standard would be defeated or thwarted if compliance was required as it would reduce the diversity of commercial and retail uses sought in the locality statement for Cleveland Street and would specifically fail to achieve objective (a) and objective (d) of the development standard.
- There are sufficient environmental planning grounds to justify the contravention of the FSR development standard including the following:
  - The variation to the FSR development standard enables commercial floor areas of between 650m<sup>2</sup> and 950m<sup>2</sup> to be provided on the site in circumstances where there is a demonstrated lack of supply of floorspace of that size and, consequently, a strong demand for tenancies of that size;

- The proposed supply of commercial floor space between 650m<sup>2</sup> and 950m<sup>2</sup> in Building G can assist in the retention of existing established and medium sized businesses (of around 40 to 70 employees) in the locality which are currently struggling to find office space of the appropriate scale;
- The additional FSR only gives rise to nominal additional overshadowing with the impact limited to the northern most terraces along Marriott Street and it only occurs between 9:00am and 10:00am.
- Building G provides an appropriate separation and remains sympathetic to the existing heritage item on the site notwithstanding the fact that it exceeds the FSR development standard. Building G does not adversely affect the scale of the heritage item, ensuring its strong presence and prominent corner position is not lost.
- The development of Building G for a commercial building rather than a residential building removes a habitable interface from the Marriott Street frontage and ensures that Building G does not cause any potential visual privacy impacts to the residential terraces to the west.
- If residential units were to front Cleveland Street (as was proposed under the competitive design process) they would experience a lower level of residential amenity, caused from the ongoing traffic and activity along the street front.
- The use of Building G for commercial (office) purposes (rather than residential) will improve the number of economic and social benefits associated with the proposed development.
- The amount of commercial floor space proposed within Building G is appropriate to the site's zoning and highly accessible location within the Surry Hills Town Centre, being walking distance to a range of existing and future transport options.
- The reduction in the area of floor plates within Building G so as to bring the development into compliance with the FSR development standard would have ramifications for the commercial viability of that building and may result in it reverting back to a residential use, which is considered to be a poorer planning outcome than that which is now proposed.
- 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 provides additional employment generating land uses which are in line with the forecast growth of Surry Hills / Redfern and are consistent with the relevant local and State strategic plans; and
- The proposed development (including the proposed variation to the FSR development standard) is in the public interest.

Therefore, the DA may be approved with the variation as proposed in accordance with the flexibility allowed under clause 4.6 of the SLEP 2012.

## 2.0 Background

The site has been subject to a Planning Proposal, site specific Development Control Plan (DCP) and a design excellence process which has led to the development of a scheme that presents a genuine understanding and thoughtful response to the character of the area.

As part of the Design Excellence process, the Selection Panel recommended that the proponent clarify the appropriateness of a residential use fronting Cleveland Street where it would likely experience a lower level of amenity arising from heavy traffic and extended retail activity. This recommendation started a process to investigate replacing the east west orientated residential building fronting Cleveland Street (Building G) with an office building (refer to **Figure 1**).

This potential change of use is also contemplated under clause 14 of the site-specific DCP for the site.



**Figure 1** Subject of this clause 4.6 variation request (in red outline)

Source: SJB

In addition to addressing concerns regarding residential amenity, the introduction of office uses was identified as an opportunity to provide significant positive economic and employment benefits to Surry Hills consistent with the intent of the relevant local and State strategic plans and the objectives of the B2 Local Centre zone.

A Social and Economic Benefit Statement was prepared to identify what office uses were best suited to the location. The statement identified a shortage in office floor plates of between 650m<sup>2</sup> and 950m<sup>2</sup> in the Surry Hills / Redfern area (refer to **Appendix A**).

Building G provides floor plates of this size and provides opportunities for an office product which can sufficiently accommodate existing and growing small businesses, and retain medium sized business in the area, reducing their need to relocate outside the locality (refer to **Section 4.2.1**).

The 'planning envelope' for the site and by inference the FSR, was predicated on a residential building being located along the Cleveland Street frontage. The residential envelope is not suitable to accommodate a standalone commercial building of this nature or the scale of floorplates necessary to assist in the retention of growing local businesses.

To accommodate an appropriate commercial building which delivers a clearly better planning outcome than that anticipated in the Planning Proposal and subsequent LEP controls, results in a variation to the maximum floor space ratio (2:1) development standard.

