

# **Attachment C**

<p><b>Clause 4.6 Variation Request Height of Buildings</b></p>
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**URBIS**

# **CLAUSE 4.6 VARIATION REQUEST**

355-357 Sussex Street,  
Sydney

Prepared for  
**MULPHA SUSSEX DEVELOPMENTS PTY LTD**  
August 2023

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# 1. INTRODUCTION

This Clause 4.6 Variation Request (Variation Request) has been prepared on behalf of Mulpha Sussex Development Pty Ltd (the Applicant) and accompanies a Development Application (DA) for the proposed hotel development at 355-357 Sussex Street, Sydney.

This Variation Request seeks an exception from the height of building development standard prescribed for the site under clause 4.3 of the *Sydney Local Environmental Plan 2012* (Sydney LEP 2012). The Variation is made in accordance with clause 4.6 of the Sydney LEP.

This Clause 4.6 Variation Request should be read in conjunction with the Statement of Environmental Effects prepared by Urbis Pty Ltd (Rev 01 dated May 2023), as well as the Architectural Plans (dated 08/05/2023 Rev A) and Design Report prepared by Cottee Parker.

This report is structured as follows:

- **Section 2** – Description of the site and its local and regional context, including key features relevant to the proposed variation.
- **Section 3** – Brief overview of the proposed development as outlined in further detail within the SEE and accompanying architectural drawings.
- **Section 4** – Identification of the development standard which is proposed to be varied, including the extent of the variation.
- **Section 5** – Outline of the relevant assessment framework for the variation in accordance with clause 4.6 of the LEP.
- **Section 6** – Detailed assessment and justification of the proposed variation in accordance with the relevant guidelines and relevant planning principles and judgements issued by the NSWLEC.
- **Section 7** – Summary and conclusion.

# 2. SITE DESCRIPTION

The site is known as 355 – 357 Sussex Street and is located on the western side of Sussex Street between Liverpool Street to the north and Goulburn Street to the south. The site has a frontage of approximately 24.45m to Sussex Street, a maximum depth of 28.09m, and a total site area of 718 sqm.

The site's topography comprises a significant level change of approximately 3.5 metres between Sussex Street and Dixon Street. The highest point along the site's boundary is the south-eastern corner (RL 10.23) and the lowest point is at the north-eastern corner (RL 9.97).

The site comprises two existing former warehouse buildings up to 4-5 storeys in height. The site at 357 Sussex Street comprises an existing basement, while the site at 355 Sussex Street comprises an existing lower ground level. The existing buildings on site are wholly built out to all site boundaries.

The legal description of the site is outlined within **Table 1** and the site location is shown in **Figure 2**. A photograph of the existing Sussex Street frontage is shown in **Figure 2**.

Table 1 – Legal Description of the Site

Property Address	Title Description
355 Sussex Street	Lots 1-7, SP 20780
357 Sussex Street	Lot 1, DP405848
<b>Total Site Area</b>	<b>718 sqm</b>

Figure 1 – Aerial Photograph of Site Location



Source: Urbis (2021)

## 2.1. LOCALITY CONTEXT

The site is located at the southern end of the Sydney Central Business District (CBD) within the City of Sydney Local Government area (LGA) and to the south-west of Town Hall train station and the new Pitt Street Metro Station (Bathurst Street entrance). The site is also located within the Chinatown precinct, and to the east of Darling Harbour.

The immediate urban surrounding contexts is comprised of predominately commercial development, including office uses, retail tenancies and food and beverage premises. There are also several hotels, serviced apartments, and residential apartment developments in the southern portion of the CBD. The site benefits from its Sussex Street location which is a north-south pedestrian and transport spine connecting key public places on the western edge of the city between Barangaroo, Darling Harbour, Chinatown, Haymarket, and Central. The surrounding context of the site is outlined below.

### North:

The former “Commerce Buildings” at 345B-353 Sussex Street adjoins the site to the north and is a local heritage-listed item (I1966). The commercial building is 5-6 storeys in height and comprises food and beverage uses at the ground floor and commercial office suites above.

The Radisson Hotel and Suites is located to the north-east at 72 Liverpool Street. This building is approximately 23-storeys in height and comprises 100 serviced apartments under both freehold and leasehold arrangements.

Further north at 311-315 Sussex Street, Development Consent D/2018/686 was approved on 5 December 2018 and allows the redevelopment of this site for the purposes of a 16-storey mixed use building with a maximum height of approximately 54.9m (RL63.48). The building will accommodate three retail tenancies on the lower and ground floors and residential accommodation on upper floors in the form of nine residential apartments and 83 boarding house rooms.

Figure 2 – Existing Image of Sussex Street Frontage, Facing North-West



Source: Urbis (2021)

**East:**

To the east of the site is the Pacific Arcade Mall at 372 Sussex Street which is a 10-storey commercial building with retail and medical suites at the ground floor. The Pacific Arcade Mall is bound by the heritage-listed Douglass Lane (i1732), Sussex Street and Liverpool Street.

Further east is the heritage-listed commercial building at 53-55 Liverpool Street (I1733) and the serviced apartment development at 57 Liverpool Street known as The Waldorf.

**South:**

Directly south of the site is the Regal Apartments at 359-361 Sussex Street which is 17-storeys in height. The 3-storey heritage-listed (former “Commerce House”) is located further south at 367-375 Sussex Street (I1967). This is also adjacent to an 11-storey commercial office building at 377 Sussex Street and 4-10 Goulburn Street which features several retail and business tenancies at the ground floor.

**West:**

Directly west of the site is the APX Darling Harbour apartments at 2-8 Dixon Street comprising serviced apartments at the lower levels (Levels 2-6) and residential apartments above (Levels 7-15). Further west is the 15-storey Seasons Darling Harbour hotel at 38 Harbour Street which is bound by Dixon Street, Goulburn Street, Harbour Street and Liverpool Street.

Refer to **Figure 3** for images of the existing local context and surrounding development.



Figure 3 – Images of Surrounding Development and Existing Local Context



Picture 1 – Regal Apartments at 359-361 Sussex Street, Facing West

Source: Google Maps (2022)



Picture 2 – APX Darling Harbour at 2-8 Dixon Street, Facing East

Source: Google Maps (2022)



Picture 3 – Pacific Arcade Mall at 372 Sussex Street, Facing East

Source: Google Maps (2022)



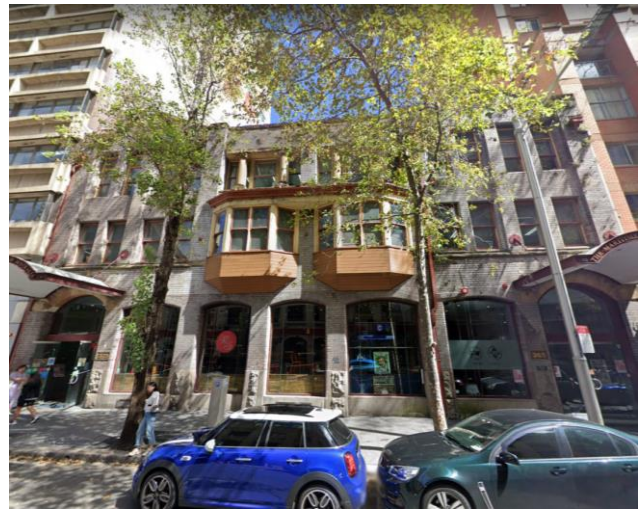
Picture 4 – Radisson Hotel and Suites at 72 Liverpool Street, Facing North-East

Source: Google Maps (2022)



Picture 5 – Former “Commerce Building” at 345B Sussex Street, Facing South-West

Source: Google Maps (2022)



Picture 6 – Former “Commerce House” at 365-375 Sussex Street, Facing West

Source: Google Maps (2022)

### 3. PROPOSED DEVELOPMENT

This Clause 4.6 Variation Request has been prepared to accompany a DA for the partial demolition of the existing buildings and structures and the construction of a 17-storey hotel development at 355-357 Sussex Street, Sydney.

This application seeks development consent for:

- Partial retention of the existing 5-storey building at 357 Sussex Street (including retention of the existing façade, and retention of the first two structural bays), and demolition of the remaining building and structures at 357 Sussex.
- Adaptive reuse of salvaged cast iron columns from 355 Sussex Street, and demolition of the existing building and structures at 355 Sussex Street.
- The construction of a 17-storey building with a maximum height of 54.9m (RL 63.92) for use as hotel comprising 272 hotel rooms, and ancillary reception, lobby and restaurant / bar at the ground floor.
- Excavation of two basement levels for loading and servicing, storage, hotel back-of-house spaces, and associated services and utilities, and service vehicular access from Sussex Street.
- Associating landscaping (including removal of 1 tree, and provision of 2 trees) and provision of public art.

Key details of the proposal are summarised in **Table 2** and an artist’s impression of the proposed built form and architectural design is provided in **Figure 4**.

