



# **WOOLLAHRA LEP 2014**

## **Clause 4.6 Exceptions to Development Standards – Floor Space Ratio (FSR)**

Proposed Alterations and Additions to an Existing  
Commercial Building at

**No. 2A Cooper Street &  
24 Bay Street, Double  
Bay**

Prepared for:

**Brooklyn Lane Investments Pty Ltd**

Fortis

33-39 Riley Street

Woolloomooloo NSW 2011

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JOB NO. 20307

November 2021

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## WOOLLAHRA LOCAL ENVIRONMENTAL PLAN (LEP) 2014

### CLAUSE 4.6 EXCEPTIONS TO DEVELOPMENT STANDARDS

**APPLICANT'S NAME:** Brooklyn Lane Investments Pty Ltd

**SITE ADDRESS:** No. 2A Cooper Street & 24 Bay Street, Double Bay

**PROPOSAL:** Propose alterations and additions to an existing commercial building

**1. (i) Name of the applicable planning instrument which specifies the development standard:**

Woollahra Local Environmental Plan (LEP) 2014

**(ii) The land is zoned:**

B2 Local Centre. The objectives of the B2 Local Centre Zone are as stated:

- To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.
- To encourage employment opportunities in accessible locations.
- To maximise public transport patronage and encourage walking and cycling.
- To attract new business and commercial opportunities.
- To provide active ground floor uses to create vibrant centres.
- To provide for development of a scale and type that is compatible with the amenity of the surrounding residential area.
- To ensure that development is of a height and scale that achieves the desired future character of the neighbourhood.

**(iii) The number of the relevant clause therein:**

Clause 4.4A – Exceptions to Floor Space Ratio (Areas 1 and 1A – Double Bay). Clause 4.4A is stated, inter alia:

**4.4A Exceptions to floor space ratio (Areas 1 and 1A—Double Bay)**

- (1) The objective of this clause is to encourage the development of prominent corner buildings in Double Bay.
- (2) This clause applies to land identified as “Area 1” and “Area 1A” on the Floor Space Ratio Map.
- (3) Despite clause 4.4, development consent may be granted to development on land to which this clause applies that results in a floor space ratio that does not exceed—
  - (a) in respect of Area 1—3:1, or
  - (b) in respect of Area 1A—4.5:1,

*if the consent authority is satisfied that the development will be compatible with the desired future character of the zone in terms of building bulk and scale.*

This Clause 4.6 Exception to Development Standards should be read in conjunction with the Statement of Environmental Effects (SEE) prepared by GSA Planning

## 2. Overview

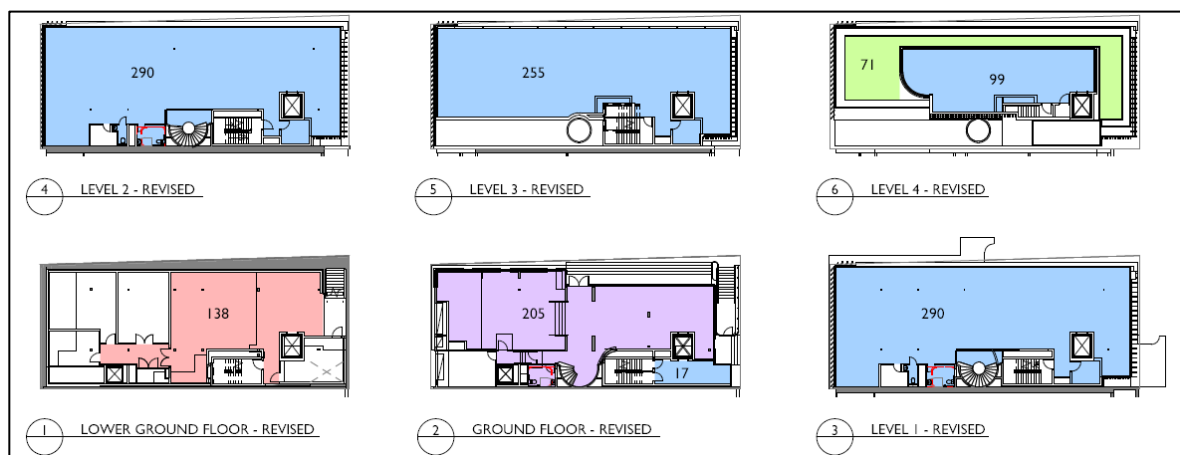
This Clause 4.6 Exception to Development Standards has been prepared in accordance with the most recent case law. In our opinion, the variation is consistent with the objectives of the zone and development standard and has demonstrated there are sufficient environmental planning grounds.

