

Attachment B

<p>Clause 4.6 Variation Request – Height of Buildings</p>
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Justification under Clause 4.6 of Sydney Local Environmental Plan 2012 –
Exceptions to Development Standards.

191 – 201 Oxford Street, Darlinghurst

Clause 4.3 Height of Buildings

Control	191 – 195 Oxford Street 15 m 197 – 201 Oxford Street 12 m
Proposed Height	191 – 195 Oxford Street 18.7 m (existing) 197 – 201 Oxford Street 24.8 m
Draft LEP Amendment	191 – 195 Oxford Street 23m 197 – 201 Oxford Street 20m

1.0 Introduction

The proposed development comprises the adaptive reuse of the existing commercial buildings as an art hotel and basement hospitality tenancy, ground floor café and restaurant and level 5 roof top bar at 191 – 201 Oxford Street, Darlinghurst (Lots 1 DP 61238, Lot 1 DP 945258, Lot 1 DP 9258 & Lot 1 DP 9334462).

The hotel use is proposed to consolidate the three existing buildings fronting Taylor Square and Oxford Street, with the restoration and adaptive reuse of 191 – 195 Oxford Street and connecting to the two buildings to the south 197 – 199 Oxford Street and 201 Oxford Street (which have been significantly altered over time) and restoring their Oxford Street elevations and demolishing the structure behind the façade and constructing a basement, reconstructing the Level 1 and Level 2, and setting back the proposed new levels from the Oxford Street façade to provide an art gallery on Level 3 and hotel rooms on Level 5 and 6. The three buildings are in common ownership.

The restoration and adaptive reuse of 191 – 195 Oxford Street will provide a hospitality tenancy in the existing basement; a hotel reception, lobby and café on Level 1 (ground floor) and adaptively reusing Level 2 and Level 3 as an art hotel with a gallery on Level 1 accompanied by hotel rooms and hotel rooms on Level 2.

It is proposed to create a roof top bar below the existing billboard sign (which is proposed to remain in its current confirmation).

It is considered that the adaptive reuse of the existing commercial buildings as an art hotel and basement hospitality tenancy, ground floor café and restaurant and level 4 roof top bar at 191 – 201 Oxford Street, Darlinghurst will enliven Taylor Square and Oxford Street consistent with the City of Sydney's Urban Design Policy for Oxford Street.

It is proposed to adaptively reuse the existing commercial buildings as an art hotel with hospitality uses at basement and ground floor and with the main hotel reception and lobby accessed from Flinders Street. The existing ground floor level is to be configured as the main hotel reception and lobby, a café tenancy fronting Taylor Square and a restaurant fronting Oxford Street. The hotel will have a gallery on Level 2 and eight hotel rooms (three with a mezzanine); a gallery on Level 3 and six hotel rooms; a bar at Level 4 with a roof top terrace below the existing billboard sign; Level 5 will comprise three hotel rooms and Level 6 will comprise two hotel rooms. The proposed art hotel will be a boutique hotel with a total of nineteen rooms and back of house within the newly constructed basement.

The site is located in the southern side of Taylor Square in the Oxford Street and Flinders Street precinct. The area has a unique location and character between the city fringe, Darlinghurst and Surry Hills.

The subject site is located on the western side of Oxford Street, with a secondary frontage to Flinders Street. The surrounding development is mid-rise and is characterised by mixed uses with retail, hospitality and entertainment at the lower and mid-levels levels. The locality is primarily commercial uses with the nearest residential uses occurring to the west (Belgenny on Bourke Street 60m); the west (Urbis on Flinders Street 60m); to the south-west (Claridge Apartments on Flinders Street 65m) and terrace houses on Sturt and Taylor Streets to the south-east.

