

Attachment D

<p>Clause 4.6 Written Request – Height of Buildings</p>
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GYDE

Amended Clause 4.6 Variation Request (HOB)

Mixed Use Development

14- 26 Wattle Street, Pyrmont

submitted to the City of Sydney Council
on behalf of Landream Pyrmont Pty Ltd

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1. EXECUTIVE SUMMARY

This request has been prepared in accordance with Clause 4.6 of the *Sydney Local Environmental Plan 2012* (SLEP 2012). The purpose of the request is to justify a variation to the maximum *height of buildings* (cl 4.3) development standard (HOB development standard) as part of a Stage 2 Detailed Development Application (DA) submitted to the City of Sydney Council (Council). The DA is for the detailed design of a mixed-use development across five buildings containing residential, commercial, retail, childcare, and indoor recreational facilities. The DA relates to land known as 14- 26 Wattle Street, Pyrmont comprising one lot legally described as Lot 200 DP 1224234 and a portion of Jones Street (a public road) (see Figure 1). The site has a total site area of 12,381m², being 12,125m² for Lot 200 and 256m² for the portion of Jones Street.

The SLEP 2012 identifies a 27 metre height control for the site. Relevantly, the NSW Land and Environment Court (LEC) approved a Concept DA at the site on 21 May 2021 (Council Reference: D/2019/649), which included a Clause 4.6 Variation Request to vary the maximum building height for each building, with the greatest variation being 6.08 metres (or 22%) for a portion of the Wattle Street building in the centre of the site.

Since D/2019/649 was granted development consent, the Applicant has undertaken an 'invited' architectural design competition process with five competitors in accordance with the conditions imposed on that consent and in accordance with Council's *Competitive Design Policy*. As a result of this process, and following further design development, additional changes are proposed to the building heights across the site, including the extent of exceedance. Of relevance, the BVN competition scheme (the preferred scheme as nominated by the Jury in the Architectural Design Competition) involved deviations from the approved Stage 1 Concept DA building envelopes. The Competition Jury unanimously supported the BVN scheme, which rearranged the Wattle Street Building, that was originally 'L-shaped' and is now split in two. This strategy places the tallest building elements in the centre of the site, which liberates the ground plane, improves residential amenity outcomes, and reduces overshadowing impacts. The other amendments proposed to the building heights approved under D/2019/649 relate to increases in floor-to-floor heights to allow compliance with the *Design and Building Practitioners Act 2020*, and minor increases to the height of the Fig Street building (with increased setbacks), reflecting its change to wholly commercial use. The above changes also necessitate redistribution of floor space and hence changes to the building envelopes. These changes, trigger a Section 4.56 Modification Application to amend the Stage 1 Concept Approval to address the amendments. A modification application is being lodged simultaneously with the subject Stage 2 Detailed DA.

The Stage 1 Approval (D/2019/649) nominated that pursuant to Clause 6.21D(3)(a) of the SLEP 2012, the site may have a building height that exceeds the maximum height shown on the height of buildings map (27 metres) by an amount, to be determined by the consent authority, of up to 10%. This bonus was reflected in the Architectural Design Competition Brief. For completeness, this request addresses the extent of the proposed variation in the absence of the 10% height bonus as well as with the 10% height bonus, i.e., a 27 metre height standard and 29.7 metres height standard, respectively.

The proposed variation of the HOB development standard is detailed in Table 1 having regard to both; the SLEP 2012 height plane (27 metres) and, SLEP 2012 height plane + 10% design excellence height bonus (29.7 metres). The maximum proposed variation occurs in the centre of the site on Building C (Courtyard) which results in a maximum building height of 42.46 metres (RL 45.55) at the northern roof plant, representing a 15.46 metre variation or 57% (calculated from the 27 metres mapped maximum building height).

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

Clause 4.6 Variation Request (HOB) – 14- 26 Wattle Street, Pyrmont

- Is consistent with, and achieves the objectives of the development standard in Clause 4.3 of the SLEP 2012 (Wehbe Test 1);
- Is consistent with the objectives of the MU1 Mixed Use zone under the SLEP 2012;
- Is consistent with the applicable and relevant State and regional planning policies;
- Will deliver a development that is appropriate for its context, despite the numerical variation to the development standard, and therefore has sufficient environmental planning grounds to permit the variation; and
- Achieves design excellence and is in the public interest.



Figure 1: Aerial view of the site (Source: Nearmap)

2. INTRODUCTION

This request has been prepared in accordance with Clause 4.6 of the SLEP 2012. The purpose of the request is to justify a variation to the maximum HOB (cl 4.3) development standard as part of a DA submitted to Council.

The objectives of Clause 4.6 are to provide an appropriate degree of flexibility in applying development standards to achieve better outcomes for, and from, development. As the following request demonstrates, a better planning outcome for the site would be achieved by exercising the flexibility afforded by Clause 4.6 in the circumstances of this DA.

This request has been prepared having regard to the Department of Planning and Environment's *Guidelines to Varying Development Standards* (August 2011) and various recent decisions in the LEC and the NSW Court of Appeals (Appeals Court).

Clause 4.6 requires that a consent authority be satisfied of the following three (3) matters before granting consent to a development that contravenes a development standard:

1. That the applicant has adequately demonstrated in a written request that compliance with the development standard is unreasonable or unnecessary in the circumstance of the case [Clause 4.6(3)(a) and clause 4.6(4)(a)(i)].
2. That the applicant has adequately demonstrated in a written request that there are sufficient environmental planning grounds to justify contravening the development standard [Clause 4.6(3)(b) and Clause 4.6(4)(a)(i)], and
3. That the proposed development will be in the public interest because it is consistent with the objectives of the particular development standard sought to be varied and the objectives for development within the zone in which the development is proposed to be carried out [Clause 4.6(4)(a)(ii)].

The proposed development involves the construction of five high-quality buildings (one of which is a retail pavilion) in accordance with the principles established by the Concept DA consent (D/2019/649) and the subsequent invited Architectural Design Competition. This request demonstrates that compliance with the SLEP 2012 HOB development standard is unreasonable and unnecessary in the circumstance of the case because the objectives of the HOB development standard and MU1 (Mixed Use) zone (previously B4 Mixed Use zone) are achieved notwithstanding the non-compliance.

The development is in the public interest, there are sufficient environmental planning grounds to justify the variation as outlined in Section 7 and this request restates the majority of the environmental planning grounds which were provided to support the written request prepared in support of the HOB design standard exceedances proposed for the Concept Approval, noting those grounds were endorsed by the LEC when granting development consent to the Concept DA. Further environmental planning grounds are also provided in relation to the additional height exceedances sought by the present DA.

This request also addresses the requirements for concurrence of the Secretary by Clause 4.6(4)(b) and it is considered appropriate in this circumstance to vary the HOB development standard.

3. BACKGROUND – CONCEPT DA (D/2019/649), DESIGN COMPETITION AND CONCURRENT s4.56 MODIFICATION APPLICATION

On 21 May 2021, Concept DA consent was granted by the LEC (Council Reference: D/2019/649). This approval included variations to the height control, with the greatest exceedance being 6.08m (22%) for a portion of the Wattle Street building in the centre of the site. The exceedance is owed, in part, to the unique site topography which includes a level difference of approximately 11.5- 14 metres from the Jones Street property boundary to the Fig and Wattle Street frontages.

The site historically operated as a quarry pit, which has significantly modified its terrain such that most of this level difference occurs across a 5- 10 metres horizontal distance between Jones Street and the centre of the site. This poses a significant constraint when seeking to maintain compliance with the HOB design standard.