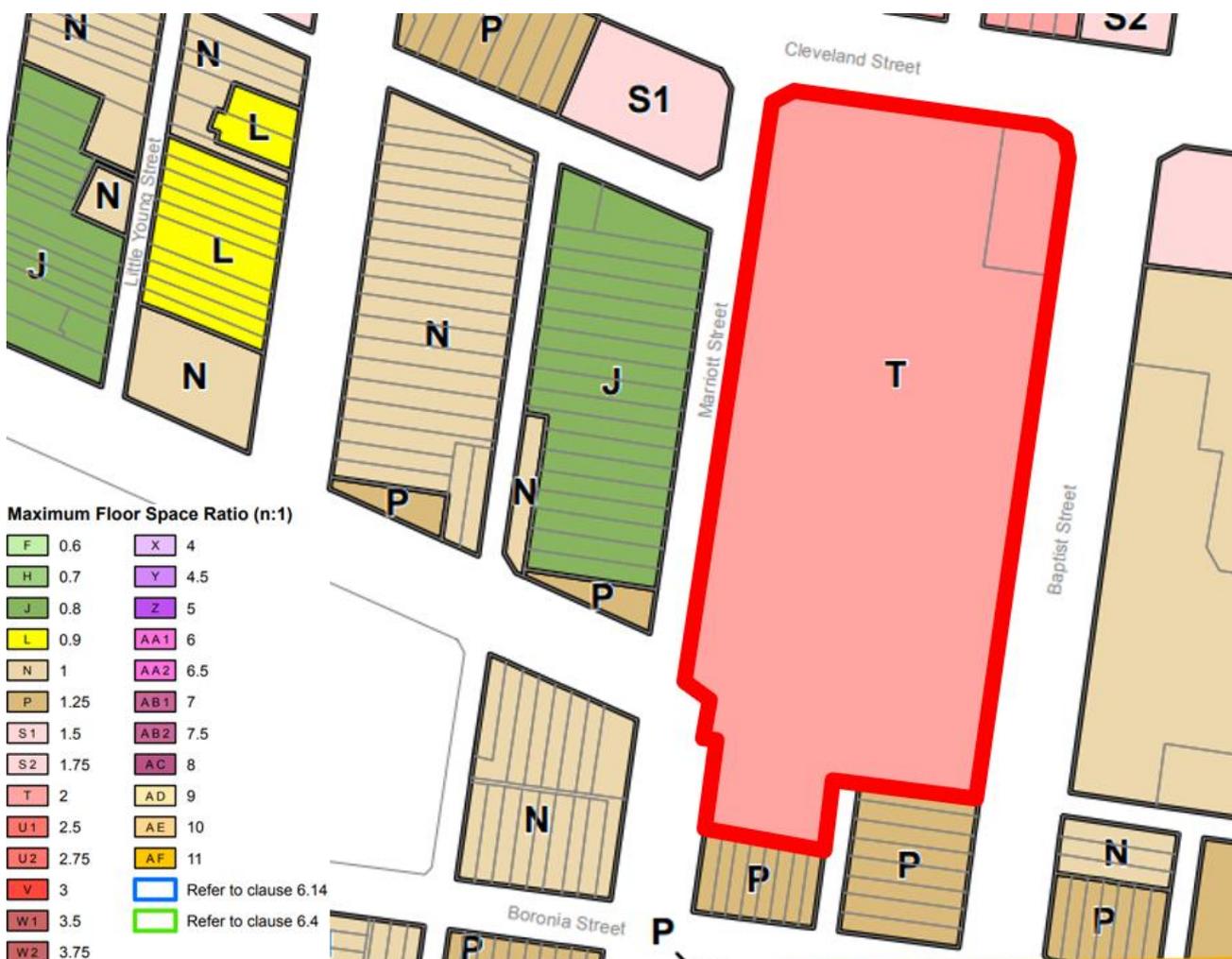
This request satisfies the statutory tests set out under Clause 4.6 and demonstrates that the variation to the maximum FSR standard will result in a better planning outcome.

### 3.0 Development Standard to be Varied

This clause 4.6 variation request seeks to justify contravention of the FSR development standard under Clause 4.4 of the SLEP 2012.

Clause 4.4 of the SLEP 2012 allocates the site a maximum FSR of 2:1 (refer to **Figure 2**). The area of the site is 12,244m<sup>2</sup> and the proposed development provides a total Gross Floor Area (GFA) of 26,698m<sup>2</sup>. This equates to an FSR of 2.18:1 and a 9% variation from the development standard.

The additional GFA that results in the variation to the standard occurs entirely within Building G and from its change from a residential to a commercial building.



**Figure 2** Extract from the Floor Space Ratio Map (Sheet FSR\_016)

Source: Sydney Local Environmental Plan 2012

## 4.0 Justification for Contravention of the Development Standard

Clause 4.6(3) of the SLEP 2012 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 SLEP 2012 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 in:

1. *Bates Smart Pty Ltd v Council of the City of Sydney* [2014] NSWLEC 1001;
2. *Wehbe v Pittwater Council* [2007] NSW LEC 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 SLEP 2012 with respect to the FSR development standard, are each addressed below, including with regard to these decisions.

### 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 SLEP 2012 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 ways 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 FSR development standard is unreasonable or unnecessary are the first and third Methods.

#### 4.1.1 The underlying objectives or purposes of the development standard

The objectives of the development standard contained in clause 4.4 of the SLEP 2012 are:

- (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.*

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

##### **Objective (a): To provide sufficient floor space to meet anticipated development needs for the foreseeable future**

The anticipated development needs in the foreseeable future for the Surry Hills area will be influenced by forecast job growth, a growing local population and low vacancy rates within the Sydney CBD (refer to **Appendix A**). Specifically:

- The site is located within the Chippendale and Surry Hills Statistical Area 2 (SA2). This area will experience job growth in the foreseeable future and is forecast to provide an additional 24,480 jobs by 2036. This equates to an average annual growth rate of 2.1%, exceeding the average annual growth rate for the City of Sydney (1.4%);
- The population within the SA2 area will increase from 37,480 residents in 2016 to 56,390 residents by 2036. This represents an average annual growth rate of 2.1% which exceeds the average annual growth rate for the City of Sydney (2.0%) and Greater Sydney (1.5%); and
- Demand for commercial floor space within the SA2 will be driven by a growing local population and ongoing low office vacancy rates within the Sydney CBD (CBD), increasing the demand for floor space in the fringe CBD, which includes areas such as Redfern and Surry Hills.