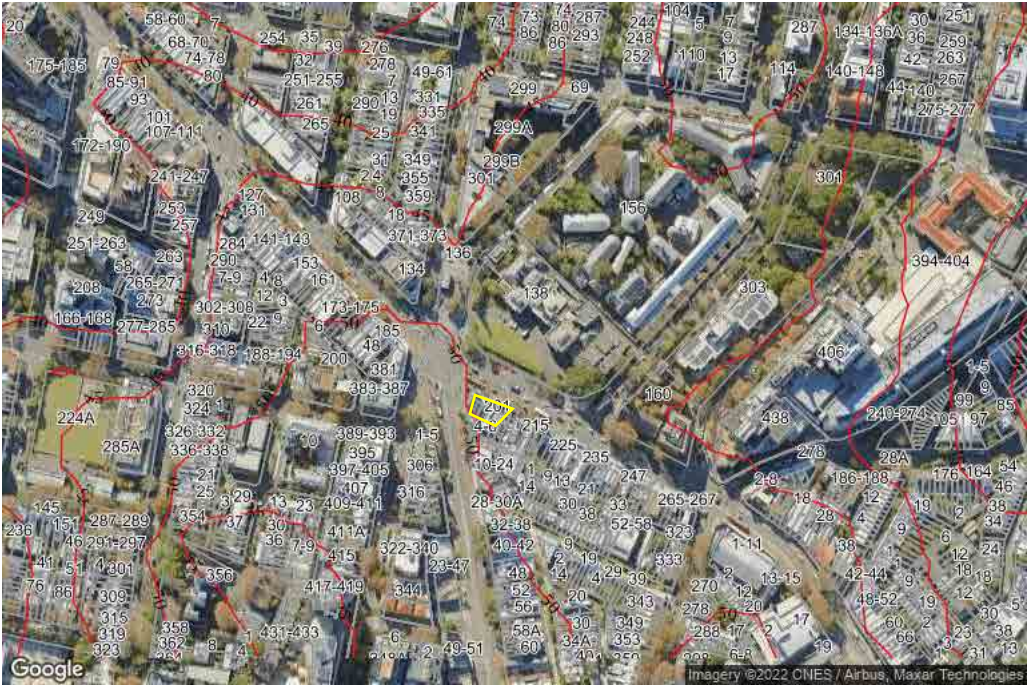


Site aerial

Source RPData 2022

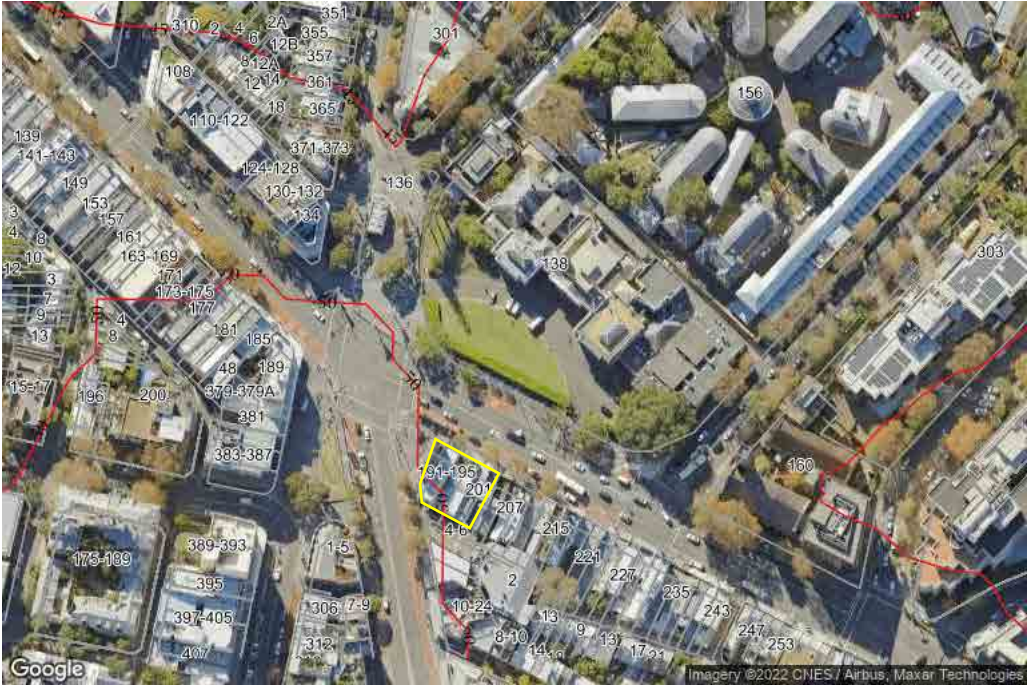
A site survey is included with the application and is reproduced in part below. The topography of the site falls from west to east 0.98m along the Oxford Street frontage (RL49.48 – RL48.50) and falls 0.76m from south to north along the Flinders Street frontage (RL50.24 – RL49.48). The southern laneway frontage falls 0.84m west to east (RL50.24 – RL49.40).

The site has an area of 481.64m² and is irregular in shape. The eastern boundary (Oxford Street) is 21.23m with the northern frontage to Taylor Square of 13.73m. The western boundary to Flinders Street is 9.06m and the common southern boundary to the laneway is 17.97m.