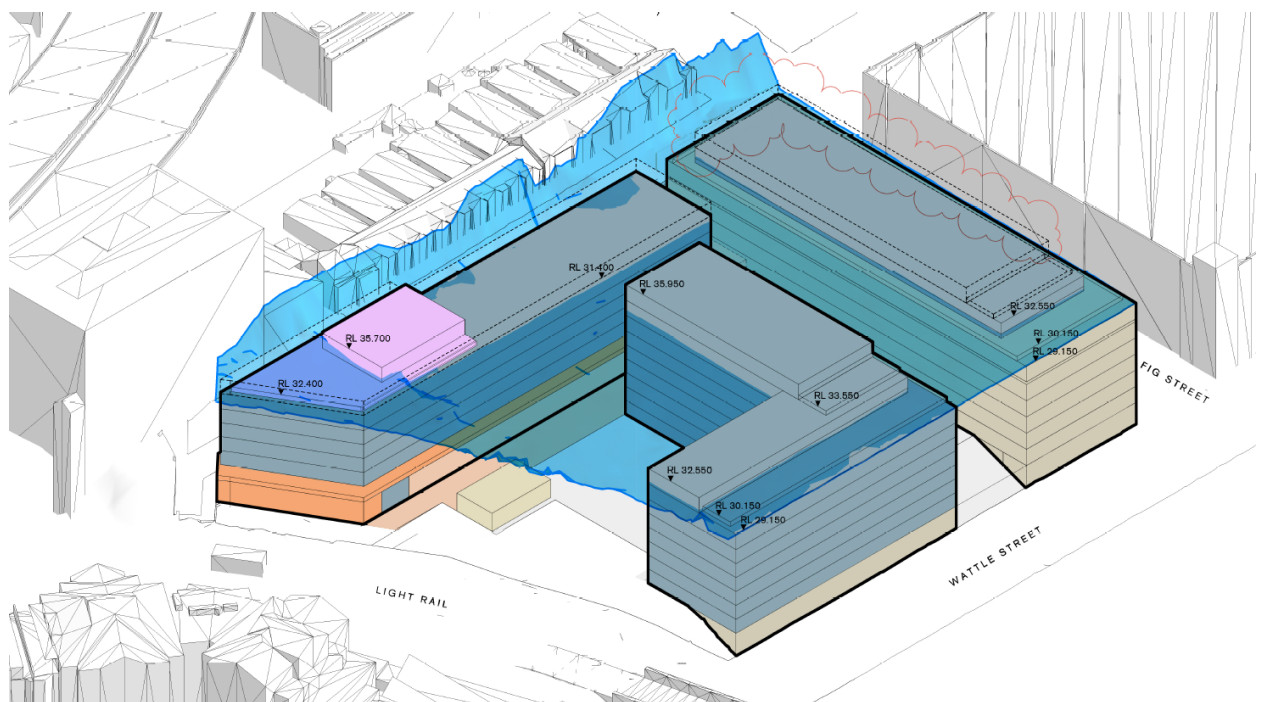


Figure 2: HOB Variations Approved under D/2019/649

In granting Concept DA consent, Commissioner Horton provided the following key reasons for supporting the Clause 4.6 variation to the HOB design standard:

- Strict compliance is unreasonable and unnecessary on the grounds that the envelopes were appropriately sited and designed in response to the topographical condition of the site. The envelopes provided an appropriate transition between the proposal and existing built form adjacent to the site, including heritage items and other buildings in the vicinity.
- Sufficient environmental planning grounds were provided to justify the contravention, in particular the unique topography of the site in the location of the sandstone rock face, and in response to which the Jones Street building is setback and modulated to transition between the scale of existing development on Jones Street and the height of buildings generally permitted on the site. Further, the exceedance occurs in areas well setback from the boundary

lines, where adverse impacts can be managed, and where the uppermost levels are least visible from the street frontages.

- The objectives of the MU1 zone are achieved. Specifically, the development proposed a mix of public and community uses on a site that imposes constraints, in response to which the exceedance is reasonable. The site is bounded on three sides by transport corridors, and on Jones Street by the sandstone rock face. Commissioner Horton accepted that the location and scale of communal open space (COS), including through site links, will encourage access to, and use of, the Light Rail corridor and encourage walking.
- Commissioner Horton accepted that the height of development is appropriate given the site condition and its context, in particular the decision to redistribute allowable building height away from Jones Street to the centre of the site, providing a lower envelope at this interface, including a setback to accommodate a footpath on an important pedestrian link to the Light Rail Station where none currently exists today.

Following the granting of this consent, an Architectural Design Competition was undertaken as required by the consent conditions imposed on the Stage 1 Concept Approval, and in accordance with Council's *Competitive Design Policy*. Of the five competition schemes, the Jury unanimously selected the BVN entry. BVN proposed to deviate from the Concept DA envelope by breaking the 'L-shaped' Wattle Street building into two separate buildings, including a central residential building with a smaller floorplate (named the '*Garaban*', now known as Building C (Courtyard)), which will provide high level north facing and cross ventilated through apartments, delivering positive sustainability and residential amenity outcomes.

The Jury Report dated August 2022 acknowledges the height non-compliance, however from a design and urban character perspective, the variation occurs primarily within the centre of the site where impacts on key issues such as: overshadowing of Wentworth Park; the Wattle Street presentation and scale; and interface with Jones Street (including heritage buildings) is minimal. The rearrangement of massing also facilitates an public, open-air north/south link that will deliver greater pedestrian permeability in proximity to the Light Rail station and improved amenity of the east-west through site link.

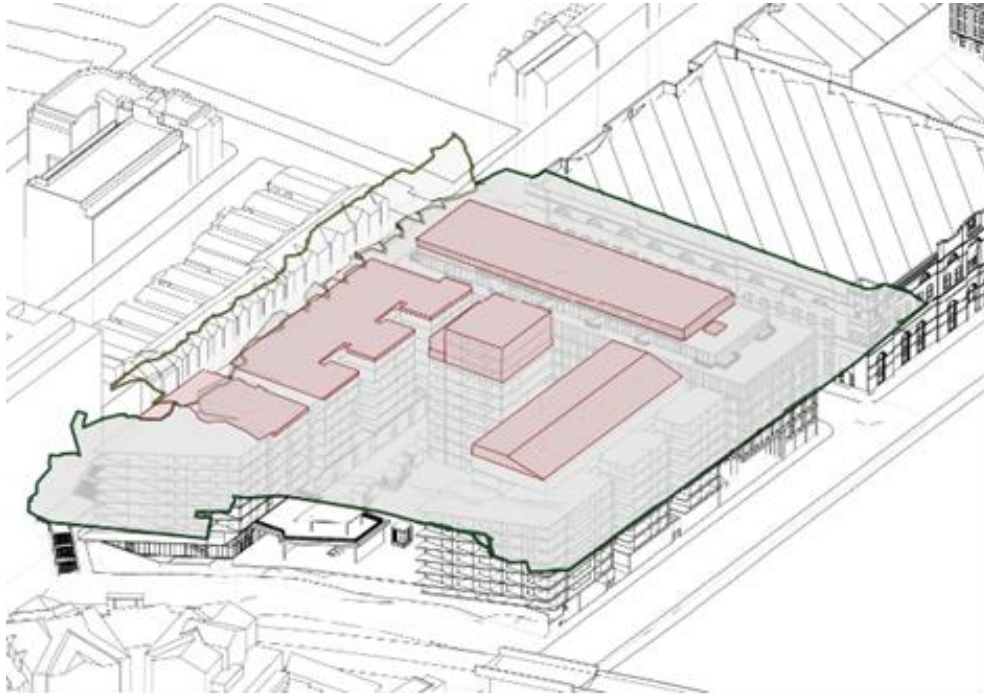


Figure 3: Axonometric drawing showing height non-compliances of the BVN scheme in the Architectural Design Competition (Source: BVN)

As identified earlier in this Request, a concurrent Section 4.56 Modification Application is being submitted with the Stage 2 Detailed DA. The proposed changes are consistent with those identified in this Request notably:

- Conversion of the top residential floors (level 7 and 8) previously proposed on Building E (Fig Street) to commercial use, making it a solely commercial building.
- The floor-to-floor heights of Building E (Fig Street) were originally proposed to be increased from 3.6 metres to 3.8 metres. Following the receipt of Council's request for information (RFI) in July 2023, the floor-to-floor heights are now reverted back to 3.6m for the typical commercial floors to minimise overshadowing of Wentworth Park.
- Increase of floor-to-floor heights of Building B (Jones Street), Building C (Courtyard) and Building D (Wattle Street) from 3.1 metres to 3.2 metres in accordance with the *Design and Practitioners Act 2020*.
- Reconfiguration of the previously approved L-shaped Wattle Street building to create a separate (taller) Building C (Courtyard) and Building D (Wattle). The Stage 2 DA has increased the height of Building C by 1 storey as compared to the design competition scheme, due to the conversion of the top floor apartments in Building E to commercial offices as recommended by the architectural design competition jury. Notwithstanding, the overall floor space ratio (FSR) remains compliant with the 4:1 development standard under SLEP 2012 at 3.87:1.
- Creation of a retail pavilion in the centre of the site with a maximum height of RL10.750 to the roof slab and RL11.050 to the parapet wall.
- The proposed amended building envelopes for Building B (Jones Street) and Building D (Wattle Street) are deeper and wider than those originally approved in the Stage 1 Concept DA.

- As a result of the above amendments, the concurrent modification application increases the approved height of buildings on the site.

These amendments will ensure consistency between the Stage 1 Concept envelopes (as modified) and the subject Stage 2 Detailed DA envelopes (as amended to address Council's RFI).

4. STANDARD TO BE VARIED

The standard proposed to be varied is the HOB development standard which is set out in Clause 4.3 of the SLEP 2012 as follows:

- (2) *The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.*

The site has a maximum height of building control of 27 metres, as shown in Figure 4 below. The HOB development standard is not excluded from the operation of clause 4.6(8) of the SLEP 2012.