The proposed development will provide commercial floor space to help accommodate the development needs generated from the job and population growth expected for the area in the foreseeable future.

The job and population growth detailed above will also likely increase demand for residential floor space within the SA2 as employees and employers look to collocate jobs and homes. The proposed development also provides a

significant amount of residential floor space to help meet any additional residential demand within the SA2 within the foreseeable future.

The residential floor space proposed will also improve housing choice within the SA2. The terrace style, one, two and three storey units above ground, can accommodate individual and family compositions, contributing to a more diverse residential population, ensuring the SA2 can absorb a greater number of residential needs.

The residential floor space proposed will also assist to meet the broader residential needs of Eastern Sydney anticipated within the foreseeable future: Specifically, it will:

- Contribute to the additional 157,500 homes needed within the Eastern City District under the *Eastern City District Plan*; and
- Contribute to the diversity and choice of housing. Specifically:
  - One-bedroom units proposed will support housing for single person households, expected to increase by 61,100 in the Eastern City District by 2036. It is noted that the greatest proportional increase in single person housing will be within the City of Sydney; and
  - Two and three-bedroom units proposed will support housing for couple-only households, expected to increase by 31,750 in the Eastern City District by 2036.

**Objective (b): To regulate the density of development, built form and land use intensity and to control the generation of vehicle and pedestrian traffic**

The density of development proposed is considered reasonable and appropriate, given the location and circumstances of the site in a local centre close to public transport, and given the proposed development creates no unreasonable impacts even though it seeks to vary the FSR development standard. In particular:

- There will be no significant additional overshadowing impacts to the existing residential terraces to the west of the site as a result of the additional floor space proposed for Building G (refer to **Section 4.2.2** and **Section 5.0** of the Addendum SEE);
- The Traffic Impact Assessment has determined that the traffic generation from the proposed development will not have a significant adverse impact on the surrounding road network and intersections (refer to **Section 4.10** and the SEE);
- The FSR proposed for the site is accommodated within the site's maximum height limit (27.5m) and is generally consistent with the requirements of the site-specific DCP applicable to the site. Therefore, the proposed development, even though it exceeds the FSR development standard, is reasonably scaled in line with the envisioned environmental capacity of the site. The proposed development also achieves substantive compliance with the *Apartment Design Guide* amenity controls;
- A number of design measures have been included to regulate the density of the proposed development and ensure the achievement of a design outcome which is consistent with the existing character and built form of the neighbourhood. These include:
  - A two storey architecturally designed podium. The podium directly responds to the existing low-density scale of development surrounding the site, both in terms of materiality and height
  - Upper level building setbacks to reduce the perceived bulk and scale of development (refer to proposed setback and storey plan within Section 4.1 of the Architectural Design Report at Appendix A of the SEE); and
  - Distribution of residential floor space between six (6) individual building elements, reducing an unsightly 'blank wall' effect along the Baptist Street and Marriott Street streetscape (refer to Site Layout Plan at **Figure 1**).

**Objective (c): To provide for an intensity of development that is commensurate with the capacity of existing and planned infrastructure**

The increased floor space proposed for the site can be accommodated on the site without any undue impact on the capacity of existing and planned infrastructure. Any future infrastructure planned in the vicinity of the site would need to be considered and/or accommodated by the proposed development irrespective of the proposed FSR. Further, the site is in a highly accessible location, being walking distance (1.5km) from Central and Redfern Station. Two bus stops (route 355 and the Metrobus route M50) are also located along Cleveland Street directly in front of the site.

These stations provide transport infrastructure in dense clusters with adjoining bus and light rail connections. The site will also be in close proximity to the future South East Light Rail Link which will include a light rail stop approximately 550m north of the site, as well as Waterloo Station, part of Sydney Metro.

The intensity of development is therefore considered suitable for the site as the majority of visitors, employees and residents of the site will use public transport for their daily mode of travel. This mode of transport will further be encouraged by the bicycle storage facilities and end of trip facilities provided by the proposed development.

**Objective (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 site is located within the Cleveland Street Precinct (refer to Section 2.13.1 of the City of Sydney DCP 2012). The locality statement for the Cleveland Street Precinct is place specific and informs a series of principles to guide future development in the precinct. The locality statement and principles combined, ensure new development reflects the desired character of the locality and minimises the adverse impacts on the existing amenity of that locality.