Aerial photograph with 5m contour overlay

Source: RPData 2022



Aerial photograph with 5m contour overlay

Source: RPData 2022

over time at both Level 1 (ground), Level 2 and Level 3. This was originally two separate buildings which have been amalgamated over time. 201 Oxford Street comprises three levels which have been significantly altered over time at both at both Level 1 (ground), Level 2 and Level 3 with an enclosed balcony at Level 2 and an upper level addition built to the street at Level 3. The buildings are oriented to each of their street frontages.



View of the subject site from north-east



View of the subject site from north-east



View of the subject site from Oxford Street



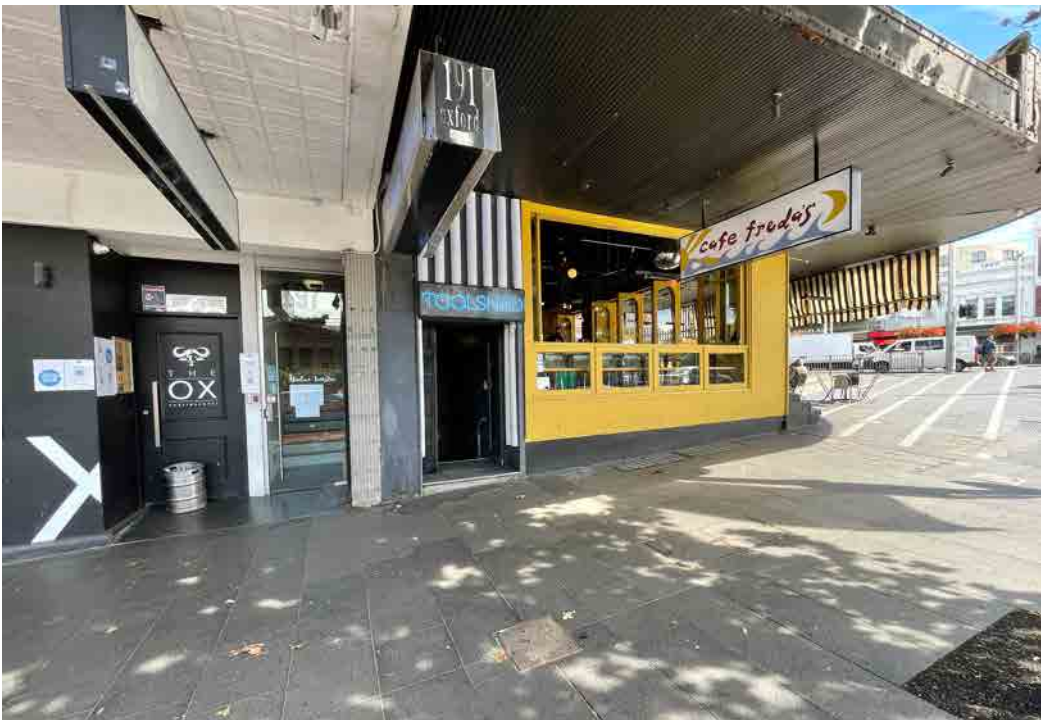
View of the subject site 201 Oxford Street



View of the subject site 201 Oxford Street



View of the subject site 191 - 199 Oxford Street



View of the subject site 191 - 199 Oxford Street



View east on Oxford Street



View east from Taylor Square



View east from Flinders Street



View north from Flinders Street

The Planning Proposal – Oxford Street Creative and Cultural Precinct – Sydney Local Environmental Plan 2012 was endorsed by the Council in May 2021 and exhibited from 10 September 2021 to 5 November 2021. The Draft Amendment to the Sydney Local Environmental Plan 2012 – Oxford Street Creative and Cultural Precinct increases the current height control from 15m to 23m for 191 – 195 Oxford

Street and 20m for 197 – 201 Oxford Street. The amendment has been endorsed by the Council on 11 April 2022 and consequently is considered to be imminent and certain. It is noted that the height proposed on the 191 – 195 Oxford Street is well below the imminent and certain amendment.