### 3. Specify the nature of Development Standard sought to be varied and details of variation:

The development standard to which this request for variation relates is Clause 4.4A of the LEP – Exceptions to Floor Space Ratio (Areas 1 and 1A – Double Bay). The subject site is located in 'Area 1' and therefore a FSR of 3:1 applies. This is 0.5:1 more than surrounding sites where the standard Clause 4.4 applies. Clause 4.4A is consistent with the definition for a development standard under Section 1.4 of the Environmental Planning and Assessment Act 1979 (EPA Act).

The proposal is for alterations and additions to the existing heritage listed commercial building known as 'Gaden House', including the construction of two additional levels.

The subject site has an area of 386m<sup>2</sup>, which equates to a maximum gross floor area (GFA) provision of 1,158m<sup>2</sup>. The existing development already exceeds this, with a total GFA of 1,225m<sup>2</sup> and a FSR of 3.17:1. The proposed development will have a minor increase in GFA compared to the existing, with a proposed GFA of 1,294m<sup>2</sup> and an FSR of 3.35:1, representing a 11.74% variation (see **Figure 1**). A total of 138m<sup>2</sup> of the GFA is from the basement level (lower ground floor), which is technically counted due to its commercial use (food and beverage tenancy), however does not contribute to the perceived bulk. In addition, the existing building on the subject site also exceeds the development standard. The proposed FSR will provide a built form that sits comfortably within the streetscape, while recognising Council's desire for prominent buildings on corner sites.



Source: Lawton Hurley Architects

**Figure 1: Proposed GFA Diagrams**

We also note the proposed FSR of 3.35:1 is significantly less than that of the previously refused DA which proposed an FSR of 3.6:1. Importantly, the proposed FSR excluding the basement level is 2.99:1, which is compliant. This will provide a building with a compliant bulk and scale in the streetscape, in line with the FSR and objectives envisaged in the LEP.

### 4. Consistency with Objectives of Clause 4.6

The objectives of Clause 4.6 seek to provide appropriate flexibility to the application of development standards in order to achieve better planning outcomes both for the development and from the development. In the Court determination in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] 236 LGERA 256 (*Initial Action*), Preston CJ notes at [87] and [90]:

