

Attachment D

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

CLAUSE 4.6 VARIATION REQUEST – FLOOR SPACE RATIO
DETAILED DESIGN DEVELOPMENT APPLICATION FOR A MIXED-USE TOWER
525 GEORGE STREET, SYDNEY



Prepared by Planning Lab

Issued on 1 May 2023

Summary

Site

525-529 George Street, Sydney - Lot 1 in DP 224683

Area = 1,856.1m²

Variation sought

Clause 4.4 Floor Space Ratio

Extent of variation

Maximum permissible FSR / GFA = 15.1285:1 / 28,080m²

Proposed FSR / GFA = 15.24:1 / 28,283m²

Variance = 0.7%.

An additional 203m² of GFA is proposed which equates to a variance of 0.7%.

Summary of non-compliance

The proposed design exceeds the maximum permissible floor space ratio (FSR) by 203m². This numerical non-compliance is the result of locating bicycle parking above ground where it is counted as gross floor area (GFA) rather than in a basement where it would be excluded from GFA as 'basement storage'.

The design includes the provision of non-residential bicycle parking on the Upper Ground Level with an area of 205m² which, due to level changes around the site, is at grade with Albion Place. This allows cyclists to access the bicycle parking without crossing through any tenancies or relying on any lifts. This design will encourage cycling with well-designed on-site bicycle parking.

The Lower Ground Level, the eastern portion of which is below ground and constitutes a basement, is proposed to be occupied by a bar/restaurant and various back-of-house spaces associated with the hotel. These areas constitute GFA whether in a basement or above ground. An alternative design could rearrange these uses such that the bicycle parking was in the basement where it would be excluded from GFA. In such a design, the building's envelope and total floor area would remain the same but the GFA would be reduced by 205m² achieving compliance with the FSR standard. However, doing so would result in a worse outcome in terms of accessibility, convenience and safety for cyclists accessing the site and would disincentivise visitors from using bicycle parking.

This demonstrates that the proposed exceedance of the FSR standard by 0.7% does not have any environmental impacts beyond what an FSR-compliant scheme would have in terms of building bulk or intensity of land use. Accordingly, the development is capable of compliance with the objectives of the FSR standard notwithstanding the numerical non-compliance and compliance in this instance is unreasonable and unnecessary.

Introduction

This Clause 4.6 Variation Request has been prepared in accordance with Clause 4.6 (cl 4.6) of the *Sydney Local Environmental Plan 2012 (SLEP 2012)* to vary Clause 4.4 (cl 4.4) relating to maximum FSR. It supports a detailed design Development Application (DA) submitted to the City of Sydney under D/2022/481 for 525-529 George Street, Sydney ('the site'). The detailed design was lodged concurrently with a modification to the concept envelope under D/2019/758/A. The detailed design DA proposes the demolition of existing structures on the site, excavation and construction of a mixed-use development comprising a 44-storey tower with podium. The proposed development includes seven levels of basement, a cinema complex, retail tenancies, 292 hotel rooms, 115 apartments and vehicular access from Kent Street.

The proposed building has a maximum FSR / GFA of 15.24:1 / 28,283m² which exceeds the site's maximum FSR limit under cl 4.4 of the Sydney LEP 2012 by 0.11:1 / 203m².

The objectives of cl 4.6 are to provide an appropriate degree of flexibility in applying development standards to achieve better outcomes for, and from, development. This request has been prepared having regard to the following:

- the Department of Planning and Environment's *Guidelines to Varying Development Standards* (August 2011);
- the objectives of cl 4.4 of the SLEP 2012, being the development standard to which a variation is sought; and,
- relevant case law in the New South Wales Land and Environment Court and New South Wales Court of Appeal regarding cl 4.6 variations including *Wehbe v. Pittwater Council* [2007] NSWLEC 827, *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90 and *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118.

This Variation Request provides an assessment of the development standard and the extent of variation being proposed. The variation is then assessed in accordance with the principles set out in the *Wehbe* judgement where it is demonstrated that compliance with the height standard is unreasonable and unnecessary in the circumstances of the development since the objectives of the standard are achieved notwithstanding the variation.

