

# **Attachment D**

<b>Clause 4.6 Written Request</b>
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# 14-26 Wattle Street, Pyrmont

Clause 4.6 variation to Height of Buildings

On behalf of Landream Pyrmont Pty Ltd  
August 2019



# 1 Introduction

This Clause 4.6 Variation Request relates to the Concept Development Application (DA) for 14-26 Wattle Street, Pyrmont (**subject site**), which proposes a mixed use precinct, and specifically to vary the development standard for maximum Height of Buildings under Clause 4.3 of the *Sydney Local Environmental Plan 2012 (SLEP 2012)*.

This Clause 4.6 Variation Request demonstrates that compliance with the Height of Buildings development standard is unreasonable and unnecessary in the circumstances of the case, and that the justification is well founded. The variation allows for a development that represents the orderly and economic use of the land in a manner which is appropriate considering the site's context comprising a mix of large-scale warehouse style developments, high-density residential developments and low-density terrace-houses. Accordingly, the proposal is justified on environmental planning grounds.

This Clause 4.6 Variation Request demonstrates that, notwithstanding the non-compliance, the proposed development:

- Is consistent with, and achieves the objectives of the development standard in Clause 4.3 of SLEP 2012 (Wehbe Test 1);
- Ensures the objective of the development standard in Clause 4.3 won't be thwarted. In particular, strict compliance with the development standard would thwart objective (a) (Wehbe Test 3);
- Is consistent with the objectives of the B4 Mixed Use zone under SLEP 2012;
- Is consistent with the applicable and relevant state and regional planning policies;
- Will deliver a development that is appropriate for its context, despite the breach to the development standard, and therefore has sufficient environmental planning grounds to permit the variation; and
- Is in the public interest.

As a result, the DA may be approved as proposed in accordance with the flexibility afforded under Clause 4.6 of the SLEP 2012.

## Clause 4.6 Exceptions to Development Standards

Clause 4.6 of the SLEP 2012 aims to provide an appropriate degree of flexibility in applying certain development standards to achieve better outcomes for and from development.

Clause 4.6 requires that a consent authority be satisfied of three matters before granting consent to a development that contravenes a development standard:

- That the applicant has provided a written request that has adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case;
- That the applicant has provided a written request that has adequately demonstrated there are sufficient environmental planning grounds to justify contravening the development standard; and
- That the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out.

The consent authority's satisfaction as to those matters must be informed by the objectives of Clause 4.6, which are:

1. providing flexibility in the application of the relevant control; and
2. to achieve better outcomes for and from development.

The Land and Environment Court has developed a number of principles directed to the sufficiency of a request under Clause 4.6. These cases include:

- Justice Lloyd, in *Winten Property Group Ltd v North Sydney Council* [2001] 130 LGERA 79 at 89. The test was later rephrased by Chief Justice Preston, in the decision of *Wehbe v Pittwater Council* [2007] NSW LEC 827 (**Wehbe**). These tests were initially developed through the former SEPP 1 and are still considered through Clause 4.6 variations;
- An additional principle was established in the recent decision by Commissioner Pearson in *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1009 (**Four2Five**) which was upheld by Pain J on appeal.
- A further recent judgement by Preston CJ in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 clarified the correct approach to Clause 4.6 variation requests, including that:

*"The requirement in cl 4.6(3)(b) is that there are sufficient environmental planning grounds to justify contravening the development standard, not that the development that contravenes the development standard have a better environmental planning outcome than a development that complies with the development standard."* [88]

Accordingly, this Clause 4.6 variation request is set out using the relevant principles established by the Court. It is noted, it also reflects the further finding by Commissioner O'Neill for *Initial Action Pty Ltd v Woollahra Municipal Council* [2019] NSW LEC 1097



when the case was remitted back to the LEC as a Class 1 Appeal and *RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130

Clause 4.6 of the SLEP2012 reads as follows:

**Clause 4.6 Exceptions to development standards**

(1) The objectives of this clause are as follows:

- (a) to provide an appropriate degree of **flexibility in applying certain development standards** to particular development,
- (b) to **achieve better outcomes for and from development by allowing flexibility** in particular circumstances.

(2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.

(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**.

(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 Director-General has been obtained.

(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.

*(7) After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).*

(emphasis added)

### 3 The Development Standard to be varied

This Clause 4.6 Variation has been prepared as a written request seeking to justify contravention of the maximum height of building development standard as set out in Clause 4.3 (2) of the SLEP 2012. Clause 4.3 states:

#### 4.3 Height of buildings

- (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.

As identified on the SLEP 2012 Height of Buildings Map (see **Figure 1** below), the subject site has a maximum building height limit of 27m.



Figure 1 Height of Buildings LEP Map

Source: SLEP 2012



## 4 Extent of Variation to the Development Standard

The proposal seeks to vary the 27m height control by proposing a variation of up to 3.88m for a portion of the built form set back from its Jones Street frontage, and up to 7.95m once lift overruns are considered for the roof garden on the Jones St Building. It is noted however, that Council's SLEP2012 Clause 5.6 specifically permits lift overruns to breach a height control where appropriately contained within an 'architectural roof feature' – which will be a requirement of any future design competition and Detailed DA. A Clause 4.6 variation is also sought for parapets along the Wattle and Fig street frontages (**Figure 3**) of approximately 700mm.

The subject 4.6 does not seek to apply for the additional 10% height as this is a matter for the Design Competition and consent authority for the Detailed DA stage. The Concept Envelope Drawings show where the proponent will be seeking an additional 10% height through a Design Competition; and it should be noted that the applicant has explicitly chosen not to seek the 10% height on the Jones Street building, which currently proposes the greatest height variation through the 4.6 request.

### **Exceedance of height control for building fronting Jones Street**

The non-compliance with the height of building development standard along Jones Street stems from the unique topography of the site, which includes a height difference of approximately 14-16m from the Jones Street property frontage to the Fig Street and Wattle Street frontages. The site historically operated as a quarry pit, which has significantly modified the terrain of the site ensuring that the majority of the level difference occurs across a 5-10m horizontal distance between Jones Street and the centre of the site. This poses a significant design constraint when seeking to ensure compliance with the relevant controls. Although the definition of 'building height (height of building - HOB)' includes the 'vertical distance from ground level (existing) to the highest point of the building', the unique topography of this site ensures that utilising such a method does not achieve the Objectives of the height controls.

The portion of the proposed building envelope that exceeds the HOB development standard is located in the building envelope that fronts Jones Street. The proposed Jones Street building envelope has a maximum height at RL38.550 for the lift overruns to a potential rooftop garden. However, the built form area with greatest exceedance of the HOB standard sits lower than this at RL34.050. Despite the building being up to 3.88m above the HOB control in this location, RL34.050 is actually less than 27m above the ground level (existing) at the Jones Street boundary for almost the full length of the site frontage (see **Figures 2, 3 & 4**).

Overall, the proposed height is consistent with the surrounding built form and will provide a consistent developed edge along Jones Street, which is compliant with the expectation of future context of up to 7 storey development as identified within the *Sydney Development Control Plan 2012* (SDCP 2012). It is also noted that the proposed development scale aligns with the existing urban fabric and morphology along the western edge of Jones Street and surrounding Pyrmont area, which is largely characterised by an eclectic mix of large-scale commercial and residential developments (see **Figures 5 and 6**), combined with lower-density terrace dwellings. This is reflected in Council's own Pyrmont Locality Statement (Section 2.12 of the



SDCP2012) for the subject precinct, which discusses the mixed character of fine grain and larger-scale buildings.

By setting the built form along the Jones Street frontage of largely between 4 and 5 storeys, the proposal also seeks to provide a contextually appropriate development scale for the heritage listed terraces on the eastern side of Jones Street, consistent with Council's DCP provisions relating to 'height in storeys' and 'street wall height in storeys' controls. The proposal also responds to the surrounding context by allowing the scale to step and transition between the heritage terraces and larger-scale wool stores, and higher density contemporary apartment buildings, while also maintaining solar amenity.

#### **Exceedance of height control for building fronting Wattle and Fig Streets**

The proposal also includes a building envelope on Wattle Street, which is predominantly A mix of 7 storeys for the commercial building and 8 storeys for the residential building (7 from the podium) to ensure the differing floor-to-floor heights of the different uses result in a consistent built form approach. These two buildings have slight height exceedance of approximately 700mm for the Wattle and Fig Street buildings related only to parapets due to the need to raise the finished floor level of the future ground-level to manage flooding (see **Figures 2, 3 & 4**)

With respect to the Fig and Wattle Street frontages, a factor of the non-compliance stems from the need to lift the development to address flood levels at these locations. The non-compliance relates only to parapets of the future development and does not include any floor space.

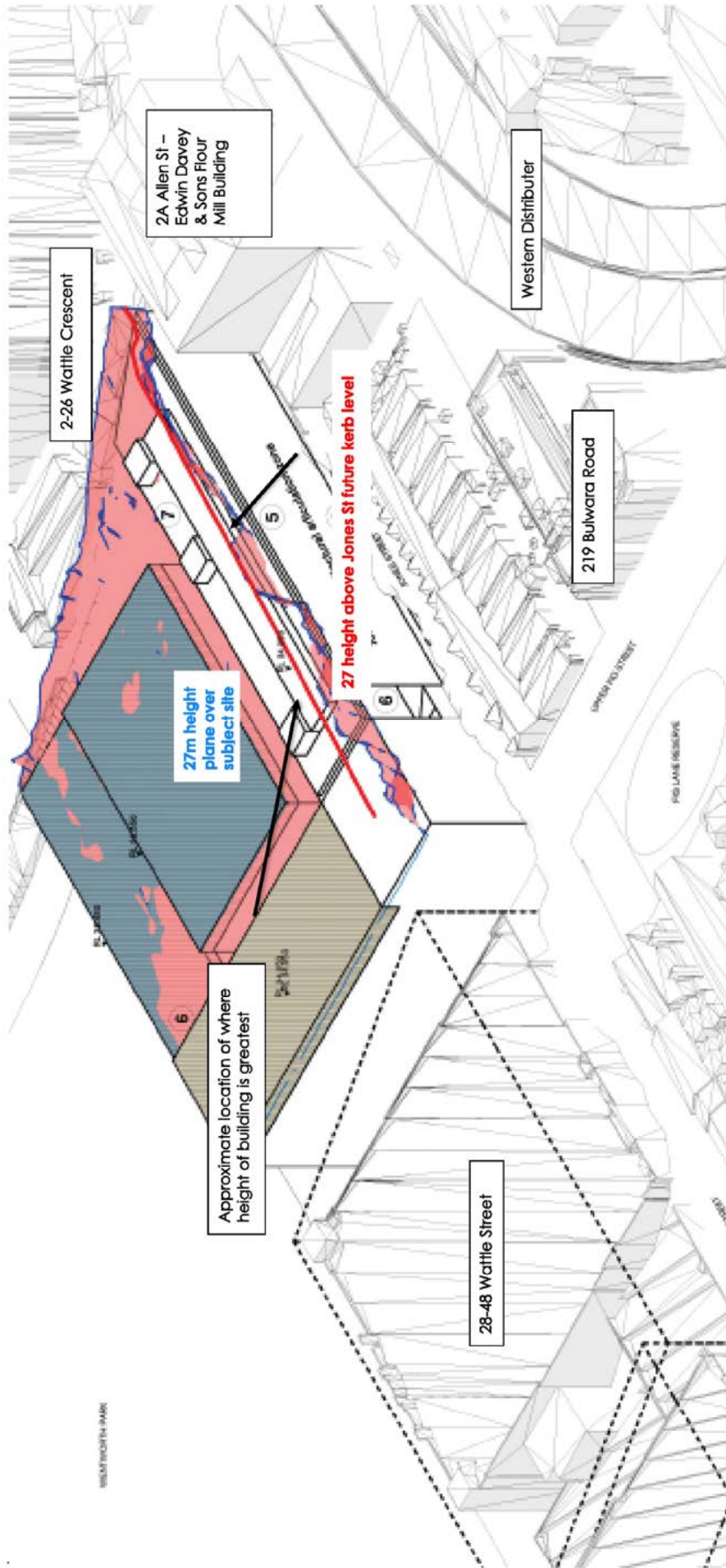


Figure 2 Height Plane Study and surrounding context (including 10% height option). Source: Tzannes Architects