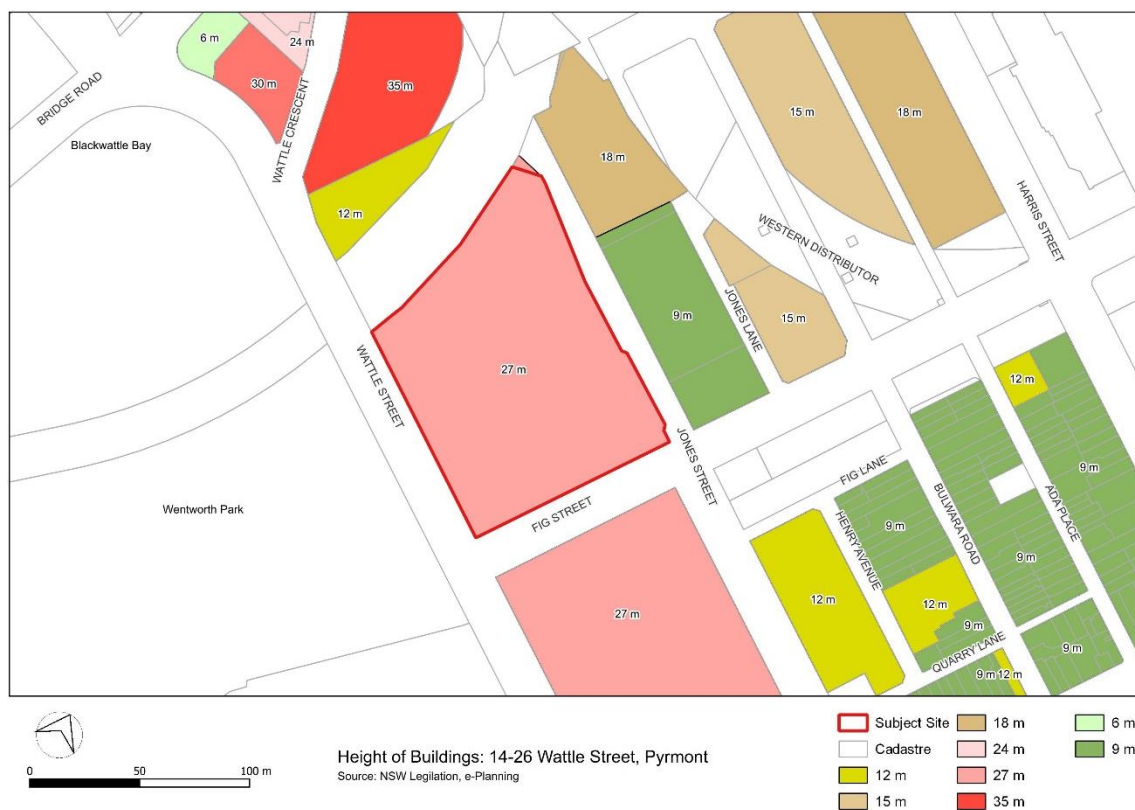


Figure 4: Extract of SLEP 2012 HOB map, site outlined in red (Source: NSW Legislation/Gyde)

As noted earlier in this Request, the Stage 1 Approval (D/2019/649) prescribes that pursuant to Clause 6.21D(3)(a) of the SLEP 2012, the site may have a building height that exceeds the maximum height shown on the height of buildings map (27 metres) by an amount, to be determined by the consent authority, of up to 10%. This bonus was included in the Architectural Design Competition Brief. For the sake of completeness, this request addresses the extent of the proposed variation in the absence of the 10% height bonus and with the 10% height bonus, i.e., a 27 metre height standard and 29.7 metres height standard, respectively.

Condition 7 of the Stage 1 Concept Approval provides that, among other things, the Jones Block and Fig Block may be eligible for up to 10% additional height pursuant to Clause 6.21(7) of SLEP 2012 if the consent authority is satisfied that the resulting detailed design DA exhibits design excellence and is the result of a competitive design process. The concurrent section 4.56 modification application seeks to remove this restriction of applying the design excellence (DE) bonus heights to Building B (Jones) and Building E (Fig), but to Buildings B to E inclusive.

5. EXTENT OF VARIATION

Pursuant to Clause 4.3 of the SLEP 2012, the site has a maximum height of buildings control of 27 metres. See Section 4 above for discussion on the 10% height bonus pursuant to Clause 6.21D(3)(a).

Relevantly, the NSW Land and Environment Court (LEC) approved a Concept DA at the site on 21 May 2021 (Council Reference: D/2019/649), which included a Clause 4.6 Variation Request to vary the maximum building height for each building, with the greatest variation being 6.08 metres (or 22%) for a portion of the Wattle Street building in the centre of the site. Figure 5 depicts these variations.

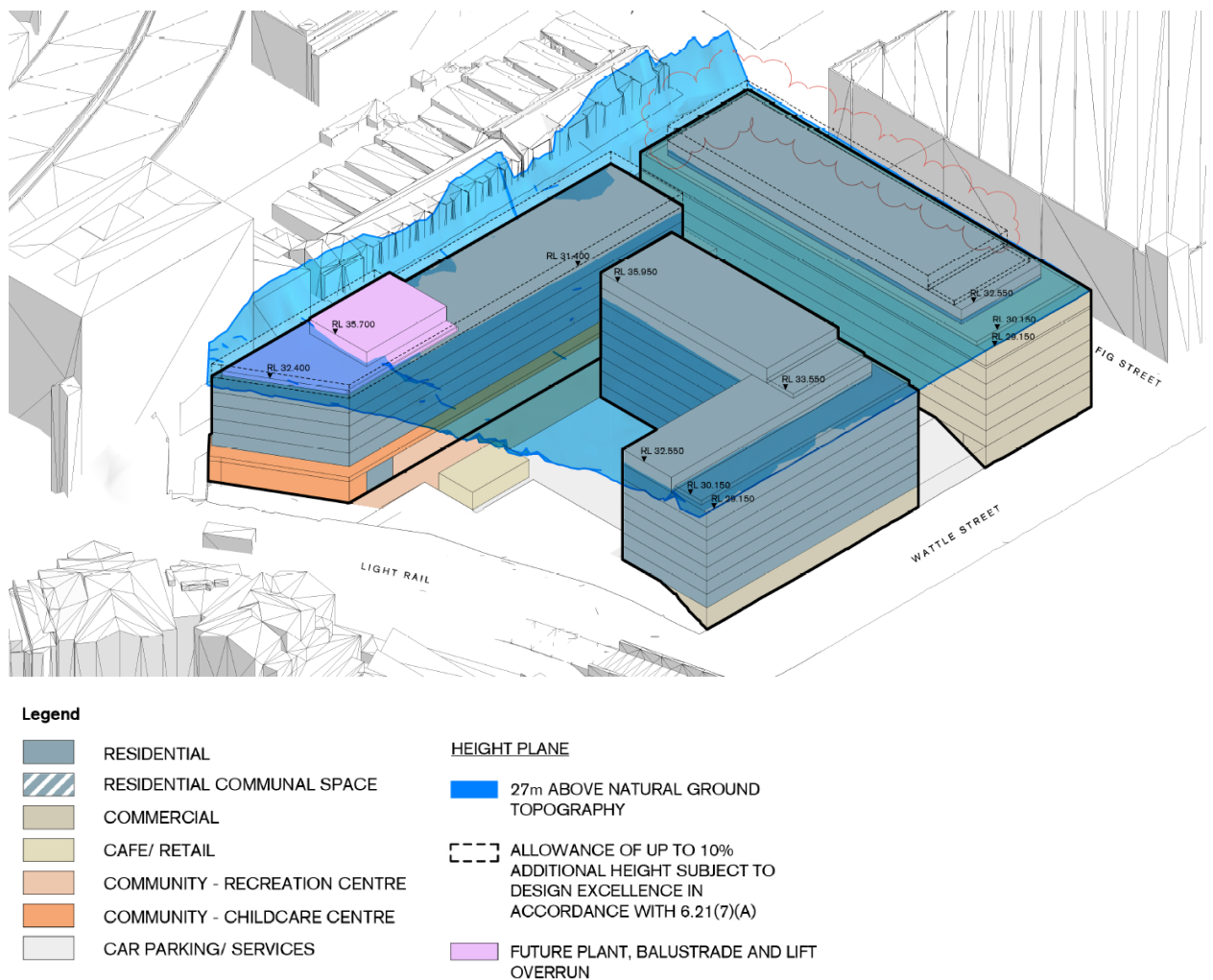


Figure 5: Extract of approved height plane diagram in D/2019/649 (Source: Tzannes)

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Each proposed building in this subject Stage 2 Detailed DA does not comply with the maximum height of buildings control, as set out in Table 1 below:

Table 1: Extent of the proposed height non-compliances

BUILDING NAME	PROPOSED MAXIMUM BUILDING HEIGHT IN SUBJECT STAGE 2 DA	NUMERICAL EXCEEDANCE OF MAXIMUM BUILDING HEIGHT	NUMERICAL EXCEEDANCE OF MAXIMUM BUILDING HEIGHT + BONUS	EXTENT OF THE VARIATION (%)
Building B (Jones Street)	30.78 metres (RL37.10) at the PV cells on the northern part of the roof to 33.78 metres (RL37.10) at the PV cells in the mid area of the roof	3.78 metres at the PV cells on the northern area of the roof to 6.78 metres at the PV cells in the mid area of the roof	1.08 metres at the PV cells on the northern area of the roof to 4.08 metres at the PV cells in the mid area of the roof	LEP height limit: 14-25% LEP + design excellence (DE) bonus: 4- 14%.
Building C (Courtyard)	42.37 metres (RL45.55) at the southern rooftop plant to 42.46 metres (RL45.55) at the northern rooftop plant	15.37 metres at the southern rooftop plant to 15.46 metres at the northern rooftop plant	12.67 metres at the southern rooftop plant to 12.76 metres at the northern rooftop plant	LEP height limit: 57% LEP + DE bonus: 43%.
Building D (Wattle Street)	33.36 metres (RL36.45) to 33.95 metres (RL36.45) at the PV cells at the middle of the roof	6.36 metres to 6.95 metres at the PV cells at the middle of the roof	3.66 metres to 4.25 metres at the middle of the roof	LEP height limit: 24-26% LEP + DE bonus: 12-14%.
Building E (Fig Street)	34.87 metres (RL37.95) to 35.14 metres (RL37.95) at the PV cells on the mid-southern roof	7.87 metres to 8.14 metres at the PV cells on the mid-southern roof	5.17 metres to 5.44 metres at the PV cells on the mid-southern roof	LEP height limit: 29-30% LEP + DE bonus: 17-18%.

