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| <p>Clause 4.6 Variation Request – Floor Space Ratio</p> |
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Clause 4.6 Variation Request – Floor Space Ratio

502-514 Elizabeth Street and 272-276 Cleveland Street, Surry Hills



'Gura Bulga'

Liz Belanjee Cameron

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

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

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

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

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

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1.0 Introduction

This clause 4.6 variation request has been prepared by Ethos Urban on behalf of Aidop No.7. It is submitted to the City of Sydney (the Council) in support of a development application (DA) for a commercial development at 502-514 Elizabeth Street and 272-276 Cleveland Street, Surry Hills (the site).

The proposed development seeks consent for:

- Demolition of 272-276 Cleveland Street to provide the required road widening under *Sydney Local Environmental Plan 2012* (Sydney LEP 2012).
- Retention of the contributory building fabric fronting Elizabeth Street and demolition of the remaining building.
- Bulk earthworks and excavation to create two levels of basement to accommodate:
 - A two-car lift
 - 29 Car parking spaces
 - Three (3) motorcycle spaces
 - Services rooms
- New vehicle access from Perry Street.
- Landscaping and public domain improvements including footpath widening and the provision of landscaping along Cleveland Street.
- Construction of a four-story commercial building comprising:
 - Ground floor retail uses
 - End of trip facilities on the ground floor
 - Three (3) levels of commercial above ground floor
 - A rooftop garden terrace accessible to tenants and tenant visitors.
- Extension and augmentation of services and utilities to the development, as required.

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

This clause 4.6 variation request relates to the floor space ratio (FSR) development standard under clause 4.4 of the Sydney LEP 2012 and should be read in conjunction with the Statement of Environmental Effects (SEE) prepared by Ethos Urban dated 17 June 2022 including supporting documentation.

This clause 4.6 variation request demonstrates that compliance with the maximum floor space ratio (FSR) development standard is unreasonable and unnecessary in the circumstances of the case and that there are sufficient environmental planning grounds to justify contravention of the standard. It demonstrates that, notwithstanding the non-compliance with the maximum FSR standard, the proposed development:

- Achieves the objectives of clause 4.4 of the Sydney LEP 2012 as:
 - The non-compliance is purely technical in nature and the proposal has been designed to holistically deliver a compliant quantum of floor space allowable under the FSR development standards across the site.
 - The proposal has distributed the allowable floor space across the site which results in a significantly more appropriate built form outcome when compared to a compliant scheme that would result in a disjointed form.
- Will have an appropriate impact, in terms of its scale, form and massing.
- Will promote the orderly and efficient use of land, in accordance with the objects of the Environmental Planning and Assessment Act 1979 (the Act).
- Is in the public interest in light of the numerous positive social, ecological, design and economic impacts it will deliver for the Site.

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

2.0 Development Standard to be Varied

2.1 Relevant FSR Development Standards Applicable to the Site

This clause 4.6 variation request seeks to justify contravention of the FSR development standard set out in clause 4.4 of the Sydney LEP 2012. Clause 4.4 provides two different FSRs across the site, as shown on the Floor Space Ratio Map. The portion of the site fronting Cleveland Street is subject to a maximum FSR of 2:1 and the remaining lot fronting Elizabeth Street is subject to a maximum FSR of 2.5:1. An excerpt from the Sydney LEP 2012 map sheet is shown at **Figure 1**.

