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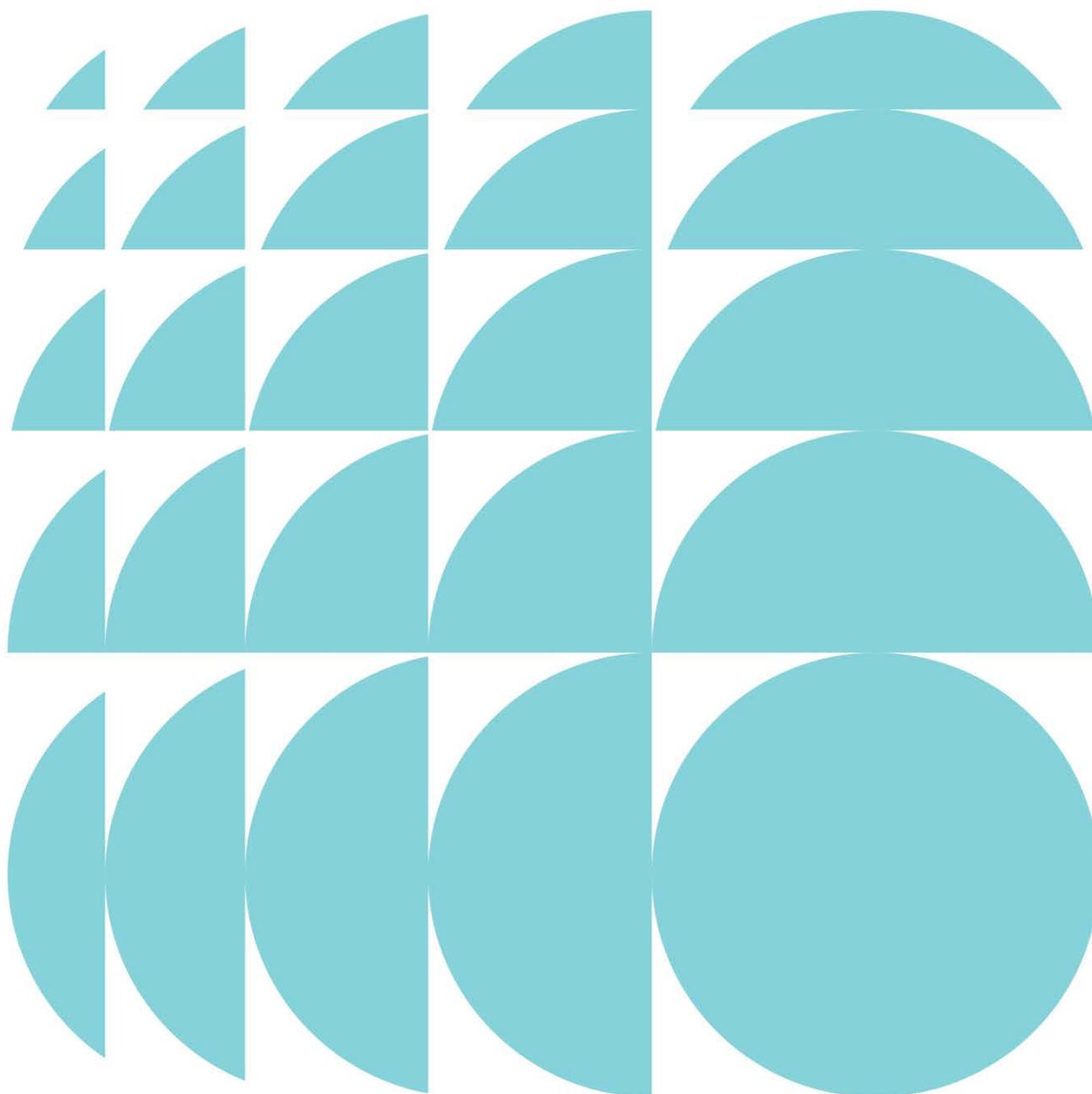
**Cause 4.6 Variation Request – Height of
Buildings**

Clause 4.6 Variation Request

55 Pitt Street, Sydney

Submitted to the City of Sydney Council
On behalf of Mirvac Capital Pty Ltd and Mirvac
Commercial Sub SPV Pty Ltd

15 June 2021 | 2210025



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1.0 Introduction

This clause 4.6 variation request has been prepared by Ethos Urban on behalf of Mirvac Capital Pty Ltd and Mirvac Commercial Sub SPV Pty Ltd (together Mirvac). It is submitted to the City of Sydney Council (Council) in support of a development application (DA) for the redevelopment of the site at 55 Pitt Street, Sydney (the site).