The following four figures provide an extract of the height plane diagrams prepared by BVN. These depict:

- LEP height limit plane (27 metres above existing ground level) – west view
- LEP height limit plane (27 metres above existing ground level) – east view
- LEP height limit + 10% DE height bonus plane (29.7 metres above existing ground level) – west view
- LEP height limit + 10% DE height bonus plane (29.7 metres above existing ground level) – east view

The height plane is identified with dark blue line. The green RLs depict the smallest variation between the relevant height plane and proposed maximum building height. The orange RLs depict the greatest variation between the relevant height plane and the proposed maximum building height. These are also attached in Appendix B.

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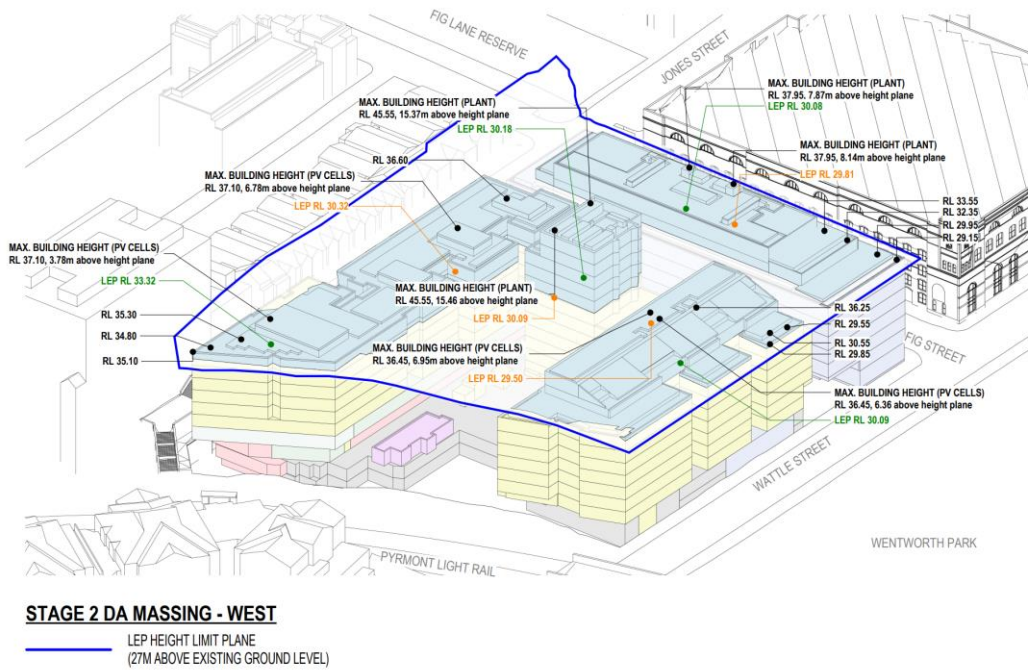


Figure 6: Extract LEP height limit plane (27 metres above existing ground level) – west view (Source: BVN)

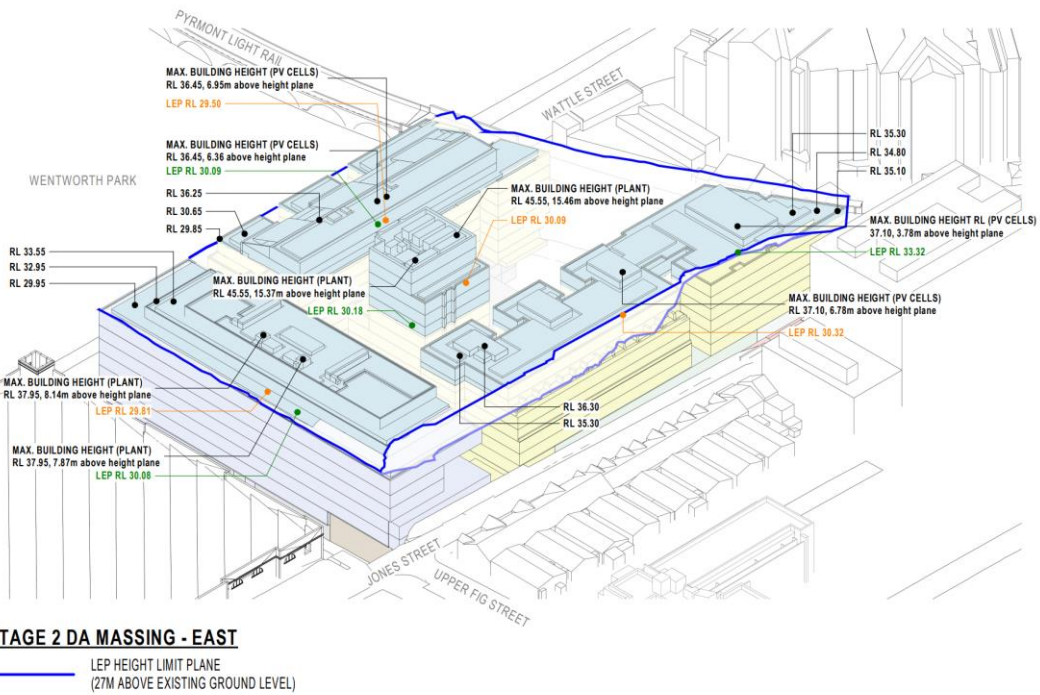
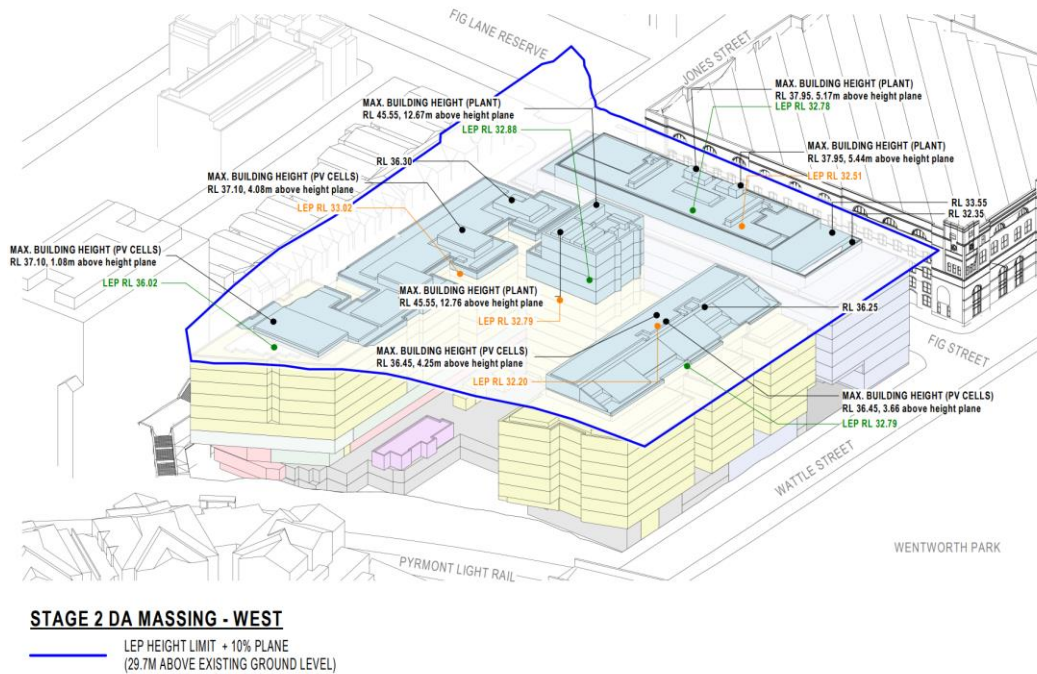


Figure 7: Extract LEP height limit plane (27 metres above existing ground level) – east view (Source: BVN)