Proposal

The DA proposes the demolition of existing structures on the site, excavation and construction of a mixed-use development comprising a 44-storey tower with podium. The proposed development includes seven levels of basement, a cinema complex, retail tenancies, 292 hotel rooms, 115 apartments and vehicular access from Kent Street. There is a substantial variation in levels at the site's boundaries. As a result, the Lower Ground Level corresponds to the height of Kent Street while the Upper Ground Level corresponds to George Street.

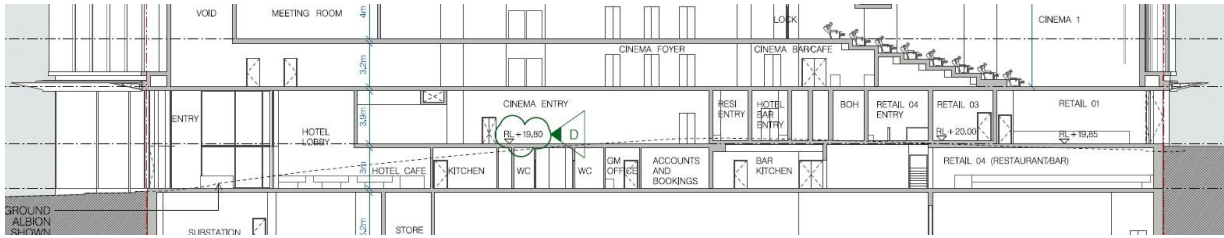


Figure 1 - Extract of Section A showing varying site levels

Clause 4.6 Exceptions to development standards

Clause 4.6(2) of the SLEP 2012 provides that development consent may be granted for development even though the development would contravene a development standard imposed by the SLEP 2012, or any other environmental planning instrument, if it is not expressly excluded from the operation of the clause. Building height is not excluded from the operation of the clause.

Clause 4.6(3) prevents development consent from being granted under cl 4.6 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 circumstance of the case, and
- (b) there are sufficient environmental planning grounds to justify contravening the development standard.

This Clause 4.6 Variation Request has been prepared to satisfy Clause 4.6(3).

What is the Environmental Planning Instrument (EPI) that applies to the land?

The Environmental Planning Instrument (EPI) to which this variation relates is the Sydney Local Environmental Plan 2012.

What is the zoning of the land?

The site is zoned SP5 - Metropolitan Centre zone under the SLEP 2012. The proposed uses are residential apartments, a hotel, a function centre, an entertainment facility (cinema) and retail. All uses are permitted with consent. As demonstrated later in this Request, the proposal is consistent with the relevant zone objectives.

What is the development standard being varied?

Clause 4.4(2) of the SLEP 2012 provides that the maximum FSR for any building is not to exceed the floor space ratio shown for the land on the Floor Space Ratio Map. The site is identified on the Floor Space Ratio Map as having a maximum FSR of 8:1 and is shown as being located in Area 2.

Clause 6.4(1) of the Sydney LEP 2012 permits additional floor space for specific purposes within areas identified on the Floor Space Ratio Map. At the time that the development application was lodged on 23 May 2022, Area 2 permitted the following FSR bonuses:

- An FSR bonus of 4.5:1 was permitted for entertainment facilities, function centres and retail premises.
- An FSR bonus of 6:1 was permitted for residential and hotel uses.

The proposed development permits the following bonuses:

Purpose	GFA (m ²)	% of total GFA	Associated FSR bonus
Residential	12,341	43.63%	2.6180
Hotel	11,289	39.91%	2.3949
Cinema / function	3,692	13.05%	0.5874
Retail	961	3.40%	0.1529
Total	28,283	100.00%	5.7532

The permissible FSR under Clauses 4.4 and 6.4 is $8 + 5.7532 = 13.7532:1$.

In addition to the FSR permitted under Clauses 4.4 and 6.4, the development is also eligible for a design excellence bonus of up to 10% of FSR under Clause 6.21D(3)(b) of the Sydney LEP 2012. This increases the total permissible maximum FSR to 15.1285:1. The site area is 1,856.1m². The maximum permissible GFA is $1,856.1 \times 15.1285 = 28,080\text{m}^2$

The proposal has a total GFA of 28,283m² which equates to an FSR of 15.24:1. The exceedance of GFA is 203m² and exceedance of FSR is 0.11:1. This is an exceedance of 0.7%.

Is the development standard excluded from the operation of Clause 4.6 of the EPI?

