

Attachment C

Clause 4.6 Variation Requests

Clause 4.6 – Building Height

Piccadilly Hotel + Brougham Street Terraces

169-173 Victoria Street & 92-98 Brougham Street, Potts Point

Submitted to City of Sydney Council

On behalf of PG Capital



'Gura Bulga'

Liz Belanjee Cameron

'Gura Bulga' – translates to Warm Green Country. Representing New South Wales.

By using the green and blue colours to represent NSW, this painting unites the contrasting landscapes. The use of green recognizes tranquillity and health. The colour cyan, a greenish-blue, sparks feelings of calmness and reminds us of the importance of nature, while various shades of blue hues denote emotions of new beginnings and growth. The use of emerald green in this image speaks of place as a fluid moving topography of rhythmical connection, echoed by densely layered patterning and symbolic shapes which project the hypnotic vibrations of the earth, waterways and skies.

Ethos Urban acknowledges the Traditional Custodians of Country throughout Australia and recognizes their continuing connection to land, waters and culture.

We acknowledge the Gadigal people, of the Eora Nation, the Traditional Custodians of the land where this document was prepared, and all peoples and nations from lands affected.

We pay our respects to their Elders past, present and emerging.

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1.0 Introduction

This Clause 4.6 variation request has been prepared by Ethos Urban on behalf of the applicant and reflects revised architectural plans prepared by Woods Bagot in July 2022. It is submitted to City of Sydney Council (the Council) in support of a Development Application for adaptive reuse of the existing Piccadilly Hotel (171 Victoria Street), 169 Victoria Street and 92-98 Brougham Street for use as a hotel with associated food and beverage uses.

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

This Clause 4.6 variation request relates to the development standard for the maximum Height of Building Control under Clause 4.3 of the Sydney LEP and should be read in conjunction with the Statement of Environmental Effects (SEE) and accompany architectural plans and design statement.

This request demonstrates that compliance with the numeric maximum Height of Buildings standard applying to the site is unreasonable and unnecessary in the circumstances of the specific case, and that there are sufficient environmental planning grounds to justify contravention of the standard. The request also demonstrates that the proposed development is consistent with the objectives of LEP 2012 and Environmental Planning and Assessment Act 1979 (EP&A Act), is justified by environmental planning grounds, and is in the public interest.

2.0 Clause 4.6 – Variation to Development Standards

Clause 4.6(3) of LEP 2012 requires Council to consider a written request from the applicant that seeks to justify the contravention of the development standard. Clause 4.6(4)(a) states that development consent must not be granted for development that contravenes a development standard unless the consent authority is satisfied:

- *that the applicant's written request has adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case;*
- *that the applicant's written request has adequately demonstrated that 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 relevant matters contained in Clause 4.6 of the Sydney LEP, with respect to the Height of Building development standard, are each addressed in this letter. This Clause 4.6 variation request:

- *identifies the development standard to be varied and the variation sought*
- *establishes that compliance with the development standard is unreasonable or unnecessary in the specific circumstances the proposal;*
- *demonstrates there are sufficient environmental planning grounds to justify the contravention, because it is consistent with the objectives of the zone and the development standard;*
- *demonstrates that the proposed variation is in the public interest; and*
- *provides an assessment of the matters the secretary is required to consider before providing concurrence.*

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

- *Wehbe v Pittwater Council [2007] NSW LEC 827;*
- *Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 1009;*
- *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118; and*
- *Turland v Wingecarribee Shire Council [2018] NSWLEC 1511*

3.0 Height of Buildings – Clause 4.3 of LEP 2012

This Clause 4.6 variation request seeks to justify a contravention of the development standard set out in Clause 4.3 of the Sydney LEP 2012 – Height of Buildings. As shown below in **Figure 1**, the sites have a maximum Height of Buildings Control of 12m.

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 outside Central Sydney,
 - 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.

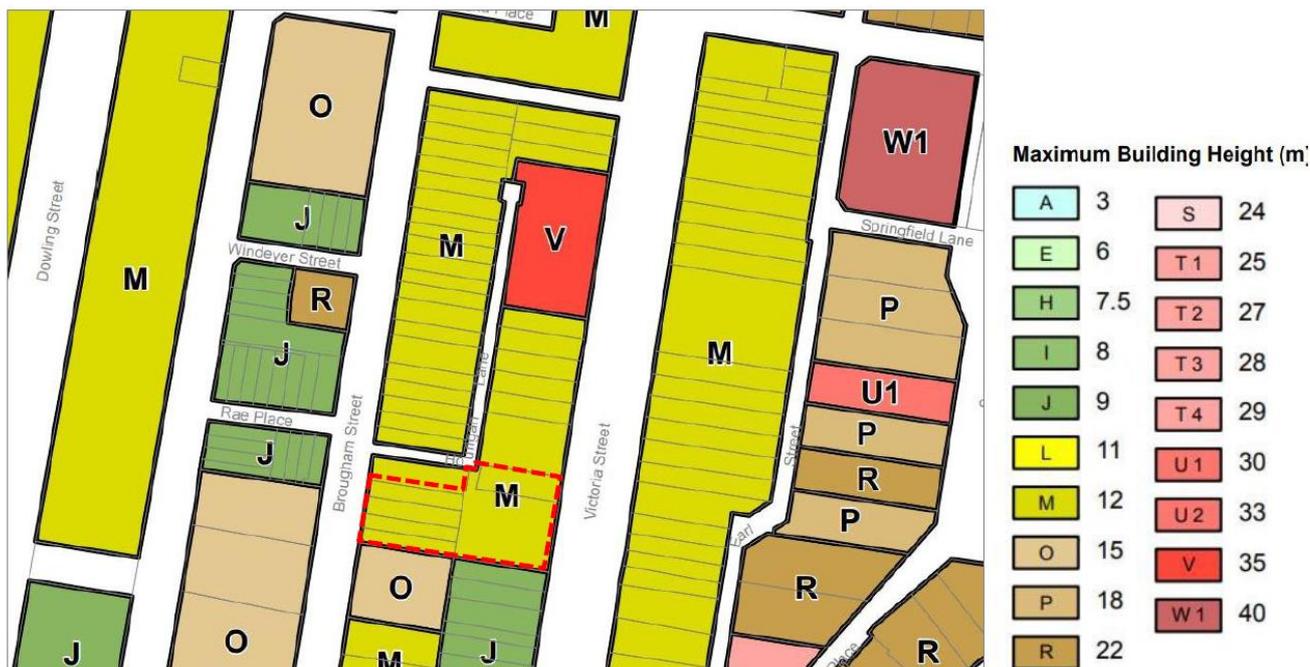


Figure 1 Height of Building Map (12m) - site outlined in red

Source: Sydney LEP 2012

The site comprises the following properties:

- 169 Victoria Street, Potts Point – also formerly known as The Golden Apple, at SP 19010
- 171-173 Victoria Street, Potts Point – also known as the Piccadilly hotel, at Lot 1 in DP 82775
- 92 Brougham Street, Potts Point – Lot 1 in DP 724376
- 94 Brougham Street, Potts Point – Lot 1 in DP 904094
- 96 Brougham Street, Potts Point – SP 17354
- 98 Brougham Street, Potts Point – Lot 100 in DP 613011

4.0 Background of Development

The development fronting Brougham Street comprises four Victorian terraces, which have been subject to extensive internal remodelling and contemporary additions to the rear. The terraces at 92, 94 and 98 are currently being used as single dwellings, whilst the property at 96 Brougham Street has been externally remodelled and divided into three separate units.

The development fronting Victoria Street comprises the Piccadilly Hotel which is a three-storey heritage bar and hotel formerly occupied by SoHo Nightclub, and The Golden Apple which is a three-storey terrace with contemporary additions at the rear and was formerly used as a brothel. Both the Piccadilly Hotel and The Golden Apple have remained vacant for a number of years and have been progressively acquired with the aim to revitalise and repurpose them for their next lifecycle.

The original building on the site was constructed in the 1970's and was previously used as the NSW Police headquarters. In 2007 a Development Application was endorsed by the Central Sydney Planning Committee for alterations and adaptive reuse of the existing commercial building for residential with ground floor retail.

The adaptive reuse was the subject of a design competition and subsequently designed by Scott Carver Architects and constructed by Hutchinson's Builders, being completed in 2011. The site has been subject to several modifications since the original approval, none of which have related to the lot the subject of this DA. The site is currently vacant.