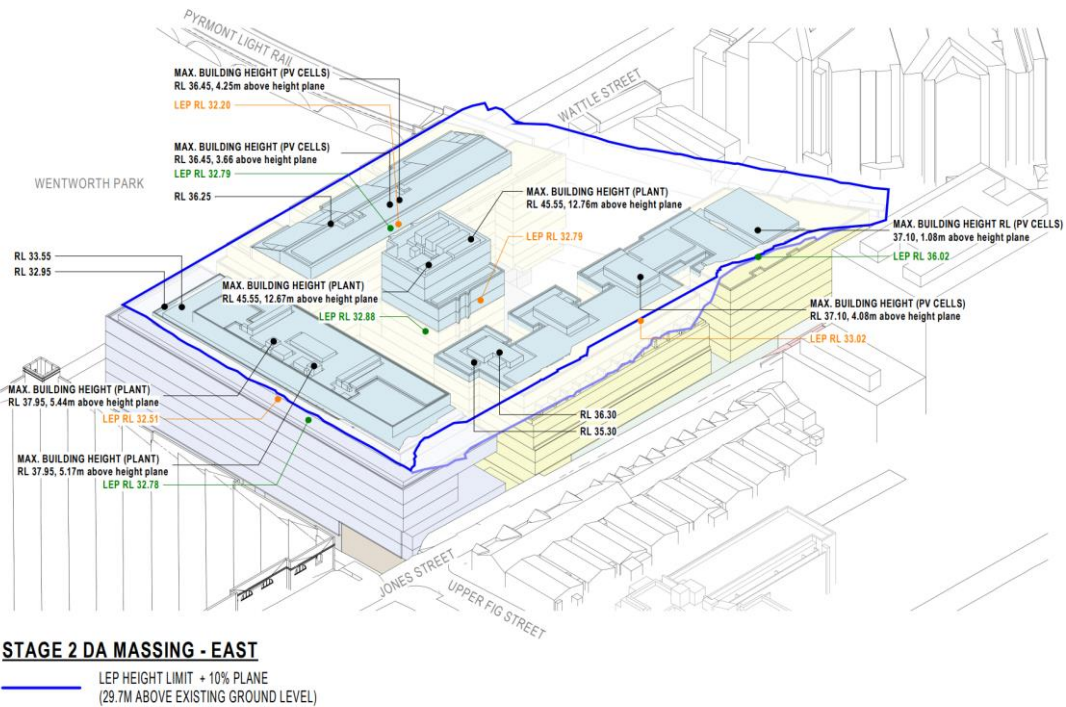
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STAGE 2 DA MASSING - WEST

LEP HEIGHT LIMIT + 10% PLANE
(29.7M ABOVE EXISTING GROUND LEVEL)

Figure 8: Extract LEP height + 10% DE height bonus plane (29.7 metres above existing ground level) – west view (Source: BVN)



STAGE 2 DA MASSING - EAST

LEP HEIGHT LIMIT + 10% PLANE
(29.7M ABOVE EXISTING GROUND LEVEL)

Figure 9: Extract LEP height + 10% DE height bonus plane (29.7 metres above existing ground level) – east view (Source: BVN)

KEY LEGEND

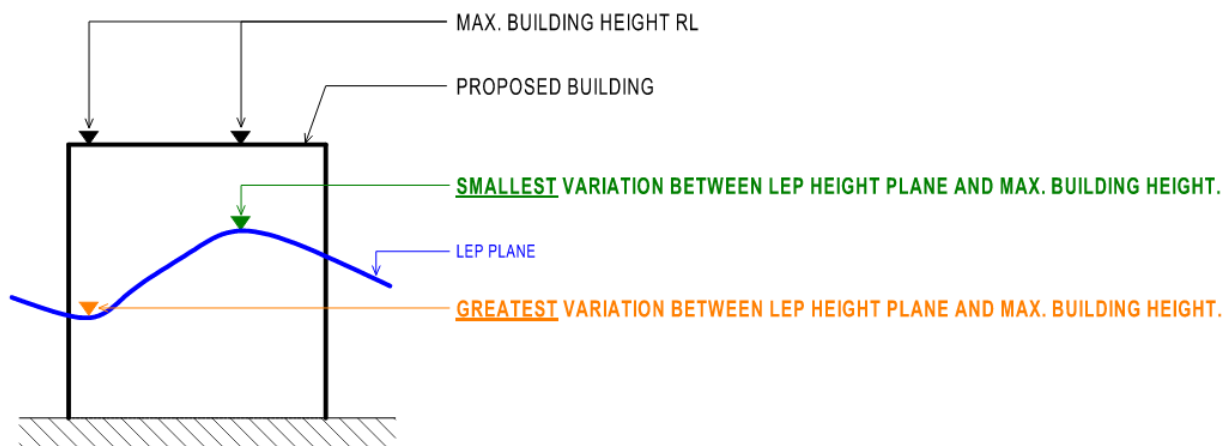


Figure 10: Extract of height plane diagram legend (Source: BVN)

For completeness we note that the quantum of the variation (up to 57%) is not in itself, a material consideration as whether the variation should be allowed. There is no constraint on the degree to which a consent authority may depart from a numerical standard under clause 4.6: *GM Architects Pty Ltd v Strathfield Council* [2016] NSWLEC 1216 at [85].

Some examples that illustrate the wide range of commonplace numerical variation to development standards under clause 4.6 (as it appears in the Standard Instrument) are as follows:

- In *Baker Kavanagh Architects v Sydney City Council* [2014] NSWLEC 1003 the Land and Environment Court granted a development consent for a three storey shop top housing development in Woollahroo. In this decision, the Court, approved a floor space ratio variation of 187 per cent.
- In *Abrams v Council of the City of Sydney* [2019] NSWLEC 1583 the Court granted development consent for a four-storey mixed use development containing 11 residential apartments and a ground floor commercial tenancy with a floor space ratio exceedance of 75 per cent (2.63:1 compared to the permitted 1.5:1).
- In *Micaul Holdings Pty Limited v Randwick City Council* [2015] NSWLEC 1386, the Land and Environment Court approved a residential flat building in Randwick with a 55 per cent exceedance of the height limit (at its highest point) and a 20 per cent exceedance of the floor space ratio control.
- In *SJD DB2 Pty Ltd v Woollahra Municipal Council* [2020] NSWLEC 1112 the Court granted development consent to a six-storey shop top housing development with a floor space ratio exceedance of 42 per cent (3.54:1 compared to the permitted 2.5:1).
- In *Artazan Property Group Pty Ltd v Inner West Council* [2019] NSWLEC 1555 the Court granted development consent for a three-storey building containing a hardware and building supplies use with a floor space ratio exceedance of 27 per cent (1.27:1 compared to the permitted 1.0:1).
- In *Stellar Hurstville Pty Ltd v Georges River Council* [2019] NSWLEC 1143 the Land and Environment Court granted development consent for 12-storey residential tower, on the basis of a clause 4.6 request, with a floor space ratio exceedance of 8.3 per cent.
- In *88 Bay Street Pty Ltd v Woollahra Municipal Council* [2019] NSWLEC 1369 the Land and Environment Court granted development consent for a new dwelling house, swimming pool and landscaping at 6 Bayview Hill Road, Rose Bay with a height exceedance of 49 per cent (14.16m compared to the permitted 9.5m).

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- In *Merman Investments Pty Ltd v Woollahra Municipal Council* [2021] NSWLEC 1582, the Court granted a development consent for a residential flat building. In this decision, the Court approve a floor space ratio variation of 85 percent (from 0.65:1 to 1.21:1).

In short, clause 4.6 is a performance-based control so it is possible (and not uncommon) for large variations to be approved in the right circumstances.

6. UNREASONABLE OR UNNECESSARY

In this section it is demonstrated why compliance with the HOB development standard is unreasonable or unnecessary in the circumstances of this case, as required by clause 4.6(3)(a) of the SLEP 2012.

The LEC has held that there are at least five (5) different ways, and possibly more, through which an applicant might establish that compliance with a development standard is unreasonable or unnecessary. See *Wehbe v Pittwater Council* [2007] NSWLEC 827 (Wehbe).

The five (5) ways of establishing that compliance is unreasonable or unnecessary are:

1. The objectives of the development standard are achieved notwithstanding non-compliance with the standard; (First Test)
2. The underlying objectives or purpose is not relevant to the development with the consequence that compliance is unnecessary; (Second Test)
3. The objectives would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable; (Third Test)
4. The development standard has been virtually abandoned or destroyed by the Council's own actions in granted consents departing from the standard hence the standard is unreasonable and unnecessary; (Fourth Test) and
5. The zoning of the land is unreasonable or inappropriate; (Fifth Test).

It is sufficient to demonstrate only one of these ways to satisfy clause 4.6(3)(a). The First Test is considered below.

6.1. The objectives of the development standard are achieved notwithstanding non-compliance with the standard

Table 2 considers whether the objectives of the development standard are achieved notwithstanding the proposed variation (First Test under Wehbe).