The additional floor space proposed for Building G does not cause the proposed development overall, to become inconsistent with the Cleveland Street Precinct locality statement and the principles of the locality statement continue to be achieved notwithstanding the contravention of the FSR development standard. Specifically:

- Building G continues to provide ground floor retail along Cleveland Street and does not reduce the amount of residential floor space on the site or the number of residents that can be accommodated on the site to the point where there is no consistent critical mass to support the viability of the retail uses along Cleveland Street;
- Deliberate design development and materiality responds to, and continues to complement the existing surrounding heritage items surrounding the site. Specifically, the proposed development:
  - Retains and restores the existing heritage item (Former Bank of NSW) located on the corner of the site. The adaptive reuse of the heritage item will reinstate its original integrity and reflect more broadly, the ongoing commitment to conserving the heritage character of the locality;
  - Provide street landscaping to confirm to the existing pattern of street planting in the locality;
  - Uses materiality which responds to Surry Hills predominately masonry-built fabric; and
  - Uses upper level setbacks which are recessed inwards from the street, reducing the perceived bulk and scale of development when compared to the existing surrounding terrace housing, shop fronts and laneways within the surrounding Baptist Street heritage conservation area.
- 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 retained amenity for existing low scale residential terraces to the west (refer to Setback and Storey Plan within Section 4.1 of the amended Architectural Design Report at Attachment A of the Addendum SEE.)

The proposed development, notwithstanding the contravention with the Floor Space Ratio development standard, remains consistent with the Cleveland Street Precinct locality statement and guiding principles. This ensures the development appropriately conforms to the desired character of the locality and reduces impacts to its existing

amenity. The desired future character of the locality and how the proposed development conforms to this is demonstrated in **Section 4.1.3**.

#### **4.1.3 The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable**

In addition to the First method, it is considered that the underlying object of the development standard (refer to **Section 4.1.1**) would be defeated if strict compliance with the development standard was sought.

Strict compliance with the standard would likely result in Building G being reverted back to a residential use, above the ground floor retail, or smaller commercial floor plates which would not align to the identified demand (refer to **Section 4.2.1**).

The locality statement for Cleveland Street in Section 2.13.1 of the City of Sydney DCP 2012 relevantly states:

*“Cleveland Street will continue as a major east-west traffic route with an enhanced function as a place for people. Positive aspects of the streetscape to be retained and reinforced include existing corner commercial buildings, older warehouses and consistent terrace rows.*

*The diversity of commercial and retail uses are to be increased to support a greater pedestrian focus, while retaining the residential component to sustain those uses. A series of identifiable nodes or activity clusters that straddle the street and break-down the traffic barrier are encouraged with the aim of linking Redfern to Surry Hills. The Bourke Street retail area offers opportunities to serve the local community and provide dining.”*

Strict compliance with the development standard would reduce the diversity of commercial and retail uses sought in the locality statement for Cleveland Street and would specifically fail to achieve objective (a) and objective (d) of the development standard.

Reducing the opportunities for residents to live and work locally would likely increase the need for more trips outside the area. This would inevitably increase the number of vehicle and pedestrian movements which is contrary to objective (b) of the development standard.

As has been demonstrated within objective (b), the SEE and supporting documentation submitted with the DA, including the Traffic and Parking Impact Assessment and Infrastructure Services Statement, the capacity of existing and planned infrastructure can support the intensity of development proposed with manageable impacts consistent with objective (c).

#### **4.1.4 Conclusion on clause 4.6(3)(a)**

The underlying purpose of the development standard is to control the bulk, scale and density of buildings in order to minimise adverse environmental effects, ensure compatibility with the existing and desired future character of the area and regulate the density of development.

The preceding assessment demonstrates that despite the variation to the FSR development standard, the variation will not have any adverse environmental effects in terms of built form or density and will result in a development that is consistent with what was envisioned for the site and that the First and Third methods identified in Wehbe are applicable and met in this instance.

For the above reasons, it is considered that compliance with the FSR development standard is unreasonable and unnecessary in the circumstances of the case.

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

The following matters are environmental planning grounds which are considered to justify the contravention of the FSR development standard. Each relate specifically to Building G, the element of the proposed development which causes the contravention of the development standard.

### 4.2.1 Ground 1 – Demand for commercial floor space within Surry Hills

**Section 4.1.2** of this report has demonstrated that the site is within an area forecast to experience significant job growth. This will be driven by a growing local population and ongoing low office vacancy rates within the CBD. Building G will provide employment generating land uses which will assist to accommodate this forecast growth.

Building G provides floor plates which are between 650m<sup>2</sup> and 950m<sup>2</sup>. An examination of the historical and current rental listings between 2015 and 2018 illustrates a gap in the market for offices with these size floor plates in the Surry Hills and Redfern area (Refer to **Appendix A**).

This trend is demonstrated in **Table 1**.

**Table 1 Commercial Rentals in Surry Hills and Redfern (December 2015 – August 2018)**

Floorspace (sqm)	Number	Proportion (%)	Average sqm	Days listed
< 200	188	39.09	109	143
200 – 650	152	31.60	348	150
650 – 950	42	8.73	800	132
> 950	99	20.58	2020	146

**Table 2** (which comprises data extracted from Appendix A) demonstrates a lack of supply for floorspace of between 650m<sup>2</sup> and 950m<sup>2</sup> as commercial rentals for this floor space accounted for only 8.7% of all commercial properties being leased in the Redfern and Surry Hills area.

**Table 1** also demonstrates that, aligned with the lack of supply for floorspace of between 650m<sup>2</sup> and 950m<sup>2</sup>, is a strong demand for tenancies of this size, with this size floorspace having the lowest average number of days listed on the market.