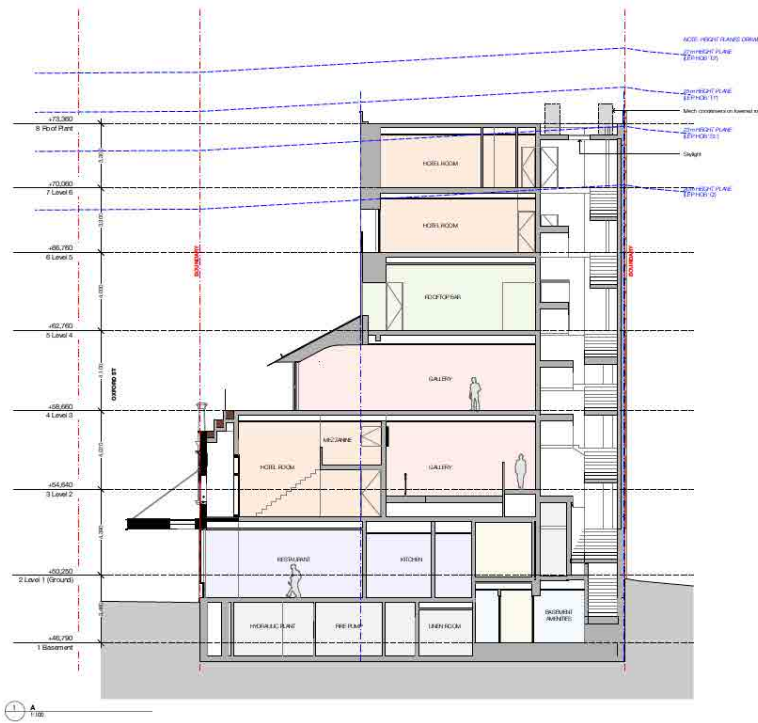
The existing building at 191 – 195 Oxford Street has a height of 18.7m and exceeds the current planning controls.

The existing building at 191 – 195 Oxford Street retains its height of 18.7m and exceeds the current planning control of 15m. The draft LEP which is considered to be imminent and certain provides for a height control of 23m and the proposal is compliant with amendment.

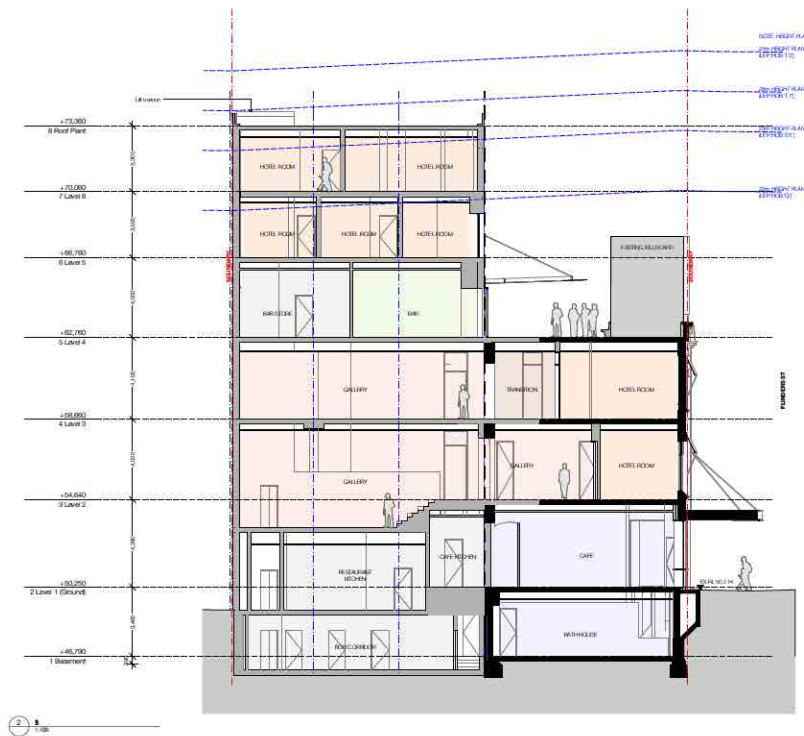
The existing building at 197 – 201 Oxford Street retains its height of 10.3m at the Oxford Street frontage and exceeds the current planning control of 12m within the proposed hotel tower setback 8.2m from Oxford Street. The draft LEP which is considered to be imminent and certain provides for a height control of 20m and the proposal exceeds amendment. Although the LEP and draft LEP allow for extra height on the 191-195 site, the proposal locates the tall building element on the 197-201 sites, facilitating both the reconstruction and unification of the original grouping of 3 terraces (which have been substantially altered over time), and the substantial retention of the corner building which is largely intact and of a higher heritage value.



Taylor Square Elevation (north-west)



Section A



Section B

Clause 4.6 of the Sydney Local Environmental Plan 2012 (SLEP 2012) enables Council to grant consent for development even though the development varies 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.

Clauses 4.6 (3) and (4)(a)(ii) require that a consent authority be satisfied of three matters before granting consent to a development that contravenes a development standard, namely:

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

The consent authority's satisfaction to those matters must be informed by the objective of providing flexibility in the application of the relevant control to achieve

better outcomes for and from the development in question.