Cl 4.6(2) states that development consent may be granted for development even though the development would contravene a development standard. However, this does not apply to a development standard that is expressly excluded under cl 4.6(8). The following relevant clauses are not identified under subclause 4.6(8) and are therefore not specifically excluded from the operation of cl 4.6 of SLEP 2012:

- Clause 4.4 Floor space ratio;
- Clause 6.4 Accommodation floor space; and,
- Clause 6.21D Competitive design process.

The Site and its Context

This detailed DA relates to 525 George Street, Sydney ('the site'), which is legally described as Lot 1 in DP 224683. The site is currently occupied by the southern section of the Event Cinemas complex which is located across two titles between 505-523 and 525 George Street. 505-523 George Street is under separate ownership and this DA relates solely to 525 George Street. The existing cinema building occupies the entire site to all boundaries.

The site is located within the midtown area of the Sydney CBD, approximately 250m south of Townhall and 120m northwest of World Square where it sits in approximately the middle of the block between Bathurst Street to the north and Liverpool Street to the south.

The surrounding land uses at the ground level are predominantly retail including entertainment uses. Nearby towers host a mix of land uses including residential, serviced apartments, hotels and commercial office space. The site enjoys a high level of pedestrian traffic along George Street.

Development to the North

Adjoining the site's northern boundary is 505-523 George Street where a detailed design application was approved in 2020 for a new 280m tall residential tower and mixed-use podium. The tower reaches a maximum height of RL 287 over 80 storeys. It includes a 10m tall ARF.

Further north is 501 George Street and 488 Kent Street which are towers A and B, respectively within a single development known as 'Regent Place'. Tower A, known as Lumiere, is a 40-storey residential building. Tower B is known as Fraser Suites and is a 30-storey tower containing serviced apartments. The common podium is occupied by a range of commercial and retail uses.

Development to the South

Development to the south of the site is separated by Albion Place. The Albion Place Hotel is a heritage-listed 4-storey building located at 531-535 George Street.

To the immediate south is 528 Kent Street known as the Meriton Suites on Kent Street which is a 40-storey tower containing serviced apartments with a 4-storey podium containing retail uses. The building's crown reaches a maximum height of 185m (AHD).

To the south along the Kent Street frontage, the site is adjacent to 518-520 Kent Street which is a 3-storey restaurant and office building.

Development to the East

580 George Street is occupied by the HSBC centre which is a 33-storey office tower with a podium containing a food court at the ground level and a retail arcade at the lower ground level.

Development to the West

To the west of the site, along Kent Street, there are two low-scale heritage items. 529 Kent Street is occupied by a single storey building located in a garden operating as 'Tetsuya's Restaurant'. 531 Kent Street is occupied by a single storey State heritage-listed building known as the former "Judge's House" with the listing including interiors and the garden.

To the southwest is 533-539 Kent Street which is a 14-storey apartment tower with 68 units built on a podium. The podium incorporates several heritage listed buildings along Kent Street and retains their facades.

