

# **Attachment C**

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



11 February 2021

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Request to Contravene the Floor  
Space Ratio (FSR) Standard under  
Clause 4.6 of S.L.E.P. 2012 –

33-37 Sophia Street Surry Hills

(New Mixed Use Building)

## Introduction

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This written request supports a development application (DA) for a new 4 storey mixed use building at Nos. 33-37 Sophia Street, Surry Hills at 33-37 Sophia Street, Surry Hills. It should be read in conjunction with the Statement of Environmental Effects by Perica and Associates Urban Planning Pty Ltd to which it is attached, plans by Stanisic Architects and the information submitted with the DA.

The proposal exceeds the maximum Floor Space Ratio (FSR) control in Clause 4.4 of Sydney LEP 2012 (SLEP 2012). This control is a "development standard" in accordance with the definition in Section 1.4 of the Environmental Planning and Assessment Act 1979 (EPA Act 1979).

Clause 4.6 of SLEP 2012 relevantly states:

### **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 Director-General 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 Director-General before granting concurrence.
- (6) –(8)... [not relevant]

## 1. Identifying and quantifying the non-compliance

Clause 4.4 of SLEP 2012 specifies a maximum FSR of 2:1 (double the site area), by reference to the relevant LEP Map (extract below). The sit is within area “T”.

The site area is 209.96sqm by survey. A 2:1 FSR equates to a Gross Floor Area (GFA) of 419.92sqm.