4.1 Proposed Development

This Clause 4.6 variation request has been prepared to accompany a Development Application seeking consent for use as a hotel with associated food and beverage uses, including:

Partial demolition, excavation and alterations and additions to the buildings, retaining the significant fabric of heritage buildings and reinstating the original built form to Brougham Street terraces (removing the unsympathetic addition to 96 Brougham Street)

- Fitout and use for 17 hotel rooms within the Brougham Street terraces and 169 Victoria Street, with associated staff facilities including bicycle parking within the Piccadilly Hotel
- Basement servicing/storage and kitchen, ground floor food and beverage/retail, and upper-level dining facilities associated with the hotel, enclosed within a new roof form of the Piccadilly Hotel building
- Bar to be located on the lower ground floor of 169 Victoria Street
- Construction of an enclosable courtyard between the Victoria and Brougham Street buildings incorporating trees within the courtyard and landscaping to the roof structure
- The operation of the Hotel use and associated food and beverage uses will be subject to separate development approval.

5.0 Nature and Extent of Variation

The proposed development seeks to utilise floor space within the existing envelope of the site (particularly the Piccadilly Hotel) without adversely impacting existing views, solar access to surrounding properties, streetscapes, heritage fabric, or subdivision patterns while ensuring the desired future character of Potts Point, Kings Cross and Woolloomooloo respectively is maintained.

The proposed design inchoates minor excavation within the basement of the Piccadilly Hotel that will become useable floor space for kitchen, back of house and storage facilities, as well as the enclosure of the 'garden room' between the Victoria Street and Brougham Street priorities. This enclosure, from a technical Gross Floor Area perspective has been proposed to suitably manage and mitigate impacts to surrounding residential development, particularly No 100 Brougham Street.

The proposal includes the extension of the existing upper level of the Piccadilly Hotel which is covered with a contemporary, lightweight, architectural roof feature. The proposed building height of this roof feature does not create floor space that what would otherwise be realised from a standard sloping roof to this level, but seeks to

maximise the architectural response, natural light, views and amenity of occupants, whilst ensure that solar access to and views from surrounding properties is not impacted.

The Sydney LEP 2012 maximum building height development standard for the site (all lots within the site) is 12m. The proposed development seeks to vary the maximum building height standard on the eastern Victoria Street frontage of the site by a maximum of 14.99m (25%), which equates to a total maximum height of 14.99m at the centre of the architectural roof feature. This steps down markedly to the north and south of the centre of the form. The proposed exceedance of the maximum building height development standard relates to reconstruction and extension of the existing top floor level of the Piccadilly Hotel, and very minor variation associated with the reconstruction of No 169 Victoria Street (as outlines in the Urban Design Report).

The principal reasons for the exceedance of the 12m maximum building height development standard are specific to the site circumstances, and include:

- The notable change in topography (see **Figure 3** and Survey within the Architectural Drawing Package), falling from at Brougham Street as the site traverses the Victoria Street/Brougham Street cliff edge and up towards the Kings Cross ridgeline. The extent of change is significant and equivalent to almost two storeys across the site.
- Due to the topography of the site (see height pane diagram in **Figure 2**) reconstruction and extending the existing top floor level of the Piccadilly Hotel and in a technical non-compliance. This significant topographical change, therefore, impacts the ability to adaptively reuse the existing building without breaching the maximum building height development standard.
- It is noted that the existing parapet of the site to Victoria Street currently exceeds the maximum building height controls. The existing built form to 169 Victoria Street also has a minor exceedance to the building height controls currently.
- The proposed variation to the height of building control is primarily related to the Architectural Roof Feature

It is also noted that whilst these site-specific constraints have resulted in a development that exceeds the maximum permitted height limit, the proposed development complies with the applicable DCP storey controls on both of its street frontages and has carefully considered and responded to the potential environmental impacts of the proposal, which as addressed above,

Therefore, it is clear that despite the proposed height variation, the proposal is within the planned and foreseeable development density and prescribed character of the area and does not result in an over intensification of the site.

Table 1: Extent of Variation

Site	Control	Proposed Height	Extent of Variation (m)	% Variation
171-173 Victoria Street (Piccadilly Hotel)	12m	14.99m	2.99m	25% Note that the existing building current exceed the building Height Control
169 Victoria Street (Golden Apple)	12m	13.05m	1.05m	8.75%

The proposed exceptions to the Height of Building development standard has been considered against the objectives and provisions of Clause 4.6. The proposal has a marginal impact on the gross floor area of the development and as demonstrated in this assessment, is consistent with the objectives of the Height of Building control and the zone.

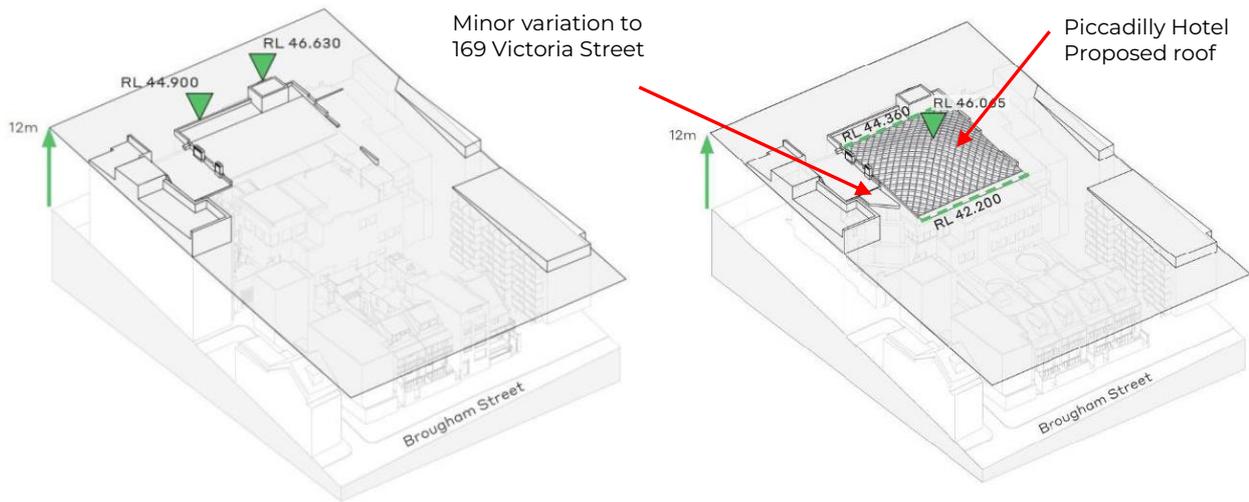


Figure 2 Building Height Plane – Existing and Proposed

Source: Woods Bagot

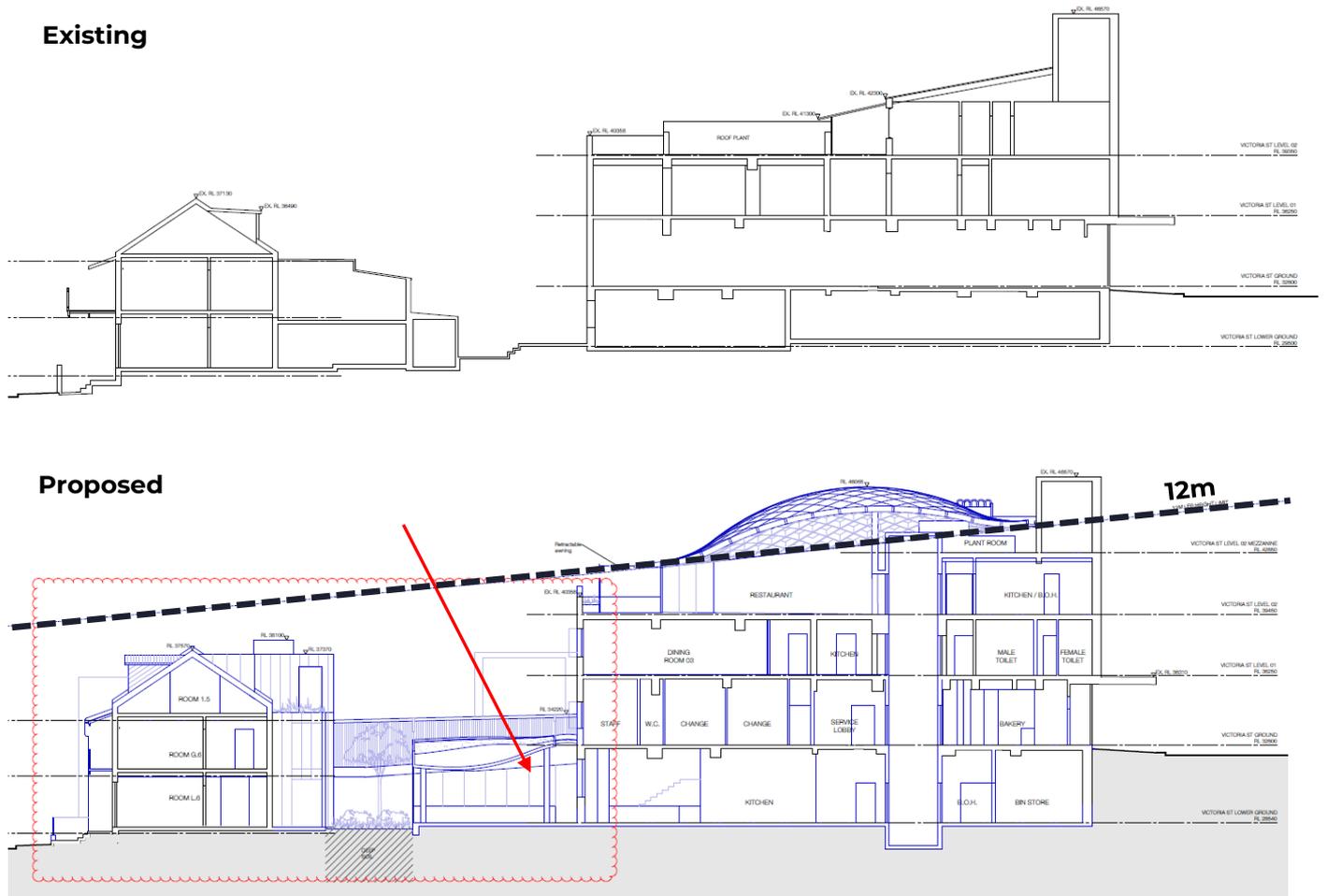


Figure 3 Existing and Proposed Building Section (through Piccadilly Hotel) – Annotated