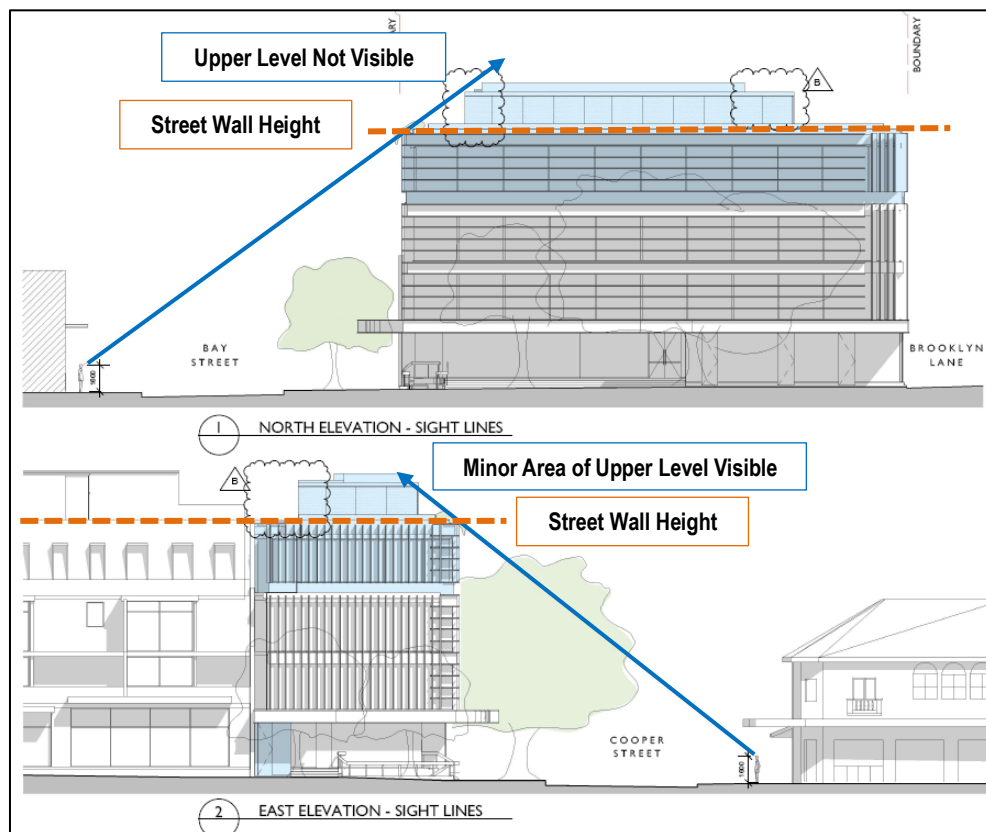
*Clause 4.6 does not directly or indirectly establish a test that the non-compliant development should have a neutral or beneficial effect relative to a compliant development...In any event, Clause 4.6 does not give substantive effect to the objectives of the clause in Clause 4.6(a) or (b). There is no provision that requires compliance with the objectives of the clause.*

However, it is still useful to provide a preliminary assessment against the objectives of the Clause. The objectives of Clause 4.6 and our planning response are as follows:

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

The proposal seeks flexibility in the application of the FSR development standard to the development in the circumstance of this particular case. Development in the Double Bay Centre comprises an evolving mix of development, with a variety of commercial and residential uses. A number of approved and recently constructed buildings in the surrounding area have exceeded Council's development standards. Notwithstanding the technical FSR exceedance, the proposed parapet is slightly below the maximum height of the adjoining property at Nos. 16-22 Bay Street, which provides consistency in the streetscape.

Flexibility in this circumstance will achieve a better outcome both for and from the development. The proposed FSR will accommodate a well designed development with a bulk and scale that is consistent with existing and approved development within the Double Bay Centre. The proposed FSR allows a strong built form which accentuates the prominent corner location, with a stepped upper level to ensure a street wall consistent with that of surrounding development, and minimal visibility of the upper level massing (see **Figure 2**).



Source: Lawton Hurley Architects

**Figure 2: Sightline Diagrams from Bay Street and Cooper Street**

Reducing the FSR would unreasonably restrict the development of the site, without any noticeable benefits to surrounding properties. The proposal provides retail and office tenancies from ground level to Level 4 which provide a compliant FSR, and are in high demand within the Double Bay Centre and generate local employment. The basement level contributes to the additional FSR above the maximum permitted, however this level will not be visible in the streetscape or contribute to the bulk and scale of the development.

Accordingly, the proposal provides an improved planning outcome both for and from the development and flexibility should be afforded in this instance.

## 5. Justification of Variation to Development Standard

Clause 4.6(3) outlines that a written request must be made seeking to vary a development standard and that specific matters are to be considered. The Clause states, inter alia:

- (3) *Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*
  - (a) *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
  - (b) *that there are sufficient environmental planning grounds to justify contravening the development standard.*

This written request justifies the contravention of the development standard by demonstrating that compliance is unreasonable or unnecessary in these circumstances; and there are sufficient environmental planning grounds to justify the non-compliance. These matters are discussed in the following sections.