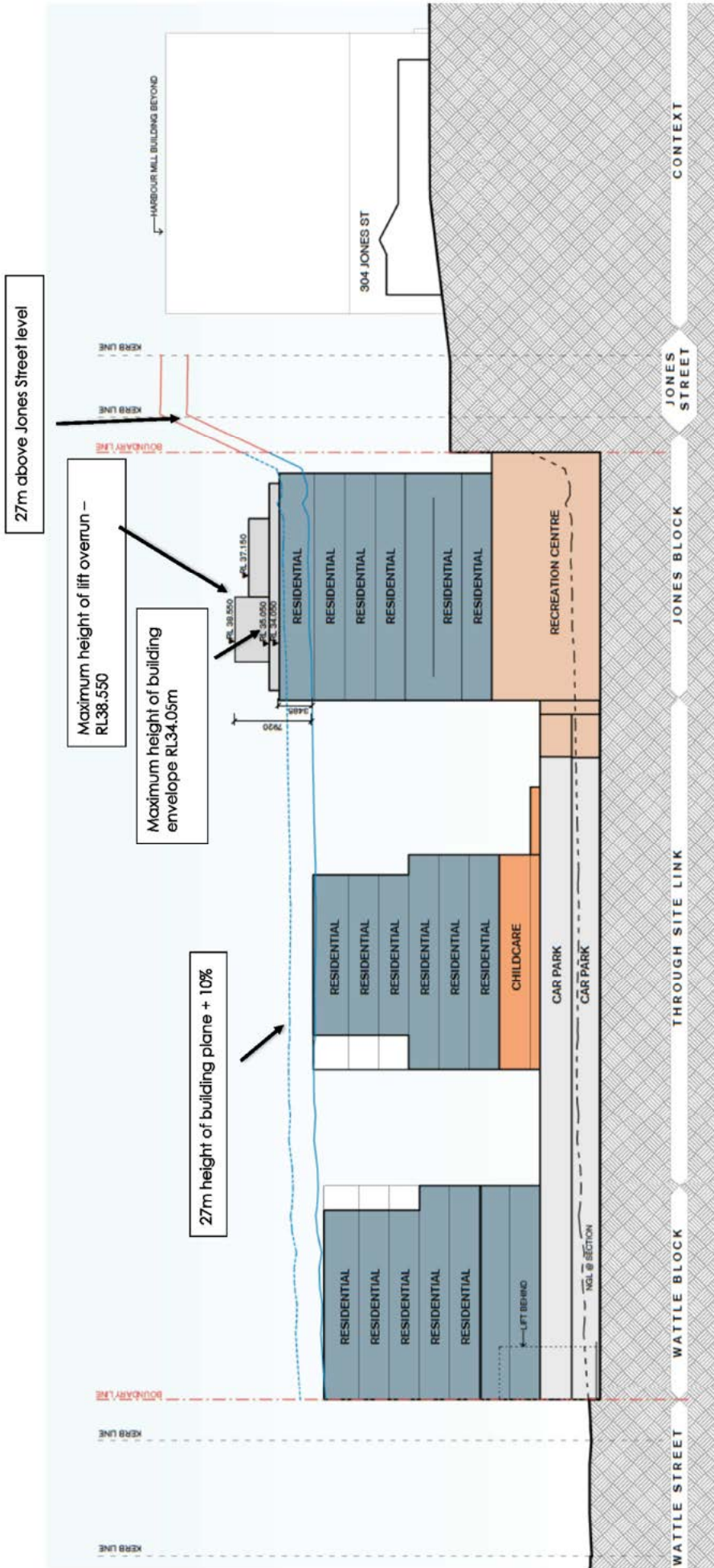
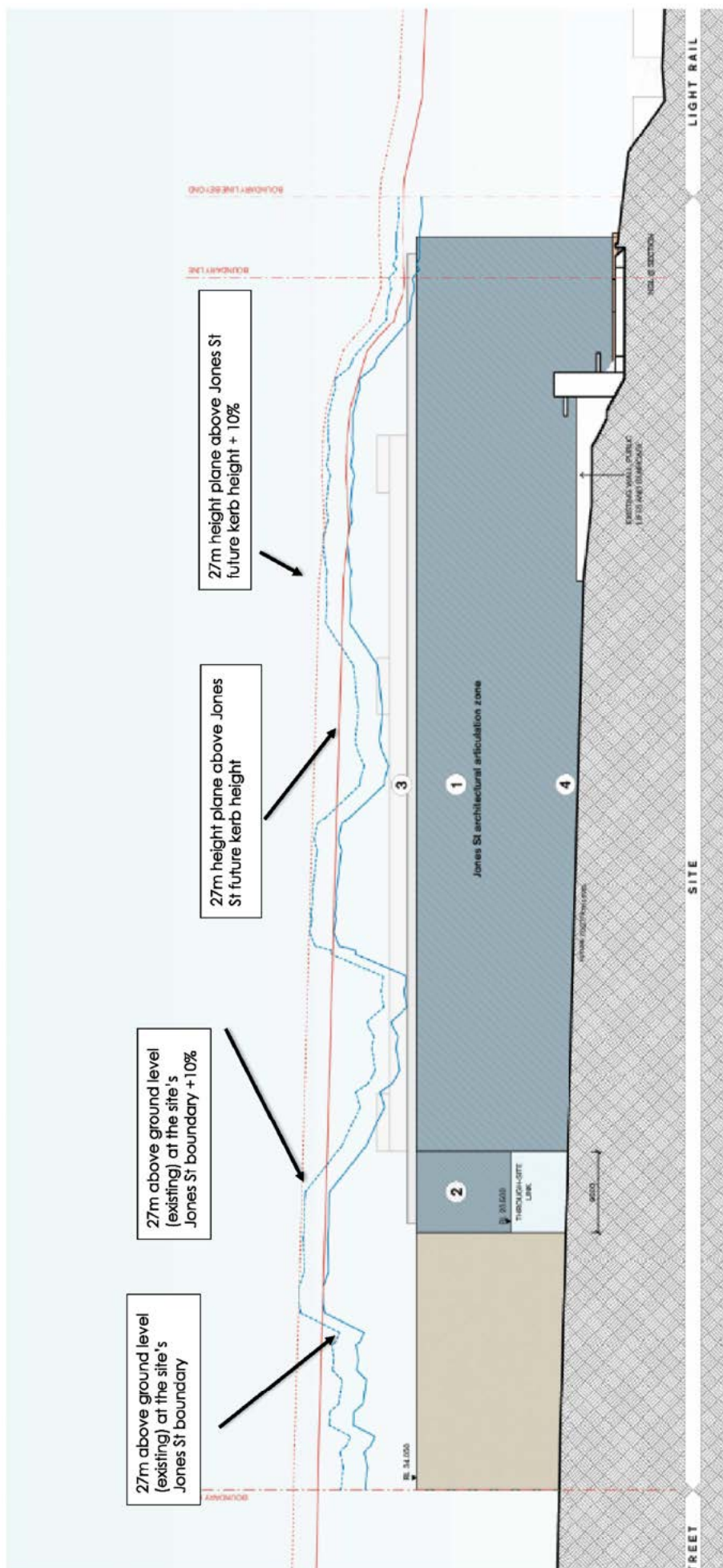


Figure 3 Section through part of development (where top of the building is the greatest distance between ground level (existing)) Source: Trannes Architects







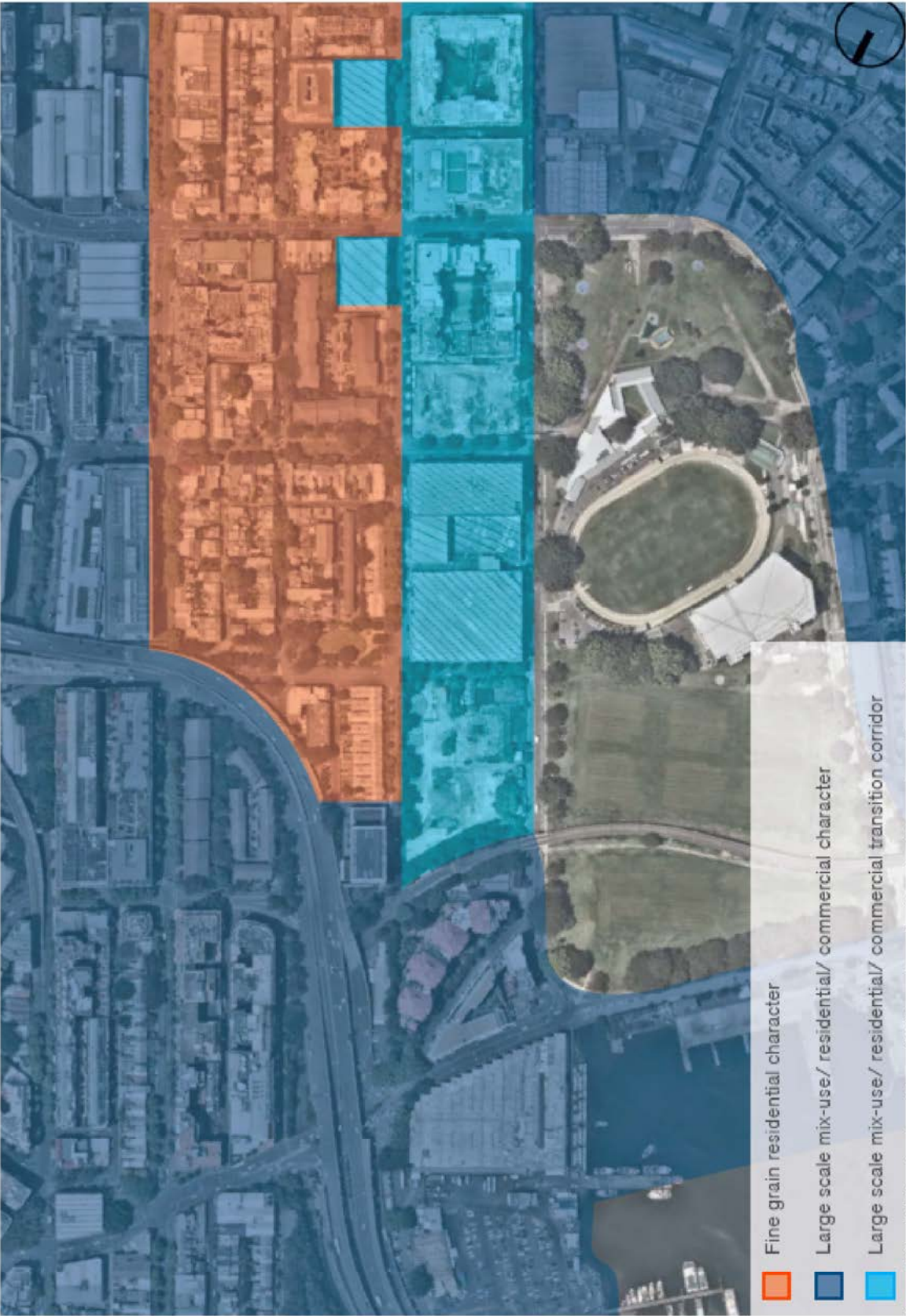


Figure 5 Urban Fabric – showing mixture of built form characters throughout Pymont area. Source Izannes Architects



**Figure 6 Urban Morphology – showing mixture of built form characters throughout Pymont area. Source Tzannes Architects**



## 5 Objectives of the Standard

The objectives of the Clause 4.3 Height of Buildings 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.

## 6 Objectives of the Zone

The objectives of the B4 Mixed Use zone are as follows:

- To provide a mixture of compatible land uses.
- To integrate suitable business, office, residential, retail and other development in accessible location so as to maximise public transport patronage and encourage walking and cycling.
- To ensure uses support the viability of centres.

## 7 Assessment

### **Clause 4.6(3)(a) - Is Compliance with the development standard unreasonable or unnecessary in the circumstances of the case**

Compliance with the height standard is unreasonable and unnecessary given the following:

As detailed in *Williams v Ku-ring-gai Municipal Council* [2017] NSWLEC 1098, *Wehbe v Pittwater Council* [2007] NSWLEC 827 at [44]–[48], a number of approaches could be used to establish that compliance with a development standard is unreasonable or unnecessary. *Wehbe* tests 1 and 3, as described in *Williams*, are relevant to the proposed variation to the height development standard:

- *Wehbe* Test 1 - the objectives of the standard are achieved notwithstanding non-compliance with the standard;
- *Wehbe* Test 3 - the objective would be thwarted if compliance was required.

**1. Wehbe Test 1 - Objectives of the Height Control are achieved notwithstanding non-compliance with standard**

- a. *Objective (a) to ensure the height of development is appropriate to the condition of the site and its context*
  - i. The subject site has four quite different contextual interfaces:
    - a. The Jones Street Interface, which sits at the highest point of the site, approximately 14m higher than the lowest point of the site and is opposite to a series of 1-2 storey heritage listed terraces, and a high-density Edwin Flour development that ranges from 3-12 storeys in height;
    - b. The light-rail interface slowly slopes from the highest Jones Street point to the low point of Wattle Street with a series of steps and ramps enabling people entering or existing the light rail to Wattle or Jones Street;
    - c. Wattle Street is the lowest site frontage largely at-grade with the surrounding public domain and opposite Wentworth Park; and
    - d. Fig Street starts at a similarly low point with Wattle of approximately RL 2, before gradually increasing in height with a significant height increase occurring at the base of the excavated site up to Jones Street.
  - ii. The relationship of the ground level (existing) in the context of the Wattle Street, Fig Street and the Light Rail is largely consistent with the adjoining public domain and immediately surrounding built forms. Any building along these frontages largely meet the maximum height of building development standard within the SLEP 2012 of 27m and the 7-storey control within the Sydney Development Control Plan 2012 (SDCP 2012) similar to other surrounding development.
  - iii. The proposed building envelope reflects this; ensuring the majority of building envelopes that address Fig Street and the Light Rail are below 27m in height and generally 7 storeys. The buildings fronting Wattle and Fig Streets are also broadly compliant with the 27m height control, with a minor exceedance of approximately 700mm for parts of these buildings. This exceedance relates only to parapets and is a result of needing to raise the future finished floor levels for the ground-level to manage flooding. It is also noted that part of the Wattle Street building that contains residential uses is 8 storeys, rather than 7 – although it presents as 7 storeys from the podium. This has been done to ensure that the building sets a consistent and contextually appropriate street wall along Wattle Street, as the floor-to-floor levels of the commercial building (Fig and Wattle Streets) are higher than the residential building (Wattle Street frontage). It has also been done to sleeve the podium car park, which is required to be sleeved by active uses in Council's controls.