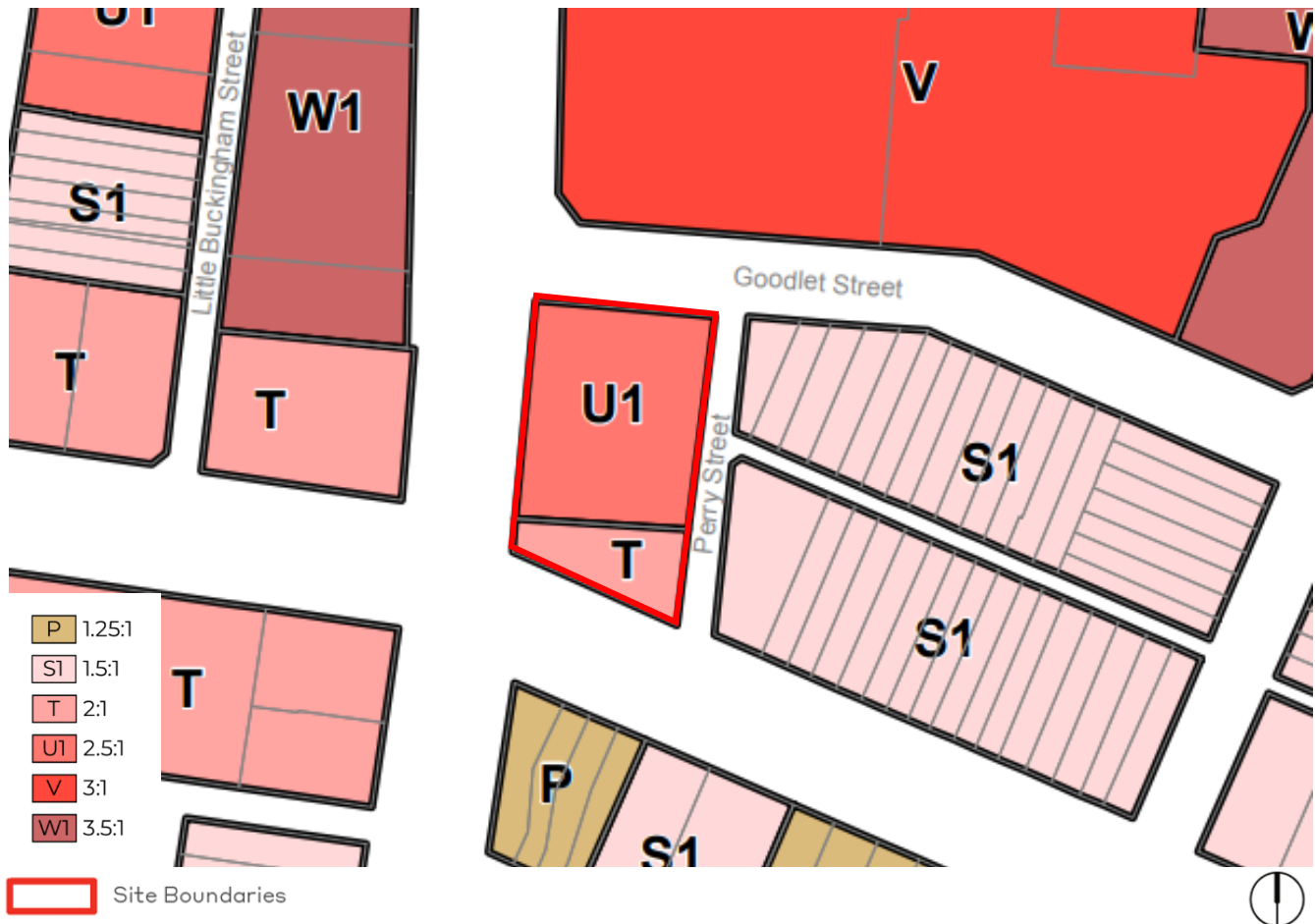


Figure 1 Excerpt from Sydney LEP 2012 Floor Space Ratio Map

Source: City of Sydney via NSW Legislation

2.2 Floor Space Approach and Methodology

The methodology adopted for floor space was to distribute the allowable gross floor area (GFA) across the entire site, rather than designing the built form to accommodate two separate FSR controls. It is an appropriate approach in the circumstances given that the proposed development involves the consolidation of lots to create an island site that should be viewed cohesively for efficiency and urban design purposes.

Figure 2 illustrates the methodology and calculations utilised to establish FSR and GFA limitations for the site. In the first instance, the maximum GFA was calculated for each portion of land. These were then combined to establish the maximum allowable GFA across the site. Accordingly, the proposal has been designed to wholistically deliver a compliant quantum of floor space allowable under the FSR development standards.