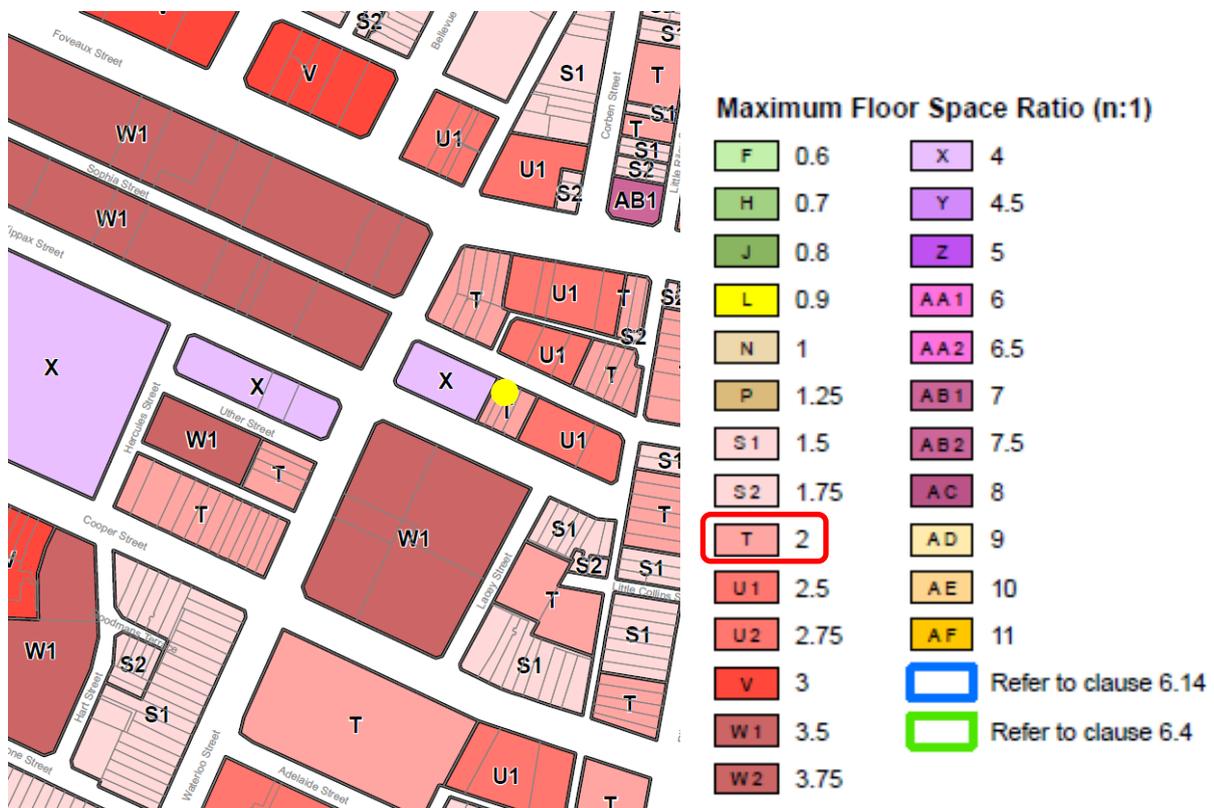


Figure 1 – FSR Map extract SLEP 2012

The proposed GFA is 521 sqm, resulting in a proposed FSR of 2.48:1 (source: Stanistic Architects). The proposal exceeds the FSR standard by around 24.9%

The loading area (revised after DA lodgement in response to a worthwhile and constructive suggestion by Council's Design Review Panel) remains excluded as it still is principally a loading area.

## 2. Objectives of Clause 4.6 of SLEP 2012

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The objectives of Clause 4.6 of SLEP 2012 are:

- (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.*

There was some legal debate about the requirement to specifically address these objectives. On one hand, the objectives are not explicitly required to be addressed or specifically considered (as typically occurs in zone objectives), and compliance with the objectives of the Clause could be read to arise when compliance with the operative provisions of the Clause are met, being the sub-clauses that follow the objectives. In other words, the objectives state what complying with the operative provisions would achieve. On the other hand, if this was the case then the objectives would have no work to do.

This matter was recently considered and determined in a judgement by the Chief Justice of the Land and Environment Court of NSW in *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118*. That judgement held that the objectives of Clause 4.6 do not need to be specifically considered, and specifically should not be read to compel comparison with a complying development proposal.

Accordingly, compliance with the objectives of Clause 4.6 (of appropriate flexibility and better outcomes) can be assumed if the operative provisions and thresholds of Clause 4.6 are met. The objectives state what the operative clauses are designed to do.

## 3. Clause 4.6 (3)(a) and 3(b) of SLEP 2012

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Clause 4.6(3) of SLEP 2012 states:

- (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*

### **(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case**

The submission and consideration of Objections under State Environmental Planning Policy No. 1 ("SEPP 1 Objection") and the issue of compliance being "unreasonable or unnecessary" was well summarised in the Land and Environment Court judgement *Wehbe v Pittwater Council [2007] NSWLEC 827* ("the Wehbe case"). While that judgement applied to SEPP 1 Objections and not Clause 4.6 Variation requests, the approach in that case has been accepted in subsequent court cases related to Clause 4.6 Variation Requests.

The onus lies upon the applicant to demonstrate this in a written request (being this submission) and that requiring compliance with the particular standard would be unnecessary or unreasonable. In this regard, the Wehbe case outlined 5 possible ways to demonstrate whether compliance would be unnecessary or unreasonable, by establishing:

- i. Compliance with the underlying objectives of the standard being breached, notwithstanding the numerical non-compliance; or
- ii. That the objectives of the standard are not relevant to the proposal; or
- iii. Requiring compliance with the development standard would “thwart” the achievement of the objectives of that standard; or
- iv. The development standard in question has been “virtually abandoned” by the Council; or
- v. The zoning of the land is not appropriate for the site and therefore the associated standards are not appropriate (with some qualifications).

This written request does not rely on a case related to pathways 2-5 above. However, it is noted that variations to FSR standards can and do occur on a case-by-case basis within the Sydney LGA.

This written request does argue compliance with underlying objectives of the standard in question are achieved.

In terms of the objectives of the standard, Clause 4.4(1) of SLEP 2012 contains the following objectives:

- (a) to provide sufficient floor space to meet anticipated development needs for the foreseeable future,
- (b) to regulate the density of development, built form and land use intensity and to control the generation of vehicle and pedestrian traffic,
- (c) to provide for an intensity of development that is commensurate with the capacity of existing and planned infrastructure,
- (d) to ensure that new development reflects the desired character of the locality in which it is located and minimises adverse impacts on the amenity of that locality.