The proposed supply of floor space between 650m<sup>2</sup> and 950m<sup>2</sup> in Building G can also assist in the retention of existing established and medium sized businesses (of around 40 to 70 employees) in the locality which are currently struggling to find office space of appropriate scale (refer to **Table 2** which comprises data extracted from Appendix A).

**Table 2 Location Opportunities for Businesses in Professional Services**

Business type	Floorspace (sqm)	Approximate size of firm	Location opportunities
Micro / emerging	< 200	< 13 workers	Balanced
Small	200 – 650	13 – 43 workers	Balanced
Established / medium	650 – 950	43 – 63 workers	Constrained
Established / large	> 950	>63	Balanced

Although small businesses currently have balanced location opportunities, for expansion, they may be unable to find suitable office floor space within Surry Hills / Redfern, forcing their relocation outside the area. The proposed provision of commercial floor space within Building G will assist to improve the level of appropriately sized floor space for these small businesses as well as existing established, and medium sized businesses.

If Building G were to provide smaller floor plates, the proposed development could comply with the FSR development standard, but it would not meet the strong market demand for commercial floor space between 650m<sup>2</sup> and 950m<sup>2</sup>. The benefits associated with providing in demand yet undersupplied floorspace and retaining existing business within the Surry Hills / Redfern area would however be lost.

On balance, these benefits are considered to provide a better planning outcome for the site and the Surry Hills / Redfern area and cater to specific demand which would otherwise not be achieved with a compliant floor space of 2:1.

#### 4.2.2 Ground 2 – Impacts on surrounding development

The primary matters for consideration are the existing low scale residential terraces directly to the west of Building G, along Marriott Street. To determine any additional impact on these terraces from Building G, 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 impacts of Building G

SJB has prepared a shadow analysis for the proposed development (refer to **Appendix A** and **Section 3.0** of the Addendum SEE). The study demonstrates the shadow impacts generated from Building G as proposed, and the shadow impacts generated from Building G 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 Marriott Street are subject to overshadowing between 9:00am and 10:00am (refer to Figure 3 and **Figure 4**). This occurs regardless of whether Building G was to be developed as proposed, or in accordance with the site-specific DCP.

It is recognised that Building G (as proposed) does increase the extent of overshadowing to the northern most terraces along Marriott Street at 9:00am. It is gone by 10:00am however when the shadow falls largely on the street (refer to **Figure 4**).

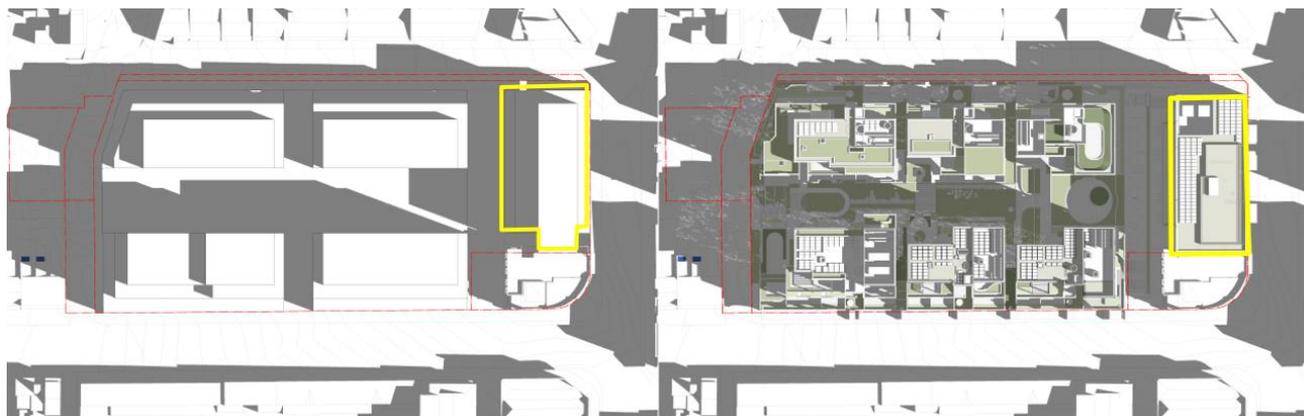
This causes a shadow only slightly larger than that which would be created under the site-specific DCP, lasts only for one hour, and is considered on balance to be a nominal additional adverse impact in terms of overshadowing to the terraces along Marriott Street.

From 10:00am, the existing residential terraces to the west of the site along Marriott Street are not subject to any overshadowing by the proposed development (refer to **Figure 5** to **Figure 7**).