Table 2: Consistency with Objectives of clause 4.3 of the SLEP 2012

OBJECTIVE	DISCUSSION
<p>4.3 Height of Buildings</p>	
<p>(1) The objectives of this clause are as follows—</p>	
<p>(a) to ensure the height of development is appropriate to the condition of the site and its context.</p>	<p>The height of the proposed development is appropriate to the condition of the site and its context, notwithstanding the proposed exceedance. The site has four quite different contextual interfaces. Each of the four site interfaces, and the proposed Building C (Courtyard Building), are addressed in turn:</p> <p>Light Rail Interface</p> <ul style="list-style-type: none"> • Given the existing environmental circumstances of the light rail interface, there is a strong need for the proposal to present as an inviting prospect for people entering/exiting the light rail walk through the site. The proposal maintains a break to the building mass close to the station and delivers large, high-quality COS on

OBJECTIVE	DISCUSSION
	<p>the ground plane of the site. The light rail interface slowly slopes from the highest Jones Street point to the low point of Wattle Street with a series of steps and ramps enabling people entering and exiting the light rail to/from Wattle and Jones Street. The proposal is also set back 5.5 metres off its northern boundary (at the north-east of the site) to retain existing trees and landscaping. In response to the light rail interface to the north of the site, a break to built forms is provided with setbacks, preserving existing trees (as practical) and resulting in an inviting through-site link adjacent to the centrally located COS. Hence, reducing the building height in this part of the site, which provides a through site link, is highly beneficial and a positive outcome. Trees that are proposed to be removed are making way for a new pedestrian connection to the light rail station and improve activation of the station precinct. Ground level open space (publicly accessible and communal) has been arranged adjacent to the light rail station and is connected to internal through site links providing a highly beneficial and positive outcome.</p> <p>Wattle Street Interface</p> <ul style="list-style-type: none"> The proposed height of the Wattle Street frontage is designed to be compatible with the street wall established by the former wool store to the south. Additional height is setback to minimise additional overshadowing to Wentworth Park, and to ensure it does not result in intrusive visual bulk in the context of the dominant street wall along Wattle Street. <p>Fig Street Interface</p> <ul style="list-style-type: none"> Likewise, the Fig Street interface is compatible with the street wall height established by the former wool store to the south of the site but differs from the other frontages in that no pedestrian links are proposed, given the function of Fig Street as a major traffic route into the CBD, and onto the Harbour Bridge. The topmost levels of Building E (Fig Street) are setback from Fig Street and Wattle Street so as to minimise additional overshadowing of Wentworth Park, and to ensure it will not result in intrusive visual bulk and allow sky view from the street level. <p>Jones Street Interface</p> <ul style="list-style-type: none"> Setbacks are provided to Jones Street boundary of 2.160 metres to the closest point consistent with the Stage 1 DA in respect of the heritage-listed terraces. The DA proposes a four-storey street wall height opposite the heritage terraces, with the additional height setback further to avoid adverse impacts beyond that of a strictly compliant scheme. From a heritage perspective, locating built form and floor space to a more central position within the site, and to allow the provision of

OBJECTIVE	DISCUSSION
	<p>setbacks from Jones Street is a preferable design response. This will benefit the public domain, appropriately scale the proposal with the surrounding locality, and allow the sandstone rock face to be visible to public areas.</p> <p>Courtyard Building (Building C)</p> <ul style="list-style-type: none"> The taller Building C (Courtyard) is a residential tower exceeds the height limit but provides significant benefit through a slender floor plate which achieves a high level of solar access and cross ventilation, providing superior sustainability and residential amenity outcomes. The placement of this taller tower as a standalone element (not linked to another building as an ‘L-shape’, as initially envisaged within the Concept Approval) also has the positive effect of liberating the ground plane, providing additional public space and pedestrian permeability through the site. Moreover the slender nature of Building C (Courtyard) do not cause unreasonable additional overshadowing onto Wentworth Park compared to the Stage 1 Concept envelope, due to the central location of the building.
<p>(b) to ensure appropriate height transitions between new development and heritage items and buildings in heritage conservation areas or special character areas</p>	<p>The site’s adjacency to heritage items on two frontages, being Jones Street and Fig Street, has been appropriately considered in the height transitions provided:</p> <ul style="list-style-type: none"> Building B (Jones Street) is lower in overall height, being RL37.10, than the existing apartment building located on the site of heritage item I1205 <i>Former industrial building elements and industrial components “Edwin Davey & Sons Flour Mill”</i>, which has a top of building height at RL45.95. The existing terrace group on Jones Street currently presents as low scale buildings within a dense urban context; it is located between the Western Distributor, the 5-storey residential development at 219 Bulwara Road and the former Edmin Davey & Sons Flour Mill building. Sites surrounding the terrace group, particularly on the southern and western sides of Jones Street are all identified for much higher development than the terrace group, in both the SLEP 2012 and the Sydney Development Control Plan 2012 (SDCP 2012). The transition between the scale of the heritage listed terraces on Jones Street and the proposal is assisted by the setback from the Jones Street property boundary and additional upper level setbacks, and by matching the four-storey height of the lower portion of the Harbour Mill Apartments. Strictly applying the 27 metre height plane to the unique topography of the site would permit a built form along Jones Street that imposes a far greater impact than what is now proposed (and

OBJECTIVE	DISCUSSION
	<p>approved in the Stage 1 Concept DA). This is the result of the decision to redistribute the floor space in favour of a lower envelope and to provide a setback that allows visibility of the sandstone cliff face and accommodates a footpath on an important pedestrian link to the light rail station where none exists today.</p> <ul style="list-style-type: none"> • While the heritage listed terraces on Jones Street are low scale, they are currently visualised in the context of the Harbour Mill Apartment Building that rises from 5 to 10 storeys in height, as well as other larger buildings in the locality. The proposed building heights are lower than the recent Harbour Mill Apartment Building, providing a transition in scale to the heritage terraces. • Similarly, the Fig Street interface is consistent with the heritage-listed former wool store when viewed in context, due to the southern and eastern setbacks at level 8 and above in Building E (Fig Street). • Given that the proposal does not seek to exceed, or even meet, the maximum FSR of 4:1, and the minimal environmental impact associated with the additional height at the centre of the site, when considering the streetscape and heritage impact, compliance with the height standard can be seen to be unreasonable or unnecessary, see <i>Randwick City Council v Micaul Holdings Pty Ltd</i> [2016] NSWLEC 7 at [34]. • The design of Building B (Jones Street) comprises façade articulation which takes cues from the rhythm of the heritage terraces and in doing so break down the building form to respond to Jones Lane. • The Heritage Impact Statement prepared by Paul Davies confirms: <ul style="list-style-type: none"> - <i>The relocation of the previously proposed residential uses in Building E (Fig Street) and redistributing across the site/Building C (Courtyard Building) is conceptually sound and results in no heritage impact.</i> - <i>The built form is well articulated and modelled to reflect the broader pattern of development including its scale along Wattle Street. The design is varied by responds to the street wall height of adjacent block. There are no heritage issues arising from the Wattle and Fig Street interfaces.</i> - <i>The proposal establishes a strong and modulated street wall with setbacks at a higher level which create an appropriate (scaled) relationship to the residences to the south.</i> - <i>The modelling of the south-east corner of the development, with open space at street level connecting to the through site link, creates a generous spatial setting at this corner.</i> - <i>There is no perceivable heritage impact from the minor</i>

OBJECTIVE	DISCUSSION
	<p><i>amendments to the building height from that originally approved in the Stage 1 Concept DA.</i></p> <ul style="list-style-type: none"> - <i>Proposing Building E (Fig Street) as solely a commercial building is more consistent with the existing/historical warehouse qualities of the site, which is considered a positive heritage outcome.</i> - <i>The increase height associated with Building C (Courtyard) result in no adverse heritage impacts.</i>
<p>(c) to promote the sharing of views outside Central Sydney</p>	<ul style="list-style-type: none"> • The site has been underutilised for many years, devoid of significant built forms, despite its MU1 (previously B4) mixed-use zoning. The surrounding buildings have enjoyed the benefit of the undeveloped site, however there must be a reasonable expectation that the site will be developed in accordance with the relevant planning controls at some stage. • The site most impacted by view loss is the group of terraces on the opposite/eastern side of Jones Street. These western views over Wentworth Park currently enjoyed by these buildings would be lost by a development wholly compliant with the height control, and as such the view impact to the terrace group is reasonable and acceptable in accordance with the fourth principle established in <i>Tenacity Consulting v Warringah</i> [2004] NSWLEC 140, and the proposed exceedance does not affect the achievement of this objective. • Likewise, a complying development envelope fronting Jones Street, by virtue of the profile of the sandstone rock face, could achieve a 27 metre height at the Jones Street boundary that would adversely impact views from the Harbour Mills Apartments. Instead, the proposed buildings adopt a lower profile that achieves a positive view sharing outcome. • The views from Fig Lane Park, which is located to the south-east of the site at the intersection of Fig and Jones Street, are in the north-westerly direction comprising treetops on the site and parts of the Inner West Light Rail Corridor Viaduct. A compliant development for Building B (Jones Street) would similarly take these views away. However, the northern view of the Anzac Bridge is unaffected as is the treetops view to the north and east beyond Jones Street.
<p>The site is not located within Central Sydney, or Green Square Town Centre and therefore objectives (d) and (e) are not relevant.</p>	

As demonstrated in Table 2, the objectives of the HOB development standard are achieved notwithstanding the variation. In accordance with *Wehbe*, compliance with the development standard is therefore demonstrated to be unreasonable or unnecessary, and the requirements of clause 4.6(3)(a) have been met on this First Test alone.