### 5.1 Compliance with the Development Standard is Unreasonable and Unnecessary in the Circumstances of the Case

Clause 4.6(3)(a) requires the applicant to demonstrate that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case. In *Wehbe v Pittwater Council* (2007) 156 LGERA 446 (*Wehbe*), Preston CJ established five potential tests for determining whether a development standard could be considered unreasonable or unnecessary. This is further detailed in *Initial Action* where Preston CJ states at [22]:

*These five ways are not exhaustive of the ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary; they are merely the most commonly invoked ways. An applicant does not need to establish all the ways. It may be sufficient to establish only one way, although if more ways are applicable, an applicant can demonstrate that compliance is unreasonable or unnecessary in more than one way.*

It is our opinion that the proposal satisfies a number of the five tests established in *Wehbe* and for that reason, the development standard is unreasonable and unnecessary in this instance. The relevant tests will be considered below.

#### **Test 1 - The objectives of the standard are achieved notwithstanding non-compliance with the standard;**

Despite the proposed development's non-compliance with the applicable FSR development standard, the proposal is consistent with the desired high-density, commercial character of the area. There is only one objective for Clause 4.4A. Reasons why the proposed development is consistent with this objective are explained below.



- (1) ***The objective of this clause is to encourage the development of prominent corner buildings in Double Bay.***

The proposal utilises the corner allotment to provide a prominent building which assists in defining the built form along Bay Street. The building will address all three frontages and provides a high level of visual amenity (see **Figure 3**).



Source: Lawton Hurley

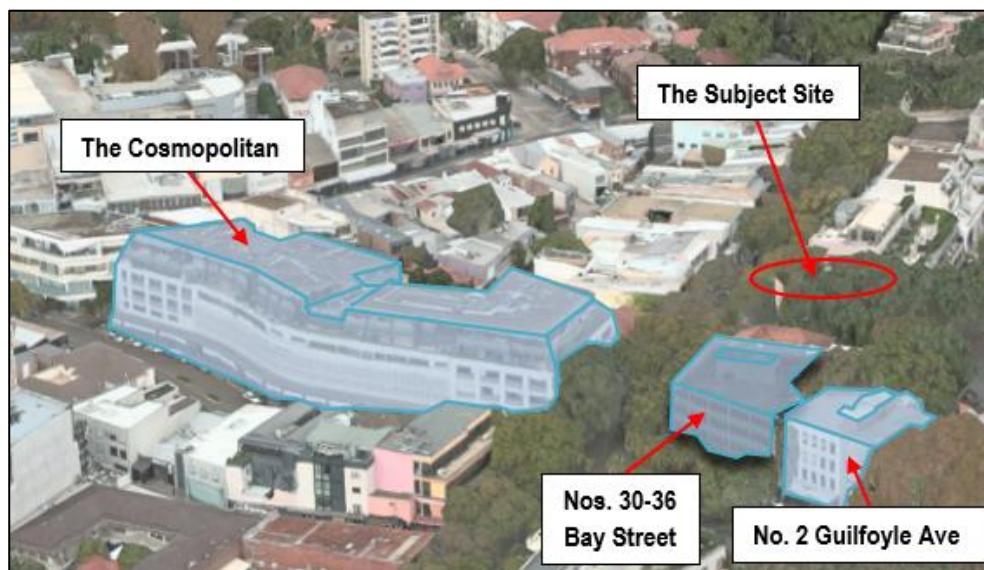
**Figure 3:** 3D Image Showing Proposed Relationship to the Corner

The subject site has a higher FSR development standard (3:1) than adjoining allotments along Bay Street to the south (2.5:1). This reflects Council's desire for the corner allotment to have a distinct presence in the streetscape.

The proposed development will have a scale and density consistent with surrounding development (see **Figure 4** on the following page). The most recently approved modification to the development at Nos. 30-36 Bay Street (DA-289/2019), which is also on a corner allotment, exceeded the FSR standard by 14% at 3.42:1 (see **Figure 5** on the following page).

Despite the FSR exceedance, the built form as viewed within the streetscape provides a compliant massing, with ground floor to Level 4 having an FSR of 2.99:1. The proposed roof parapet is also consistent with the height of the adjoining development at Nos. 16-22 Bay Street, to provide a harmonious street wall within Bay Street (see **Figure 6** on the following page).