The Land and Environment Court has given consideration to the matters that must be addressed in relation to whether a variation to development standards should be approved. While these cases originally referred to the former SEPP 1, the principles still remain relevant, more recently, further guidance on the approach to apply to applications to vary development standards under clause 4.6 of the Standard Instrument was provided by the Land and Environment Court. This Clause 4.6 gives consideration to the matters raised in:

- Big Property v Randwick City Council [2021];
- HPG Projects Pty Ltd v Mosman Municipal Council [2021];
- Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118;
- Turland v Wingecarribee Shire Council [2018] NSWLEC 1511;
- Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 1009;
- Micaul Holdings Pty Limited v Randwick City Council [2015] NSWLEC 1386;
and
- Moskovich v Waverley Council [2016] NSWLEC 1015.
- Wehbe v Pittwater Council [2007] NSW LEC 827; and
- Winten Property Group Ltd v Sydney Council [2001] 130 LGERA 79 at 89;

In accordance with the above requirements, this Clause 4.6 variation request:

2. identifies the development standard to be varied;
3. identifies the variation sought;
4. establishes that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case;
5. demonstrates there are sufficient environmental planning grounds to justify the contravention;
6. demonstrates that the proposed variation is in the public interest; and
7. provides an assessment of the matters the secretary is required to consider before providing concurrence.

This Clause 4.6 variation request relates to the development standard for Height of Buildings under Clause 4.3 of the SLEP and should be read in conjunction with the Statement of Environmental Effects prepared by Mersonn dated April 2022 as well as the supplementary documentation submitted to Council. This Clause 4.6 variation request demonstrates that compliance with the Height of Buildings development standard is unreasonable and unnecessary in the circumstances of the case and that there are sufficient environmental planning grounds to justify

variation to the standard.

2.0 Development Standard to be Varied

The development standard that is sought to be varied as part of this application is Clause 4.3 of the SLEP, relating to the Height of Buildings. Under the SLEP 2012, the site is afforded Height of Buildings of 15m and 12m.

3.0 Nature of the Variation Sought

The maximum Height of Buildings on the site under the SLEP 2012 for this application is 15m and 12m. The proposed building on the site has a height of 24.8m and is in excess of the maximum Height of Buildings development standard applicable under the SLEP 2012 and requires a variation to the maximum Height of Buildings development standard through clause 4.6. It is noted that 191 – 195 Oxford Street exceeds the 15m height control, being 18.7m existing, however, the height of this building does not change.

The proposed development seeks consent to exceed the Height of Buildings development standard applicable under the SLEP 2012 by 106.7%.

However, it is noted that the amendment has been endorsed by the Council on 11 April 2022 and consequently is considered to be imminent and certain. It is noted that the Height of buildings proposed on the subject site is 20m and 23m which is well below the imminent and certain amendment for 191 – 195 Oxford Street but breaches the control for 197 – 201 Oxford Street by 4.8m.

It is well established in case law that the extent of the numerical variation does not form part of the test required to be exercised under Clause 4.6. Decisions in respect of Micaul Holdings P/L V Randwick City Council (55% exceedance of height and 20% exceedance of FSR) and Moskovich V Waverley Council (65% exceedance of FSR) support this.

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

The five methods outlined in Wehbe include:

- 1. The objectives of the standard are achieved notwithstanding non-compliance with the standard (First Method).*
- 2. The underlying objective or purpose of the standard is not relevant to the*

development and therefore compliance is unnecessary (Second Method).

3. The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable (Third Method).

4. 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).

5. 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).

In this instance, the First Method is of particular assistance in establishing that compliance with a development standard is unreasonable or unnecessary.

The environmental planning grounds relied on in the written request under Clause 4.6 must be sufficient to justify contravening the development standard. 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 v Woollahra Municipal Council* [24] and *Turland v Wingecarribee Shire Council* [42]).

In this instance the whole of the proposed development is the aspect of the development that exceeds the development standard however, it is noted that the amendment has been endorsed by the Council on 11 April 2022 and consequently is considered to be imminent and certain. It is noted that the Height of buildings proposed on the subject site is 20m and 23m which is well below the imminent and certain amendment. As a result of the amendment 191 – 195 Oxford Street will comply with the height control comfortably and 197 – 201 will exceed the control by 4.8m.

The purpose of the exceedance arises from the location of the hotel tower adopting setbacks far in exceedance of the 3m required in the amendment to the LEP. The hotel tower has a significantly reduced footprint and is setback 8.2m from Oxford Street and is setback 10m from Taylor Square in order to reduce the bulk and scale and maintain the historical significance of the buildings which address Oxford

Street and Taylor Square.