- iv. The Jones Street interface differs dramatically from the adjoining public domain. The boundary of the site addressing Jones Street is the location of significant cut; a hangover from the historical quarry use of the site. Rather than having a gradually sloping gradient from Jones Street down to Wattle Street, the site provides an unnatural, modified, steep gradient (see **Figures 3 and 4**). Furthermore, the level of the site addressing Jones Street is not consistent, having a variation of height at the boundary of 8-9m (see **Figures 4**). The combination of the condensed area of fall from east to west and the dramatic variation in ground level (existing) along the Jones Street frontage make it impossible to provide a building envelope addressing Jones Street, which is both contextually appropriate and statutorily compliant.
- v. Considering the unnatural site conditions, a method of utilising the level of the adjoining public domain for the Jones Street site frontage to set the 27m height control was established in order to develop a contextually appropriate development along this frontage. Further supporting this approach is the fact that this method provides sufficient envelope to site up to 7 residential storeys (refer to **Figure 4**).
- vi. However, the development proposes a 4 and 5 storey building envelope fronting Jones Street, with a minor 6-storey element where the land falls away adjacent to the lightrail and opposite the high-density Harbourmill development. This has been done in order to ensure the proposed development is contextually appropriate within its surroundings. This approach is further strengthened by the fact that up to 7 storeys could potentially be permissible at this location.
- vii. It is noted that both the revised Heritage Letter by Urbis and Peer Review by Weir Phillips consider that a 5 storey building along Jones Street would be appropriate interface given the established relationship in the area between large-scale woolstore buildings and terraced neighbours. Further, the proposed built form along Jones Street is further set back from the site boundary to deliver a new public footpath and verge – further enabling transition from the lower-scale terraces.
- viii. In *Al Maha Pty Ltd v Marrickville Council* [2013] NSWLEC 1072, the Court considered the relationship between the height in metres control in the LEP and the height in storeys control in the DCP. The court stated that the number of storeys and number of metres both deal with different aspects of height but the DCP control provides more detail on how the maximum height can be distributed on the site to achieve the objectives of the height control. Applying these findings from *Al Maha Pty Ltd v Marrickville Council* [2013] NSWLEC 1072 it can be determined that taking the 27m height control from the future kerb height of Jones Street facilitates a distribution of storeys in accordance with the future context of the site as identified within the SDCP 2012.

- ix. Calculating the height of building from adjoining public domain is not untested. In both *Bettar v Council of the City of Sydney* [2014] NSWLEC 1070 (Bettar) and *Stamford Property Services Pty 247 v City of Sydney and Anor* [2015] NSWLEC 1189 (Stamford) the Court utilised the method of taking surveyed spots from the public domain directly adjoining the development site to determine a suitable surrounding context. It is recognised that in these scenarios the 'ground level (existing)' could not be determined on account the sites were fully developed.
- x. In the case of the subject site the ground level (existing) can be determined. However, it is considered that, due to the site's excavation as part of its prior use of a quarry, utilising ground level (existing) is unable to deliver a building envelope that responds to the 'site's context' (as required in Objective (a) of Clause 4.3). In the circumstances of the case of Bettar, Commissioner O'Neill supported the approach to take levels from the adjoining public domain, on account "the level of the footpath bears a relationship to the context...".
- xi. This application does not attempt to challenge the calculation of ground floor (existing) utilising the methods established in Stamford and Bettar; rather it utilises a similar technique to identify a suitable height that bears a relationship to the context of Jones Street when considered against the suite of planning controls, including the SDCP2012 height in storeys (Refer to Figures 3 and 4).
- xii. The subject application, as shown in Figure 4 sits entirely within both the height in metres, and height in storeys controls when considered from the Jones Street public domain. The built form along Jones Street has been carefully designed as a 4 and 5 storey built form, with a minor 6-storey element where the land falls away adjacent to the lightrail and opposite the high-density Harbourmill development. This built form provides a contextually appropriate transition from the high-density residential developments to the north and north-east, to the lower-density heritage terraces facing part of the site on the eastern side of Jones Street and the large-scale wool stores along the western edge of Jones Street.
- xiii. The site is subject to a 7-storey 'height in storeys' control, which could reasonably be considered to be taken from the surrounding public domain; particularly given 4.2.1.1 of the DCP objectives states to "ensure the height in storeys and street frontage height in storeys reinforces the existing or future neighbourhood character". However, given there is no explicit definition of 'height in storeys' in the DCP, there is some uncertainty as to whether the control should be measured from the surrounding public domain, or within the site.
- xiv. Given the other objectives of the LEP and DCP height controls regarding contextually appropriate development, the proposed built form has been carefully designed to respond to its varied surrounding built form context by proposing a modest predominant 4 and 5 storey built form along Jones Street that sits within both the height in storeys and height in metres control along this frontage. As noted in the earlier figures, the 3.88m (building) and 7.95m (lift overrun) height variation occurs once the envelope steps away from Jones



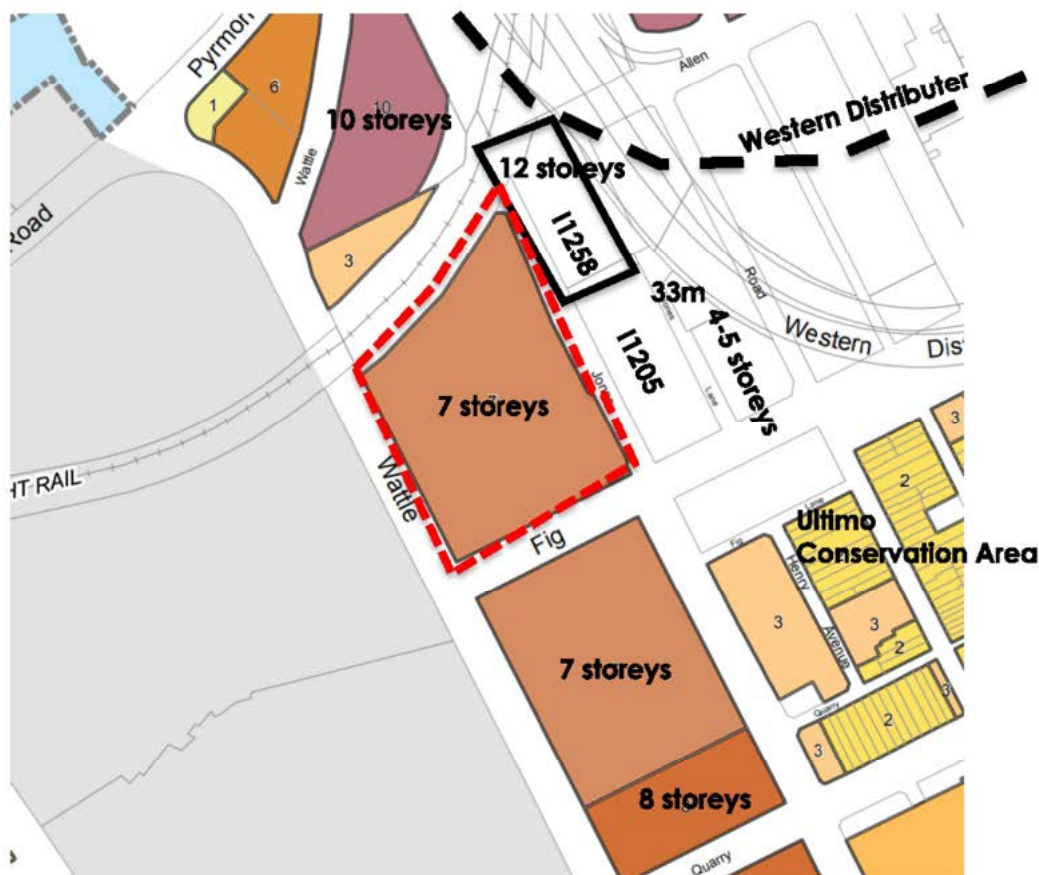
Street with the deep excavation. It is also noted that the 7.95m lift overrun would be capable of satisfying the requirements of Clause 5.6 'Architectural Roof Features' as part of a detailed design.

- b. Objective (b) to ensure appropriate height transitions between new development and heritage items and buildings in heritage conservation areas or special character areas,*
- i. It should be noted that in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, it was determined that a development does not have to demonstrate that the non-compliant aspect of the development should have a neutral or beneficial effect relative to a compliant development. The objective of the clause is that the proposed development allows for appropriate height transitions between new development and heritage items and buildings in heritage conservation areas or near special character areas.
  - ii. In light of the above, the proposed envelope needs to demonstrate that it can result in an appropriate relationship between the building and surrounding heritage items, not that it will provide a better relationship than a complying building envelope.
  - iii. The portion of the proposed building envelope that exceeds the height of buildings development standard is set back from the Jones Street frontage opposite two identified heritage items (refer to Figure 7);
    - I. I1205 – Former industrial building elements and industrial components "Edwin Davey & Sons Flour Mill"; and
    - II. I1238 – Terrace group (286-318 Jones Street) including interiors.
  - iv. The proposed height will result in a scale of building which is lower in overall height (in terms of RL) than the existing apartment building located on the site of heritage item I1205, which has a top of building height at RL45.95.
  - v. It is also reiterated that the proposed building at the public domain frontage of Jones Street is well below both the height in metres, and height in storeys controls, with the breach occurring further set back within the site where the site drops from the prior excavation. Further, as the proposal includes a new public footpath and verge within the existing site boundary, the built form will be further setback from the terraces than is permissible, which also contributes to an appropriate height transition between the terraces and the new building fronting Jones Street.
  - vi. The existing terrace group currently sits as low scale buildings within a large-scale urban context; located between the western distributor, the 5 storey residential development at 219 Bulwara Road and the former Edwin Davey & Sons Flour Mill building.
  - vii. Sites surrounding the terrace group, particularly on the southern and western sides of Jones Street are all identified for much higher development than the terrace group, in both the SLEP 2012 and SDCP 2012. The SLEP 2012 identifies



maximum building heights directly adjoining the terrace group of between 15-27m.

- viii. Land on the western side of Jones Street is all identified for a 27m to 33m maximum height under the SLEP 2012. This even applies to the south of the site, where allotments opposite the Ultimo Heritage Conservation Area are identified for a maximum building height of 33m (see Figure 5). In addition, the Harbour Mill development to the north of the Terrace Group was approved at a height of approximately 33m despite the 18m control that still applies to the site.
- ix. The proposal appropriately transitions height between the new development and surrounding heritage items, as it represents the preferred development typology applied through the relevant controls for the site and surrounding locality.
- x. As noted above, the proposed built form along Jones Street is predominantly between 4 and 5 storeys above the street level, which provides an appropriate transition between the two heritage items and the proposed development, having regard to the surrounding context. As is noted in Figure 7 below, the Council's controls envisage a variety of building typologies and heights from 2-3, up to 7, 8 and even 10 storeys in close proximity to the site. Although the Harbour Mill site does not have a storey height in place, it is subject to an 18m height control, despite achieving a 33m building height approval – again highlighting the diversity and eclectic built form of the precinct.



**Figure 7 Height of Building in Storeys Map - as modified by Mecone**

- xi. This is also demonstrated by the photomontages in the Figures 8 & 9 below, which demonstrate what an appropriate 4-5 storey built form along Jones Street would look like and how it would act as an appropriate transition between the high-density residential development to the north and the terrace dwellings. The envelope controls also explicitly identify an 'articulation zone' to run along the Jones Street frontage to guarantee appropriate treatment and design at the Design Competition and Detailed DA phases (refer to Figures 8-10 below).



**Figure 8 Photomontage viewing south on Jones Street. Source Tzannes Architects**





**Figure 9 Photomontage viewing north at the Intersection of Jones Street and Upper Fig Street.  
Source Tzannes Architects**



**Figure 10 Photomontage viewing north on Jones Street with future built form of 28-48 Wattle St, Ultimo. Source Tzannes Architects**

- c. *Objective (c) to promote the sharing of views,*
- i. The site has been largely un-utilised and vacant, with only a small number of low level service buildings historically provided on the site, despite the site being zoned B4 Mixed Use. The surrounding development has enjoyed the benefit of the undeveloped subject site; however, it must be recognised that there is an expectation that the site will be developed in accordance with the relevant controls.
  - ii. The site that will be most impacted in terms of view loss will be the group of terraces on the opposite side of Jones Street. These terraces are single or double storey in height and have private open space located towards the rear (Jones Lane). From the front door of the terrace group, the predominant views are towards Wentworth Park and the surrounding development to the west and harbour to the north. It is noted that the existing wall on the site boundary already creates view restrictions for these terraces.
  - iii. In addition, considering the terrace group has a maximum height of building of 9m, the loss of existing views from the front door of the terrace group across Wentworth Park is an inevitable outcome of any development of the site. Even a development that met the height control across all parts of the site would still cause view loss for the terrace group due to the 27m height control, the site topography and the low-density nature of these terraces. It is also reiterated that the immediate frontage of the proposed building at Jones Street, and directly opposite the terrace group is entirely compliant, and substantially reduced below the 27m and 7 storey height controls.



- iv. The additional height will not provide any additional obstruction of views from these properties than would otherwise be experienced from a building envelope strictly in accordance with the 27m development standard. The proposed building envelope facing Jones Street is 4-5 storeys in height and consistent (and reduced) with the number of storeys identified in SDCP 2012.
  - v. There is no basis upon which all views across the subject site should be preserved. The subject site is currently undeveloped and has potential for a 27m building to be constructed. In accordance with the fourth principle established in *Tenacity Consulting v Warringah* [2004] NSWLEC 140, the view impact to the terrace group is reasonable and acceptable as any complying development would eliminate the views enjoyed by the terrace group. As the additional height sought by the proposed development does not further impact any view or outlook loss beyond a fully compliant scheme, the proposed additional height is considered reasonable.
- d. *Objective (d) to ensure appropriate height transitions from Central Sydney and Green Square Town Centre to adjoining areas,*
- i. The subject site does not sit within either Central Sydney or the Green Square Town Centre, however the proposed building envelope clearly shows a stepping of height from Jones Street at RL34.05m to, down to the Wattle Street frontage at RL29.85m (see **Figures 3 & 6**).

- e. Objective (e) in respect of Green Square: (i) to ensure the amenity of the public dominance 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
- i. The subject site is not within Green Square and accordingly this objective is not relevant.

In accordance with Wehbe Test 1 it is clearly demonstrated that the proposed development is able to comply with the objectives of the height of building control, notwithstanding the noncompliance with the numerical controls.