Enforcing strict compliance would result in a development that removes the basement level, or presents a storey lower than the adjoining development, which would not reflect desired future character of the corner allotment as demonstrated by the higher FSR standard. The upper level is stepped back and will form a recessive visual element.



Source: Woollahra Council 3D Mapping Portal

**Figure 4: Aerial View Showing Scale of Development in the Double Bay Centre**



Source: Fortis Development Group

**Figure 5: Approved Development at Nos. 30-36 Bay Street, Double Bay (FSR: 3.42:1)**



Source: Lawton Hurley Architects

**Figure 6: Street Elevation Showing Surrounding Context**



**Test 3 - The underlying objective or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;**

In our opinion, the underlying purpose of the development standard is to present a building that enhances the prominent corner site, and is compatible with context and character of the locality.

The subject site is currently underdeveloped. The proposal upgrades the existing three-storey building with basement level, with a new commercial development that responds to the corner site location and the evolving and rapidly developing character of the Double Bay Centre. As demonstrated in Section 5.3 of this report, the proposed built form will have a bulk and scale that is consistent with the desired future character of the area.

Enforcing strict compliance would result in removal of the basement level, or a streetscape presentation that is lower than the emerging character of the streetscape generally and Nos. 16-22 Bay Street specifically, thereby not being a prominent corner building. A reduced FSR would also minimise the potential for increased commercial floorspace on the subject site, unreasonably impacting development of the site without noticeable benefits to neighboring properties. Strict compliance would therefore be incompatible with the object of the EPA Act, to promote orderly and economic development.

As the existing development on the subject site already exceeds the FSR standard, it is inevitable that any renovations or improvement works would also not comply. The proposal enhances the amenity of the existing building and allows for its adaptive reuse with a commercial use that is consistent with Council's objectives for the Double Bay commercial centre.

Accordingly, the proposal is considered to be appropriate as the built form enhances the prominent corner site, is generally consistent with the bulk and scale of surrounding development and will maintain the amenity of the streetscape and surrounding properties.

**5.2 There are Sufficient Environmental Planning Grounds to Justify Contravening the Development Standard**

There are a number of environmental planning grounds that justify the additional height in this particular circumstance. In addition to compliance with the objectives of the zone and development standard; environmental planning grounds include the prominent corner site; commercial use; heritage listing; consistency with context; acceptable environmental impacts; and the urban design benefits of the proposal. These will now be addressed.

**Prominent Corner Site**

The subject site is uniquely located on a prominent corner allotment and is therefore subject to a higher FSR development standard than neighbouring sites. A slightly higher building in this location forms a visual gateway and an urban design benefit. As discussed under the sole objective of the development standard above, the proposal capitalises on its unique location to provide a high quality, distinguished gateway development.

As indicated, 138m<sup>2</sup> of the GFA is located in the basement where it will not contribute to the building envelope. Enforcing strict compliance while counting this space would result in a building bulk less than what is envisaged for the corner site.



The corner location also means environmental impacts are minimised, as there is significant building separation on three sides. Further, the upper level massing has been well setback from the development to the south, to maintain privacy and provide ample solar access. The significance of corner sites is recognised in the DCP through specific controls, of which the proposal complies with (see Table 3 in the SEE).

The small corner allotment comes with site constraints, such as less efficient floor plates. The site should not be penalised for addressing all three street frontages, and additional height is appropriate in this instance.

### Commercial Use

The proposal responds to a recognised demand for commercial floor space within the Woollahra Local Government Area (LGA) generally and the Double Bay Centre specifically. Commercial floor space is considered more desirable than residential uses. The commercial use will provide additional local employment and contribute to the daytime activation and vibrancy of Double Bay. There may also be economic multiplier benefits.