Table 2 – Numeric Overview of Proposal

Element	Proposed Development
Site Area	718m <sup>2</sup>
Proposed Gross Floor Area (GFA)	6,315 sqm
Proposed Floor Space Ratio (FSR)	8.8:1
Maximum Height of Building	Roof top plant / tower lift overrun – 54.905 m (RL 63.92)

Figure 4 – Artist’s Impression of Proposed Development



Source: Cottee Parker (2023)

# 4. VARIATION OF HEIGHT OF BUILDING STANDARD

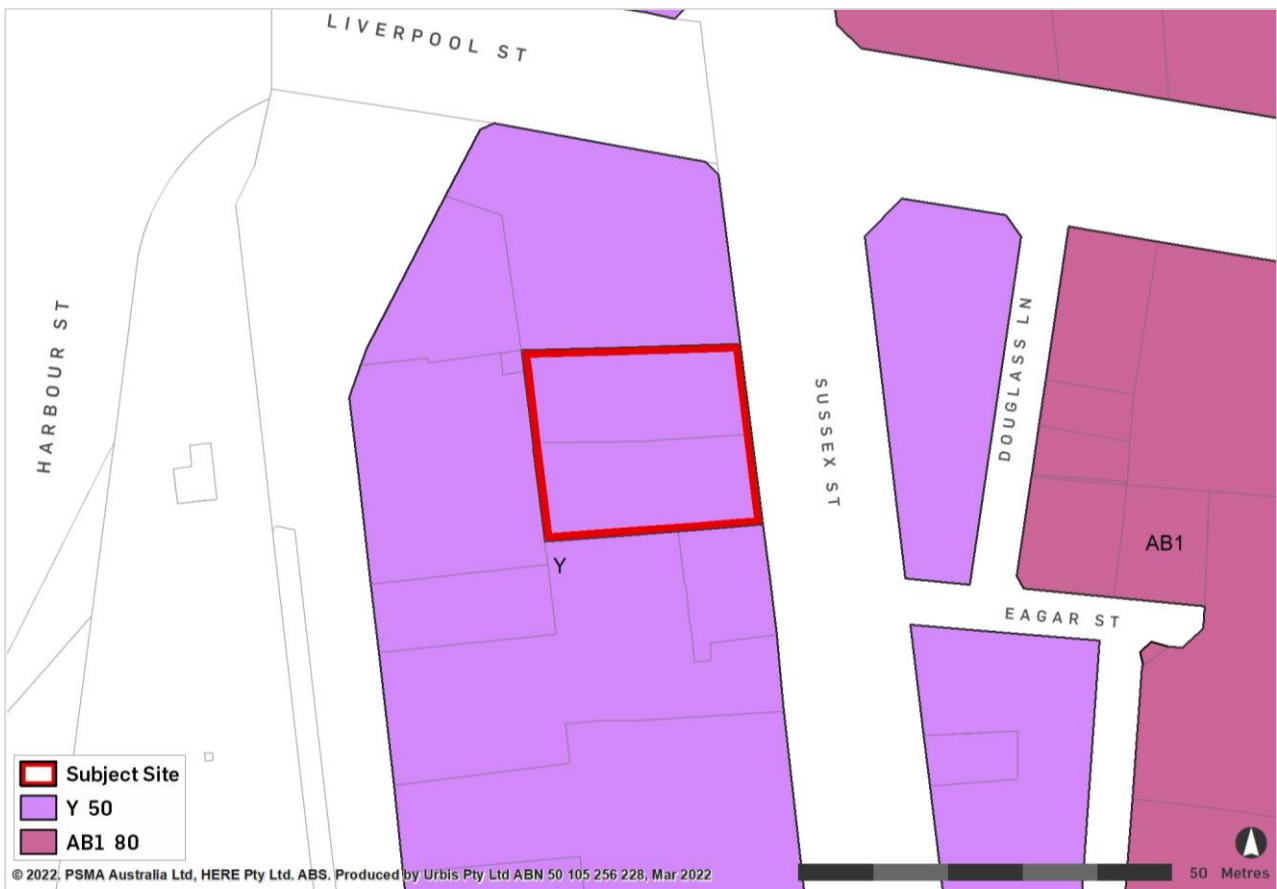
This section identifies the development standard proposed to be varied, including the extent of the variation. Detailed justification for the proposed variation is provided in **Section 6** of this Variation Request.

## 4.1. PROPOSED VARIATION TO MAXIMUM BUILDING HEIGHT

Clause 4.6 of the Sydney LEP 2012 applies to development standards. The relevant building height control at clause 4.3(2) requires that 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." Clause 6.16 of the Sydney LEP 2012 also prevents buildings from exceeding a height of 55 metres unless the site area is at least 1,000 sqm.

The maximum building height prescribed for the site is 50 m (shown in **Figure 5** below). This Request seeks a variation to the maximum building height prescribed for the site under Clause 4.3 of the Sydney LEP 2012.

Figure 5 – Extract of Sydney LEP 2012 Height of Buildings Map (Sheet HOB\_015)



Source: Sydney LEP 2012 (amended by Urbis 2022)

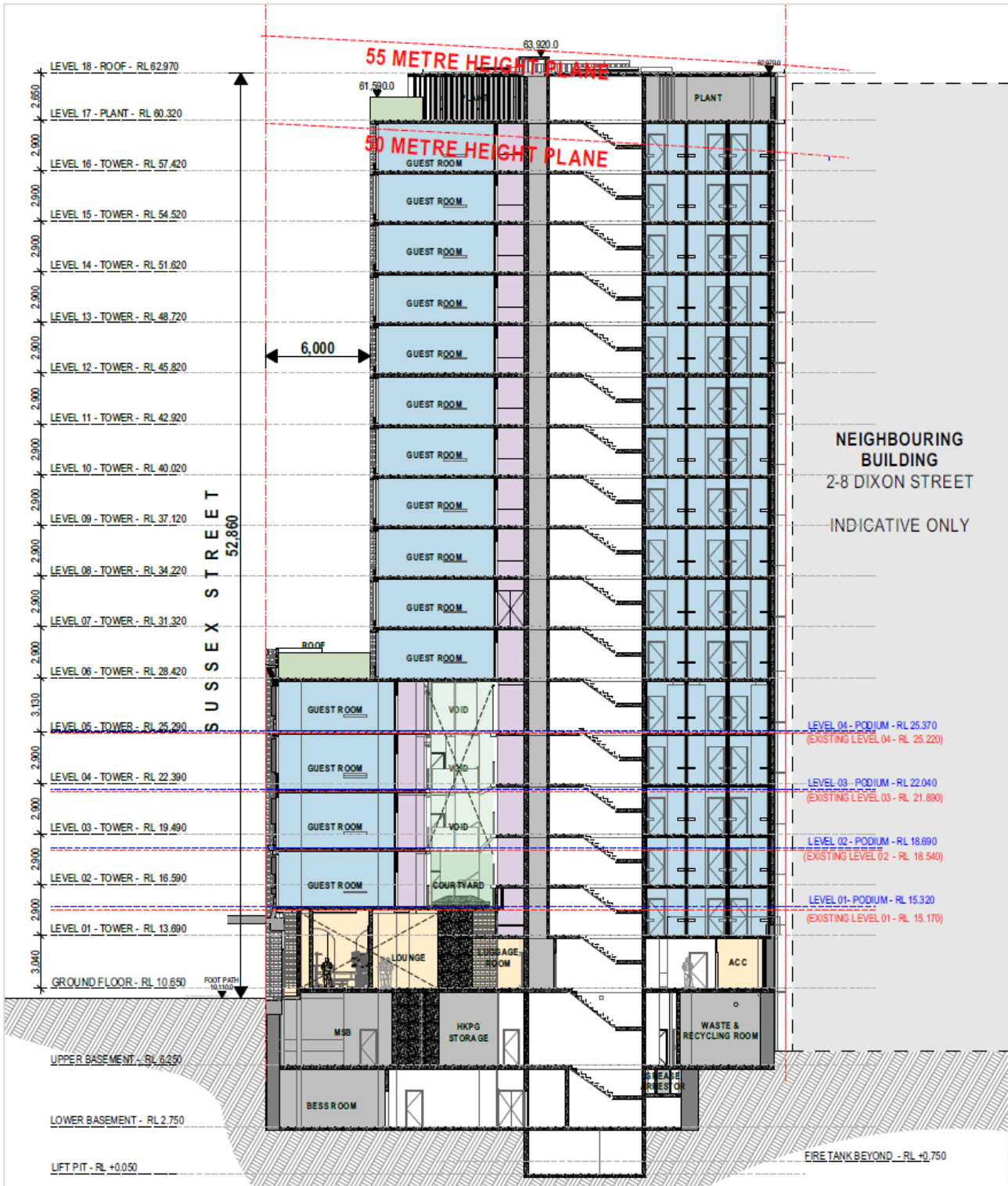
The proposed variation to the maximum building height is set out within **Table 3** and **Figure 6** below.

Table 3 – Proposed Height Variation

Location	Height Standard	Proposed Height	Variation *
Tower Parapet (to Sussex Street frontage)	50m	RL 61.59	+2.085 m
Plant / Lift Overrun	50m	RL 63.92	+4.905 m

\* Extent of variation calculated by measuring the distance between the 50m height plane and the 55m height plane at the relevant locations.

Figure 6 – Proposed East/West Section Showing Extent of Variation



Source: Cottee Parker (2023)

The sloping height planes are based on known survey spot levels taken from Sussex Street (along the site's eastern boundary at its interface with the public domain) and known spot levels on Dixon Street to the west (along the western boundary of the APX Apartments at 2-8 Dixon Street). The sloping height planes in **Figure 6** above are illustrated as an average between these known survey levels which reflects the relationship of the proposed development to the overall topography that includes the site.

## 5. RELEVANT ASSESSMENT FRAMEWORK

Clause 4.6 of Sydney LEP 2012 includes provisions that allow for exceptions to development standards in certain circumstances. The objectives of clause 4.6 of Sydney LEP 2012 are:

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

Clause 4.6 provides flexibility in the application of planning provisions by allowing the consent authority to approve a DA that does not comply with certain development standards, where it can be shown that flexibility in the particular circumstances of the case would achieve better outcomes for and from the development.

In determining whether to grant consent for development that contravenes a development standard, clause 4.6(3) requires that the consent authority to consider a written request from the applicant that seeks to justify the variation of the development 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.*

Clause 4.6(4)(a) requires the consent authority to be satisfied that the applicant's written request adequately addresses each of the matters listed in clause 4.6(3). The consent authority should also be satisfied that that the proposed development will be in the public interest because it is consistent with the objectives of the standard and the objectives for development within the zone in which it is proposed to be carried out.

Clause 4.6(4)(b) requires the concurrence of the Secretary to have been obtained. In deciding whether to grant concurrence, subclause (5) requires that the Secretary consider:

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

The concurrence of the Secretary can be assumed to have been granted for the purpose of this Variation Request in accordance with the Department of Planning Circular PS 18–003 'Variations to development standards', dated 21 February 2018. This circular is a notice under section 64(1) of the *Environmental Planning and Assessment Regulation 2000* and provides for assumed concurrence. A consent granted by a consent authority that has assumed concurrence is as valid and effective as if concurrence had been given.