The following responds to these objectives:

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

The proposal helps to meet the growing needs and forecasts for growth in local and Regional planning strategies. It is also highly likely there will also be a number of sites which are not able to reach their maximum GFA, due to a combination of smaller lots and Heritage Conservation Area limitations, such that a modest additional justified GFA at this site, may assist in meeting future needs more holistically. The proposal will not thwart the overall achievement of this broad objective. The subdivision pattern and Conservation Area surrounding the site is illustrated in the following Heritage Map extract.

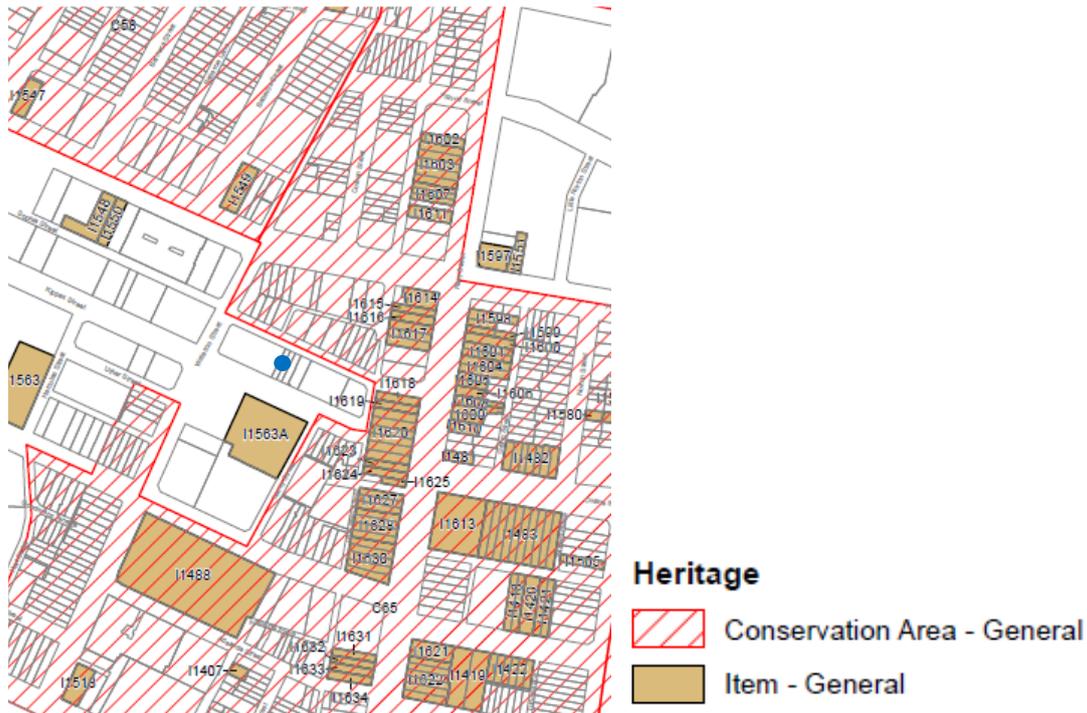


Figure 2 – Heritage Map Extract – SLEP 2012

The site is very well situated in terms of access to services and transport and a minor exceedance is acceptable given the site's location, and relative constraints to other surrounding land.

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

The proposal involves a relatively minor exceedance of the GFA in overall terms.

There are 4 aspects to this objective, which are dealt with in turn.

The density of development is not directly affected by the proposed GFA. That is, 5 units and a retail area could still be accommodated in a complying development.

The built form is also regulated by other controls in the LEP and DCP and ought to be considered having regard to the setting and context of the site. In terms of other controls, the proposal complies with the maximum LEP height limit and DCP height in storeys (noting a mezzanine is excluded from the definition of a storey). So the built form is consistent with that envisaged by the planning controls in both the LEP and DCP. Some GFA could be reduced with the same overall number of storeys and height, as complying, in the central portion of the site. However, this would lead to an inappropriate setback to the streets, which again Council controls and the setting of the site/context favours the approach adopted.

