

Attachment C

Clause 4.6 Variation Request – Height of Buildings

The logo for URBIS, featuring the word "URBIS" in a bold, white, sans-serif font. The text is contained within a white square frame that is partially open on the right side. A thick white vertical line runs down the left side of the page, and a thick white horizontal line runs across the top, intersecting the vertical line and the logo's frame.

CLAUSE 4.6 VARIATION REQUEST - BUILDING HEIGHT

598-610 Crown Street, Surry
Hills

Prepared for
CROSSPATH PTY LTD
28 September 2023

URBIS STAFF RESPONSIBLE FOR THIS REPORT WERE:

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CONTENTS

1.	Introduction	1
2.	Site Context	2
3.	Proposed Development	5
4.	Variation of height of building Standard	6
4.1.	Development Standard	6
4.2.	Extent of Variation to Height of Building	7
5.	Relevant Assessment Framework	9
6.	Assessment of Clause 4.6 Variation	10
6.1.	Is the Planning Control a Development Standard that can be Varied? – Clause 4.6(2).....	10
6.2.	Is Compliance with the Development Standard Unreasonable or Unnecessary in the Circumstances of the Case? – Clause 4.6(3)(A)	10
6.3.	Are there Sufficient Environmental Planning Grounds to Justify Contravening the Development Standard? – Clause 4.6(3)(B).....	12
6.4.	Has the Written Request Adequately Addressed the Matters in Sub-Clause (3)? – Clause 4.6(4)(A)(I)	14
6.5.	Is the Proposed Development in the Public Interest? – Clause 4.6(4)(B)(II).....	14
6.6.	Has the Concurrence of the Planning Secretary Been Obtained? – Clause 4.6(4)(B) and Clause 4.6(5)	15
7.	Conclusion	16
	Disclaimer	17

FIGURES

Figure 1	Extract of Survey Plan	2
Figure 2	Aerial Photograph.....	4
Figure 3	LEP HOB Map	6
Figure 4	Height Plane Diagram	8

TABLES

Table 1	Previous Clause 4.6 HOB Variations in Surrounding Area	4
Table 2	Assessment of Consistency with Clause 4.3 Objectives.....	11
Table 3	Assessment of Compliance with Land Use Zone Objectives	14

1. INTRODUCTION

This Clause 4.6 Variation Request (**'the Request'**) has been prepared on behalf of Cross Path Pty Ltd (**'the applicant'**) and accompanies a Development Application (**'DA'**) for a mixed-use; retail and commercial development at 598-610 Crown Street, Surry Hills.

The Request seeks an exception from the 12-metre maximum 'Height of Buildings' (**'HOB'**) control prescribed for the site under clause 4.3 of the *Sydney Local Environmental Plan 2012* (**'LEP'**). The variation request is made pursuant to clause 4.6 of the LEP.

This report should be read in conjunction with the Statement of Environmental Effects prepared by Urbis Pty Ltd accompanying the development application.

The following sections of the report include:

- **Section 2:** description of the site context, including key features relevant to the proposed variation.
- **Section 3:** brief overview of the proposed development as outlined in further detail within the SEE and accompanying architectural plans.
- **Section 4:** identification of the development standard which is proposed to be varied, including the extent of the contravention.
- **Section 5:** outline of the relevant assessment framework for the variation in accordance with clause 4.6 of the LEP.
- **Section 6:** detailed assessment and justification of the proposed variation in accordance with the relevant guidelines and relevant planning principles and judgements issued by the Land and Environment Court.
- **Section 7:** summary and conclusion.