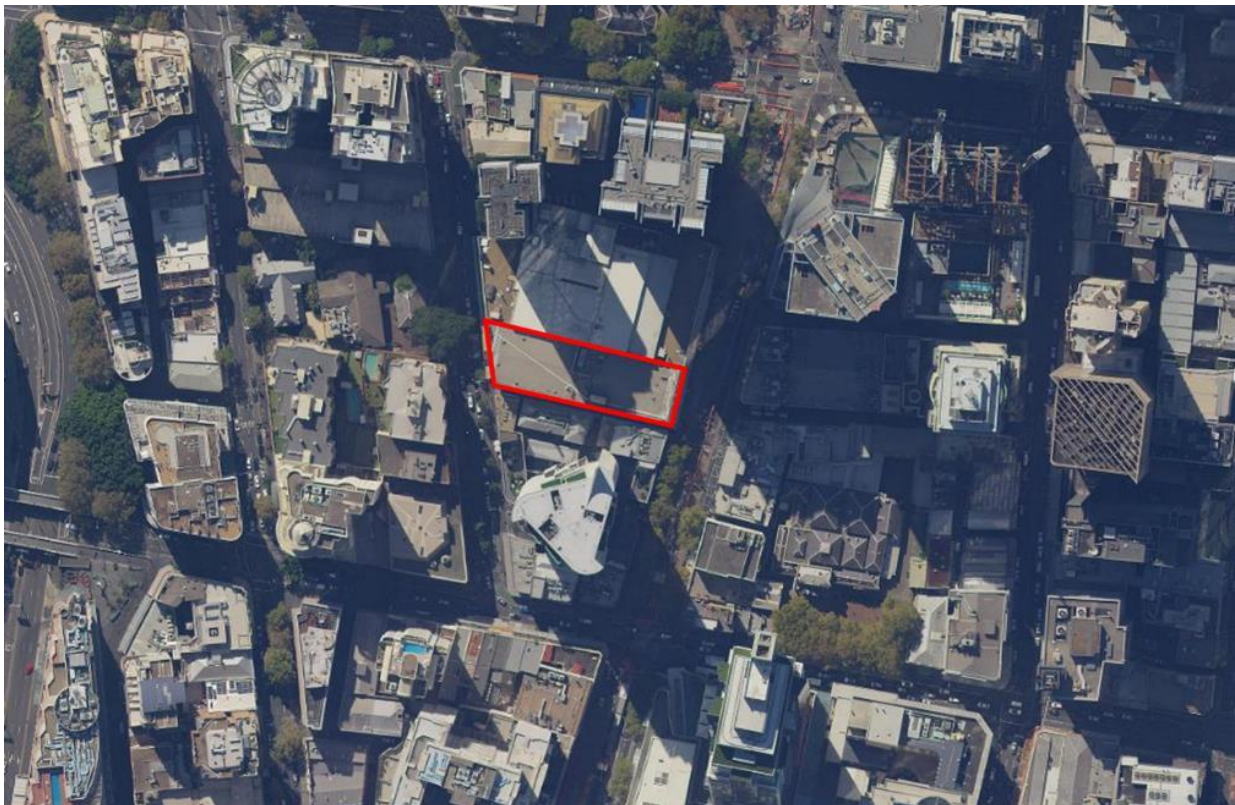


Figure 2 – Aerial image identifying the site (Six Maps)



Figure 3 – The site viewed looking south along George Street

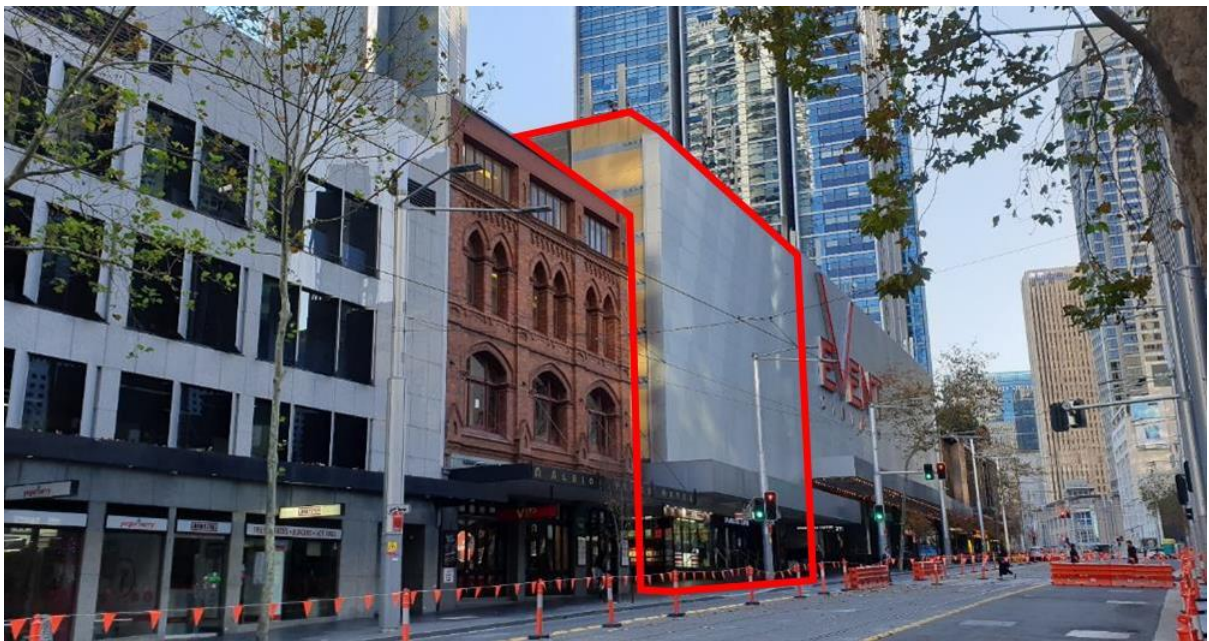


Figure 4 – The site viewed looking north along George Street

Extent and Nature of Variation to the Development Standard

This application involves a variation to the maximum FSR / GFA limit of 15.1285:1 / 28,080m² by 0.11:1 / 203m². This is a variation of 0.7%.