### Heritage Listing

As indicated throughout this report, the proposal will provide an enhanced heritage outcome for the heritage building by providing for its refurbishment and continued maintenance. The additional commercial floorspace will improve the viability of the continued conservation of this site. This includes the substantial costs involved in replacing the deteriorating exterior facades of the building. The works also provide for the adaptive reuse of the building, allowing the heritage interiors to be enjoyed by the community. The Heritage Impact Statement (HIS) (separately submitted), states, inter alia:

- *The proposal retains and conserves the heritage item, including its principal character-defining elements (both externally and internally). Conservation works such as the reinstatement of the bronze-coloured finish to the external louvres (which are to be replaced due to their poor condition), refurbishment of the backlit horizontal spandrels, and the reinstatement of the original wall treatment to the ground-floor corridor, are a highly sympathetic outcome.*
- *New work at the building's interior and exterior would be noticeably contemporary, yet sympathetic to the character and detailing of the heritage item.*
- *The new vertical addition to the building is in keeping with the original design intent of Neville Gruzman and is considered a sympathetic approach to adding height to this particular building. Multiple options were considered during the design development phase – which largely included a contrasting architectural language – however these were deemed to be inappropriate in the context of the heritage item.*
- *Internal works would be largely contained to spaces and fabric which are not deemed to make a defining contribution to significance.*
- *The building would be maintained for commercial purposes, in keeping with its historic use and heritage significance.*

...

In relation to the proposed bulk and scale of the additions, the HIS states:

*The proposed addition at the roof level is considered to be compatible with the scale, form and materiality of the heritage item. Instead of introducing a contemporary expression which might compete or clash with the strong architectural qualities of the Modernist structure, the new addition would instead respond in a sympathetic manner to the building's language. The new addition would allow for a smooth transition between the original and introduced levels, while distinguishing between old and new through contrasting materiality and colour.*

...

*The scale of the new upper-levels addition would not be such that it would visually dominate the building or its significant elements, including its presentation to the Double Bay Centre.*

### Consistency with Context

As discussed under the Development Standard Objective above, the proposal will present as a four storey development (with the fifth level stepped back) which is consistent with the context. A number of recently approved and constructed developments in the vicinity also exceed the FSR, including Nos. 30-36 Bay Street. In *Initial Action v Woollahra Municipal Council* [2019] NSWLEC 1097, Commissioner O'Neill states at [42] that:

*I am satisfied that justifying the aspect of the development that contravenes the development standard as creating a consistent scale with neighbouring development can properly be described as an environmental planning ground within the meaning identified by His Honour in Initial Action [23], because the quality and form of the immediate built environment of the development site creates unique opportunities and constraints to achieving a good design outcome (see s 1.3(g) of the EPA Act).*

Notwithstanding the height exceedance, the building will present a similar bulk and scale to the surrounds. It is also worth noting that in the Court approval for Nos. 28-34 Cross Street, the Commissioner stated, inter alia:

*Here there is a discrete section of Cross Street the subject of the approvals. The Site falls within that section. The approvals were not for the purpose of meeting an urban design imperative in existence at that time, but rather were deliberate decisions to allow buildings of a significantly greater height and floor space in this locality than the controls envisaged. The abandonment is confined to this block of Cross Street on the southern side. That much is plain from the approvals and the configuration and uses in Cross Street between Bay Street and Knox Lane.*

*The Council deliberately and knowingly decided that larger buildings were appropriate in the block of which the Site forms part. That, in my view, amounts to an abandonment of the controls for this part of Double Bay.*

While the controls have not been abandoned for Bay Street, this is still relevant as it demonstrates the emerging character in the Double Bay Centre.

### Urban Design Benefits

The proposal provides quality urban design features which minimise the perceived scale. The facades will be highly articulated with balconies and soft landscaping. There will also be significant roof plantings. As discussed, the upper level will form a recessive visual element as it will be stepped back.

The additional FSR improves the feasibility of a number of design features which promote public domain improvements. The terrace and associated planter box at the fourth floor level will provide additional vegetation on a site with limited opportunity for deep soil landscaping. The quality design has the potential to stimulate further renewal in the area. This contributes to the evolving character of the Double Bay Centre.