The proposed development seeks consent for:

- Demolition of existing basement walls, site preparation and remediation works.
- Bulk excavation to create three levels of basement to accommodate:
 - 79 car parking spaces, 10 service vehicle spaces and 13 motorbike parking spaces.
 - Loading dock facilities.
 - Service rooms such as waste room, fire pump room, fire control room, water meter and bin washing bay.
- New vehicular access to the basement levels from Dalley Street.
- Landscaping and public domain improvements, including:
 - Extension and widening of Queens Court to provide an active through-site link between Dalley Street and Underwood Street.
 - Widening of the Underwood Street footpath and upgrades to the existing Underwood Street Colonnade.
 - Ground floor retail tenancies fronting Pitt Street, Underwood Street (east-west) and Queens Court.
 - General public domain upgrades including new paving to Pitt Street, Underwood Street, Dalley Street and Queens Court.
 - The provision of street trees on Pitt Street and landscaped planters throughout Queens Court.
 - 8 bicycle spaces.
- Staged construction and use of a new commercial building containing up to 70,747m² of commercial and retail GFA, and comprising an 8-storey podium and a 45-storey tower, with the following key features:
 - A ground level entry 'Cove' lobby in the north eastern corner of the Site.
 - An elevated double height lobby with access from the 'Cove'.
 - 44 commercial office levels.
 - A total of 650 bicycle spaces and end-of-trip facilities on Level 3.
 - Three plant levels.
 - A rooftop garden terrace accessible to tenants and tenant visitors.
 - An architectural roof feature.
- Improvements to the existing Ausgrid and Telstra buildings on the Site, including treatments of the existing façades and roofscape.
- Provision of public art in various locations of the public domain, Queens Court lane, and internally within the new building.
- Extension and augmentation of services and utilities to the development, as required.

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

This clause 4.6 variation has been prepared to address the variation to the maximum height prescribed for the site under clause 6.25 of the Sydney LEP 2012 and should be read in conjunction with the Statement of Environmental Effects (SEE) prepared by Ethos Urban dated June 2021.

This clause 4.6 variation request demonstrates that compliance with the maximum height control is unreasonable and unnecessary in the circumstances of this case and that there are sufficient environmental planning grounds to justify contravention of the standard. This request is made in the context of clause 5.6 of the Sydney LEP 2012 which relates to architectural roof features.

This clause 4.6 variation request demonstrates that, notwithstanding the non-compliance with the maximum height of building control prescribed by clause 6.25 of the Sydney LEP 2012, the proposed development:

- Achieves the objective of clause 6.25 of the Sydney LEP 2012 by providing a development which aligns with the intended commercial uses of the Alfred Street, Pitt Street, Dalley Street and George Street (APDG) block while providing significant public benefit.
- Achieves the objectives of clause 4.3 of the Sydney LEP 2012 by:
 - Ensuring that the height of the development is in-keeping with the scale and character of neighbouring buildings and is of a form that will not result in any negative environmental impacts.
 - Respecting the character, appearance and scale of nearby heritage buildings.
 - Continuing to promote the sharing of views.
- Achieves the objectives of clause 5.6 of the Sydney LEP 2012 by:
 - Ensuring the architectural roof feature will not cause any adverse visual impacts nor adversely affect the amenity of neighbouring premises. Additionally, the proposed development will not impact on any significant view lines and vistas from the public domain.
 - Ensuring the architectural roof feature is a considered component in the overall proposed building design and integral in emphasising the verticality of the Soft-Core built form.
- Will deliver a compliant FSR of 16.52:1, consistent with the permitted FSR under the Sydney LEP 2012, and delivering 7,760 jobs.
- Relates only to the screening of elevator machine rooms, providing an opportunity to crown the building and extend the Soft-Core proportion of the massing, emphasising this element in the roofscape.
- Will have an appropriate impact, in terms of its scale, form and massing.
- Will promote the orderly and efficient use of land, in accordance with the objects of the *Environmental Planning and Assessment Act 1979* (the Act).

In light of the above, the consent authority can be satisfied that there is sufficient justification for the variation to the development standard, as proposed in accordance with the flexibility allowed under clause 4.6 of the Sydney LEP 2012 and in accordance with the provision of an architectural roof feature under clause 5.6 of the Sydney LEP 2012.

2.0 Background

The site has been subject to a long planning history, initially through the wider APDG master plan, and more recently with a site-specific planning proposal and further site-specific DCP amendment. The planning proposal received gateway determination on 22 June 2020 and was publicly exhibited with a draft Voluntary Planning Agreement (VPA) on 18 September 2020 to 16 October 2020. On 16 November 2020, Council endorsed post-exhibition amendments to the planning proposal and supporting Sydney DCP 2012 amendments and sent the planning proposal to the Department of Planning, Industry and Environment for finalisation.

While the site-specific amendments to the Sydney LEP 2012 and Sydney Development Control Plan 2012 (Sydney DCP 2012) are not yet finalised, gazettal is expected imminently. For further background, the planning proposal will amend the current APDG Clause (clause 6.25) of the Sydney LEP 2012 to:

- Establish a maximum building height of 232m to up to 44% of Block 5 (the Site).
- Establish a maximum floor space ratio of 15.02:1 (or up to 16.52:1 inclusive of the 10% additional floor space if the consent authority is satisfied that the building demonstrates design excellence).
- Permit for the purposes of calculating the floor space ratio, the inclusion of the Telstra and Ausgrid buildings.
- Transfer unused floor space from the adjacent Telstra and Ausgrid sites, with improvements proposed to both utility buildings in the form of façade and roof upgrades and new retail spaces in the Telstra building.
- Restrict development on Block 5 (the Site) to non-residential uses.
- Allow development consent to be granted only if development includes a through-site link and improvement works to the Telstra and Ausgrid Buildings.