Bicycle Parking

The Sydney LEP 2012 defines GFA (in part) as follows (emphasis added):

gross floor area means the sum of the floor area of each floor of a building measured from the internal face of external walls, or from the internal face of walls separating the building from any other building, measured at a height of 1.4 metres above the floor, ...

but excludes—

(e) any basement—

(i) storage...

Bicycle parking is commonly located within basement areas of commercial buildings where it is exempt from inclusion in GFA calculations as basement storage under (e)(i) of the GFA definition in the standard instrument. The exclusion of basement bicycle parking from GFA as ‘basement storage’ has been established in *Britely Property Pty Ltd v Randwick City Council (No 2) [2020] NSWLEC 1389*. The Commissioner found at [58] (emphasis added):

*58. In regard to the contested bicycle parking areas I am satisfied that the floor area occupied by the bike cages does not form GFA as defined by LEP 2012. Consistent with the decision of the Court in *Connoisseur Investments Pty Ltd v Sutherland Shire Council [2020] NSWLEC 1181* at [81], and the wording of the definition itself, I am satisfied that only habitable spaces (or shops, auditoriums or cinemas and the like) in the basement contribute to GFA. Further, I am satisfied that the bike cages fall with the storage exclusion at (e)(i) of the definition for GFA extracted at paragraph 28.*

The City of Sydney applies an end of journey floor space bonus under Clause 6.6 of the Sydney LEP 2012 equal to the FSR of provided end of journey facilities in purely commercial buildings up to a maximum of 0.3:1. This clause incentivises the provision of such facilities above ground which is consistent with the City’s preferred bicycle parking access arrangements under Section 3.11.3(7) of the Sydney DCP 2012. The subject proposal includes residential land uses and so is prevented from relying on the end of journey floor space bonus under Clause 6.6.

The design has located 205m² of commercial staff and visitor bicycle parking (135 spaces) on the Upper Ground Level where it is accessible at grade from the approximate centre of Albion Place (Figure 5). The entry point and bicycle parking are centrally located within the development between the various commercial uses to encourage maximum use. It also provides a safe entry point in an area that will be busy at most hours by virtue of the adjacent cinema lobby, residential lobby and retail tenancies. The location on the Upper Ground Level ensures that visitors and staff do not have to use a lift or enter via the hotel lobby to access the bicycle parking which reduces the friction associated with bicycle parking making people more likely to utilise the facilities. The location of the bicycle parking results in a superior design outcome that is in the public interest and complies with the City’s preferred access arrangements for bicycle parking.

Because of the change in surrounding ground levels, much of the Lower Ground Level of the development is located within a basement. The Lower Ground Level has been proposed to be occupied by a variety of uses including a food and drink premises and back of house offices which would constitute GFA whether located in a basement or above ground.

The bicycle parking has been located above ground where a superior outcome is achieved but where it cannot rely on the exemption from GFA under basement storage. It thereby contributes 205m² to the building's total GFA resulting in an exceedance of 203m².

An alternative design could rearrange the uses between parts of the Upper Ground and Lower Ground Levels to locate the bicycle parking within the basement area of the Lower Ground Floor where it would be exempt from inclusion as GFA. The back of house offices or other uses that are currently in the Lower Ground level could be located on the Upper Ground where they would continue to contribute to GFA. This alternative arrangement would exclude the 205m² of bicycle parking from GFA and result in an FSR-compliant design while maintaining the same building envelope.

The alternative described above would be an inferior outcome in terms of accessibility, convenience, and safety in relation to the provision of bicycle parking, which the current design optimises. The proposed development optimises the design and provision of bicycle parking instead of optimising for numerical compliance with the FSR standard. Notwithstanding, the proposal also complies with the LEP's FSR objectives.