The imminent and certain amendment would create a much bulkier tower which would have greater streetscape impact. The proposal reduces the footprint and sets back significantly so as to locate the hotel tower form in a way that responds to the surrounding high rise buildings in the locality. It is considered that the environmental planning grounds justify the contravention of the development standard.

4.1 The objectives of the development standard are achieved notwithstanding the non-compliance (First Method)

The objectives of Clause 4.3 Height of Buildings in SLEP 2012 are;

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

(a) to ensure the height of development is appropriate to the condition of the site and its context,

(b) to ensure appropriate height transitions between new development and heritage items and buildings in heritage conservation areas or special character areas,

(c) to promote the sharing of views,

(d) to ensure appropriate height transitions from Central Sydney and Green Square Town Centre to adjoining areas,

(e) in respect of Green Square:

(i) to ensure the amenity of the public domain by restricting taller buildings to only part of a site, and

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

(a) to ensure the height of development is appropriate to the condition of the site and its context,

It is demonstrated in the plans that the proposal minimises any overshadowing, loss of privacy and visual impacts for the neighbouring properties consistent with the objectives of this clause. The proposal presents as a building predominantly within the maximum height of buildings as it presents to the street but is well

setback from the street frontages and responds to the residential towers in the locality.



Oxford Street Elevation (north)



Taylor Square Elevation (north-west)

It is apparent from the photographs below that the immediate context comprises a

number of high rise residential towers and the proposed hotel tower follows this form being setback behind the streetscape buildings which contribute to the heritage conservation area.



View south to Taylor Square



View east to Taylor Square



View west to Taylor Square

Although the LEP and draft LEP allow for extra height on the 191-195 site, the proposal locates the tall building element on the 197-201 sites, facilitating both the reconstruction and unification of the original grouping of 3 terraces (which have been substantially altered over time), and the substantial retention of the corner building which is largely intact and of a higher heritage value. It is considered that the height of development is appropriate to the condition of the site and its context. It is considered that the proposal meets this objective of the standard.

(b) to ensure appropriate height transitions between new development and heritage items and buildings in heritage conservation areas or special character areas,

The proposed development provides an appropriate height transitions between new development and the buildings in heritage conservation areas by setting back the hotel tower form 8.2m from Oxford Street and 10m from Taylor Square. This achieves an appropriate transition and is further assisted by removing the later add-ons to the existing buildings and restoring their facades to elevate the heritage conservation area.

It is considered that the proposal meets this objective of the standard.

(c) to promote the sharing of views,

It is not anticipated that any significant view loss arises from the proposal given the siting of the building and the distance of the high rise residential flat buildings to the north and east. The hotel tower form effectively sits well setback from the street edge and is considered to have minimal view impacts.

It is apparent from consideration of the surrounding buildings to the north and east where taller residential flat buildings exist that views are only obtained from the upper levels well above the street wall height. The buildings to the west and south of the site are similarly of 1 – 3 storeys with views obscured by the existing street wall.

It is considered that on balance the view outcome is acceptable. It is considered that the proposal meets this objective of the standard.

(d) to ensure appropriate height transitions from Central Sydney and Green Square Town Centre to adjoining areas,

Not applicable.

(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.

Not applicable.

The height of the proposal is considered to be consistent with the desired character of the locality and the surrounding buildings particularly at zone boundaries. The proposal provides an appropriate built form and land use intensity consistent with the adjoining properties and ensures compatibility by the proposal.

It is considered that on balance the compatibility outcome is acceptable. It is considered that the proposal meets this objective of the standard.

It is demonstrated in the plans that the proposal minimises any overshadowing, loss of privacy and visual impacts for the neighbouring properties consistent with the objectives of this clause. The proposed height breach is predominantly in the centre of the building and located to minimise any view or solar impacts. Furthermore, its central location means that it will not be significantly visible from the streetscape or surrounding properties.

The SEE details that the proposal is largely consistent with the relevant environmental planning instruments and does not give rise to any adverse environmental impacts in respect to overshadowing, traffic, heritage, wind, reflectivity, stormwater, flooding, noise, waste, economic and social impacts.

It is considered that these objectives are met by the proposal.

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

Clause 4.6(3)(b) of the SLEP 2012 requires the departure from the development standard to be justified by demonstrating:

That there are sufficient environmental planning grounds to justify contravening the development standard.

There are sufficient environmental planning grounds to justify a flexible approach to the application of the Height of Buildings control as it applies to the site. 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.