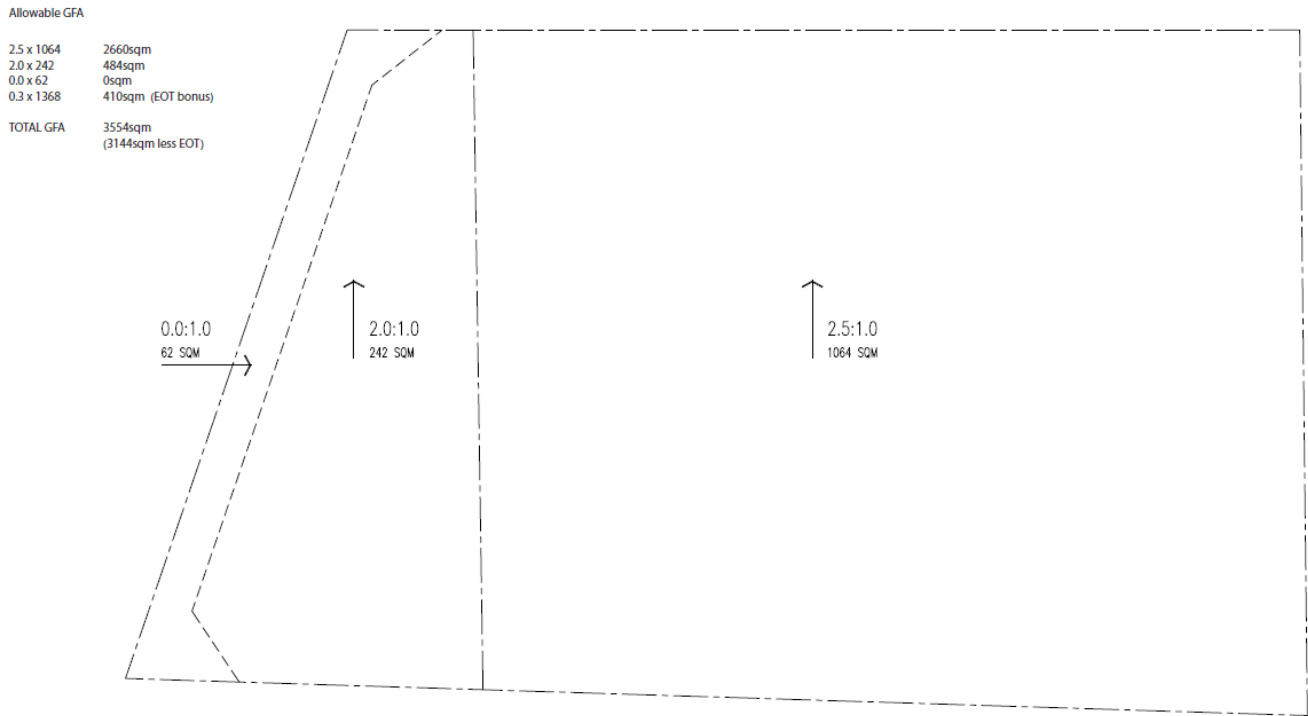


Figure 2 FSR Methodology and Calculations

Source: SJB

2.3 Variation Sought

As noted, the design response provides a quantum of floor space that is commensurate with the total allowable floorspace to achieve a cohesive development across the site. More specifically, when calculating the overall FSR of the proposed development, the building accommodates a GFA of 3131m² (excluding the end-of-trip facilities bonus floor space) the which is equal to an FSR of 2.4:1.

When calculating the FSR on the two separate portions of the site as mapped on the Sydney LEP 2012 Floor Space Map, the Elizabeth Street parcel has an FSR of 2.4:1, which is compliant with the 2.5:1 FSR development standard. The Cleveland Street parcel has an FSR of 2.2:1, which presents a 9.7% variation to the 2:1 FSR development standard. Accordingly, this clause 4.6 report has been prepared for the technical non-compliance to the FSR development standard on the Cleveland Street portion of the site. A summary of these GFA and FSR metrics are provided at **Table 1** below.

Table 1 Summary of GFA and FSR

| | Cleveland Street Portion | Elizabeth Street Portion | Entire Site |
|----------------------|--------------------------|--------------------------|--------------------|
| Control | 2:1 | 2.5:1 | N/A |
| Allowable GFA | 484m ² | 2660m ² | 3144m ² |
| Proposed GFA | 536m ² | 2,595m ² | 3131m ² |
| Proposed FSR | 2.2:1 | 2.4:1 | 2.4:1 |
| Variation GFA | 52m ² (9.7%) | 0m ² | 0m ² |

However, as demonstrated at **Figure 2** above, the proposal has been designed to wholistically deliver a compliant quantum of floor space allowable under the FSR development standards for the site.