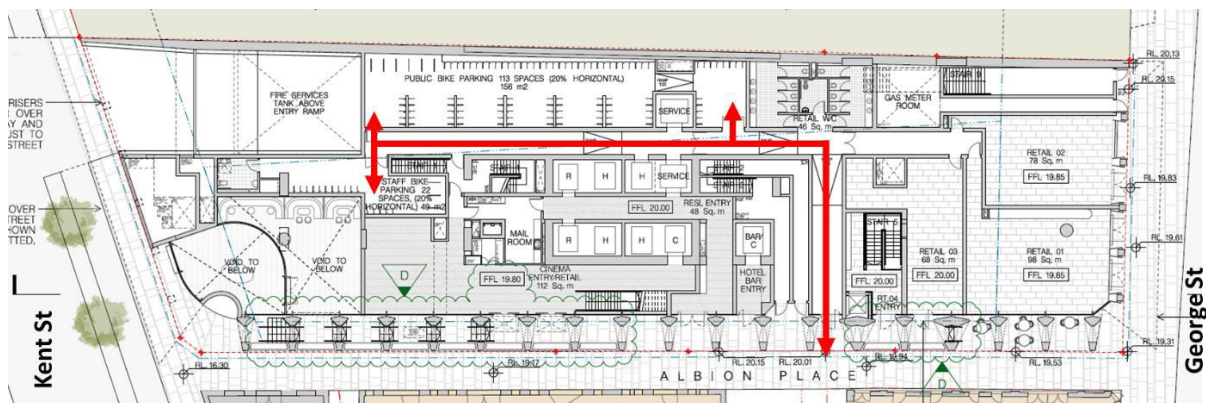


Figure 5 - Commercial bicycle parking access route (shown in red) on the Upper Ground Level

Concept Envelope

The proposed design is part of a Detailed Design DA following an approved Concept DA (D/2019/758). This Detailed Design DA is lodged in parallel with a modification to D/2019/758 seeking minor changes in the approved building envelope in relation to the building's uppermost level, north-facing public art zone and Level 5 terrace awnings, and balustrades. The variations being sought to the concept envelope are modest and do not seek to create additional GFA. They also do not relate to the Lower Ground or Upper Ground levels.

As described above, the theoretical relocation of bicycle parking to the basement areas and other uses to the Upper Ground Level would not alter the proposed envelope of the podium. That area of the building envelope is compliant with the approved concept envelope and does not increase building bulk.

Design Excellence

The proposed design was selected as the most successful scheme from an Invited Competitive Design Alternative Process. The competition-winning scheme has been refined in response to the comments of the selection panel as discussed in section 4.1.3 of the Statement of Environmental Effects.

The proposed scheme meets the design excellence requirements as described in detail in section 8.1 of the Statement of Environmental Effects.

The proposed design exhibits design excellence notwithstanding the non-compliance with the FSR standard.

Clause 4.6(3)(a) - Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case?

Historically, the most commonly invoked way to establish that a development standard was unreasonable or unnecessary was the satisfaction of the first test of the five set out in *Wehbe v Pittwater Council* [2007] NSWLEC 827 which requires that the objectives of the standard are achieved notwithstanding the non-compliance with the standard.

In *Wehbe v Pittwater Council* [2007] 156 LGERA 446 [42] – [51] (“*Wehbe*”) and repeated in *Initial Action* [17]-[21] the Chief Judge identified 5 ways in which an applicant might establish that compliance with a development standard is unreasonable or unnecessary and that it is sufficient for only one of these ways to be established.

Although *Wehbe* concerned a SEPP 1 objection, it remains relevant to requests under clause 4.6 as confirmed by Pain J in *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90, notwithstanding that if the first and most commonly applied way is used, it must also be considered in 4.6(4)(a)(ii).

The 5 ways in *Wehbe* are that:

1. the objectives of the development standard are achieved notwithstanding non-compliance with the standard;
2. the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary;
3. the objective would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable;
4. the development standard has been virtually abandoned or destroyed by the Council’s actions in granting consents departing from the standard and hence the standard is unreasonable; or,
5. the zoning of the land is unreasonable or inappropriate.

The five ways are not exhaustive and it may be sufficient to establish only one. This Request relies on the first way established under *Wehbe*. The remaining 4 are not relevant to the circumstances of the DA.