Source: Woods Bagot

6.0 Justification for Contravening the Development Standard

This section provides the justification to support why compliance with the standard is unreasonable and unnecessary in the specific circumstances of the case. Guidance on the approach to justifying a contravention is taken from applicable decisions of the NSW Land and Environment Court. These establish that one of the methods in which the demonstration of the compliance with the standard is unreasonable or unnecessary is that objectives of the standard are achieved notwithstanding non-compliance with the standard.

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

4.6 Exceptions to development standards

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

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

- 4) *Development consent must not be granted for development that contravenes a development standard unless:*
 - a. *the consent authority is satisfied that:*
 - i. *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
 - ii. *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
 - iii. *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, particularly *Wehbe v Pittwater Council* [2007] NSW LEC 827. The relevant matters contained in Clause 4.6 of the Sydney LEP, with respect to the Height of Buildings development standard, are addressed below.

6.1 Objectives of the are achieved notwithstanding the non-compliance with the standard

An assessment of the proposal against the objectives of the maximum Height of Building development standard is provided below.

Table 2: Objectives of the Height of Buildings Control

Objectives of the Height of Buildings Control	Proposal
a) to ensure the height of development is appropriate to the condition of the site and its context,	<p>The proposed exceedance of the maximum height of buildings development standard is appropriate for the condition of the site. The proposed exceedance is as a result of reconstructing and extension to the rear of the existing uppermost storey of the Piccadilly Hotel with an architectural roof feature.</p> <p>This contemporary roof form carefully considered in terms of its versional impacts and heritage impacts and is integrated with the form of the existing building to ensure that the proposed height exceedance remains compatible with the existing buildings.</p> <p>Namely, the proposed addition has been designed to sit-behind and be screened by the existing 1.4m tall building parapet that protrudes above the topmost storey of the Piccadilly Hotel. Utilising the existing building parapet, ensures that the portion of the building exceeding the maximum building height remains</p>

Objectives of the Height of Buildings Control	Proposal
	<p>generally imperceptible when viewed from the public domain and does will have no impact on the streetscape or existing street frontage height of the existing building</p> <p>The proposal is consistent with the maximum height of buildings in storeys control nominated under the Sydney Development Control Plan 2012 (Sydney DCP). The proposed height is consistent with the prescribed character, and therefore appropriate for the condition of the site as considered in the Sydney DCP.</p> <p>The proposed exceedance of the maximum height of buildings development standard is also appropriate for the context of the site. The proposed variation enables the development to support and reinforce this desired future character for the site and surrounding context to reactive the site. The proposed is appropriate for the site’s context as it will not adversely impact the enjoyment of views and daylight from surrounding development and will not undermine the transition in height between development, and as such is compatible with the scale of development in the immediate surrounding context.</p>
<p>b) to ensure appropriate height transitions between new development and heritage items and buildings in heritage conservation areas or special character areas,</p>	<p>The proposed height variation does not undermine the transition between buildings on the Victoria Street frontage of the site. As seen by the existing buildings and planning controls for Victoria Street there are varied building heights and forms. The proposal will contribute positively to this mix of undulation, without having adverse environmental impacts.</p> <p>The proposal, building height and form are supported by the Conservation Management Plan and Heritage Impact Statement that accompany the DA and Statement of Environmental Effects.</p>
<p>c) to promote the sharing of views,</p>	<p>The building elements which are proposed to exceed the maximum building height development standard do not result in and adverse impacts on view lines from surrounding developments, nor will they compromise or impact what are considered to be important views (such as the CBD skyline).</p> <p>A detailed assessment is provided by Woods Bagot in the Urban Design Report and Accompanying view study.</p> <p>The additions to the Piccadilly Hotel have been designed to promote the sharing of views, including from Kings Cross looking west, and will substantially improve the visual amenity of the roofscape (from what is currently an ad hoc and unkempt area of roof plant and additions).</p>
<p>d) to ensure appropriate height transitions from Central Sydney and Green Square Town Centre to adjoining areas,</p>	<p>Not applicable</p>
<p>e) in respect of Green Square—</p> <p>a) to ensure the amenity of the public domain by restricting taller buildings to only part of a site, and</p> <p>b) to ensure the built form contributes to the physical definition of the street network and public spaces.</p>	<p>Not applicable</p>

6.2 Sufficient Environmental Planning grounds to justify contravening the standards

Clause 4.6(3)(b) of the Sydney LEP 2012 requires the consent authority to be satisfied that the Applicant's written request has adequately addressed clause 4.6(3)(b), by demonstrating: "that there are sufficient environmental planning grounds to justify contravening the development standard".

There are sufficient environmental planning grounds to justify contravention of the maximum Height of Budding development standard in this specific instance. As set out in the case law, in order to justify the exceedance it must be demonstrated that the planning grounds are particular to the circumstances of the proposed development on that site, and must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole.

Site Characteristics, Topography and History (including existing building)

The nature of the existing development and the sloping topography results in a scenario that is likely to result in a minor non-compliance as floor plates extend west from the high point of the site on Victoria Street.

This significant topographical change on the site impacts the ability to adaptively reuse the existing building without breaching the maximum building height development standard (given the height of the existing uppermost level of the Piccadilly Hotel). As mentioned previously, whilst this could theoretically be delivered with technical building height compliance, it would be a suboptimal floor to ceiling height and be a poor planning outcome.

A design alternative explored in the preliminary phases of the proposal was to provide additional capacity in the centre of the site, beneath the existing maximum building height line and in-line with the slope of the site. This 'compliant' outcome, however, would result in far greater environmental impacts, including:

- Impacted views from development to the south at 175 and 183 Victoria Street, which rely on views through the centre of the site to the Harbour Bridge, Opera House and city skyline.
- Impacted solar access for development to the south at 175 and 183 Victoria Street, and more importantly 100 Brougham Street, which include windows overlooking the southern boundary of the site.
- Significantly increased bulk and scale when viewed from Brougham Street, with the addition in the centre being visible from this frontage and effecting the desired three storey residential character.
- Degraded architectural and visual quality of the development and reducing the legibility of the historic lot configuration or building enveloped.

Improved Amenity and Functionality

The proposed development, architectural roof feature and design allows for the internal amenity (outlook, views, daylight etc) to be maximised from the site, whilst having no adverse impacts to surrounding development. As such, the design is appropriate and supports orderly development of the site. The contemporary addition has also been designed to accentuate the heritage item below, creating a juxtaposition between old and new. Requiring compliance with the technical height of building control would be a substandard result for the site, precinct and city.

Lack of Environmental Impacts

Crucial to all of the items listed above is that the proposal does not result in a perceptible change to the building envelope (monitor straightening of the level 22 north façade), no change to building height, and no change to overshadowing, privacy/outlook or view lines. This is due to the specific circumstance of the case being the location on the building where the works are occurring, the height of the building and the surrounding development.

Architectural Roof Feature + Contemporary Addition

It is important to note that as shown on the Section of the Architectural Plans, the proposed contemporary roof additional in the form of an architectural roof feature at a location of the site that is hypothetically capable of being designed to strictly comply with the building height control (as a plane across the site). As demonstrated by Woods Bagot, this design for technical compliance would be a substandard and poor design outcome for the site, and as demonstrated in the detailed environmental assessment, the proposed design does not result in any adverse environmental impacts.

6.3 No Additional environmental impacts from the variation

There are sufficient environmental planning grounds to justify a flexible approach to the application of the maximum Height of Building development standard to allow a nominal increase to building GFA in this situation. The proposed changes will have no environmental or amenity impacts. Specifically, there will be no change to solar access and overshadowing, visual and acoustic privacy (with potential improvements) or views.