This Variation Request demonstrates that compliance with the maximum height control prescribed for the site in clause 4.3 of Sydney LEP 2012 is unreasonable and unnecessary, that there are sufficient environmental planning grounds to justify the requested variation and that the approval of the variation is in the public interest because it is consistent with the development standard and zone objectives.

In accordance with clause 4.6(3), the applicant requests that the height development standard be varied.

## 6. ASSESSMENT OF CLAUSE 4.6 VARIATION

The following sections provide a comprehensive assessment of the request to vary the development standard relating to the maximum building height in accordance with clause 4.3 of Sydney LEP 2012.

Detailed consideration has been given to the following matters within this assessment:

- *Varying development standards: A Guide*, prepared by the (former) Department of Planning and Infrastructure dated August 2011.
- Relevant planning principles and judgements issued by the NSWLEC.

The following section provides detailed responses to the key questions required to be addressed within the above documents and clause 4.6 of the Sydney LEP 2012.

## 6.1. IS THE PLANNING CONTROL A DEVELOPMENT STANDARD THAT CAN BE VARIED? – CLAUSE 4.6(2)

The maximum building height control prescribed by clause 4.3 of Sydney LEP 2012 is a development standard. The proposed variation is not excluded from the operation of clause 4.6(2) as it does not comprise any of the matters listed within clause 4.6(6) or clause 4.6(8) of the Sydney LEP 2012.

Therefore, the proposed maximum building height control is a development standard that is capable of being varied under clause 4.6(2) of the Sydney LEP 2012.

## 6.2. IS COMPLIANCE WITH THE DEVELOPMENT STANDARD UNREASONABLE OR UNNECESSARY IN THE CIRCUMSTANCES OF THE CASE? – CLAUSE 4.6(3)(A)

Historically, the most common way to establish a development standard was unreasonable or unnecessary was by satisfying the first method set out in *Wehbe v Pittwater Council* [2007] NSWLEC 827. This method requires the objectives of the standard are achieved despite the non-compliance with the standard.

This was recently re-affirmed by the Chief Judge in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 at [16]-[17]. Similarly, in *Randwick City Council v Micaul Holdings Pty Ltd* [2016] NSWLEC 7 at [34] the Chief Judge held that “establishing that the development would not cause environmental harm and is consistent with the objectives of the development standards is an established means of demonstrating that compliance with the development standard is unreasonable or unnecessary”.

This Variation Request addresses the first method outlined in *Wehbe v Pittwater Council* [2007] NSWLEC 827. This method alone is sufficient to satisfy the ‘unreasonable and unnecessary’ requirement.

- **The objectives of the standard are achieved notwithstanding non-compliance with the standard** (the first method in *Wehbe v Pittwater Council* [2007] NSWLEC 827 [42]-[43])

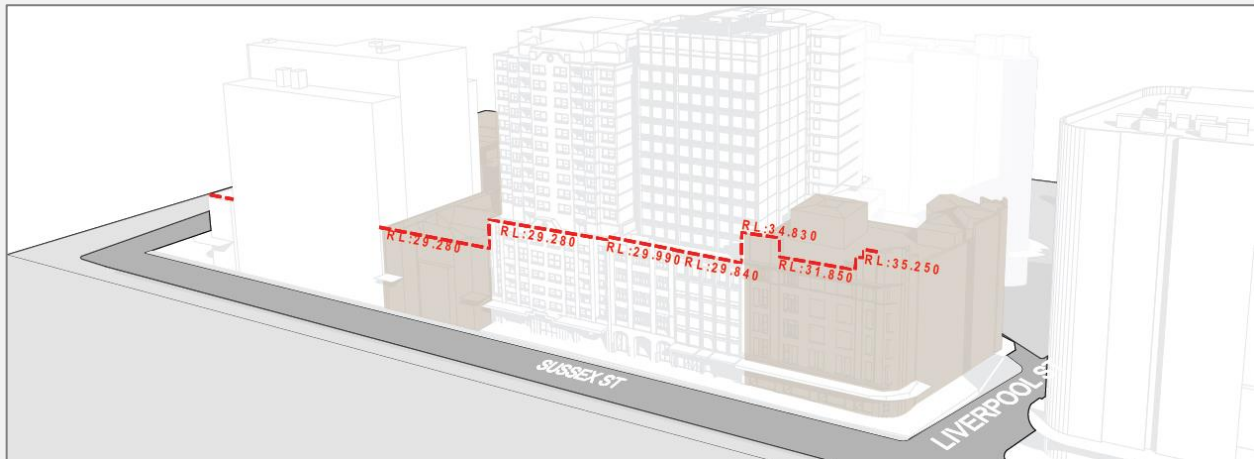
The specific objectives of the development standard as specified in clause 4.3 of Sydney LEP 2012 are detailed in **Table 4** below. An assessment of the consistency of the proposed development with each of the objectives is also provided.

Table 4 – Assessment of Consistency with Clause 4.3 Objectives

Objectives	Assessment
(a) <i>To ensure the height of development is appropriate to the condition of the site and its context,</i>	<p>The proposal forms part of the transitional built form area between the high-density CBD developments to the east and Darling Harbour to the west.</p> <p>The height of buildings in the surrounding area varies significantly, although the prevailing street wall and parapet provides a strong contextual reference point. In the site’s immediate context, tower forms of up to 23-storeys are situated above a varied street wall height of approximately 20 metres.</p> <p>While the existing buildings at 355 and 357 Sussex Street are not listed as local or State heritage items, the proposal seeks to retain and conserve those elements of the existing buildings which make the most significant contribution to its character and presentation as a remnant building of its type and period. This includes the existing façade and two structural bays of 357 Sussex Street as well as retention of the existing floor levels behind. The new infill podium at 355 Sussex Street will align</p>

Objectives	Assessment
	<p>with the horizontal datum of the retained and adapted former warehouse building at 357 Sussex Street, ensuring that the existing street wall height is maintained.</p> <p>The proposed height variation results in the addition of part of a habitable floor as well as rooftop plant / services (having regard to the fall in topography between Sussex Street and Dixon Street). When viewed from Sussex Street, this variation will not result in any additional visual bulk compared to a scheme which strictly complies with the 50m height control. The rooftop plant / services and lift overrun have been setback from the perimeter of the tower from the east, north and south. The proposed tower is also setback 6m from Sussex Street above the existing street wall height which reduces the visual impact of the development when viewed from the public domain.</p> <p>The proposal is also consistent with the nature, scale and character of existing tower developments to the east, south, and west including the APX apartments and the Regal apartments (as shown in <b>Figure 7</b> below). The proposed development is consistent with this objective.</p>

Figure 7 – Sussex Street Elevation



Source: Cottee Parker (2022)

<p>(b) <i>to ensure appropriate height transitions between new development and heritage items and buildings in heritage conservation areas or special character areas,</i></p>	<p>The Central Sydney Planning Strategy (CSPC) envisages growth opportunities and future development of the surrounding area. While the site is not identified for height uplift under the CSPS, the eastern side of Sussex Street has been identified as a Tower Cluster Area – an area capable of accommodating increased height and density to promote increased growth opportunities for employment floor space. This has the potential to impact the site’s immediate built form context in the medium to long-term whilst maintaining the stepped transition in building heights to the west towards Darling Harbour.</p> <p>The proposal is consistent with the existing and future pattern of development in the city, is visually compatible with neighbouring properties, and creates a general stepping in height while maintaining the existing established street wall height.</p>
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Objectives	Assessment
	<p>Although the site is not a local or State heritage listed item, the site is located within the Haymarket / Chinatown Special Character Area. A local heritage listed item, the former “Commerce Building” (1966) at 345B Sussex Street adjoins the site to the north. There are also several other heritage items located within the immediate vicinity of the site including the Former “Commerce House” (1967) at 365-375 Sussex Street and Former “Foley Bros” warehouse group (1968) at 374-386 Sussex Street.</p> <p>The proposal partially retains the existing building at 357 Sussex Street, including the façade and two structural bays. In doing so, the proposal maintains the existing characteristics of the area (including the predominant street wall height). The proposal complements this existing character and is appropriate to the established and varied building heights in the area.</p> <p>The proposal would have no adverse or unreasonable impacts on adjacent or nearby heritage items (including their fabric, settings or views). In particular, the setting and contribution of the adjacent heritage-listed “Commerce Building” at 345B Sussex Street will be maintained as an important corner site and will not be impacted by the proposal.</p> <p>The proposed development is consistent with this objective.</p>
<i>(c) to promote the sharing of views outside Central Sydney,</i>	<p>The proposed height results in a scale and density of development that is acceptable and appropriate for the site’s CBD location. The proposal is not out-of-character for the street, and is consistent with the scale and density of neighbouring buildings. As a result, the proposed height variation will not result in any significant or unacceptable impacts on amenity or visual privacy to the adjacent properties to the west and south compared to a scheme which strictly complies with the 50m height control.</p> <p>The proposed development is consistent with this objective.</p>
<i>(d) to ensure appropriate height transitions from Central Sydney and Green Square Town Centre to adjoining areas,</i>	<p>The proposed development is located in the south-western portion of the CBD where building height controls transition towards the Darling Harbour precinct. From the eastern side of George Street building heights gradually transition from 235m, progressively to 80m on the western side of George Street, with Sussex Street (and the subject site) stepping down to 50m.</p> <p>As discussed elsewhere in this Clause 4.6 variation, the parapet height of the proposal is generally aligned with the 50m height control, albeit that the lift core and plant slightly exceed this, which has been examined in close detail in this variation request.</p>
<i>(e) in respect of Green Square—</i>	Not applicable – the site is not located in Green Square.

Objectives	Assessment
<p>(i) to ensure the amenity of the public domain by restricting taller buildings to only part of a site, and</p> <p>(ii) to ensure the built form contributes to the physical definition of the street network and public spaces.</p>	Not applicable – the site is not located in Green Square.