This clause 4.6 variation request has been written in the context of these amendments, noting the imminent nature of the gazettal.

3.0 Development Standard to be Varied

3.1 Is the Planning Control in Question a Development Standard?

The environmental planning instrument to which this variation relates is the Sydney LEP 2012. The specific clause of Sydney LEP 2012 in contention relates to clause 6.25(3)(e) which is subject to gazettal, but is reproduced as follows:

‘Despite clause 4.3, development consent may be granted to the erection of a building with a maximum height of—

- a) 200 metres on up to 33% of the area of block 1, or*
- b) 155 metres on up to 42% of the area of block 2, or*
- c) 185 metres on up to 24% of the area of block 3, or*
- d) 248 metres on up to 25% of the area of block 4 and 238 metres on up to 12% of the area of that block.*
- (e) 232 metres on up to 44% of the area of block 5.***

(our emphasis)

It is clear that clause 6.25(3) of Sydney LEP 2012 contains two development standards, being:

1. a maximum height control for a building (in this case set at 232 metres); and
2. a maximum site coverage control for a building (in this case 44% for a building with a height of 232 metres).

The maximum height control as prescribed under clause 6.25(3e) of the Sydney LEP 2012 is therefore a development standard.

3.2 Variation Sought

The maximum height control established for the site under clause 6.25(3) of the Sydney LEP 2012 is 232 metres on up to 44% of the site. The proposed development comprises a commercial office building with a general height of 232 metres on 44% of the site, but across 10.4% of the site, an architectural roof feature is proposed which extends to RL 240.8 (238.1m in height).

The architectural roof feature will result in a variation to the height development standard by 6.1 metres (or 2.62%). This variation is localised to only the north western corner of the building, as illustrated in **Figure 1**. Architectural drawings providing further detail of the variation sought are provided at **Appendix A** of the SEE.

The proposed variation to the maximum height development standard for the site does not result in any additional floor space, and the roof features does not contain any gross floor area. Rather the function of the variation is to facilitate an integrated architectural roof feature which will create a consistent façade treatment that screens the lift motor rooms and associated building plant. Noting this, clause 5.6 of the Sydney LEP 2012 provides that:

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

- (a) to allow minor architectural roof features to exceed height limits,*
- (b) to ensure that any architectural roof feature does not cause an adverse visual impact or adversely affect the amenity of neighbouring premises,*
- (c) to ensure that architectural roof features are considered in the design of a building and form an integral part of a building’s design.*

(2) Development that includes an architectural roof feature that exceeds, or causes a building to exceed, the height limits set by this Plan may be carried out, but only with development consent.

(3) Development consent must not be granted to any such development unless the consent authority is satisfied that—

(a) the architectural roof feature—

- (i) comprises a decorative element on the uppermost portion of a building, and*
- (ii) is not an advertising structure, and*

- (iii) does not include floor space area and is not reasonably capable of modification to include floor space area, and
- (iv) will cause minimal overshadowing, and
- (b) any building identification signage or equipment for servicing the building (such as plant, lift motor rooms, fire stairs and the like) contained in or supported by the roof feature is fully integrated into the design of the roof feature.

The proposed exceedance in height due to the roof feature is provided in accordance with clause 5.6 of the Sydney LEP 2012 as set out above. While a variation under clause 4.6 may not be required due to the structure of clause 5.6, this written variation request has been prepared for completeness.



Figure 1 Three-dimensional view of the extent of variation to the approved 232 metres height plane

Source: Woods Bagot

4.0 Justification for Contravention of the Development Standard

Clause 4.6(3) of the Sydney LEP 2012 provides that:

4.6 Exceptions to development standards

- (3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:
 - (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and
 - (b) that there are sufficient environmental planning grounds to justify contravening the development standard.

Further, clause 4.6(4)(a) of the Sydney LEP 2012 provides that:

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

- (i) *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
 - (ii) *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
- (b) *the concurrence of the Secretary has been obtained.*

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

1. *Wehbe v Pittwater Council* [2007] NSW LEC 827.
2. *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1009.
3. *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 (Initial Action).
4. *Al Maha Pty Ltd v Huajun Investments Pty Ltd* [2018] NSWCA 245 (Al Maha).

4.1 Role of the consent authority

The role of the consent authority in considering this written request for a clause 4.6 variation has been recently explained by the NSW Court of Appeal in *Initial Action* and in *Al Maha* to require that the consent authority needs to be satisfied in relation to two matters:

- That the applicant's request has adequately addressed the matters in in clause 4.6(4)(a)(i).
- That the proposed development will be in the public interest because of its consistence with the objectives of the development standard and the zone objectives.

The consent authority is required to form these two opinions first before it considers the merits of the DA, and it can only consider the merits of the DA if it forms the required satisfaction in relation to the matters. In particular, the consent authority needs to be satisfied that there are proper planning grounds to grant consent and that the contravention of the standard is justified.

This report provides the basis for the consent authority to reach the required level of satisfaction.