The Design Statement refers to the design of the upper level's bulk and scale throughout discussions by the expert project team, inter alia:

*There were three directions discussed by the team in the Design Workshops. The team agreed broadly on the following points:*

- *The corners of the existing building were a strong presence in the street with some nuance in their detailing, and that these corners should be reinforced on the first additional level*
- ...
- *That the second additional level would require a significant setback to reduce the overall scale of the addition relative to the existing building*
- ...
- *Set back the top most level in a light colour with a screen to drop back and not compete with the levels below*

For the reasons contained in this application, there are sufficient environmental planning grounds to justify the variation to the development standard, as required in Clause 4.6(3)(b). We therefore consider contravening the development standard to be justified.

## 6. Clause 4.6(4)(a) Requirements

Clause 4.6(4)(a) guides the consent authority's consideration of this Clause 4.6 variation request. It provides that:

- (4) *Development consent must not be granted for development that contravenes a development standard unless:*
- (a) *the consent authority is satisfied that:*
- (i) *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
  - (ii) *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out*

The applicant submits that the consent authority can be satisfied of each of the requirements of Clause 4.6(4)(a), for all the reasons set out in this written request, and having regard to the site and locality.

In our opinion, the proposal is consistent with the objectives of the FSR Development Standard, as already demonstrated; and the B2 Local Centre Zone, as discussed below:

**Objective:** *To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.*

**Response:** The proposal will provide retail and commercial uses that will serve the needs of the LGA. The FSR exceedance allows for additional commercial floorspace.

**Objective:** *To encourage employment opportunities in accessible locations.*

**Response:** The proposed FSR will provide additional employment space in an area with a recognised demand for accessibly located office space.

**Objective:** *To maximise public transport patronage and encourage walking and cycling.*

**Response:** The proposal is in a highly accessible location and within close proximity to public transport routes including bus, train and ferry services.

**Objective:** *To attract new businesses and commercial opportunities.*

**Response:** The busy corner location will be highly attractive for businesses and shops. The new tenancies will provide substantial amounts of office space in a sought after area close to the City.

**Objective:** *To provide active ground floor uses to create vibrant centres.*

**Response:** Tenancies within the renovated contemporary commercial building will provide active frontage to both Bay and Cooper Streets at the ground floor level.

**Objective:** *To provide for development of a scale and type that is compatible with the amenity of the surrounding residential area.*

**Response:** The proposed FSR, bulk and scale will align with the existing and emerging development in the locality. The proposed FSR enables the provision of additional commercial floor space to meet the growing demand within the Woollahra LGA. The upper floor will be set back from the building line to enhance amenity for surrounding development and the streetscape. The basement level will not be visible in the streetscape and will have no impact on surrounding residential development.

- Objective:** *To ensure that development is of a height and scale that achieves the desired future character of the neighbourhood.*
- Response:** The proposal provides a bulk and scale that is in keeping with the desired future character of the area and is compatible with surrounding development. The proposed upper levels will be well articulated, with the top level set back and treated with landscaping to soften the built form.

From this, we consider the proposal is in the public interest and should be supported.

## 7. **Clauses 4.6(4)(b) and 4.6(5) Requirements**

Clause 4.6(4)(b) of the LEP requires the concurrence of the Secretary (of the Department of Planning, Industry and Environment) before the consent authority can exercise the power to grant development consent for development that contravenes a development standard.

Under Clause 64 of the Environmental Planning and Assessment Regulation 2000, the Secretary has given written notice dated 21 February 2018, attached to the Planning Circular PS 20-002 issued on 5 May 2020, to each consent authority, that it may assume the Secretary's concurrence for exceptions to development standards in respect of applications made under Clause 4.6, subject to the conditions in the table in the notice. While the proposal exceeds the development standard by over 10%, the Planning Circular provides for the Local Planning Panel to assume concurrence.

Nevertheless, the matters in Clause 4.6(5) should still be considered when exercising the power to grant development consent for development that contravenes a development standard (*Fast Buck\$ v Byron Shire Council* (1999) 103 LGERA 94 at [100] and *Wehbe* at [41]). In deciding whether to grant concurrence, the Secretary is required to consider the following:

- (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 proposal is not considered to raise any matter of significance for State or regional environmental planning. The FSR non-compliance will enhance the amenity and functionality of the proposed commercial building without significantly, unreasonably or unacceptably impacting neighbouring properties.