## 2. Wehbe Test 3 - Objectives would be thwarted if compliance was required.

- a. Objective (a) to ensure the height of development is appropriate to the condition of the site and its context,
- i. The proposed variation to the height control of the building envelope fronting Jones Street has occurred, in part, to ensure that Objective (a) of Clause 4.3 of the SLEP 2012 is maintained. A development envelope that strictly complied with the 27m maximum height of building control would result in a development that is inappropriate to the conditions of the site and its context for the following reasons outlined below.
- ii. The proposed development has related to the adjoining developments by providing a consistent streetscape. Including the existing development opposite the subject site at 2A Allen Street – the Edwin Davey & Sons Flour Mill development (see **Figure 11**)

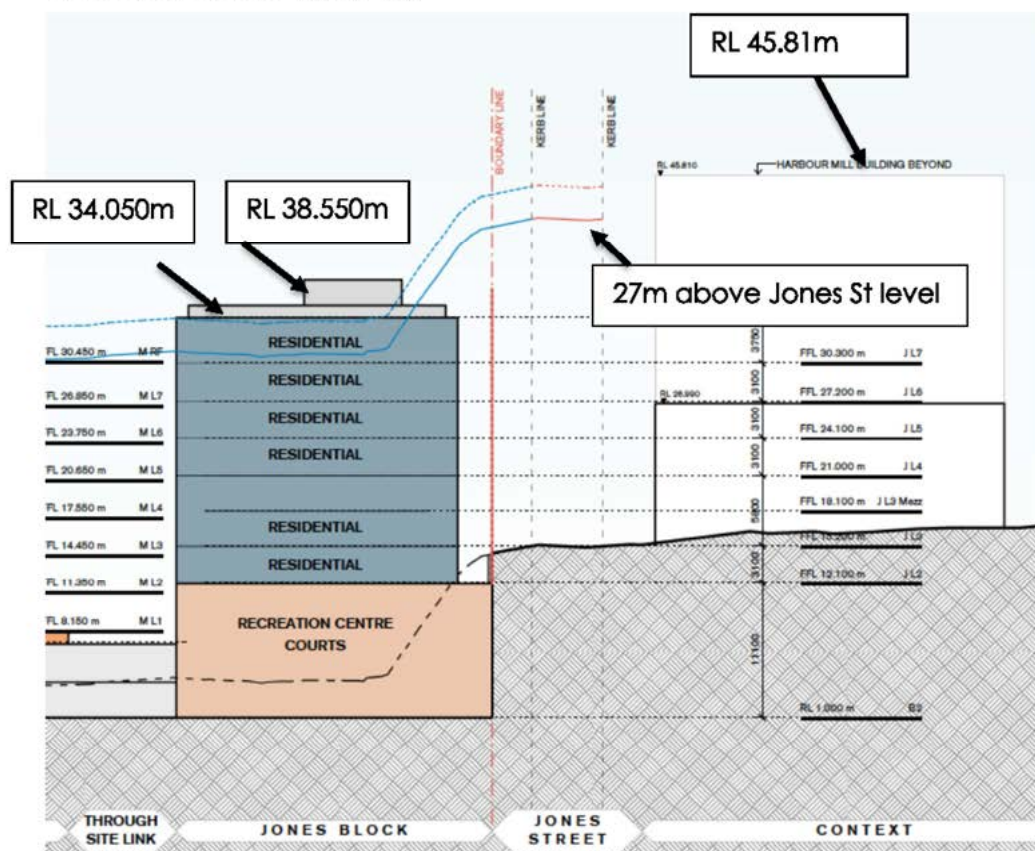
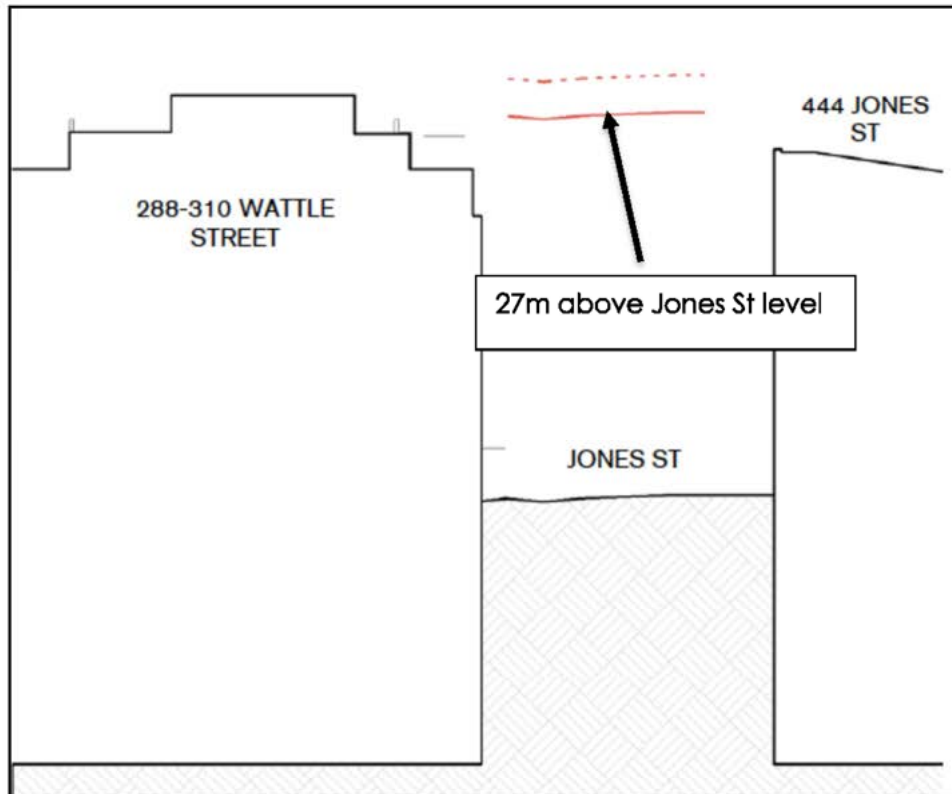


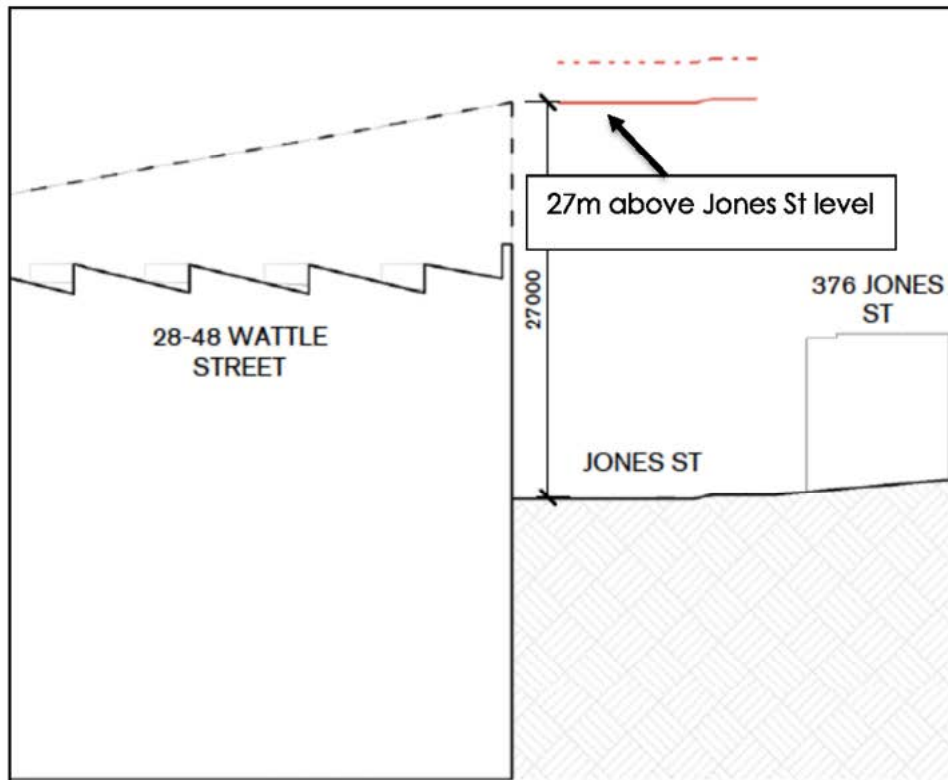
Figure 11 Section of Jones Street showing proposed envelope and site at 2A Allen Street.

- iii. A review of the context to the south of the Subject Site along Jones Street also shows established buildings constructed above 27m in height (for example, 288-310 Wattle Street in **Figure 12**) and sites with a development potential to be constructed to 27m. The site at 28-48 Wattle Street (immediately south of the site) is constructed boundary to boundary. Their redevelopment would benefit from the method of calculating "ground level (existing)" determined in Bettar and Stamford; that being, by taking the level of the public domain directly adjoining the boundary, and extrapolating across the site. This means that these sites will be able to construct to a height of 27m along Jones Street (see **Figure 13**).



**Figure 12 Cross Section of Jones St at existing buildings at 288-310 Wattle Street and 44 Jones Street. Source Tzannes Architects**





**Figure 13 Cross Section of Jones St at existing buildings at 24-48 Wattle Street and 376 Jones Street. Source Tzannes Architects**

- iv. The current and future context of the western side of Jones Street includes 27m high buildings up to 7 storeys in accordance with the LEP and DCP controls. The boundary of the subject site along Jones Street varies over 10m from approximately RL33.75m to RL42m+. Strict compliance with the standard would result in a built form with unnatural stepping and staggering, along Jones Street which is considered contrary to good design practice and inappropriate within the existing and desired future condition and context.
- v. It is further shown in **Figure 14** below, that even the removal of the 5<sup>th</sup> storey fronting Jones Street (as has been requested by Council in its recent correspondence to the proponent) would still result in the need for a Clause 4.6 variation request not just for lift overruns, but also for some floor space (300mm) at the rear of the Jones Street building.
- vi. Furthermore, on account of the unnatural topography of the site which falls so dramatically inside the site, a strictly compliant building would only be able to accommodate a compliant street wall to Jones Street that is 5m deep, which would not deliver any form of practical or good quality design outcome (refer to Figure 19).
- vii. With respect to the minor height exceedances along Fig and Wattle Street, this comes from the need to raise the buildings along these frontages to address flood levels. It is noted that a portion of the Fig and Wattle Street residential envelope is proposed at 8 storeys (7 Storeys from the podium). However, this has been done in order so that the building and street edge along Wattle Street is consistent between the two commercial and residential use envelopes.

- viii. Strict compliance with the numerical height of building control in the case of the subject site, would thwart the ability of any development to achieve of Objective (a) of Clause 4.3 and therefore flexibility should be applied in accordance with Clause 4.6 of SLEP2012.

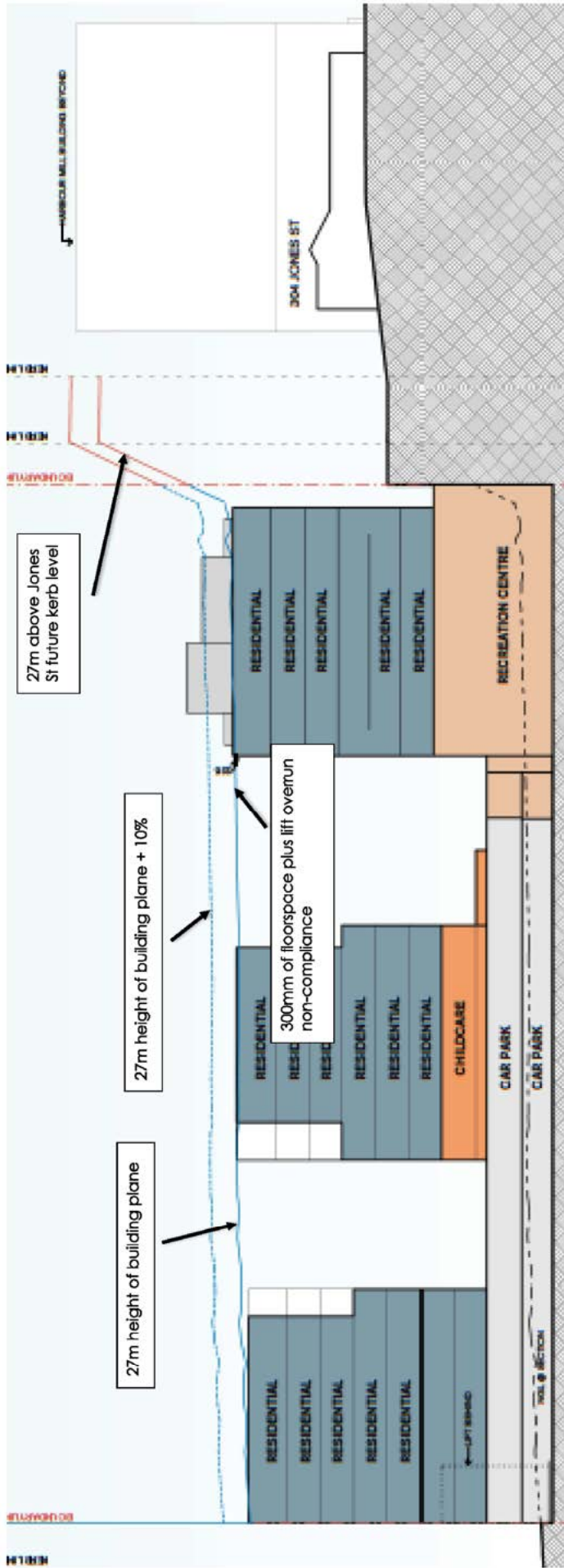


Figure 14 Section of proposal with 5<sup>th</sup> floor along Jones St elevation deleted, demonstrating that Clause 4.6 variation would still be required due to unnatural topography of the site



**Clause 4.6(3)(b) - Are there sufficient environmental planning grounds to justify contravening the development standard?**

As discussed above, Pain J held in *Four2Five vs Ashfield Council* [2015] NSWLEC 90 that to satisfy clause 4.6(3)(b), a clause 4.6 variation must do **more than** demonstrate that the development meets the objectives of the development standard and the zone – it must also demonstrate other environmental planning grounds that justify contravening the development standard, preferably grounds that are specific to the site. Pain J also held that in order for a clause 4.6 variation to be accepted, seeking to justify the contravention is insufficient - the consent authority must be satisfied that clause 4.6(3)(a) and (b) have been properly addressed.