Solar access and overshadowing

As detailed in the overshadowing plans prepared by Woods Bagot, the architectural roof feature and minor extension to 169 Victoria Street, will have no adverse impacts to overshadowing to surrounding properties, particularly the north facing balconies of No 100 Brougham Street.

Visual Privacy

As discussed in the Urban Design Report and Statement of Environmental Effects, the proposal incorporates privacy measures throughout the development to minimise impacts to overlooking between the site and surrounding sites. The proposal also seeks to improve the current/historic arrangement of privacy impacts that currently exists on site today. As it relates to the area of the proposal that exceeds the height of building controls, there will be no additional privacy impacts.

View Sharing

The building that are proposed to exceed the maximum building height development standard (169 and 171-173 Victoria Street (Piccadilly Hotel)) will not result in significant or adverse impacts on view lines from surrounding developments, nor will they compromise what are considered to be iconic aspects of these views (such as the Sydney Harbour Bridge and the sails of the Opera House). The adopted design response will serve to improve views from 100 Brougham Street by reinstating the terrace form of 96 Brougham Street.

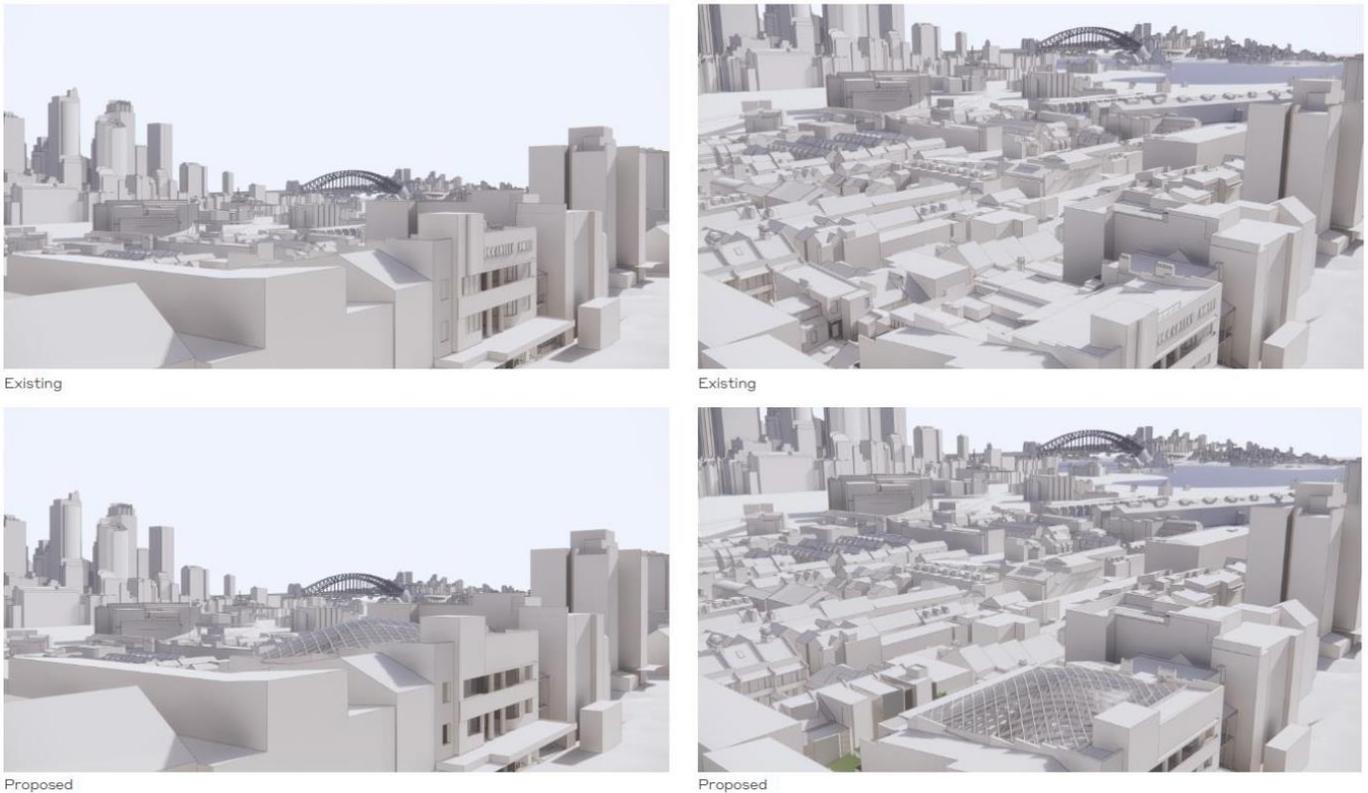


Figure 4 Existing and Proposed Building Section (through Piccadilly Hotel) – Annotated

Source: Woods Bagot

6.4 Consistency with the objects of the Act

With respect to the environmental planning grounds justifying the proposed variation, the proposal is consistent with the subject matter, scope and purpose of the EP&A Act, as set out in the Objects at section 1.3.

Table 3: Objects of the Act

Object of the Act	Proposal
(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	<p>The proposed development, including the variation to the height of building standard will promote the economic and social welfare of the community through adaptive reuse and revitalisation of an abandoned and dilapidated site. It will respond appropriately to the local heritage item while delivering additional hotel and food and beverage floor space in area in close proximity of the CBD and Kings Cross Centre.</p> <p>The proposed development will provide for new construction and operational jobs in close proximity of public transport. Adaptive reuse of the Piccadilly Hotel, currently unused and redundant, is strongly encouraged and will ultimately assist in supporting the on-going prosperity of this area.</p>
(b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment	<p>The proposed development will facilitate ecologically sustainable development by ensuring compliance with the performance standards for the energy efficiency of buildings through (including Section J of the BCA). The roof design in particular allows for the opportunity of natural ventilation of the space.</p>
c) to promote the orderly and economic use and development of land	<p>The proposed development is considered to be a balanced and orderly design outcome that responds to the unique characteristics of the site and does not represent the over intensification of land.</p>
(d) to promote the delivery and maintenance of affordable housing,	<p>The proposed development does not impact on any existing affordable housing.</p>
(e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,	<p>The proposed development will have no impact on threatened species or ecological communities.</p>
(f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),	<p>The proposed development maximises and enhances the heritage characteristics of the site and represents the unique opportunity to remove unsympathetic built form elements and provide additional capacity without impacting the heritage fabric or significance of the Piccadilly Hotel.</p>
(g) to promote good design and amenity of the built environment,	<p>The development promotes high quality architectural design excellence. The proposed variation to the height limit will result in a development that is compatible with the scale of the surrounding development on both frontages of the site and will not result in an additional adverse environmental impact on the surrounding area as detailed above.</p>
(h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,	<p>The proposed development complies with all relevant BCA codes and will promote the health and safety of occupants.</p>
(i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,	<p>Not relevant to the proposal.</p>
(j) to provide increased opportunity for community participation in environmental planning and assessment.	<p>The proposed development will be publicly notified in accordance with the requirements of Councils Community Participation Plan.</p>

6.5 Consistent with the objectives of the zone and development standard (Public Interest)

Consistency with objectives of the development standard

The proposed development is consistent with the objectives of the Height of Building development standard, for the reasons discussed above.

Consistency with objectives of the zone – B4 Mixed Use

The Victoria Street portion of the site (169 and 171-173 Victoria Street) is zoned B4 Mixed Use, whilst the Brougham Street frontage of the site is zoned R1 General Residential. As the exceedance of the maximum Height of Building development standard is contained on the Victoria Street sites. The objectives of the B4 Mixed Use Zone are addressed below.

Table 4: Objectives of the B4 Mixed Use Zone

Objective of the B4 Mixed Use Zone	Proposal
To provide a mixture of compatible land uses.	The proposed development incorporates a hotel use that will have a mixture of accommodation rooms (within the R1 and B4 zoning of the site), as well as ground and Low ground level food and beverage uses available to the public. As demonstrated in the SEE and accompanying specialists report, the uses proposed within the development, and the physical configuration those uses are compatible with other uses in the area.
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.	The proposal provides additional capacity in a highly accessible and well serviced location by public and private transport modes and other associated services for residential and guests.
To ensure uses support the viability of centres.	The proposal seamlessly integrates with the existing buildings, ensuring it does not impact significant heritage fabric and serves to enhance their character, opening them up for access. The reactivation of the site, including the reactivation of the ground floor to Victoria Street will go towards supporting the viability of the centre.

6.6 Secretary’s Concurrence

Under clause 4.6(5) of Sydney LEP 2012, the Secretary’s concurrence is required prior to any variation being granted. Under clause 64 of the Environmental Planning and Assessment Regulation 2000, we understand the Secretary has given written to Council that it may assume the Secretary’s concurrence for exceptions to development standards in respect of applications made under Clause 4.6, subject to the conditions in the table in the notice.

6.7 Any matter of significance for State or regional environmental planning

The variation of the maximum Height of Building development standard does not raise any matter of significance for State or regional planning. The proposal has also been assessed against the relevant State and Regional Strategic and Statutory considerations in the recent Planning Proposal to part of the site (92- 98 Brougham Street).