As set out within the table above, the proposal is consistent with the objectives of the development standard as specified in clause 4.3 of the Sydney LEP 2012, (notwithstanding the minor variation to the development standard, in the particular circumstances of this Clause 4.6 Variation Request).

### 6.3. ENVIRONMENTAL PLANNING GROUNDS TO JUSTIFY CONTRAVENING THE DEVELOPMENT STANDARD – CLAUSE 4.6(3)(B)

The NSWLEC judgment in *Initial Action Pty Ltd v Woollahra Council* [2018] NSWLEC 118, assists in considering the sufficient environmental planning grounds. At [24], Preston CJ observed that in order for there to be ‘sufficient’ environmental planning grounds to justify a written request under clause 4.6, the focus must be on:

*“... the aspect or element of the development that contravenes the development standard, not on the development as a whole, and why that contravention is justified on environmental planning grounds. The environmental planning grounds advanced in the written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole...”*

Preston CJ also observed at [87] that there is no basis in clause 4.6 to:

*“... directly or indirectly establish a test that the non-compliant development should have a neutral or beneficial effect relative to a compliant development.”*

In *Initial Action*, the Court also stated that the adjectival phrase “environmental planning” is not defined but would refer to grounds that relate to the subject matter, scope and purpose of the *Environmental Planning and Assessment Act 1979* (EP&A Act), including the objects in section 1.3 of the EP&A Act.

While this does not necessarily require that the proposed development should be consistent with the objects of the Act, the proposal has been considered against each object of the EP&A Act nonetheless (as and if relevant), notwithstanding the proposed variation to the height development standard.

Table 5 – Objects of the EP&A Act EP

Object	Comment
<p>(a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the</p>	<p>The proposal promotes the social and economic welfare of the community and a better environment through the delivery of hotel accommodation development in the Sydney CBD. This employment-generating land use will also support new jobs during the construction and operational phases of the project which is located near existing and future transport facilities.</p>

<p><i>State's natural and other resources,</i></p>	
<p><i>(b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,</i></p>	<p>The proposal will satisfy the required standards of ecologically sustainable development (ESD) through the integration of ESD principles within the design. This includes the provision of landscaping on the roof areas at Levels 1 and Level 6, photovoltaic panels on the tower roof, sun shading to the tower through articulation / external façade depth, a reduction in embodied carbon (through retention of the existing façade and two structural bays at 357 Sussex Street) and through targeting a rating of 4 Star NABERS Energy for Hotels. The proposed height variation will have no significant adverse impacts on any environmental and social considerations.</p>
<p><i>(c) to promote the orderly and economic use and development of land,</i></p>	<p>The proposed development promotes the orderly and economic use and development of the site through the partial demolition of the existing buildings, retention of the existing façade and two structural bays of the existing building at 357 Sussex Street, as well as the delivery of a new hotel accommodation development in a highly accessible CBD location.</p> <p>The proposed height variation is an orderly design outcome that responds to the sloping topography of the site and predominantly comprises rooftop plant / services and the lift overrun.</p>
<p><i>(d) to promote the delivery and maintenance of affordable housing,</i></p>	<p>In accordance with the City of Sydney Affordable Housing Program, a requirement for a contribution towards the provision of affordable housing is expected to form part of the development consent. Therefore, the proposal promotes the delivery and maintenance of affordable housing.</p>
<p><i>(e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,</i></p>	<p>The proposed development including the minor height variation will have no impact on threatened species or ecological communities and their habitats.</p>
<p><i>(f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),</i></p>	<p>The proposal promotes the sustainable management of built and cultural heritage through the retention of the existing façade (and two structural bays) of the existing former warehouse building at 357 Sussex Street. The proposal also seeks to salvage and reuse the remnant cast iron columns from the existing building at 355 Sussex Street. These cast iron columns are to be reused as decorative elements within the new infill podium at 355 Sussex Street.</p>
<p><i>(g) to promote good design and amenity of the built environment.</i></p>	<p>Design by Cottee Parker, the proposal achieves a high standard of architectural design, materials and detailing appropriate to the building type and its location within the Haymarket / Chinatown Special Character Area. The form and external appearance of the tower has a similar relationship to the external face of the brick work as the</p>

	<p>retained warehouse façade of 357 Sussex Street which will improve the quality and amenity of the public domain. The proposal provides a sympathetic response to the historic character of the area.</p> <p>The proposal has also been subject to rigorous pre-lodgment and post-lodgment design review which has informed the revised architectural expression and overall built form response. Therefore, the proposal promotes good design and amenity of the built environment.</p>
<p>(h) <i>to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,</i></p>	<p>The proposed development is capable of complying with the relevant BCA requirements. The minor variation in building height does not prevent the development from complying with the BCA. Potential construction related impacts will be able to be managed as required.</p>
<p>(i) <i>to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,</i></p>	<p>This Object is not relevant to the proposed development.</p>
<p>(j) <i>to provide increased opportunity for community participation in environmental planning and assessment.</i></p>	<p>The proposal was publicly exhibited in mid-2022 providing the opportunity for community participation as part of the environmental planning and assessment process. It is expected that Council will determine the necessary level of any additional community engagement in the project.</p>

In addition to considering the variation against the objects of the Act, the following assessment is also provided (as guided by *Initial Action* above). This assessment demonstrates that there are sufficient environmental planning grounds to justify the proposed variation to the development standard.

### **Partial Retention of Former Warehouse Buildings**

Whilst not a heritage-listed item, the proposed development seeks to retain and conserve those elements of the former warehouse building at 357 Sussex Street which make the most significant contribution to its character and presentation as a remnant building of its architectural type and period. This includes the face brick and rendered façade, and the existing window and door arrangement (including introduced, but relatively early, 3-over-2 timber-framed sash windows).

The proposal also proposes the retention of two bays deep (in plan) of the existing building structures at 357 Sussex Street at Levels 1-4 and retention of the existing floors behind (including timber posts, beams, floor joists, and side walls at Basement, Ground and Levels 1-4). This respects the structural integrity of the existing building and demonstrates a meaningful and considered approach to the adaptive reuse of the former warehouse building.

The floor levels proposed within the new infill podium at 355 Sussex Street will be aligned with the retained levels of the existing floors at 357 Sussex Street. This allows the podium façade at 355 Sussex Street to align with the horizontal datum of the retained and adapted former warehouse building at 357 Sussex Street, providing a sympathetic external and internal cohesion between the retained and new sections of the building. This will also result in the alignment of window openings and spandrel sections along the external eastern façade of the podium fronting Sussex Street.

In addition to the retention of two existing structural bays within the existing building at 357 Sussex Street, the proposal also seeks to salvage and reuse the remnant cast iron columns from the existing building at 355 Sussex Street. These remnant columns are intended to be reused as decorative elements within the

northern atrium (within the footprint of the new infill podium at 355 Sussex Street). This presents a sympathetic response to the site's industrial heritage.

The retention of the existing façade and two bays deep of the existing building structure at 357 Sussex Street (including timber posts, beams and floor joists) introduces significant structural complexities and spatial challenges for the site. These additional structural complexities have had an impact on the planning and configuration of both the podium and tower and has significantly influenced the internal layout of the hotel. The proposal therefore provides a comparable quantum of floor space compared to the outcome that would be achieved should the former warehouse building be demolished.

### Visual Impacts from the Public Domain

The site's topography comprises a significant level change of approximately 3.5 metres between Sussex Street and Dixon Street (based on known survey spot RLs at the interface with the public domain). The highest known point of ground level (existing) is at the south-eastern corner of the site boundary (RL 10.23), and the lowest known point is at the north-eastern corner (RL 9.97). This significant level change across the site means the exceedance above the 50m height plane predominantly occurs on parts of the building which are located at the low point of the site (i.e. towards the west).

The proposed tower form has been setback 6m from Sussex Street above the street frontage height (with no encroachments or façade articulation elements within this setback). This exceeds the tower setback of the adjoining Regal apartments to the south at 359-361 Sussex Street, creating an improved relationship to the streetscape and minimising any perceived visual dominance of the tower when viewed from the public domain.

In addition, the architectural expression and vertical articulation of the tower façade further mitigates the overall bulk and scale of the proposal. The rooftop plant / services and lift overrun have also been setback from the tower parapet from the east, north and south. This reduces the visual impact of the portion of the building above the 50m height plane when viewed from the public domain and as a result, the roof top plant / services and lift overrun would not be clearly visible from Sussex Street.

The extent of additional visual impacts caused by the portion of the building which exceeds the 50m height limit is negligible when viewed from the public domain. This is shown in **Figure 8** below.

Figure 8 – Comparison of Existing and Proposed View Lines from Sussex Street, Looking South-West



Source: Cottee Parker (2023)

## Building Separation and Privacy

The primary living areas and balconies associated with the adjoining Regal apartments (359-361 Sussex Street) are oriented to the east or west, away from the subject site. While there are existing secondary windows facing north and east within a lightwell on the northern façade of the Regal apartments, the proposed tower has been setback from this sensitive interface creating a separation distance of over 3.7 metres. This ensures a sufficient building separation distance in this location which mitigates the potential for any unacceptable impacts on visual privacy or overlooking.