On appeal, Leeming JA in *Four2Five vs Ashfield Council* NSWCA 248 acknowledged Pain J's approach, but did not necessarily endorse it, instead re-stating Pain J and saying:

*"matters of consistency with objectives of development standards remain relevant, but not exclusively so."*

This approach was further reinforced by Commissioner O'Neill's determination of the subsequent Initial Action Class 1 appeal (LEC 2019 1097), where she stated that *"the environmental planning grounds relied upon must be sufficient to justify contravening the development standard and the focus is on the aspect of the development that contravenes the development standard, not the development as a whole (Initial Action [24]). Therefore, the environmental planning grounds advanced in the written request must justify the contravention of the development standard and not simply promote the benefits of carrying out the development as a whole (Initial Action [24]) ...*

*I am satisfied that justifying the aspect of the development that contravenes the development standard as creating a consistent scale with neighbouring development can properly be described as an environmental planning ground within the meaning identified by his Honour in Initial Action [23], because the quality and form of the immediate built environment of the development site creates unique opportunities and constraints to achieving a good design outcome (see s 1.3(g) of the EPA Act)."*

In the instance of this development application, there are three critical environmental planning grounds relevant to the subject site that justify a variation to the development:

- i. The significant drop in 'existing ground level' from the Jones Street frontage to the remainder of the site as a result from the previous development of the site as a sandstone quarry that was heavily excavated is the key reason for the breach in height control of the Jones Street building;
- ii. The importance of placing the most sensitive land use (residential) away from the hostile environments of Fig and Wattle Streets where possible.
- iii. The importance of ensuring that the design (despite the variation) did not create additional environmental impacts as a result of the variation.
- iv. The need to raise floor levels slightly on the buildings fronting Wattle and Fig Street to manage flood requirements given the site's proximity to Blackwattle

Bay is the reason for the slight 700mm breach in height control of the Wattle and Fig St buildings; and

- v. The contractual requirement to deliver development on the site within certain timeframes in order to provide Council with its childcare and recreation centres limits the ability to deliver additional commercial floor space over the medium/long term. This distorts the ability for the developer to increase commercial floorspace, with its more efficient built forms that are less likely to result in variations to height controls. This environmental planning ground relates to the mix and floorspace of the development as a whole, and the project's feasibility with respect to delivering more commercial floor space as an alternative to residential floor space, which currently is causing the height control breaches due to its more inefficient built form.

Further detail regarding the environmental planning grounds which justify the contravention of the height standard are set out below:

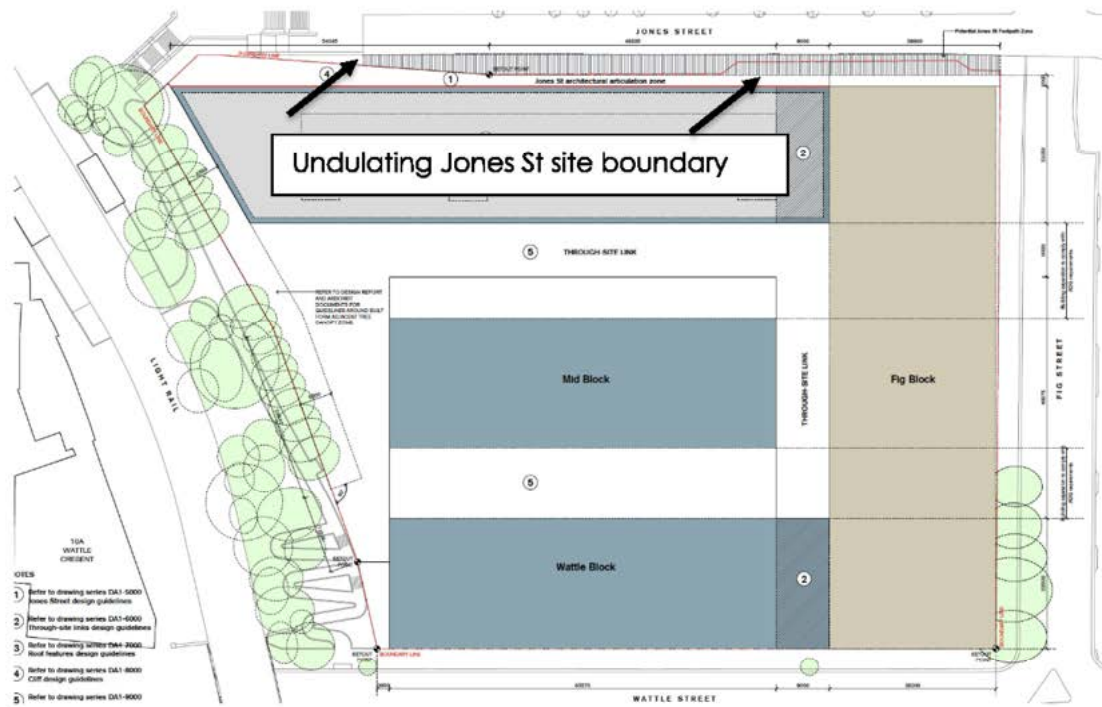
#### Jones Street Building

- i. The development of the site will not set any precedent for future development in the immediate locality as the site has such unique topography and the development only seeks to meet the future height potential of other development along the western side of Jones Street. The proposed development meets the objectives of the HOB Standard and B4 Mixed Use zone without providing unreasonable impact on adjoining sites (see below for further details as to compliance with the objectives of the B4 Mixed Zone).
- ii. The proposed development provides for building envelopes that are able to accommodate a greater mix of land uses. The extent of the height control exceedance along Jones Street is a result of the proposed depth of the building envelope to accommodate future residential development with suitable amenity. Many parts of the site abut hostile urban environment, such as the Fig Street and (to some extent) the Wattle Street interface, this is why the ground floor on Wattle Street is identified for preferred retail uses, whilst the building envelope fronting Fig Street has been identified for future Commercial.
- iii. The area of the site most suitable for future residential development is the Jones Street interface. However, due to the fall of the site, there are only a small portion of apartments that will be suitable to face the cliff face. The residential component of the Jones Street envelope therefore needs to relate to the level of the future kerb on Jones Street.
- iv. As shown in **Figures 4 and 16**, the vast majority of the building sits below the 27m control from the Jones Street property boundary, however not all portions of the building envelope are abutting the Jones Street property boundary. The Jones Street property boundary is not parallel to the Jones Street alignment. The boundary undulates (see **Figure 15**). The building envelope therefore takes an alignment that is parallel to the Jones Street alignment to ensure a consistent built form edge is provided (despite the actual boundary alignment not being consistent).



- v. The apartment building depth has been provided at 23.25m. This is to ensure that the proposed building can accommodate double loaded corridors for access to single aspect apartments, which includes balconies and articulation. Furthermore, in accordance with the Apartment Design Guide, a suitable glass line to glass line for a cross over apartment is 18m. The proposed building envelope therefore allows for a design which will support a double loaded corridor single aspect apartments as well as cross over apartments including balconies, articulation and common circulation areas. To provide a consistent built form along Jones Street, this building depth is continued to the upper levels of the commercial building that addresses Fig Street (see **Figure 16**).
- vi. On account of the fact that the topography of the site falls away so suddenly from the Jones Street frontage, the 23.25m depth of the residential component of the building envelope accentuates the numerical non-compliance with the height of building control (see **Figure 16**). If the site's previous development for a sandstone quarry had not caused such a sharp drop in the landform from Jones Street to the remainder of the site, the subject application would not have required a Clause 4.6 variation as the development would sit easily within the 27m height control set back from Jones Street.
- vii. The proposed building envelopes across the site have been identified for a range of uses, with a desire to largely provide single use buildings to best integrate uses across the site. The most suitable location for residential land uses is the Jones Street frontage. A combination of the undulating Jones Street property boundary and the unnatural topography has resulted in the development along Jones Street needing to vary the height control to provide a contextually consistent built form. The extent of the variation is a result of this building envelope needing to be 23.25m deep to ensure suitable amenity is afforded to the future occupants.
- viii. Furthermore, there is no significant benefit in maintaining the height standard as the proposed development maintains an outcome that better responds to the surrounding context than would be afforded to an envelope that strictly complied with the development standard. The proposed design, including the additional height along Jones Street facilitates no additional adverse environmental impacts.





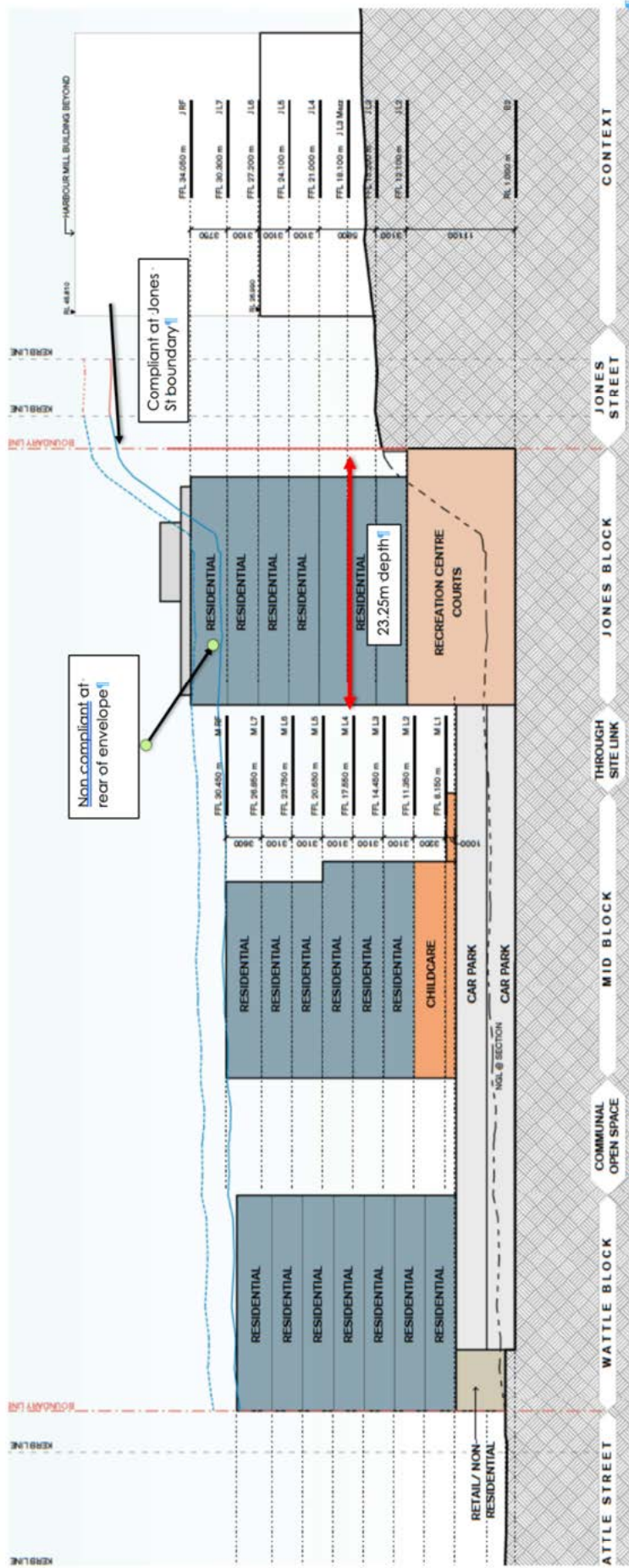


Figure 16 Section through centre of site (Jones St to Wattle St). Source Izannes Architects

#### Ability to deliver greater mix of commercial

- i. In particular, while it is noted that in different circumstances, there may be a greater ability to deliver more commercial floor space on the site, the timeframes the developer must commit to in order to deliver Council's childcare and recreational facility, make the delivery of additional commercial floorspace at that time unfeasible.
- ii. This is verified by advice provided to Landream in October 2019 by AEC, also provided to Council and is appended to this 4.6, which stated that *"the Site's location outside the 'core' locations of Pyrmont conceivably limits the potential pool of prospective tenants and constrains the pace of take-up that is achievable. Absent the contractual timeframe for delivery of development on the Site, the Site could be positioned to respond to longer term commercial office demand and through development of a 'new precinct' in Pyrmont. The circumstances under which development is to be delivered on the Site however limits the extent of commercial-only that could viably be achieved on the Site (AEC Pg 8)."* This is a specific environmental planning ground that limits the uptake of commercial floorspace in the development beyond what is already proposed.
- iii. It is recognised the additional commercial floorspace beyond what is currently proposed would likely result in a reduced building height on parts of the site as commercial buildings have greater efficiencies than residential ones. However, given this land use is not feasible within the development's delivery timeframe, the proposed mix (and resultant height variations due to the more inefficient residential buildings) is a specific environmental planning ground relevant to the site and development.