7. SUFFICIENT ENVIRONMENTAL PLANNING GROUNDS

In *Initial Action Pty Ltd v Woollahra Council* [2018] NSWLEC 118, Preston CJ determined that “environmental planning grounds” include matters that relate to the subject matter, scope and purpose of the *Environmental Planning and Assessment Act 1979* (the Act), including the objects in Section 1.3, which are copied in full below:

- 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;*
- b. *to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment;*
- c. *to promote the orderly and economic use and development of land;*
- d. *to promote the delivery and maintenance of affordable housing;*
- e. *to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats;*
- f. *to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage);*
- g. *to promote good design and amenity of the built environment;*
- h. *to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants;*
- i. *to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State; and*
- j. *to provide increased opportunity for community participation in environmental planning and assessment.*

In that decision, Preston CJ also observed that in order for there to be ‘sufficient’ environmental planning grounds to justify a written request under Clause 4.6 to contravene a development standard, the focus must be on the aspect or element of the development that contravenes the development standard, not on the development as a whole.

The environmental planning grounds relied upon to justify the departure of the HOB development standard are as follows. It is noted that the LEC accepted the sufficiency of the grounds provided in paragraphs (b), (c), (d), (e) and (f) when granting consent to the Stage 1 Concept Approval. The environmental planning grounds provided in paragraphs (a), (g)- (k) relate particularly to the exceedances required in connection with the proposal as adapted consequent upon the design competition:

- (a) The proposed development provides large scale community uses including a 91-place childcare and indoor recreation centre comprising two indoor courts and associated facilities; while also delivering significant public benefits through generous through-site links, which are not mandated under the planning controls. The proposal provides a genuine mix of business and residential uses to enhance the character, liveability and productivity of the Wentworth Park Sub Precinct in the Pyrmont Peninsula and 5,181m² or 41.8% of the site area as COS (16.8% more than that required by the Apartment Design Guide), including publicly accessible open space. The proposed height exceedances free up the ground plane to deliver these benefits.
- (b) Notwithstanding the proposed exceedance of the HOB development standard, the proposal (FSR 3.87:1) complies with the FSR development standard that applies to the site under clause 4.4 of the SLEP 2012 (being 4:1) and does not represent an overdevelopment of the site from a land use intensity perspective.
- (c) A primary driver of the HOB exceedance is the desirability of enabling the buildings across the site to be arranged to maximise COS and enhance pedestrian connectivity within the site and to surrounds. Further public benefit is

evident in the setback from the boundary at Jones Street (including provision of a new footpath) in response to the heritage listed properties opposite the site, and extension of the central courtyard to the interface with the Light Rail Station, where development of 27 metres is possible but is not proposed.

- (d) The proposed building forms are derived from analysis of the existing built form adjacent to the site, so that unreasonable impacts do not result, particularly in respect of solar access and streetscape character. No unreasonable additional overshadowing as compared to the approved concept envelope is imposed on Wentworth Park, Fig Lane Reserve, or the existing properties on the eastern side of Jones Street.
- (e) The abrupt change in level on the site (formed by the sandstone rock face to the east) demonstrates why it is necessary to apply the HOB standard flexibility. An alternative proposal that achieved compliance with the HOB development standard could be built to the boundary where the rock face is close to the level of Jones Street, and where a narrow envelope of 27 metres in height could be developed. A strictly compliant proposal would result in a comparatively worse environmental planning outcome. Instead, in the current proposal this floor space is redistributed centrally within the site, where it is largely below the 27 metres height control.
- (f) A consistent building setback is adopted to the irregular Jones Street boundary line. The result is a loss of floor space on an area of the site on which it is otherwise allowed, in favour of a footpath on Jones Street and a gap with visibility to the sandstone cliff face below. The Jones Street building footprint is consistent with the amenity criteria of the *Apartment Design Guide* (ADG), and its envelope is compatible with surrounding development. Likewise, a generous setback is evident at the upper storeys that are above the height plane at the Fig Street block. The building masses of the Jones and Fig blocks mostly reside under the sandstone wall which forms the eastern site boundary. The shadow impacts are also comparable to that approved in the Stage 1 Concept DA and less than a compliant envelope.
- (g) The taller Building C (Courtyard) residential tower exceeds the HOB design standard but provides significant benefit through a slender floor plate that achieves a high level of solar access and cross ventilation, providing superior sustainability and residential amenity outcomes. The placement of this taller tower as a standalone element (not linked to another building in an 'L-shape' configuration as initially envisaged by the Concept Approval) also has the positive effect of liberating the ground plane, providing additional public space and pedestrian permeability through the site. Moreover, the slender nature of the tower ensures shadow impacts are fast moving and so do not cause undue additional impacts on surrounding public open spaces. The redistribution of floor space from the former L-shaped building and from the previously proposed residential floors of Building E (Fig) to the top of Building C (Courtyard) has contributed to the latter's height exceedance. Notwithstanding, the amenity benefits in terms of solar access and cross ventilation for those units outweigh the numerical height exceedance and the minimal environmental impact that would result.
- (h) Floor levels in Building D (Wattle Street) and Building E (Fig Street) are elevated by approximately 700mm (RL2.87) for flood planning, which contributes to the height exceedance.
- (i) Increase to the floor-to-floor heights of Building B (Jones Street) and Building D (Wattle Street) from 3.1 metres to 3.2 metres is required to meet the requirements of the *Design and Practitioners Act 2020*.
- (j) The envelope and inclined roof form of Building D (Wattle Street) protects solar access to Wentworth Park in mid-winter and accommodates floor space that could otherwise be in the COS adjoining the Light Rail station.

- (k) The additional shadows on Wentworth Park beyond the approved Stage 1 Concept Envelope and attributed to the height exceedance are minor in nature. The additional shadows are a result of the amended massing strategy and redistribution of floor space driven by the design competition, increased floor to floor heights for improved construction standard, and the need for roof-mounted plant and equipment that cannot be accommodated within basements. The impact is limited to the morning period. By 10am, 21 June, the majority of the shadows will fall on existing trees at the eastern edge of the park as well as the Wattle Street road reserve. The impact will gradually decrease and by 12 noon, 21 June, the proposed development will not cast any shadows on Wentworth Park. The majority of Wentworth Park will remain under direct sunlight throughout the day in mid-winter. The retained solar access will greatly exceed the currently applicable DCP control for protection of sunlight to public parks, which requires 50% of the total park area to receive sunlight for 4 hours from 9am to 3pm at mid winter.
- (l) The additional exceedances beyond those already approved by the Concept Approval could be remedied by reducing the floor-to-floor heights and reinstating the L-shaped form of the Wattle Street building, however, this would result in an inferior environmental planning outcome because:
- The reduced floor to floor heights would compromise the design quality of the apartments for no material or perceivable environmental benefit.
 - It would require the two top floors of Building E (Fig Street) to be reinstated as residential storeys, resulting in a mixed-use building and less commercial floor space. As noted by the Competition Jury, residential storeys on this building were considered problematic from a design and asset management perspective. Strategically, it is preferable to maximise the commercial floorspace and avoid conflicting land uses that will compromise the performance of the building. In this regard, 33.0% of the total floor space is commercial, 0.9% is retail floor space, 56.7% is residential floor space, 3.8% is childcare floor space and 5.6% is recreational floor space. Further, the site is within the City Fringe and Innovation Corridor which houses knowledge intensive clusters that represent some of the fastest-growing sectors in the City's economy according to City Plan 2036 (the City of Sydney Local Strategic Planning Statement). The creation of unconstrained commercial floor plans in a mixed use and high amenity context is consistent with and promotes the development of innovative and diverse business clusters in the City Fringe in accordance with priority P2 of City Plan 2036.
 - It would also require the reinstatement of the L-shaped Wattle Street building, reducing the permeability of the ground plane and amenity of the east-west through site link, creating apartments with poorer amenity due to the deep re-entrant corner, and compromising the outcome of the architectural design competition.

Having regard to the discussion in points (a)- (l) above, the environmental planning grounds are considered sufficient and are consistent with the following objects in Section 1.3 of the Act:

- *(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,*
- *(c) to promote the orderly and economic use and development of land,*
- *(f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),*
- *(g) to promote good design and amenity of the built environment,*

8. PUBLIC INTEREST

Clause 4.6(4)(a)(ii) requires that development consent may not be granted to a proposal which contravenes a development standard unless the consent authority is also satisfied that the proposed development will be in the public interest because it is consistent with the objectives:

- a) of the particular standard; and
- b) for development within the zone in which the development is proposed to be carried out.

The proposed development will be in the public interest because it is consistent with the objectives of the HOB development standard and the objectives of the MU1 (Mixed Use) zone. An assessment against the objective of the MU1 (Mixed Use) zone is provided in the Table 3 below. An assessment against the objectives of the HOB development standard in Clause 4.3 was provided in Table 2 above, and is not restated here to avoid duplication, but is relied on also in relation to this test.