6.8 Public Benefit of maintaining the development standard

The proposal represents a unique opportunity to bring the existing sites back to life, from what are decaying building that are not providing any positive contribution or activation to Kings Cross. The proposal creates an opportunity to realise unique and outstanding outcomes that could not ordinarily be achieved in the context. This is done by bringing together a range of different buildings which offer a unique opportunity to provide for the use.

Maintaining the development standard would not result in any public benefit in this instance as it would undermine the ability to provide an enhanced urban design outcome and breathe new life to the Piccadilly Hotel and adjoining building at 169 Victoria Street. The proposed development is considered to be the best and only outcome for the site, and within the public interest, as:

- It is consistent with and reinstates the desired future character of the Woolloomooloo and Kings Cross Special Areas, as well as the nominated street frontage heights under the DCP, ensuring the proposal responds to the envisaged scale and form of development of the area.
- It provides additional capacity in a highly accessible and well serviced location.
- It seamlessly integrates with the existing buildings, ensuring it does not impact significant heritage fabric and actually serves to enhance their character, opening them up for access.
- It supports the ongoing vitality of the site and surrounding area through bringing new life to buildings that have remained vacant for several years.
- It provides for a mix of uses that are compatible with the surrounding area and the renewing character of Kings Cross / Potts Point. Importantly, would the proposed works not occur on the site and the Applicant be forced to abandon the refurbishment plans, the former brothel and pub/nightclub could commence operating on the site which would be inconsistent with the vision considered by Council and the Committee for Sydney in the LSPS for the reimagining and revitalising of the area's night time offering.
- It provides additional capacity without generating any adverse environmental impacts, ensuring that the proposal is within the planned and foreseeable development density of the site and does not result in an over intensification of the site. This is reinforced by the recent planning proposal applying to 92-98 Brougham Street.

6.9 Any others to be considered by the Secretary before granting concurrence

We are not aware of any other matters that the Secretary or any consent authority as per the delegations of the Secretary is required to consider before granting concurrence.

7.0 Conclusion

The assessment above demonstrates that compliance with the maximum Height of Building development standard contained in Clause 4.3 of the Sydney LEP 2012 is unreasonable and unnecessary in the circumstances of the case and that the justification is well founded. It is considered that the variation allows for the orderly and economic use of the land in an appropriate manner, whilst also allows for a better amenity outcome with no environmental or amenity impacts.

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

- is consistent with the objectives of the zone and also the Height of Building development standard in the Sydney LEP 2012;
- remains compatible with the scale and layered building heights characterising of the area – involving no perceivable changes from the public domain;
- will not adversely impact on the amenity of surrounding land uses or development;
- will facilitate the orderly and economic redevelopment; and
- is in the public interest as it remains consistent with the objectives of the applicable land use zone

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

Clause 4.6 – Floor Space Ratio

Piccadilly Hotel + Brougham Street Terraces

169-173 Victoria Street & 92-98 Brougham Street, Potts Point

Submitted to City of Sydney Council

On behalf of PG Capital

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1.0 Introduction

This Clause 4.6 variation request has been prepared by Ethos Urban on behalf of the applicant and reflects revised architectural plans prepared by Woods Bagot in July 2022. It is submitted to City of Sydney Council (the Council) in support of a Development Application for adaptive reuse of the existing Piccadilly Hotel (171 Victoria Street), 169 Victoria Street and 92-98 Brougham Street for use as a hotel with associated food and beverage uses.

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

This Clause 4.6 variation request relates to the development standard for the maximum Floor Space Ratio (FSR) buildings under Clause 4.4 of the Sydney LEP and should be read in conjunction with the Statement of Environmental Effects (SEE) and accompany architectural plans and design statement.

This request demonstrates that compliance with the numeric maximum FSR standard applying to the site is unreasonable and unnecessary in the circumstances of the specific case, and that there are sufficient environmental planning grounds to justify contravention of the standard. The request also demonstrates that the proposed development is consistent with the objectives of LEP 2012 and Environmental Planning and Assessment Act 1979 (EP&A Act), is justified by environmental planning grounds, and is in the public interest.

2.0 Clause 4.6 – Variation to Development Standards

Clause 4.6(3) of LEP 2012 requires Council to consider a written request from the applicant that seeks to justify the contravention of the development standard. Clause 4.6(4)(a) states that development consent must not be granted for development that contravenes a development standard unless the consent authority is satisfied:

- *that the applicant's written request has adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case;*
- *that the applicant's written request has adequately demonstrated that 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 relevant matters contained in Clause 4.6 of the Sydney LEP, with respect to the FSR development standard, are each addressed in this letter. This Clause 4.6 variation request:

- *identifies the development standard to be varied and the variation sought*
- *establishes that compliance with the development standard is unreasonable or unnecessary in the specific circumstances the proposal;*
- *demonstrates there are sufficient environmental planning grounds to justify the contravention, because it is consistent with the objectives of the zone and the development standard;*
- *demonstrates that the proposed variation is in the public interest; and*
- *provides an assessment of the matters the secretary is required to consider before providing concurrence.*

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

- *Wehbe v Pittwater Council [2007] NSW LEC 827;*
- *Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 1009;*
- *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118; and*
- *Turland v Wingecarribee Shire Council [2018] NSWLEC 1511*

3.0 Floor Space Ratio (FSR) – Clause 4.4 of LEP 2012

This Clause 4.6 variation request seeks to justify a contravention of the development standard set out in Clause 4.4 of the Sydney LEP 2012. As shown below in **Figure 1**, the site, competing several lots, has varying FSR controls across each.

4.4 Floor Space Ratio

- 1) The objectives of this clause are as follows—
 - 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.
- 2) The maximum floor space ratio for a building on any land is not to exceed the floor space ratio shown for the land on the Floor Space Ratio Map.

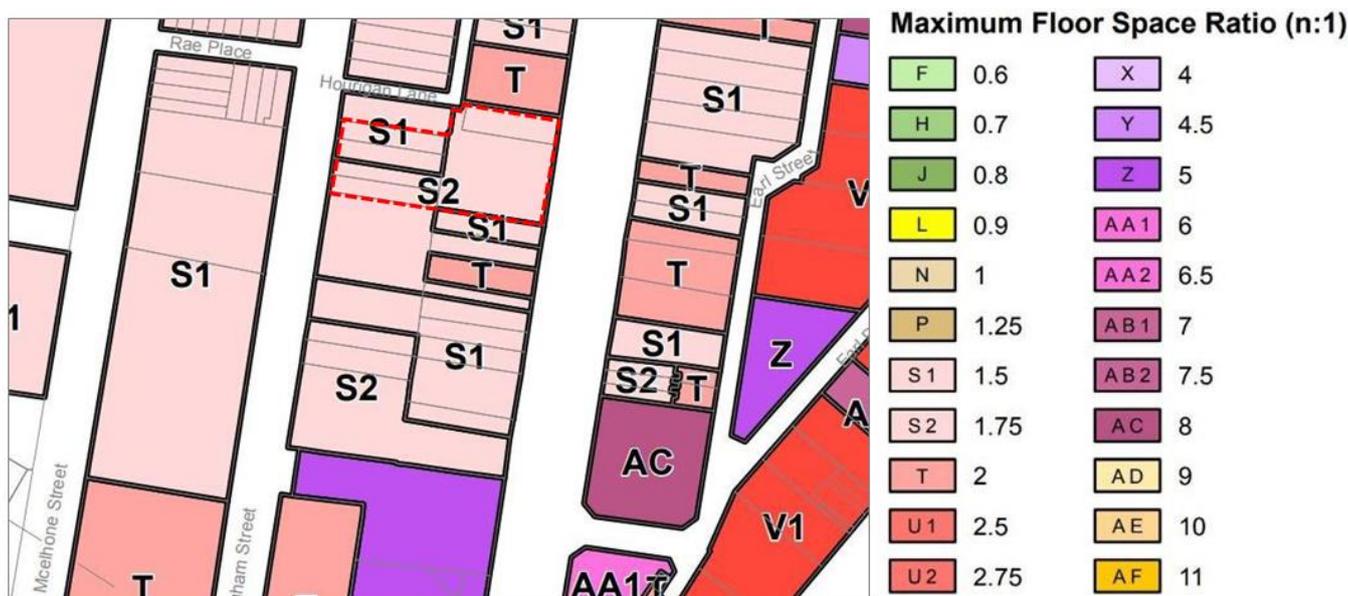


Figure 1 Floor Space Ratio Map - site outlined in red

Source: Sydney LEP 2012

The site comprises the following properties:

- 169 Victoria Street, Potts Point – also formerly known as The Golden Apple, at SP 19010
- 171-173 Victoria Street, Potts Point – also known as the Piccadilly hotel, at Lot 1 in DP 82775
- 92 Brougham Street, Potts Point – Lot 1 in DP 724376
- 94 Brougham Street, Potts Point – Lot 1 in DP 904094
- 96 Brougham Street, Potts Point – SP 17354
- 98 Brougham Street, Potts Point – Lot 100 in DP 613011

4.0 Background of Development

The development fronting Brougham Street comprises four Victorian terraces, which have been subject to extensive internal remodelling and contemporary additions to the rear. The terraces at 92, 94 and 98 are currently being used as single dwellings, whilst the property at 96 Brougham Street has been externally remodelled and divided into three separate units.