#### Fig and Wattle Buildings

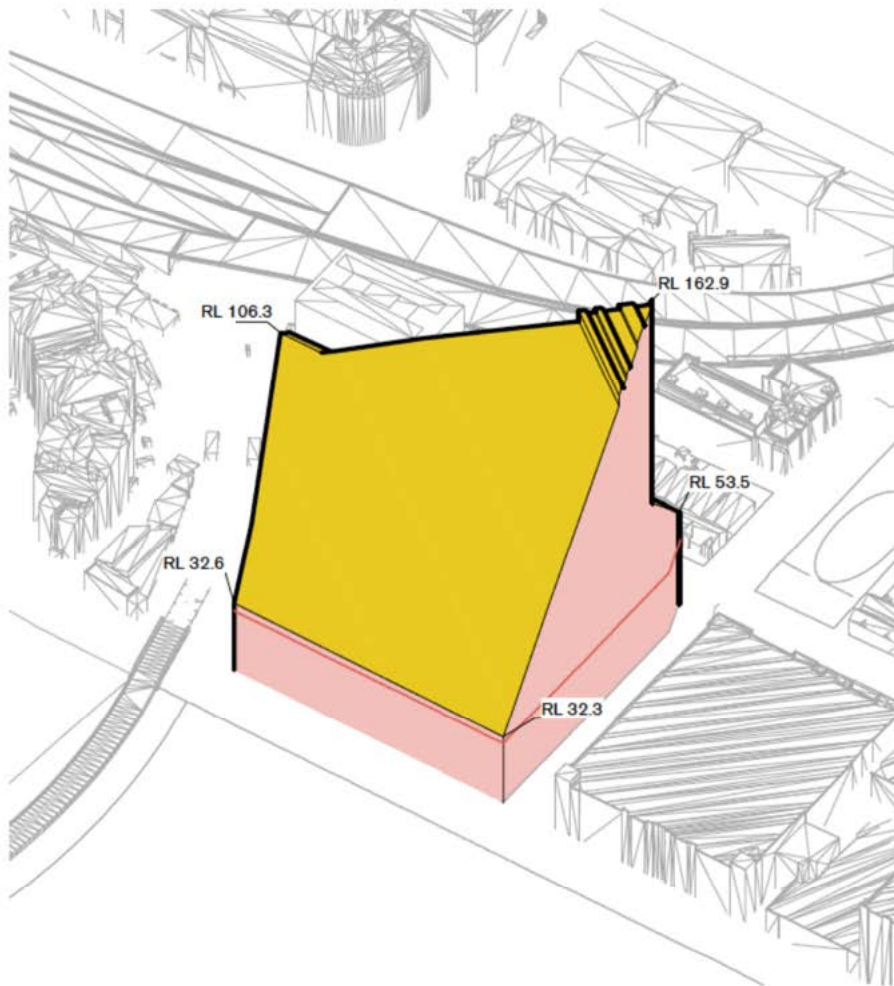
- iv. With respect to the Fig and Wattle buildings, the site's low location in proximity to Blackwattle Bay means that the ground-floor levels need to be lifted to meet the required flooding and stormwater standards. This results in a minor variation of approximately 700mm to these buildings, which form parapets, with no floor space.

#### Ensuring Amenity for Surrounding Developments

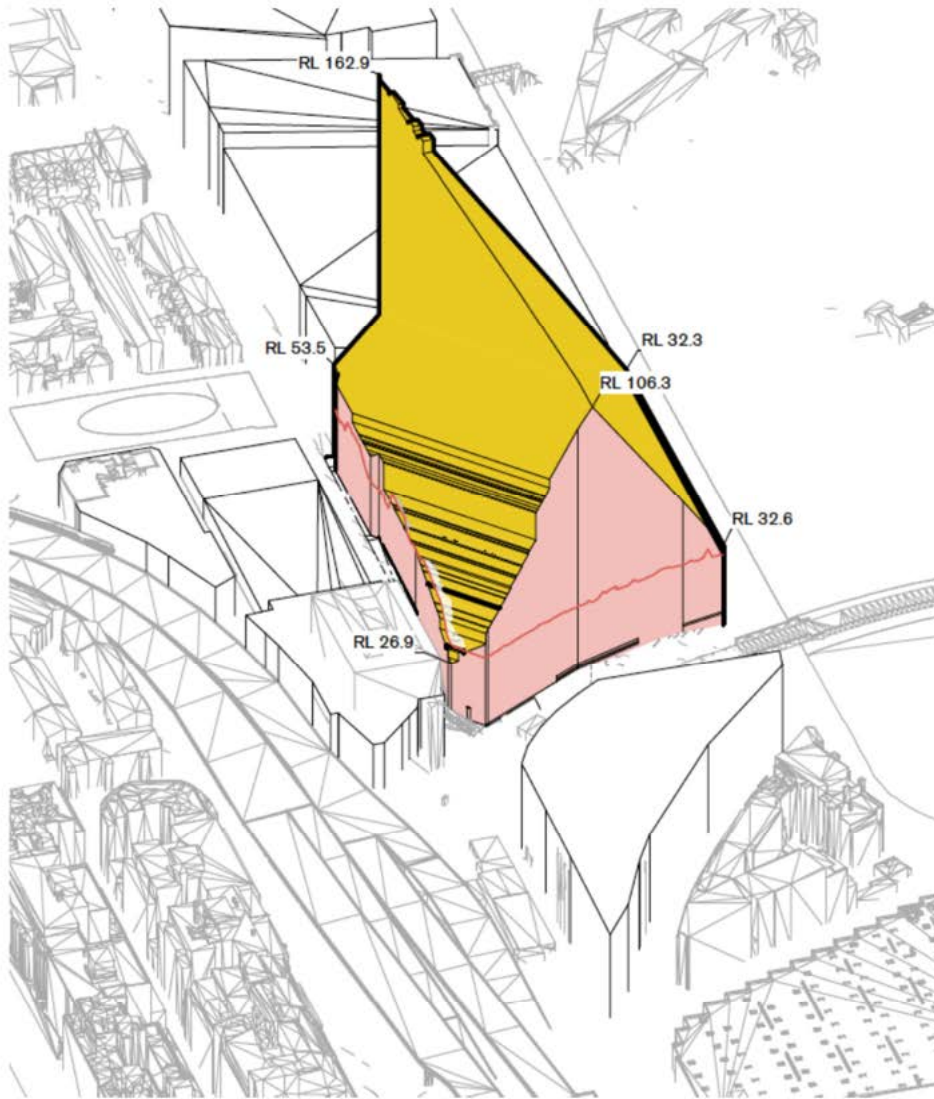
- v. In the spirit of the previous statement, it is also realised that the proposed development is constrained by the existing built form surrounding it. The proposed development has therefore evolved from a design exercise that has analysed the surrounding sites and provided an outcome that reflects a consistent built form outcome, that does not unreasonably impact on the adjoining sites developed for high density urban development and for public open space – particularly with respect to solar access and streetscape character.
- vi. The design process included reviewing the surrounding context. Principles for the proposal included;
  - a. No additional overshadowing to Wentworth Park on 21 June from 12pm onwards;



- b. No additional overshadowing to usable open space of Fig Lane Reserve from 9am – 3pm on 21 June.
  - c. No additional overshadowing to existing west facing windows of the 280 Jones Street apartment building.
  - d. No additional overshadowing to existing west facing windows of Terrace Group directly opposite the subject site on Jones Street.
  - e. No additional overshadowing to private open spaces of existing terraces close to site along Jones St between 9am-3pm on 21 June.
- vii. The resultant solar access plane – created from above Principles provided a model in accordance with **Figures 17 and 18**.



**Figure 17 Solar Plane created from principles - SW Axo View. Source Tzannes Architects**



**Figure 18 Solar Plane created from principles - NE Axo View. Source Tzannes Architects**

- viii. The proposal responds to the topography of the site to create a built form outcome that is consistent with the existing and future context of Jones Street, without unreasonably overshadowing any surrounding developments or public space. Therefore, the proposed development better allows for the promotion and co-ordination of the orderly and economic use and development of land than a compliant scheme would.
- ix. The increased height will not significantly or unreasonably impact upon the amenity of adjoining neighbours in relation to overshadowing which again reflects the orderly and economic use and development of the land. The proposed scheme provides a better outcome than otherwise afforded by a scheme that strictly complied with the height controls.
- x. Finally, it is noted that the subject scheme is an appropriate mixed use development in close proximity to a key transport node – light rail – which will assist with integrating land uses with public transport and active transport such as walking and cycling. Further, the proposed development does not achieve the maximum FSR for the site, despite the technical height breaches, which



demonstrates that it would not be considered an overdevelopment of the site from a land use intensity perspective.

Considering the proposed design has addressed all of the site specific constraints, reducing the height of the built form set back from Jones Street purely to achieve technical compliance with a numerical height control would be a poor planning outcome and an inefficient use of high density mixed use land adjacent to the light rail.

For the above reasons, strict compliance with the height control would hinder the attainment of the objectives of the Act, the height standard and the B4 zone (see further discussion below), and would not result in the orderly and economic use and development of land.

Accordingly, it is considered that there are adequate environmental planning grounds to justify the contravention.

**Clause 4.6 (4)(a)(i) – The consent authority is satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3)**

As demonstrated above and as required by *RebelMH Neutral Bay Pty Limited v North Sydney Council* [2018] NSWLEC 191, the consent authority can be satisfied that the proposed development has adequately addressed the matters required to be demonstrated in Clause 4.6(3) by demonstrating that;

1. Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case as the objectives of the development standard are achieved notwithstanding the non-compliance (Wehbe Test 1) and that the objectives of the zone would be thwarted if strict compliance was required (Wehbe Test 3); and
2. There are sufficient environmental planning grounds to justify the development standard.

**Clause 4.6(4)(a)(ii) - Is the proposed development in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out?**

The proposed development incorporating the height exceedances is in the public interest as it will remain consistent with:

The objectives of the particular standard

It has been demonstrated above in this report that the development is consistent with the objectives of Clause 4.3 Height of buildings within the SLEP 2012 notwithstanding the non-compliance with the standard. In particular, the only development height that would be able to maintain views for the terrace group along Jones Street would be restricted to the top of the cliff. This would severely restrict the ability of any development to achieve the maximum permissible FSR of 4:1, which would be contrary to Objective 1.3(c) of the Act, "to promote the orderly and economic use and development of land".



The objectives for development within the zone in which the development is proposed to be carried out.

The site falls within the B4 High density residential zone. As outlined below the proposed development is in the public interest because it is consistent with the objectives of the B4 High density residential zone;

- To provide a mixture of compatible land uses.
- To integrate suitable business, office, residential, retail and other development in accessible location so as to maximise public transport patronage and encourage walking and cycling.
- To ensure uses support the viability of centres.

To provide a mixture of compatible land uses.

The proposed development provides for building envelopes that are able to accommodate a greater mix of land uses. The extent of the height control exceedance is a result of the proposed depth of the building envelope to accommodate future residential development with suitable amenity. Many parts of the site abut hostile urban environment, such as the Fig Street and (to some extent) the Wattle Street interface, this is why the ground floor or Wattle Street is identified for preferred retail uses, whilst the building envelope fronting Fig Street has been identified for future Commercial. The proposed development also intends to deliver future through-site links, recreation and childcare uses in the centre of the site with easy access to the light rail, which strongly aligns with the zone objective of maximising public transport patronage and encouraging walking and cycling. The genuine mix of uses including commercial, residential, childcare and a community facility aligns with the zone objectives and delivers an optimal outcome for the site's mixed use zoning.

To integrate suitable business, office, residential, retail and other development in accessible location so as to maximise public transport patronage and encourage walking and cycling.

The proposed building envelopes across the site have been identified for a range of uses, with a desire to largely provide single use buildings to best integrate uses across the site. The most suitable location for residential land uses is the Jones Street frontage. A combination of the undulating Jones Street property boundary and the unnatural topography has resulted in the development along Jones Street needing to vary the height control to provide a contextually consistent built form. The extent of the variation is a result of this building envelope needing to be 23.25m deep to ensure suitable amenity is afforded to the future occupants.

For the above reasons, the proposal is considered in the public interest as it is consistent with the objectives of the development standard and the B4 Mixed Use.

Finally, it is noted that the subject scheme is an appropriate mixed use development in close proximity to a key transport node – light rail – which will assist with integrating land uses with public transport and active transport such as walking and cycling. Further, the proposed development does not achieve the maximum FSR for the site, despite the technical height breaches, which demonstrates that it would not be considered an overdevelopment of the site from a land use intensity perspective.

To ensure uses support the viability of centres.

The proposed mix of uses will strongly support the viability of Centres, including the Ultimo and Pyrmont precinct. It will deliver a good combination of residential, office, retail and community facilities, which will assist in enlivening the existing centre.

## 8 Any matters of significance for State or regional environmental planning

The contravention of the height standard does not raise any matter of State or regional planning significance.

## 9 Secretary's concurrence

The Planning Circular PS 18-003, issued on 21 February 2018 (**Planning Circular**), outlines that all consent authorities may assume the Secretary's concurrence under clause 4.6 of the *Standard Instrument (Local Environmental Plans) Order 2006* (with some exceptions). The SLEP 2012 is a standard instrument LEP and accordingly, the relevant consent authority may assume the Secretary's concurrence in relation to clause 4.6 (5). This assumed concurrence notice takes effect immediately and applies to pending development applications.

We note that under the Planning Circular this assumed concurrence is subject to some conditions - where the development contravenes a numerical standard by greater than 10%, the Secretary's concurrence may not be assumed by a delegate of council. This restriction however does not apply to decisions made by a local planning panel, as they are not legally delegates. The proposed development will be assessed by a Central Sydney Planning Committee, and as such the 10% limit does not apply.

## 10 No Public benefit in maintaining the development standard

There is no public benefit in maintaining the height of building development standard, due to the reasons outlined in section 7 above.

By way of summary, the proposed development achieves the objectives of the height standard despite the non-compliance with the height standard due to the fact that it:

- (a) is mostly compliant with the 7-storey height controls identified within SDCP 2012;
- (b) is consistent with the streetscape and provides an appropriate height transition to existing heritage buildings;
- (c) responds to, and ensure that the building properly relates to, the topography of the site;
- (d) minimises visual, overshadowing and privacy impacts which would otherwise have been present in a fully compliant building envelope;



- (e) has been designed to maintain reasonable solar access to the adjoining developments and public domain.