Importantly, the characteristics of the area and desired future characteristics of the area encourage building to the street alignments (and the side boundaries). Combined with

the height and number of storeys, the resulting built form proposed is appropriate both contextually and in the context of the wider planning controls.

Given the large 7 storey building to the immediate west and other desired character traits for the Surry Hills area, as stated in SDCP 2012, regarding a transition in scale/form and building to the street alignments, in this instance on this site, a building to 4 storeys and the maximum height limit, and built to the street and side boundaries is not only acceptable but appropriate and desirable.

These built form determinants of height and setbacks, appropriate to guide the form in this particular instance, have resulted in an FSR which does exceed the numerical control, yet is both acceptable and desirable.

The land use intensity is somewhat reduced by the provision of units, which tend to be a less intense form of development than employment uses, particularly related to traffic and parking demand and impacts.

The generation of vehicular traffic is also reduced by providing units, not providing parking on site and facilitating cycle use, by on-site cycle parking and shower/change facilities. The pedestrian environment will also be improved by the active uses, surveillance and building form to the street alignments.

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

The site/area has the surrounding capacity to accommodate the uses and density sought.

This includes:

- services surrounding the site;
- public transport availability proximate to the site; and
- Utilities available for the development.

As previously mentioned, the provision of units is less intense than other land uses and the intensity of development for the site is modest, despite the FSR non-compliance.

**(d) to ensure that new development reflects the desired character of the locality in which it is located and minimises adverse impacts on the amenity of that locality**

While largely addressed in the S.E.E., key aspects of the existing and future desired character of the area are addressed below.

This particular objective is a key reason to support the proposal and why the FSR non-compliance is justified in this instance.

In terms of considering the “desired character of the area”, it is appropriate to consider the DCP provisions for the locality, which are expressed in similar terms.

In this regard, the site is located within the Surry Hills Central Locality as designated in SDCP 2012.



**Figure 3** – DCP Extract – Part 2.12.2 Pyrmont Locality

The DCP contains the following locality character statement (emphasis added in bold):

*This locality is bounded by Foveaux Street to the north, Devonshire Street to the south, the rear of lots fronting Elizabeth Street to the west, and the rear of lots fronting Bourke Street to the east.*

*The area is to continue to constitute the retail centre of Surry Hills with **active frontages** consolidated along Crown, Foveaux and **Kippax Streets**. The future built form character is to **maintain the transition in scale and use, from large footprint warehouse buildings in the west to small lot retail, shop-top and terrace houses in the east**.*

*Crown Street is to continue its role as a neighbourhood centre defined by consistent street level awnings and high quality public domain treatment and active uses such as restaurants, cafes, and specialty retail shops, particularly to the north and opposite Shannon Reserve. The consistent late Victorian terrace house character of the areas residential streets is to be preserved to contribute to the heritage quality of the neighbourhood.*

The proposal is consistent with the character statement for the area.

The DCP lists 11 principles relating to development in this area, as below (including a response):