2. SITE CONTEXT

The site is 598-610 Crown Street, Surry Hills which consists of the following lots:

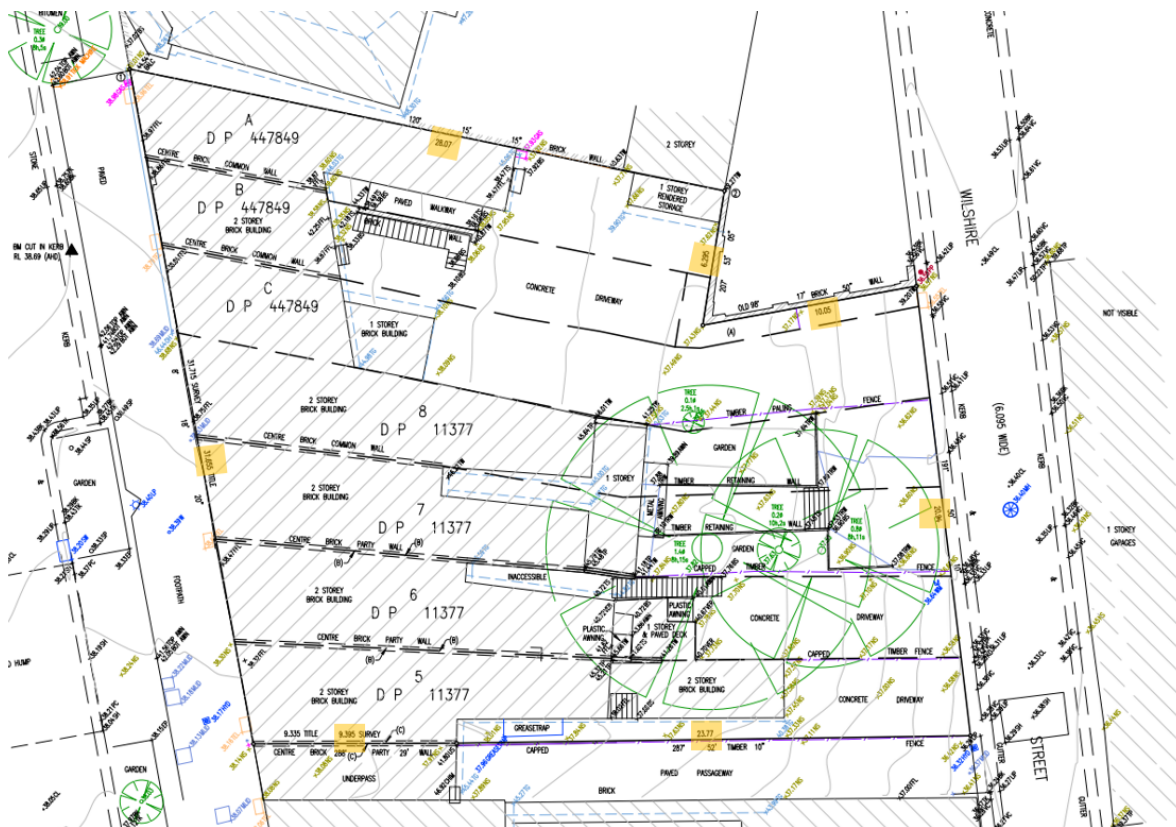
- Lot A in Deposited Plan (DP) 447489
- Lot B in Deposited Plan (DP) 447489
- Lot C in Deposited Plan (DP) 447489
- Lot 8 in Deposited Plan (DP) 11379
- Lot 7 in Deposited Plan (DP) 11379
- Lot 6 in Deposited Plan (DP) 11379
- Lot 5 in Deposited Plan (DP) 11379

The site is located on Gadigal Country. The total resultant site area, encompassing all lots is 891.1m².

The Crown Street frontage is 31.655m and the Wilshire Street frontage is 20.94m.

All lot dimensions are shown on the accompanying Site Survey prepared by Veris Australia Pty Ltd. An extract of this plan is shown at **Figure 1** below.

Figure 1 Extract of Survey Plan



Source: Veris Australia Pty Ltd

The current individual lots each comprise 2 storey brick buildings consisting of retail tenancies: Ash Tobacconist (598 Crown Street), Thai Massage (600 Crown Street), Kúrtosh Chimney Café (604-606 Crown Street), Surry Hills Pharmacy (608 Crown Street) and Crust Pizza (610 Crown Street). Crust Pizza adjoins a public art display known as 'Village Voices'.