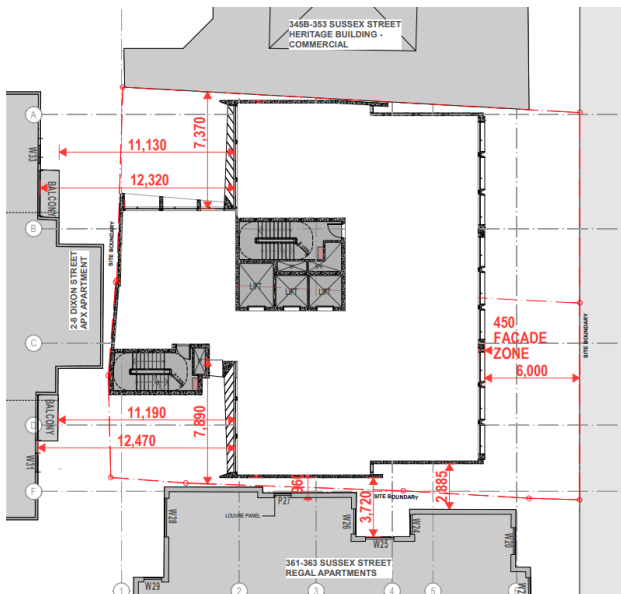
The existing metal louvres on the northern façade of the Regal apartments (located to the west of the existing lightwell) act as a screen for mechanical services in this location (shown in Figure 9 below). These existing services are accessible internally from within the Regal apartments. Notwithstanding this, the proposed tower has been setback from the site's southern boundary in this location to provide sufficient building separation between the southern wall of the tower and the northern façade of the Regal apartments.

The APX apartments to the west of the site comprises serviced apartments at the lower levels (Levels 2-6) and residential apartments at the upper levels (Levels 7-15). On Levels 7-15, the typical floor plate contains a total of eight (8) apartments, six (6) of which are orientated towards the west (away from the subject site).

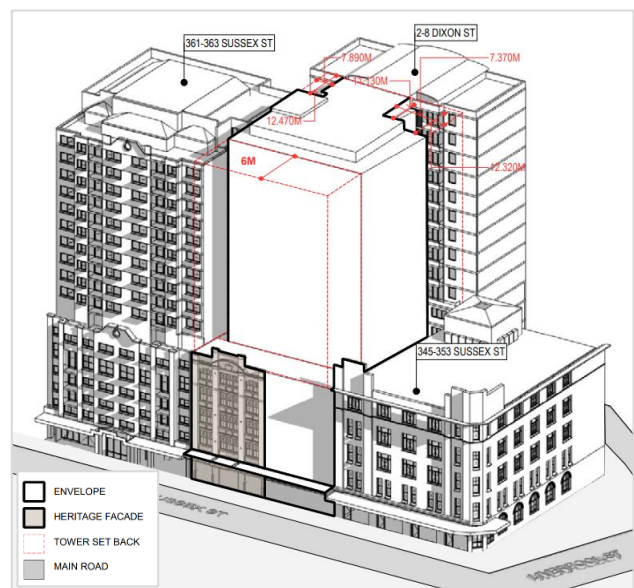
To achieve adequate building separation between the site's western façade and the adjacent APX apartments at 2-8 Dixon Street, the proposed built form has been set back at the north-west and south-western corners. Where the proposal is built to the western site boundary, this generally aligns with the location of the existing lift core at the APX apartments and minimises the potential for any impacts on visual privacy and overlooking between the proposal and the adjoining property to the west.

While a previous iteration of the proposal considered orientating most hotel rooms in a north and south-facing direction, the configuration has been refined to comprise predominantly east and west-facing hotel rooms. In addition, the rooms orientated towards the north are located at the rear of the site and are setback more than 7m from the northern boundary (illustrated in figure 9 below). This preserves the potential opportunity for a future tower development on the adjacent site at 345B Sussex Street to the north. However, given that this site is heritage-listed, the likelihood of redevelopment for a future tower is considered unlikely.

Figure 9 – Proposed Tower Setbacks to Adjacent Development



Picture 7 – Proposed Setbacks (Floor Plan)



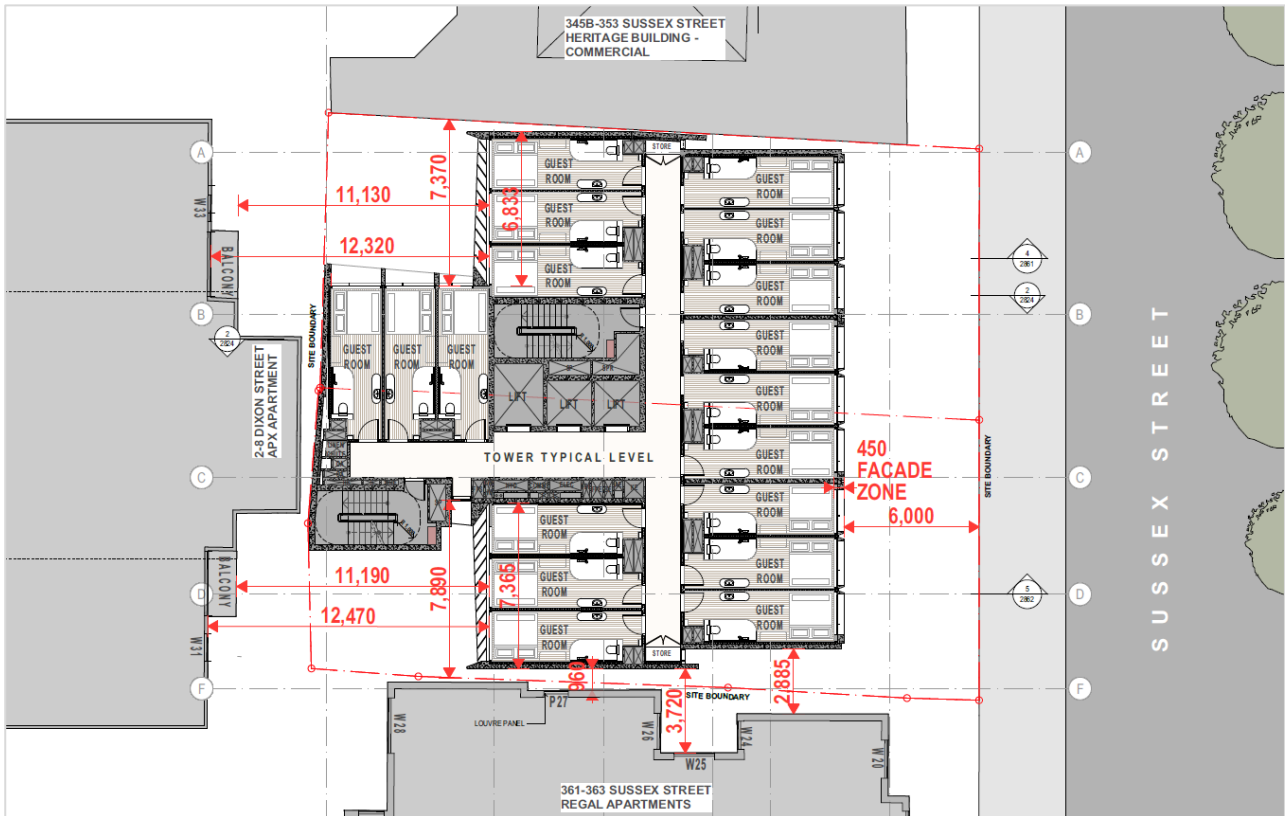
Picture 8 – Proposed Setbacks (Axonometric)

Source: Cottey Parker (2023)

The existing development to the west at 2-8 Dixon Street (APX Apartments) includes some living areas and balconies which are orientated east towards the site's rear western boundary. The west-facing hotel rooms within the proposed development have been positioned to achieve a minimum separation distance of 12 metres to achieve adequate separation to the neighbouring APX apartments. This minimises the potential for any impacts on visual privacy and overlooking between the proposal and the adjoining property to the west.

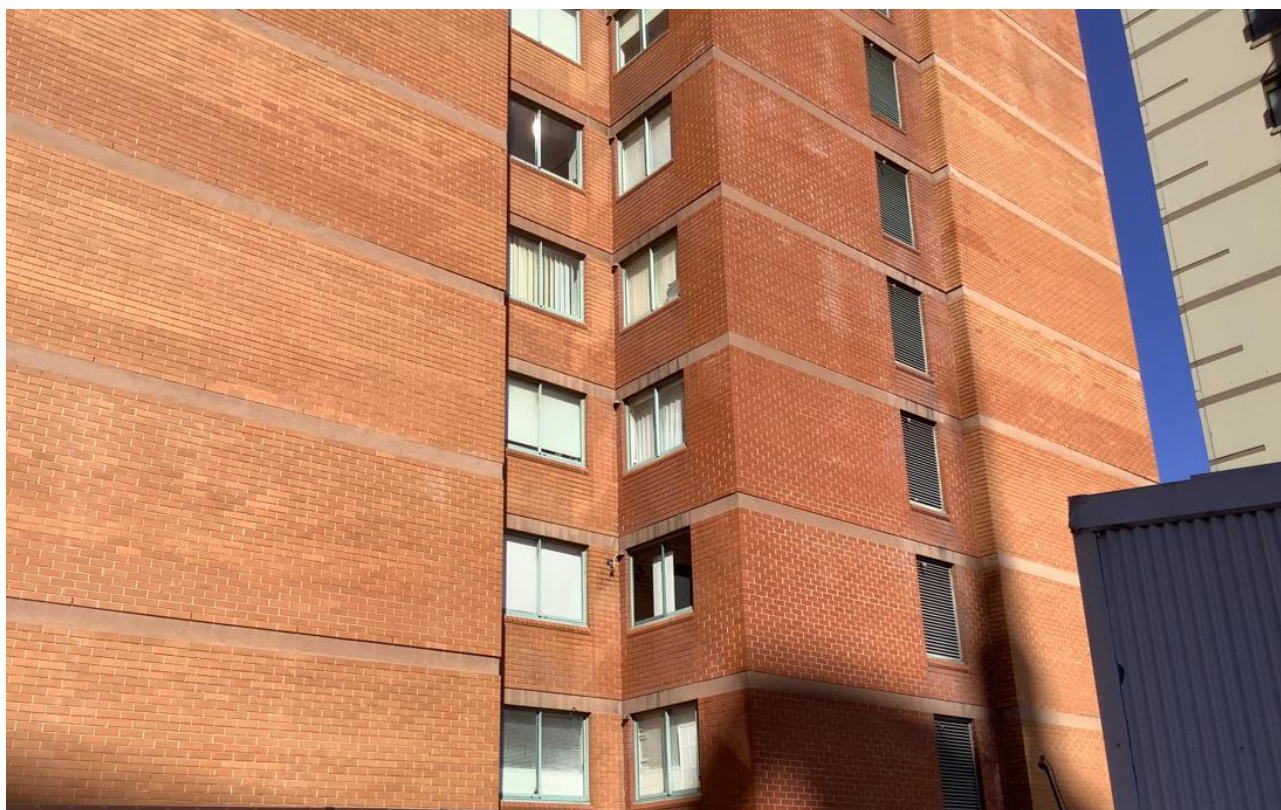
The extent of view loss due to the variation above the 50m height plane is minor and would have a negligible impact on visual privacy and amenity to nearby properties compared to a scheme that strictly complies with the 50 metre height control. As a result, the proposed development will not result in any significant or unacceptable impacts on amenity or visual privacy to the adjacent properties to the west and south. The changes to visual outlook resulting from the proposed height variation is acceptable given the site's built form context.