The applicable circumstances that relate to the site are discussed below.

The proposal seeks flexibility in the application of the standard where the breach to the height control arises from a building, which is consistent in bulk and scale with the desired future character and the breach predominantly arises from the reduced footprint of the hotel tower to ensure oversize setback are provided to the streetwall building.

It is apparent from the views from the sun that the surrounding buildings are minimally affected and the proposal provides good solar access and amenity with very low levels of amenity impact to the neighbours. A compliant building would

unnecessarily fail to provide good solar access, amenity and equitable access to the upper level of the building in order to achieve the height control. This is considered to achieve flexibility consistent with the objectives of this clause.

The proposal provides for a better outcome in making available extensive setbacks above the street wall from all levels, which benefits from high amenity and high levels of solar access and outlook. This is considered to be a better outcome consistent with the objectives of this clause.

The proposal does not reduce public views or significantly reduce solar access to public spaces. Shadow diagrams are provided with the application.





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1:200



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A consideration of the application and the submitted shadow diagrams demonstrate that no significant overshadowing, privacy, view or bulk and scale amenity impacts arise from the proposal. It is considered that the proposal is the better planning outcome encouraged by the provisions of Clause 4.6.

The proposed works above the height have no significant view impact and cause no overshadowing, nor bulk or scale impacts to the existing surrounding dwellings.

In the circumstances where there are sound environmental and site specific sufficient environmental planning grounds reasons for the breach to the height control it is considered to justify contravention of the control and consequently the exception to the height control standard under Clause 4.6 is considered acceptable.

In this regard, there are sufficient environmental planning grounds to justify contravening the development standard. The proposed additional height sought in this Clause 4.6 better allows the built form on the site to achieve the desired future character of the locality, as expressed under the DCP, as compared to the do nothing scenario.

6.0 It is in the public interest because it is consistent with the objectives of the particular standard and the zone.

6.1 Consistency with the objectives of the development standard.

The proposed development is consistent with the objectives of the FSR development standard, for the reasons discussed in Section 4.1 of this report.

6.2 Consistency with the Zoned B2 – Local Centre Zone objectives.

The objectives for development in this zone are;

1 Objectives of zone

- To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.
- To encourage employment opportunities in accessible locations.
- To maximise public transport patronage and encourage walking and cycling.
- To ensure that development is appropriately designed to minimise amenity impacts.
- To allow appropriate residential uses to support the vitality of local centres.

To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.

The proposal provides for entertainment and cultural uses that front Oxford Street and Taylor Square and are notably serviced on the subject site. This aspect is of significance where the subject site is separated from the residential zone. The servicing will provide appropriate amenity benefits and will seek to improve the local amenity on this interface. It is considered that the proposal meets this objective.

To encourage employment opportunities in accessible locations.

The subject site is located approximately 1km east of the Sydney CBD and well serviced by public transport. It is clear that the proposal will create the opportunity and encourage employment opportunities in the provision of entertainment and cultural space in an accessible location where the proposed activated ground level space will benefit from contemporary servicing facilities which do not exist on the existing site where the existing buildings do not appropriately function to encourage employment opportunities because of the lack of appropriate servicing. It is considered that the proposal meets this objective.

To maximise public transport patronage and encourage walking and cycling.

It is considered that the proposal will maximise public transport and encourage walking and cycling by substantially improving the opportunity and safety for pedestrians and cyclists. It is considered that the proposal meets this objective.

To ensure that development is appropriately designed to minimise amenity impacts.

The proposed development has been designed with the so that the additional floor space within the hotel tower is setback in excess of 8m from Oxford Street and beyond the building known as 191 – 195 Oxford Street so that the two frontages will have minimal impact on the amenity of the surrounding buildings and the locality in general.

The proposed development restores the ground and first floor building form and raises the open space to the roof area to improve the amenity for the occupants.

It is demonstrated in the plans that the proposal minimises any overshadowing, loss of privacy and visual impacts for the neighbouring properties. The proposal does not create any adverse visual impacts from adjoining properties, the street and public reserves. The proposal minimise any overshadowing, loss of privacy and visual impacts of development on neighbouring properties through the siting of the building and open space and the provision of setbacks.

The proposal maximizes solar access for the public domain where the Hotel tower is located centrally on the site and the shadows cast are demonstrated as being acceptable.

The bulk and scale of the proposal is considered to be consistent with

the desired future character of the locality and provides an appropriate transition in height between the relevant parts of the new development. The proposal responds to the site relating the proposed building to the topography maximising amenity and solar access.