The public benefit of maintaining the development standard is not considered significant given that, regardless of the non-compliance, the proposal will appear consistent in the streetscape. The additional FSR will facilitate the provision of additional high quality commercial tenancies in the Double Bay Centre, which will increase the diversity of stock within the Woollahra LGA.

Accordingly, the proposal is consistent with the matters required to be taken into consideration before concurrence can be granted. The non-compliance contributes to a quality development which is consistent with the desired character of the precinct and is, in our opinion, in the public interest.



## 8. Conclusion

This written request has adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case and that there are sufficient environmental planning grounds to justify contravening the development standard. This is summarised in the compliance matrix prepared in light of *Initial Action* (see **Table 1** on the following page).

We are of the opinion that the consent authority should be satisfied that the proposed development will be in the public interest because it is consistent with the objectives of the standard and the development objectives of the B2 Local Centre Zone pursuant to the LEP. On that basis, the request to vary Clause 4.4 should be upheld.

Table 1: Compliance Matrix

Para (Initial Action)	Requirement	Section of this Report	Summary	Satisfied
10	Is it a development standard (s.1.4)	1	Yes	
11	What is the development standard	1	Clause 4.4A: FSR	
12	What is the control	1 & 2	3:1	
14	<b>First Precondition to Enlivening the Power</b> – Consent authority must form 2 positive opinions:		Both positive opinions can be formed as detailed below.	YES
15, 25	<b>1<sup>st</sup> Positive Opinion</b> – That the applicant's written request seeking to justify the contravention of the development standard has adequately addressed the matters required to be demonstrated by Clause 4.6(3). There are two aspects of that requirement.	5	The Clause 4.6 variation has adequately addressed both matters in Clause 4.6(3) by providing a detailed justification in light of the relevant tests and planning considerations.	YES
16-22	<b>First Aspect is Clause 4.6(3)(a)</b> – That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case. Common ways are as set out in <i>Wehbe</i> .	5.1	The proposal satisfies Tests 1 and 3 of <i>Wehbe</i> : <ul style="list-style-type: none"> <li>The objectives of the standard are achieved notwithstanding the non-compliance with the standard;</li> <li>The underlying objective or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable</li> </ul>	YES
23-24	<b>Second Aspect is Clause 4.6(3)(b)</b> – The written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard so as to enable the consent authority to be satisfied under Clause 4.6(4)(a)(i) that the written request has adequately addressed this matter. The environmental planning grounds must be "sufficient" in two respects: <ol style="list-style-type: none"> <li>The environmental planning grounds advanced in the written request must be sufficient "to justify contravening the development standard". The focus is on the aspect or element of the development that contravenes the development standard, not on the development as a whole, and why that contravention is justified on environmental planning grounds.</li> <li>The environmental planning grounds advanced in the written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole.</li> </ol>	5.2	Sufficient environmental planning grounds include, inter alia: <ul style="list-style-type: none"> <li>The proposed FSR provides for a prominent corner building in accordance with the development standard objective;</li> <li>The additional FSR facilities additional commercial floorspace which provides local employment and contributes to the conservation of the heritage item; and</li> <li>The perceived scale will be reduced by articulation and stepping back the upper level.</li> </ul>	YES
26-27	<b>2<sup>nd</sup> Positive Opinion</b> – That the proposed development will be in the public interest because it is consistent with the objectives of the particular development standard that is contravened and the	6	The proposed development is consistent with the objectives of the FSR standard as addressed under Test 1 of <i>Wehbe</i> . The proposal is also consistent with the objectives of the B2 Local Centre Zone.	YES

	objectives for development for the zone in which the development is proposed to be carried out.			
28-29	<b>Second Precondition to Enlivening the Power –</b> That the concurrence of the Secretary has been obtained [Clause 4.6(4)(b)]. On appeal, the Court has the power to grant development consent, subject to being satisfied of the relevant matters under Clause 4.6.	7	As the relevant matters for consideration under Clause 4.6 have been satisfied as outlined above, the Council can grant development consent.	YES

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