This clause 4.6 variation request is proposed in the context of several clauses of the Sydney LEP 2012. Relevant matters contained in clause 4.6 of the Sydney LEP 2012, with respect to the height development standard, are each addressed below. The objectives and criteria in clause 5.6 of the Sydney LEP 2012 have also been identified for the purposes of justifying the architectural roof feature which is subject to the height variation. While a numerical height of building control is not identified in clause 4.3, rather under clause 6.25, the underlying objectives of clause 4.3 have been considered given they provide guidance on maximum heights under the Sydney LEP 2012.

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

In *Wehbe*, Preston CJ of the Land and Environment Court provided relevant assistance by identifying five traditional ways in which a variation to a development standard had been shown as unreasonable or unnecessary. However, it was not suggested that the types of ways were a closed class.

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

As the language used in subclause 4.6(3)(a) of the Sydney LEP 2012 is the same as the language used in clause 6 of SEPP 1, the principles contained in *Wehbe* are of assistance to this clause 4.6 variation request.

The five methods outlined in *Wehbe* include:

- The objectives of the standard are achieved notwithstanding non-compliance with the standard (**First Method**).

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

This clause 4.6 variation request establishes that compliance with the development standard is unreasonable or unnecessary in the circumstances because the objectives of the height development standard are achieved notwithstanding the non-compliance with the standard (First Method).

4.2.1 Clause 6.25 objective

As previously noted, the maximum height development standard for the site is stipulated under clause 6.25 of the Sydney LEP 2012. As such, this section provides justification as to how the proposed variation aligns with the objective of clause 6.25. The objective as contained under clause 6.25 of the Sydney LEP 2012 requires development to provide for:

... additional building height on parts of certain sites (within the area bounded by Alfred Street, Pitt Street, Dalley Street and George Street (known as the "APDG block")) if the development of the site provides for publicly open space, lanes and other links through the site.

The development, including the proposed height variation, continues to align with the objective as listed under clause 6.25 for the following reasons:

- The design facilitates the redevelopment of the site to achieve a high quality urban built form.
- The proposal will have minimal impact on views and will result in no overshadowing to the protected public spaces as stipulated under clause 6.19 of the Sydney LEP 2012.
- The existing permeability of the site will be improved through the extension of Queens Court which will provide pedestrians with a connection from Dalley Street to Underwood Street and also provide future workers and visitors with areas suitable for outdoor dining and a place to meet.
- Enhanced pedestrian connections will be created through the ground plane due to proposed porous corner of Pitt and Underwood Streets.
- The development as a whole will provide 70,746m² of commercial floor space which will contribute to the globally competitive CBD.

4.2.2 The underlying objectives or purposes of the development standard are achieved notwithstanding non-compliance with the standard

Clause 6.25(3) establishes the maximum height for the site, while clause 4.3 establishes the broader objectives for the height of buildings in the City of Sydney Local Government Area. As such, the objectives of the height of buildings development standard under clause 4.3 are also addressed in this section. They include:

- (a) to ensure the height of development is appropriate to the condition of the site and its context,*
- (b) to ensure appropriate height transitions between new development and heritage items and buildings in heritage conservation areas or special character areas,*
- (c) to promote the sharing of views,*
- (d) to ensure appropriate height transitions from Central Sydney and Green Square Town Centre to adjoining areas,*
- (e) in respect of Green Square –*

- (i) to ensure the amenity of the public domain by restricting taller buildings to only part of a site, and
(ii) to ensure the built form contributes to the physical definition of the street network and public spaces.

The proposal is assessed against the objectives for the height of buildings development standard below for completeness. As this clause 4.6 variation request is also related to an architectural roof feature, the objectives of clause 5.6 have also been assessed below.

Clause 4.3 – Height of Buildings Development Standard

The proposal's consistency against the objectives as listed under clause 4.3 of the Sydney LEP 2012 are listed in **Table 1** below.