The desired character of the locality and the surrounding buildings and public areas will continue to receive satisfactory exposure to sky and sunlight. The proposal provides an appropriate built form and land use intensity consistent with the objectives of this clause.

It is demonstrated in the plans that the proposal minimises any overshadowing, loss of privacy and visual impacts for the neighbouring properties consistent with the objectives of this clause. The proposed external works to the building are at the rear of the site and located to minimise any view impacts.

The SEE details that the proposal is largely consistent with the relevant environmental planning instruments and does not give rise to any adverse environmental impacts in respect to overshadowing, traffic, heritage, wind, reflectivity, stormwater, flooding, noise, waste, economic and social impacts. It is considered that these objectives are met by the proposal.

To allow appropriate residential uses to support the vitality of local centres.

Not applicable.

The proposal is considered consistent with the objectives of the standard and for development in this zone as required by this subclause.

7.0 Secretary's Concurrence.

Under Clause 4.6(5) of SLEP 2012, the Secretary's concurrence is required prior to any variation being granted. The following section provides a response to those matters set out in Clause 4.6(5) of the SLEP, which must be considered by the Secretary.

Whether contravention of the development standard raises any matter of significance for State or regional environmental planning.

The variation to the Height of Buildings standard of SLEP 2012 will not raise any matter in which could be deemed to have State or Regional significance. The extent of variation sought is minor in the context of the building heights.

The public benefit of maintaining the development standard.

Maintaining the development standard would not result in any public benefit in this situation. As detailed within the SEE, the height and bulk of the existing building is appropriate to the context and the proposal responds to the surrounding urban context and the requirements of the Sydney DCP and the amendments.

The built-form provided by the proposed building is generally consistent with the bulk and scale of the surrounding buildings, and requiring compliance with the Height of Buildings standard would result in an inconsistent building form.

The proposed development would allow the building as a whole to better meet the objectives of the DCP. The proposed variation to the Height of Buildings standard therefore allows the site to better meet the objectives of the DCP, the amendments and the desired future character of the area. DCPs are guiding documents prepared to express the desired future character; protect the public interest and are prepared through an extensive public exhibition process.

Therefore, to better meet the objectives of the DCP can be said to improve the development's presentation to the public domain and is in the public interest.

Any other matters to be taken into consideration by the Secretary
None.

8.0 Conclusion

The assessment above demonstrates that compliance with the maximum Height of Buildings development standard contained in Clause 4.3 of SLEP 2012 is unreasonable and unnecessary in the circumstances of the case and that the justification is well founded on environmental planning grounds.

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 superior outcome in planning and design terms. This Clause 4.6 variation demonstrates, notwithstanding the non-compliance with the maximum building height development standard, that:

- The development as proposed will deliver a superior built-form outcome in consideration of the site's characteristics and its location amongst the surrounding buildings;
- The development as proposed will provide environmental benefits particular to the site through improved amenity for future occupants of the development and for the surrounding area generally; and
- Compliance with the development standard would be both unreasonable and unnecessary in the instance because the development is able to fully satisfy the objectives of the B2 – Local Centre Zone and the objectives of the Height of Buildings development standard.

The SLEP 2012 applies a maximum Height of Buildings development standard for the site of 15m and 12m. The proposed development has a height of 24.8m and is therefore in excess of the maximum Height of Buildings development standard allowable under the SLEP 2012.

This variation therefore seeks consent for the proposed works as consistent with the specific site constraints and the character and form of the surrounding buildings and does not result in an over development of the site or any adverse impacts on the public domain. The proposed additional height is commensurate with surrounding developments and the built form that characterises the locality. It is also consistent with the design approach applied to other buildings within the immediate vicinity.

Consistent with the aim of Clause 4.6 to provide an appropriate degree of flexibility to achieve better outcomes for and from development, a departure from the Height of Buildings development standard is considered appropriate in these circumstances.

Despite the numerical non-compliance with the Height of Buildings development standard, the proposed development is considered to satisfy the objectives of the development standard and the B2 – Local Centre Zone.

The proposal will provide environmental benefits particular to the site through the provision of equitable access and improved amenity for future occupants of the development and for the surrounding area generally. On this basis, the Clause 4.6 variation is considered well founded and should be supported.

In this instance it is considered appropriate to make an exception to the Height of Buildings development standard under the provisions of Clause 4.6 for the reasons outlined in the preceding discussion.

A handwritten signature in blue ink on a light yellow background. The signature is stylized, starting with a large 'A' and ending with a long horizontal stroke.

Signature:

Name:

Andrew Darroch

Date:

April 2022