Figure 10 – Proposed Separation to Adjacent Buildings (Typical Tower Floor Plan)



Source: Cottee Parker (2023)

Figure 11 – Existing Northern Façade of the Regal Apartments at 359-361 Sussex Street, facing South West



Source: Cottee Parker (2023)

### Overshadowing

The intent of setting back the proposed rooftop plant / services and the lift overrun away from the building perimeter (on the tower roof) is to minimise or eliminate their visibility such that they are not perceived from the surrounding public domain, and to also minimise any additional overshadowing on the nearby residential properties to the west and south.

The extent of additional overshadowing caused by the roof top elements which exceed the 50 metre height limit is shown within **Figure 12** within the area shaded blue. This analysis shows that the additional overshadowing at mid-winter would have negligible effect on overall overshadowing and amenity to the nearby properties when compared to a scheme that strictly complies with the height control. In particular, the potential for any additional overshadowing has also been minimised to the APX apartments to the west and the Regal apartments to the south. Therefore, the minor variation will not result in any unreasonable impacts on amenity, privacy or overshadowing to adjacent residential properties.

Importantly, the parts of the buildings that exceed the maximum building height predominantly comprise mechanical plant / services and the lift overrun. The proposed development also complies with the maximum floor space ratio (FSR) control for the site, and the minor variation to the height control (in conjunction with a compliant FSR) will ensure that the overall built form comprises a scale and massing which is appropriate for the site and consistent with the character of development within the surrounding area.

Overall, the proposed development is consistent with the nature and scale of development in the CBD. These specific circumstances of the proposal and the site constitute sufficient environmental planning grounds which justify the proposed variation to the height development standard.

As provided in the Amended DA submission, detailed shadow analysis has been carried out by Cottee Parker and is included within the Architectural Plans. This analysis concludes:

- Compared to a compliant building envelope, there will be minor and discreet increases in shadows to distant rooftops of surrounding development only as shown in **Figure 11** below.
- The residential development to the immediate south (Regal Apartments at 359-361 Sussex Street) does not have any north-facing windows, with the exception of a light-well on the northern facade adjoining the



site. The windows within this lightwell are connected to bedrooms and bathrooms. The primary living areas and balconies at the Regal apartments are orientated east or west (away from the site).

The solar access to the lightwell will be reduced as a result of the proposed development (refer **Figure 13**). Specifically, we note that there is some minor additional shadow cast by the plant/lift elements of the proposal (which exceed the 50m height standard) between 9-12 and between 1pm-2pm at mid-winter. The proposal impacts 3 additional bedroom windows between 9am-11am, and a single additional north facing bedroom window at 12 noon. Also, between 1pm-3pm there is a bedroom and bathroom window which will be affected by additional shadowing. It is important to note that the living spaces of these apartments would otherwise get good solar access at the same time, and as this impact will be at the worst time of the year, the equinox period (and times of the year) will be substantially improved.

However, within this CBD location, it is reasonable to expect that the existing solar access to the lightwell would not be maintained in perpetuity. Notwithstanding this, the proposed tower has been setback (in part) from the southern boundary and offset from the north-facing lightwell to preserve daylight and privacy for the neighbouring apartments. This is considered to provide a well-resolved and acceptable outcome in the context of the site's urban CBD location.

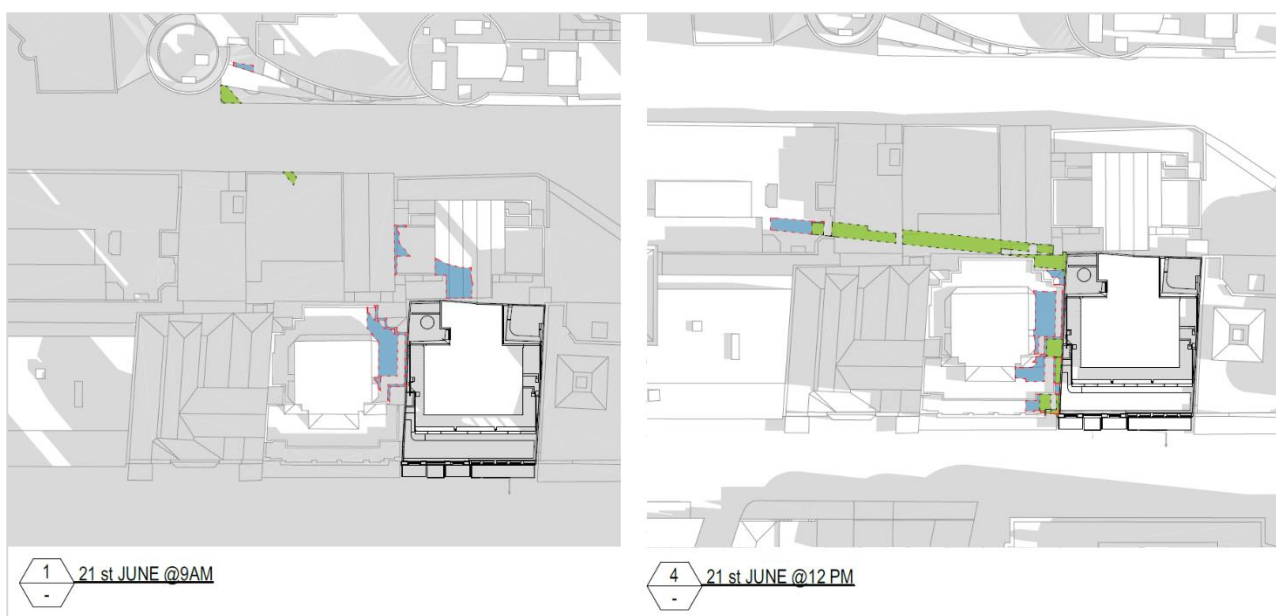
Importantly, the proposal will not overshadow the primary living areas and balconies of the Regal apartments.

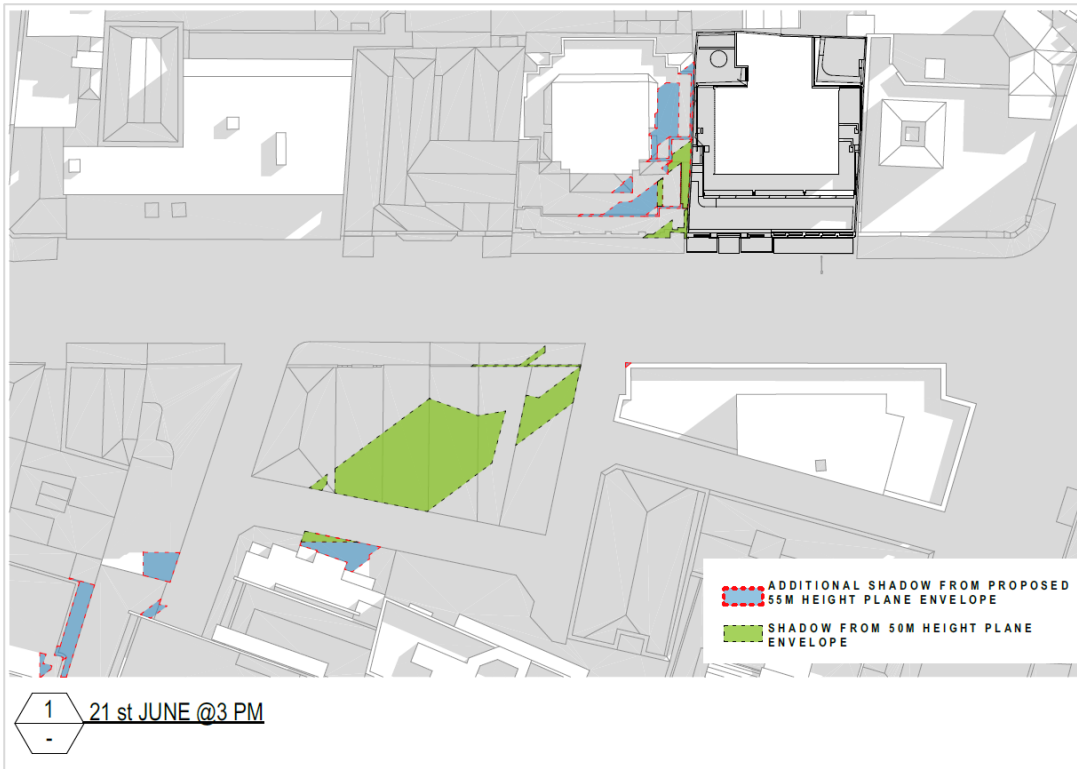
- As shown in **Figure 14**, the existing lift core of the APX Apartments at 2-8 Dixon Street casts shadows over the east-facing living rooms and balconies located within the south-eastern portion of this site. The proposed development will result in a minor increase in overshadowing to bathroom windows within the APX apartments at 9am.

This minor impact is considered acceptable given that the site's constrained context and given that the additional overshadowing affects secondary living spaces. The 12m building separation outlined previously will ensure daylight access to these east-facing apartments is preserved.