3.0 Justification for Contravention of the Development Standard

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

4.6 Exceptions to development standards

(3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:

- (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
- (b) that there are sufficient environmental planning grounds to justify contravening the development standard.*

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

(4) Development consent must not be granted for development that contravenes a development standard unless:

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

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

1. *Wehbe v Pittwater Council* [2007] NSW LEC 827; and
2. *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1009.
3. *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 (Initial Action).
4. *Al Maha Pty Ltd v Huajun Investments Pty Ltd* [2018] NSWCA 245 (Al Maha).
5. *Turland v Wingecarribee Shire Council* [2018] NSWLEC 1511.
6. *Micaul Holdings Pty Limited v Randwick City Council* [2015] NSWLEC 1386.
7. *Moskovich v Waverley Council* [2016] NSWLEC 1015.
8. *Baron Corporation Pty Ltd v The Council of the City of Sydney* [2018] NSWLEC 1552 (Baron Corporation).

The relevant matters contained in clause 4.6 of the Sydney LEP, with respect to the maximum FSR development standard, are each addressed below, including with regard to these decisions.

3.1 Role of the Consent Authority

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

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

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

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

This clause 4.6 variation request is proposed in context of clause 4.4 of the Sydney LEP 2012. Relevant matters contained in clause 4.6 of the Sydney LEP 2012, with respect to the FSR development standard, are each addressed below.

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

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

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

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

The five methods outlined in *Wehbe* include:

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

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

3.2.1 The underlying objectives or purposes of the development standard

The objectives of the development standard contained in clause 4.4 of the *Sydney LEP 2012* are:

- (a) to provide sufficient floor space to meet anticipated development needs for the foreseeable future,
- (b) to regulate the density of development, built form and land use intensity and to control the generation of vehicle and pedestrian traffic,
- (c) to provide for an intensity of development that is commensurate with the capacity of existing and planned infrastructure,
- (d) to ensure that new development reflects the desired character of the locality in which it is located and minimises adverse impacts on the amenity of that locality.

3.2.2 The objectives of the standard are achieved notwithstanding the non-compliance

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

As noted, this clause 4.6 request is for a technical non-compliance with the development standard on the Cleveland Street portion of the site. Overall, the proposed development will deliver the quantum of floor space intended for the consolidated site consistent with the intent of the existing planning controls across the site which have been established to meet the anticipated development needs for the site and surrounding locality.

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

The proposal presents a density intended by the applicable floor space controls. As an island site, the proposal responds appropriately to the site's context through provide a cohesive built form across the whole parcel of land. Should the proposal be designed to comply with the two separate FSR controls applicable to the site, it would remove opportunities for innovation in building design and result in a disjointed building form that does not fully achieve the potential of the site. The proposal has rationalised the allowable floor space across the site, which has resulted in a regular and appropriate built form.

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

As noted, the proposal does not exceed the permissible floor space allowed across the site. Wholistically, the proposal provides a compliant quantum of floor space, which has been enforced by the Sydney LEP 2012 with consideration to the existing and planned infrastructure.

It is also relevant that the site is strategically located on the fringe of the Sydney CBD, approximately 700 metres from Central Railway Station, providing access to the comprehensive train network that traverses NSW. The site is also approximately 400m of the Surry Hills light rail stop on Devonshire Street. Further, the closest bus stop is located only 20m away along Elizabeth Street, which provides connections across Sydney. Accordingly, the proposed development adopts a scale that is consistent with strategic expectations for the site which is suitably located to benefit from existing and planned infrastructure.

Objective (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 proposed built form has been designed to accommodate a compliant quality of GFA across the site. This has resulted in a building that is appropriate and consistent in scale to surrounding buildings.

3.2.3 Conclusion on clause 4.(3)(a)

In summary, compliance with the FSR development standard is considered unreasonable and unnecessary since:

- The variation to the FSR development standard is purely technical and the proposed development will wholistically provide a quantity of GFA allowable under the FSR standards across the site.
- The proposed approach to distribute the allowable floor area across the site results in an appropriate built form outcome for the island site, compared to a technically compliant scheme which would result in a stepped and uniform built form.

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

Clause 4.6(3)(b) of the Sydney LEP 2012 requires the contravention of the development standard to be justified by demonstrating that there are sufficient environmental planning grounds to justify the contravention. The focus is on the aspect of the development that contravenes the development standard, not the development as a whole. Therefore, the environmental planning grounds advanced in the written request must justify the contravention of the development standard and not simply promote the benefits of carrying out the development as a whole (*Initial Action* at [24]).