The development fronting Victoria Street comprises the Piccadilly Hotel which is a three-storey heritage bar and hotel formerly occupied by SoHo Nightclub, and The Golden Apple which is a three-storey terrace with contemporary additions at the rear and was formerly used as a brothel. Both the Piccadilly Hotel and The Golden Apple have remained vacant for a number of years and have been progressively acquired with the aim to revitalise and repurpose them for their next lifecycle.

The original building on the site was constructed in the 1970's and was previously used as the NSW Police headquarters. In 2007 a Development Application was endorsed by the Central Sydney Planning Committee for alterations and adaptive reuse of the existing commercial building for residential with ground floor retail.

The adaptive reuse was the subject of a design competition and subsequently designed by Scott Carver Architects and constructed by Hutchinson's Builders, being completed in 2011. The site has been subject to several modifications since the original approval, none of which have related to the lot the subject of this DA. The site is currently vacant.

4.1 Proposed Development

This Clause 4.6 variation request has been prepared to accompany a Development Application seeking consent for use as a hotel with associated food and beverage uses, including:

Partial demolition, excavation and alterations and additions to the buildings, retaining the significant fabric of heritage buildings and reinstating the original built form to Brougham Street terraces (removing the unsympathetic addition to 96 Brougham Street)

- Fitout and use for 17 hotel rooms within the Brougham Street terraces and 169 Victoria Street, with associated staff facilities including bicycle parking within the Piccadilly Hotel
- Basement servicing/storage and kitchen, ground floor food and beverage/retail, and upper-level dining facilities associated with the hotel, enclosed within a new roof form of the Piccadilly Hotel building
- Bar to be located on the lower ground floor of 169 Victoria Street
- Construction of an enclosable courtyard between the Victoria and Brougham Street buildings incorporating trees within the courtyard and landscaping to the roof structure
- The operation of the Hotel use and associated food and beverage uses will be subject to separate development approval.

5.0 Nature and Extent of Variation

The proposed development seeks to utilise floor space within the existing envelope of the site (particularly the Piccadilly Hotel) without adversely impacting existing views, solar access to surrounding properties, streetscapes, heritage fabric, or subdivision patterns while ensuring the desired future character of Potts Point, Kings Cross and Woolloomooloo respectively is maintained.

The proposed design inchoates minor excavation within the basement of the Piccadilly Hotel that will become useable floor space for kitchen, back of house and storage facilities, as well as the enclosure of the 'garden room' between the Victoria Street and Brougham Street priorities. This enclosure, from a technical Gross Floor Area perspective has been proposed to suitably manage and mitigate impacts to surrounding residential development, particularly No 100 Brougham Street. The proposal also includes the extension of the existing upper level of the Piccadilly Hotel which is covered with a contemporary, lightweight, architectural roof feature.

The extent of 'additional GFA' when compared to the existing building is primarily due to the creation of usable space within the basement level – which becomes calculatable for FSR purposes - and partial enclosure of the garden room.

The proposed development has a total combined FSR of 1.98:1 across the combined sites (2536sqm of proposed GFA / 1,311sqm site area). Given the nature of a consolidated site of size with separate lots, varied floor space ratios (FSR) apply under Sydney LEP 2012. The proposed combined variation of GFA beyond the maximum permissible is +310sqm. However, as shown in the tables below, the non-compliance with the development standard is restricted to 169 and 171-173 Victoria Street only. The remainder of the sites are well below the maximum permissible floor space for the respective sites.

As such, the majority of the proposed GFA is to be within the Piccadilly Hotel and adjoining terrace at No 169 Victoria Street that currently exceed the maximum FSR control. The proposed work to the Brougham Street terraces in terms of floor space is minimal, both as an FSR and GFA quantum.

Table 1: Existing and Proposed GFA – Broken down by Lot

EXISTING & PROPOSED GFA & FSR (FLOOR SPACE RATIO) CALCULATIONS

Name	Address	Site Area (m2)	Legislated FSR	Max. Area (m2)	Ex. GFA (m2)	Ex. FSR	Proposed GFA (m2)	Proposed FSR
Piccadilly	171-173 Victoria St	579	1.75	1013	1045	1.80	1513	2.61
Golden Apple	169 Victoria St	185	1.75	324	342	1.85	382	2.06
Terrace	92 Brougham St	137	1.50	206	116	0.85	175	1.28
Terrace	94 Brougham St	136	1.50	204	119	0.88	162	1.19
Terrace	96 Brougham St	136	1.75	238	164	1.21	160	1.17
Terrace	98 Brougham St	138	1.75	242	125	0.91	145	1.05
TOTAL		1311		2226	1911		2536	

Table 2: Proposed FSR variation – Technical variation per lot

Site	Control (FSR)	Existing GFA	Existing FSR	Proposed FSR	Proposed GFA	Extent of Variation (sqm)	Extent of Variation (FSR)	%Variation of the standard
171-173 Victoria Street (Piccadilly Hotel)	1.75:1	1,045sqm	1.8:1	2.61:1	1,513sqm	+500sqm	0.86:1	49%
169 Victoria Street (Golden Apple)	1.75:1	342sqm	1.85:1	2.06:1	382sqm	+57sqm	0.31:1	18%

Note – all other sites at 92-98 Brougham Street Comply with maximum permissible FSR

Across the site (combined), which in our view is how the extent of floor space should be considered in the context of controlling density from development, the following applies

Table 2: Proposed FSR variation – Combined Sites

Site	Permissible GFA (Combined Site FSRs)	Combined Permissible FSR*	Existing GFA (all sites)	Proposed GFA/FSR	Extent of Variation (sqm)	Extent of Variation (as FSR)	%Variation to maximum permissible GFA
Combined Sites	2,226sqm	1.7:1 (2,226/1,311)	1,911sqm	2,536sqm or 1.93:1	+310sqm	0.23:1	14%

*combined max FSR permissible on of the each sites combined (as GFA)/total site area)

The proposed exceptions to the FSR development standard has been considered against the objectives and provisions of Clause 4.6. The proposal incorporates a small increase in the overall anticipated gross floor area by the controls (both as a percentage and quantum), and as demonstrated in this assessment, is consistent with the objectives of the FSR control and the zone. As shown on the plans, a large proportion of the additional floorspace is occupied from area at the lower ground level being utilised within the Piccadilly Hotel and Golden Apple (169 Victoria Street), which does not add to the bulk and scale of the development but allows for a more functional and effective adaptive reuse of the heritage item and contributory buildings.