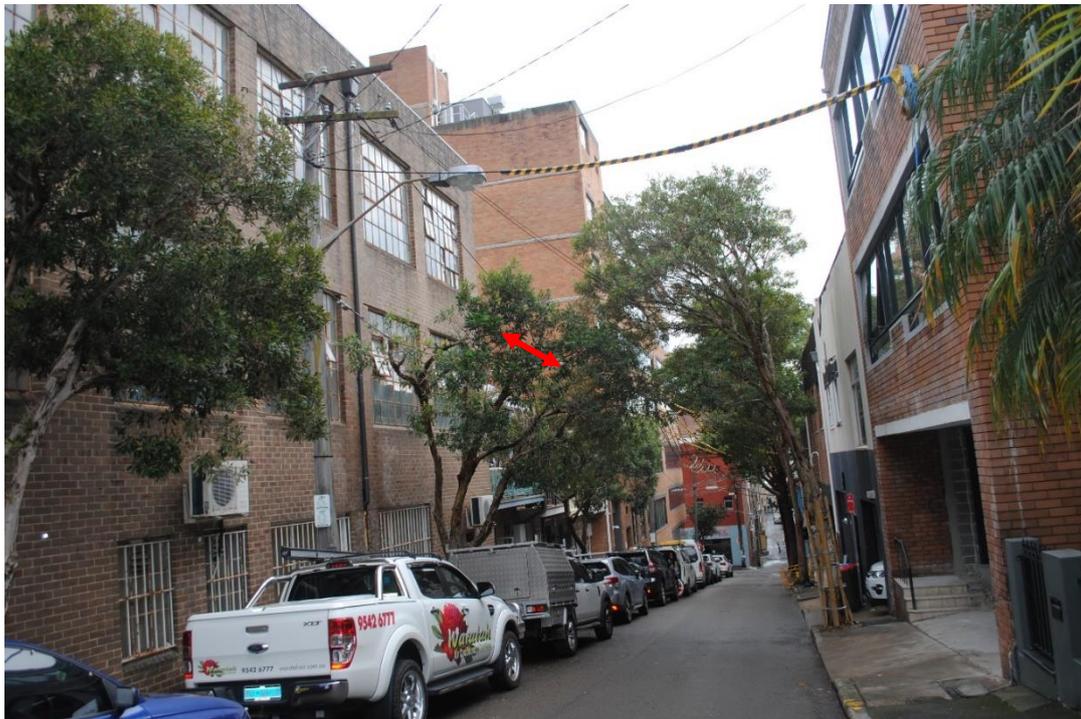
- (a) *Development must achieve and satisfy the outcomes expressed in the character statement and supporting principles.*

Response:

Achieved. Particularly, the proposal provides an active use to Kippax Street, which is not provided at the moment and currently undermined by an inappropriate street setback and parking area. The proposal also provides an appropriate “transition in scale” from warehouse buildings, including immediately to the west of the site. The site is not on Crown Street and is not heritage-listed.

The Sophia Street frontage has also been improved since the DA was lodged. This followed a worthwhile and constructive suggestion of the Design Review Panel (DRP) to provide a dual function of the loading area to include active use while not in use.

The higher buildings to the immediate west and east are shown in the photo below:



**Figure 4** – Photo looking west along Sophia Street

The proposal will also provide a benefit is helping visually shield the blank wall of the building to the west, which is discordant and detracting from the character of the area.

It is also noted that the adjoining proposed undetermined Boarding House also provides a higher street wall, to both Sophia and Kippax Streets.



**Figure 5** – North and south elevations to Sophia and Kippax Streets (adjoining DA blue)

The immediately adjoining building to the east is expected to be developed over time, and the proposal provides an appropriate form and siting for redevelopment of that site. This expectation is reflected in a current development proposal, which demonstrates that a proposal which generally complies with key development standards, and of a form markedly different to the existing building on the adjoining site, is commercially viable as a development proposal. This means, whether the adjoining undetermined DA is approved or not, redevelopment of the adjoining site can reasonably be considered likely.

*(b) Development is to respond to and complement heritage items and contributory buildings within heritage conservation areas, including streetscapes and lanes.*

Response:

Achieved. The scale, massing and materiality is appropriate for the area. The site is not a listed item nor within a Conservation Area. The heritage aspects of the proposal are addressed in the attached SoHI by GBA.

*(c) Maintain consistent intact residential streets.*

Response:

Achieved. The street is not a “residential” street, but a mixed use one, as reflected in the zoning (as opposed to other residentially-zoned blocks within the identified Locality).

*(d) Maintain views along Riley Street to Ward Park.*

Response:

Achieved. The proposal is not located on Riley Street.

*(e) Maintain the transition in built form scale, from taller buildings in the west, to consistent two storey areas in the east.*

Response:

Achieved. This is particularly relevant for the site where the building abuts a 7-storey form, including adjoining blank wall, and forms which mediate down to the east. The form reflects this and archives an appropriate transition in height and scale. Building to the maximum height limit is appropriate for this site.