Context

The site is bounded by Crown Street to the west and Wilshire Street to the east. Both provide legal ingress to the site and egress to the broader arterial road network. Crown Street comprises a mixture of land uses commensurate with the E1 Local Centre Zoning, affording a range of retail, business and community uses that serve the needs of people who live in, work in or visit the area.

The site abuts 594-596 Crown Street to the north, which is a locally listed ('11514') heritage item known as "St Clair Flats – including interior". That site currently accommodates Webster Nolan Real Estate.

Further north of the site to Devonshire Street comprises various business and retail premises of similar building typology. The predominant land use to the east of the site is residential, including 9-19 Nickson Street which is located on the opposite side of Wilshire Street.

Accessibility

The site is highly accessible, being within a comfortable 5-minute walk (commonly cited as $\leq 400\text{m}^1$) to public transportation.

- Surry Hills Light Rail Station is located on Devonshire Street, approximately 215m north-west of the site. Two bus stops (201021:
- Crown St at Miles St and 201098: Crown St opposite Lansdown St) proximate to the site provide access to the following buses B304 (City Circular Quay) and B352 (Marrickville Metro Smidmore St).

These bus stops are located ~25m and ~95m from the subject site, respectively.

Environment

The natural environment of the site is highly disturbed with no remanent vegetation, however does comprise 3 trees including a large jacaranda tree at the rear of the site.

The survey plans provide the following information regarding easements:

- (A) BK 2422 No 441 Right of way affecting the part(s) shown so burdened in the title diagram BK 2422 No 443 Right of way affecting the part(s) shown so burdened in the title diagram.
- (B) J187103 Cross easements (S181B Conveyancing Act 1919) affecting the party wall on the common boundary of lots 5 & 6 and 6 & 7 DIN DP 11379.
- (C) J198183 Cross easements (51818 Conveyancing Act 1919) affecting the party wall shown on the southern boundary of lot 5.
- There are no easements noted on title for the common walls but rights may apply.

An aerial photograph of the site is contained at **Figure 2**.

¹ NSW Government (2023) Movement and Place. Access: <https://www.movementandplace.nsw.gov.au/>

Figure 2 Aerial Photograph



Source: Urbis (2023).

A review has been undertaken of approved clause 4.6 height variations proximate to the site (on Crown Street) from 2008-present. The following is considered relevant:

Table 1 Previous Clause 4.6 HOB Variations in Surrounding Area

Reference/Address	Extent of Variation	Justification
D/2021/1233 – 285 Crown Street	13.00%	The proposal is considered not to have an unreasonable impact on the amenity of the adjoining properties or the streetscape.
D/2019/1305 – 241 Crown Street	0.216%	The proposal is considered not to have an unreasonable impact on the amenity of the adjoining properties or the streetscape.
D/2021/170 – 520 Crown Street	29.1%	The proposal is considered not to have an unreasonable impact on the amenity of the adjoining properties or the streetscape.

Notwithstanding the statutory requirements for the assessment of a clause 4.6 variation request, **Section 6** of this report addresses the potential amenity impacts of the proposal on adjoining development and the streetscape for continuity with the previous clause 4.6 approvals listed in **Table 1**.

3. PROPOSED DEVELOPMENT

This Clause 4.6 Variation Request has been prepared to accompany a DA for a mixed use; retail and commercial development at 598-610 Crown Street, Surry Hills.

The proposal seeks consent for the partial demolition of existing buildings, tree removal and the erection of a 3 storey mixed use commercial development comprising six (6) ground level retail tenancies and Level 01 and Level 02 commercial office tenancies with a total GFA of 1,782.4m².

A detailed description of the proposed development is provided in the Statement of Environmental Effects prepared by Urbis Pty Ltd .

A summary of the key features of the proposed development is provided below:

- Partial demolition to the rear of existing buildings
- Construction of a 3-storey mixed-use commercial development comprising:
 - Six (6) ground level retail tenancies.
 - Level 01 commercial office tenancy.
 - Level 02 commercial office tenancy.
- Tree removal and associated landscaping elements
- Vehicle loading bay accessed from Wilshire Street
- Building entry and business signage zones.
- Augmentation of services infrastructure and utilities, as required.