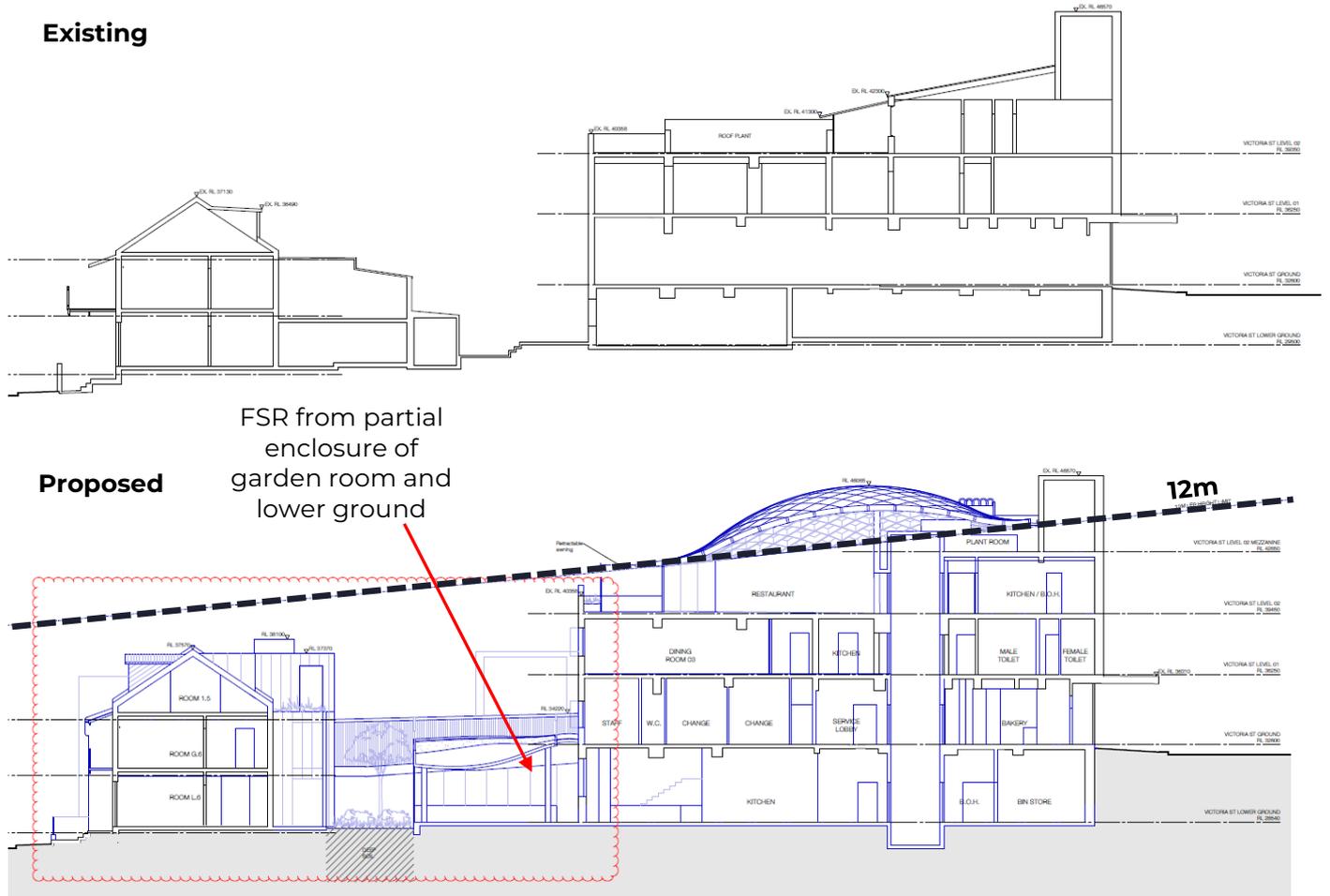


Figure 2 Existing and Proposed Building Section – Annotated

Source: Woods Bagot

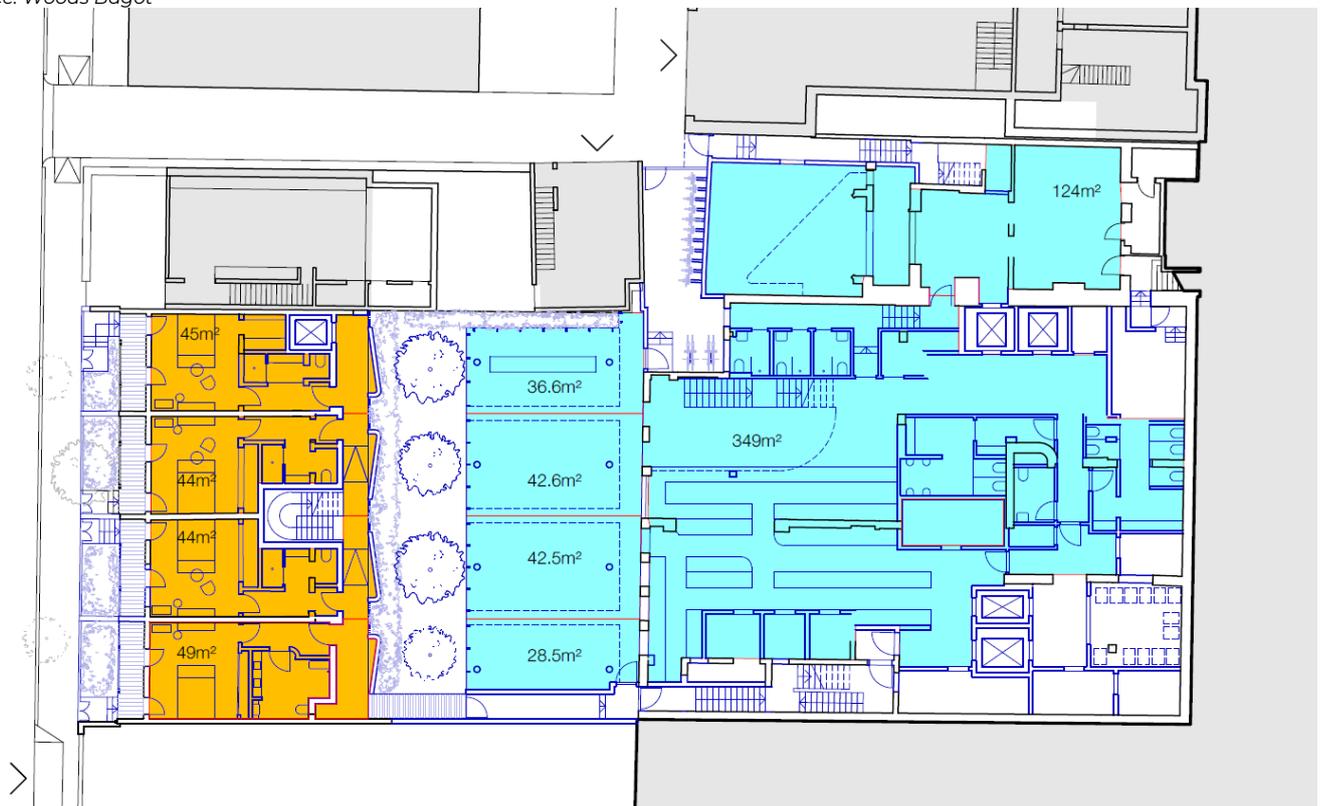


Figure 3 Lower Ground Floor Plan – GFA Areas

Source: Woods Bagot Architectural Plans – July 2022

6.0 Justification for Contravening the Development Standard

This section provides the justification to support why compliance with the standard is unreasonable and unnecessary in the specific circumstances of the case. Guidance on the approach to justifying a contravention is taken from applicable decisions of the NSW Land and Environment Court. These establish that one of the methods in which the demonstration of the compliance with the standard is unreasonable or unnecessary is that objectives of the standard are achieved notwithstanding non compliance with the standard.

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

4.6 Exceptions to development standards

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

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

- 4) *Development consent must not be granted for development that contravenes a development standard unless:*
 - a. *the consent authority is satisfied that:*
 - i. *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
 - ii. *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
 - iii. *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, particularly *Wehbe v Pittwater Council* [2007] NSW LEC 827. The relevant matters contained in Clause 4.6 of the Sydney LEP, with respect to the maximum Floor Space Ratio development standard, are addressed below.

6.1 Objectives of the are achieved notwithstanding the non-compliance with the standard

An assessment of the proposal against the objectives of the maximum FSR development standard is provided below.

Table 3: Objectives of the Floor Space Ratio Control

Objectives of the Floor Space Ratio Control	Proposal
a) to provide sufficient floor space to meet anticipated development needs for the foreseeable future,	The minor increase in floor space arises from the adaptive reuse of the existing building and converting basement space to usable and calculatable floor space (for BCA and health reasons). The enclosure of the garden room is proposed order to manage acoustic and privacy issues and provide an improved amenity situation than the existing for 100 Brougham Street. This area is therefore calculated as gross floor area (being capable of being enclosed).
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 does not change the perceived density of the existing development (height, setbacks/built form etc) and does not result in additional environmental impacts from that of a compliant floor space ratio. The generation of vehicle traffic for the proposed use, particularly in relation to servicing and loading is assessed in the GTA Transport Report. It is noted that the relatively minor exceedance to

Objectives of the Floor Space Ratio Control	Proposal
	FSR does not have any material change to loading, servicing and waste collection vehicle trips.
<p>c) to provide for an intensity of development that is commensurate with the capacity of existing and planned infrastructure,</p>	<p>The proposed development will be serviced by the necessary infrastructure for the site, as outlined in the Stantec Services Report that accompany the DA</p>
<p>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.</p>	<p>As discussed in the DA and in this Clause 4.6, the proposed development seeks to return the original built form of the Brougham Street terraces to reflect the desired future character of Woolloomooloo. Similar to Victoria Street, the desired future character is retained and enhanced through the retention and refurbishment of the Piccadilly Hotel façade.</p>

6.2 Sufficient Environmental Planning grounds to justify contravening the standards

Clause 4.6(3)(b) of the Sydney LEP 2012 requires the consent authority to be satisfied that the Applicant's written request has adequately addressed clause 4.6(3)(b), by demonstrating: "that there are sufficient environmental planning grounds to justify contravening the development standard".

There are sufficient environmental planning grounds to justify contravention of the maximum FSR development standard in this specific instance. As set out in the case law, in order to justify the exceedance it must be demonstrated that the planning grounds are particular to the circumstances of the proposed development on that site, and must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole.

The existing arrangement of the basement and built form above (including servicing and access to the basement from Victoria Street) is unique to the site that can readily be converted to usable floor space.