- With respect to residential apartments at 591 George Street, Sydney, we note that there is some very minor additional overshadowing between 2pm- 3pm as a result of the proposed height variation. We note that the shadowing which occurs at this time of the day is negligible, and confined to the lower podium area of this building which does not contain balconies or private open spaces. More generally, this building has a north/south alignment with a large expansive western façade receives extensive solar access.
- With respect to residential apartments at 28 Harbour Street, Sydney, we note that very negligible amount of shadowing from the proposed height variation. The shadow falls on an existing area of plant/servicing space on the roof of this building and not on any sensitive communal open space areas.

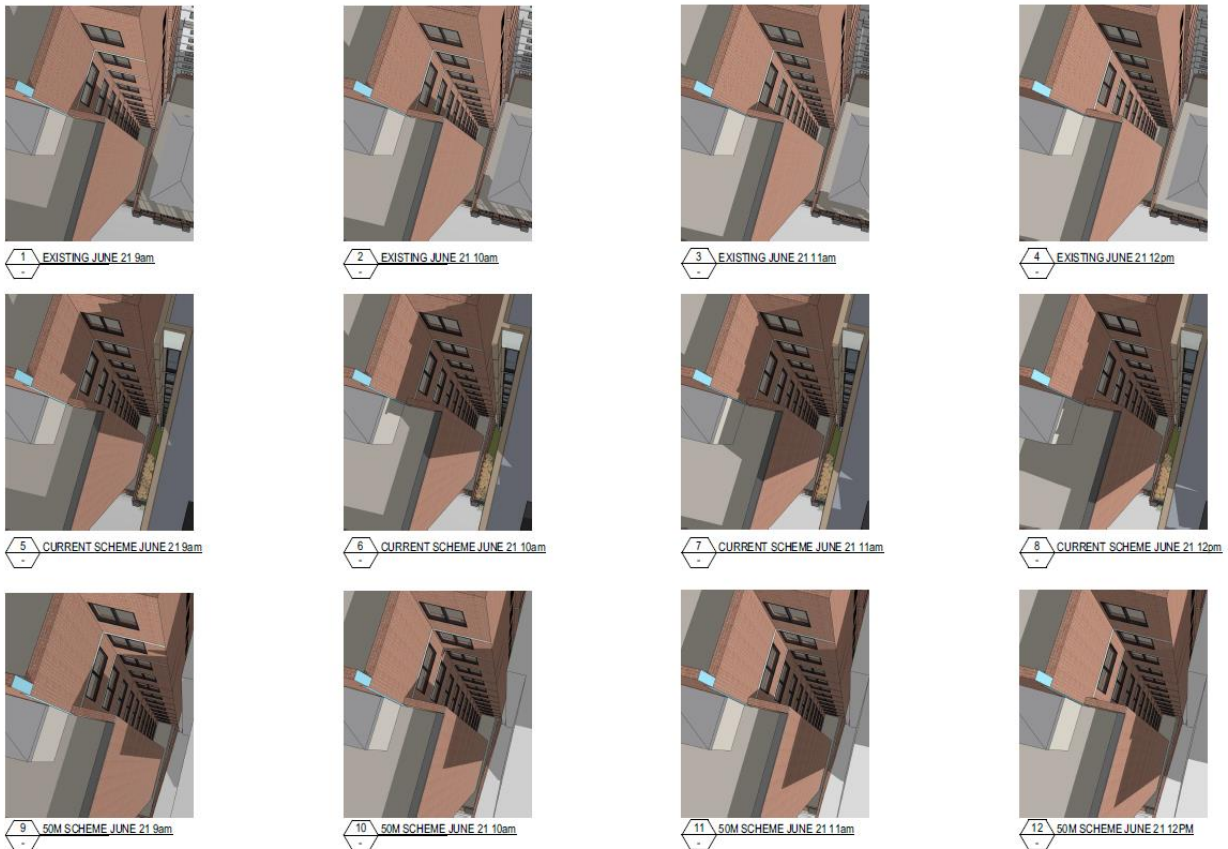
Figure 12 – Proposed Extent of Overshadowing at Mid-Winter (9am, 12pm and 3pm)





Source: Cottee Parker (2023)

Figure 13 – Solar Analysis to Regal Apartments at 359-361 Sussex Street (Facing South West)



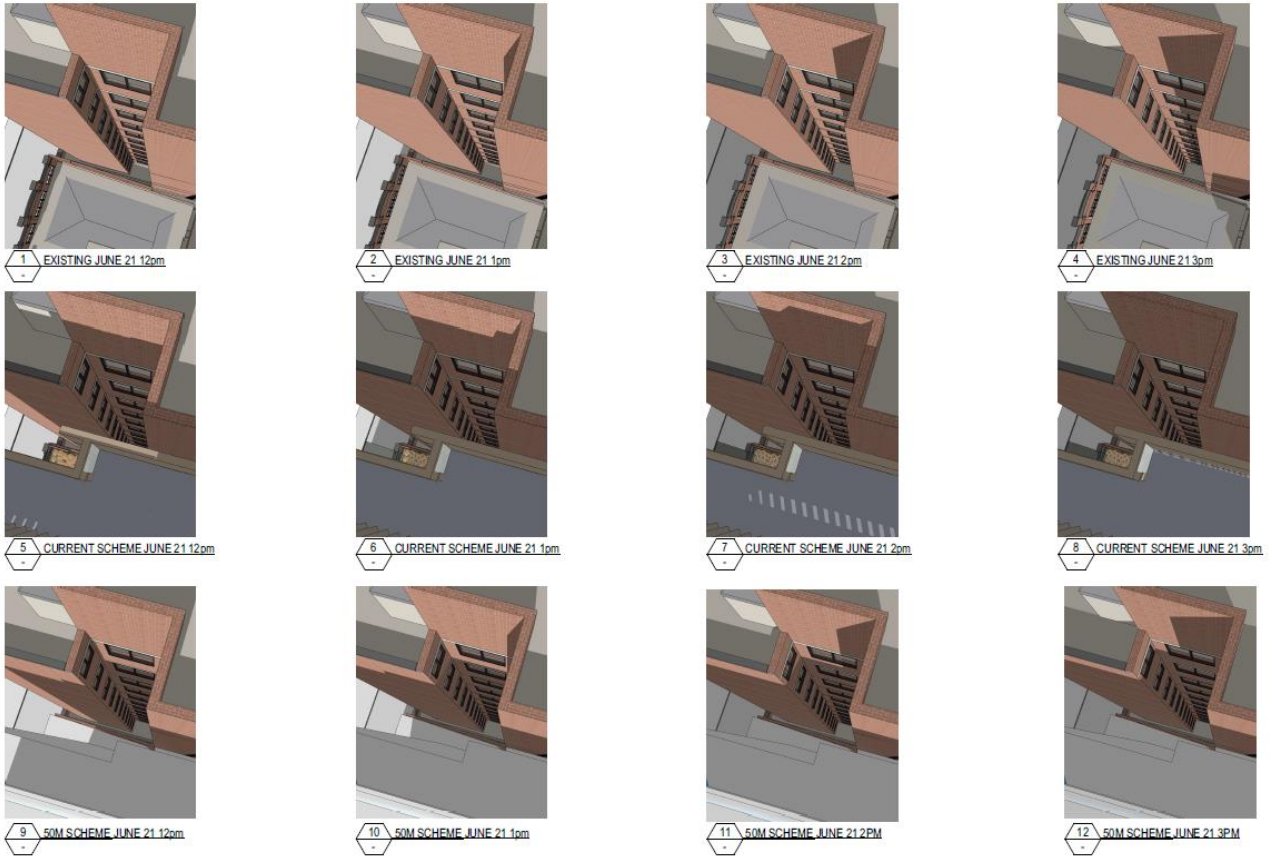
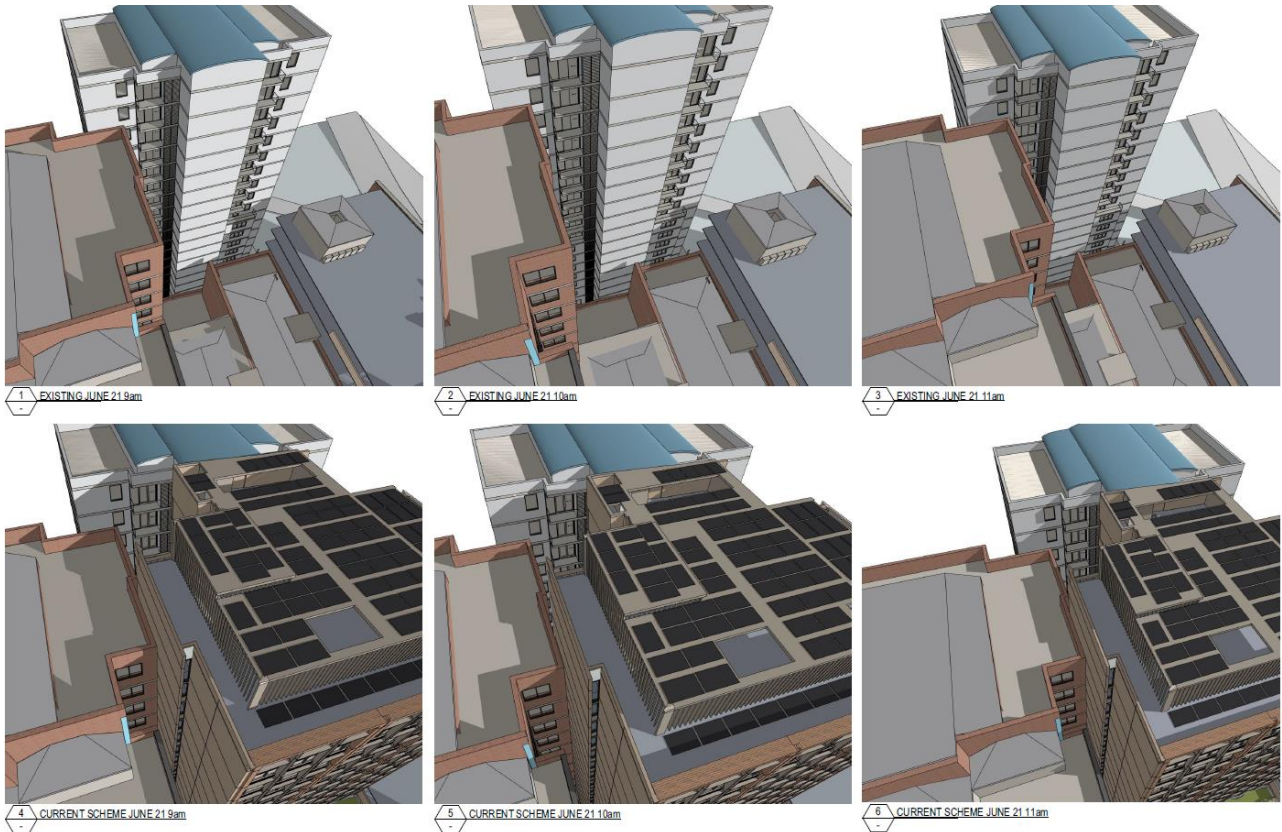


Figure 14 – Solar Analysis to APX Apartments at 2-8 Dixon Street (Facing West)



Source: Cottey Parker (2023)

## 6.4. HAS THE WRITTEN REQUEST ADEQUATELY ADDRESSED THE MATTERS IN SUB-CLAUSE (3)? – CLAUSE 4.6(4)(A)(I)

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).