**Figure 3** Building G DCP envelope (left) and Building G proposed (right) – 9:00am

Source: SJB

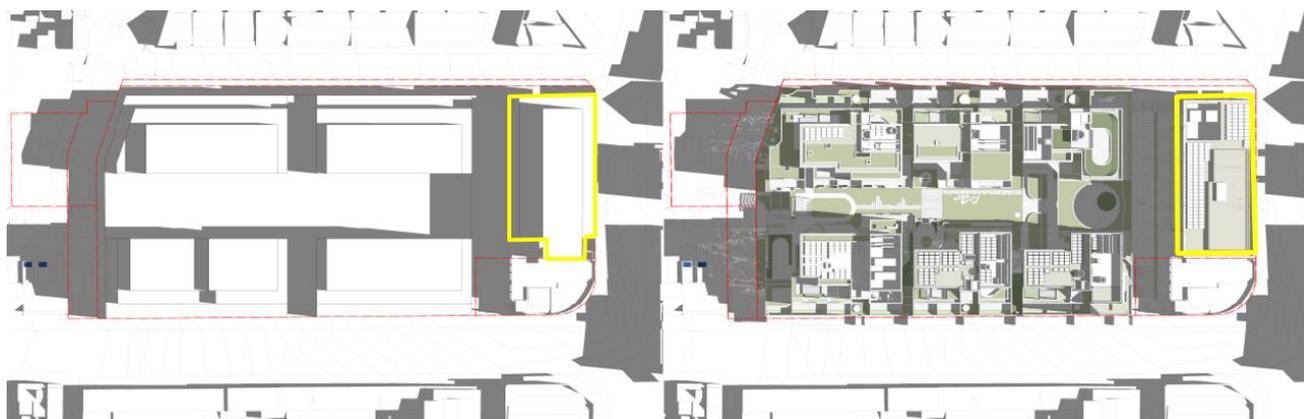


**Figure 4 Building G DCP envelope (left) and Building G proposed (right) – 10:00am**

Source: SJB

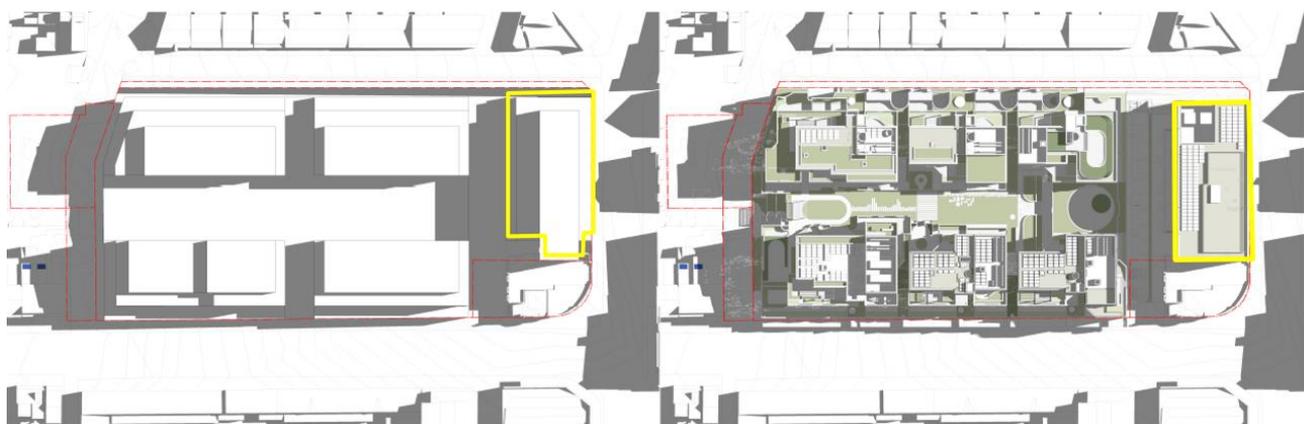
The significant positive economic and employment benefits associated within the size of the floor plates is considered to provide a positive outcome for the site and on balance is considered to outweigh the minor additional overshadowing cast to the west between 9:00am and 10:00am.

Building G also provides an improved solar outcome (from 12:00pm) for the western portion of the retail laneway of the site, compared to that which would be otherwise be provided under the site-specific DCP.



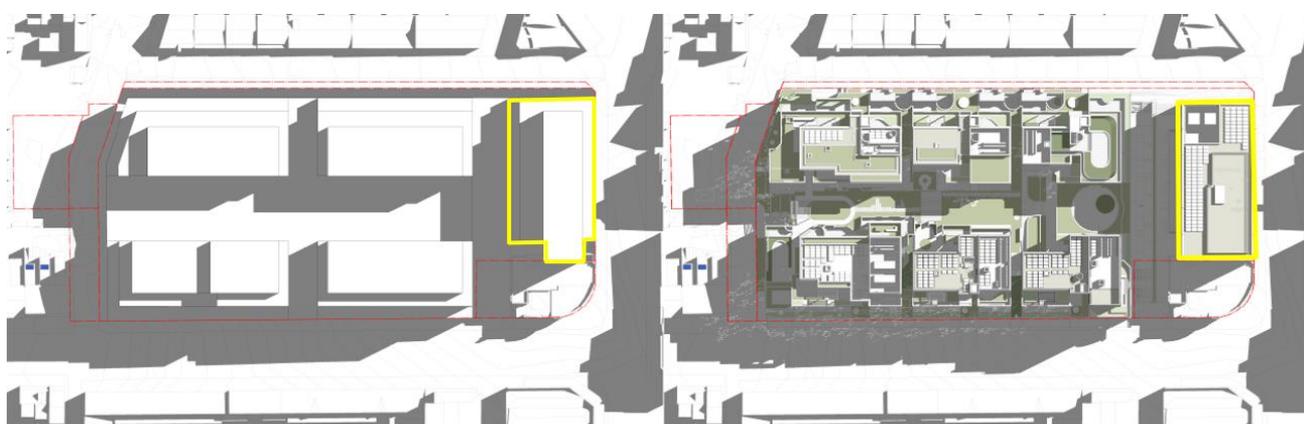
**Figure 5 Building G DCP envelope (left) and Building G proposed (right) – 11:00am**

Source: SJB



**Figure 6 Building G DCP envelope (left) and Building G proposed (right) – 12:00pm**

Source: SJB



**Figure 7 Building G DCP envelope (left) and Building G proposed (right) – 1:00pm**

Source: SJB

### Visual privacy and intrusion

Under the site-specific DCP and competitive design process for the site, Building G was envisioned to accommodate residential units. Following ongoing design development and the recommendation of the design excellence panel, Building G is now proposed for a non-residential (commercial) land use.