6.2.1 Solar access and overshadowing

As detailed in the overshadowing plans prepared by Woods Bagot, the architectural roof feature and minor extension to 169 Victoria Street, will have no adverse impacts to overshadowing to surrounding properties, particularly the north facing balconies of No 100 Brougham Street.

6.2.2 Visual privacy

As discussed in the Urban Design Report and SEE, the proposal incorporates privacy measures throughout the development to minimise impacts to overlooking between the site and surrounding sites. The proposal also seeks to improve the current/historic arrangement of privacy impacts that currently exists on site today. As it relates to the area of the proposal that exceeds the height of building controls, there will be no additional privacy impacts.

6.2.3 View sharing

The buildings that are proposed to exceed the maximum building height development standard (169 and 171-173 Victoria Street (Piccadilly Hotel)) will not result in significant or adverse impacts on view lines from surrounding developments, nor will they compromise what are considered to be iconic aspects of these views (such as the Sydney Harbour Bridge and the sails of the Opera House). These components of the development are not the driver for additional FSR in the development. The adopted design response will serve to improve views from 100 Brougham Street by reinstating the terrace form of 96 Brougham Street.

6.3 No Additional environmental impacts from the variation

There are sufficient environmental planning grounds to justify a flexible approach to the application of the maximum FSR development standard to allow a nominal increase to building GFA in this situation.

The proposed changes will have no environmental or amenity impacts. Specifically, there will be no change to solar access and overshadowing, visual and acoustic privacy (with potential improvements) or views as a result of the proposed gross floor area. On the contrary, the return of No 96 Brougham Street to the original arrangement has benefits to the views and outlook of the dwellings at 100 Brougham Street..

6.4 Consistency with the objects of the Act

With respect to the environmental planning grounds justifying the proposed variation, the proposal is consistent with the subject matter, scope and purpose of the EP&A Act, as set out in the Objects at section 1.3.

Table 4: Objects of the Act

Object of the Act	Proposal
(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	<p>The proposed development, including the minor variation to FSR will promote the economic and social welfare of the community through adaptive reuse and revitalisation of an abandoned and dilapidated site. It will respond appropriately to the local heritage item while delivering additional hotel and food and beverage floor space in area in close proximity of the CBD and Kings Cross Centre.</p> <p>The proposed development will provide for new construction and operational jobs in close proximity of public transport. Adaptive reuse of the Piccadilly Hotel, currently unused and redundant, is strongly encouraged and will ultimately assist in supporting the on-going prosperity of this area.</p>
(b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment	<p>The proposed development will facilitate ecologically sustainable development by ensuring compliance with the performance standards for the energy efficiency of buildings (including Section J of the BCA)..</p>
c) to promote the orderly and economic use and development of land	<p>The proposed development is considered to be a balanced and orderly design outcome that responds to the unique characteristics of the site and does not represent the over intensification of land.</p>
(d) to promote the delivery and maintenance of affordable housing,	<p>The proposed development does not impact on any existing affordable housing.</p>
(e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,	<p>The proposed development will have no impact on threatened species or ecological communities.</p>
(f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),	<p>The proposed development maximises and enhances the heritage characteristics of the site and represents the unique opportunity to remove unsympathetic built form elements and provide additional capacity without impacting the heritage fabric or significance of the Piccadilly Hotel.</p>
(g) to promote good design and amenity of the built environment,	<p>The development promotes high quality architectural design excellence. The proposed variation to the floor space ratio control will result in a development that remains compatible with the scale of the surrounding development on both frontages of the site, and will not result in an additional adverse environmental impact on the surrounding area as detailed above. Crucially, the proposed FSR does not drive an expansion of the building envelope in a way that generated additional bulk and scale, particularly from the public domain, that in turn would impact surrounding development and amenity.</p>
(h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,	<p>The proposed development complies with all relevant BCA codes and will promote the health and safety of occupants.</p>
(i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,	<p>Not relevant to the proposal</p>
(j) to provide increased opportunity for community participation in environmental planning and assessment.	<p>The proposed development will be publicly notified in accordance with the requirements of Councils Community Participation Plan.</p>

6.5 Consistent with the objectives of the zone and development standard (Public Interest)

Consistency with objectives of the development standard

The proposed development is consistent with the objectives of the Floor Space Ratio development standard, for the reasons discussed above.

Consistency with objectives of the zone – B4 Mixed Use

The Victoria Street portion of the site (169 and 171-173 Victoria Street) is zoned B4 Mixed Use, whilst the Brougham Street frontage of the site is zoned R1 General Residential. As the exceedance of the maximum Floor Space Ratio development standard is contained on the Victoria Street sites and largely below street level. The objectives of the B4 Mixed Use Zone are addressed below.

Table 5: Objectives of the B4 Mixed Use Zone

Objective of the B4 Mixed Use Zone	Proposal
To provide a mixture of compatible land uses.	The proposed development incorporates a hotel use that will have a mixture of accommodation rooms (within the R1 and B4 zoning of the site), as well as ground and Lowe ground level food and beverage uses available to the public. As demonstrated in the SEE and accompanying specialists report, the uses proposed within the development, and the physical configuration those uses are compatible with other uses in the area.
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.	The proposal provides additional capacity in a highly accessible and well serviced location by public and private transport modes and other associated services for residential and guests.
To ensure uses support the viability of centres.	The proposal seamlessly integrates with the existing buildings, ensuring it does not impact significant heritage fabric and serves to enhance their character, opening them up for access. The reactivation of the site, including the reactivation of the ground floor to Victoria Street will go towards supporting the viability of the centre.

6.6 Secretary’s Concurrence

Under clause 4.6(5) of Sydney LEP 2012, the Secretary’s concurrence is required prior to any variation being granted. Under clause 64 of the Environmental Planning and Assessment Regulation 2000, we understand the Secretary has given written to Council that it may assume the Secretary’s concurrence for exceptions to development standards in respect of applications made under Clause 4.6, subject to the conditions in the table in the notice.

6.7 Any matter of significance for State or regional environmental planning

The variation of the maximum Floor Space Ratio development standard does not raise any matter of significance for State or regional planning. The proposal has also been assessed against the relevant State and Regional Strategic and Statutory considerations in the recent Planning Proposal to part of the site (92- 98 Brougham Street).

6.8 Public Benefit of maintaining the development standard

The proposal represents a unique opportunity to bring the existing sites back to life, from what are decaying building that are not providing any positive contribution or activation to Kings Cross. The proposal creates an opportunity to realise unique and outstanding outcomes that could not ordinarily be achieved in the context. This is done by bringing together a range of different buildings which offer a unique opportunity to provide for the use.

Maintaining the development standard would not result in any public benefit in this instance as it would undermine the ability to provide an enhanced urban design outcome and breathe new life to the Piccadilly Hotel and adjoining building at 169 Victoria Street. The proposed development is considered to be the best and only outcome for the site, and within the public interest, as:

- It is consistent with and reinstates the desired future character of the Woolloomooloo and Kings Cross Special Areas, as well as the nominated street frontage heights under the DCP, ensuring the proposal responds to the envisaged scale and form of development of the area.
- It provides additional capacity in a highly accessible and well serviced location.
- It seamlessly integrates with the existing buildings, ensuring it does not impact significant heritage fabric and actually serves to enhance their character, opening them up for access.
- It supports the ongoing vitality of the site and surrounding area through bringing new life to buildings that have remained vacant for several years.
- It provides for a mix of uses that are compatible with the surrounding area and the renewing character of Kings Cross / Potts Point. Importantly, would the proposed works not occur on the site and the Applicant be forced to abandon the refurbishment plans, the former brothel and pub/nightclub could commence operating on the site which would be inconsistent with the vision considered by Council and the Committee for Sydney in the LSPS for the reimagining and revitalising of the area's night time offering.
- It provides additional capacity without generating any adverse environmental impacts, ensuring that the proposal is within the planned and foreseeable development density of the site and does not result in an over intensification of the site. This is reinforced by the recent planning proposal applying to 92-98 Brougham Street.

6.9 Any others to be considered by the Secretary before granting concurrence

We are not aware of any other matters that the Secretary or any consent authority as per the delegations of the Secretary is required to consider before granting concurrence.

7.0 Conclusion

The assessment above demonstrates that compliance with the maximum Floor Space Ratio development standard contained in Clause 4.4 of the Sydney LEP 2012 is unreasonable and unnecessary in the circumstances of the case and that the justification is well founded. It is considered that the variation allows for the orderly and economic use of the land in an appropriate manner, whilst also allows for a better amenity outcome with no environmental or amenity impacts.

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

- is consistent with the objectives of the zone and also the Floor Space Ratio development standard in the Sydney LEP 2012;
- remains compatible with the scale and layered building heights characterising of the area – involving no perceivable changes from the public domain;
- will not adversely impact on the amenity of surrounding land uses or development;
- will facilitate the orderly and economic redevelopment; and
- is in the public interest as it remains consistent with the objectives of the applicable land use zone

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