In *Four2Five*, the Court found that the environmental planning grounds advanced by the applicant in a Clause 4.6 variation request must be particular to the circumstances of the proposed development on that site at [60]. There are sufficient environmental planning grounds to justify contravention of the FSR development standard in this specific instance.

Firstly, as noted the non-compliance is technical in nature and only relates to the portion of the site fronting Cleveland Street and is a consequence of two separate sites being consolidated and developed wholistically. When treated as a single site the proposal will deliver a building compliant with the maximum GFA allowable across the site under the relevant FSR controls. This has resulted in a more responsive and appropriate built form, compared to a building that would accommodate the two separate FSR controls which would result in a disjointed form across a singular island site.

Secondly, the proposal does not cause adverse environmental impacts which would render it incompatible with its surrounding land uses and ensures the proposal is appropriate for the context of the site. The non-compliance is technical in nature and the proposal provides a compliant quantum of floor space allowable for the site which ensures the built form will not result in significant additional overshadowing, view or privacy impacts to the surrounding public realm or existing residential receivers surrounding the site.

Consistency with Objects of the EP&A Act

In *Initial Action*, the court stated that the phrase “*environmental planning grounds*” is not defined but would refer grounds that relate to the subject matter, scope and purpose of the EP&A Act, including the objects in section 1.3 of the Act. While this does not necessarily require that the proposed development should be consistent with the objects of the Act, nevertheless, as set out in **Table 2** we consider the proposal is broadly consistent with each object, notwithstanding the proposed variation of the FSR development standard.

Table 2 Consistency with objects of the EP&A Act

| Object | Comment |
|---|--|
| (a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State’s natural and other resources | The proposed development provides significant public benefit to the economic welfare of the community through rejuvenating a tired and aging site with a new development that will improve public activation and provide a suitable amount of high amenity employment generating floor space in a highly accessible location on the fringe of the CBD. |
| (b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment | Overall, the proposal provides a high quality building that reflects several sustainability outcomes. In particular, the proposed design facilitates the use of the rooftop terrace by future tenants and visitors and incorporates extensive urban landscaping, providing a highly sustainable development outcome. The technical variation to the FSR standard on the Cleveland Street portion of the site will have no negative impact on environmental and social considerations and will support the economic health of Sydney. |
| (c) to promote the orderly and economic use and development of land | Strict compliance with the two FSR development standards on the site would result in a disjointed building form that would not result in the orderly use of the land and would stifle innovation in building design. The proposal will result in a balanced design outcome that responds to the unique characteristics of the site. As noted, the proposal provides an overall compliant quantum of floor space for the site and does not represent and over intensification of the land or the Cleveland Street frontage. |
| (d) to promote the delivery and maintenance of affordable housing | The proposal relates to non-residential uses, and therefore this object is not relevant. |
| (e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats | The proposal will not have any impact on threatened species or ecological communities. |
| (f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage) | The proposal will not impact built or cultural heritage. |
| (g) to promote good design and amenity of the built environment | The proposal will promote good design and amenity of the built environment by exhibiting a high quality and sculptured design which adds to the architectural diversity of Surry Hills, as demonstrated by the Design Report and architectural drawings prepared by SJB in support of the development application. |
| (h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants | The proposal will comply with the relevant provisions of the BCA and will promote the health and safety of occupants. |
| (i) to promote the sharing of the responsibility for environmental planning and assessment between | This object is not relevant to this proposal but it adheres to the required planning processes for the site and scale of development, and implements the strategic |

| Object | Comment |
|---|--|
| the different levels of government in the State | planning priorities for employment growth in Surry Hills and City of Sydney more broadly. |
| (j) to provide increased opportunity for community participation in environmental planning and assessment | The proposed development will be publicly exhibited in accordance with the requirements of Council's Community Participation Plan. |

3.3.1 Conclusion of clause 4.6(3)(b)

There are sufficient environmental planning grounds to justify contravening from the development standard as as the proposal will wholistically provide a compliant quantum of GFA distributed across the site, the built form will not cause significant additional environmental impacts to the surrounding locality in regard to overshadowing, privacy and views.

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

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

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

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

Consistency Caselaw

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

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

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

3.5.1 Consistency with objectives of the development standard

The proposed development is consistent with the objectives of the FSR development standard, for the reasons discussed in **Section 3.2.2** of this report.

3.5.2 Consistency with objectives of the zone

The proposed development has been assessed against the objectives for the MU1 – Mixed Use Zone as outlined below. The departure from the FSR of building development standards do not result in any inconsistencies with the objective of the zone.