This will remove a habitable interface from the Marriott Street frontage and ensure Building G does not cause any potential issues associated with visual privacy to the residential terraces to the west.

### Heritage conservation

Building G is adjacent the Former Bank of NSW. The building provides appropriate separation and remains sympathetic to the existing heritage item notwithstanding the fact that it exceeds the FSR development standard. Building G and does not intrude into the footprint of the remnant sections of the heritage building. This ensures:

- The scaling and detail of Building G does not dominant the heritage item;
- Sightlines to the Heritage building are not impeded from Cleveland Street; and
- The sense of scale of the heritage item is not lost, and its strong street presence, addressing its prominent corner location, is not diminished.

### 4.2.3 Ground 3 – Improved residential amenity

As detailed in **Section 2.0**, under the competitive design process for the site, Building G was envisioned for residential use. A recommendation from the Design Excellence Panel, *inter alia*, was to reconsider the use of Building G due to its location directly adjacent Cleveland Street.

The recommendation triggered further design development which determined that a non-residential use would be more appropriate for Building G. If residential units were to front Cleveland Street (as was proposed under the competitive design process) they would experience a lower level of residential amenity, caused from the ongoing traffic and activity along the street front.

Cleveland Street is identified as a State Road, being a main vehicular thoroughfare connecting the Princess Highway to the west and South Dowling Street to the east. Two bus stops (route 355 and the Metrobus route M50) are also located along Cleveland Street directly in front of the site. Finally, strip retailing, containing a range of convenience, retail, food and beverage outlets likely to be active during weekdays and weekends is located along Cleveland Street in close proximity to the site.

The commercial use of Building G is considered a better planning outcome, separating residents from Cleveland Street. This provides residents overall within an improved outcome which better responds to the constraints of Cleveland Street.

### 4.2.4 Ground 4 – Social and economic benefits

The use of Building G for commercial (office) purposes will improve the number of economic and social benefits associated with the proposed development.

The floor plates proposed for Building G will help to reduce the current undersupply of office floor space within the fringe CBD and improve employment opportunities within Surry Hills / Redfern. The floor plates proposed for Building G are of a specific size to help address a significant gap in commercial floor space within Surry Hills / Redfern (as discussed above).

This will provide an opportunity to deliver an office product which allows emerging and small business to evolve within Surry Hills / Redfern and provide opportunities for medium-sized business to remain in the area (refer to **Section 4.2.1**). This could not be achieved if the floor plates for Building G were reduced to below 650m<sup>2</sup> to ensure a development compliant with the FSR development standard.

More broadly:

- Building G will improve the number of employment options within the Surry Hills / Redfern area and increase the number of permanent office jobs on the site;
- Building G will accommodate jobs most likely related to Professional, Scientific and Technical Services industry in an area with a relatively high proportion of highly educated workers;
- Building G will provide significant pedestrian and site activation to the Marriott Street and Baptist Street frontage;
- Building G will accommodate jobs in a highly accessible, amenity rich location;
- The workforce created from Building G will contribute to critical mass on the site and increase local expenditure available to the local area; and
- Building G provides additional environmentally sustainable design enhancements over and above those required under the site-specific VPA. These include a cross laminated timber construction methodology and provision of additional solar panels (refer to **Section 4.24** of the SEE) and represents best practice environmentally sustainable design.

### 4.2.5 Ground 5 – Site suitability

The amount of commercial use within Building G is appropriate to the site's zoning and location within the Surry Hills Town Centre. The site is highly accessible, in walking distance to a range of existing and future transport

options (refer to **Section 4.3.2**). The commercial use proposed for Building G will be consistent with the existing commercial land use pattern running east and west along Cleveland Street.

#### 4.2.6 Conclusion on clause 4.6(3)(b)

The preceding environmental planning grounds relate specifically to Building G, the element of the proposed development which causes contravention to FSR development standard. They demonstrate that Building G contributes to a significantly better planning outcome for the site and is suitable to the locality.

### 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 FSR development standard, for the reasons discussed in **Section 4.1.2** of this report.

#### 4.3.2 Consistency with objectives of the zone

The proposed development is consistent with the objectives of the B2 Local Centre Zone, as demonstrated below.

##### **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. Building G in particular will provide floor space for business, and employment opportunities for people who work in the local area (refer to **Section 4.2.1**).