Table 1 Proposal's consistency with Clause 4.3 objectives

Objective	Comment
Objective 4.3 (1)(a): to ensure the height of development is appropriate to the condition of the site and its context	The site is located in the Sydney CBD, one of the highest density centres in Australia. The site also sits within the APDG Block which forms an important part of the financial, professional and business services core of Central Sydney. Importantly, directly north of the site, an architectural roof feature was approved on the site at 182 George Street and 33-35 Pitt Street (referred to as the Lendlease CQ Tower), which included a 15 metre variation to the development standard. The height proposed and subject to this clause 4.6 variation request aligns with the approved architectural roof feature of the Lendlease CQ Tower to the north. Notwithstanding the non-compliance with the height of buildings standard, the proposal meets the aims of objective 4.3(1)(a).
Objective 4.3 (1)(b): to ensure appropriate height transitions between new development and heritage items and buildings in heritage conservation areas or special character areas	There are several heritage items in the vicinity of the site, including the Cliveden Commercial Building and the former Northumberland Insurance Building. The location of the proposed architectural roof feature on the north western corner of the site at the uppermost levels of the tower will ensure no surrounding heritage items are impacted. Overall, the proposed variation continues to maintain appropriate height transitions between new development and the surrounding heritage items.
Objective 4.3 (1)(c): to promote the sharing of views	The proposed variation will not result in any significant additional impacts to views from surrounding buildings or public places. As previously mentioned, the Lendlease CQ Tower which is under construction, includes an architectural roof feature with a height that aligns with the top of the roof feature proposed as part of this clause 4.6 variation. The CQ Tower rooftop feature includes a useable landscaped rooftop. View impacts from the CQ Tower rooftop terrace to the proposed roof feature are considered negligible given primary and more highly valued views are to the north and the significant setback as a result of the BMU which wraps the perimeter of the western rooftop feature on CQ Tower. The outlook from the commercial office levels below the roof feature of the CQ Tower will be improved by way of appropriate screening proposed as part of the proposed roof feature. In addition, the component of the development which exceeds the height of buildings development standard, being the proposed architectural roof feature, does not significantly impact existing public or private views as: <ul style="list-style-type: none"> • The site is not positioned in any significant view corridors. • The existing development on the site already inhibits views across the site, and the new building will be to a much greater height which is largely above surrounding building heights. • The additional height associated with the architectural roof feature will not block any significant views for surrounding residences. • The additional height (given its location and height relative to the ground plane) will not be discernible.
Objective 4.3(1)(d) to ensure appropriate height transitions from Central Sydney and Green Square Town Centre to adjoining areas	Objective 4.3 (1)(d) is not relevant since the site is not within Green Square Town Centre and is within the centre of the Central Sydney catchment area.
Objective 4.3(1)(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	Objective 4.3 (1)(e) is not relevant since the site is not within Green Square Town Centre.

Objective	Comment
(ii) to ensure the built form contributes to the physical definition of the street network and public spaces.	

Clause 5.6 – Architectural roof feature

The proposal's consistency against the objectives as listed under clause 5.6 of the Sydney LEP 2012 are listed in **Table 2** below.

Table 2 Proposal's consistency with Clause 5.6 objectives

Objective	Comment
Objective (a): to allow minor architectural roof features to exceed height limits	The height exceedance of 6.1 metres (2.62%) is contained within the north western corner of the building and will impact 10.4% of the site. As such, the variation is minor in nature.
Objective (b): to ensure that any architectural roof feature does not cause an adverse visual impact or adversely affect the amenity of neighbouring premises	While buildings immediately surrounding the site are predominately mid-rise, there is an increasing number of taller high-rise towers immediately surrounding the site including 1 Alfred Street, Lendlease CQ Tower, 200 George Street and 210-220 George Street. Additional height on the neighbouring tower to the north (the Lendlease CQ Tower) has been approved for the purposes of an architectural roof feature, with the majority of commercial office levels are contained generally at a height lower than the proposed architectural roof feature. The proposed roof feature subject to this clause 4.6 variation request will result in a height that aligns with the height of the Lendlease CQ Tower. The roof feature will provide adequate screening to limit view impacts from the Lendlease CQ Tower's commercial floors. The useable component of the landscaped rooftop of the CQ Tower will be setback to reduce visual impacts from tenants of the building, with the roof feature unlikely to be substantially visible. Given the proposed tower is taller than most other buildings within the site's surroundings, the amenity of other neighbouring premises will not be compromised by the architectural roof feature.
Objective (c): to ensure that architectural roof features are considered in the design of a building and form an integral part of a building's design	The architectural roof feature will be an integral part of the building form, function and overall design. The feature presents a unique opportunity for the design to emphasise the Soft-Core which provides soft services to tenancies distributed vertically throughout the tower's commercial floorplates. It will provide a consistent façade as seen on lower levels to screen the elevator machine rooms and effectively crown the building.

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

Clause 4.6(3)(b) of the Sydney LEP 2012 requires the contravention of the development standard to be justified by demonstrating that there are sufficient environmental planning grounds to justify the contravention. The focus is on the aspect of the development that contravenes the development standard, not the development as a whole. 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* at [24]).

In *Four2Five*, the Court found that the environmental planning grounds advanced by the applicant in a Clause 4.6 variation request must be particular to the circumstances of the proposed development on that site [60]. In this instance, the relevant aspect of the development is the architectural roof feature on the western component of the tower.

There are sufficient environmental planning grounds to justify contravention of the height of buildings development standard in this specific instance, as described under the relevant headings below.

Design excellence

In accordance with Section 3.5 of *City of Sydney Competitive Design Policy 2013*, an International Architectural Design Competition for the 55 Pitt Street project was held in late-2020/early-2021. The purpose of the design competition was to select the scheme that exhibited the highest quality architectural, landscape and urban design solution for the site in response to the Competition Brief.

Following the six competitor's submissions and presentations, the Jury invited two finalists (Tzannes and Woods Bagot + SHoP) to provide further refinements on their proposals. Subsequently, the Jury selected Woods Bagot + SHoP as the winning scheme given the proposal presented a distinctive character, and the strongest marketability and commercial presence noting the objectives of the Competition Brief.