The transition in scale to the adjoining buildings is illustrated in the photo below. This shows why it is desirable to build to the maximum height (given higher adjoining buildings), and to build



**Figure 4** – Photo looking north from Kippax Street

- (f) *Provide a strong edge and passive surveillance to Ward Park Sites on the corner of Riley and Devonshire Streets while creating a gateway to Riley Street from the south.*

Response:

Achieved. The proposal is not located on Riley Street or Devonshire Street.

- (g) *Retain the low scale of terrace houses along Richards Avenue. Single storey additions only are allowed at the rear of these houses to minimise the impact on Shannon Reserve.*

Response:

Achieved. The proposal is not located on Richards Avenue.

- (h) *New development is to maintain and respond to intact low scale terrace areas.*

Response:

Achieved. The proposal is not located in a low scale terrace area. Instead it abuts a 7-storey large warehouse building and adjoins a large blank wall.

- (i) *Retain and reinforce the two distinct retail characters; including the warehouse style retail outlets of Foveaux and Kippax Streets and the small lot pattern traditional retail strip of Crown Street with active uses dominated by restaurants, cafes and specialty shops.*

Response:

Achieved. An active use to the street alignment is provided along Kippax Street. This will be a significant improvement to the area and a significant positive change towards achieving the desired character of the area, as stated in the DCP.

- (j) *Allow the commercial precinct around Waterloo Street between Kippax and Devonshire Streets to continue, defined by remnant commercial warehouses, and landmarks such as the Reader's Digest building.*

Response:

Achieved. The adjoining warehouses are not affected and the proposed form is complementary to surrounding warehouse buildings. The retail and accommodation uses will also help support the many commercial uses and workers in those surrounding warehouse buildings, helping their longer term viability, to improve prospects for their retention.

- (k) *Retain the mixed use character of the north side of Devonshire Street.*

Response:

Achieved. The proposal is not located on Devonshire Street.

As can be seen, the proposal is consistent both with the existing character statement of the area and all 11 stated desired future characteristics for the area, as contained in principles for new development.

In summary, the proposal is wholly consistent with the objectives of the development standard and using the accepted approach in *Wehbe v Pittwater Council* [2007] NSWLEC 827, compliance with the development standard can be considered unnecessary or unreasonable.

**(b) that there are sufficient environmental planning grounds to justify contravening the development standard**

The case *Four2Five v Ashfield Council* [2015] NSWLEC 1009, NSWLEC 90, NSWCA 248 raises the issue that the grounds should relate to a site and specific proposal, rather than generic reasons.

The case *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 highlighted that:

1. The term “environmental planning grounds” is not defined and would include the objects of the EPA Act (Section 1.3);
2. The grounds must relate to the contravention of the development standard in question, not the whole development; and
3. The consent authority must indirectly be satisfied the applicant's written request provides sufficient environmental planning grounds, not directly form an opinion about there being sufficient environmental planning grounds to justify the contravention.

Also, given the term “environmental planning grounds” is wide in its nature, context and understanding, and given the Objects of the EPA Act 1979 give effect to all other planning instruments, DCPs and wide assessment criteria, a wide appreciation of the term is warranted.

In this context, the following environmental planning grounds are given to justify the proposed contravention of the FSR development standard, on this particular site and for this particular development:

- a) The FSR non-compliance essentially arises from building to the height limit in the LEP, number of storeys in the DCP and adopting no setbacks to the streets and side boundaries. This approach to siting, height and form is appropriate and wholly consistent with the LEP and DCP controls regulating building massing, except for the numerical FSR standard.

In this instance, adopting a massing approach which considers height (and a transition in height as desired for the area), and appropriate setbacks is not just acceptable, but desirable.

The immediately adjoining building to the east is expected to be developed over time, and the proposal provides an appropriate form and siting for redevelopment of that site. This expectation is reflected in a current development proposal, which demonstrates that a proposal which generally complies with key development standards, and of a form markedly different to the existing building on the adjoining site, is commercially viable as a development proposal. This means, whether the adjoining undetermined DA is approved or not, redevelopment of the adjoining site can reasonably be considered likely. This is also likely to mean the adjoining streetwall will increase and change the context, further supporting some reasonable development of this subject site.