Each of the sub-clause (3) matters are comprehensively addressed in this written request, including detailed consideration of whether compliance with a development standard is unreasonable or unnecessary in the circumstances of the case. The written request also provides sufficient environmental planning grounds, including matters specific to the proposal and the site, to justify the proposed variation to the development standard.

## 6.5. IS THE PROPOSED DEVELOPMENT IN THE PUBLIC INTEREST? – CLAUSE 4.6(4)(B)(II)

Clause 4.6(4)(a)(ii) states development consent must not be granted for development that contravenes a development standard unless the consent authority is satisfied the proposal will be in the public interest because it is consistent with the objectives of the development standard and the objectives for the zone.

### Meaning of “Consistent”

A development that is consistent with zone objectives does not need to promote the objective concerned strictly, but it encompasses development which may be complementary or ancillary to development which promotes the objective concerned. A development is not consistent with zone objectives if it is contrary to those objectives (as per *Coffs Harbour Environment Centre Inc v Coffs Harbour City Council* [1991] 74 LGRA 185). Therefore, it follows that the test of consistency is low.

### Consistency with the Standard

Table 4 above demonstrates that the development is consistent with the objectives of the building height development standard. Consistency with the objectives of the SP5 Metropolitan Centre zone are addressed in Table 6 below.

Table 6 – Assessment of Consistency with Land Use Zone Objectives

Objective	Assessment
<i>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.</i>	The proposal involves a high-quality hotel development that will support and complement the CBD and Darling Harbour tourism precincts. The proposal is also compatible with the range of tourism, entertainment, commercial, retail and residential uses in the surrounding area.
<i>To provide opportunities for an intensity of land uses commensurate with Sydney’s global status.</i>	As a result of the proposed variation, the building will optimise the proposed floor space to accommodate a hotel development commensurate with Sydney’s global status. The proposed development therefore represents an appropriate intensity of use within its CBD location. The proposal will also maintain and enhance employment opportunities within the site and increase the supply of tourist accommodation within a highly accessible location close to key attractions, public transport and other amenities.

<b>Objective</b>	<b>Assessment</b>
<i>To permit a diversity of compatible land uses characteristic of Sydney's global status and that serve the workforce, visitors and wider community.</i>	The proposal provides hotel accommodation to support Sydney's status as a premier visitor destination and contribute to the NSW economy.
<i>To encourage the use of alternatives to private motor vehicles, such as public transport, walking or cycling.</i>	The site is located within close proximity to various public transport options. The absence of car parking on-site will encourage hotel staff, guests and visitors to utilise alternatives to private motor vehicles, such as public transport, walking and cycling.
<i>To promote uses with active street frontages within podiums that contribute to the character of the street.</i>	The location of the hotel lobby and ancillary restaurant / bar at ground level will promote an active street frontage and public domain which contributes to the character of the area.
<i>To promote the efficient and orderly development of land in a compact urban centre.</i>	The proposal makes the most efficient use of the constrained site within a dense urban environment, whilst providing a built form that is sympathetic to the character of the area, as well as adjacent and nearby heritage items. The proposal is also consistent with the scale and density of buildings in the surrounding area and is appropriate for its CBD context.
<i>To promote a diversity of commercial opportunities varying in size, type and function, including new cultural, social and community facilities.</i>	The proposed development will provide high quality tourist and visitor accommodation which will add to the commercial diversity of the Sydney CBD and will provide support and accommodation to commercial workers travelling from interstate and overseas. This will include function spaces and ancillary services that will support conferences, events and facilities for the office sector.
<i>To recognise the important role that Central Sydney's public spaces, streets and their amenity play in a global city.</i>	The proposed development has been through extensive engagement with the City of Sydney to ensure that the built form and massing responds positively to the surrounding context, ensures a high quality level of activation at the ground plane, and retains existing historic fabric to add to the vibrancy of the streetscape. The proposal does not give rise to any unreasonable impacts on public spaces, streets or the surrounding public domain.
<i>To promote the primary role of the zone as a centre for employment and permit residential and serviced apartment accommodation where they complement employment generating uses.</i>	As discussed above, the proposed development will provide high quality visitor accommodation which will support the CBDs primary role as a centre for employment. The accommodation is located in a centrally located location, and the function spaces and ancillary services provided as part of the hotel will support conferences, events and facilities that will support the surrounding commercial office and employment services in the CBD.

As demonstrated within the table above, the proposed development is in the public interest as it is consistent with the objectives of the land use zone and is also consistent with the objectives of the height development

standard (notwithstanding the minor variation to the development standard, in the particular circumstances of this Clause 4.6 Variation Request).

## **6.6. HAS THE CONCURRENCE OF THE PLANNING SECRETARY BEEN OBTAINED? – CLAUSE 4.6(4)(B) AND CLAUSE 4.6(5)**

Concurrence of the Secretary to the variation can be assumed in accordance with Department of Planning Circular PS 18–003 ‘*Variations to development standards*’, dated 21 February 2018. This circular is a notice under 64(1) of the *Environmental Planning and Assessment Regulation 2000*.

The matters for consideration under clause 4.6(5) are considered below.

### **Clause 4.6(5)(a) – does contravention of the development standard raise any matter of significance for State or regional environmental planning?**

The proposed non-compliance with the height development standard will not raise any matter of significance for State or regional environmental planning. The proposed variation is appropriate based on the specific circumstances of the case and would be unlikely to result in an unacceptable precedent for the assessment of other development proposals. The proposal is also consistent with the aims and objectives of the Greater Sydney Region Plan as it will:

- Enhance the role of the sub-region as Sydney’s global economic driver.
- Provide capacity for employment growth through the construction of the development and in the hotel management sector.
- Provide hotel accommodation within a strategic location within close proximity to public transport and employment opportunities, which will contribute to a more walkable city.
- Enhance the CBD as Sydney’s most significant concentration of global economic activity.
- Although not a heritage-listed item, the proposal partially retains the most significant elements of the existing building at 357 Sussex Street that are representative of a remnant architectural building of its type and period.

### **Clause 4.6(5)(b) - is there a public benefit of maintaining the planning control standard?**

The proposed development achieves the objectives of the height development standard and the land use zone objectives despite the technical non-compliance.

There is no material impact or benefit associated with strict adherence to the development standard and there is no compelling reason or public benefit derived from maintenance of the standard.

### **Clause 4.6(5)(c) – are there any other matters required to be taken into consideration by the Secretary before granting concurrence?**

Concurrence can be assumed, however, there are no known additional matters that need to be considered within the assessment of the Clause 4.6 Variation Request prior to granting concurrence, should it be required.

## **7. CONCLUSION**

For the reasons set out in this Variation Request, strict compliance with the height development standard contained within clause 4.3 of Sydney LEP 2012 is unreasonable and unnecessary in the circumstances of the case. In addition, there are sufficient environmental planning grounds to justify the proposed variation for the following reasons:

- The variation stems from the structural complexities and spatial challenges associated with retaining a portion of the existing warehouse building at 357 Sussex Street (including two structural bays).

- The requirements for large transfer beams and additional structural support impacts the internal layout and spatial planning of all floor levels and restricts layout options, reducing the overall flexibility of the hotel levels.
- Although not a heritage-listed item, the proposal partially retains the most significant elements of the existing building at 357 Sussex Street that are representative of a remnant architectural building of its type and period. The partial retention of the former warehouse at 357 Sussex Street will facilitate the adaptive reuse of this existing building, and the significant structural and spatial constraints are accommodated within the proposed development as a result of the variation to the height development standard. The proposal therefore provides a comparable quantum of floor space compared to the outcome that would be achieved should the former warehouse building be demolished.
- Notwithstanding the variation, the proposal ensures that overshadowing of adjacent residential properties is minimised at mid-winter. The minor additional impact as a result of the height variation is considered acceptable given the constrained context of the site and its CBD location.
- The proposal will not result in any unacceptable amenity impacts on nearby residential properties or heritage-listed items.
- The proposal would not result in unacceptable view loss from the surrounding residential properties or public domain when compared to a compliant built form outcome. The changes to the current visual outlook of surrounding properties resulting from the proposed height variation is acceptable given the site's built form context, and is consistent with the scale and density of the surrounding area.
- The proposal is in the public interest as it is consistent with the objectives of the height development standard and the objectives of the SP5 Metropolitan Centre zone.

For the reasons outlined above, strict compliance with the development standard is unnecessary and unreasonable in the circumstances of the proposed development, and there are sufficient environmental planning grounds that warrant variation to the height development standard.

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