In addition, the proposed development is consistent with the objectives of the B4 Mixed Use zone despite the non-compliance with the height standard due to the fact that it provides a building envelope that is able to accommodate a great mix of development close to the light rail, a key transport node and will encourage walking and cycling. The additional height afforded to Jones Street ensures the future apartments receive a suitable level of solar access and ventilation. This affords the opportunity for other areas of the site, which have less amenity to be occupied by less sensitive uses – such as commercial, office, retail and recreation.

Considering the above, there is no public benefit in maintaining the height development standard.

## 11 Conclusion to variation to height standard

This written request is for a variation to the height standard under Clause 4.6 of the SLEP 2012. The request justifies the contravention to the height standard in the terms required under Clause 4.6 of the SLEP 2012, and in particular demonstrates that the proposal provides a built form that achieves a significantly better relationship with the surrounding context, whereas a fully compliant scheme would result in a built form wildly inconsistent with the surrounding context. Therefore in the circumstances of the case:

- Compliance with the height standard is unreasonable and unnecessary as the height and the building design has ensured that the proposed development will deliver an outcome that better responds to the surrounding context (including neighbouring heritage items) than could otherwise be achieved through a compliant scheme.
- This written request to vary the development standard demonstrates that the proposed development:
  - Is consistent with and achieves the objectives of the development standard in Clause 4.3 of SLEP 2012 (Wehbe Test 1); and
  - Ensures the objective of the development standard in Clause 4.3 won't be thwarted. In particular, strict compliance with the development standard would thwart objective (a), (Wehbe Test 3).
- There are sufficient environmental planning grounds for the contravention; due to:
  - The significant drop in 'existing ground level' from the Jones Street frontage to the remainder of the site as a result from the previous development of the site as a sandstone quarry that was heavily excavated is the key reason for the breach in height control of the Jones Street building;
  - The importance of placing the most sensitive land use (residential) away from the hostile environments of Fig and Wattle Streets where possible.



- The importance of ensuring that the design (despite the variation) did not create additional environmental impacts as a result of the variation.
  - The need to raise floor levels slightly on the buildings fronting Wattle and Fig Street to manage flood requirements given the site's proximity to Blackwattle Bay is the reason for the slight 700mm breach in height control of the Wattle and Fig St buildings; and
  - The contractual requirement to deliver development on the site within certain timeframes in order to provide Council with its childcare and recreation centres limits the ability to deliver additional commercial floor space over the medium/long term. This distorts the ability for the developer to increase commercial floorspace, with its more efficient built forms that are less likely to result in variations to height controls. This environmental planning ground relates to the mix and floorspace of the development as a whole, and the project's feasibility with respect to delivering more commercial floor space as an alternative to residential floor space, which currently is causing the height control breaches due to its more inefficient built form.
- It is in the public interest as it is consistent with the objectives of the height standard and B4 Mixed Use zone, given that the proposed development provides for the redevelopment of a vacant site, that is consistent with the preferred development typology of 7 storey development for the subject site; and
  - There are no matters of State or regional planning significance and no public benefits in maintaining the height standard in this case.

18 October 2019

Mark Girgis  
Landream

Sent via email: [mark@landream.com.au](mailto:mark@landream.com.au)

Dear Mark,

## RE: PYRMONT OFFICE MARKET - SHORT TO MEDIUM TERM COMMERCIAL TAKE-UP AND ABSORPTION ANALYSIS

Landream is the successful bidder to purchase and develop the site at 14-26 Wattle Street, Pyrmont (referred to as the Site) following an Expression of Interest campaign conducted by the City of Sydney (the City) over the course of late-2018. The 1.2ha site was formerly the City's Fig and Wattle Street Depot, decommissioned as a depot in 1990 after which it was used for storage purposes.

This briefing note examines the Pyrmont office market and in particular undertakes an analysis of short to medium term commercial office take-up to assist Landream plan for a mix of uses to be developed on the Site.

Commercial centres studies carried out for the purposes of strategic land use planning (whether by a local authority such as City of Sydney or state planning authority such as the Department of Planning, Industry and Environment) generally approach demand and supply from a long-term perspective. This involves understanding the nature of commercial office demand, the likelihood of that demand being met under current planning controls and the planning interventions that may be required to ensure a balanced demand and supply equation over the planning horizon (typically 20 years).

Office markets (and indeed most property markets) are fluid and subject to dynamic drivers which influence the distribution of demand and the supply response to meet that demand. Short term and long term drivers can have different influences on demand and supply, subject also to activity in competing markets (including in the Sydney CBD and other City Fringe markets).

## BACKGROUND

Landream Pyrmont Pty Ltd (as the Developer) and the Council of the City of Sydney (the City) entered into a development deed dated 21 December 2018 wherein the Developer agreed to purchase the Site from the City and develop into a mixed use precinct that delivers on the following key elements:

- Compliant with current planning controls for the Site, generally at FSR 4:1 and 27m height of buildings (48,500sqm GFA).
- Maximum residential GFA of 31,000sqm which includes serviced apartments.
- Provision of pedestrianised through-site link between Jones Street and Wattle Street that is accessible by the public and from a disability perspective.
- Centre Works comprised of:
  - Delivery of a 91-place childcare centre to be separately titled and with a minimum functional area of 2,075sqm and outdoor area of 896sqm.
  - Delivery of multi-use two court indoor recreation centre to be separately titled and with minimum functional area of 2,390sqm.

The Centre Works are to be compliant with the design briefs prepared by the City.

*Liability limited by a scheme approved under Professional Standards Legislation*



A design competition is required following a Stage 1 DA, and thereafter to be followed by a Stage 2 DA.

The following key dates are relevant for this analysis.

**Table 1: Key Milestone Dates**

Milestone	Date	Obligation
Ultimate Approvals Sunset Date	21 Dec 2021	Developer to have obtained Stage 1 and Stage 2 Approvals
First Stage Substantial Commencement*	21 Dec 2022	In the event the works are staged, Developer must commence the First Stage to achieve required completion
Practical Completion of Council Facilities	21 Dec 2024	Council Facilities (or Centre Works) are to be completed by this date (part of mixed use development)
Second Stage Substantial Commencement*	21 Dec 2023	In the event the works are staged, Developer must commence the Second Stage to achieve required completion

Source: Landream

\*The commencement dates as relevant for the analysis as they indicate the requirement for pre-commitments to be in place as is necessary to secure development finance.

Landream have submitted a Stage 1 DA to the City that envisages a maximum FSR of 3.74:1 with the following indicative breakdown of uses in gross floor area (GFA):

- Childcare centre 1,296sqm.
- Recreation centre 2,303sqm.
- Retail floorspace 540qm.
- Commercial floorspace 15,437sqm.
- Residential floorspace 25,738qm.

The Stage 1 DA envisages a total of 45,329sqm GFA.

## SCOPE OF ANALYSIS

AEC Group (AEC) is engaged by Landream to advise on the supply and demand drivers of commercial office floorspace on the Site, in particular the likely viable quantum of floorspace to inform the overall development mix.

More specifically, the advice focuses on the drivers of supply and demand in the context of contractual timing requirements described in Table 1, i.e. fixed development commencement and maximum completion milestones. A critical issue for this analysis is the considerations for take-up in the required timeframe and size/ tenancy requirements for commercial office floorspace in the Pyrmont/ Ultimo City Fringe market.

To fulfil the requirements of the brief, the following matters are considered:

- Market analysis:
  - Market profile of Central Sydney and City Fringe markets (including Pyrmont/ Ultimo).
  - Supply pipeline and overall outlook over different time horizons.
- Trends and drivers of demand and supply in the office markets.
- Likely role of the Site in the provision of commercial office floorspace.

Speculative builds of the proposed magnitude of commercial office floorspace (15,400sqm) are an unlikely proposition, with pre-commitments required to secure development finance.

Accordingly, the overarching objective of this analysis is to advise Landream on the viability and quantum of commercial office floorspace in the context of likely tenant profile requirements and agreed milestone and sunset dates for development of the Site.

## MARKET ANALYSIS

Sydney CBD is not a homogenous market. To reflect the market's thought process and occupier requirements, this section examines patterns of demand and supply in Central Sydney and the City Fringe markets.

### Central Sydney

Central Sydney (or 'Sydney CBD' as more commonly known in the market) has undergone a period of significant demand over the 2015-2018 period, characterised by falling vacancies and incentives concurrent with rising rents. This was driven by the converging of a number of factors:

- Economic growth and long-term confidence in Sydney;
- Low unemployment and availability of capital;
- Centralisation trend with demand from those occupiers seeking to attract and retain talent.
- Withdrawal of commercial stock (for alternate uses including residential/ hotel and construction of Sydney Metro in the future) putting pressure on remaining supply.

The 2015-2018 period also saw a significant number of commercial office projects being planned for delivery. Many of these projects have pre-commitments secured.

Demand for office space in Central Sydney continues to be strong, though overall absorption is showing signs of easing. The nature of demand continues to be influenced by a number of key trends:

- Exponential growth by co-working operators, leading to:
  - Need for more floorspace across Central Sydney; and
  - Removal of a large proportion of small tenants (<500sqm) from the general tenant pool who have the option of leasing space from a co-working operator.
- Strategies to reduce occupancy costs resulting in more intensive use of floorspace and consequently a lower floorspace requirement per worker. This includes:
  - Flexible work practices (e.g. employees working from home);
  - Removal of individual offices in favour of open plan work areas;
  - Design of fitout and furniture to minimise occupancy ratios and maximise use of space.
- Strong demand for A-grade space, leading to a narrowing difference between Premium and A-grade rents.

Strong growth in rents has resulted in many occupiers being priced out, with some overflow tenant demand to City Fringe markets and others considering locations further afield at North Sydney and even at Parramatta.

The outlook for the commercial office market and concurrent rise in rents has facilitated an impressive supply pipeline (>730,000sqm) of office net lettable area (NLA). About 450,000sqm is approved/ pre-committed and due for completion in 2020 to 2021. Approximately 280,000sqm is planned subject to feasibility and pre-commitments.

Table 1 summarises key projects in the supply pipeline in the Central Sydney market.

**Table 1: Central Sydney Supply Pipeline**

Address	Precinct	Total GFA (sqm)	Office NLA (sqm)	Status	Estimated Completion
185 Clarence St	Western	9,603	7,659	New. 40% committed	2020
388 George St	City Core	44,270	38,500	Refurbishment. 62% committed	2020
58-60 Martin Pl & 197 Macquarie St	City Core	44,581	39,377	New. 80% committed	2020
275 George St	City Core	7,886	6,363	New	2020
1 Sussex St	Western	11,748	10,000	New. 100% committed	2020



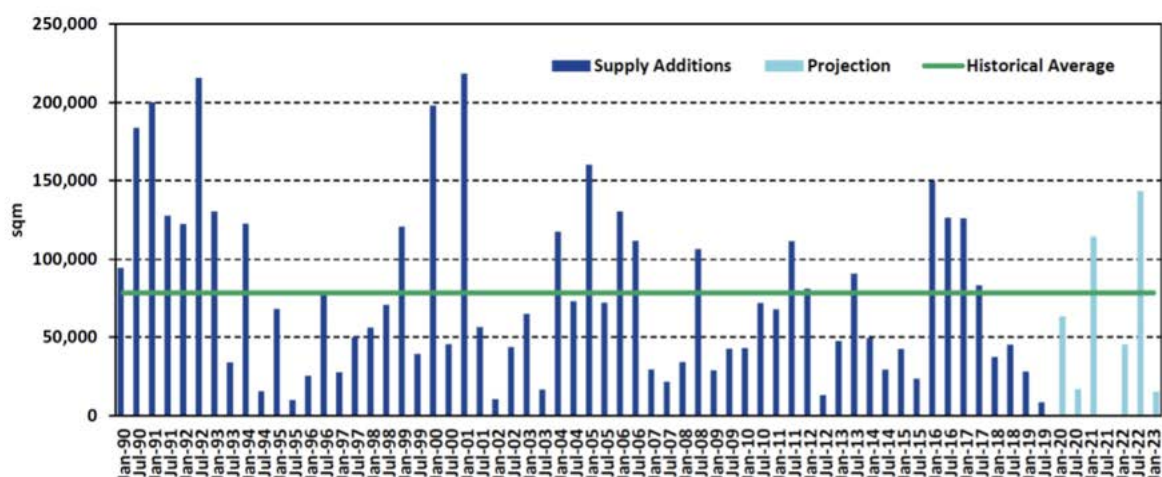
Address	Precinct	Total GFA (sqm)	Office NLA (sqm)	Status	Estimated Completion
Wynyard Pl	City Core	85,300	68,200	New. 80% committed	2020
320 Pitt St, Telstra Plaza	Midtown	29,159	29,159	Refurbishment. 38% committed	2020
231 Elizabeth St, Telstra House	Midtown	23,275	22,964	Refurbishment. 100% committed	2021
55 Market St	Midtown	25,131	20,552	Refurbishment	2021
397-409 Kent St & 2 Market St	Western	49,763	18,386	Refurbishment	2021
255 George St	City Core	39,940	22,500	Refurbishment	2021
50 Bridge St (QQT)	City Core	102,133	88,274	New. 75% committed	2021
44 Martin Pl	City Core	11,366	9,500	Refurbishment	2021
180 George St (CQT)	City Core	66,852	55,000	New	2021
210-220 George St	City Core	19,717	17,000	New	2021
33 Alfred St	City Core	35,660	32,353	Refurbishment	2023
77 Market St	Midtown	36,391	12,000	Planned	2022
Darling Park Tower 4	Western	89,000	70,000	Planned	2023+
55 Pitt St	City Core	46,000	30,000+	Planned	2023+
Central Barangaroo	Western	59,225	45,000	Planned	2023+
Martin Place Metro Station North Tower	City Core	75,498	75,000	Planned	2024+
Martin Place Metro Station South Tower	City Core	37,553	20,700	Planned	2024+
33 Bligh St	City Core	26,000	26,000	Planned	Unknown
<b>Total</b>		<b>976,051</b>	<b>734,487</b>		

Source: Knight Frank, AEC

**Figure 1** illustrates the supply pipeline to 2023. The pipeline is expected to peak in 2021/ 2022 with completion of 50 Bridge Street (88,300sqm NLA) and 180 George Street (55,000sqm NLA).