The form, scale, height and FSR proposed is an appropriate form and “precedent” for the adjoining eastern site, and an appropriate mediation in scale from the west. This is illustrated in the montage below and other diagrams and illustrations submitted with the DA.



**Figure 5** – Montage from Sophia Street

- b) No adverse impacts are anticipated from the additional bulk, and the scale is appropriate for the site and area.
- c) The proposal complies with all other key or core controls regulating bulk, siting, height and massing, but for the numerical FSR standard;
- d) The site characteristics are such that additional FSR can be accommodated with acceptable outcomes, particularly due to the large high blank wall to the west, and terrace blank wall to the east, with public roads to the north and south. These characteristics of the site minimise the visual and amenity impacts from the additional GFA on both adjoining private and public land;
- e) The additional bulk means the rooftop communal area is higher, with better outlook and sunlight access, to significantly improve amenity for the site and future occupants, yet at no significant impact to others or the streetscape;
- f) The landscaped area is increasing, to provide a longer-term benefit for the landscaped setting of the site, including associated with the additional bulk;
- g) The density of the proposal is not excessive, and the intensity is mitigated by use as dwellings rather than more intense employment or other uses;
- h) The streetscape and public domain interface will be improved by the proposal, and additional bulk, including by building to the street alignment;
- i) While not technically eligible for a 0.3:1 "end of journey floorspace" due to not being for wholly office/employment use, generally equivalent bicycle parking, showering and change facilities are provided, which provides a wider public benefit as sought by the LEP incentive clause for such facilities;
- j) In terms of the Objects of the EPA Act, the proposal, including the non-compliant FSR and additional GFA of the building, is consistent with the following Objects of the Act:



- i. *to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations* – noting improved access to light and ventilation and improved healthy living for the residents of the dwelling, and increased density at a well-connected, inner-city location;
- ii. *to promote the orderly and economic use and development of land* – noting the well-considered siting and increased accommodation space, in a sensitive way;
- iii. *to promote the sustainable management of built and cultural heritage* – by no adverse impacts on heritage items and an improved streetscape and public domain interface outcome for the area;
- iv. *to promote good design and amenity of the built environment* – for the same reasons above and as the design is considered to provide a superior contribution to the streetscape and area compared to the current situation, and improved internal and external amenity, without compromising the amenity of neighbours of any significance;
- v. *to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants* – as the building allows excellent amenity, access and healthy living for the future occupants, again without compromising the health and safety of others;

As noted previously, the Objects of the EPA Act provide a framework for the Act itself, and its operative provisions, which include giving effect to other Environmental Planning Instruments. The proposal, and specifically the FSR non-compliance, also facilitates the following aims and objectives within Sydney LEP 2012 (Clause 1.2(2) more so than the current situation:

- (a) supporting a Metropolitan Sydney: by supporting jobs and residential accommodation close to the City and the CBD;
- (b) supporting the City of Sydney as an important place for business: by providing business uses and permanent accommodation to support business demand;
- (c) environmental sustainability: by increased accommodation and density on a well-connected site, diverse housing choice, allowing for good orientation and access to light/ventilation and not providing any excessive parking;
- (d) encouraging economic growth: by the employment on site, labour needed in construction, and residential density to support nearby centres;
- (e) residential diversity: by new housing stock which is suited to a range of occupants;
- (g) an appropriate land use to complement infrastructure: due to the nature of the use and the nature of the site/surrounds, and supporting services and infrastructure;
- (h) enhanced amenity for local communities: by providing appropriate amenity for the new building, without any significant anticipated adverse amenity impacts on neighbours;

- (i) support for mixed use centres: by supporting mixed uses and density near a local and metropolitan centre;
- (j) design excellence and high-quality development: by a well-designed and well-considered building; and
- (k) conservation of environmental heritage: by providing a well-designed building which respects and complements the attributes of the surrounding area and nearby heritage items.