Compliance is unreasonable and unnecessary

Strict compliance with the floor space ratio development standard is unreasonable and unnecessary in the circumstances of this application as:

- the proposed variation for the floor space ratio standard is minor at 0.7%;
- the proposed design locates 205m² of bicycle parking above ground where it is counted as GFA rather than in the basement where it would be excluded;
- the proposed arrangement of the bicycle parking on Upper Ground Level does not impact upon the approved concept envelope;
- the proposal exhibits design excellence notwithstanding the non-compliance with the FSR standard;
- the proposal is consistent with the objectives of the floor space ratio standard as detailed below; and,
- the proposed variation to the floor space ratio standard does not give rise to any substantive negative environmental impacts.

As the proposal is consistent with the objectives of the FSR development standard, compliance with the development standard is considered to be unreasonable and unnecessary in the circumstances.

Compliance with the floor space ratio standard

Clause 4.4 Objective (a)

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

The extent of the proposed variation is 0.7%. The proposal provides sufficient floor space to meet the anticipated development needs of the future.

Clause 4.4 Objective (b)

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

As described in this Variation request under the heading 'Extent and Nature of Variation to the Development Standard', the layout of the Lower Ground and Upper Ground levels could be reconfigured, while retaining the existing uses, to achieve numerical compliance with the development standard. However, doing so would result in an inferior design for non-residential bicycle parking. The 'density', 'built form' and 'land use intensity' of the proposed building would be the same as if numerical compliance were achieved. As described under the subheading 'Concept Envelope', the proposed arrangement of the bicycle parking on Upper Ground Level does not impact upon the approved concept envelope. The proposal is consistent with the density, built form and land use intensity envisioned for the site under the applicable planning controls despite the small 0.7%

variation and is consistent with the first half of objective (b).

By providing easily accessible bicycle parking for staff and visitors, the development is discouraging the use of private motor vehicles and encouraging active and public transport use. This is consistent with the second half of objective (b).

Clause 4.4 Objective (c)

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

The minor variation of 203m² of GFA that is being proposed represents a negligible impact on infrastructure within the Sydney CBD. Additionally, numerical compliance with the FSR standard could be achieved while providing the same intensity of uses as described above. This indicates that the intensity of the development is not inappropriate or inconsistent with the available infrastructure.

Clause 4.4 Objective (d)

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

The provision of bicycle parking on the Upper Ground Level does not impact upon the approved concept envelope under D/2019/758. The development of a 44-storey tower is compatible with the character of the Sydney CBD.

As considered below, the additional 203m² of GFA does not give rise to any identifiable negative environmental impacts.

Environmental Impacts

The primary environmental amenity matters of consideration are; overshadowing, privacy/overlooking, view loss and visual domination. These matters provide an indication of a proposal's suitability and reflect the matters of consideration under Section 4.15 of the Act.

As established above, the same building envelope could achieve a numerically compliant FSR with the uses in the Lower Ground Level and Upper Ground Level being rearranged. As a result, there is no environmental impact that can be associated with the non-compliance in comparison to an alternative FSR-compliant design.

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

The objects of the *Environmental Planning and Assessment Act 1979* include the promotion of good design and amenity of the built environment. The proposed design locates bicycle parking on the Upper Ground Level while other uses such as a food and drink premises and back of house offices for the hotel are located on the Lower Ground Level. Rearranging these uses would achieve numerical compliance with the FSR standard but would cause an inferior design outcome for the bicycle parking.

The design has located 205m² of commercial staff and visitor bicycle parking (135 spaces) on the Upper Ground Level where it is accessible at grade from the approximate centre of Albion Place. The entry point and bicycle parking are centrally located within the development between the various commercial uses to encourage maximum use. The location on the Upper Ground Level ensures that visitors and staff do not have to use a lift to access the bicycle parking making them more likely to utilise the facilities. The proposed design encourages the activation of Albion place and the use of active and public transport methods. It also complies with the City's preferred access arrangements for bicycle parking.

The proposed FSR non-compliant design is superior to one in which numerical compliance is achieved with the FSR standard but in which bicycle parking is located on the Lower Ground Level. Such an arrangement would require access either through the hotel lobby or via a lift. Either alternative has the potential to discourage the use of visitor bicycle parking.

There are sufficient environmental planning grounds to justify the contravention of the FSR development standard as the proposed contravention promotes good design and amenity in the built environment through its positive contribution to the building's bicycle parking arrangements and its lack of external negative environmental impacts.