4. VARIATION OF HEIGHT OF BUILDING STANDARD

This section of the report identifies the development standard which is proposed to be varied, including the extent of the contravention. A detailed justification for the proposed variation is provided in **Section 6** of the report.

4.1. DEVELOPMENT STANDARD

This clause 4.6 variation seeks variation to clause 4.3 height of buildings of the LEP.

As shown below in Figure 3 the relevant HOB map contained in the LEP identifies a maximum HOB of 12m for the site.

The dictionary of the LEP defines building height as:

building height (or height of building) means—

(a) in relation to the height of a building in metres—the vertical distance from ground level (existing) to the highest point of the building, or

(b) in relation to the RL of a building—the vertical distance from the Australian Height Datum to the highest point of the building,

including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like.

Figure 3 LEP HOB Map - 12m height control

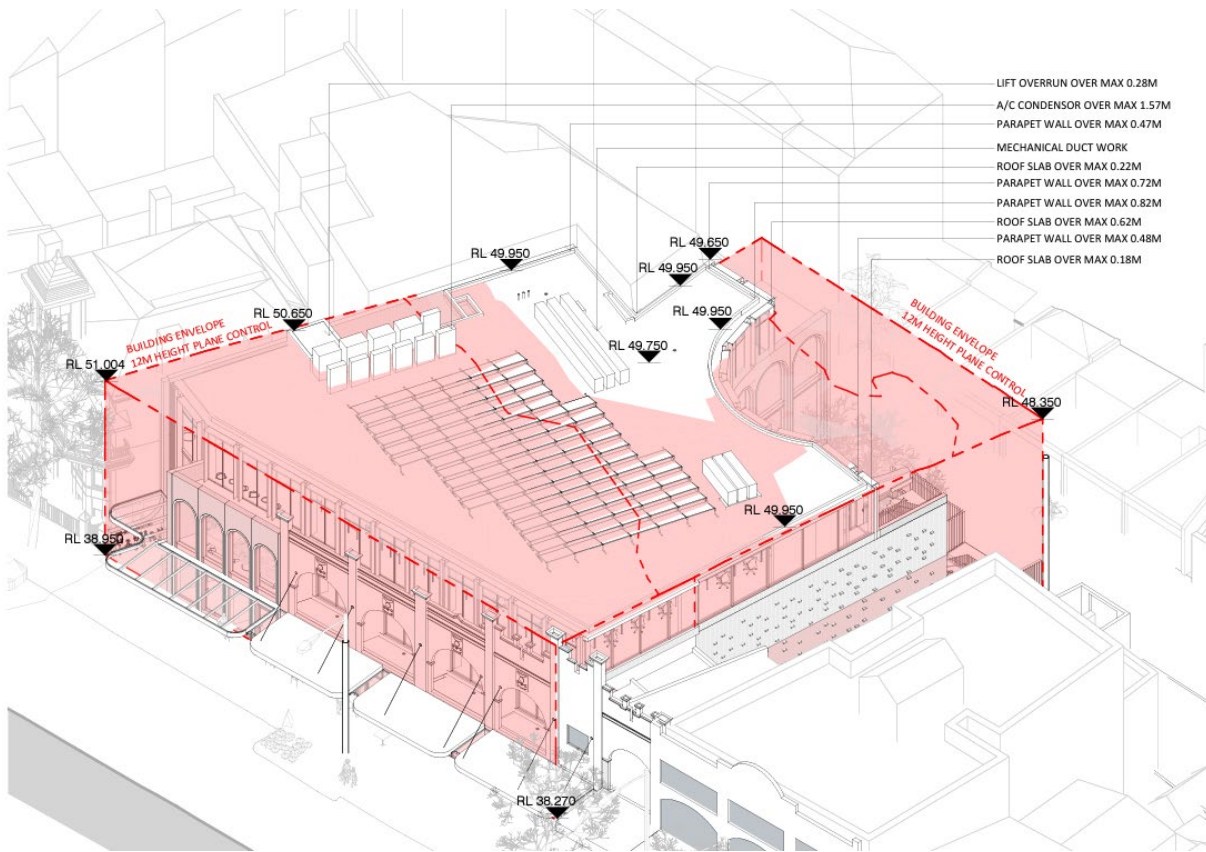


Source: Urbis (2023).