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 local residents in the locality. The site provides a concentration of retail services in one location due to the number and variation and different retail outlets proposed. The site can therefore service a greater number of retail needs for people who live, work and visit the local area without the need for ongoing 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 Conclusion on clause 4.6(4)(a)(ii)**

The proposed development, notwithstanding the variation to the FSR development standard, is in the public interest because it remains consistent with the objectives of the standard and the objectives of the B2 Local Centre.

**4.4 Other Matters for Consideration**

Under clause 4.6(5), in deciding whether to grant concurrence, the Director-General 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 FSR development standard does not raise any matter of significance for State or regional planning. We do note, however, that the proposed development is consistent with the most recent metropolitan plan for Sydney, A Plan for Growing Sydney 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;
- Improves the site's capability to provide local employment opportunities, both in the short and long term; and
- Is well located next to an array of public transport options.

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

There is no public benefit in maintaining the FSR development standard on the site. Strict adherence to the FSR development standard would require Building G to provide smaller floor plates which does not align to the current demand and significant gap in floor space between 650m<sup>2</sup> and 950m<sup>2</sup> identified in the Surry Hills / Redfern area (refer to **Section 4.2.1**), or would revert the building to a residential use which will reduce the diversity and amenity of the site and surrounding area.

Maintaining and enforcing the development standard in this case would prevent Building G being developed to a point where it provides the most economic benefit to the local area.

**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 matters required to be taken into account by the Secretary.

## 5.0 Conclusion

This assessment demonstrates that compliance with the Floor Space Ratio development standard contained in clause 4.4 of the SLEP 2012 is unreasonable and unnecessary in the circumstances of the case and that there are sufficient environmental planning grounds to justify the variation to the standard.

It is considered that the variation allows for the orderly and economic use of the land in an appropriate manner, whilst also allowing for a better outcome in planning terms. The proposed development will help to reduce a significant gap in commercial office floor space within the Surry Hills / Redfern area and contribute to the retention of business within the locality which is consistent with the desired character of the area.

This clause 4.6 variation request demonstrates that, notwithstanding the non-compliance with the FSR development standard:

- The proposed development achieves the objectives of clause 4.4 – Floor Space Ratio in the SLEP 2012, as:
  - It will make a significant contribution to the provision of sufficient floor space to meet anticipated development needs for the foreseeable future, particularly medium sized commercial floor space within Surry Hills;
  - It will have an appropriate density, built form and land use intensity;
  - It will not generate an unacceptable amount of additional vehicle and pedestrian traffic;
  - The proposed floor space and intensity of the development, is commensurate with, and can be accommodated on the site without unreasonably impacting, existing and planned infrastructure (including from vehicle and pedestrian traffic generated by the development) particularly considering the proximity of the site to public transport options including busses, future light rail and Central and Redfern train stations; and
  - The built form reflects the desired character of the locality; and
  - It minimises adverse impacts on the locality including in terms of overshadowing, visual impact, and loss of privacy.
- The underlying object or purpose of the FSR development standard would be defeated or thwarted if compliance was required as it would reduce the diversity of commercial and retail uses sought in the locality statement for Cleveland Street and would specifically fail to achieve objective (a) and objective (d) of the development standard.
- There are sufficient environmental planning grounds to justify the contravention of the FSR development standard including the following:
  - The variation to the FSR development standard enables commercial floor areas of between 650m<sup>2</sup> and 950m<sup>2</sup> to be provided on the site in circumstances where there is a demonstrated lack of supply of floorspace of that size and, consequently, a strong demand for tenancies of that size;
  - The proposed supply of commercial floor space between 650m<sup>2</sup> and 950m<sup>2</sup> in Building G can assist in the retention of existing established and medium sized businesses (of around 40 to 70 employees) in the locality which are currently struggling to find office space of the appropriate scale;
  - The additional FSR only gives rise to nominal additional overshadowing with the impact limited to the northern most terraces along Marriott Street and it only occurs between 9:00am and 10:00am.
  - Building G provides an appropriate separation and remains sympathetic to the existing heritage item on the site notwithstanding the fact that it exceeds the FSR development standard. Building G does not adversely affect the scale of the heritage item, ensuring its strong presence and prominent corner position is not lost.
  - The development of Building G for a commercial building rather than a residential building removes a habitable interface from the Marriott Street frontage and ensures that Building G does not cause any potential visual privacy impacts to the residential terraces to the west.
  - If residential units were to front Cleveland Street (as was proposed under the competitive design process) they would experience a lower level of residential amenity, caused from the ongoing traffic and activity along the street front.

- The use of Building G for commercial (office) purposes (rather than residential) will improve the number of economic and social benefits associated with the proposed development.
- The amount of commercial floor space proposed within Building G is appropriate to the site's zoning and highly accessible location within the Surry Hills Town Centre, being walking distance to a range of existing and future transport options.
- The reduction in the area of floor plates within Building G so as to bring the development into compliance with the FSR development standard would have ramifications for the commercial viability of that building and may result in it reverting back to a commercial use, which is considered to be a poorer planning outcome than that which is now proposed.
- 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 provides additional employment generating land uses which are in line with the forecast growth of Surry Hills / Redfern and are consistent with the relevant local and State strategic plans; and
- The proposed development (including the proposed variation to the FSR development standard) is in the public interest.

Therefore, the DA may be approved with the variation as proposed in accordance with the flexibility allowed under clause 4.6 of the SLEP 2012.