The proposal is consistent with the overall aims of SLEP 2012.

#### 4. Clause 4.6(4) of SLEP 2012

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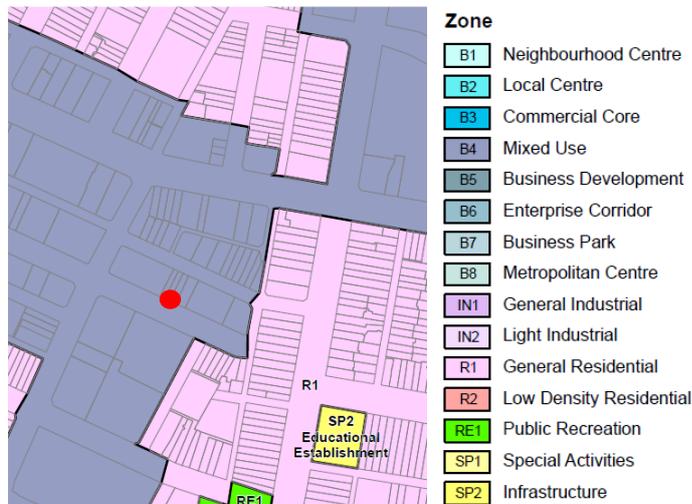
Clause 4.6(4) of SLEP 2012 states:

- (4) *Development consent must not be granted for development that contravenes a development standard unless:*
- (a) *the consent authority is satisfied that:*
- (i) *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
  - (ii) *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
- (b) *the concurrence of the Secretary has been obtained*

These are matters for the consent authority to be satisfied (as opposed to the applicant justifying as in Clause 4.6(3)). Despite this, further commentary is given to assist the consent authority in its' deliberations.

Clause 4.6(4)(a)(i) has been addressed in the previous Section of this written request. The objectives of the standard have also been addressed in the previous Section of this written request.

In terms of the zone objectives, the site is zoned Mixed Use B4 in SLEP 2012.



**Figure 5** – SLEP 2012 Zoning Map Extract

The objectives of this zone are:

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

The proposal is consistent with these zone objectives, noting:

- The proposal provides a diverse mix of uses on the site, which are compatible with each other and complementing the diverse nature of the area.
- The site is well-connected to public transport, jobs and services, to encourage use of public transport, walking and cycling. Car parking is not provided, loading is provided and bicycle storage provided in the basement (with a shower). This supports non-car based travel behaviour.
- The use and density on the site will support wider centres. The retail use will provide interest, vitality and vibrancy to the area, further enhancing the wider attractiveness of Surry Hills.

The proposal is entirely consistent with the zone objectives applying to the site.

#### **Clause 4.6(4)(b) – Concurrence of the Secretary**

Concurrence of the Secretary is not required as it is understood the City of Sydney Council has delegation from the Secretary.

#### 4. Clause 4.6(5) of SLEP 2012

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Clause 4.6(5) of SLEP 2012 states:

- (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.*

In these regards, the City of Sydney is understood to have delegation from the Secretary for the Department of Planning and Environment to consider and decide upon Clause 4.6 Variation Requests. In terms of Clause 4.6(5) (a)-(c), the following response is given;

- (a) No matter of significance for State or Regional environmental planning arises or is compromised by the non-compliance;
- (b) The integrity of the development standard will not be compromised by granting approval, noting the site-specific and proposal-specific considerations in this instance, which should not give rise to universal precedence elsewhere. In the circumstances of this application, there is no public benefit of maintaining the development standard. To the contrary: for the environmental planning reasons outlined in this written request; and given the consistency with the objectives of the development standard and zone, allowing the proposal, including its FSR non-compliance, will provide a public benefit in this instance;
- (c) There are no other known required or nominated matters by the Secretary to be taken into account.

For all the reasons given in this written request, the proposal should be approved and is justified, notwithstanding the numerical non-compliance with the FSR development standard in Clause 4.4 of *Sydney Local Environmental Plan 2012*.



Jason Perica  
Director