4.2. EXTENT OF VARIATION TO HEIGHT OF BUILDING

The proposal comprises built form elements which extend beyond the 12m height plane as shown in Figure 4 below. These encroachments are also listed in Table 2 below.

Figure 4 Height Plane Diagram



Source: PTW (2023).

Table 2 – Building Height

Element	Proposed Height	Variance (%)
A/C Condenser	13.2m	10%
Lift Overrun	12.28m	2%
A/C Condenser	13.57m	13%
Parapet Wall	12.47m	3%
Roof Slab	12.22m	1%
Parapet Wall	12.72m	6%
Parapet Wall	12.82m	7%
Roof Slab	12.62m	5%
Parapet Wall	12.48m	4%
Roof Slab	12.18m	2%

As shown in Figure 3 and Table 2 the building height exceedance ranges from 0.18m to 1.57m. The maximum variation at 13% encroachment for the A/C condenser can be determined by Council as the exceedance is less than a 20% deviation from the HOB control.

5. RELEVANT ASSESSMENT FRAMEWORK

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

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

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

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

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

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

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

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

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

The Secretary can be assumed to have given concurrence if the matter is determined by an independent hearing and assessment panel or a Sydney district or regional planning panel in accordance with the Planning Circular.

This clause 4.6 request demonstrates that compliance with the maximum HOB prescribed for the site in clause 4.3 of the LEP is unreasonable and unnecessary, that there are sufficient environmental planning grounds to justify the requested variation and that the approval of the variation is in the public interest because it is consistent with the development standard and zone objectives.

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

6. ASSESSMENT OF CLAUSE 4.6 VARIATION

The following sections of the report provide a comprehensive assessment of the request to vary the development standards relating to the HOB in accordance with clause 4.3 of the LEP.

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

- *Varying development standards: A Guide*, prepared by the Department of Planning and Infrastructure dated August 2011.
- Relevant planning principles and judgements issued by the Land and Environment Court.

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

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

The HOB prescribed by clause 4.3 of the LEP is a development standard capable of being varied under clause 4.6(2) of the LEP.

The proposed variation is not excluded from the operation of clause 4.6(2) as it does not comprise any of the matters listed within clause 4.6(6) or clause 4.6(8) of the LEP.

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

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

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

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

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

The specific objectives of the maximum HOB control as specified in clause 4.3 of the LEP are detailed in **Table 2** below. An assessment of the consistency of the proposed development with each of the objectives is also provided.