Notably, one of the matters for consideration which was requested by the Jury before finalising their decision was the consideration of rooftop amenity and landscaping for tenant use. Woods Bagot + SHoP worked on improving the usability and amenity of the roof, providing an accessible rooftop space, with the lift and associated plant heightened to service this space. The proposed roof feature will provide adequate screening to the lift motor room, providing an opportunity to crown the building, and also extending the architecture of the Soft-Core, emphasising the verticality of this element in the skyline.

Architectural roof feature

Clause 5.6 of Sydney LEP 2012 provides that architectural roof features are able to exceed the height limit for the site, provided certain criteria are met:

(3) Development consent must not be granted to any such development unless the consent authority is satisfied that—

(a) the architectural roof feature—

(i) comprises a decorative element on the uppermost portion of a building, and

(ii) is not an advertising structure, and

(iii) does not include floor space area and is not reasonably capable of modification to include floor space area, and

(iv) will cause minimal overshadowing, and

(b) any building identification signage or equipment for servicing the building (such as plant, lift motor rooms, fire stairs and the like) contained in or supported by the roof feature is fully integrated into the design of the roof feature.

This criterion is addressed below.

(i) comprises a decorative element on the uppermost portion of a building

The architectural roof feature has been intentionally designed in a way to emphasise the verticality of the building form, acting as an extension of the strong linear façades, and appropriately concealing the building services. The feature will provide an opportunity to crown the building and extend the Soft-Core proportion of the massing, providing an interesting addition to the skyline. In contrast to the lower eastern wing of the tower, the western component asserts its independence with an alternative top of building resolution.

(ii) is not an advertising structure

The proposed architectural roof feature is not an advertising structure and is not proposed to be used as such at any time in the future.

(iii) does not include floor space area and is not reasonably capable of modification to include floor space area

The proposed architectural roof feature does not include any floor space, with all floor space located below the maximum height limit. As shown in **Figure 2**, the only elements which are contained within the rooftop feature include the lift motor room and plant material. The increased lift height and subsequent overrun will allow the lift to access the rooftop level, ensuring tenants and their visitors are able to use the rooftop terrace and maximise the amenity and usability of the building as a whole. The screening and all GFA associated with the rooftop terrace is located below the maximum height limit, as illustrated in **Figure 2**.

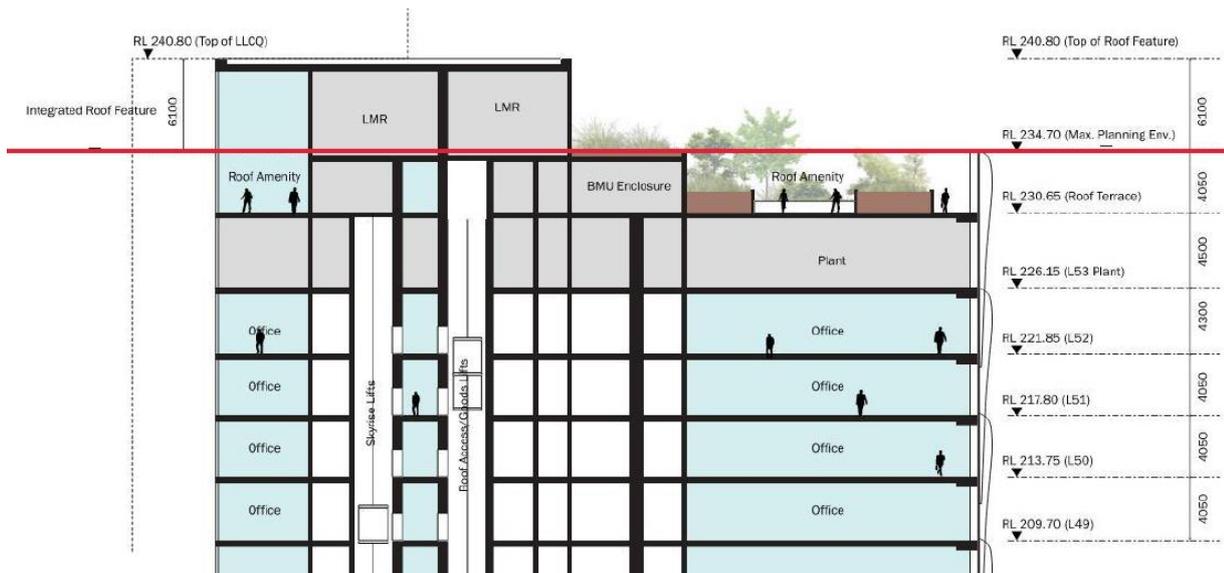


Figure 2 Section through roof showing RL234.70 (232 metres) height plane and extent of height variation

Source: Woods Bagot

(iv) will cause minimal overshadowing

The proposed architectural roof feature will not result in any significant overshadowing, particularly given it is a small component of the overall built form. Sun eye diagrams are included in **Appendix B** of the SEE and demonstrate that the impact will be minimal.

(b) any building identification signage or equipment for servicing the building (such as plant, lift motor rooms, fire stairs and the like) contained in or supported by the roof feature is fully integrated into the design of the roof feature.

The architectural roof feature discretely screens equipment for servicing the building such as the lift motor room, of which will not be perceivable from ground floor and not obvious from neighbouring buildings.