Clause 4.6(4)(a)(i) - consent authority satisfied that this written request has adequately addressed the matters required to be demonstrated by Clause 4.6(3)

Clause 4.6(4)(a)(i) 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 addressed the matters required to be demonstrated by subclause (3).

These matters are comprehensively addressed above in this written request with reference to the five-part test described in *Wehbe v Pittwater Council* [2007] NSWLEC 827 for consideration of whether compliance with a development standard is unreasonable or unnecessary in the circumstances of the case. In addition, the establishment of environmental planning grounds is provided, with reference to the matters specific to the proposal and site, sufficient to justify contravening the development standard.

Clause 4.6(4)(a)(ii) - consent authority satisfied that the proposal is in the public interest because it is consistent with the zone and development standard objectives

Clause 4.6(4)(a)(ii) states that development consent must not be granted for development that contravenes a development standard unless the consent authority is satisfied 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.

Objective of the Development Standard

The consistency of the proposed development with the specific objectives of the FSR development standard is addressed above.

Objectives of the Zone

Clause 4.6(4) also requires consideration of the relevant zone objectives. The site is located within the SP5 - Metropolitan Centre zone under the SLEP 2012 (as amended on 26/04/2023). The proposal is consistent with the relevant zone objectives, namely:

- To recognise and provide for the pre-eminent role of business, office, retail, entertainment and tourist premises in Australia's participation in the global economy.
- To provide opportunities for an intensity of land uses commensurate with Sydney's global status.
- To permit a diversity of compatible land uses that are characteristic of Sydney's global status and that serve the workforce, visitors and wider community.
- To encourage the use of alternatives to private motor vehicles, including public transport, walking and cycling.
- To promote land uses with active street frontages within podiums that contribute to the character of the street.
- To promote the efficient and orderly development of land in a compact urban centre.
- To promote a diversity of commercial opportunities varying in size, type and function, including new cultural, social and community facilities.
- To recognise the important role that central Sydney's public spaces, streets and amenity play in a global city.
- To promote the primary role of the zone as a centre for employment and permit residential accommodation and serviced apartments where the accommodation complements employment-generating land uses.

The proposed uses are residential apartments, a hotel, a function centre, an entertainment facility and retail premises. All uses are permitted with consent. The development is consistent with the objectives of the zone in that the proposal for a mixed-use tower envelope on the subject site:

- Reinforces the pre-eminent role of business, retail, entertainment and tourist uses and the site's contribution to and participation in the global economy.
- Provides a complaint intensity of land uses commensurate with Sydney's global status.
- Incorporates a diversity of compatible and permissible land uses characteristic of Sydney's global status and that serve the workforce, visitors and wider community.
- Encourages the use of alternatives to private motor vehicles, such as public transport, walking and cycling by offering bicycle parking and being accessible by public transport.
- Promotes uses with active street frontages on George Street and Albion Place for the purposes of retail premises, and a hotel lobby on Kent Street.
- Promotes the efficient and orderly development of land by utilising the available height and FSR under the LEP.
- Promotes commercial, cultural and social facilities by providing a hotel, cinemas and food and drink premises on the site.
- Provides residential apartments that will not negatively impact the other employment generating uses being proposed, and complements employment-generating land uses in the CBD.

Objectives of Clause 4.6

The specific objectives of cl 4.6 are:

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

The proposal demonstrates a high-quality design that responds positively to its CBD context. A degree of flexibility is necessary to permit a structure that exceeds the site's maximum FSR by 0.7%. This provides a better outcome for the site by allowing bicycle parking to be provided for non-residential uses at grade with Albion Place. This non-compliance supports the zone objective to encourage alternatives to motor vehicle transport including cycling and complies with Council's preferred bicycle parking arrangements under Section 3.11.3(7) of the Sydney DCP 2012.

Accordingly, it is considered that the consent authority can be satisfied that the proposal meets objective 1(a) of Clause 4.6 in that allowing flexibility in relation to the FSR development standard will achieve a better outcome in this instance in accordance with objective 1(b).

Conclusion

Strict compliance with the FSR development standard contained within clause 4.4 of the Sydney Local Environmental Plan 2012 has been shown in this Variation Request to be unreasonable and unnecessary in the circumstances of the case. Further, there are sufficient environmental planning grounds to justify the proposed variation. In this regard, it is reasonable and appropriate to vary the FSR development standard to the extent proposed.