Table 2 Assessment of Consistency with Clause 4.3 Objectives

Objectives	Assessment
<p><i>(a) to ensure the height of development is appropriate to the condition of the site and its context,</i></p>	<p>The proposed HOB is appropriate to the condition of the site and its context as follows:</p> <ul style="list-style-type: none"> ▪ The proposed A/C condenser is located towards the northern portion of the roof, separated from the western roof parapet so as to alleviate visibility from the Crown and Wilshire Street frontages. ▪ The parapet of the proposal will align with the existing parapet line at 612 Crown Street to recognise the existing parapet lines. ▪ A number of developments along Crown Street outlined in Table 1 have been approved with minor variations to the HOB control. ▪ The proposal is supported by shadow diagrams that support that the building height will not result in an adverse overshadowing impact to neighbouring development. In terms of noise, appropriate mitigation measures will be incorporated into the design of the proposal in accordance with the accompanying Noise Impact Assessment and Conditions of Development Consent. ▪ Most of the building envelope is contained entirely within the 12m height plane as shown in Figure 4. ▪ The height of the proposal provides a clear height transition from the nearby approved apartment development at 9-19 Nickson Street, Surry Hills. ▪ As detailed in the accompanying design report, the proposal comprises opening the corner to the view of the adjoining heritage building at 594-596 Crown Street.
<p><i>(b) to ensure appropriate height transitions between new development and heritage items and buildings in heritage conservation areas or special character areas,</i></p>	<p>The proposal will ensure appropriate height transitions between new development and heritage items and buildings in the Bourke Street South Conservation Area as follows:</p> <ul style="list-style-type: none"> ▪ The proposal provides a two-storey frontage wall height along Crown Street to respond to the scale of existing heritage buildings with a third level that is set back from the street edge (Heritage Impact Statement, p 74). ▪ The design of level 02 and the northern end of the infill building uses a simple contemporary design of a steel framed structure with glazed infill. The structural grid repeats in regular bays. This is continuous along the Crown Street frontage above the masonry façade but is setback by approximately 1600mm to minimise the perception of height (Heritage Impact Statement, p 74).
<p><i>(c) to promote the sharing of views outside Central Sydney,</i></p>	<p>The proposal promotes the sharing of views outside Central Sydney as follows:</p> <ul style="list-style-type: none"> ▪ The proposal retains the existing subdivision pattern. The principal and important views and vistas to and from the site in the Bourke Street South Conservation Area are primarily from Crown Street. The proposal retains the views to the

Objectives	Assessment
	<p>facades to the Hills Building. This provides a greater prominence in the streetscape for this building (Heritage Impact Statement, p 73).</p> <ul style="list-style-type: none"> ▪ The encroachment into the height plane is not a continuous built form element. <p>The proposal will improve views and vistas to and from St Clair Flats (Heritage Impact Statement, p 81).</p>
<p><i>(d) to ensure appropriate height transitions from Central Sydney and Green Square Town Centre to adjoining areas,</i></p>	<p>The proposal is not located within Central Sydney or Green Square Town Centre.</p>

The objectives of the development standard are achieved, notwithstanding the non-compliance with the standard in the circumstances described in this variation report.

The underlying object or purpose would be undermined, if compliance was required with the consequence that compliance is unreasonable (the third method in *Wehbe v Pittwater Council* [2007] NSWLEC 827 [42]-[43] as applied in *Linfield Developments Pty Ltd v Cumberland Council* [2019] NSWLEC 131 at [24])

Not relied upon.

The burden placed on the community (by requiring strict compliance with the FSR standard) would be disproportionate to the (non-existent or inconsequential) adverse consequences attributable to the proposed non-compliant development (cf *Botany Bay City Council v Saab Corp* [2011] NSWCA 308 at [15]).

Not relied upon.

6.3. ARE THERE SUFFICIENT ENVIRONMENTAL PLANNING GROUNDS TO JUSTIFY CONTRAVENING THE DEVELOPMENT STANDARD? – CLAUSE 4.6(3)(B)

The Land & Environment Court judgment in *Initial Action Pty Ltd v Woollahra Council* [2018] NSWLEC 2018, assists in considering the sufficient environmental planning grounds. Preston J observed:

“...in order for there to be 'sufficient' environmental planning grounds to justify a written request under clause 4.6, the focus must be on the aspect or element of the development that contravenes the development standard and the environmental planning grounds advanced in the written request must justify contravening the development standard, not simply promote the benefits of carrying out the development as a whole; and