Environmental impacts

The proposed development, despite the contravention of the maximum height development standard, does not cause significant additional environmental impact which would render it incompatible with its surrounding land uses and ensures the proposal is appropriate for the context of the site. In particular, there will be no significant additional overshadowing impacts to the surrounding public realm or existing residential receivers surrounding the site. There will also be no significant additional impacts to the existing residential receivers surrounding the site in terms of overlooking and privacy.

Consistency with Objects of the EP&A Act

In *Initial Action*, the Court stated that the phrase “environmental planning grounds” is not defined but would refer grounds that relate to the subject matter, scope and purpose of the EP&A Act, including the objects in section 1.3 of the Act. While this does not necessarily require that the proposed development should be consistent with the objects of the Act, nevertheless, as set out in **Table 3** the proposal is broadly consistent with each object, notwithstanding the proposed variation of the maximum height development standard.

Table 3 Assessment of consistency of the proposed development with the Objects of the EP&A Act

Object	Comment
(a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources	The proposed height variation will promote the social and economic welfare of the community by enabling a higher performing building with enhanced amenity catering to tenants seeking to position themselves in the Sydney CBD. The proposed development as a whole will deliver 700 Full Time Equivalent (FTE) construction jobs and approximately 7,060 operational jobs when the building is fully occupied. This is a significant contribution to an area which is well serviced by public transport services.

Object	Comment
(b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment	The proposed variation allows for building services to be located above the maximum height limit. It will facilitate the usability of the rooftop terrace by future tenants and visitors, providing a highly sustainable development outcome. Furthermore, the height variation will have no negative impact on environmental and social considerations and will support the economic health of the Sydney CBD.
(c) to promote the orderly and economic use and development of land	<p>The site is significantly underutilised and outdated, occupied by older commercial office buildings. The site is strategically located within the Sydney CBD, in proximity to existing heavy rail, bus and ferry services as well as the future Martin Place Metro Station.</p> <p>When realised, the proposal will deliver 70,746m² of employment generating floor space. The proposed development will deliver approximately 700 Full Time Equivalent FTE construction jobs and approximately 7,060 operational jobs when the building is fully occupied.</p> <p>Strict compliance with the maximum building height control would be a lost opportunity to enable improved usability of the rooftop which will cater to future tenants and visitors and will add to the diversity of functional rooftops in Sydney's CBD.</p> <p>The proposal is a balanced and orderly design outcome that responds to the unique characteristics of the site and does not represent the over intensification of land as it does not comprise habitable commercial office floor space above the height limit.</p>
(d) to promote the delivery and maintenance of affordable housing	The proposal relates to non-residential uses, and therefore this object is not relevant.
(e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats	The proposal will not have any impact on threatened species or ecological communities.
(f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage)	The proposal will not impact built or cultural heritage.
(g) to promote good design and amenity of the built environment	The proposal will promote good design and amenity of the built environment by exhibiting a high quality and sculptured design which adds to the architectural diversity of the Sydney CBD skyline.
(h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants	The proposal will comply with the relevant provisions of the BCA and will promote the health and safety of occupants.
(i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State	This object is not relevant to this proposal, however, the proposal has adhered to the required planning processes for the site and scale of development, and implements the strategic planning priorities for employment growth in Central Sydney.
(j) to provide increased opportunity for community participation in environmental planning and assessment	The proposed development will be publicly exhibited in accordance with the requirements of Council's Community Participation Plan.

4.3.1 Conclusion on clause 4.6(3)(b)

There are sufficient environmental planning grounds to justify contravening the development standard as:

- The contravention will enable the design to respond to the comments made by the Jury during the design competition process which requested further consideration into the amenity of the rooftop and landscaping for tenant use.
- The roof feature responds to the criteria for architectural roof features contained in clause 5.6 of the Sydney LEP 2012, comprising a decorative top of building element which does not comprise floor space, screens plant, and is free of signage.
- The roof feature is consistent with the built form of the adjacent Lendlease CQ Tower which is currently under construction.

4.4 Clause 4.6(4)(a)(i): The applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3)

This written request adequately and comprehensively addresses the matters required to be demonstrated by subclause (3).

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

In *Initial Action* at [27], it was held that it is the proposed development's consistency with the objectives of the development standard and the objectives of the zone that make the proposed development in the public interest. The proposal is in the public interest because it is consistent with the objectives of the development standard and the objectives of the zone.

Consistency Caselaw

Consistency has been defined throughout caselaw including the following Land and Environment Court cases:

- *Addenbrooke v Woollahra Municipal Council* [2008] NSWLEC 190
- *Schaffer Corporation v Hawkesbury City Council* (1992) 77 LGRA 21
- *Raassis v Randwick City Council* [2019] NSWLEC 1040
- *Abrams v Council of City of Sydney* [2018] NSWLEC 1648
- *Kingsland Developments v Parramatta Council* [2018] NSWLEC 1241
- *Dem Gillespies v Warringah Council* (2002) 124 LGERA 147

In these cases, consistency is considered to be different to that of 'achievement'. The term 'consistent' has been considered in a judgements of the Court in relation to zone objectives and has been interpreted to mean "compatible" or "capable of existing together in harmony" (*Dem Gillespies v Warringah Council* (2002) 124 LGERA 147; *Addenbrooke Pty Ltd v Woollahra Municipal Council* [2008] NSWLEC 190) or "not being antipathetic" (*Schaffer Corporation v Hawkesbury City Council* (1992) 77 LGRA 21). Whichever interpretation is adopted the test of "consistency", is less onerous than that of "achievement".