Table 3: MU1 (Mixed Use) Zone Objectives

OBJECTIVE	DISCUSSION
<ul style="list-style-type: none"> • To encourage a diversity of business, retail, office and light industrial land uses that generate employment opportunities. 	<ul style="list-style-type: none"> • The proposal delivers a diversity of office, retail, recreational and childcare land uses that generate employment opportunities in a highly accessible area. • The proposal provides a mix of public and community uses alongside commercial, retail and residential use, notably 33.0% of the total floor space is commercial, 0.9% is retail floor space, 56.7% is residential floor space, 3.8% is childcare floor space and 5.6% is recreational floor space. In response to the constraints, the height non-compliances are considered reasonable. The height exceedances result from a staged design excellence process, which sought to locate non-residential uses at 'hostile' interfaces, e.g. putting retail uses at Wattle Street and commercial uses at Fig Street. The more sensitive residential and childcare uses are generally located centrally within the site and at the Jones Street frontage, which is not subject to significant acoustic, traffic or other constraints. • The taller Building C (Courtyard Building) is a residential tower which exceeds the height limit but provides significant benefit through a slender floor plate. The placement of this taller tower as a standalone element (not linked to another building as an 'L-shape', as initially envisaged) also has the positive effect of liberating the ground plane, providing additional public space and pedestrian permeability. • The overall development achieves a high level of cross ventilation with 61.1% (corner and cross-through units, and units assessed by specialist consultant to achieve equivalent level of airflow) of apartments in the first nine storeys being naturally cross ventilated, providing superior sustainability and residential amenity outcomes. Additionally, none of the apartments receive no sun in mid-winter. • Overall, the site planning (including the proposed height exceedances) has resulted, in part, from the desire to locate land uses in suitable

OBJECTIVE	DISCUSSION
	<p>locations across the site. The genuine mix of uses including commercial, residential, retail, childcare and community facilities aligns with the zone objectives and delivers an optimal outcome for the site's mixed-use zoning.</p>
<ul style="list-style-type: none"> 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. 	<ul style="list-style-type: none"> The proposal provides active frontages on all site edges, responding to the unique characteristics of the streets and the Light Rail corridor. The proposal achieves diverse and active frontages to Wattle, Jones and Fig Streets. Commercial units, a through-site link and a pedestrian forecourt are provided at the Wattle Street frontage. A retail unit, plaza and through-site link offer activation to the Jones Street / Fig Street junction and effectively expand the public domain; the apartments within Building B provide casual surveillance of Jones Street. Fig Street is subject to high volumes of vehicular traffic and it would not be viable to provide retail uses along this frontage. Notwithstanding, the commercial suites within Fig Street would animate the street and contribute to its safety and security. The development would also provide a revitalised and active edge to the eastern part of Wentworth Park. The pedestrian permeability afforded by the proposal, together with the setback and footpath proposed at Jones Street, enhance accessibility in proximity to the Light Rail station, which integrates the mixed-use development with public and active transport (such as cycling and walking) and improves pedestrian connectivity in the surrounding neighbourhood.
<ul style="list-style-type: none"> To minimise conflict between land uses within this zone and land uses within adjoining zones. 	<ul style="list-style-type: none"> The proposal (as concurrently proposed to be amended in the Section 4.56 modification application) does not result in any conflict of land uses. The site adjoins an R1 General Residential zone to the east, SP2 (Railways) zone to the north, and SP2 (Classified Roads) to the south and west. Wentworth Park is situated further to the west. The design scheme adopts a site layout and massing strategy which are contextually appropriate and would minimise adverse environmental and amenity impacts on key public open spaces and existing residential uses in the locality. The proposed building heights will retain adequate solar access to the terraces along Jones Street as well as Wentworth Park. The tallest element, being the Courtyard Building, is contained within the centre of the site to minimise visual and overshadowing impacts on the surrounding areas. The proposed building heights are also consistent with the nearby heritage listed former wool stores along Wattle Street. The development will introduce a residential and employment population that maximise usage of the adjacent Light Rail and encourage sustainable modes of transport.
<ul style="list-style-type: none"> To encourage business, retail, community and other non- 	<ul style="list-style-type: none"> Non-residential uses are provided on the ground floor of Building A (Retail Pavilion), Building B (Jones Street – recreation centre), Building D (Wattle

OBJECTIVE	DISCUSSION
residential land uses on the ground floor of buildings.	<p>Street) and Building E (Fig Street).</p> <ul style="list-style-type: none"> A range of commercial uses (retail / office) have been provided for at the ground floor levels of the Wattle and Fig Street buildings. The recreation centre and childcare centre are accessible from the podium level of the development as well as the adjacent Light Rail Station.
<ul style="list-style-type: none"> To ensure land uses support the viability of nearby centres. 	<ul style="list-style-type: none"> The proposed mix of uses will support the viability of Centres, including the Ultimo and Pyrmont precinct and notably the 'Wentworth Park Sub Precinct'. It will deliver a significant range of employment generating and community uses that will align with the objectives of the <i>Pyrmont Peninsula Place Strategy</i> relating to employment generation and urban activation in the Pyrmont area. However, the proposed land uses would not compete with the role or viability of Sydney CBD.
<ul style="list-style-type: none"> To integrate suitable business, office, residential, retail and other land uses in accessible locations that maximise public transport patronage and encourage walking and cycling. 	<ul style="list-style-type: none"> The proposal successfully integrates several land uses into a singular development, achieving the objectives of the mixed-use zoning and is consistent with the vision for the Wentworth Park Sub Precinct in the Pyrmont Place Strategy. The uses have been deliberately placed in certain locations on the site in response to the surrounding urban environment. In doing so, ensures a genuine mix of business and residential uses to enhance the character, liveability and productivity of the sub-precinct. As a result of the undulating and unnatural topography at the Jones Street frontage, the height limit must be varied to provide a contextually responsive built form. The extent of this variation is considered necessary in view of the requirement to provide sufficient building depths (with indents) to achieve residential amenity outcomes consistent with the ADG. As above, the placement of a taller tower (Building C (Courtyard)) centrally within the site is considered appropriate given the flow on benefits to residential amenity, sustainability, and the ground plane. Further, the proposal does not reach the maximum FSR permissible for the site; despite the technical height exceedances, the proposal is not an overdevelopment from a land use intensity perspective. The maximum FSR is 4:1 or 49,524m², with the proposed development's FSR 3.88:1 (excluding the small RE1 zoned land in Jones Street from site area) or 47,954m² gross floor area.

8.1.1. State Environmental Planning Policy Amendment (Land Use Zones) (No 6) 2022 (Zones SEPP)

LEPs in NSW have been amended to introduce employment zones by way of self-repealing SEPPs. Six self-repealing SEPPs amended 134 LEPs on 16 December 2022. These amendments do not however commence until 26 April 2023. Zones SEPP No.6 applies to the SLEP 2012. The reform of employment zones supports long-term economic recovery through job creation and encourages increased productivity in NSW. The employment zones seek to provide clear strategic intent, include clarity around their application and increase flexibility around land uses.

Clause 4.6 Variation Request (HOB) – 14- 26 Wattle Street, Pyrmont

The Zones SEPP (No 6) which was published on the NSW Legislation website on 16 December 2022, repeals the B4 Mixed Use zone within the Land Use Table of the SLEP 2012 and replaces that with a new MU1 Mixed Zone. However, commencement of the Zones SEPP was deferred by the Inner West Local Environmental Plan Amendment (Land Use Zones) 2022. The SLEP 2012 land use zone mapping which identifies the site as MU1 zone applies to the site from 26 April 2023.

9. STATE OR REGIONAL ENVIRONMENTAL PLANNING

This section considers whether the contravention of the development standard raises any matter of significance for State or regional environmental planning, the public benefit of maintaining the development standard, and any other matters required to be taken into consideration by the Secretary before granting concurrence required by clause 4.6(5).

There is no identified outcome which would be prejudicial to planning matters of State or regional significance, as a result of contravening the development standard as proposed by this application.

As demonstrated already, the proposal is consistent with the objectives of the zone and the objectives of the development standard and in our opinion, there are no additional matters which would indicate there is any public benefit of maintaining the development standard in the circumstances of this application.

Finally, we are not aware of any other matters required to be taken into consideration by the Secretary before granting concurrence.

The Planning Secretary can be assumed to have concurred to the variation. This is because of Department of Planning Circular PS 20–002 'Variations to development standards', dated 5 May 2020. This circular is a notice under 64(1) of the *Environmental Planning and Assessment Regulation 2000*.

A consent granted by a consent authority that has assumed concurrence is as valid and effective as if concurrence had been given. The circular provides for assumed concurrence.

The Secretary can be assumed to have given concurrence to the variation, provided that the determination is not made by a delegate of the Council. (It should be noted that a committee/panel and the LEC are not delegates of the Council).

10. CONCLUSION

This submission requests a variation, under clause 4.6 of the SLEP 2012, to the HOB development standard in clause 4.3 of the SLEP and demonstrates that:

- Compliance with the development standard would be 'unreasonable and unnecessary' in the circumstances of this development;
- The development achieves the objectives of the HOB development standard and is consistent with the objectives of the MU1 (Mixed Use) zone;
- There are sufficient environmental planning grounds to justify the contravention;
- The proposed development will be in the public interest as it is consistent with the objectives of the HOB development standard and MU1 (Mixed Use zone);
- There are no matters of significance for State or regional environmental planning raised by the contravention; and
- There is no public benefit in maintaining the HOB development standard.

The consent authority can be satisfied of the above and the approval of the proposed development is therefore in the public interest. The concurrence of the Secretary can be assumed in accordance with Planning Circular PS 18-003. On this basis, it is therefore appropriate to exercise the flexibility provided by Clause 4.6 in the circumstances of the case.