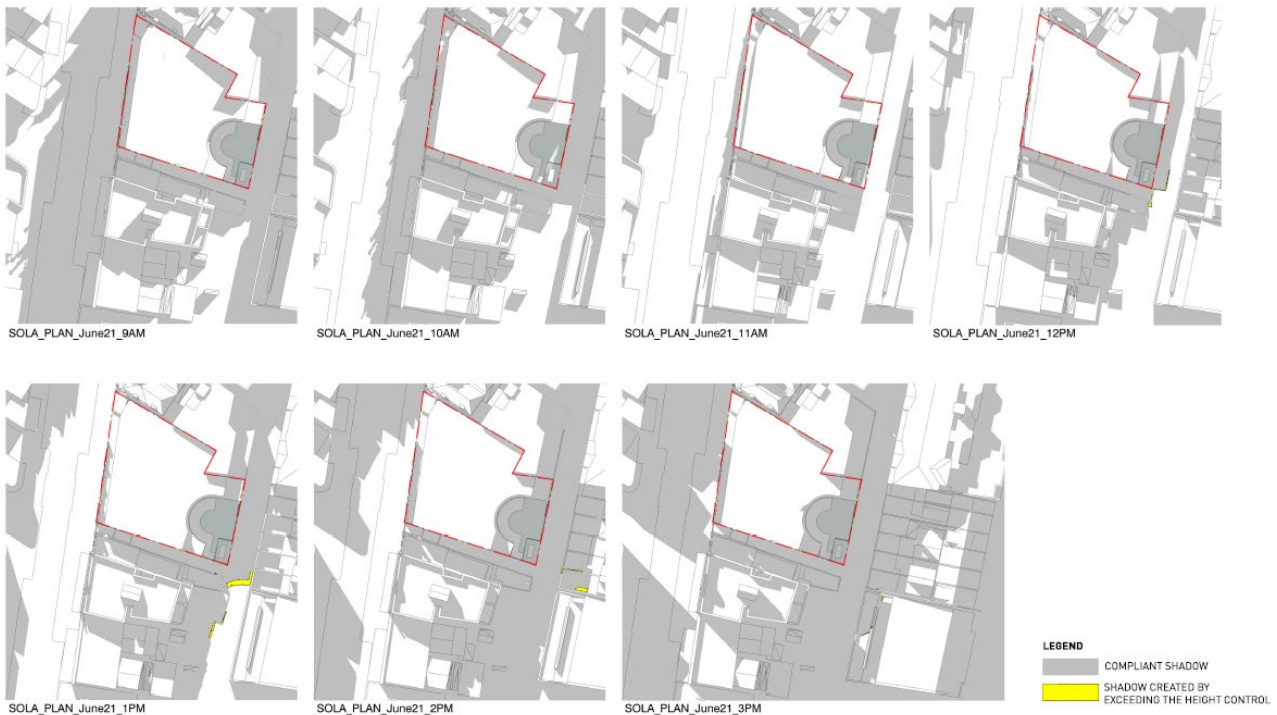
...there is no basis in Clause 4.6 to establish a test that the non-compliant development should have a neutral or beneficial effect relative to a compliant development”

The assessment has considered the environmental impact of the addition building height sought. Key considerations are discussed below:

- **View impacts** – there are no scenic or iconic views available from the site or from neighbouring sites in the locality. Given this and the minor nature of the height variation, we conclude there is no adverse view impact from the height proposed.

- **Privacy impacts** – the portion of the building height that exceeds the control does not include any habitable floor space – it relates to building plant and the like. As such there is no privacy impact created as a result of this variation.
- **Shadowing impacts** – PTW have modelled the additional shadow cast by the non-compliant elements of the proposal, illustrated in Figure 5 below. As is evident from these diagrams the impact is extremely minor in nature, effectively imperceptible. The greatest impact occurs at 1pm mid-winter with a small additional shadow cast on Wilshire Street. There will be no solar impact on residential apartment primary living spaces.

Figure 5 Shadow Diagrams



Source: PTW (2023).

Thus, there is an absence of environmental harm arising from the contravention and positive planning benefits arising from the proposed development as outlined in detail above. These include:

- Does not hinder the proposals consistency with the zoning objectives and the HOB objectives, including the intent of the HOB development standard.
- The nature of the variation relates to rooftop building elements (like plant rooms), and not a complete additional floor. The variation does not include habitable floorspace.
- Views from the streetscape to the areas of noncompliance will be largely screened as they are situated back from the building street edge, enabling the compliant street edge building scale to frame the view scape.
- The magnitude of the variation is minor being between 0.18m to 1.57m. The site sits in an urban centre characterised by varied building heights and as such the proposal will sit comfortably within the urban context.
- The height variation facilitates the provision of benefits to future occupants through improved internal amenity outcomes that will be achieved through provision of the A/C overrun in conjunction with other design elements integrated into the proposal such as ecologically sustainable development principles.