4.5.1 Consistency with objectives of the development standard

The proposed development is consistent with the objectives of the height development standard, for the reasons discussed in **Section 4.2.2** of this report.

4.5.2 Consistency with objectives of the zone

The proposed development is consistent with the objectives of the B8 Metropolitan Centre Zone, as it:

- Provides for a development that is of an intensity consistent and commensurate with the site's location in the Sydney CBD.

- Provides for a diversity of land uses complementary to Sydney's global status and will contribute to the strength of Sydney's status as a world city.
- Facilitates significant public benefit in the form of a public lane in the extended Queens Court, a new activated ground plane, and the upgrade of two utility buildings which contribute to the APDG precinct.
- Will provide commercial workspace which is well connected to major transport infrastructure such as heavy rail, bus and ferry services as well as the future Martin Place Metro Station.

4.6 Other Matters for Consideration

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

- (5) *In deciding whether to grant concurrence, the Secretary must consider:*
- (a) *whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
 - (b) *the public benefit of maintaining the development standard, and*
 - (c) *any other matters required to be taken into consideration by the Secretary before granting concurrence.*

These matters are addressed in detail below.

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

The variation of the development standard does not raise any matter of significance for State or regional planning. As relevant to State and regional planning, the proposal is consistent with the Greater Sydney Regional Plan – A Metropolis of Three Cities and the Eastern City District Plan in that it:

- Supports and contributes to growing a stronger and more competitive Harbour CBD by providing new commercial office floor space and jobs in Central Sydney.
- Provides access to jobs within a location which is well serviced by primary transport modes such as bus, train, ferry and future metro services.
- Provides workers with access to a green rooftop which can be utilised throughout the working week.
- Exhibits design excellence, contributing to places within the Eastern City District that are enjoyable, attractive and functional.

Furthermore, the variation of the maximum height development standard does not result in any significant adverse impacts on the surrounding area, or surrounding residences, and enables a high quality design that provides a useable rooftop terrace for tenants.

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

As outlined in **Section 4.3** above, there are sufficient environmental planning grounds to warrant contravention of the development standard and it is considered to be in the public interest for the variation to be supported in this case. As the architectural roof feature is provided partially in response to a recommendation of the Competition Jury for rooftop access in the proposal, it is considered appropriate and a positive strategy to provide access to the rooftop while screening lift overruns and plant. The proposed roof feature is provided in full compliance with clause 5.6 of the Sydney LEP 2012, and will ultimately provide an interesting and high quality addition to the skyline while improving the amenity and usability of the building for future tenants. As such, the proposed variation is in the public interest and necessary, and there is no foreseeable public benefit in maintaining the development standard.

4.6.3 Clause 5.6(5)(c): Any other matters required to be taken into consideration by the Director-General before granting concurrence.

There are no other matters required to be taken into consideration.

5.0 Conclusion

The assessment above demonstrates that compliance with the maximum height development standard contained in clause 6.25(3) of the Sydney LEP 2012 (to be amended) is unreasonable and unnecessary in the circumstances of the case and that the justification is well founded. It is considered that the variation allows for the orderly and economic use of the land in an appropriate manner, whilst also allowing for a better outcome in planning terms.

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

- Achieves the objective of clause 6.25 of the Sydney LEP 2012 by continuing to provide a development which aligns with the commercial uses of the APDG block while providing significant public benefit.
- Achieves the objectives of clause 4.3 of the Sydney LEP 2012 by:
 - Ensuring that the height of the development is in-keeping with the scale and character of neighbouring buildings and is of a form that will not result in any adverse environmental impacts.
 - Respecting the character appearance and scale of nearby heritage buildings.
 - Continuing to promote the sharing of views.
- Achieves the objectives of clause 5.6 of the Sydney LEP 2012 by:
 - Ensuring the architectural roof feature will not cause any adverse visual impacts nor adversely affect the amenity of neighbouring premises. Additionally, the proposed development will not impact on any significant view lines and vistas from the public domain.
 - Ensuring the architectural roof feature is a considered component in the overall proposed building design and integral in emphasising the verticality of the built form.
- Relates only to the screening of lift motor rooms and overruns, providing an opportunity to crown the building and extend the Soft-Core proportion of the massing, emphasising this element in the roofscape.
- Will have an appropriate impact, in terms of its scale, form and massing.
- Will promote the orderly and efficient use of land, in accordance with the objects of the Act.

The proposed development will maximise employment generation on the site consistent with the metropolitan and district plans as well as Council's Local Strategic Planning Statement. Therefore, the DA may be approved with the variation as proposed in accordance with the flexibility allowed under clause 4.6 and in accordance with clause 5.6 of the Sydney LEP 2012.