**Figure 1: Sydney CBD, 6-monthly Gross Supply (1990-2023)**

**Sydney CBD Six Monthly Gross Supply: 1990-2023**



Source: PCA

Supply conditions in the short term will continue to be tight with competitive demand for prime office space sustaining strong rental growth. This is expected to ease from 2021 and peak in 2022 as new completions occur and tenant relocations release backfill space into the market for lease.

Initiatives to lease existing (good quality) backfill space can have significant impact on the marketability and rate of take-up of new floorspace when lessors adopt aggressive leasing campaigns with attractive incentives in an effort to re-lease backfill space. This can be compelling to tenants as it avoids pre-committing to a wait for new space to be completed.

### **Pymont/ Ultimo**

The Pymont/Ultimo commercial market has established itself as a media and technology hub with major occupiers such as Fairfax Media, Google, Network Ten and Domain Group amongst others. It has an increasing profile as a co-working destination with WOTSO Workplace established at 55 Pymont Bridge Road (adjacent the Fish Markets) in 2015 followed by WeWork at 100 Harris Street in November 2016.

Demand for office space is primarily dominated by TAMI (technology, advertising, media and information) businesses, many of whom are priced out of Sydney CBD. That said, Pymont/Ultimo is increasingly generating its own level of demand given its unique attributes and high level of amenity. Though, market feedback indicates the lack of public transport (and mode change at Town Hall station) is a drawback for some occupiers due to the additional travel time.

The areas considered 'core' to the Pymont office market are generally bounded by Harris Street, Darling Island Road and Pirrama Road. Notwithstanding the Site's proximity to Wentworth light rail station, it is not considered to be within a 'core' location in Pymont/ Ultimo. This and the additional travel time affects overall marketability and the pool of prospective tenants who will likely consider the Site a legitimate accommodation option.

#### **Supply Pipeline**

Development activity is generally mixed use in nature (combining retail, commercial and residential uses) which is unsurprising given the B4 Mixed Use zoning.

Major development at **21-43 Harris Street** is under construction and for sale on completion. The 7 storey A-grade commercial building will have 2,650sqm campus-style floorplates (6 levels commercial floorspace 16,200sqm GFA) with retail floorspace, child care centre and a gym at ground level. The total GFA is just over 18,000sqm.

**94-136 Harris Street** is an adaptive reuse project of a former woolstore building known as Schute Bell Badgery and Lumby Woolstore that creates 10 commercial tenancies and a café. The total GFA is just over 25,000sqm.

Occupier floorspace requirements in Pymont/ Ultimo are mixed. Small tenants tend to occupy strata commercial suites while also taking space in the co-working facilities that have established there. Larger tenants are notably attracted to Pymont due to the slightly lower price points than Central Sydney. Pymont is expected to continue to play an 'overflow role' to Central Sydney and provide a clustering/ co-location opportunity to the TAMI sector.

TAMI occupiers' size requirements typically range from 1,500sqm to an upper range of circa 4,000sqm to 5,000sqm, albeit this upper size range being a rare observation. These factors are relevant when considering likely tenant pre-commitments that could be secured on the Site within the required timeframes.

### **Surry Hills**

The heritage character of Surry Hills, quality amenity and a lifestyle offer are its competitive factors. Tenant demand for Surry Hills is strong, especially for office suites smaller than 1,000sqm. Public transport accessibility and walkability is a major determinant of demand for office space, together with uniqueness and character of fit-out.

The demand for commercial office in Surry Hills is driven largely by the unique vibe and eclectic mix of uses, architecture and built form. Occupiers therefore seek office accommodation that is quirky and not generic.

#### **Supply Pipeline**

There is also a mix of activity in the Surry Hills development pipeline, from alterations and additions to existing commercial buildings (to extend, upgrade or increase lettable floorspace) to comprehensive redevelopment. Mixed use residential and commercial office development activity is notable.



The scale of new development in Surry Hills is comparatively minor due to the fine grain nature of lot patterns and valuable buildings. Surry Hills is also an appealing residential market, making residential opportunities attractive to pursue in the B4 Mixed Use zone. Notwithstanding, the residential capacity of some sites can be constrained by physical characteristics which result in lack of compliance with built form requirements. In these instances, a commercial development use could be selected over a residential one.

It is rare for a development to exceed 5,000sqm net new GFA. Most activity is comprised of alterations and additions to existing commercial buildings. An exception is **52-58 Reservoir Street** where an existing two storey building is to be demolished for construction of a 10 storey commercial building to accommodate around 2,400sqm GFA.

Due to the patterns of supply and existing tenant composition, Surry Hills is expected to continue to appeal and cater to creative and related occupiers who have small to medium sized floorspace requirements (up to 1,000sqm).

### Other City Fringe Markets

Other City Fringe office markets considered relevant to the analysis are the comparatively minor markets of Chippendale and Darlington.

There is a sprinkling of small commercial suites in converted warehouse buildings or terraces suitable for creative occupiers along Cleveland Street (Chippendale and Darlington). These spaces are typically unique in character, akin to those in Surry Hills on the northern side of Cleveland Street.

Commercial building upgrades are not commonly observed owing to their relatively small number in the area but also the areas' lack of market profile as office destinations. Though, several commercial buildings along Elizabeth Street have been positioned as unique retail and commercial spaces, offering an alternate to Surry Hills.

While unique, non-traditional office suites are sought after along Cleveland Street, their price points are lower than those in Surry Hills and are not at the level where large-scale commercial development is a viable proposition.

These City Fringe markets are expected to continue to cater to creative and related occupiers who have small to moderate floorspace requirements (up to 500sqm) and who may not have the budget for space in Surry Hills.

Redfern-Waterloo has the potential to evolve to a satellite sub-market of the City Fringe as completion and operation of the Waterloo Metro station approaches. Metro train accessibility is considered superior to light rail transport facilities owing to the more frequent and faster services that connect with the rest of the train network. The cumulative 'pull' of South Sydney and relatively affordable prices could 're-set' the current demand/ supply dynamics in other City fringe markets.

### Summary of Findings

The Sydney metropolitan office market has witnessed a sustained period of supply-side constraints resulting in:

- Rapidly rising rents and competitive market conditions;
- Relocation and/ or displacement of tenants to 'overflow' markets;
- Emergence of City Fringe and suburban markets to accommodate tenants priced out of Sydney CBD markets;
- Large scale development of commercial office buildings in the pipeline.

A wave of new development is due for completion from 2021 and is expected to peak in 2021/ 2022 in the Sydney CBD. More than 450,000sqm of office floorspace is under construction or pre-committed, while a further 280,000sqm of floorspace is mooted/ planned for, totaling a total supply pipeline of 730,000sqm NLA. Supply-side conditions are therefore expected to ease from 2021 onwards, resulting in a softening of market absorption and rental growth.

The Property Council of Australia tracks activity in various office markets, recording a long-term gross supply average of 80,000sqm in the Sydney CBD since 1990. The existing pipeline supply (committed and mooted) is equivalent to some 5.5 years to 9 years of new gross supply.



## TRENDS AND DRIVERS OF DEMAND AND SUPPLY

Several key trends are expected to continue to shape the patterns of demand and supply of commercial office space in Sydney CBD and City Fringe markets:

- **Workplace Practices and Utilisation of Floorspace**

As businesses embrace innovation and more productive ways of doing business, their business floorspace requirements are affected. More efficient use of floorspace and shrinking workspace ratios has resulted in tenants requiring less floorspace for the same activities.

This has been borne out in the surrender of 'surplus' floorspace as leases expire and higher work space ratios that are achieved across the CBD.

The City's Floorspace and Employment Survey (FES) affirms this trend, with the average work space ratio in the CBD and Harbour village area falling from 26.9sqm per worker in 2012 to 23.5sqm per worker in 2017. The FES observed that the most intensive use of work space was in the finance and financial services sector (14.7sqm per worker in 2017 reduced from 17.6sqm per worker in 2012).

- **Amenity Expectations**

The ability to secure talent is critical for the success of businesses. Hence the battle for the best talent is intense. The young, internationalised and cosmopolitan workforce is increasingly motivated by non-monetary factors. This includes lifestyle, e.g. whether they can commute to work on foot or whether their offices are situated in an area with lots of amenity, flexible working arrangements and annual leave allowances.

Occupiers are using the location of their real estate as a recruitment tool, as well as to ensure that workspaces themselves are engaging and user-focused environments where talent wants to spend time. As a result of the global war for talent, occupiers tend to cluster in locations which offer the range of characteristics the talent they are seeking to attract want. Accessibility to public transport facilities is one of these.

The urban and retail amenity that is available in the Sydney CBD is a major drawcard for businesses keen to attract and retain talent. The eclectic nature of Surry Hills to a lesser extent offers a unique quality and amenity that makes it one of the most attractive City Fringe markets.

- **The Co-working Culture**

As recent as five years ago, smaller occupiers (<500sqm) were a group of tenants poorly provided for in the Central Sydney market. With the emergence and rise to prominence of co-working providers, demand from this tenant cohort has softened with many smaller tenants now accommodated in co-working facilities.

Co-working providers (e.g. WeWork, WOTSO, etc.) are observed to have aggressive expansion strategies, taking-up large amounts of floorspace in locations that offer high levels of amenity including accessibility to public transport and retail facilities.

- **Attitudes towards Sydney CBD v City Fringe Markets**

Tenants who seek out space opportunities in City Fringe office markets are generally those who are priced out of the Sydney CBD, those after back-of-house accommodation and those who seek a City Fringe location to co-locate with other businesses in their sector.

Our research suggests many tenants who consider Pyrmont as a potential location also consider Surry Hills, and in many cases have a preference for the latter. Unlike the Sydney CBD, tenants who consider 'overflow locations' such as the City Fringe markets typically evaluate options in Pyrmont, Surry Hills as well as options in the Sydney CBD. Analysis additionally indicate South Sydney fringe market is rapidly increasing in profile as an alternate and affordable option for commercial floorspace. While 'Brand South Sydney' is still developing, the area is expected to accelerate in desirability as completion of the Metro approaches.

As tenants 'shop around' and consider multiple leasing options in various markets, pre-commitment timeframes (i.e. the time ahead of construction commencement) secured in Pyrmont (6-12 months) are typically shorter than those secured in the Sydney CBD (12-24 months).



Overall, the market and economic outlook for commercial office floorspace in Central Sydney and the City Fringe markets is robust.

The City's draft Central Sydney Planning Strategy and indeed its draft Local Strategic Planning Statement recognise the need to unlock and enable opportunities for growth.

## LIKELY ROLE FOR THE SITE

The ability of various sub-markets and precincts to respond to growth and demand for more office floorspace varies according to individual site-specific characteristics and circumstances. Existing leases and lease tails, the ability to secure pre-commitments and financing as well as competitive market supply cumulatively affect the quantum of and timeframe for floorspace to be viably delivered on individual sites.

Delivery of development on the Site is covenanted between the parties to be completed by specified dates. Working backwards to meet the agreed completion timeframes, the following dates are relevant for staged commencements (wherein pre-commitments and financing must be in place) on the Site:

- 1 Stage 1 - 21 December 2022
- 2 Stage 2 - 21 December 2023

As the market continues to drive workspace efficiencies and place increasing value on the quality of amenity (including transport and retail amenity), the push for more intensive use of space will continue to place downward pressure on tenants' floorspace requirements and influence their site selection criteria.

Pymont/ Ultimo has in the last decade increased in prominence as a desirable City Fringe market, driven by activity of co-working operators and TAMI businesses. The market does view Pymont/ Ultimo in sub-precincts though, with locations generally bounded by Harris Street in the west, Pirrama Road and Darling Island Road in the north considered to be 'core' and most desirable. Locations outside of the core are subject to softer prices/ rents and longer take-up/ leasing periods.

The distance to train services and mode change (Town Hall or Central Station) is a disadvantage, requiring buildings to have excellent end-of-trip facilities and car parking on-site to offset this negative market perception.

The City Fringe market of Pymont is expected to continue to play an 'overflow role' to Central Sydney and provide clustering/ co-location opportunities for the TAMI sector as well as for larger tenants attracted to its lower price points compared to the Sydney CBD markets.

The level of take-up/ absorption of floorspace in Pymont will be influenced by supply levels and floorspace opportunities in Central Sydney as well as relative price points therein. A large quantum of pipeline supply is expected to be completed in Central Sydney from 2021 to peak in 2022. The pipeline supply (committed and mooted) is equivalent to about 5.5 years and 9 years of gross supply respectively.

New building completions will result in tenant relocations from other parts of Central Sydney and the release of backfill space to the market. It is during this time (2021-2023) that the Site will require pre-commitments to be in place before financing can be secured and commencement can occur.

While there is robust demand for office floorspace generally, the Site's location outside the 'core' locations of Pymont conceivably limits the potential pool of prospective tenants and constrains the pace of take-up that is achievable. Absent the contractual timeframe for delivery of development on the Site, the Site could be positioned to respond to longer term commercial office demand and through development of a 'new precinct' in Pymont. The circumstances under which development is to be delivered on the Site however limits the extent of commercial-only that could viably be achieved on the Site.

The leasing process will typically consider 4-5 potential occupiers to be available at the same time. TAMI occupiers are the most probable end user for the proposed commercial floorspace, these tenants typically having floorspace requirements ranging from 1,000sqm to 4,000sqm.

Given the Site's location outside the 'core' of Pyrmont at its western edge, the demand outlook to 2022/ 2023 in Central Sydney and the contractual obligations between the parties, in our view, the proposed commercial office floorspace proposed in the Stage 1 DA of 15,400sqm represents the upper end amount that could be viably delivered within the specified parameters.

Yours sincerely

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