Based on the above, it has been demonstrated that there are sufficient environmental planning grounds to justify the proposed HOB non-compliance in this instance.

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

Clause 4.6(4)(a)(i) states that development consent must not be granted for development that contravenes a development standard unless the consent authority is satisfied that the applicant’s written request has adequately addressed the matters required to be demonstrated by subclause (3).

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

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

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

The consistency of the development with the objectives of the development standard is demonstrated in Table 2 above. The proposal is also consistent with the land use objectives that apply to the site under the LEP. The site is located within the E1 Zone. The proposed development is consistent with the relevant land use zone objectives as outlined in Table 3 below.

Table 3 Assessment of Compliance with Land Use Zone Objectives

Objective	Assessment
<i>To provide a range of retail, business and community uses that serve the needs of people who live, work in or visit the area.</i>	The proposal provides retail and commercial uses which will serve the needs of people who live, work in or visit the area.
<i>To encourage investment in local commercial development that generates employment opportunities and economic growth.</i>	The proposal will provide two levels of commercial GFA which will enhance the employment opportunities within the immediate and broader context. The proposal will provide both construction and operational jobs.
<i>To enable residential development that contributes to a vibrant and active local centre and is consistent with the Council’s strategic planning for residential development in the area.</i>	The proposal does not comprise residential development. However, the proposal positively integrates into the locality and is consistent with Council’s strategic aspirations for the area.
<i>To encourage business, retail, community and other non-residential land uses on the ground floor of buildings.</i>	The proposal provides six (6) revitalised retail tenancies at ground level.
<i>To maximise public transport patronage and encourage walking and cycling.</i>	The proposal comprises 10 bicycle parking spaces for staff and 10 for visitors which promotes alternative transportation and actively reduces emissions by virtue of

Objective	Assessment
	substituting private motor vehicle usage. Public transport is also highly accessible to the site.

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

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

The Secretary can be assumed to have given concurrence as the matter will be determined by an independent hearing and assessment panel or a Sydney district or regional planning panel in accordance with the Planning Circular.

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

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

The proposed non-compliance with the maximum HOB development standard will not raise any matter of significance for State or regional environmental planning. It has been demonstrated that the proposed variation is appropriate based on the specific circumstances of the case and would be unlikely to result in an unacceptable precedent for the assessment of other development proposals.

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

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

The proposed variation will facilitate the required A/C services to support the amenity of occupants of the building. Having high efficiency air conditioning equipment will reduce the energy consumption of the proposal. The identified A/C services are high efficiency and optimise energy and water consumption. The proposal at present will meet and outperform NCC Section J – Energy Efficiency. This improves the environmental performance of the proposal and delivers long term energy efficiency during the life of the building. As such, strict compliance would reduce the amenity of the commercial tenants throughout the development and the environmental credentials of the building which would otherwise be facilitated by the A/C overrun in addition to other design elements.

Strict compliance with the planning control standard would also compromise the delivery of the desired uses, public benefits and development intensity within the site. The proposal offers integrated, sustainable growth in close proximity to existing transport and infrastructure that respects the contextual heritage setting and provides employment opportunities and investment in the locality.

Finally, given the assessment earlier, there are no material environmental impacts that require mitigation to resolve issues. As such there is no compelling reason or public benefit derived from strict adherence of the development standard.

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

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

7. CONCLUSION

For the reasons set out in this written request, strict compliance with the maximum HOB control contained within clause 4.3 of LEP is unreasonable and unnecessary in the circumstances of the case. Further, there are sufficient environmental planning grounds to justify the proposed variation and it is in the public interest to do so.

For the reasons outlined above in this report, the clause 4.6 request is well-founded. The development standard is unnecessary and unreasonable in the circumstances, and there are sufficient environmental planning grounds that warrant contravention of the standard. In the circumstances of this case, flexibility in the application of the maximum HOB development standard should be applied.

DISCLAIMER

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