To encourage a diversity of business, retail, office and light industrial land uses that generate employment opportunities.

The proposal will provide a diversity of uses on site, being retail uses on the ground floor with commercial office uses above. Both retail and commercial uses will generate employment opportunities at the site.

To ensure that new development provides diverse and active street frontages to attract pedestrian traffic and to contribute to vibrant, diverse and functional streets and public spaces.

The proposal will provide retail uses on the ground floor of the building, with active frontages to Elizabeth and Cleveland Street. The proposal has retained the Elizabeth Street façade and continued the Level 1 façade detailing onto the ground floor elevation to provide an improved fine grain retail presence along the street, with five (5) separate tenancies. This will provide opportunity for more diverse tenants to support an active and vibrant pedestrian environment.

To minimise conflict between land uses within this zone and land uses within adjoining zones.

The proposal provides a mix of ground floor retail uses and commercial office uses above. These land uses are compatible to the Surry Hills area and other properties along Cleveland Street (zoned SP2 Classified Road) which generally comprises ground floor retail uses and residential or commercial above. Therefore, the proposal will not result in conflicts between land uses.

To encourage business, retail, community and other non-residential land uses on the ground floor of buildings.

The proposal will provide retail uses on the ground floor to provide active street frontages, particularly to Elizabeth and Cleveland Streets.

To ensure land uses support the viability of nearby centres.

The proposal will replace a tired and aging building with a new development which will rejuvenate the site. The proposal will deliver a quantum of commercial and retail floor space to the site as envisaged by the prescribed FSR controls of the Sydney LEP 2012. The ground floor will provide retail tenancies street frontages to all main facades, as to create an activated public domain. The office space has also been designed with high quality amenities, including the roof terrace which will contribute to the development's viability as a commercial building. Overall, the proposal will provide for a competitive and attractive commercial development which will, in turn, work to provide a vibrant and evolving urban village.

To integrate suitable business, office, residential, retail and other land uses in accessible locations that maximise public transport patronage and encourage walking and cycling.

As detailed above, the site is located in walking distance to a number of existing and future public transport options, which will help maximise the use of public transport patronage to and from the site. The proposal provides ground floor retail spaces, as to provide active frontages to Elizabeth and Cleveland Street. The proposal provides office spaces with generous end-of-trip facilities including bicycle parking.

3.6 Other Matters for Consideration

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

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

These matters are addressed in detail below.

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

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

- Supports and contributes to growing a stronger and more competitive space for commercial office floor space in the City of Sydney.
- Provides access to jobs within a location which is well serviced by primary transport modes such as train, buses and light rail.

Furthermore, the variation of FSR of buildings development standard does not result in any significant adverse impact on the surrounding area, surrounding residences and enables a high quality design that is operational by the tenants within the building.

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

As outlined in **Section 3.3** above, there are sufficient environmental planning grounds to warrant contravention of the development standard and it is in the public interest for the variation to be supported in this case. The proposed development provides significant public benefit through providing a suitable amount of employment generating floor space in a highly accessible location on the fringe of the CBD. The quantum of floor space provided by development is that intended for the site under the Sydney LEP 2012, and the proposal will deliver that floor space in the form of high-quality commercial office space. As such, the proposed variation is in the public interest and necessary, and there is no foreseeable public benefit in maintaining the development standard.

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

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

4.0 Conclusion

The above assessment demonstrates that compliance with the FSR development standard contained in clause 4.4 of the Sydney LEP is unreasonable and unnecessary in the circumstances of the case and that the justification is well founded. It is considered that the variation allows for the orderly and economic use of the land in an appropriate manner, also allowing for a better outcome in planning terms.

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

- Achieves the objectives of clause 4.4 of the Sydney LEP 2012 by:
 - The non-compliance is technical in nature and the proposal has been designed to wholistically deliver a compliant quantum of floor space allowable under the FSR development standards across the site.
 - As the proposal has distributed the allowable floor space across the site, it presents a more appropriate built form outcome when compared to a compliant scheme that would result in a disjointed form.
- Will have an appropriate impact, in terms of its scale, form and massing.
- Will promote the orderly and efficient use of land, in accordance with the objects of the Environmental Planning and Assessment Act 1979 (the Act).
- Is in the public interest in light of the numerous positive social, ecological, design and economic impacts it will deliver.

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